



AGENDA

PLANNING COMMISSION REGULAR MEETING VIRTUAL PLANNING COMMISSION REGULAR MEETING

**TUESDAY, DECEMBER 22, 2020
7:00 P.M.**

To protect our residents, officials, and staff, and aligned with the Governor's executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

Location:

Instructions for Virtual Planning Commission Regular Meeting

To follow or participate in the meeting:

1. Videoconference:
 - a. Follow the meeting on-line, click here to register:
https://us02web.zoom.us/webinar/register/WN_rEgo-uNSGggcIUx133w
 - b. After clicking on the URL, please take a few seconds to submit your first name, last name, and e-mail address, then click "Register" which will approve your registration and a new URL to join the meeting will appear.
2. Phone-in:
 - a. Once registered, you will receive an e-mail with instructions to join the meeting telephonically, and then dial 877-853-5257 (Toll Free) using the Webinar ID and Password found in the e-mail.
3. E-mail Public Comments:
 - a. If preferred, please E-mail Public Comments to Community Development Director Matthew Feske at mfeske@ci.clayton.ca.us by 5:00 P.M. on the day of the Planning Commission meeting. All E-mailed Public Comments will be forwarded to the entire Planning Commission.

For those who choose to attend the meeting via videoconferencing or telephone shall have three minutes for public comments.

- A complete agenda packet is available for public review on the City's website at www.ci.clayton.ca.us
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail, Clayton; 2) Library, 6125 Clayton Road, Clayton; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- If you have special accommodation requirements to participate, please call the Community Development Department office at least 72 hours in advance of the meeting at 925-673-7300.

CALL TO ORDER

1. PLEDGE OF ALLEGIANCE

2. ROLL CALL

3. PRESENTATION AND ANNOUNCEMENTS:

A. PRESENTATIONS:

None.

B. ANNOUNCEMENTS:

None.

4. ACCEPTANCE OF THE AGENDA:

The Planning Commission will discuss the order of the agenda, may amend the order, add urgency items, note abstentions or "no" votes on Consent Calendar items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The Planning Commission may also remove items from the Consent Calendar prior to that portion of the Agenda.

5. PUBLIC COMMENT (Non-Agenda Items):

This time has been set aside for members of the public to address the Planning Commission on items of general interest within the subject matter jurisdiction of the City. Although the Planning Commission values your comments, pursuant to the Brown Act, the Planning Commission generally cannot take any action on items not listed on the posted agenda. Three (3) minutes will be assigned to each speaker.

6. CONSENT CALENDAR

The following routine matters may be acted upon by one motion. Individual items may be removed by the Planning Commission for separate discussion at this time or under Acceptance of the Agenda. The ordinance title is deemed to be read in its entirety and further reading waived on any ordinance listed on the Consent Calendar.

A. None

7. PUBLIC HEARINGS

A. CONTINUED - PUBLIC HEARING TO REVIEW AND CONSIDER THE SIX-LOT RESIDENTIAL PLANNED DEVELOPMENT PROJECT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION ENV-02-16; GENERAL PLAN MAP AMENDMENT GPA-02-18; SPECIFIC PLAN MAP AMENDMENT SPA-01-18; ZONING MAP AMENDMENT ZOA-01-18; VESTING TENTATIVE RESIDENTIAL SUBDIVISION MAP MAP-01-16; DEVELOPMENT PLAN PERMIT DP-01-19; AND TREE REMOVAL PERMIT TRP-31-19. RECOMMENDATION:

1. Approve Planning Commission Resolution No. 02-2020 (Attachment A) recommending the City Council adopt the Oak Creek Canyon Residential Subdivision Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) (ENV-02-16); and
2. Approve Planning Commission Resolution No. 03-2020 (Attachment B) recommending City Council approval of a General Plan Map Amendment to eliminate the Public/Quasi Public (PQ) designation for the Oak Creek Canyon

Residential Subdivision Planned Development Project (GPA-02-18); and

3. Approve Planning Commission Resolution No. 04-2020 (Attachment C) recommending City Council approval of a Marsh Creek Road Specific Plan (MCRSP) Map Amendment to change the open space designation to Public Open Space designation for the Oak Creek Canyon Residential Subdivision Planned Development Project (SPA-01-18); and
4. Approve Planning Commission Resolution No. 05-2020 (Attachment D) recommending City Council approval of Ordinance No. XXX (Attachment E) for a rezone of the project site from Single Family R-10 and Public Facility (PF) to Planned Development District (PD) for the Oak Creek Canyon Residential Subdivision Planned Development Project (ZOA-02-18); and
5. Approve Planning Commission Resolution No. 06-2020 (Attachment F) recommending City Council approval of the Oak Creek Canyon Residential Subdivision Planned Development Project Development Plan (DP-01-15), Tentative Subdivision Map (MAP-01-16), Development Review Permit (DP-01-19), and Tree Removal Permit (TRP-31-19) for a six-lot subdivision for six single-family homes.

Alternative Recommendation

1. Request staff draft a resolution recommending that the City Council deny the General Plan Amendment, Marsh Creek Road Specific Plan Amendment, Rezone, Development Plan, Tentative Tract Map, Development Review Permit, and Tree Removal Permit.

8. ACTION ITEMS

A. None

9. PLANNING COMMISSION REQUESTS AND UPCOMING AGENDA DEVELOPMENT

This time is set aside for the Planning Commission to make requests of staff, and/or issues of concern to Planning Commissioners are briefly presented, prioritized, and set for future meeting dates.

10. ADJOURNMENT

The next Planning Commission Regular Meeting is Tuesday, January 12, 2021.

OAK CREEK CANYON Subdivision 8626

DECEMBER 17, 2020 Staff Report and Conditions of Approval clarifications, corrections, and correspondence addendum

Changes to Staff Report and Conditions of approval show Redline edits.

Attachments:

1. Staff Report
2. Conditions of Approval
3. OCC noted project concerns and staff comments
4. 11-16-20 City MCRSP developer collaboration request letter.pdf (In response to numbers 5 & 6 below)
5. 11-13-20 Moita letter to CD PC & CC.pdf (number 6 is an attachment)
6. 8-28-20 Rick Angrisani - Seeno Review Letter (attachment to number 6 above)
7. 11-19-20 email Moita to Seeno collaboration request.pdf
8. 10-9-20 Save Mt. Diablo Letter.pdf
9. 10-7-20 K Case email
10. 8-30-20 R Hatch Letter.pdf



AGENDA REPORT

TO: HONORABLE CHAIR AND PLANNING COMMISSIONERS

FROM: Matthew Feske, Community Development Director

DATE: October 13, 2020 (clarifications/corrections in red underline and strikethrough)

SUBJECT: Public Hearing to review and consider the six-lot Residential Planned Development Project Initial Study/Mitigated Negative Declaration ENV-02-16; General Plan Map Amendment GPA-02-18; Specific Plan Map Amendment SPA-01-18; Zoning Map Amendment ZOA-01-18; Vesting Tentative Residential Subdivision Map MAP-01-16; Development Plan Permit DP-01-19; and Tree Removal Permit TRP-31-19.

RECOMMENDATION

Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony, and if determined to be appropriate:

- 1) Approve Planning Commission Resolution No. 02-2020 (**Attachment A**) recommending the City Council adopt the Oak Creek Canyon Residential Subdivision Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) (ENV-02-16); and
- 2) Approve Planning Commission Resolution No. 03-2020 (**Attachment B**) recommending City Council approval of a General Plan Map Amendment to eliminate the Public/Quasi Public (PQ) designation for the Oak Creek Canyon Residential Subdivision Planned Development Project (GPA-02-18); and
- 3) Approve Planning Commission Resolution No. 04-2020 (**Attachment C**) recommending City Council approval of a Marsh Creek Road Specific Plan (MCRSP) Map Amendment to change the open space designation to Public Open Space designation for the Oak Creek Canyon Residential Subdivision Planned Development Project (SPA-01-18); and

- 4) Approve Planning Commission Resolution No. 05-2020 (**Attachment D**) recommending City Council approval of Ordinance No. XXX (**Attachment E**) for a rezone of the project site from Single Family R-10 and Public Facility (PF) to Planned Development District (PD) for the Oak Creek Canyon Residential Subdivision Planned Development Project (ZOA-02-18); and
- 5) Approve Planning Commission Resolution No. 06-2020 (**Attachment F**) recommending City Council approval of the Oak Creek Canyon Residential Subdivision Planned Development Project Development Plan (DP-01-15), Tentative Subdivision Map (MAP-01-16), Development Review Permit (DP-01-19), and Tree Removal Permit (TRP-31-19) for a six-lot subdivision for six single-family homes.

Alternative Recommendation

1. Request staff draft a resolution recommending that the City Council deny the General Plan Amendment, Marsh Creek Road Specific Plan Amendment, Rezone, Development Plan, Tentative Tract Map, Development Review Permit, and Tree Removal Permit.

REQUEST

The applicant, Kevin English, West Coast Home Builders, Inc., requests approval of an Initial Study/Mitigated Negative Declaration, General Plan Map Amendment, Specific Plan Map Amendment, Zoning Map Amendment, Development Plan, Vesting Tentative Map, and Tree Removal Permit. The project is located on approximately nine acres of land in Clayton at the north side of Marsh Creek Road at its intersection with Diablo Parkway in Clayton, CA. (see Attachment ~~F~~G for Vicinity Map).

The proposal entails review of the following entitlements:

- Environmental Review (ENV-02-16)
Review and consideration of the Oak Creek Canyon Residential Planned Development Project IS/MND and MMRP prepared in accordance with the California Environmental Quality Act (CEQA). This report analyzes the potential impacts caused by the project and identifies various measures to mitigate these impacts.
- General Plan Amendment (GPA-02-18)
The project site is currently designated by the City of Clayton General Plan Land Use Element as Low- Density (LD), PQ, and Private Open Space (PR). Single-family dwellings are not consistent with the PQ and PR designation. Therefore, the proposed project includes a General Plan Map Amendment to eliminate the PQ designation, and shift areas of the PR and LD designations of the site to allow for the construction of six single-family residential lots.
- Zoning Map Amendment (ZOA-01-18)
The project site is currently zoned R-10 and PF. R-10 allows the construction of residences for the owner or lessee, while PF is intended to provide areas for public facilities such as government offices, public safety facilities, and other public land uses. The proposed

project includes a request to rezone the entire site from R-10 and PF to PD in order to encompass the residential uses and bioretention basin.

- Marsh Creek Road Specific Plan Map Amendment (SPA-01-18)
The project site is currently designated by the Marsh Creek Road Specific Plan Low Density Residential and Open Space. The MCRSP allows for alternative Open Space preservation. The project site proposes Private Open Space, which matches the General Plan site designation.
- Development Plan (DP-01-19)
A Development Plan to review the architecture and design of the six proposed single-family residences measuring approximately 3,049 to 4,488 square feet in area and 23 to 32 feet in height as well as the project-related landscaping, drainage, fencing, lighting, and retaining walls.
- Vesting Tentative Map (MAP-01-16)
A Vesting Tentative Map to subdivide the existing approximately 9-acre property into six proposed single-family residential lots with private open space.
- Tree Removal Permit (TRP-31-19)
A Tree Removal Permit to allow the removal of nine of the 21 trees existing on the project site and replacement with newly planted trees, shrubs, and groundcover.

PROJECT INFORMATION

Applicant/owner: West Coast Home Builders, Inc.
4061 Port Chicago Highway
Concord, CA 94520
Contact: Kevin English
(925) 682-6419

Acreage/Location: 9.03 acres
Northwest of the intersection of Marsh Creek Road and Diablo Parkway
APN: 119-070-008

General Plan Designation
Existing Private Open Space PR, Public/Quasi Public PQ, and Low-Density Residential LD (1.1 - 3 units per acre)
Proposed: Private open Space PR, and Low-Density Residential LD (1.1 - 3 units per acre)

Zoning Classification
Existing: R-10 Residential and Public Facility PF
Proposed: Planned Development PD

Marsh Creek Road Specific Plan

Existing: Open Space OS, and Low-Density Residential LD
Proposed: Private Open Space PR, and Low-Density Residential LD

Surrounding General Plan Designations: North: Public Park / Open Space / Open Space and Recreational
South: Single-Family Low Density (1.1 – 3.0 units per acre)
East: Vacant Grazing land
West: Single-Family Low Density (1.1 – 3.0 units per acre)

Surrounding Zoning Classifications: North: Planned District (PD) and Community Park
South and West: Single-Family Residential R-10 District
East: Marsh Creek Road Specific Plan

Environmental Review: Oak Creek Canyon Planned Development Project Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (ENV-02-16) prepared in accordance with the California Environmental Quality Act is discussed in further detail below.

Public Notice: On August 19, 2020, a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration and a Notice of a Public Hearing for the Oak Creek Canyon Planned Development Project was published in the Contra Costa Times, posted on the notice boards, and mailed to property owners within 300 feet of the project site. The 20-day public review period for the project's Initial Study/Mitigated Negative Declaration was from August 21, 2020, to September 9, 2020. The public hearing date was noticed for October 13, 2020.

Authority: Section 65354 of the California Government Code requires the Planning Commission to provide the City Council with a written recommendation on general plan amendments.

Sections 65354 and 65453 of the California Government Code requires the Planning Commission to provide the City Council with a written recommendation on specific plan amendments.

Section 17.56.060 of the Zoning Ordinance requires any Planning Commission recommendations on zone changes to be made by Planning Commission resolution.

BACKGROUND/DISCUSSION

The 9.03-acre project site is located northwest of the intersection of Marsh Creek Road and Diablo Parkway and surrounded by existing single-family residential neighborhoods to the west

and south. The subject property is vacant land. The applicant proposes to subdivide the existing property into six residential lots.

The Oak Canyon Creek Annexation and Residential Subdivision Project was approved by the City of Clayton on April 5, 2005, along with adoption of an Initial Study/Mitigated Negative Declaration; however, the project was never constructed. The previously-approved entitlements for the project included a property annexation, a General Plan Amendment, an amendment to the MCRSP, pre-zoning of the project site, a tentative subdivision map for five single-family lots and one lot for a bio-retention basin, a Development Plan review permit for home landscape and design, and a Use Permit for the stormwater basin. It should be noted that the General Plan Amendment pertained to a parcel that is not included in the current project proposal.

Given that original project was never constructed, several project entitlements have since expired. In addition, the project applicant has modified the project to include six homes instead of the five homes included in the original proposal, and the size of the proposed bio-retention basin has been reduced. As discussed in greater detail below, the project entails review and consideration of an IS/MND (ENV-02-16), General Plan Map Amendment GPA-02-18; Specific Plan Map Amendment SPA-01-18; Rezone ZOA-02-18 (Map Amendment); Tentative Vesting Map MAP-01-16; Development Plan Permit DP-01-19; and Tree Removal Permit TRP-31-19.

PLANNING COMMISSION AND CITY COUNCIL ACTIONS

Due to the requested and proposed legislative actions, the General Plan Map Amendment, Zoning Map Amendment, Environmental Study, and Marsh Creek Specific Plan Amendment, the City Council will be the final hearing body for this project; therefore, the Planning Commission actions will consist of recommendations to the City Council. The Planning Commission will first review and make separate recommendations to the City Council on the first four entitlements: the IS/MND and MMRP (ENV-02-16); the General Plan Amendment (GPA-02-18); MCRSP Amendment (SPA-01-18) and the Rezone (ZOA-02-18), and then will make a recommendation to the City Council for the remaining entitlements: the Development Plan (DP-01-19); the Tentative Parcel Map (MAP-01-16); and the Tree Removal Permit (TRP-31-19) together under one recommendation.

Separate Resolutions have been drafted for the first four entitlements (ENV-02-16, GPA-02-18, ZOA-02-18, and SPA-01-18) and then the remaining three entitlements (DP-01-19, MAP-01-16, , and TRP-31-19) are bundled together in one Resolution. In total, the Planning Commission will review and render recommendations to the City Council on five individual Resolutions.

ENVIRONMENTAL REVIEW

In compliance with CEQA, the City has prepared an IS/MND and MMRP for the proposed project. The IS/MND was circulated for a 20-day public review period from August 21, 2020, to Sept 8, 2020. Due to the length of the IS/MND, the document was distributed to the Planning Commission electronically on October 2, 2020. The IS/MND and MMRP are available for review at the Community Development Department on the third floor of City Hall and can also be found on the City's website at:

<https://ci.clayton.ca.us/community-development/planning/development-activity/current-projects-oak->

[creek-canyon/](#).

The IS/MND evaluated the potential project-related environmental impacts: aesthetics, agriculture resources, air quality, biological resources, cultural resources, energy, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation/circulation, tribal cultural resources, utilities and service systems, wildfire, and mandatory findings of significance. Of the 20 potential impacts evaluated, the IS/MND identified five environmental factors that are “potentially significant”: biological resources, cultural resources, geology and soils, hazards and hazardous materials, and tribal cultural resources. Mitigation measures have been provided for the five potentially significant impacts, thereby reducing the project impacts on the environment to a “less-than-significant” level. The evaluations, impacts, and mitigation measures are described in detail in the IS/MND.

GENERAL PLAN MAP AMENDMENT

The project site is currently designated by the City of Clayton General Plan Land Use Element as LD, PQ, and PR. Single-family dwellings are not consistent with the PQ and PR designation. Therefore, the proposed project includes a General Plan Map Amendment to change the boundaries of the LD and PR areas and eliminate the PQ designation which would allow for the construction of six single-family residential lots (see Attachment H). Previous plans depicted a detention basin in the PQ-designated location. The basin has been changed to a private facility, thus no longer requiring the PQ designation.

In looking at the surrounding General Plan land use designations, directly adjacent to the project site are Single-Family Low Density LD (1.1 to 3 units per acre), Public Park/Open Space/Open Space and Recreational PU, Private Open Space PR, and Rural Estate RD.

Housing Element

State law requires that the State Department of Housing and Community Development (HCD) forecast statewide housing needs and allocate the anticipated need to regions throughout the state. For the Bay Area, HCD provides the regional need to the Association of Bay Area Governments (ABAG), which then distributes the Regional Housing Needs Assessment (RHNA) to the cities and counties within the ABAG region. ABAG allocates housing production goals for cities and counties based on their projected share of the region’s household growth, the state of the local housing market and vacancies, and the jurisdiction’s housing replacement needs.

“For the 2014-2022 projection period, ABAG has allocated the City of Clayton a total of 141 housing units, which must be accommodated for and demonstrated within the City’s Housing Element. The City’s 2015-2023 Housing Element identifies a citywide capacity of 275 housing units, which provides for a housing surplus of 134 units above the City’s assigned RHNA of 141 units. The Housing Element identifies the entire project site as an “approved site.” As the original Site Plan Review Permit expired, the City is conditioning the developer to provide 1 low-income housing unit off-site as part of the Affordable Housing Plan for the project.

ZONING MAP AMENDMENT

The proposed project includes a request to rezone the entire site from R-10 and PF to PD in order to encompass the residential uses, private open space, and bioretention basin (see Attachment J). R-10 allows the construction of residences for the owner or lessee, while PF is intended to provide areas for public facilities such as government offices, public safety facilities, and other public land uses. Previous (expired) plans for 5 residential lots included a public detention basin on the property in the PF zone.

MARSH CREEK ROAD SPECIFIC PLAN MAP AMENDMENT

The project site is currently designated by the Marsh Creek Road Specific Plan Low Density Residential and Open Space. The MCRSP allows for alternative Open Space preservation. The project site proposes Private Open Space, which is the General Plan designation for the parcels open space. (See Attachment I)

DEVELOPMENT PLAN PERMIT

A Planned Unit Development of five (5) lots or more requires a Development Plan Permit. The development plan review process reviews the proposed site plan, architecture, arrangement and spacing of structures to provide appropriate open spaces around them, landscaping, vehicular and pedestrian access, lighting, fences, and walls.

TENTATIVE PARCEL MAP

The Tentative Parcel Map proposes to create six new single-family residential lots on the undeveloped property along Marsh Creek Road. The proposed single-family residential lots are proposed to have a single-family residence placed on each lot that will be accessed by a driveway off Saltbrush Lane. A shared driveway is proposed for lots 1 and 2. Section 17.37.090.D.4 of the Clayton Municipal Code (CMC) states, in part, that the City Engineer may require driveway widths in excess of the minimum 16-foot requirement “where unusual traffic, grade, or site conditions prevail.” Because the proposed driveway grade may be up to 20%, the Vesting Tentative map shall show a minimum 20-foot driveway width curb to curb, in accordance with CMC Section 17.37.090.D.4, for which a condition has been provided.

Three existing easement areas are located on the property: an existing 8-foot-wide Public Utility Easement parallels and is next to Marsh Creek Road; a 50-foot-wide easement between Contra Costa Water District (CCWD) parcel and Marsh Creek Road; and four pipeline easements along the east property line. The project has conditions addressing the safety of working near the easements, landscaping, and clearing title to non-existent or abandoned pipelines.

The MCRSP delineates a trail on the east side of the property line. A condition has been added that the project show dedication of a 10-foot-wide public access easement along the eastern edge of lots 5 and 6. A six-foot-wide pedestrian trail shall be installed in the easement as shown on the MCRSP.

Section 16.12 of the CMC requires all new subdivisions to dedicate land, pay a fee in-lieu thereof, or both for park and recreational purposes. For projects involving 50 parcels or less, the proposed subdivision is required to pay a fee equal to the land value of the portion of the local park

required to serve the needs of the residents of the proposed subdivision. A condition has been provided requiring payment of parkland dedication fees at the time of filing the final map.

Constraints Map

Section 17.22 of the CMC requires a residential density computation that does not include sensitive land areas for purposes of calculating the permitted subdivision capacity (density) on a parcel or parcels of land. Because of the constraints due to sensitive land areas, residential parcels with sensitive land areas shall fall within a not-to-exceed maximum density for developable acreage and shall not have a minimum density requirement. 3.52 acres of the 9.03-acre lot are on slopes greater than 26 percent. This leaves 5.51 acres. The general plan for the Single-Family Low-Density LD (1.1 to 3 units per acre), computes to 6 to 16 allowable residences. (See Attachment K)

Open Space

The proposed project is requesting a rezone of the entire project site to PD; therefore, the provisions of CMC Chapter 17.28 would also be applicable, including the open space requirements of CMC Section 17.28.100. This section requires provisions for active and passive open space comprising of at least 20 percent of the project site. As a result, the proposed project would be required to acquire and dedicate off-site land for open space or make an in-lieu contribution for the dedication of open space.

The total area of the six single-family home sites is 9 acres, and the developer is required to provide 20 percent of that square footage as open space with 10 percent active open space and 10 percent passive open space. The project shows 5 acres passive open space, and no active open space. Since on-site active open space is not being provided, the developer has three options and shall memorialize the selected option or a combination of options by entering into an agreement with the City: 1) acquire the equivalent amount of land for public open space and/or the construction of open space at an off-site location, 2) payment of an in-lieu financial contribution to the City for acquisition and/or maintenance of public open space, or 3) if the financial contributions are based upon maintenance costs, such contributions shall be based upon reasonable maintenance costs for a 10-year period and shall be proportional to the land area that would be required if open space area was provided on-site. The acquisition of open space or the in-lieu fee shall be paid at the time of filing the final map. Staff has provided a condition that the project shall comply with the open space requirements of the CMC.

Street Section

The Tentative Parcel Map shows two typical cross sections for Saltbrush Lane that do not conform to the MCRSP. The standard for a collector road in the MCSP shows a 4-foot sidewalk, a 6-foot landscape strip, 10-foot parking and bike lane, two 11-foot travel lanes, and 6 feet of landscaping. Conditions of Approval call for the dedication of the 48-foot right-of-way and grading of the entire right-of-way. The Developer is being required to build a 4-foot sidewalk, 6-foot landscape strip (including curb), and 24-foot roadway (including gutter) to accommodate two travel lanes and a 2-foot shoulder.

The proposed section is adequate for the 6 proposed lots, and allows for the future utility construction without disrupting the road section. At such time the lands to the east are annexed and approved for construction, the proposed section allows for connection to the parcels with minimal grading

Per the MCRSP section C1-7: Internal circulation within subdivisions shall be designed at the discretion of the property owner, subject to approval by the City, provided that it allows for through access to adjacent parcels as indicated on Figure 10.

GRADING

The maximum elevation of the property is approximately 690 feet above sea level with a minimum elevation of approximately 587 feet above sea level. Geotechnical remediation reports depict an old slide on lots 1 through 3 which is proposed to be repaired as part of the grading work. Lots 1, 2, and 3 each have retaining walls that are a maximum of 3 feet high. Plans depict a balanced site.

Per MCRSP, DD-4a, Site grading shall generally be limited to areas within the building footprint, under access roads and driveways, and where necessary to create modest yards or to correct unusual site conditions such as landslides.

A condition has been added that requires plans be modified to show full section grading of Saltbrush Lane.

East Contra Costa County Habitat Conservancy

According to the Plant Survey Report, the project site consists of approximately 6.57 acres of annual grassland land cover and 2.46 acres of ruderal land cover. The project site is located within the boundaries of the *East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCCHCP/NCCP)*, which is intended to provide an effective framework to protect natural resources in the County. The project site is located within Zone 2 of the Fee Payment Zones designated in the ECCCHCP/NCCP. As per the Fee Payment Zones, the proposed project would be subject to payment of all applicable fees prior to construction of the project.

Prior to grading the project, the initial study requires mitigation measures to minimize effects of the project, which are included in the conditions of approval.

UTILITIES

Water, sewer, and stormwater infrastructure for the subdivision is shown on the project utility plan. A detention basin is planned for lot 6, while the smaller basins shown are conditioned to be eliminated and the lot 6 basin redesigned to accept the flows for ease of maintenance, if feasible. All utilities are to be sized to accommodate buildout of the MCRSP.

The Oak Creek plans and COA's provide adequate improvements for the project's 6 lots and provision for expansion for future annexation and development as envisioned in the MCRSP. All parcels in the MCRSP excepting the proposed Oak Creek Canyon proposed project and a small parcel are outside the urban limit line.

Since the MCRSP was written over 25 years ago the city enacted the Sensitive Lands Ordinance (CMC 17.22.020: density is reduced on lands environmentally sensitive, and greater than 26% slopes Without a constraints plan to determine allowable density, utility sizing is unknown at this time on the eastern parcels.

MCRSP IM-13 states “improvements on individual properties required under this Specific Plan shall be financed by individual property owners or developers.”

Water

The CCWD will provide water to the residential project site. Currently, an existing CCWD water main is located along Marsh Creek Road that the applicant proposes to utilize in order to serve the six lots extending in a proposed line from the existing water main with two water laterals to each lot.

Sewer

Sewer service is currently provided in proximity to the residential project site by the City of Concord from an existing sewer line located on Marsh Creek Road that runs south along the road. The project would include the connection of the proposed residential units to sewer service by way of a new 8-inch sewer line extending from the existing sewer main, with six sewer laterals proposed to service the six residential parcels, one sewer lateral to each lot.

Stormwater

In order to comply with State’s C.3 standards, the portion of the project site proposed for development has been separated into drainage management areas corresponding with the six residential units proposed as part of the project. Stormwater runoff from the drainage management areas would be directed to separate bioretention areas, Per C.3 Guidebook instructions, and the proposed bioretention areas would be sized with adequate capacity to receive and treat all runoff from the impervious areas of the project. Runoff entering the bioretention areas would move through permeable soil layers, which would slow the stormwater while also removing pollutants that may be contained in the runoff. Stormwater that exceeds the bioretention facilities’ infiltration capacity, such as in the case of heavy storm events, would be directed to existing stormwater infrastructure located on at the Saltbrush Road intersection with Marsh Creek Road.

Funding for the operation and maintenance of the stormwater detention basin is the responsibility of the Homeowners Association (HOA). A Community Facilities District (CFD) is being required to take on the operation and maintenance of the stormwater facilities (and landscape maintenance) should the HOA fail to meet their obligation.

Conditions have been provided addressing project-related stormwater, storm drain, and drainage issues, including the applicant submitting to the City Engineer for review and approval a stormwater operations and maintenance plan along with a final stormwater control plan.

The drainage area in the southern portion of the project site had been recently disked prior to visual reconnaissance surveys of the project area by biologist Leslie Koenig to evaluate biological

resource conditions at the site in 2017 and 2018. However, several indicators were found suggesting considerable surface water flows across the site in the vicinity of the mapped drainage alignment, and that without the routine disturbance from disking, a natural drainage with a bed and bank could form within the site. Project plans propose a 48-inch storm drain, and mitigation measures require that prior to approval of grading plans for the proposed project, the project applicant shall complete a formal wetland delineation and submit the delineation to the U.S. Army Corps of Engineers (USACE) for verification. If the project site is determined to include jurisdictional wetlands that would be altered as part of the proposed development, a Section 404 permit for fill of jurisdictional wetlands would be required, and mitigation for impacts to jurisdictional waters that cannot be avoided shall conform with the USACE “no-net-loss” policy prior to approval of grading plans.

DEVELOPMENT PLAN PERMIT REVIEW

Development Standards

The Planned Development District designation allows for flexibility in regulations, limitations, and restrictions different than those specified elsewhere in the City, such as setbacks and height limitations, location of pedestrian and vehicular access, construction fences and walls, amongst others. The development standards for the six lots for the six single-family homes are proposed in the table below. Staff analyzed the development standards in the adjacent Single-Family Residential Districts and found the proposed development standards were identical to those within the Single-Family Residential R-10 District, which is the existing zoning district; therefore the proposed development standards conform to surrounding existing development standards, development patterns, and house orientations. Note, the lots are greater in size than those existing to the south and west of the project due to the sensitive lands of the slopes, however as a gateway to Clayton (until future MCRSP development occurs), the project conforms to the topography by clustering the development in the flatter land area.

R-10 and MCRSP Standards

Setback Analysis

The Planned Development zoning proposed for the site allows the project to establish project-specific setbacks, at the discretion of the Planning Commission and City Council. Staff has provided a R-10 setback table. The proposed setbacks for the proposed homes are consistent with surrounding existing interior lot setbacks and provide a greater amount of setback area than surrounding lots in the R-10 District.

The proposed site plan shows that the proposed homes meet the minimum lot width at the front setback line of 80 feet, excepting the flag lot on lot 2 that shows adequate layout relationship to neighboring homes on lots 1 and 3. The project site plan demonstrates the six proposed homes have setbacks equal to or greater than those shown on the table below.

R-10 Setback Table

Front Setback	Interior Side Setback	Exterior Side Setback	Rear Setback	Building Height	Accessory structures	Lot area
20'	10' minimum	20'	15'	35'	Per MC	10,000 S.F.

	20' aggregate				17.16.130	Min.
<u>Marsh Creek Road Specific Plan Standards (DD-2a)</u>						
<u>Front Setback¹</u>	<u>Interior Side Setback</u>	<u>Exterior Side Setback</u>	<u>Rear Setback</u>	<u>Building Height</u>	<u>Accessory structures</u>	<u>Lot area</u>
<u>20'</u>	<u>10' minimum</u> <u>25' aggregate</u>	<u>20'</u>	<u>25'</u>	<u>35'²</u>	<u>Per MC</u> <u>17.16.130</u>	<u>10,000 S.F.</u> <u>Min.</u>

1. 25' to back of curb
- ~~1-2.~~ Lot 6 is 28-foot building height

The MCRSP aggregate side setback is 25-feet (20-feet in R-10). Lot 3-4 aggregate side setback is 23-feet, lot 4-5 aggregate side setback is 20-feet, and lot 1 setback is 19.5-feet. MCRSP DD-2g states the setbacks may be changed based on site specific considerations such as trees, steep topography, road/trail crossings, or appropriate clustering. The projects clustering, and topography meets the criteria for reduction in setback.

The area and depth of each lot are greater than the R-10 10,000-square-foot-minimum lot size and the 90-foot-minimum lot depth, and the 15,000-square-foot-minimum lot size noted in the MCRSP DD-3a.

As discussed under the Vesting Tentative Map Grading section above, a condition has been added that requires Saltbrush Lane modification to assure no future grading occurs on lot 6 once the MCRSP buildout is complete and Saltbrush Lane is constructed to full section.

Architecture and Design

As part of the project, each lot plans for one single-family residence. The site plan, floor plans, architectural elevations, colors, and roofing are provided as Attachment 0.

Policy 7c of the General Plan requires design plans to be coordinated with those of the Town Center and the current architecture. MCRSP Policy DD-8 indicates the architectural style should reflect traditional rural architecture. Architectural elevations were resubmitted that reflect a rural architecture by using vertical and horizontal siding, brick, fieldstone, ledgerstone, timber materials, colors and roofing material that combine to create a country sense. Each residence features sufficient articulation with various projections, recesses, and undulations on all four facades. Visual interest is provided with the varying window sizes and to break up the various panes of window glass. The earth tones of the proposed exterior colors and materials provide dynamic yet subtle color schemes that foster a unique curb appeal. The appearance of the residences from Marsh Creek Road is enhanced by the varied architectural elements, and minimal use of solid wall planes.

Residential Floor Area Analysis

Building Footprint

The purpose of the CMC 17.78.010 regulation is to implement the General Plan, which envisions maintaining the semi-rural character of the city and providing a variety of housing sizes. This

regulation of the relationship of house size to lot size is intended to preserve and perpetuate the established relationship of buildings and spaces characteristic of Clayton's residential setting, where relatively modest residences are surrounded with generously sized areas of natural and landscaped open grounds; assure that the scale of residential development responds to the limitations created by constrained lot sizes; minimize the out-of-scale appearance of large residences relative to their lot size and to other residences in a neighborhood; minimize the environmental damage of tree removal and grading which may result from over-building; and expand the range of house sizes to accommodate housing needs and preserve and enhance diversity of housing.

The following demonstrates shows that the project conforms to the floor area analysis per the CMC, because the project square footage numbers are less than the maximum footages allowed in CMC 17.78.010. Note the MCRSP does not reference floor area ratio.

Project Floor Area Analysis Table

Lot	NET Lot Area*	Building Footprint	Maximum Footprint Allowed (25%)	Floor Area	Maximum Floor Area (35%)
1	26,276	3,894	6,569	6,024	9,197
2	129,761	3,554	32,440	5,663	45,416
3	74,579	3,461	18,645	6,002	26,103
4	44,704	4,397	11,176	4,397	15,646
5	41,654	3,105	10,414	5,109	14,579
6	63,193	5,015	15,798	5,015	22,118

*Net lot area means the total horizontal area included within a lot, excluding areas within vehicular or pedestrian access easements.

Landscaping

The applicant has submitted a Landscape Plan for the project (see Attachment P). The applicant is providing a mixture of 7 types of trees including coast live oaks and valley oaks, yew, and crape myrtle trees as well as various shrubs, ornamental grasses, and groundcovers. Staff has provided a condition that, prior to a grading permit being issued for the project, a revised Landscape, Irrigation, Fencing, and Retaining Wall Plan shall be submitted along with construction plans for building permit issuance to the Community Development Director for review and approval. Landscaping is proposed in front of the residences and in the Saltbrush lane right-of-way. Landscape plans also show landscaping along Marsh Creek Road and the proposed Saltbrush Lane.

Staff has provided a condition that the landscaping for the project comply with the City's landscape water conservation standards, as listed in Chapter 17.80 of the CMC. Landscape plans show the only water-thirsty landscape is a small grass area at each proposed home site. All other landscaping is low to moderate water use.

Fencing

The fencing plans in the landscape plan package show a split double rail, a split-view fence (solid lower, wire top), a privacy fence, and open space wire fencing. Due to traffic along Marsh Creek Road, a sound study a mitigation measure was added to provide sound protection and thus construct sound walls at locations near the roadway instead of fencing. For visual concerns, the project is conditioned to remove the metal open space fence and provide the wire open space fencing.

Retaining Walls

The proposed project includes construction of 3-foot high retaining walls on lots 1, 2, and 3. Lot 3 shows a double wall in the back yard to allow for a larger patio/yard area. Regrading on lot 6 to allow future full-section roadway for Saltbrush Lane may require additional 3-foot-high walls. The walls will be textured, colored block walls. All retaining walls visible from street or sidewalk areas are conditioned to be covered with a stone fascia.

Parking

The architectural plans show garage parking for three cars, and the site plan shows parking for a minimum of two additional cars in the driveway. Until buildout of the MCRSP, Saltbrush Lane's modified section does not provide parking for the homes, however each lot and garage provides adequate parking.

TREE REMOVAL PERMIT

None of the 21 trees surveyed are protected under the City of Clayton Tree Ordinance due to their size and species; however, as part of the project, the applicant is requesting approval of a Tree Removal Permit to remove nine trees, for which an Arborist Report has been submitted (see Attachment Q). Section 15.70.040.A of the CMC provides the options for tree replacement and the project landscape plans (see Attachment P) show abundant tree planting.

To minimize damage to public improvements (i.e. sidewalks), staff has provided a condition that trees planted less than 10 feet away from public improvements have root guards installed.

AGENCY COMMENTS

The project conditions of approval list agency comments from Contra Costa County Flood Control and Water Conservation District, Contra Costa County Fire Protection District, Contra Costa Water District, CRIMSON PIPELINE L.P., and Phillips 66 Pipeline, LLC.

FISCAL IMPACT

There are no immediate fiscal impacts associated with the application. Should the proposed project be approved, there would be an increase in property taxes, which would be a direct positive fiscal impact. In addition, after construction and occupancy of the homes, the residents could have an indirect positive fiscal impact by shopping and eating at the local businesses and increasing sales taxes.

ATTACHMENTS

- A Planning Commission Resolution No. 02-2020 IS/MND
- B Planning Commission Resolution No. 03-2020 General Plan Map Amendment

- C Planning Commission Resolution No. 04-2020 Marsh Creek Road Specific Plan Map Amendment
 - D Planning Commission Resolution No. 05-2020 Zoning Map Amendment
 - E Clayton Zoning Map Amendment Ordinance
 - F. Planning Commission Resolution No. 06-2020 Vesting Tentative Map, Development Plan, Tree Removal
 - G Vicinity and Site Map
 - H General Plan Map Amendment Exhibit
 - I Marsh Creek Road Specific Plan Map Amendment Exhibit
 - J Zoning Map Amendment Exhibit
 - K Constraints Map
 - L Vesting Tentative Map
 - M Preliminary Grading Plan
 - N Utility Plan
 - O Site and Architectural Plans (Floor Plans and Architectural Elevations, Exterior Colors and Materials)
 - P Landscape and Fencing Plan
 - Q Arborist Report
 - R [Oak Creek Canyon Conditions of Approval](#)
- Initial Study/Mitigated Negative Declaration [\(Separate stand-alone document\)](#)

CONDITIONS OF APPROVAL FOR OAK CREEK CANYON SUBDIVISION 6826

FILES

Environmental Review ENV-02-16; General Plan Map Amendment GPA-02-18; Specific Plan Map Amendment SPA-01-18; Zoning Map Amendment ZOA-02-18; Vesting Tentative Subdivision Map MAP-01-16; Development Plan Permit DP-01-19; and Tree Removal Permit TRP-31-19.

West Coast Home Builders, Inc. (Applicant and Owner)

Administrative

1. _____ This approval is based on the following exhibits/reports received by the Community Development Department for 6 residential lots on the approximately nine (9) acre site as follows:

PLAN	DATED	PREPARED BY	PAGES
Vesting Tentative Map (VTM)	2/03/20	Isakson & Assoc. Inc.	1
Zoning Exhibit		Isakson & Assoc. Inc.	1
General Plan Exhibit		Isakson & Assoc. Inc.	1
Marsh Creek Road Specific Plan Exhibit		Isakson & Assoc. Inc.	
Site Plan and Design Review Booklet	2/24/2020	Discovery Design Group	34
Prelim. Grading Plan	2/3/2020	Isakson & Assoc. Inc.	2
Geotech Slope Constraints	3/18/2020	Isakson & Assoc. Inc.	1
Geotechnical /Geologic Peer Review	2/25/2020	Alan Kropp and Assoc. Inc.	4
Geotechnical Earthwork Calcs	11/3/2019	A.D. Seeno Const. Co.	6
Response to Review 2/25/20 Comments by Alan Kropp & Assoc.	3/10/2020	ENGEO	23
Supplemental Geotechnical/Geological Peer Review	3/18/2020	Alan Kropp and Associates, Inc.	2
Review letter of Engeo Updated Geotechnical	3/19/2008	Joyce Associates	3
Engeo Updated Geotechnical Report	2/22/2008	Engeo	84
Preliminary Landscape Plan	3/10/2020	MD Fotheringham Landscape Architects	12
Arborist report	10/10/2019	Traverso Tree Service	8

Stormwater Control Plan	5/17/2015	Isakson & Assoc. Inc.	19
Constraints Map	8/23/2019	Isakson & Assoc. Inc.	1
Rare Plant Survey Report	12/21/2018	Swaim Biological Incorporated	32
Biological Resources Assessment & Attach. A photos	06/11/2018	Swaim Biological Incorporated	32
HCP Application and Planning Survey Report	May 2018	Swaim Biological Incorporated	35
Utility Plan	6/12/2020	Isakson & Assoc. Inc.	1
Initial Study		Raney	
Title Report Pre	1/21/2020	Old Republic	

2. _____ Approval of the tentative map shall not be construed as a guarantee of approvals of specific proposed improvements shown.
3. _____ The development shall comply with the City of Clayton Municipal Code, policies, and standards unless a specific exception is granted thereto, or is otherwise modified in these conditions or in the development agreement.
4. _____ Prior to the issuance of building permits architecture, sound walls, fencing, mailboxes, lighting, any accent paving, addressing, and landscaping for the entire project shall be subject to review and approval by the ~~Planning Commission~~ Community Development Director.
5. _____ Sound wall locations and elevations shall be included on the grading plan(s).
6. _____ A final and unchallenged approval of this project supersedes previous approvals that have been granted for this site.
7. _____ Permits or approvals, whether discretionary or ministerial, will not be considered if the applicant is not current on fees, reimbursement and/or other payments that are due the City.
8. _____ All required easements or rights-of-way for improvements shall be obtained by the applicant at no cost to the City of Clayton. Advance permission shall be obtained from any property or, if required from easement holders, for any work done within such property or easements.
9. _____ All easements of record that are no longer required and affect individual lots or parcels within this project shall be removed prior to or concurrently with the recordation of the final map or subsequent separate document as approved by City Engineer.

10. _____ All advertising signs shall be consistent with the Sign Ordinance or as approved by the Community Development Director.
11. _____ The approval is for a two-year period, which may be extended for an additional one year. Extension requests must be submitted prior to expiration of the initial approval and must be accompanied by the appropriate filing fee. An extension request is subject to review and approval of the Community Development Director.
12. _____ Pursuant to Government Code Section 66474.9, the applicant (including the subdivider or any agent thereof) shall defend, indemnify, and hold harmless the City of Clayton and its agents, officers, consultants, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul the City's approval concerning this subdivision map application, which action is brought within the time period provided for in Section 66499.37. The City will promptly notify the subdivider of any such claim, action, or proceeding and cooperate fully in the defense.
13. _____ The applicant agrees to indemnify, protect, defend, and hold harmless the City and its elected and appointed officials, officers, employees, consultants, and agents from and against any and all liabilities, claims, actions, causes, proceedings, suits, damages, judgements, liens, levies, costs, and expenses of whatever nature, including attorney's fees and disbursements arising out of or in any way relating to the issuance of this entitlement, any actions taken by the City relating to this entitlement, or the environmental review conducted under the California Environmental Quality Act for this entitlement and related actions.
14. _____ The project is subject to development impact fees and parkland dedication fees, as established in the Municipal Code at the time of payment.
15. _____ All mitigation measures set forth in the Oak Creek Canyon Subdivision Initial Study/Negative Declaration (ENV 02-16) are hereby incorporated into these Conditions of Approval, as if fully contained herein, except those found infeasible pursuant to Section 15091 of the California Environmental Quality Act Guidelines.
16. _____ The Developer shall be responsible for all fees and environmental review costs, including those charged by other governmental agencies including, but not limited to, the California Department of Fish and Wildlife (CDFW) and the U.S. Army Corps of Engineers (USACE).
17. _____ This application is subject to an initial application fee, which was paid with the application submittal, plus time and material costs if the application review expenses exceed 100% of the initial fee. Any additional fee due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first. You may obtain current costs by contacting the ~~project's assistant planner~~Community Development Director. If you owe additional fees, a bill will be sent to you shortly after permit issuance.

Rezoning/Amending

18. _____ This tentative map approval is not effective until the General Plan designation for the project site area has been amended to Private Open Space (PR) and Low Density (LD) as shown on the General Plan exhibit [GPA 02-18]; the Zoning Map designation for the project site lots 1-6 have been rezoned From R-10 and Public Facility (PF) to Planned Development District (PD) [ZOA 02-18]; and the Specific Plan has been amended to adjust the areas of Open Space (OS) and LD to PR and LD [SPA 01-18] subject to review and approval by the Community Development Director.

Residential Lots

19. _____ The maximum number of units approved is six (6) single-family residential lots as shown on the tentative map, development package, and associated plan submittals noted above.

Development Plan/Design Review

20. _____ 60 days prior to the approval of the grading plan, the applicant shall submit for review and approval by the Community Development Director a revised development plan set that depicts the modifications requested herein.

Affordable Housing

21. _____ The developer to provide 1 low-income housing unit off-site as part of the Affordable Housing Plan for the project subject to the review and approval of the Community Development Director.

Open Space

- 20-22. _____ Since on-site active open space is not being provided, the developer has three options and shall memorialize the selected option or a combination of options by entering into an agreement with the City: 1) acquire the equivalent amount of land for public open space and/or the construction of open space at an off-site location, 2) payment of an in-lieu financial contribution to the City for acquisition and/or maintenance of public open space, or 3) if the financial contributions are based upon maintenance costs, such contributions shall be based upon reasonable maintenance costs for a 10-year period and shall be proportional to the land area that would be required if active open space area was provided on-site. The acquisition of active open space or the in-lieu fee shall be paid at the time of filing the final map subject to review and approval by the Community Development Director.

Modifications

- 21-23. _____ All revisions of the internal circulation plan or lot layout shall be subject to review and approval of the Community Development Director and City Engineer at least 60 days prior to filing the Final Map or obtaining a Grading Permit.

~~22-24.~~ _____ Saltbrush Lane shall be modified as shown in the Marsh Creek Road Specific Plan (MCRSP) right-of-way of 48 feet. The VTM, grading plans, landscape plans, and site/development plans shall be modified to depict grading of the full right-of-way section, including the area adjacent to lot 6.

~~23-25.~~ _____ The Developer shall construct a 4-foot sidewalk on the west/north side of the right-of-way which shall connect to the 6-foot pathway on the eastern side of the property, 6-foot landscape strip (including curb) and 24-foot roadway (including gutter on the west/north side). Additional width shall be constructed if a berm is required on the east/south side of the right-of-way for drainage purposes.

~~24-26.~~ _____ Adjust the proposed Marsh Creek Road path design to provide 2 feet of additional clearance from tree #43. [Mitigation Measure 5.b]

~~25-27.~~ _____ The final map shall show an offer of dedication for a public utility easement over Saltbrush Lane in addition to an offer of dedication in fee title for the roadway right-of-way as approved by the City Engineer.

~~26-28.~~ _____ Eliminate the two small storm drain detention basins and revise the main basin on lot 6 to accommodate the removal of the small basins if feasible and approved by the City Engineer.

~~27-29.~~ _____ Shift the meandering 6-foot-wide path along Marsh Creek Road to stay in the public right-of-way (easterly of the Saltbrush Lane intersection).

~~28-30.~~ _____ ~~Eliminate~~ No new trees may be planted on the Contra Costa Water District (CCWD) easements as noted in their advisory notes.

~~29-31.~~ _____ Provide an all-weather access to the stormwater detention basin.

~~30-32.~~ _____ Sound walls shall be added to construction plans as noted on the Acoustical Study and shown in the Project IS/MND.

~~31-33.~~ _____ The Open Space Fencing shall be modified to reflect a rural mesh fence.

Homeowners Association

~~32-34.~~ _____ A Homeowners Association (HOA) shall be formed for the maintenance of the project as shown on the Tentative Subdivision Map and development plans and noted below in the covenants, ~~conditions~~ conditions, and restrictions (CC&Rs).

Covenants, Conditions and Restrictions

~~33.35.~~_____ The CC&Rs for the single-family residential lots shall be submitted for the review and approval of the ~~Zoning Administrator~~Community Development Director at least 60 days prior to filing the Final Map. This document shall provide for establishment, ownership, and maintenance of common space (including the area between Marsh Creek Road and the property line), parking, fire protection, tree protection, fencing, Saltbrush Lane, drainage maintenance, keeping of pets, and establishment of signs, and it will include conditions as noted:

- a. Setbacks for the home shall be as noted and shown on the approved project Site Plan. Deviations from that plan must be approved by the Community Development Director.
- b. The minimum dimension for any modification shall be consistent with the Clayton Municipal Code R-10 district.
- c. The building heights shall not exceed thirty-five (35) feet.
- d. Fencing is per the Project Fencing Plan as modified to show a rural mesh fence for the Open Space Fencing. Property owners are responsible for the repair and maintenance of the fences along their respective property lines. The fences shall be maintained in a style consistent with the design approved by the City, unless prior written approval is obtained from the Community Development Director.
- e. All fencing located on the Marsh Creek Road frontage portion of lots 1, 2, and 6 shall be set back at least fifty (50) feet from the edge of the right-of-way.
- f. All fencing located on the upslope portions of lots 2-5 behind the residences shall be open wire fencing. Solid fencing is prohibited in these areas.
- g. Property owners shall maintain any gates on their property needed for access to aboveground or underground drainage facilities.
- h. Gates to the private open space must accommodate fire apparatus per the Contra Costa County Fire Protection District (CCCFPD).
- i. The property owners of lots 2, 3, 4, and 5 shall be responsible for the maintenance of the graded bench. Furthermore, property owners shall not modify the graded bench and drainage facilities without prior written approval from the City of Clayton. The property owners shall not place or store any materials or structures on the bench or on the slope above the bench.
- j. The owner shall cut down and remove all weeds, grass, vines, or other growth that is capable of being ignited and endangering property. (304.1.2) California Fire Code (CFC).
- k. No provision in the CC&Rs that is included as a result of these Conditions of Approval may be amended without the prior written approval of the City of Clayton.

~~34.36.~~_____ The CC&Rs document shall reference the approved drainage improvement maintenance plan and the fencing plan program.

~~35-37.~~ _____ The CC&Rs shall state that all residential units constructed on the lots 1, 2, and 6 shall provide outdoor areas that are exposed to noise levels from Marsh Creek Road at levels no greater than 60 dB.

~~36-38.~~ _____ The CC&Rs shall clearly note that all subdivision maintenance is to be done by the property owner, r the Homeowners Association or the community facilities district.

~~37-39.~~ _____ The CC&Rs shall make an adequate provision for funding road maintenance and establishing a maintenance cycle standard.

~~38-40.~~ _____ The CC&Rs shall make an adequate provision for funding the maintenance of the C.3 storm drainage facilities and establishing a maintenance cycle standard.

~~39-41.~~ _____ In accordance with the County Child Care Ordinance, the CC&Rs shall indicate that a child care facility may be located at any residential unit or lot, consistent with the existing laws.

~~40-42.~~ _____ The Developer shall provide homeowners with educational materials regarding proper storage and disposal of household hazardous wastes, including fuels, oils, paints, and solvents. The format and wording of the educational materials shall be approved in advance by the Community Development Director.

CC&R Deed Restrictions

~~41-43.~~ _____ The Covenants, Conditions and Restrictions (CC&Rs) developed for this project shall include the following deed restrictions. The wording of the following deed disclosures shall be approved by the Clayton Community Development Director and City Attorney. The following deeds are to be recorded concurrently with the final map, and a note on the final map shall be utilized:

- A. The final map shall show private open space deed restrictions in the locations listed below. The restrictions are intended to preserve the open and attractive visual character of the subject area. The restrictions shall prohibit grading (except for remedial grading, drainage improvements, and disking for weed abatement); construction of all buildings and structures; and storage of any motor vehicles, trailers, recreational vehicles, graders, tractors, or similar equipment.
 1. The western portion of lot 2, beginning at the western edge of the 50-foot-wide roadway and pipeline easement serving the CCWD parcel.
 2. The northern portions of lots 3-5 above the V-ditch drainage bench generally located at elevation of 630 feet.

3. The detention basin on lot 6 in the Storm Drain Management Easement.
- B. Concurrent with recordation of the Final Map, and consistent with the provisions and intent of the Contra Costa County's "Right to Farm" Ordinance, the following statement shall be recorded at the County Recorder's Office for each parcel within the subdivision to notify owners of the lots that they own property in an agricultural/grazing area:

"This document shall serve as notification that you have purchased land in an agricultural area where you may regularly find farm equipment using local roads; farm equipment causing dust; crop dusting and spraying occurring regularly; burning associated with agricultural activities; noise associated with farm equipment and aerial crop dusting, and certain animals and flies may exist on surrounding properties. This statement is, again, notification that this is part of the agricultural way of life in the open space areas of Contra Costa County and you should be fully aware of this at the time of purchase."

- C. No alterations of Storm Drain Management Easement on lot 6 shall be allowed, except for activities approved as part of a maintenance, preservation, and/or enhancement plan. The deed restriction shall prohibit, in perpetuity, use and improvements within the Storm Drain Management Easement. Specifically, the deed restriction shall prohibit any physical alterations within the Storm Drain Management Easement, including vegetation removal, vegetation planting, landform alterations, or construction of structures or improvements. The deed restriction shall be recorded concurrently with the final map.
- D. A deed restriction shall alert each property owner to the possible presence of buried human remains and/or artifacts. The deed restriction shall require that if any of these cultural remains are discovered during-ground disturbing activities, work shall be halted within 50 feet of the discovery until a qualified archaeologist is retained to inspect the discovery. If the archaeologist determines that the find is important, no additional construction shall take place until the find can be fully evaluated according to procedures outlined in Section 106 of the Historic Preservation Act. If human remains are uncovered, the Contra Costa County Coroner shall be notified immediately. If the remains are determined to be Native American, a qualified Native American representative shall be contacted, and the Native American Heritage Commission (NAHC) shall be notified within 24 hours. The most likely descendants (MLD) of the deceased shall be given the chance to make recommendations for the remains. If no recommendations are made within 24 hours, remains may be reinterred elsewhere. If recommendations are made and not accepted, the NAHC shall mediate the problem.
- E. Applicant shall record a statement to run with deeds to property stating that no trees are to be removed on the property, excepting those approved to be removed

on the project's tree preservation plan, without obtaining a tree permit from the Community Development Department.

- F. Applicant shall record a statement to run with deeds to property acknowledging the approved geotechnical report by title, author (firm), and date, calling attention to approved recommendations, and noting that the report is available from the seller.
- G. Prepare a deed disclosure to be recorded with each lot that they are in a Community Facilities District (CFD). Should the HOA become defunct for any reason, the CFD will require annual assessment installments, hereinafter collectively referred to as special liens. If special liens described above are not paid, foreclosure proceedings may be initiated at any time. After property taxes become delinquent, property may be sold for the delinquent amounts earlier than with regular property taxes.
- H. Notification shall be provided on the deeds and California Department of Real Estate disclosure forms to future property owners regarding the presence of oil pipelines, the public trail north and east of the project site, and the planned extension of the project road to serve future residential development to the east.
- I. The deeds for lots 1, 2, and 3 shall contain wording which notifies future owners of the potential serious risks to the respective owners and residents from failure of the CCWD Seminary Water Tank and subsequent inundation of the respective lots and property. The notification wording on the deed shall be subject to the review and approval by the Community Development Director.
- J. The deed for lot 6 shall contain wording that notifies future owners that the Saltbrush Lane may be widened and no encroachments, including tree planting, are permitted in the right-of-way adjacent to the property. This deed restriction shall terminate with the construction of the roadway widening.

~~42.44.~~ _____ The deeds for all lots shall contain language that prohibits any future land division(s) to create additional home sites.

Community Facilities District

~~43.45.~~ _____ If not already a part of the City's existing landscape maintenance district, the Developer shall annex into the district prior to the issuance of the first certificate of occupancy or sale of any lot, whichever comes first. The annexation request shall include annual rate adjustments to account for cost-of-living increases. The landscaping and irrigation improvements required to be installed in the median islands in Marsh Creek Road shall be operated and maintained by the City as part of the duties of the City's existing landscape maintenance district.

~~44.46.~~ _____ The maintenance of all public and private landscaping and stormwater facilities on or adjacent to the development from the back of curb on Marsh Creek Road is the responsibility of the HOA. The developer shall form a CFD that

will levy the assessments should the HOA fail to fulfill its requirements. Prior to approval of the final map, the Developer shall submit a written request for and consent to the formation of a CFD (consistent with the Mello-Roos Community Facilities Act of 1982). Prior to issuance of a certificate of occupancy for the first residence (including model homes) or the sale of any lot, whichever comes first, the Developer shall participate in the formation, including the holding of a ballot election and the levying of assessments, of the CFD. The CFD shall include the land area of lots 1-6. The CFD shall include annual rate adjustments to account for cost-of-living increases. (Note: This CFD is separate from the existing City-wide landscape district.) Assessments shall be levied to fund the cost of all operating, maintenance, and repair needs for all of the storm drainage facilities and basin improvements on lot 6; periodic inspections and testing; roadway maintenance; operating, maintenance, and repair needs for the irrigation and landscaping; periodic inspections costs; City administrative and reporting costs; County levy and collection costs; City overhead charges; and reserve funds for capital replacements and major repairs.

45.47. _____ The Developer shall pay a fair share contribution, as determined by the City Engineer, to the City for impacts to city services (e.g., police, library, administration, planning, maintenance, and engineering) directly related to impacts of the proposed project, including impact fees and the establishment of the CFD. The payment shall be made at the time of issuance of the building permit for the project's first unit and shall be based on the findings of the fiscal impact study prepared for the CFD.

Tree Retention and Landscaping

46.48. _____ Prior to occupancy of the first residence, the Developer shall install the public landscaping and irrigation generally shown on the landscape plans (Figure 10 and 11 of the IS/MND), subject to City review and approval.

47.49. _____ A note shall be added to the grading plan that references the October 10, 2019, project's Arborist Report. All trees to be saved and removed shall be marked on the grading plan. The Community Development Department shall review and approve grading, landscape, and improvement plans to ensure adequate measures are taken to protect trees.

48.50. _____ All trees greater than 6 inches in diameter at 4.5 feet above ground level on lot 4 shall be retained if feasible. If, during construction, it is found that it is necessary to remove of these trees, construction shall be halted in the immediate area of the subject tree(s) until a revision to the tree retention actions shown on the grading plan is reviewed and approved by the Community Development Director.

49.51. _____ The applicant shall submit for the review and approval of the Community Development Director a tree protection plan to identify the location of the existing trees to be retained, as identified in the Arborist Report.

- a. Adjust the proposed Marsh Creek Road path design to provide 2 feet of additional clearance from tree #43.
- b. Prior to construction or grading, the project contractor shall install fencing to construct a temporary Tree Protection Zone (TPZ) around trees #43 and #60.
- c. TPZ fencing shall remain in an upright sturdy manner from the start of grading until the completion of construction. Fencing shall not be adjusted or removed without consulting the project arborist.
- d. If roots greater than 2 inches in diameter are encountered near tree #61 during construction of the proposed ditch, roots shall be cleanly pruned with a handsaw or sawzall.
- e. Pruning shall be performed by personnel certified by the International Society of Arboriculture (ISA). All pruning shall adhere to the ISA and American National Standards Institute standards and best management practices (BMPs).
- f. Should TPZ encroachment be necessary, the project contractor shall contact the project arborist for consultation and recommendations.
- g. The project contractor shall keep TPZs free of all construction-related materials, debris, fill soil, equipment, etc. The only acceptable material is mulch spread out beneath the trees.
- h. Should any damage to the trees occur, the contractor shall promptly notify the project arborist to appropriately mitigate the damage. **[Mitigation Measure 5]**

50.52. _____ Landscape and irrigation improvement plans shall be submitted for review and approval by the Community Development Department, Maintenance Department, and City Engineer that meet the requirements of Chapter 17.80 of the Zoning Ordinance and reference plan modifications noted in COA's 13-18 and include the following features and stipulations:

- a. Landscaping and irrigation in the medians in Marsh Creek Road along the project's frontage, including light-colored pavers which match the existing pavers along Marsh Creek Road, low-profile rocks (which do not obstruct driver visibility) at the western and eastern ends of the median bulbs, and crepe myrtle trees.
- b. A 24-foot (minimum) landscape corridor accommodating a meandering pedestrian/equestrian path and clustered planting of oaks in the project's frontage on Marsh Creek Road.
- c. Landscaping in the area between the sound fences on lots 1 and 2 and the above-noted 24-foot wide-landscape corridor.
- d. Perimeter landscaping on lot 6 along the project road in a 25-foot-wide strip extending from the back of the curb.

- e. A wildflower mix (subject to the approval of the Community Development Director) shall be applied on all areas of lot 6 that are outside of the landscaped areas along Marsh Creek Road, the project road, and the stormwater detention basin.
- f. Groundcover and landscaping at the project entry shall be on private property.
- g. Landscaping shall utilize native trees, including oaks with genetics similar to native oaks in the Clayton area (if such oaks are reasonably available).
- h. All trees installed pursuant to these conditions of approval shall not be removed or severely pruned without a tree removal permit.
- i. Water meters and irrigation systems will include automatic rain controls.
- j. All anti-siphon water valves shall be screened.
- k. All newly-graded areas in or adjacent to the public right-of-way shall not exceed a 3:1 (horizontal:vertical) ratio,
- l. A layer of mulch 2 to 4 inches thick shall be applied in all landscape areas.

~~51.53.~~ _____ Three sets of the final landscape and irrigation plans shall be submitted with the grading and improvement plans for review and approval by the Community Development Department, Engineering Department, and the Maintenance Department. These plans shall be approved prior to issuance of grading or encroachment permits. The landscape and irrigation plans shall be prepared by a landscape architect; have overall dimensions of 24 inches by 36 inches; contain approval blocks for the Community Development Director, City Engineer, and Maintenance Department; and show all existing and proposed public utilities within the project limits.

~~52.54.~~ _____ Landscaping is to be maintained by the individual property owner(s) and/or the HOA and/or CFD and/or the LMD and shall be installed in conformance with the approved plans prior to occupancy of the individual residence(s).

~~53.55.~~ _____ Landscaping is subject to inspection by the Maintenance Department and must be guaranteed for one year from the date of acceptance of the subdivision improvements by the City Council.

~~54.56.~~ _____ Installation of all irrigation and landscaping shall be performed by a licensed contractor. Open trench inspection of the irrigation installation in City right-of-way is subject to approval of the City Maintenance Department. Prior to the final inspection by the Maintenance Department, the installation shall be approved by the landscape architect.

~~55.57.~~ _____ All trees shall be planted at least 10 feet away from any public water, sewer, or storm drain lines, unless a closer location is approved by the City. All trees shall be planted at least 10 feet away from any oil pipeline, unless a closer location is approved by the pipeline easement holder and operator. All trees shall be installed with support staking. All nursery stakes must be removed from trees. All trees planted within 8 feet of a sidewalk, trail, or driveway shall be installed with root guards.

~~56.58.~~ _____ Prior to issuance of a certificate of occupancy for the first residence (including model homes) the landscaping and irrigation improvements are required to be installed in the 24-foot-wide landscape corridor along the project's Marsh Creek Road frontage on lots 1 and 2; in the area between the sound fences on lots 1 and 2; the above-noted 24-foot-wide landscape corridor; and in the Marsh Creek Road median islands adjacent to the project.

~~57.59.~~ _____ The developer shall maintain the Marsh Creek Road landscaped medians adjacent to the project for a period of 90 days after final approval of the subdivision improvements by the City Council. Prior to release of the Developer's maintenance responsibilities, all landscaped areas shall be inspected by representatives of the City Engineer and Maintenance Departments. This inspection shall include a water audit of the landscaped areas to identify any irrigation problems. The water audit shall be performed by City staff or contracted for by City staff and paid for by the Developer, at the City's sole discretion. All corrective measures shall be made as called for in the water audit and the punch list prepared by City staff and as-built plans (on reproducible Mylar or in a format approved by the City Engineer) shall be submitted to the City Engineer prior to the release of the Developer's responsibilities.

~~58.60.~~ _____ The Developer shall maintain all landscaping and other facilities that will become the responsibility of the HOA for one year after the HOA has been formed and a plan for the smooth transition of responsibility has been prepared by the developer and approved by the City Engineer. Prior to release of the Developer's maintenance responsibilities, all landscaped areas shall be inspected by representatives of the City Engineer and Maintenance Departments. This inspection shall include a water audit of the landscaped areas to identify any irrigation problems. The water audit shall be performed by City staff or contracted for by City staff and paid for by the Developer, at the City's sole discretion. All corrective measures shall be made as called for in the water audit and the punch list prepared by City staff and as-built plans (on reproducible Mylar or in a format approved by the City Engineer) shall be submitted to the City Engineer prior to the release of the Developer's responsibilities.

~~59.61.~~ _____ Landscaping shall be installed in conformance with the approved plans prior to final inspection.

~~60-62.~~ _____ Plans shall conform with the Water Conserving Landscape Guidelines in Chapter 17.80 of the Zoning Ordinance and applicable stormwater regulations.

Fencing Conditions

~~61-63.~~ _____ The fencing plan shown on the Front Yard Landscape Plan L-3) shall be amended to show the items listed below and submitted for review and approval by the Community Development ~~Department~~Director.

- a. Lot 1 - The "split view fence" shall be constructed as a sound fence (i.e., solid plywood core) along the eastern, southern, and western sides of the lot.
- b. Lot 2 - A "split view fence" constructed as a sound fence shall be installed along the southern side of the property to the graded daylight line, set back at least 50 feet from the edge of the right-of-way of Marsh Creek Road.
- c. Lot 6 - The "split view fence" shall be constructed as a sound fence (i.e., solid plywood core) along the eastern, southern, and western sides of the lot.
- d. Notation shall be maintained on final plans to indicate that all fencing located on the Marsh Creek Road frontage portion of lots 1, 2, and 6 shall be set back at least 50 feet from the edge of the right-of-way.
- e. Lot 5 - A 6-foot-high, tubular aluminum fence shall be installed with gates and a locking system as specified by the City Engineer.

~~62-64.~~ _____ All fences and walls in proximity to Marsh Creek Road public right-of-way shall be located at least 1 foot inside the respective parcel.

~~63-65.~~ _____ Any fences crossing easements for landscape or drainage facility maintenance shall have 9-foot-wide, lockable gates, which shall be maintained by the lots' respective property owners.

~~64-66.~~ _____ The Open Space Fencing shall be modified to reflect a rural mesh fence.

Grading

~~65-67.~~ _____ Prior to any ground disturbance related to covered activities, a U.S. Fish and Wildlife Service (USFWS)/CDFW-approved biologist shall conduct a preconstruction survey in areas identified in the planning surveys as having potential burrowing owl habitat. The surveys shall establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (CDFW 1995).

- a. On the parcel where the activity is proposed, the biologist shall survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership shall not be surveyed. Surveys shall take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls shall be identified and mapped. Surveys shall take place no more than 30

days prior to construction. During the breeding season (February 1 to August 31), surveys shall document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1 to January 31), surveys shall document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results shall be valid only for the season (breeding or nonbreeding) during which the survey is conducted.

- b. If burrowing owls are found during the breeding season (February 1 to August 31), the project proponent shall avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the nonbreeding season (September 1 to January 31), the project proponent should avoid the owls and the burrows they are using, if possible. Avoidance shall include the establishment of a buffer zone (described below).
- c. During the breeding season, buffer zones of at least 250 feet in which no construction activities can occur shall be established around each occupied burrow (nest site). Buffer zones of 160 feet shall be established around each burrow being used during the nonbreeding season. The buffers shall be delineated by highly visible, temporary construction fencing.
- d. If occupied burrows for burrowing owls are not avoided, passive relocation shall be implemented. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors should be in place for 48 hours prior to excavation. The project area should be monitored daily for one week to confirm that the owl has abandoned the burrow. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation (CDFW 1995). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

[Mitigation Measure 1]

~~66-68.~~ _____ If work is scheduled to take place between February 1 and August 31, a pre-construction nesting bird survey shall be conducted by a qualified biologist within 14 days of construction, covering a radius of 250 feet for non-listed raptors and 100 feet for non-listed passerines at all locations. The findings of the survey shall be submitted to the Community Development Department. If an active bird nest is found within these buffers, species-specific measures shall be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. At a minimum, grading in the vicinity of a nest shall be postponed until the young birds have fledged. If an active nest is present, a minimum exclusion buffer of 100 feet shall be maintained during construction, depending on the species and location. The perimeter of the nest setback zone shall be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A

survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, shall be submitted prior to initiation of grading in the nest-setback zone. The qualified biologist shall serve as a biological monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. **[Mitigation Measure 2]**

67-69. Protocol-level special-status plant surveys were conducted within the project area in April, June, August, and October of 2018, and no special-status plant species were identified. Survey results are valid for three years. If construction does not commence before spring of 2021, then new focused plant surveys shall be performed according to CDFW and California Native Plant Society (CNPS) protocol, as generally described below. Surveys for rare plant species shall be conducted using approved CDFW/USFWS methods during the appropriate season for identification of large flowered fiddleneck, big tarplant, round-leaved filaree, Mt. Diablo fairy lantern, diamond-petaled poppy, and showy golden madia. The blooming periods for each species is described in the Biological Resources Assessment prepared for the proposed project by Swaim Biological, Inc.

- a. If during surveys East Contra Costa County Habitat Conservation Plan/Natural Communities Conservation Plan (ECCHCP/NCCP) covered or no-take species are found, the location, extent and condition of all occurrences shall be documented in a survey report and submitted to the City of Clayton. California Natural Diversity Database (CNDDDB) California Native Species Field Survey Forms for all covered or no-take plants encountered on the site shall also be completed and submitted to the City of Clayton and the CNDDDB.
- b. Results of surveys shall inform project design. In order to comply with the ECCHCP/NCCP, construction activities shall avoid all impacts on extremely rare no-take species and shall implement plant salvage when impacts to covered plant species are unavoidable. Conservation measures described in the ECCHCP/NCCP shall be adhered to. If a rare plant is found that is not covered by the ECCHCP/NCCP, appropriate conservation measures similar to those required by the ECCHCP/NCCP shall be developed on a plant by plant basis and in accordance with CDFW and CNPS. **[Mitigation Measure 3]**

68-70. Prior to approval of grading plans for the proposed project, the project applicant shall complete a formal wetland delineation and submit the delineation to the USACE for verification, and the Community Development Director.

- a. In the event that the proposed project site is determined to include jurisdictional wetlands that would be altered as part of the proposed development, a Section 404 permit for fill of jurisdictional wetlands shall be acquired, and mitigation for impacts to jurisdictional waters that cannot be avoided shall conform with the USACE “no-net-loss” policy prior to approval of grading plans. To the extent feasible, however, the project shall be designed to

avoid and minimize adverse effects on waters of the U.S. or jurisdictional waters of the State of California within the project area. Mitigation for impacts to both federal and State jurisdictional waters shall be addressed using these guidelines.

- b. If a Section 404 permit is obtained, the applicant must also obtain a water quality certification from the Regional Water Quality Control Board (RWQCB) under Section 401 of the Clean Water Act (CWA). Written verification of the Section 404 permit and the Section 401 Water Quality Certification shall be submitted to the Community Development Department.
- c. The applicant shall also provide evidence to the Community Development Department of consultation with CDFW to determine if a Streambed Alteration Agreement is required for on-site activities pursuant to Section 1602 of the CDFW Code.
- d. If the mapped drainage shown on the U.S. Geological Survey and other data sources is determined by regulatory agencies to be a jurisdictional waters on the site, then an ECCCHCP/NCCP fee calculation for permanent impacts to wetlands or streams should be assessed in addition to the development fee, unless the design of the proposed project is modified to avoid regulated habitat or provide adequate alternative compensatory mitigation. **[Mitigation Measure 4]**

~~69.71.~~ _____ Prior to the issuance of a grading permit, the grading plan shall include a requirement (via notation) indicating that if cultural resources or human remains are encountered during site grading or other site work, all such work shall be halted immediately within 100 feet of the area of discovery and the contractor shall immediately notify the City of the discovery. In such case, the City, at the expense of the project applicant, shall retain the services of a qualified archaeologist for the purpose of recording, protecting, or curating the discovery as appropriate. The archaeologist shall be required to submit to the City for review and approval a report of the findings and method of curation or protection of the resources. Further grading or site work within the vicinity of the discovery, as identified by the qualified archaeologist, shall not be allowed until the preceding steps have been taken. **[Mitigation Measure 6]**

~~70.72.~~ _____ Pursuant to State Health and Safety Code §7050.5(c) State Public Resources Code §5097.98, if human bone or bone of unknown origin is found during construction, all work shall stop within 100 feet of the vicinity of the find and the Contra Costa County Coroner shall be contacted immediately. If the remains are determined to be Native American, the Coroner shall notify NAHC who shall notify the person believed to be the MLD. The MLD shall work with the contractor to develop a program for re-internment of the human remains and any associated artifacts. Additional work shall not take place in the immediate vicinity of the find, which shall be identified by the qualified archaeologist at the applicant's expense, until the preceding actions have been implemented. **[Mitigation Measure 7]**

~~71.73.~~ _____ The Grading Plan shall be amended as follows:

- a. Designs and actions listed in the Oak Tree Preservation Plan required to be prepared by Mitigation Measure 5 shall be incorporated into the grading plan.
- b. A licensed surveyor or engineer shall survey the locations and limits of the trunk and dripline of all trees to be retained that could be affected by any work during project construction. The locations and limits shall be shown on the grading plans and appropriate construction and plot plans.
- c. Add note: Construction contractors shall contact pipeline operators (e.g., Shell, Conoco-Phillips, Crimson) at least seventy-two (72) business hours (excluding weekend and public holidays) prior to start of construction activities to obtain information on the location of underground oil pipes.
- d. The stormwater detention basin BR1 shall accommodate the flows of both BR2/3 that are to be eliminated if feasible and approved by the City Engineer.
- e. All disturbed slopes steeper than 10% shall be track-walked for surface compaction, covered with jute netting and hydroseeded, or stabilized with other techniques acceptable to the City Engineer.
- f. The exterior edges of the pads for lots 1-6 that are visible from off-site locations shall be contoured and feathered so that transitions between flat areas and graded slopes, or between graded and un-graded areas, are rounded off to avoid a mass-graded, padded lot effect. All new graded slopes must be configured to undulate and avoid relatively flat planes or sharp transitions to un-graded areas, particularly the western edges of lots 2 and 3.
- g. All required side setbacks shall contain at least 5 feet of flat, unoccupied area. "Flat" means a cross-slope between 2% and 10%. "Unoccupied" means no encroachments by fireplaces, building popouts (with or without a foundation), air conditioning pads, and the like.
- h. Two feet of flat area shall be provided on the graded portions of properties between a property or right-of-way line and the top of slope.
- i. All retaining walls in the project shall be constructed of segmental units (a.k.a., keystone), masonry block, or concrete. All retaining walls visible from street or sidewalk areas shall be covered with a stone fascia. Retaining walls greater than 3 feet in height shall be designed by a licensed engineer.
- j. Signature blocks shall be provided for the Community Development Director and the City Engineer.

72-74. _____ Prior to approval of the improvement plans for the project, all recommendations from the Geotechnical Report prepared for the project by ENGEO (2008) shall be incorporated into the improvement plans to the satisfaction of the City Engineer. In addition, the applicant shall retain a California-registered Geotechnical Engineer to perform field observations during grading to determine the depth of removal of compressible soils. Compliance with the recommendations of the Geotechnical Engineer shall be provided to the City Engineer. **[Mitigation Measure 8]**

73-75. _____ Should any portion of the driveway providing access to lots 1 and 2 exceed a grade of 16%, the entire shall be widened to 20 feet in width or as approved by the City Engineer.

~~74.76.~~ _____ Prior to the issuance of a grading permit, the project applicant shall prepare to the satisfaction of the City Engineer an erosion control plan that utilizes standard construction practices to limit the erosion effects of the proposed project during construction. Actions should include, but are not limited to:

- a. Hydro-seeding;
- b. Placement of erosion control measures within drainage ways and ahead of drop inlets;
- c. The temporary lining (during construction activities) of drop inlets with “filter fabric”;
- d. The placement of straw wattles along slope contours;
- e. Use of a designated equipment and vehicle “wash-out” location;
- f. Use of siltation fences;
- g. Use of on-site rock/gravel road at construction access points; and
- h. Use of sediment basins and dust palliatives. **[Mitigation Measure 9]**

~~75.77.~~ _____ Grading and construction plans and specifications for the project shall include the wording which specifies that construction contractors shall contact all pipeline operators (e.g., Shell, Conoco-Phillips) at least forty-eight (48) hours prior to start of construction activities to obtain detailed identification of underground oil pipes. **[Mitigation Measure 12]**

~~76.78.~~ _____ Notification shall be provided on the deeds and California Department of Real Estate disclosure forms to future property owners regarding the presence of crude oil pipelines. The wording of the notification shall be approved by the Clayton Community Development Director and City Attorney. **[Mitigation Measure 13]**

~~77.79.~~ _____ During grading and construction, the project contractor shall ensure that the following measures are implemented, consistent with the recommendations in the Environmental Noise and Analysis prepared for the proposed project:

- a. Grading and construction activities shall be limited to the daytime hours between 7:00 AM and 5:00 PM Monday through Friday, as specified in Section 15.01.101 of the Clayton Municipal Code. Any such work beyond said hours and days shall be strictly prohibited unless previously specifically authorized in writing by the City Engineer or designee or by project conditions of approval;
- b. All noise-producing project equipment and vehicles using internal-combustion engines shall be equipped with manufacturers-recommended mufflers and be maintained in good working condition;

- c. All mobile or fixed noise-producing equipment used on the project site that are regulated for noise output by a federal, State, or local agency shall comply with such regulations while in operation on-site;
- d. Electrically powered equipment shall be used instead of pneumatic or internal combustion-powered equipment, where feasible;
- e. Material stockpiles and mobile equipment staging, parking, and maintenance areas shall be located as far as practicable from noise-sensitive receptors; and
- f. Construction site and access road speed limits shall be established and enforced during the construction period.
- g. The requirements above shall be included, via notation, on the final grading plan submitted for review and approval by the Community Development Director prior to grading permit issuance. **[Mitigation Measure 14]**

~~78-80.~~ _____ The Developer shall identify the BMPs for protection of air quality to minimize the generation of dust during construction. The Bay Area Air Quality Management District's Basic Construction Measures shall be included within the project grading plan and shall be approved prior to issuance of project grading permits:

- a. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- b. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- c. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- d. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- e. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points.
- f. All construction equipment shall be maintained and properly tuned in accordance with manufacturers specifications. All equipment shall be checked by a certified visible emissions evaluator.
- g. A publicly visible sign shall be posted with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

Street Conditions

~~79.81.~~ _____ Prior to the issuance of a grading permit, the project road labeled Saltbrush Lane shall be modified. The right-of-way width for the project road shall be 48 feet. The ultimate street width shall be 32 feet from face-of-curb to face-of-curb. A sidewalk shall be provided on the north side of the project road and shall have a width of 4.5 feet (from face-of-curb). Residential setbacks shall be measured from the edge of the right-of-way.

~~80.82.~~ _____ Parking shall be prohibited along the south side of the project road and along the north side of the project road from Marsh Creek Road to the northern end of the proposed median. The parking prohibition shall be indicated by painting the face and top of curb red.

~~81.83.~~ _____ A meandering, 6-foot-wide pedestrian path shall be installed along Marsh Creek Road from the Community Park entrance to the eastern edge of the project site. The design and paving material of the path shall be subject to the review and approval of the City Engineer and Community Development Director. The path shall be set back at least 6 feet from the back of the curb, excepting the area east of the project intersection where it is adjacent to the curb to keep the path in the public right-of-way.

~~82.84.~~ _____ The final map shall show dedication of a 10-foot-wide public access easement along the eastern edge of lots 5 and 6. A 6-foot-wide pedestrian trail shall be installed in the easement as shown on the March Creek Road Specific Plan. The design (including installation of removable bollards) and paving material of the trail shall be in accordance with any applicable oil pipeline easement restrictions and subject to the review and approval of the City Engineer and Community Development Director. In lieu of the easement, the developer may offer to dedicate the same area in-fee to the City.

~~83.85.~~ _____ All streets, sidewalks, curbs, and gutters adjacent to this subdivision shall be improved as necessary to connect improvements constructed within this subdivision to existing improvements. Any existing street, sidewalk, curb, gutter, or other existing improvement which in the sole opinion of the City Engineer is damaged - either on or adjacent to - the project site, shall be repaired by the Developer to the satisfaction of, and in the manner required by, the City Engineer.

~~84.86.~~ _____ All street grades and geometrics shall be subject to the approval of the City Engineer. Grades shall not exceed 6% through intersections. The grade break between a minor street and a major street, at the projected curb line of the major street, shall not exceed 6%. Street grades shall not exceed 16% grade, shall have a minimum outside turning radius of 42 feet, and must be capable of supporting the imposed loads of fire apparatus (i.e., 37 tons).

~~85-87.~~ _____ The “Saltbrush Lane” name of the project road shall be subject to review and approval in accordance with City Council Resolution No. 68-2003, due to the time lapse of the project.

~~86-88.~~ _____ All mailbox locations shall be constructed and grouped in accordance with U.S. Postal Service standards, and the grouping of mailboxes shall be architecturally treated to reduce massing and visual impact. All mailbox locations are subject to review and approval of the Community Development ~~Department~~ Director and the U.S. Postal Service.

~~87-89.~~ _____ Lots 1 and 2 shall have a shared driveway easement with fee title to the driveway included in Lot 2. A road maintenance agreement shall be established for lots 1 and 2. The form and terms of said agreement shall be approved by the Community Development Director. (Duplicate COA)

~~90.~~ _____ Prior to approval of the final map, the Developer shall contribute its fair share, per AB1600, as determined by the City, to a traffic calming/control fund for improvements such as installation of rumble strips, a flashing yellow light (on an interim basis), and/or a traffic signal (on a permanent basis at or east of the project entrance road) if applicable per review and approval by the Community Development Director and City Engineer.

Drainage Conditions

~~88-91.~~ _____ The stormwater detention basin shall be sized and constructed to accommodate the stormwater flows solely created by the project.

~~89-92.~~ _____ All ditches for conveying stormwater runoff shall be constructed of tan-colored reinforced concrete and shall have a maximum longitudinal slope of 10%. All stormwater runoff from impervious areas shall be treated and contaminants removed prior to discharge off of the site or into a natural water channel. The design of the detention and treatment facilities shall be subject to the approval of the City Engineer and Community Development Director and shall include, but not be limited to, the installation of drywells for percolation, if applicable. The headwall should be faced with natural-appearing stone, or textured to resemble stone, rather than smooth finished concrete per the MCRSP.

~~90-93.~~ _____ All drainage collection (ditches, storm drains, etc.) and treatment facilities, and access to such facilities, shall be located in public storm drain easements, which shall be shown on the final map. City personnel or contracted forces shall have the right of access to conduct inspections and maintenance of all on-site drainage devices. Maintenance of such facilities shall be the responsibility of the HOA and/or CFD.

91.94. _____ The Mosquito and Vector Control District and its contractors shall have the right of access to conduct inspections and maintenance of all on-site drainage devices.

92.95. _____ All roofs shall have rain gutters with rainwater leaders that directly discharge into an on-lot underground system which discharges through the face of curb at streets or into a concrete-lined ditch or storm drain inlet.

93.96. _____ The improvement plans shall reflect that all on-site storm drain inlets shall be labeled "No Dumping — Drains to Creek" using thermoplastic stenciling or equivalent permanent method, subject to City approval.

94.97. _____ The Developer shall comply with all rules, regulations, and procedures of the National Pollution Discharge Elimination System (NPDES) as promulgated by the California State Water Resources Control Board (SWRCB), the San Francisco Bay RWQCB, and the Contra Costa County Clean Water Program. The project management and design shall include BMPs during construction and post-construction phases for the elimination of storm water pollutants to the maximum extent practicable.

95.98. _____ The Developer shall provide proof that a "Notice of Intent" has been filed with the State Regional Water Quality Control Board. Prior to acceptance of the subdivision the Developer shall provide proof to the City that the "Notice of Intent" has been closed out by the State Regional Water Quality Control Board.

96.99. _____ Prior to the issuance of a grading permit, the Developer shall prepare and submit to the City a Stormwater Pollution Prevention Plan (SWPPP) in conformance with the requirements set forth by the RWQCB. The SWPPP shall include pre-construction, construction, and post-construction BMPs. The SWPPP shall also include, but not be limited to:

- a) Sampling (pre-construction, during construction, and post-construction) of the stormwater outfall at Mount Diablo Creek for sediments in accordance with State Construction General Permit (CGP) regulations.
- b) Hydro-seeding or landscaping of all disturbed areas.
- c) BMPs, including landscaping or hydro-seeding of front and rear yards prior to acceptance of the subdivision.
- d) A site spill response plan.
- e) An erosion control plan including such items as installation of berms, silt fences, sedimentation basins and other measures to minimize off-site transport of soil. Topsoil should be stockpiled during grading and distributed over the ground surface after grading has been completed.
- f) Location of construction staging and materials storage areas.
- g) On-site retention and treatment of stormwater through the use of water quality basins, grassy swales, biofilters and/or other methods acceptable to the City

Engineer and the RWQCB. The project shall mitigate runoff quantities to the extent currently required by the City's NPDES Permit and Municipal Separate Storm Sewer System permit.

- h) Installation of structural treatment facilities to remove total suspended solids and total petroleum hydrocarbon products to the extent currently required by the RWQCB, or to the satisfaction of the City Engineer. The methods and designs shall be shown on the grading and improvement plans, as appropriate, for review and approval by the City Engineer.

~~97.100.~~ _____ Prior to commencement of any site work that will result in a land disturbance of one acre or more, the Developer shall provide evidence to the City that the requirements for a stormwater State CGP have been met.

~~98.101.~~ _____ The Developer shall ensure that all project contractors shall conform to the requirements of the "Best Management Practices for Construction Sites" required by the City, including detention and/or filter materials to preclude an increase in water quantity and quality impacts from debris and sediments entering the stormwater system over "non-development" conditions.

~~99.102.~~ _____ The deeds for lots 1, 2, and 3 shall contain wording that notifies future owners of the potential serious risks to the respective owners and residents from failure of the CCWD Seminary Water Tank and subsequent inundation of the respective lots and property. The notification wording on the deed shall be subject to the review and approval by the Community Development Director.

~~100.103.~~ _____ The Developer shall dedicate to the City easements for drainage improvements. The volume and rate of stormwater runoff from the site shall not exceed the amounts allowed by Section C.3 of the City's stormwater permit. The project shall bear the financial responsibility of the construction and perpetual maintenance (including monitoring and reporting) of these facilities with a funding mechanism acceptable to the City that addresses costs for capital replacement, inflation, and administration.

~~101.104.~~ _____ The Developer shall prepare an operations and maintenance plan, including a schedule for ongoing maintenance and replacement, for the stormwater facilities. The plan shall be submitted for review and approval of the City Engineer prior to recordation of the final map.

~~102.105.~~ _____ The quantity and rate of stormwater runoff may take into consideration any applicable comments from the Contra Costa County Flood Control and Water Conservation District (FC District) to ensure that the quantity and creation of runoff from the site does not exceed historic rates and does not adversely impact downstream drainage facilities.

~~103.106.~~ _____ The Developer shall provide all project property owners with Clean Water Program educational materials.

~~104.107.~~ _____ The Developer shall construct the County Standard Plan CD52i, Type "M" Headwall Structure at the headwall proposed at the easterly property limits.

~~105.108.~~ _____ The Developer shall obtain a Contra Costa County Drainage Permit for any work within the County territory.

Utility Conditions

~~106.109.~~ _____ All utilities shall be sized to accommodate buildout of the MCRSP ~~buildout~~ or be designed to provide for future expansion to accommodate the ultimate annexation and development build-out envisioned in the MCRSP.

~~107.110.~~ _____ The Developer shall dedicate an 8-foot-wide public utility easement along project's entire frontage on the north side of the Marsh Creek Road.

~~108.111.~~ _____ The Developer shall, in the joint trench and across the project road at two locations specified by the City Engineer, install two four-inch conduits and pull-boxes with pull lines for City use for future telecommunication purposes. Conduits shall be installed in the public utility easement with termination at residential property lines.

~~109.112.~~ _____ The Developer shall install all underground utilities (including sewers, water, storm drains, and joint trench) along the entire extent of the project road to the easterly boundary for possible future extension (refer also to COA #109.

~~110.113.~~ _____ Prior to approval of the final map, the Developer shall agree to financially participate, on a fair share basis as determined by the City of Concord, in a funding program to design, install, and/or upgrade any downstream sewers serving the MCRSP area. If the funding program has been established prior to the approval of the final map, payment of the Developer's share shall be made prior to approval of the final map.

~~111.114.~~ _____ Sanitary sewers shall have a maximum depth of 10 feet from finished grade to invert , or as approved by City Engineer and City of Concord.

~~112.115.~~ _____ The Developer shall connect to the sanitary sewer system, obtain applicable permits, and pay applicable fees required by the City of Concord Public Works Department.

~~113.116.~~ _____ The width of access and maintenance easements for underground facilities shall be twice the depth of the facility with a minimum width of 10 feet.

~~114.117.~~ _____ Underground facilities crossing lots shall be located in flat portions of the lots, not within slope areas.

~~115.118.~~ _____ Street lights shall be provided on the project road. Street light standards and photometrics showing levels of illumination shall be submitted for the review and approval of the Community Development Department. "Cut-off" fixtures and downward-oriented fixtures shall be used to minimize spillover of lighting into residences.

~~116.119.~~ _____ Street lighting shall be installed and activated prior to occupancy of the first residence.

~~117.120.~~ _____ Developer shall pay for the cost of installation, activation, and electrical usage until final acceptance of subdivision improvements by the City Council.

~~118.121.~~ _____ The Developer shall prepare a construction traffic plan for the review and approval of the City Engineer which addresses the following issues:

- a) All construction traffic associated with the development of the proposed subdivision safely enters and exits the site from Marsh Creek Road.
- b) Warning devices (e.g., mobile reader boards) shall be located east and west of the project site entrance to alert motorists of turning movements by construction vehicles.

~~119.122.~~ _____ The Developer is obligated to construct all street improvements and utilities (including, but not limited to, sanitary sewer, storm drain, and joint trench) in the project road from Marsh Creek Road to the project's easterly boundary. To avoid grading or the construction of improvements on the adjoining property to the east, the proposed grading and improvements may be shortened the least amount possible. That is, grading shall commence no further than 3 feet from the project boundary.

~~120.123.~~ _____ Prior to filing of the final map, the Developer shall provide an interest-bearing, non-refundable cash deposit or cash bond, in an amount to be determined by the City Engineer, for use by the City in the completion of the improvements as shown on the tentative map at some undetermined time in the future.

~~121.124.~~ _____ Prior to approval of any grading or construction plans or maps, the Developer shall provide any necessary rights of entry, drainage easements, slope and/or grading easements, as may be required by the City Engineer, from adjoining property owners. Refer also to Advisory Notes.

~~122.125.~~ _____ The Developer shall also provide written approval from the CCWD and the oil pipeline easement holders and operators for the proposed work within any easements controlled by said parties. Refer also to Advisory Notes.

~~123-126.~~ _____ All work shall be designed and constructed in accordance with the Municipal Code, as well as the City's Standard Plans, City of Concord plans, and Contra Costa County plans where applicable, and Specifications.

~~124-127.~~ _____ Upon recording of the final map, the City shall be given a full size, reproducible, Mylar photocopy of the recorded map and an electronic file of the map in a form which can be imported into AutoCAD, and configured as directed by the City Engineer.

~~125-128.~~ _____ Upon completion of the improvements and prior to City Council acceptance, the City shall be given a full size, reproducible copy of the improvement plans, and an electronic version in AutoCAD, annotated to reflect any changes that occurred during construction and signed by the Project Engineer, on USB key or other means acceptable to the City Engineer.

~~126-129.~~ _____ Should the construction of any offsite improvements shown on the tentative map or required in these conditions of approval, necessitate the acquisition of sufficient title or interest in lands not controlled by the Developer, the Developer shall make a good faith effort to obtain the necessary title or interest prior to the filing of the final map pursuant to Section 66457 of the Subdivision Map Act. If the Developer is unable to obtain the necessary title or interest and has demonstrated a good faith effort to the City's satisfaction (including, but not limited to, preparation of an appraisal and submittal of a bona fide offer based on the appraisal), the City shall approve the final map, and, within 120 days of filing of the final map, obtain the necessary title or interest in accordance with Section 66462.5 of the Subdivision Map Act. The Developer shall pay for all costs, including City's legal, overhead, and administrative costs, involved in the acquisition of the necessary title or interest.

~~127-130.~~ _____ At the City's sole discretion, if the Developer has made the good faith effort described above and was not able to obtain the required rights of entry or easements, in lieu of the City obtaining the necessary rights of entry and/or easements, the City may allow the proposed improvements to be modified to eliminate the need for such rights of entry and/or easements. Should the City allow such modifications and prior to the filing of the final map, the Developer shall provide a non-refundable cash deposit or cash bond, in an amount to be determined by the City Engineer, for use by the City in the completion of the improvements as shown on the tentative map at some time in the future.

~~128-131.~~ _____ The Developer shall underground the wires from the south side of Marsh Creek Road, across the development, to the CCWD property. All new utility lines shall be underground including those crossing Marsh Creek Road.

ADVISORY NOTES

THE FOLLOWING INFORMATION DOES NOT CONSTITUTE CONDITIONS OF APPROVAL. IT IS PROVIDED TO ALERT THE APPLICANT TO LEGAL REQUIREMENTS OF THE CITY AND OTHER PUBLIC AGENCIES TO WHICH THIS PROJECT MAY BE SUBJECT.

NOTICE OF 90-DAY OPPORTUNITY TO PROTEST FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

This notice is intended to advise the applicant that pursuant to Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations, and/or exactions required as part of this project approval. The opportunity to protest is limited to a 90-day period after the project is approved.

The ninety (90) day period, in which you may protest the amount of any fee or the imposition of any dedication, reservation, or other exaction required by this approved permit, begins on the date this permit was approved. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and delivered to the Community Development Department within 90 days of the approval date of this permit.

- A. The applicant/owner should be aware of the expiration dates and renewing requirements prior to recording the Final Maps.
- B. Comply with the requirements of the Concord Sanitary District.
- C. Comply with the requirements of the CCWD.
- D. Comply with the requirements of the Consolidated Fire Protection District.
- E. Comply with the requirements of the Health Services Department, Environmental Health Division.
- F. Comply with the requirements of the Contra Costa County Building Inspection Department. Building permits are required prior to the construction of the proposed residences.
- G. This project may be subject to the requirements of the CDFW. It is the applicant's responsibility to notify the CDFW, P.O. Box 47, Yountville, California 94599, of any proposed construction within this development that may affect any fish and wildlife resources, per the CDFW Code.
- H. This project may be subject to the requirements of the USACE. It is the applicant's responsibility to notify the appropriate district of the USACE to determine if a permit is required, and if it can be obtained.

Contra Costa County Flood Control District Advisory Notes

- Prior to issuance of the grading permit, the developer shall obtain a 1010 Drainage Permit from the FC District for any construction work (grading,

dewatering, etc.) within the existing open drainage channel in unincorporated Contra Costa County.

- Prior to filing the final map, the developer shall enter into an Operations and Maintenance agreement with the City of Clayton (City), that creates a perpetual funding source for maintenance and repair, and includes yearly inspections, of on-site stormwater management facilities that are constructed to mitigate the development's drainage impacts on County and City residents and properties downstream of the development.

Contra Costa Fire Protection District Advisory Notes

- Provide emergency apparatus access roadways with all-weather (paved) driving surfaces of not less than 16 feet unobstructed width, and not less than 13 feet 6 inches of vertical clearance, to within 150 feet of travel distance to all portions of the exterior walls of every building. Access shall have a minimum outside turning radius of 35 feet, and must be capable of supporting the imposed fire apparatus loading of 22 tons. Access roadways shall not exceed 20% grade. Grades exceeding 16% shall be constructed of grooved concrete. (503 and tables B105.1 (1) Table C105.1)) CFC
- Access roadways of less than 28-feet unobstructed width shall have signs posted or curbs painted red with the words NO PARKING — FIRE LANE clearly marked. (22500.1) CVC, (503.3) CFC
- Access roadways of 28 feet or greater, but less than 36-feet unobstructed width shall have NO PARKING— FIRE LANE signs posted, allowing for parking on one side only or curbs painted red with the words NO PARKING — FIRE LANE clearly marked. Parking is permitted only on the side of the road that does not have hydrants. (22500.1) CVC, (503.3)
- Lot 2 as proposed shall require the installation of an approved Fire District turnaround. Dead-end emergency apparatus access roadways in excess of 150 feet in length shall be provided with approved provisions for the turning around of Fire District apparatus. Contact the Fire District for approved designs. (503.2.5) CFC
- The dead-end turnaround at the end of Sage Lane appears to comply with Fire District requirements.
- Access gates for Fire District apparatus shall be a minimum of 16 feet wide. Access gates shall slide horizontally or swing inward and shall be located a minimum of 30 feet from the street. Electrically operated gates shall be equipped with a Knox Company key-operated switch. Manually operated gates shall be equipped with a non-casehardened lock or approved Fire District lock. Contact the Fire District for information on ordering the key-operated switch. (D103.5) CFC.

- The Developer shall provide an adequate and reliable water supply for fire protection as set forth in the California Fire Code. (507.1) CFC
- The Developer shall provide an adequate and reliable water supply for fire protection with a minimum fire flow of 500 gallons per minute. Required flow must be delivered from not more than 1 hydrant flowing for a duration of 30 minutes while maintaining 20-pounds residual pressure in the main. (507.1), (B105) CFC
- The Developer shall provide 2 hydrants of the East Bay type. (C103.1) CFC
- The Developer shall submit a minimum of two copies of site improvement plans indicating all existing or proposed hydrant locations and fire apparatus access for review and approval prior to obtaining a building permit. Final placement of hydrants shall be determined by this office. (501.3) CFC
- Emergency apparatus access roadways and hydrants shall be installed, in service, and inspected by the Fire District prior to construction or combustible storage on site. (501.4) CFC
- Note: A temporary aggregate base or asphalt grindings roadway is not considered an all-weather surface for emergency apparatus access. The first lift of asphalt concrete paving shall be installed as the minimum roadway material and must be engineered to support the designated gross vehicle weight of 22 / 37 tons.
- The homes as proposed shall be protected with an approved automatic fire sprinkler system complying with the 2016 edition of National Fire Protection Association (NFPA) 13D or Section R313.3 of the 2016 California Residential Code (CRC). Submit a minimum of two sets of plans to this office for review and approval prior to installation. (903.2) CFC, (R313.3) CRC, Contra Costa County Ordinance 2016-23
- The homeowner shall maintain an effective firebreak by removing and clearing away flammable vegetation and combustible growth from areas within 30 feet of buildings or structures. (1276.01) P.R.C.
- Where existing access to open land or space, or to fire trail systems maintained for public or private use is obstructed by new development of any kind, the developer shall provide an alternate means of access into the area that is sufficient to allow access for fire personnel and apparatus. These access roadways shall be a minimum of 16 feet in width to accommodate Fire District equipment. Access locations will be determined by this office upon submittal of three (3) copies of complete improvement plans. Contra Costa County Ordinance 2010-15
- Development on any parcel in this subdivision shall be subject to review and approval by the Fire District to ensure compliance with minimum requirements related to fire and life safety. Submit three (3) sets of plans to the Fire District prior to obtaining a building permit. (501.3) CFC

- The Developer shall submit a minimum of two (2) complete sets of plans and specifications of the subject project, including plans for any of the following required deferred submittals, to the Fire District for review and approval prior to construction to ensure compliance with minimum requirements related to fire and life safety. Plan review and inspection fees shall be submitted at the time of plan review submittal. (105.4.1) CFC, (901.2) CFC, (107) CBC
- Our preliminary review comments shall not be construed to encompass the complete project. Additional plans and specifications may be required after further review.

Contra Costa Water District Advisory Notes

The project is within CCWD's treated water service area and the CCWD is the local water service provider for this project. This project parcel surrounds CCWD's Seminary Water Tank on three sides (west, south and east) and the District has an easement through this property to access this tank. The District will provide treated (potable) water services to this project per CCWD Code of Regulations Section 5 and has the following comments related to this provision of water service:

- The CCWD's pipelines in easements and rights-of-way shall be protected at all times. No encroachment is allowed onto CCWD property, and no construction within the CCWD easement is allowed without a permit from the CCWD.
- New trees may not be planted within the CCWD's easement or easement projection to right-of-way.
- The existing 4-inch blow-off appurtenance at the creek discharge at the new Diablo Parkway/Sage Lane intersection shall remain and be accessible for future CCWD maintenance.
- A water main extension will be required down Sage Lane to serve this new development.
- The existing water infrastructure will need to be evaluated and any modifications will need to be designed and constructed at the Developer's expense.
- Each premise to be provided domestic service will require its own service connection and meter.
- A separate meter for landscape irrigation may be required, and a separate irrigation meter will be needed for the common landscape areas.
- A separate fire service is required for each residence which will include a 1-inch meter and a 1-inch backflow prevention device. The water pressure in this area is high, so each residence will require a pressure-reducing valve.
- Relocation and/or abandonment of CCWD facilities may be required which will require a quitclaim of the existing easement. Easements for proposed facilities may be also required.

- The water main in the street or right-of-way shall be located opposite the proposed meter locations, with sufficient capacity and pressure as determined by CCWD. The project/property may require a main extension or addition of other infrastructure.
- The SWRCB mandates certain separation requirements of water mains that are parallel to and/or crossing sewer and storm drains. Grading and/or utility plans should be developed to comply with all separation criteria mandated in SWRCB Section 64572.
- Water service will likely require backflow prevention devices, which could reduce water pressure. Proper planning is necessary to ensure backflow prevention devices are located appropriately.
- Relocation of public facilities must be performed by CCWD forces.

CRIMSON PIPELINE L.P. Advisory Notes

Construction Requirements in the Proximity of Crimson Pipelines

- Crimson Pipeline L.P. (Crimson) is committed to the continued, safe operation of its pipeline. The listed construction requirements are designed to help ensure that the pipeline is protected from excavation damage, encroachment or other risks that could adversely impact the pipeline or prevent required inspection and maintenance activities.
- Crimson requires two copies of any proposed plans for work within Crimson's right-of-way. Plans shall be provided 45 calendar days prior to commencement of work to the address listed above.
- Aboveground structures and improvements that interfere with the construction, maintenance, or repair of the pipeline are prohibited within Crimson's right-of-way. Structures and improvements include, but are not limited to, buildings, fences, and walls.
- Landscaped areas are permitted within the right-of-way. Trees and large bushes that impede the visual inspection of the ground surface are not permitted within the right-of-way. Crimson shall review all plans that encroach the pipeline and the pipeline right-of-way prior to 4.
- Federal law prohibits removing, damaging, or defacing of pipelines, pipeline signs, or other appurtenances installed on the pipelines right-of-way.
- Other utilities may be installed within the right-of-way with permission from Crimson. Such utilities must maintain a minimum of 5-foot-parallel and 1-foot-vertical clearances unless approved in writing by Crimson prior to their installation. All clearances must conform to existing state and federal regulations.
- A minimum of 3 feet, but not more than 6 feet of cover, must be maintained over the pipeline at all times, unless otherwise approved by Crimson in writing. The

ground contour cannot be changed within the right-of-way without prior written permission by Crimson.

- Proposed roads and utility crossings should cross Crimson’s right-of-way as close to 90 degrees as possible. If, in Crimson’s sole judgment, additional precautions are required to protect Crimson’s pipeline, Crimson shall review and approve the construction plans in writing prior to the start of construction.
- California State Law requires that parties notify Underground Service Alert at 1-800-227-2600 two full working days prior to digging.
- All work on/or around the Crimson facility must comply with appropriate sections of Code of Federal Regulations Title 49, Part 195 - TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE.
- Crimson may choose to have an inspector on-site during any grading or excavation activities near the Crimson pipeline. Arrangements may be made for on-site inspection by contacting Crimson Utilities Coordinator at the address shown above.
- Crimson requires that all excavation in the vicinity of the pipeline be done with hand tools in the presence of the Crimson’s inspector consistent with California State Law requirements. Any damage to the pipeline shall be reported immediately. Crimson shall perform the necessary repair to ensure the safety of the public safety. Crimson shall be reimbursed for all repair work necessary to continue with the safe, reliable operation of the pipeline.
- In an emergency, including any damage or suspected damage to the Crimson pipeline, immediately notify Crimson at: 1-866-351-7473.
- Any questions regarding construction activities in the vicinity of Crimson’s pipeline shall be directed to:
CRIMSON PIPELINE L.P.
3760 Kilroy Airport Way, Suite 300
Long Beach, CA 90806
UTILITIES COORDINATOR
Ph: (562) 285-4112 or (833) 876-4589
[Email: landdepartment@crimsonpl.com](mailto:landdepartment@crimsonpl.com)

General Encroachment Guidelines for Property Developers and Land Owners near Phillips 66 Pipeline LLC and Facilities

Company (Permitter) constructs, repairs, operates and maintains its pipelines in compliance with current U.S. Department of Transportation (DOT) regulations and industry and Company standards for safe operations. Should Encroaching Party (Permittee) propose plans that infringe on Permitter’s rights or affect Permitter’s ability to meet these requirements, modifications to the pipelines or plans shall be made. The cost of all such modifications shall be borne by the Permittee. The following guidelines apply to Permittee and any contractors, agents and or representatives it uses for

construction activities conducted in Permittor's right-of-way and/or affecting Permittor's pipelines:

- Permittee requesting Permittor to restrict the right-of-way width will have a metes and bounds survey of the line completed across the land by a registered land surveyor at the Permittee's expense. The Permittee will provide proof of ownership of the property (i.e., warranty deed).
- Uninhabited Buildings and Engineered Works: No buildings, engineering works, patios, in-ground swimming pools, septic systems, or other permanent structures shall be permitted within 25 feet of any pipeline located within Permittor's right-of-way. No temporary structures, storage containers, construction equipment or vehicle parking will be permitted within 25 feet of any pipeline located within Permittor's right-of-way, without Permittor's prior written approval. Retaining walls are not permitted. This includes all water retention devices. Large debris such as old cars, trailers, scrap metal, etc., will not be permitted on the right-of-way. The right-of-way shall be kept clear for maintenance.
- Inhabited Structures: All private dwellings, industrial buildings, or places of public assembly shall comply with a building setback of 50 feet from the pipeline(s), and this setback requirement will be included as a deed and or plat restriction on any parcel carved out of the above referenced lands that abut the right-of-way. For easements containing multiple Permittor pipelines, this would be a strip extending 50 feet each side of Permittor's outermost pipelines.
- A greenbelt area will be established around the pipelines in the platting of any new residential or commercial subdivision subject to Permittor's easement. The width of the greenbelt should either be the width of Permittor's easement or, in the case of a blanket easement, extend 25 feet each side of a single Permittor pipeline or 25 feet each side of Permittor's outermost pipelines in the case of multiple Permittor pipelines. The purpose of a platted greenbelt in any new proposed development is to provide that no lot lines or fences cross into the right-of-way.
- No fences will be allowed on the right-of-way without Permittor's prior written approval. Fences shall be easily removable and not obstruct the view of the right-of-way for inspection purposes. No masonry, brick, or stone fences will be allowed. Fences that are perpendicular to the pipeline(s) shall include a gate or other form of access across the width of the right-of-way. Fence posts shall not be placed within 4 feet of the pipeline(s). Fences that are parallel to the pipeline(s) shall be located at least 10 feet from the nearest pipeline(s), or 25 feet if located on both sides of the line.
- No utility poles shall be allowed to cross the right-of-way if they interfere with future maintenance. Utility poles, guy wires, or anchors shall not be placed within 8 feet of the pipeline(s). Utility poles running parallel to the pipeline(s) shall be located at least 25 feet from the nearest pipeline(s). All overhead cables shall maintain a minimum height of 20 feet above grade.

- Trees or deep-rooted plants are not permitted on the right-of-way. Existing trees and vegetation may be removed or side trimmed by Permittor in its sole discretion.
- For new roads running parallel to Permittor's pipeline(s), there shall be at least 25 feet from the edge of the road to the nearest pipeline. All roads passing over Permittor's pipeline(s) shall cross at an angle as close to 90 degrees as possible. Depth of cover shall be at least 48 inches in the barrow ditches and 48 inches under road surfaces from top of pipe to top of surface. Final grade and depth of pipeline shall be surveyed in sensitive areas and results provided to Permittor and Permittee involved with the construction/modification. In addition, it may be necessary to lower and recondition, replace, relocate, or protect the pipeline(s) at the point of crossing to ensure that they are not subjected to excessive stress from movement of traffic. Any such modification to the pipeline(s) shall be made at Permittee's expense.
- Construction of parking lots over the pipeline(s) shall not be permitted without Permittor's prior written approval in an Encroachment Agreement releasing Permittor from any and all future damages to the parking lot due to pipeline maintenance and repair. Depth of cover shall be at least 48 inches from top of pipe to top of finished surface. Concrete parking lots shall have jointed sections at no more than 20-foot intervals for ease of repair.
- If the project includes over-excavating to achieve the final grade, pipeline protective measures shall be discussed and agreed to in advance by the Permittor and the Permittee.
- Any utilities that parallel Permittor's pipeline(s) shall maintain a minimum separation distance of 25 feet from the utility's outside wall to the outside wall of Permittor's pipeline(s). All utilities that cross Permittor's pipeline(s) shall pass underneath existing pipeline(s) by a minimum of 18 inches and the crossing shall be as close to 90 degrees as possible and adequately marked on both sides of such pipeline(s). The markers shall be maintained by Permittee in the future. Any future relocation of the utility line due to Permittor's pipeline maintenance shall be done at the Permittee's expense. Any exceptions to these requirements shall not be allowed without Permittor's prior written approval.
- Telephone cables, TV cables, secondary electrical lines (240vac or less), and non-steel gas lines shall be in a minimum Schedule 40 steel or PVC casing. Primary (high voltage) underground electrical lines shall be in a minimum Schedule 40 PVC casing and have a minimum clearance of 24 inches underneath Permittor's pipeline(s). Trenched or open cut crossings shall also be covered with a red concrete slab a minimum of 4 inches thick and 24 inches wide for a distance of 10 feet on both sides of the pipeline(s). Any bored or directionally drilled high voltage line shall have a metallic tape tracer installed inside the casing for ease of locating the high voltage line.

- If any of Permittee's lines that cross or run parallel to Permitter's pipeline(s) are installed and constructed of a material requiring cathodic protection, an interference survey shall be made by Permitter and Permitter shall determine what necessary steps shall be taken to prevent the damage of either line. The survey shall be done at Permitter's expense. Any measures required to address interference issues as a result of the installation of the Permittee's lines shall be done at Permittee's expense.
- Grade or elevation changes may not be made without Permitter's prior written approval. Changes in grade for the purpose of water retention shall not be approved.
- Permittee shall maintain a minimum of 48 inches of soil cover over Permitter's pipeline(s) across the entire width of the Encroachment. If sufficient cover does not currently exist, then at Permittee's sole cost and expense, the line shall be lowered or additional cover provided for placement over the right-of-way. Cover over the lines may not exceed 6 feet without Permitter's prior written approval. The method of achieving the required depth of cover shall be at Permitter's sole discretion.
- The Permitter retains the right to adequately mark the Permitter's pipelines with permanent line markers to ensure public safety and the future safe operation of the lines. DOT Regulations state that any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker shall be subject to a fine, imprisonment, or both. The Permittee is required by State law to contact the local One-Call Center at least 48 hours prior to any excavation taking place near the pipeline(s). The Permitter reserves the right to have an inspector or representative on the job to oversee all construction within the right-of-way.
- The Permittee shall allow no material or equipment to be used in the construction of the Encroachment that would hinder or impair Permitter's ability to safely maintain and operate Permitter's pipeline(s). Temporary construction roads or crossings over Permitter's pipelines must be approved in advance in writing by Permitter. Permittee shall provide additional cover and/or stabilization to specifications determined by Permitter prior to commencement of traffic across pipelines.
- Permittee shall not allow the Encroachment to create an erosion problem along the right-of-way, and should such an erosion problem arise then Permittee, at Permittee's sole cost and expense, shall immediately correct the problem.
- Permittee will incorporate Permitter's Design Guidelines contained herein into any of Permittee's design and construction drawings issued "For Bid" purposes. All plan drawings issued either "For Bid" or "For Construction" will display the following statement on the drawings in areas around Permitter's pipeline(s):

WARNING: High Pressure Pipeline(s)

No Excavation or Construction in this area without ONE- CALL and without contacting Phillips
66 PipeLine LLC (P66PL)

Noted Oak Creek Canyon Project Concerns: Staff Comments in red

Per MCRSP 108 housing units planned to the east:

Future density unknown due to the 2017 sensitive lands ordinance CMC 17.22.020, density could be reduced by removing slopes over 26% and .

Road width & elevation to insure connection to former Heartland & Moita properties. That the road alignments and right-of-way conform to the MCRSP;

MCRSP 48-foot right of way allows future widening to accommodate MCRSP buildout and connection to eastern property.

That the sizing and placement of utilities be consistent with the MCRSP;

Sizing of utilities to serve the 6 lots is per utility companies. Future utilities can be accommodated in southern dirt section of Saltbrush Lane, prior to widening the roadway for ultimate buildout.

That the drainage basin be sized for future development per the MCRSP;

Reflects calculations on current needs and adequate for current conditions. MCRSP does not reflect the 8+ acre parcel shall create a drainage basin for the proposed max of 106 lots.

MCRSP CI-7: "Internal circulation within subdivisions shall be designed at the discretion of the property owner, subject to approval by the City, provided that it allows for through access to adjacent parcels as indicated on Figure 10."

That the density and number of units also follow the Specific Plan.

Oak Creek Canyon MCRSP Table 2, p.43 notes 6 lots. Parcels outside urban limit line future actual unknown - no constraints maps have been submitted. The hillside topography and habitat would potentially lower the number of homes noted in the MCRSP (Due the sensitive land 2017 ordinance), thus actual future buildout be different from that noted in the MCRSP.

CMC 17.22.030 - Determining Capacity.

Developable acreage shall be determined by excluding the following sensitive land area(s) from the gross or legal acreage of a parcel(s): A. Land within the 100-year floodplain; B. Land or slopes exceeding twenty-six percent (26%); C. Creeks, streams, and the associated setback provisions as set forth in the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan as implemented by City Ordinance No. 412; D. Rock outcroppings; and E. Wetlands as defined and determined by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan; F. Land containing species of endangered plants that have been identified as a no-take species as defined and determined by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan; and G. Any other similar features as determined by the Planning Commission.



6000 Heritage Trail • Clayton, California 94517
Telephone 925-673-7300 Fax 925-672-4917

Hi Jim,

As you know extensive planning and preparation went into the 1995 Marsh Creek Road Specific plan (MCRSP): “As part of the planning process, the City of Clayton Planning Commission and City Council had held a total of 42 public meetings during the Specific Plan preparation process, each of which was attended by 20 to 50 land owners, agency representatives and members of the public.” While water quality, environmental, and land use legislation since 1995 has superseded some text in the MCRSD, its intent remains.

Importantly, the MCRSP required collaboration in its creation over 25 years ago— and continues to - amongst the property owners. What is missing from your correspondence to the City is evidence of communication and collaboration with the Oak Creek Canyon 6-lot residential subdivision applicant (Kevin English, West Coast Home Builders, Inc.). The Planning Commission and City Council would not look favorably upon the apparent lack of collaboration.

Please coordinate the issues you have brought up with each other (Moita and West Coast Home Builders, Inc.). City staff has conditioned the current application to provide a 48-foot right-of way with an irrevocable offer of dedication to the City thus ensuring future access to your property, and the ability to connect to all utilities. While planning and construction is overseen by City staff, the financing of the private developments is to be addressed by the landowners or developers who will benefit from them, again requiring discussion between developers.

The attached letter does not appear to acknowledge the Oak Creek Canyon Conditions of Approval. The issue of your driveway is new to staff: it appears that it is on your property on google maps: staff highly suggests you meet with the project applicant Kevin English to resolve this issue immediately. City staff will add to the Conditions errata, if warranted.

Currently, the Oak Creek 6 lot residential project and a small parcel of your proposed lands are inside the Urban limit line. While your lands are within the city sphere of influence, annexation into the City has not commenced.

The Specific plan further addresses coordination regarding common study area issues in J. Implementation Objectives.

1. Require landowners to contribute a pro-rated fair share towards the cost of common study area improvements necessitated by the Specific Plan.
2. Condition development within the study area on developer provision of adequate road improvements, sewage collection, sewage treatment, water supply, storm

drainage and other capital improvements. *(The Oak Creek COA's provide adequate improvements for their 6 lots and provision for expansion for future annexation and development as envisioned in the MCRSP).*

3. Provide for funding of administrative costs required for review and permit processing through application and development fees.

and:

IM-13 Improvements on individual properties required under this Specific Plan shall be financed by individual property owners or developers.

IM-14. Improvements that will require coordinated implementation on or along several parcels, such as widening of Marsh Creek Road and installation of traffic signals, water tanks, water mains, hunk sewers, storm drainage facilities, and downstream sewer improvements, shall be overseen by the City and should be financed with a mechanism that attempts to ensure ultimate fair-share repayment of all costs to those who pay for them by the landowners or developers who will benefit from them. Examples of appropriate funding mechanisms are included in Chapter X, Section D.3.

Should you have documents that supersede the MCRSP, or binding agreements we are not aware of, please use a drop box: if you do not have one, staff can provide.

Again, in keeping with the spirit of the MCRSP intent, city staff urges you to work together as noted in the attached 8/28/20 P/A Design Resources, Inc. letter and reiterated above to resolve the issues and concerns you have voiced.

Thanks, and make it a great day!

[Christine Gregory, AICP](#)

Project Planning Consultant

925.683.2925

cgregory@grounddc.com

CC: Kevin English, Applicant, West Coast Home Builders, Inc.
Louis Parsons, West Coast Home Builders, Inc.
Vince Moita
Matthew Feske, Community Development Department Director
Scott Alman, City Engineer, and Lynne Filson
Joe Moita
Rick Angrisani, P/A Design Resources, Inc
Dave Isakson, Isakson & Associates, Inc.

From: Jim <jmi-acorn@sbcglobal.net>
Sent: Friday, November 13, 2020 9:24 AM
To: Matthew Feske <mfeske@ci.clayton.ca.us>
Cc: Vince Moita <vm@moitalaw.com>; Scott Jenny <sejlawoffice@cs.com>; Joe Moita <joemoita@pennlaw.upenn.edu>; cherylmorgan09@yahoo.com
Subject: Oak Creek Canyon Comments for Distribution to Planning Commission & City Council

Hi Matthew,

I hope you and your family are well.

As you may know, my family owns 164 Acres (139 acres - formally owned by the Heartland Group) located just outside of the City limits of Clayton and just east of the proposed Seeno Oak Creek Canyon subdivision.

I would like to send you additional emails with several attachments. The City may have restrictions on the number of attachments allowed, so please let me know how to send these documents to you.

The attachments will provide a 30-year history of the 1995 approved Marsh Creek Road Specific Plan (MCRSP). And how the proposed Seeno Oak Creek Canyon subdivision, if approved with the narrower road and limited utilities, will gut the MCRSP and block our current and future access rights to our property.

Please note the attached letter from Rick Agrisani (32-year Clayton City Engineer) who states I may need to file a lawsuit immediately to protect our access and development rights if the Seeno project is approved as submitted. The proposed project will remove our current access and block our future access through the proposed project.

Once you review all of the documents, I would like to further discuss with you.

Thank you,

Jim Moita, President
JMI Properties Corporation
(925) 672-2200 Office
(925) 788-9571 Cell

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August 28, 2020

Jim Moita
8117 Marsh Creek Road
Clayton, CA 94517

RE: Seeno - Oak Creek Canyon Submittal

Dear Jim,

Thank you for choosing P/A Design Resources to help you understand the intricacy of the revised Oak Creek Canyon Subdivision submitted by Seeno to the City of Clayton. Their project lies to the west of your 164 acres. Per your request, I have reviewed thoroughly Seeno's new plans for Oak Creek Canyon.

As we discussed, I previously worked as the City Engineer for the City of Clayton for almost 32 years between 1986 and 2017. And, as a result, I am very familiar with this area and worked on the Marsh Creek Road Specific Plan (MCRSP) process from 1990 to June 1995 when it was approved. The MCRSP was the result of a comprehensive and detailed planning process and was intended to guide home development in the future as California faces a huge housing shortage and related housing crises.

As a result of my review, I have the following recommendations/concerns:

- 1) I recommend that you immediately contact an attorney to explore filing for an easement or ownership of the portion of Seeno's property being used for your driveway, possibly through the doctrine of adverse possession. If Seeno constructs the roadway as shown, you will have to move your existing driveway back onto your property which will likely require the lowering of the existing oil pipeline at a cost of \$750,000 or more.
- 2) Seeno's map is showing a 21' wide access road from Marsh Creek Road to approximately 20' away from your common property line. Additionally, at the southeast corner of Lot 6, Seeno is showing a "Future Easement for Future Urban Entry". Obviously, both of these items do not meet the standards established in the Marsh Creek Road Specific Plan.
- 3) I would recommend that you send a letter to the City stating that:
 - a. The City should respect, follow and enforce the Marsh Creek Specific Plan;
 - b. Seeno should be required to grant you an easement for access and utilities over the proposed roadway all the way from Marsh Creek Road to the property line in accordance with the Marsh Creek Road Specific Plan;

- c. Seeno should be required to construct his improvements (including the roadway, sewers, storm drains and dry utilities) all the way to your common property line –
 - i. You may offer to cooperate with Seeno for any encroachments he needs to construct the improvements including replacing his proposed headwall with a graded slope on your property;

That is it for now. If I think of anything else, I will let you know.

Thank you for the opportunity.

A handwritten signature in black ink, appearing to read "R. Angrisani", followed by a long horizontal flourish line.

Rick Angrisani P.E.,
PA Design Resources, Inc

From: Vincent Moita <vm@moitalaw.com>
Sent: Thursday, November 19, 2020 1:31 PM
To: 'Kevin English'; 'Louis Parsons'
Cc: 'jmi-acorn@sbcglobal.net'; jfox89@sbcglobal.net; cgregory@grounddc.com; 'City Engineer'; Joe Moita
Subject: Oak Creek Canyon Proposed Project

Dear Kevin and Louis,

Following the City of Clayton's consultant's letter dated 11/16/2020, we are interested in collaboratively working with you on the outstanding issues presented by your project to help it break ground.

We are interested in conformance with the June 1995 MCRSP to the extent that it matches the City of Clayton's current sphere of influence. Specifically, we are interested in the adequate buildout of all infrastructure on your land to serve the 108 planned homes located to the east of your project.

When are you available for a conference call?

Vince A. Moita, *JD, MBA*
Attorney at Law
925-783-9688

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October 9th, 2020

Matthew Feske
Community Development Director
6000 Heritage Trail
Clayton, CA 94517

RE: Concerns about Oak Creek Canyon Residential Subdivision

Dear Mr. Feske,

Save Mount Diablo (SMD) is a non-profit conservation organization founded in 1971 which acquires land for addition to parks on and around Mount Diablo and monitors land use planning which might affect protected lands. We build trails, restore habitat, and are involved in environmental education. In 1971 there was just one park on Mount Diablo totaling 6,778 acres; today there are almost 50 parks and preserves around Mount Diablo totaling 120,000 acres. We include more than 11,000 donors and supporters.

We are writing to inform the Clayton Planning Commission of concerns we have with the proposed Oak Creek Canyon Residential Subdivision (Project), for consideration during their hearing on the Project on Tuesday October 13th. Issues we would like to call attention to are substantial grading of the Project site and the wisdom of developing at the edge of Clayton, in the wildland-urban interface, given the dangers of wildlife and the consequences of climate change.

Attachment O of the proposed Initial Study and Mitigated Negative Declaration for the Project shows significant grading of the topography of the Project site directly north of units 1 through 5. Figure 1 (below) is a Google Streetview image of the Project site showing the hill that would be graded to accommodate the six units proposed for the Project. Development that accommodates natural terrain to blend with the landscape is more aesthetically sensitive and oftentimes avoids biological impacts on plants and wildlife to a greater degree than development that relies on heavy grading. We encourage the Planning Commission to consider recommending reducing the number of units that would be constructed in the Project to help keep Clayton's hillsides intact.

In addition, the Project Site is located at the very limit of where development could occur in Clayton, right up against the Urban Limit Line. This places the Project unequivocally at what is termed the "wildland-urban interface", or WUI. Development at the WUI has been one of the causes of increasingly severe costs and damage due to wildfires. It also exacerbates the catastrophe of human-caused climate change by increasing the number of people that live in places far away from job and service centers, leading to increased greenhouse gas emissions from driving. Please see the article (written this month) [HERE](#) for an illuminating discussion of these issues in the context of the recent and recurring catastrophic wildfires in California. Figure 2 (below) shows the Project Site located in a High Fire Hazard Severity Zone and very close to Very High Fire Hazard Severity Zones. The Planning Commission should consider the wisdom of further development of Clayton's WUI vs infill development, as well as recommending more mitigation measures to reduce costs and damage associated with wildlife and potentially recommending a reduction of the unit count of the Project.





Figure 1. Google Streetview image of the proposed Project Site and the hill that would be graded to accommodate development.

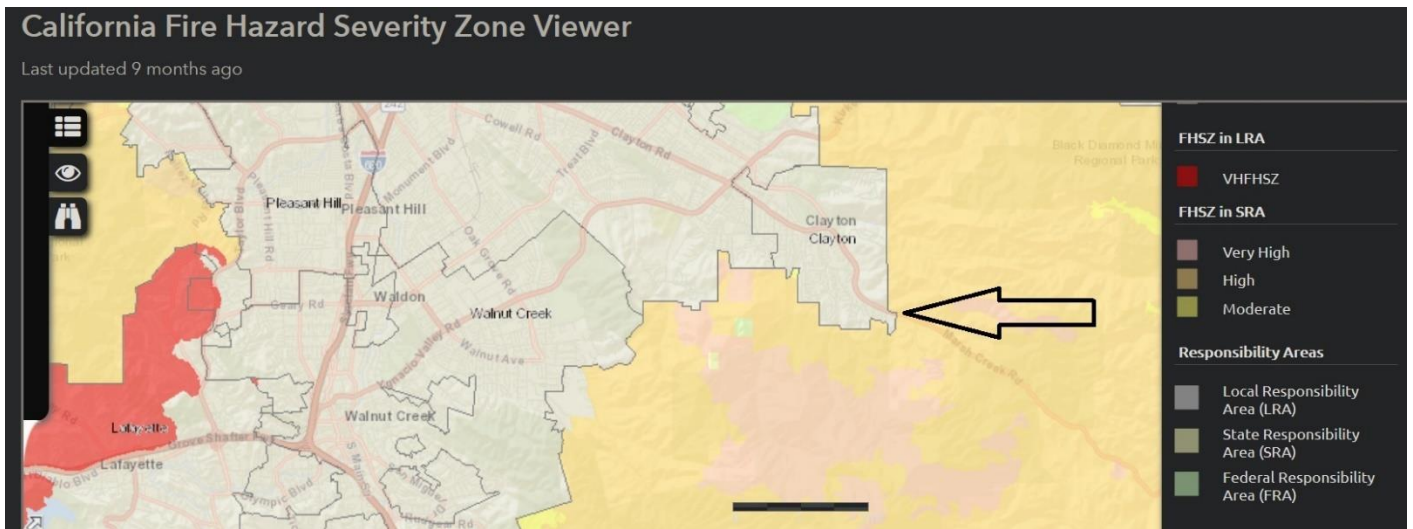


Figure 2. Map of California Fire Hazard Severity Zones showing the location of the Project Site (black arrow points to Project Site). Note the Project site lies in a High Fire Hazard Severity Zone, and lies just west and north of Very High Fire Hazard Severity Zones.

Regards,

Juan Pablo Galván
Senior Land Use Manager

From: Karen Case <karenacase@gmail.com>
Sent: Wednesday, October 7, 2020 12:07 PM
To: Matthew Feske <mfeske@ci.clayton.ca.us>
Subject: Planning Commission meeting

Dear Planning Commissioners:

I don't think that citizens of Clayton have viewed the potential new building projects on Marsh Creek Rd. or the other sites. I cannot comment on any of them because I haven't been to these sites or seen a rendering of the proposals. So all I can request is that all due diligence is done before deciding and to let the public know about the projects so that they can provide feedback before voting to approve or disapprove. Please consider all environmental impacts and any negative impacts that could happen. Please consider the impact on the Fire Dept., on unreliable water sources, on sewage treatment, on traffic , and on wildlife habitat. I prefer that no trees be removed.

Thank you.

Sincerely,
Karen Case
Clayton, CA



RANDY HATCH
Planning
Consultation

August 30, 2020

Julie Pierce, Mayor
City of Clayton
6000 Heritage Trail
Clayton, Ca. 94517

Re: IS/MND ENV-02-16, GPA-02-18, et al

Dear Mayor Pierce,

I want to thank you for your public service for over 30 years on behalf of the citizens of the City of Clayton and for advocating for good and thoughtful urban planning. As you recall, I worked as the Planning Director for the City of Clayton from 1990 to 2000. For over one half of that time, we worked together on the on future residential development southeast of Clayton along Marsh Creek Road.

As background, Contra Costa County had requested that the City study the region and develop planning documents laying out the City's vision. So, working collaboratively, I was part of a comprehensive effort with you and the Planning Commission, the City Council, land owners, environmental consultants, engineers, and land planners and countless citizens of Clayton in over 100 public meetings during a more than 4-year time span. The effort culminated in a thoughtful study and plan that was approved in June 1995 known as the Marsh Creek Road Specific Plan (MCRSP). Unfortunately, Contra Costa County did not allow the plan that they requested to be implemented as the Urban Limit Line has delayed the home development that we worked so hard to plan for.

As a lifelong professional planner living in Northern California it is my opinion and that of many others that many more homes need to be planned and built in Northern California to help alleviate the housing crises that now the whole State faces.

Julie Pierce, Mayor
Page Two

I have become aware of and reviewed the proposed application that Oakcreek Canyon has submitted to the City. In the "Notice Of Intent To Consider Adoption Of A Mitigated Negative Declaration" that has been released for this Project it says under Findings that "All other impacts in the categories of ...land use and planning...were found to be less than significant". As I detail below that is not an accurate statement. I am requesting that the City require the developer to comply with the standards outlined in the MCRSP. Otherwise, the opportunity to implement the Specific Plan with potentially 108 housing units planned to the east will be lost forever and all the precious time we spent together planning for the area will be blocked from ever happening.

Specifically, in order for the plan to comply our longstanding MCRSP I am suggesting the following modifications / mitigations:

1. Road width & elevation to insure connection to former Heartland and Moita properties who both helped pay for and participated in the Specific Plan project;
2. That the sizing and placement of utilities be consistent with the MCRSP;
3. That the drainage basin be sized for future development per the MCRSP;
4. That the road alignments and right-of-way conform to the MCRSP;
5. That the density and number of units also follow the Specific Plan.

Thank you for your consideration of my comments. Though not a resident of Clayton, I care deeply about the community and view my past service there fondly.

Feel free to contact me as needed,

Respectfully,


Randy Hatch

Phone: (209) 986-3977

Email: randyhatch@sbcglobal.net

CC: Christina Gregory; Jim Moita; RickAngrisani