



**CLAYTON CITY COUNCIL  
REGULAR MEETING AGENDA**

**Tuesday, August 20, 2024  
7:00 p.m.**

**Hoyer Hall, Clayton Community Library  
6125 Clayton Road, Clayton, CA 94517**

**Zoom Videoconference and Call-in:**

**Webinar: <https://us02web.zoom.us/j/81342918951>**

**Telephone: 1 + (669) 900 - 9128 Webinar ID: 813 4291 8951**

*Jim Diaz, Mayor*

*Kim Trupiano, Vice Mayor*

*Peter Cloven, Councilmember*

*Holly Tillman, Councilmember*

*Jeff Wan, Councilmember*

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**1. CALL TO ORDER AND ROLL CALL**

**2. PLEDGE OF ALLEGIANCE**

**3. PUBLIC COMMENT ON NON - AGENDA ITEMS**

*Members of the public may address the City Council on non-agendized items within the Council's jurisdiction. To ensure an orderly meeting and an equal opportunity for everyone, each speaker is limited to three (3) minutes, or the time established by the Mayor. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked or may at its discretion request staff to report back at a future meeting concerning the matter.*

*Public comment and input on other agenda items will be allowed when each item is considered by the Council.*

#### 4. **CONSENT CALENDAR**

*Consent Calendar items are typically routine in nature and are considered for approval by one single motion. Members of the Council, audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question, discussion, or alternative action may request so through the Mayor.*

- a. Approval of Meeting Minutes
  - i. July 16, 2024 Regular Meeting
  - ii. July 23, 2024 Special Meeting
  - iii. July 30, 2024 Special Meeting

(City Clerk)

[\(View\)](#)

- b. Approve the following recommendations:

(The Budget and Audit Committee reviewed and recommend this item at their August 12, 2024, meeting; Item 5.)

- 1) Waive the City of Clayton's (City) Procurement Policy to permit the City to utilize an Omni procurement of a lawn mower to acquire one new Lazer Z Diesel 43.5 horsepower (HP) Yanmar lawnmower with a 144" UltraCut RD Deck;
- 2) Authorize the City Manager to execute the purchase agreement with Furber Saw to acquire one new Lazer Z Diesel 43.5 horsepower (HP) Yanmar lawnmower with a 144" UltraCut RD Deck for an amount not to exceed \$75,364.22, in a form acceptable to legal counsel; and
- 3) Authorize the Interim City Manager or his designee to take any other actions that may be necessary to give effect to the above-listed actions.

(Assistant City Manager)

[\(View\)](#)

#### 5. **RECOGNITIONS AND PRESENTATIONS**

- a. Proclaiming September as Childhood Cancer Awareness Month
- b. Employee Appreciation Certificates
- c. Proclamation Honoring Contra Costa County Fire Protection District Assistant Chief Lon Goetsch on his Retirement

#### 6. **REPORTS**

- a. City Manager / Staff

- Link to ClearGov Transparency Portal:

<https://cleargov.com/california/contra-costa/city/clayton/checkbook>

**7. PUBLIC HEARINGS**

- a. Oak Creek Canyon Project, Public Hearing on an Appeal of the Planning Commission's One-Year Extension of the Oak Creek Canyon Residential Planned Development Permit for Six Residential Units Located on the North Side of Marsh Creek Road and the Intersection of Diablo Parkway. (Interim Community Development Director)  
[\(View\)](#)

**8. ACTION ITEMS**

- a. Receive an update from the City Manager's Office on the City of Clayton Strategic Plan, Implementation Action Plan.  
(The Budget and Audit Committee reviewed and recommend this item at their August 12, 2024, meeting; Item 6.)  
(Assistant City Manager)  
[\(View\)](#)
- b. Authorize the Mayor to execute the City Manager's Employment Agreement (City Attorney)  
[\(View\)](#)

**9. COUNCIL ITEMS – Limited to Council requests and directives for future meetings.**

**10. COUNCIL REPORTS**

**11. ADJOURNMENT**

The next regularly scheduled meeting of the City Council will be September 17, 2024.

## Meeting Information and Access

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail and on the City's website at [www.claytonca.gov](http://www.claytonca.gov)
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at [www.claytonca.gov](http://www.claytonca.gov)
- Any writings or documents provided to a majority of the City Council after distribution of the agenda packet and regarding any public item on this agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours and is available for review on the City's website at [www.claytonca.gov](http://www.claytonca.gov)
- If you have a physical impairment requiring special accommodation to participate, please call the City Clerk's office at least 72 hours (about 3 days) before the meeting on (925) 673-7300.

## Remote Access

The public may attend City Council meetings in-person or remotely via livestream on the City's website and through Zoom. As a courtesy, and technology permitting, members of the public may continue to provide live remote oral comment via the Zoom video conferencing platform. However, the City cannot guarantee that the public's access to teleconferencing technology will be uninterrupted, and technical difficulties may occur from time to time. Unless required by the Brown Act, the meeting will continue despite technical difficulties for participants using the teleconferencing option.

1. **Videoconference:** Click or visit the link on the front page of the meeting agenda. To access the webinar, you may download the Zoom client application or connect to the meeting in the web browser. You will be asked to enter your email address and name.

When the Mayor calls your item of interest, click the "raise hand" icon to be added to the speaker queue. The Clerk will identify you by name and you will hear "you have been unmuted" when it is your turn to provide public comment.

2. **Phone-in:** Dial the telephone number provided on the front page of the agenda. When prompted, enter the meeting ID. Once connected you will hear the meeting discussions but will remain muted. When your item of interest is called, please dial \*9 to "raise hand" and be added to the speaker queue. The Clerk will identify you by the last 4-digits of your phone number and you will hear "you have been unmuted" when it is your turn to provide public comment. To toggle between mute/unmute on your device, please dial \*6.



3. **E-mail Public Comments:** Public comment may also be sent to the City Clerk at [cityclerk@claytonca.gov](mailto:cityclerk@claytonca.gov) by 5:00 p.m. on the day of the meeting. All e-mailed public comments will be forwarded to the entire City Council and made part of the official meeting file.

Each person attending the meeting in-person, via videoconference, or call-in and who wishes to speak on an agendized or non-agendized matter (within the council's jurisdiction), shall have a set amount of time to speak as determined by the Mayor.

**MINUTES  
OF THE  
REGULAR MEETING  
CLAYTON CITY COUNCIL**

**TUESDAY July 16, 2024**

1. **CALL TO ORDER AND ROLL CALL** – The meeting was called to order at 6:00 p.m. by Mayor Diaz, held in-person from Hoyer Hall, Community Library, 6125 Clayton Rd., Clayton, California and virtually via Zoom. Councilmembers present: Mayor Diaz, Vice Mayor Trupiano, and Councilmembers: Cloven, Tillman, and Wan. Staff present: Interim City Manager, Adam W. Politzer; Financial Advisor, Regina Rubier; Police Chief, Richard McEachin; City Clerk/Assistant to the City Manager, Stephanie Cabrera-Brown and Administrative Assistant, Lauren Stevens

2. **PLEDGE OF ALLEGIANCE – Led by Mayor Diaz.**

3. **PLANNING COMMISSION INTERVIEWS**

Conduct interviews to fill three Planning Commission vacancies and select three candidates to appoint to a two-year term ending June 30, 2026, to the Planning Commission under item 8a.

The Mayor provided a brief overview of the candidate interview process.

Richard Enea, Dan Richardson, and Maria Shulman each provided a summary of their experience and time serving on the Planning Commission.

Nathalie Archangel-Montijo and Nate Bzrovich each provided a summary of their experience relative to the vacancies.

Appointment of the selected candidates took place as Action Item 8a.

4. **CLOSED SESSION**

- a. Public Employment (Gov. Code 54957)  
Title: City Manager

Conference with Labor Negotiators (Gov. Code 54957.6)

Agency designated representatives: Vice Mayor Trupiano and Councilmember Cloven

Unrepresented employee: City Manager

*Action: Staff given direction; No reportable action was taken.*

**5. PUBLIC COMMENT ON NON - AGENDA ITEMS**

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*Public comment and input on other agenda items will be allowed when each item is considered by the Council.*

*Larry McNeil – Spoke regarding the Clayton Pride Parade.*

*Jim Killeren – Spoke in support of the City Council's work and regarding fire security.*

*Gary Hood – Spoke regarding claytonwatch.org.*

*Bill Walcott – Spoke regarding claytonwatch.org and the landscaping on the postal property.*

*Dane Horton – Thanked the Council for their service, the Clayton community, and the freedom of choice.*

*Scott Denslow – Spoke regarding a previous speaker and shared his vision for Clayton politics.*

*Roy Carrera – Spoke regarding previous speakers, requested an update on the City Manager recruitment and recommended community engagement in the process.*

*The Mayor recessed the meeting at 7:27 p.m. and reconvened the meeting at 7:30 p.m.*

**6. CONSENT CALENDAR**

**It was moved by Vice Mayor Trupiano, seconded by Councilmember Tillman, to approve Consent Calendar items 6(a) to 6(c) as presented. (Passed; 5- 0).**

- a. Approval of Meeting Minutes
  - i. June 4, 2024 Regular Meeting
  - ii. July 9, 2024 Special Meeting

(City Clerk)

- b. Approve the purchase of a 2025 Ford Police Interceptor Utility vehicle to replace an unserviceable police vehicle, along with emergency equipment outfitting and identifying decals, as follows: purchase of a 2025 Ford Police Interceptor Utility vehicle from Folsom Lake Ford, purchase of emergency equipment and labor to install equipment by Lehr Auto, and application of identifying decals by Fast Signs, for a total of \$88,030.72 from the Capital Equipment Replacement Fund (CERF).  
(Police Department)
- c. *Award the Construction Contract to Rapid Grading Services from Hayward, CA for the total bid amount of \$651,011.59; authorize project expenditure up to \$814,000 (includes a 25% contingency); approve project construction plans in accordance with the design immunity requirements listed under California Government Code 830.6; and authorize the City Manager to execute the contract on behalf of the City.*  
(City Engineer)

## 7. **RECOGNITIONS AND PRESENTATIONS**

- a. *Contra Costa Water District Update (Contra Costa Water District)*

*Contra Costa Water District (CCWD) Board President David Avila presented an update on the CCWD operations, future projects, and answered questions from the council and community.*

*Bill Wallcott – Requested additional information on drought protocols and water supply.*

## 8. **REPORTS**

- a. City Manager / Staff
  - 1. Link to ClearGov Transparency Portal:  
<https://cleargov.com/california/contra-costa/city/clayton/checkbook>

*Interim City Manager, Adam W. Politzer provided an update on the City Manager and Assistant City Manager/Administrative Services Director recruitment, and shared that Finance Advisor, Regina Rubier accepted the Assistant City Manager/Administrative Services Director position and will start in August.*

**9. PUBLIC HEARINGS**

- a. Open the Public Hearing, receive public comments, on Proposed Real Property Assessments for the Diablo Estates at Clayton Benefit Assessment District (BAD), close the Public Hearing, and take action to adopt a Resolution which allows for the annual levying of assessments.  
(City Engineer)

*Mayor Diaz opened the Public Hearing. City Engineer, Larry Theis provided a brief overview , on Proposed Real Property Assessments for the Diablo Estates at Clayton Benefit Assessment District. Mayor Diaz opened public comment; there were no speakers to this item. Mayor Diaz closed the Public Hearing.*

**It was moved by Councilmember Wan, seconded by Councilmember Tillman, to adopt a Resolution establishing the Real Property Assessments for the Diablo Estates at Clayton Benefit Assessment District Fiscal Year 2024-25 as amended:**

**To include: The Fiscal Year 2024-24 maximum assessment per parcel is proposed to be \$4,409.39 which includes a 4% increase over the existing Fiscal Year 2023-24 maximum rate of \$4,239.80 per year.**

**(Passed; 5- 0).**

**10. ACTION ITEMS**

- a. Adopt a Resolution appointing three (3) individuals to the Planning Commission for a 2-year term, expiring June 30, 2026. (City Clerk)

*City Clerk, Stephanie Cabrera-Brown provided an overview of the Planning Commission appointment process and interviews conducted under Item .*

*Following discussion by the City Council, Mayor Diaz opened the item to public comment; there we no members of the public wishing to speak to this item*

**It was moved by Councilmember Wan, seconded by Vice Mayor Trupiano, to reappoint the following Planning Commissioners to a new term ending June 30, 2026:**

- **Dan Richardson**
- **Maria Shulman**
- **Richard Enea**

**(Passed; 5-0)**

- b. Authorize the Interim City Manager to execute Amendment No. 2 to the City of Clayton's Professional Services Agreement with Theis Engineering & Associates for City Engineering Services for additional limited time public works management services, with no extension to the time, for an additional amount not to exceed \$37,200. (Interim City Manager)

*Interim City Manager, Adam W. Politzer introduced Financial Advisor, Regina Rubier who provided an overview of Amendment No. 2 to the City of Clayton's Professional Services Agreement with Theis Engineering.*

*Following discussion by the City Council, Mayor Diaz opened the item to public comment; there were no members of the public wishing to speak to this item*

**It was moved by Councilmember Wan, seconded by Vice Mayor Trupiano, to approve Amendment No. 2 to the City of Clayton's Professional Services Agreement with Theis Engineering.(Passed; 5-0)**

- c. Adopt a Resolution ordering the levy and collection of special taxes and setting forth the special tax amount for Community Facilities District (CFD) 2006-1 (Downtown Park Operation and Maintenance) for Fiscal Year 2024 - 25. (Finance Advisor)

*Financial Advisor, Regina Rubier provided an overview of the levy and collection of special taxes and setting forth the special tax amount for Community Facilities District (CFD) 2006-1 (Downtown Park Operation and Maintenance) for Fiscal Year 2024 - 25*

*Following discussion by the City Council, Mayor Diaz opened the item to public comment; there were no members of the public wishing to speak to this item.*

**It was moved by Councilmember Wan, seconded by Councilmember Cloven, to adopt a Resolution ordering the levy and collection of special taxes and setting forth the special tax amount for Community Facilities District (CFD) 2006-1 (Downtown Park Operation and Maintenance) for Fiscal Year 2024 - 25. (Passed; 5-0)**

- d. Adopt a Resolution ordering the levy and collection of special taxes and setting forth the special tax amount for Community Facilities District (CFD) No. 2007-1 (Citywide Landscape Maintenance Tax) for Fiscal Year 2024 - 25. (Finance Advisor)

*Financial Advisor, Regina Rubier provided an overview of the levy and collection of special taxes and setting forth the Community Facilities District (CFD) No. 2007-1 (Citywide Landscape Maintenance Tax) for Fiscal Year 2024 - 25.*

*Following discussion by the City Council, Mayor Diaz opened the item to public comment; there we no members of the public wishing to speak to this item.*

**It was moved by Councilmember Wan, seconded by Councilmember Tillman to adopt a Resolution ordering the levy and collection of special taxes and setting forth the special tax amount for the Community Facilities District (CFD) No. 2007-1 (Citywide Landscape Maintenance Tax) for Fiscal Year 2024 - 25. (Passed; 5-0)**

- e. Establish the appropriations limit applicable to the City of Clayton (City) during Fiscal Year (FY) 2024-25 as \$14,632,351.

*Financial Advisor, Regina Rubier provided an overview of the appropriations limit applicable to the City of Clayton (City) during Fiscal Year (FY) 2024-25 as \$14,632,351.*

*Following discussion by the City Council, Mayor Diaz opened the item to public comment; there we no members of the public wishing to speak to this item.*

**It was moved by Councilmember Wan, seconded by Vice Mayor Trupiano to establish the appropriations limit applicable to the City of Clayton (City) during Fiscal Year (FY) 2024-25 as \$14,632,351. (Passed; 5-0)**

**11. COUNCIL ITEMS – Limited to Council requests and directives for future meetings.**

*Councilmember Tillman requested to discuss the LMD Sunset date, a potential joint meeting with the Trails and Landscape Committee, and a discussion with the City Attorney to discuss hiring an independent third party to investigate treatment of City Hall employees.*

*Mayor Diaz would like to schedule a joint meeting with the Mount Diablo School District.*

**12. COUNCIL REPORTS**

*Councilmember Cloven thanked the Special Events Committee and Sandy Johnson for the 4<sup>th</sup> of July Parade and met with community members.*

*Councilmember Wan attended meetings for the Budget and Audit Committee Meetings, Cintra Ad Hoc Committee, and the City Manager Recruitment.*

*Councilmember Tillman attended meetings for: Clayton Pride; met with the Financial Advisor; League of California Cities – Policy Committee; Mount Diablo Education Board; City Manager Interviews; attended: the outgoing Community Development Director’s farewell party; award ceremony for Clayton Pride; CBCA Roundup and the BBQ and Brews Festival; League of California Cities Bocce Tournament; 4<sup>th</sup> of July Parade; will share Clayton Firewise Oakhurst assessment information; and shared that Chick Boss had reopened downtown.*

*Vice Mayor Trupiano attended meetings for: Clayton Library Foundation; East Contra Costa Conservancy Meeting; City Sponsored Special Events; Cemex, City Manager Interviews; Budget and Audit Committee; Energy Services and Infrastructure Committee; Mayors’ Conference; and attended: 4<sup>th</sup> of July Parade.*

*Mayor Diaz attended meetings for: Mayors’ Conference; County Connection, Art and Wine; Car shows; attended: CBCA Roundup; July 4<sup>th</sup> Parade; and shared information regarding National Night out with the Clayton Police Department on August 6, 2024, at 6:00 pm.*

**13. ADJOURNMENT**

*On a call by Mayor Diaz, the City Council adjourned its meeting at 8:45 p.m. in memory of Clayton Library Foundation Founder Jeanne Boyd*

*Please note the Minutes of this meeting set forth all actions taken by the City Council on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.*

Respectfully submitted,

---

Stephanie Cabrera-Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

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Jim Diaz, Mayor



**MINUTES  
OF THE  
SPECIAL MEETING  
CLAYTON CITY COUNCIL**

**TUESDAY, July 23, 2024**

1. **CALL TO ORDER AND ROLL CALL** – The meeting was called to order at 4:00 p.m. by Mayor Diaz, held in-person at the City Hall, 1st Floor Conference Room, 6000 Heritage Trail, Clayton, California. Councilmembers present: Mayor Diaz, Vice Mayor Trupiano, and Councilmembers Cloven, Tillman, and Wan.  
Staff present: Interim City Manager Adam W. Politzer.

2. **CLOSED SESSION**

a. Public Employee Appointment (Gov. Code 54957)  
Title: City Manager

*Action: Staff provided with direction; no reportable action was taken.*

5. **ADJOURNMENT**

On a call by Mayor Diaz, the City Council adjourned its meeting at 9:45 p.m. The next meeting will be on Tuesday, August 20, 2024.

*Please note the Minutes of this meeting set forth all actions taken by the City Council on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.*

Respectfully submitted,

---

Stephanie Cabrera-Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

---

Jim Diaz, Mayor

**MINUTES  
OF THE  
SPECIAL MEETING  
CLAYTON CITY COUNCIL**

**TUESDAY, July 30, 2024**

1. **CALL TO ORDER AND ROLL CALL** – The meeting was called to order at 5:09 p.m. by Mayor Diaz, held in-person at the City Hall, 1st Floor Conference Room, 6000 Heritage Trail, Clayton, California. Councilmembers present: Mayor Diaz, Vice Mayor Trupiano, and Councilmembers Cloven, Tillman, and Wan.  
Staff present: Interim City Manager Adam W. Politzer.

2. **CLOSED SESSION**

- a. Public Employee Appointment (Gov. Code 54957)  
Title: City Manager

*Action: Staff provided with direction; no reportable action was taken.*

5. **ADJOURNMENT**

On a call by Mayor Diaz, the City Council adjourned its meeting at 8:45 p.m. The next meeting will be on Tuesday, August 20, 2024.

*Please note the Minutes of this meeting set forth all actions taken by the City Council on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.*

Respectfully submitted,

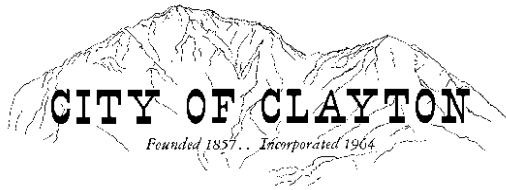
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Stephanie Cabrera-Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

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Jim Diaz, Mayor



City Council Agenda Item 4b

## STAFF REPORT

**TO:** Honorable Mayor and Councilmembers

**FROM:** Regina Rubier, Assistant City Manager

**DATE:** August 20, 2024

**SUBJECT:** Waive Requirements of the Procurement Policy and Authorize the Purchase of One New Lazer Z Diesel 43.5 horsepower Yanmar Lawnmower with a 144" UltraCut RD Deck for the Maintenance Staff not to exceed \$75,364.22 and authorize the Interim City Manager or his designee to take any other actions that may be necessary to give effect to the above-listed actions

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### **RECOMMENDATION**

Approve the following recommendations:

(The Budget and Audit Committee reviewed and recommend this item at their August 12, 2024 meeting; Item 5.)

- 1) Waive the City of Clayton's (City) Procurement Policy to permit the City to utilize an Omni procurement of a lawn mower to acquire one new Lazer Z Diesel 43.5 horsepower (HP) Yanmar lawnmower with a 144" UltraCut RD Deck;
- 2) Authorize the City Manager to execute the purchase agreement with Furber Saw to acquire one new Lazer Z Diesel 43.5 horsepower (HP) Yanmar lawnmower with a 144" UltraCut RD Deck for an amount not to exceed \$75,364.22, in a form acceptable to legal counsel; and
- 3) Authorize the Interim City Manager or his designee to take any other actions that may be necessary to give effect to the above-listed actions.

### **BACKGROUND**

The City joined OMNIA Partners, the largest and most experienced purchasing organization for public and private sector procurement. Its immense purchasing power and industry-

leading suppliers have produced an extensive portfolio of procurement solutions and partnerships, making OMNIA Partners the most valued and trusted resource for organizations nationwide. At its June 4, 2024, meeting, the Council adopted Resolution 29-2024, approving the Final Fiscal Year 2024-25 General Fund Budget, which includes the Capital Equipment Replacement Fund. The Capital Equipment Replacement Fund for this fiscal year does not allow for the replacement of one Lazer Z Diesel lawn mower; therefore, this purchase will need a budget adjustment from Fund Balance.

The City of Clayton's Maintenance Department currently operates a fleet of two large turf mowers. The newer of the two, a Toro lawn mower purchased in 2013 for \$22,689.52, is currently undergoing repairs due to a hydraulic line break and is now 11 years old. The second mower, a Toro Grounds Master 300, was acquired in 1993, making it 31 years old. Despite previous efforts to repair and replace parts on this mower, it has reached the end of its usable life as replacement parts are no longer available. Consequently, the City no longer has a spare riding lawn mower for emergency backup.

## **DISCUSSION**

The Exmark manufactures the Lazer Z Diesel 43.5 HP\*\* Yanmar 3TNV86CT Diesel w/144" UltraCut RD Deck, Susp Seat & 15" Semi-Pneumatic lawn mower. With the Flex Wing cutting deck, the Lazer Z Diesel can mow 11.5 acres per hour, making it the most productive mower Exmark has built. Powered by a cutting-edge Yanmar diesel engine, large drive tires allow you to reach ground speeds up to 12.5 miles per hour. The Exmark delivers a high-quality cut, the flex wings on the 144-inch deck pivot 20-degrees up and 15-degrees down on sloping terrain. The Lazer Z Diesel zero-turn mower delivers unparalleled durability and precision maneuverability.

The Exmark 144" Lazer Z Diesel lawn mower offers City Staff a reduction in breakdowns, more efficiency, better performance, higher safety standards, fuel efficiency, environmental benefits, improved technology and comfort. The new mower will also reduce fuel costs because it mows at twice the width of the current mower and a reduction in employee time, allowing staff to perform other duties.

The Lazer Z Diesel 43.5 HP Yanmar 3TNV86CT Diesel with a 144" UltraCut RD Deck, Susp Seat & 15" Semi-Pneumatic Lawn Mower is more efficient and safer than the 2013 and 1993 Toro lawn mowers for several reasons:

1. Advanced Engine Technology: The Lazer Z Diesel features a modern Yanmar 3TNV86CT diesel engine with 43.5 HP, which provides more power and torque compared to the older engine in the Toro Groundsmaster 360. Newer engines are generally more fuel-efficient and have better performance characteristics.
2. Advanced Deck Design: The UltraCut RD Deck on the Lazer Z provides a more refined cutting mechanism with improved guards and safety features to prevent debris from being thrown out uncontrollably. This design reduces the risk of injury from flying debris.

3. Larger Cutting Deck: The 144" UltraCut RD Deck on the Lazer Z allows for a much wider cutting path than the Groundsmaster 360. This means you can cover more ground in less time, making mowing more efficient.
4. Improved Deck Design: The UltraCut RD Deck on the Lazer Z is designed for superior cut quality and efficiency. Modern deck designs often include better airflow and cutting technology, resulting in a cleaner, more even cut and less need for multiple passes.
5. Improved Visibility: Modern mowers like the Lazer Z are designed with better visibility in mind. Enhanced visibility can help the operator see potential obstacles and avoid collisions more easily compared to older models like the Groundsmaster 360.
6. Suspension Seat: The Lazer Z's suspension seat provides added comfort and reduces operator fatigue and vibrations, which can improve productivity and efficiency over long mowing sessions. This can decrease the likelihood of operator errors and accidents that might occur due to discomfort or physical strain.
7. Semi-Pneumatic Tires: The 15" semi-pneumatic tires on the Lazer Z offer better durability and less maintenance compared to traditional pneumatic tires. They also provide improved traction and stability, which can enhance mowing efficiency. The tires are designed to be more durable and less prone to punctures than pneumatic tires. This reduces the risk of sudden tire failures, which can lead to loss of control and potential accidents.
8. Enhanced Maneuverability: Newer mowers often feature improved steering and maneuverability, making it easier to navigate around obstacles and achieve a more precise cut.
9. Fuel Efficiency: The diesel engine in the Lazer Z is likely to be more fuel-efficient than the older diesel engine in the Groundsmaster 360. Which equates to spending less time fueling and more time mowing.
10. Modern Technology: The Lazer Z is equipped with the latest advancements in lawnmower technology, which can include better engine management systems, more efficient cooling, and enhanced controls for improved overall performance.
11. Modern Safety Features: The Lazer Z Diesel is equipped with the latest safety technologies and features, which are often updated to meet current safety standards. This includes enhanced operator protection systems, more robust safety switches, and automatic shut-off mechanisms that may not be present in the older Groundsmaster 360.
12. Lower Maintenance Requirements: Newer models are designed with improved reliability and durability, meaning they often require less frequent maintenance and repairs compared to older equipment.
13. Compliance with Regulations: Newer mowers are built to meet current emissions and safety standards, which can contribute to better overall efficiency and a reduced environmental impact.
14. Better Ergonomics: Modern mowers often feature ergonomic controls and improved design for ease of use. This makes it easier for operators to control the mower safely and efficiently, reducing the risk of mishaps.

15. Enhanced Stability: The newer design and engineering of the Lazer Z typically offer better stability and balance, which helps prevent tipping and loss of control. This is especially important on uneven or sloped terrain.
16. Compliance with Current Standards: The Lazer Z Diesel adheres to current safety regulations and standards, which means it includes updated safety features and complies with modern safety protocols that older models like the Groundsmaster 360 may not.
17. Operator Training and Manuals: Newer equipment often comes with comprehensive training materials and updated operator manuals that provide detailed safety instructions and guidelines, helping operators understand and use the equipment safely.
18. Noise and Vibration Reduction: Advances in engine and deck technology have led to reduced noise and vibration levels in newer models, which can contribute to a safer operating environment by minimizing distractions and reducing physical stress on the operator.

Overall, the combination of a more powerful engine, advanced deck technology, better comfort features, and modern design improvements make the Lazer Z Diesel a more efficient choice compared to the 1993 Toro Groundsmaster 360.

### **FISCAL IMPACT**

The City has not purchased a new lawn mower since 2013 nor is this purchase included in the FY 2024-25 budget therefore, staff is requesting a budget amendment in the amount of \$75,364.22 from the General Fund, fund balance.

### **CEQA IMPACT**

None

### **ATTACHMENTS**

1. Quote from Furber Saw for lawnmower purchase

Fwd: Quote #1040644 from Furber Saw



Jim Warburton  
To Regina Rubier

You replied to this message on 8/13/2024 1:17 PM.

You don't often get email from [marketing@exmark.com](mailto:marketing@exmark.com). [Learn why this is important](#)



**Prepared For**

City of Clayton  
6000 Heritage Trail  
Clayton, CA 94517  
[jimw@claytonca.gov](mailto:jimw@claytonca.gov)

**Prepared By**

Frank Rodrigues  
Furber Saw (#412757)  
895 Howe Rd  
Martinez, CA 94553  
(925) 229-3774  
[furbersaw@aol.com](mailto:furbersaw@aol.com)

Quote # **1040644**  
Quote Type **OMNIA**  
Created On **8/6/2024**

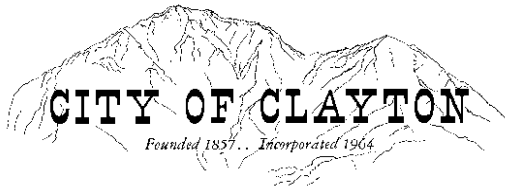
**Equipment**

	CSP	Price	Quantity	Extended Price
Lazer Z Diesel 43.5 HP** Yanmar 3TNV86CT Diesel w/144" UltraCut RD Deck, Deluxe Susp Seat & 15" Semi-Pneum	\$82,999.00	\$66,794.00	1	\$66,794.00
KIT-FINISH CUT BAFFLE 144	\$299.99	\$299.99	1	\$299.99
Equipment Total				\$67,093.99
HARD SUNSHADE from R & R Product				\$1,575.00
Sales Tax (9.750 %)				\$6,695.23
Total				\$75,364.22

**Notes**

City of Clayton Omnia Member #4001474 EXMARK Vendor ID#1564959

*Prices subject to change.  
Prices shown are in USD.*



## STAFF REPORT

**TO:** Honorable Mayor and Councilmembers

**FROM:** Daniel J. Hortert, AICP, Interim Community Development Director

**DATE:** August 20, 2024

**SUBJECT:** Oak Creek Canyon Project, Public Hearing on an Appeal of the Planning Commission's one-year extension of the Oak Creek Canyon Residential Planned Development Project for Six Residential Units Located on the North Side of Marsh Creek Road and the Intersection of Diablo Parkway

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### **RECOMMENDATION**

That the City Council conduct the Public Hearing, accept written and spoken testimony, close the public hearing and adopt the attached Resolution upholding the decision by the Planning Commission to approve a one-year extension of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Development as found in the Draft Resolution in Attachment 1.

### **SUMMARY OF PROJECT AND PROJECT ACTIONS**

In 2018 and 2019, West Coast Home Builders, Inc. (the Applicant), submitted applications to the City for various entitlements requesting approval of an Initial Study/Mitigated Negative Declaration (IS/MND), Vesting Tentative Map, General Plan Map Amendment, Specific Plan Map Amendment, Zoning Map Amendment, Development Plan, and Tree Removal Permit to construct the Oak Creek Canyon Project, a proposed single-family residential development of six single-family houses on nine acres in Clayton. Land use approvals requested by the Applicant for the Project include:

1. General Plan Map amendment to remove the Public/Quasipublic (PQ) designation from the property, and to expand the boundaries of portions of the property designated Single-Family Low Density (LD) and Private Open Space (PR) to allow the construction of the Project (GPA-02-18);



2. Marsh Creek Road Specific Plan (MCRSP) Map Amendment to change the land use designation on a portion of the property from *Open Space* to *Private Open Space* (SPA-01-18);
3. Zoning Map Amendment to rezone the site from R-10 (Single-Family Residential, 10,000 square foot minimum lot size) District and PF (Public Facility) District to PD (Planned Development) District (ZOA-01-18);
4. Vesting Tentative Map to subdivide the 9.03-acre property into six single-family residential lots with private open space (MAP-01-16);
5. Development Plan Review of the architecture of the proposed residences, each approximately 3,049 to 4,488 square feet in area and 23 to 32 feet in height, along with Project-related landscaping, drainage, fencing, lighting, and retaining walls (DP-01-19);
6. Tree Removal Permit to remove nine of the 21 trees on the Project site and replace the removed trees with newly planted trees, shrubs, and groundcover (TRP-31-19).

The 9.03-acre site of the proposed Project is on the north side of Marsh Creek Road at its intersection with Diablo Parkway, Assessor's Parcel Number (APN) 119-070-008.

California Government Code Sections 65354, 65453, 65855 and Clayton Municipal Code Section 17.56.060, identify the Planning Commission as the advisory body to the City Council on amendments to the General Plan, Specific Plan or Zoning Ordinance. After considering written and spoken testimony at public hearings conducted on December 22, 2020, and February 23, 2021, the Planning Commission expressed concerns about the adequacy of the information provided by the Applicant to fully and accurately describe the proposed Project and its related improvements. With these concerns, the Commission directed staff to prepare findings and a resolution recommending denial of the Project without prejudice, which the Commission adopted on March 9, 2021.

The Applicant subsequently filed an appeal of the Planning Commission's decision to the City Council and resubmitted plans intended to address inconsistencies and other concerns identified at the Commission's public hearings. On June 29, 2021, the City Council voted to reverse the Planning Commission decision to deny the project and upheld the applicants appeal and approved the project and City Council adopted Resolutions No. 38-2021, 39-2021, 40-2021, and 41-2021 adopting the Initial Study/Mitigated Negative Declaration (ENV 02-16), approving the General Plan Amendment (GPA 02-18) and the Specific Plan Amendment (SPA 01-18), and conditionally approving the Vesting Tentative Map (MAP 01-16), Development Plan Permit (DP 01-19), and Tree Removal Permit (TRP31-19) for the Oak Creek Canyon residential project. Furthermore, the Council adopted Ordinance 493 approving the Zoning Map Amendment request (ZOA 02-18). Resolution 41-2021 is attached to this Staff Report (Attachment 2).

## **EXTENSION REQUEST**

Pursuant to section 17.28.190 of Clayton Municipal Code (CMC) as written on the effective date of the entitlements, if construction pursuant to a Development Plan Permit approval had not commenced within 18 months of the City Council's approval, the

Development Plan Permit would become void.<sup>1</sup> CMC section 17.28.190 goes on to state that “[t]he Planning Commission or City Council, on appeal, may grant extensions to commence construction for not more than one year at a time upon showing of good cause.” As the Development Plan Permit (DP-01-19) became effective on August 19, 2021 (the effective date of the Rezoning Ordinance 493), that permit was set to expire on February 19, 2023, if construction had not started or a request for extension was not filed prior to that date.

On January 20, 2023, in accordance with the provisions of CMC section 17.28.190, the Applicant filed a timely request for a one-year extension of the Development Plan Permit granted for the Project. The extension request was filed as a result of Project delays caused by the COVID-19 pandemic and limited design consultant availability over the past three years.

On February 14, 2023, following a public hearing at which written and/or spoken testimony was accepted, the Clayton Planning Commission adopted Resolution No. 02-2023 (Attachment 3) approving a one-year extension of the approval of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Development. A copy of Resolution No. 02-2023 is attached to this Staff Report.

Construction of the Oak Creek Canyon Residential Development has not begun. On February 14, 2024, prior to the new expiration date and in accordance with the provisions of CMC section 17.28.190, the Applicant filed a timely request for a second, one-year extension of Development Plan Permit DP-01-19 granted for the Project (Attachment 4).

On February 27, 2024, following a public hearing at which written and/or spoken testimony was accepted, the Clayton Planning Commission adopted Resolution No. 01-2024 (Attachment 5) approving a one-year extension of the approval of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Development.

## **BACKGROUND OF APPEAL**

On March 8, 2024, the City received an application for an Appeal of a Planning Commission Decision from Moita & Moita, LLC on behalf of Clayton Estates, LLC. The decision by the Planning Commission to extend the Development Plan Permit DP-01-19 by one year to February 27, 2025, is the only action under appeal. Per the Appellant’s narrative, he is suggesting that the basis for the appeal is a violation of the 2019 Housing Crisis Act.

This Development Plan Permit approval is the subject of the Appeal Hearing. The City Council is requested to uphold the Planning Commission decision and staff’s original recommendation

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<sup>1</sup> CMC 17.28.190 was amended effective February 15, 2024, to extend the initial term of approval of a Development Plan Permit to 24 months. The code section as written on the effective date of the Oak Creek Canyon Development Plan Permit approval set the initial term of approval at 18 months.

to extend the Development Plan Permit an additional year. Because the appellant's appeal narrative raises several objections to the City Council's 2021 approval of the Project, it should be noted that only the February 27, 2024, decision by Planning Commission to extend the Project's Development Plan Permit is subject to appeal. The 2021 entitlements cannot be appealed.

The reasoning conveyed in the appeal request is not pertinent to the Planning Commission decision approving a one-year extension to exercise the Development Plan Permit approval granted by the Clayton City Council on June 29, 2021. The application narrative submitted by Moita & Moita, LLP can be found in Attachment 6. A response to the appeal from the Project applicant can be found in Attachment 7.

## **ANALYSIS**

It is staff's opinion that the Applicant has shown good cause and, consequently, recommends approval of the Applicant's request for extension of the Development Plan Permit for the Project. While construction on the Project has not yet begun, the Applicant has indicated that pre-construction work has been ongoing, inclusive of submittal of a first draft of the Final Map for the subdivision and field work to identify locations of petroleum pipelines within existing easements on the property. Staff understands that the Applicant still intends to pursue development of the Project should the extension of the Development Plan Permit be approved.

## **ENVIRONMENTAL REVIEW**

In compliance with CEQA, the City prepared the draft IS/MND and MMRP for the proposed Project. The draft 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 environmental resources evaluated, the draft 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.

The draft IS/MND was circulated for a 20-day public review period between August 21, 2020, and September 8, 2020. The draft IS/MND, comments received during the public comment period, responses to comments and revisions to the draft IS/MND are available for review at the Community Development Department on the third floor of City Hall.

## **PUBLIC COMMENTS**

There were no public comments at the hearing about extending the Development Plan project other than the Oak Creek Canyon applicant and Vince Moita of Moita & Moita, LLP.

## **FISCAL IMPACT**

There are no immediate fiscal impacts associated with the application.

## **ATTACHMENTS**

1. Draft Resolution to Uphold Planning Commission Decision
2. City Council Resolution No. 41-2021
3. Planning Commission Resolution No. 02-2023
4. Applicant Request for Second One-year Extension
5. Planning Commission Resolution No. 01-2024
6. Moita & Moita, LLP Application Narrative
7. Project Applicant Response to Appeal

**RESOLUTION NO. XX - 2024**

**OAK CREEK CANYON PROJECT, PUBLIC HEARING ON AN APPEAL OF THE  
PLANNING COMMISSION'S ONE-YEAR EXTENSION OF THE OAK CREEK  
CANYON RESIDENTIAL PLANNED DEVELOPMENT PROJECT FOR SIX  
RESIDENTIAL UNITS LOCATED ON THE NORTH SIDE OF MARSH CREEK ROAD  
AND THE INTERSECTION OF DIABLO PARKWAY**

**THE CITY COUNCIL  
City of Clayton, California**

**WHEREAS**, the City received an application from West Coast Home Builders (Applicant) requesting review and consideration of applications for Environmental Review pursuant to the California Environmental Quality Act (ENV-02-16), a Tentative Subdivision Map (MAP-01-16), a General Plan Map Amendment (GPA-02-18), a Specific Plan Map Amendment (SPA-01-18), a Zoning Map Amendment (ZOA-01-18), a Development Plan Permit (DP-01-19) and a Tree Removal Permit (TRP-31-19) for the subdivision and development of six single-family residences on approximately 9.03-acres ("Project"). The Oak Creek Canyon Residential Project site is located on the north side of Marsh Creek Road at its intersection with Diablo Parkway, Assessor's Parcel Number 119-070-008; and

**WHEREAS**, the City prepared a draft Initial Study/Mitigated Negative Declaration ("IS/MND") and Mitigation Monitoring and Reporting Program (MMRP) to evaluate the potential environmental impacts of the Project, in accordance with Section 15063 of Title 14 of the California Code of Regulations, the California Environmental Quality Act ("CEQA") Guidelines; and

**WHEREAS**, following public hearings conducted on December 22, 2020, and February 23, 2021, the Planning Commission expressed concerns about the adequacy of the information provided by the Applicant to fully and accurately describe the proposed Project and its related improvements, and subsequently, on March 9, 2021, the Commission adopted Resolution No. 01-2021 recommending denial of the Project without prejudice; and

**WHEREAS**, at its regular meeting of June 29, 2021, the Clayton City Council conducted a duly noticed public hearing on the appeal of the denial of the Project and received and considered testimony and evidence, both oral and documentary; and

**WHEREAS**, following close of the June 29, 2021, public hearing, the Council adopted Resolutions No. 38-2021, 39-2021, 40-2021 and 41-2021 adopting the IS/MND and MMRP for the Project, amending the General Plan Map and Marsh Creek Road Specific Plan (MCRSP) Land Use Map, and approving the Development Plan and Tree Removal Permits for the Project. At that meeting, the Council also introduced Ordinance 493 approving the Zoning Map Amendment for the Project. The Council adopted Ordinance 493 at a subsequent meeting on July 20, 2021; and

**WHEREAS**, on February 14, 2023, the project was approved for a one-year

extension which was approved by Planning Commission Resolution No. 02-2023; and

**WHEREAS**, on February 27, 2024, the Oak Creek Canyon development project was approved for a second one-year extension by Planning Commission Resolution No. 01-2024; and

**WHEREAS**, on March 8, 2024, an appeal to the Planning Commission decision outlined in Planning Commission Resolution No. 01-2024 was submitted to the City; and

**WHEREAS**, the basis for the appeal is that it does not comply with the Marsh Creek Road Specific Plan and that it conflicts with the Housing Crisis Act of 20169; and

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Clayton, California, does hereby make the following findings:

- A. The City Council does hereby find and affirm the above noted Recitals are true and correct and are hereby incorporated in the body of this Resolution as if restated in full.

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that the City Council of the City of Clayton does hereby uphold the Planning Commission decision to approve a one-year extension of the Oak Creek Canyon Development Project.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on August 20, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Jim Diaz, Mayor

ATTEST:

\_\_\_\_\_  
Stephanie Cabrera-Brown, City Clerk

**RESOLUTION NO. 41 - 2021**

**A RESOLUTION APPROVING A VESTING TENTATIVE MAP, DEVELOPMENT PLAN PERMIT AND TREE REMOVAL PERMIT FOR THE OAK CREEK CANYON RESIDENTIAL PROJECT LOCATED ON MARSH CREEK ROAD, NORTH OF THE INTERSECTION WITH DIABLO PARKWAY (MAP-01-16, DP-01-19, TRP-31-19)**

**THE CITY COUNCIL  
City of Clayton, California**

**WHEREAS**, the City received an application from West Coast Home Builders (Applicant) requesting review and consideration of applications for Environmental Review pursuant to the California Environmental Quality Act (ENV-02-16), a Tentative Subdivision Map (MAP-01-16), a General Plan Map Amendment (GPA-02-18), a Specific Plan Map Amendment (SPA-01-18), a Zoning Map Amendment (ZOA-01-18), a Development Plan Permit (DP-01-19) and a Tree Removal Permit (TRP-31-19) for the subdivision and development of six single-family residences on approximately 9.03-acres ("Project"). The Oak Creek Canyon Residential Project site is located on the north side of Marsh Creek Road at its intersection with Diablo Parkway, Assessor's Parcel Number 119-070-008; and

**WHEREAS**, the Planning Commission is authorized by Clayton Municipal Code (CMC) Section 16.04.020 to approve, conditionally approve or deny a request for tentative subdivision map approval; and

**WHEREAS**, the Planning Commission is authorized by CMC 16.50.030 to authorize removal of trees as part of development plan approval; and

**WHEREAS**, the Planning Commission is an advisory body to the City Council with respect to requests for development plan permits for development in the Planned Development (PD) District; and

**WHEREAS**, the Planning Commission held duly-noticed public hearings on December 22, 2020 and February 23, 2021, to accept written and spoken testimony on the requested approvals for a Vesting Tentative Map, Development Plan Permit and Tree Removal Permit (MAP-01-16, DP-01-19, TRP-31-19); and

**WHEREAS**, on March 9, 2021, after closing the public hearing on the item on February 23, 2021, the Planning Commission adopted Resolution No. 01-2021 finding the proposed Project plans to be inadequate for an affirmative decision and thereby recommending that the City Council deny the requested entitlements for the Project, without prejudice, which terminated proceedings on the Project in accordance with CMC Section 17.28.140; and

**WHEREAS**, notice of the Planning Commission Decision was sent to the City

Clerk and the Applicant on May 7, 2021, and on May 10, 2021, the Applicant submitted an appeal of the Planning Commission decision, along with revised plans intended to address comments and concerns raised by Planning Commissioners following close of their public hearing; and

**WHEREAS**, on June 1, 2021, at the request of the Applicant/Appellant and with concurrence from City staff, the City Council continued the duly-noted public hearing on the appeal of the Planning Commission recommendation of denial of the Project to June 29, 2021; and

**WHEREAS**, on June 29, 2021, the City Council held a continued public hearing on the appeal of the Planning Commission recommendation of denial of the Project, at which time spoken and written testimony was considered; and

**WHEREAS**, prior to acting on the appeal of the Planning Commission recommendation of denial of the Project, the City Council adopted a Resolution adopting the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Project (ENV-02-16), pursuant to the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 *et seq.*) and State CEQA Guidelines (California Code of Regulations, Section 15000 *et seq.*), and the City Council considered the information contained in that adopted IS/MND prior to acting on the Vesting Tentative Map, Development Plan Permit and Tree Removal Permit requests associated with the Project.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Clayton, California, hereby makes the following findings:

- A. The City Council does hereby find and affirm the above noted Recitals are true and correct and are hereby incorporated in the body of this Resolution as if restated in full.
- B. Proper notice of this public hearing was given in all respects as required by law, including publication in a newspaper of general circulation; first class mailing to the Applicant/Appellant, interested parties and agencies, and owners of property within 300 feet of the Project site; and posting on three community notice boards within the City.
- C. There is no evidence in light of the record that the proposed Project will have the potential for any individual or cumulative adverse effect on fish and wildlife resources or their habitat, as defined in Section 711.2 of the Fish and Wildlife Code.
- D. The development's environmental impacts have been reviewed pursuant to CEQA. In compliance with CEQA, the City prepared a draft IS/MND and Mitigation Monitoring and Reporting Program (MMRP) for the proposed Project. The draft IS/MND evaluated the potential, Project-related environmental impact to aesthetics, agriculture and forestry 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 environmental resource areas evaluated, the draft 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 Projects impacts on the environment to a “less-than-significant” level.

- E. The location of the record of the Project is the Community Development Department, third floor of Clayton City Hall at 6000 Heritage Trail, Clayton, in the custody of the Community Development Director.

*Vesting Tentative Map*

- F. The Vesting Tentative Map (VTM), together with its provisions for its design and improvements, is consistent with the General Plan and Marsh Creek Road Specific Plan and conforms to the applicable zoning regulations.
1. The VTM will facilitate residential development on the property that is consistent with General Plan Land Use Objective 1 to “retain the rural character of Clayton through a predominance but not exclusive use of single-family, low-density residential development balancing needs of the housing element and preservation of open space.”
  2. The VTM is generally consistent with the goals and policies of the Marsh Creek Road Specific Plan (MCRSP), as the zoning amendment will facilitate construction of a single-family residential development on lands designated Low Density Residential in Figure 6 of the MCRSP (as amended). Consistent with MCRSP policies LU-5a, LU-6, LU-8 and DD-2, the development that will occur under the PD District will not occur on any ridgelines or slopes over 40 percent, will occur on lower elevation portions of the site where slopes are predominantly less than 26 percent, will cluster the residential units at the lower elevation so as to retain the higher elevation lands as open space, and will comply with MCRSP development regulations including but not limited to the 80-foot building setback from Marsh Creek Road. Historic slides on the Project site would be excavated and remediated consistent with Public Safety Objective 1.
  3. The VTM will facilitate development of a project that will grade on a portion of the site where the slope exceeds 26 percent (Policy LU-5a and LU-5b). However, as noted above, the development is in substantial conformity with the land use policies and development

regulations of the MCRSP. Grading of the site will be necessary to create pads for the residences, though more visible lands upslope on the Project site would remain in private open space, and with placement of the residences at lower elevations on the property, the development will not intrude on views of Mt. Diablo. Visibility of the development will be reduced with the Project's compliance with the 80-foot setback from Marsh Creek Road and with trees and landscaping planted in the intervening setback, also consistent with Policy LU-7. As discussed on the IS/MND prepared for the Project, mitigation measures will be adopted as conditions of Project approval to reduce to less-than-significant the potential for sensitive species to be adversely impacted by the Project.

4. The VTM depicts that a 24-foot wide road will be paved with the Project within a 48-foot wide right-of-way to be dedicated with the Project, with a 4-foot wide sidewalk on the west side of the street and a 6-inch wide curb and landscaped area on the opposite side. This paved roadway width will be adequate for access purposes for the proposed six residences in the Project but would be within a dedicated right-of-way that could accommodate future widening to 32 feet, with installation of additional utilities, upon approval of land use permits for potential additional development on lands east of the site that are currently within the MCRSP planning area but outside of the municipal boundary and County Urban Limit Line. The proposed section and alignment of Saltbrush Lane nonetheless allows for future connection to development streets on those parcels to the east, consistent with MCRSP Policy CI-7 and Figure 10.
5. The VTM is consistent with the Zoning Ordinance. The density of development will not exceed the 16 unit per acre maximum allowed under the Sensitive Land Areas Ordinance (CMC Chapter 17.22) after deduction of lands with slopes greater than 26 percent, and the sizes of the proposed lots would meet the minimum lot area standards of the PD District, as well as the similar base R-10 (Residential Single-Family, 10,000 square foot minimum lot size) District.

#### *Development Plan Permit*

- G. The application of the Planned Development District, as proposed, will result in a significantly better-quality development than would occur with a non-flexible zone, and that the factors specified in CMC Section 17.28.160 have been thoroughly evaluated. The PD District will provide opportunities for large-sized lots with private open space, as well as opportunities for private maintenance of amenities and infrastructure serving the development, including landscaping, access roads and the on-site bioretention basin.
- H. The Project complies with the open space requirements of CMC Section 17.28.100. The total Project site is 9.03 acres; thus, the developer is required

to provide at least 1.8 acres as open space, with at least half of that area (0.9 acres) in active open space. The Project plans show 5 acres passive open space, and no active open space. For the Project, staff the topography of the Project site, which is mostly over 10 percent, supports a reduction in the area of active open space, as provision of 0.9 or more acres of active recreational area such as athletic fields or playgrounds would require extensive site grading to create large flat areas. Additionally, the Project site is within one-half mile of the Clayton Community Park, and proposed Project improvements include construction of a sidewalk along Marsh Creek Road to facilitate residents' ability to walk to the park. To meet the requirement for passive open space, the Applicant has proposed construction of an on-site pedestrian pathway along the eastern side of the Project site that could connect to potential future open space areas east of the Project site.

- I. The development is consistent with the Clayton General Plan. The proposed rezoning would facilitate residential development on the property that is consistent with General Plan Land Use Objective 1 to "retain the rural character of Clayton through a predominance but not exclusive use of single-family, low-density residential development balancing needs of the housing element and preservation of open space."
- J. The development will be compatible with and in harmony and character with the City as a whole and with adjoining areas and uses. Architectural elevations submitted for the Project reflect a rural architecture that incorporates vertical and horizontal siding, brick, fieldstone, ledgestone, timber materials, colors and roofing material that combine to create a country sense. Each residence features 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.
- K. The Applicant intends to start construction of the Project within the 18 months of approval of the effective date of the ordinance establishing the PD District for this Project, or, with the City's approval, not more than 30 months of the effective date of said ordinance, upon showing of good cause for a one-year extension.

#### *Tree Removal Permit*

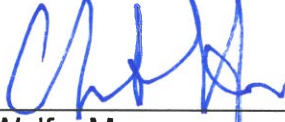
- L. The requested Tree Removal Permit will not cause or increase erosion in the vicinity of the tree, and the tree needs to be removed to allow construction of an improvement that is related to the development application. The tree will be replaced by replacement tree(s) planted pursuant to a tree replacement plan prepared in accordance with the standards of Section 15.70.040 which fully mitigates the impacts created by the removal of the tree.

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, the City Council of the City of Clayton, California, does hereby uphold the appeal and approve Vesting Tentative Map application MAP-01-16, Development Plan Permit application DP-01-19, and Tree Removal Permit application TRP-31-19, subject to the conditions of approval and mitigation measures listed in the attached Exhibit A, and effective upon the effective date of General Plan Map Amendment (GPA-02-18), Specific Plan Map Amendment (SPA-01-18), and Zoning Map Amendment (ZOA-01-18).

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on June 29, 2021, by the following vote:

AYES: Mayor Wolfe, Vice Mayor Cloven, Councilmembers Diaz, Tillman, and Wan.  
NOES: None.  
ABSENT: None.  
ABSTAIN: None.

THE CITY COUNCIL OF CLAYTON, CA

  
\_\_\_\_\_  
Carl Wolfe, Mayor

ATTEST:

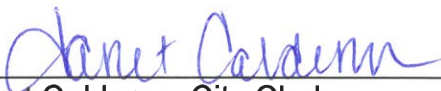
  
\_\_\_\_\_  
Janet Calderon, City Clerk

Exhibit A: Oak Creek Canyon Project, Conditions of Approval

Exhibit A  
**OAK CREEK CANYON RESIDENTIAL SUBDIVISION**  
**CONDITIONS OF APPROVAL**

**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.

**Applicant and Property Owner**

West Coast Home Builders, Inc.

**Administrative**

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

PLAN	DATED	PREPARED BY	PAGES
Oak Creek Canyon Project Entitlement Plan Booklet	6/22/2021	Isakson & Associates Inc. MD Fotheringham Landscape Arch. Discovery Design Group	1
Geotechnical/Geologic Peer Review	2/25/2020	Alan Kropp and Associates Inc.	4
Geotechnical Earthwork	11/3/2019	Albert D. Seeno Construction Co.	6
Response to Review 2/25/2020 Comments by Alan Kropp &	3/10/2020	ENGEO	23
Supplemental Geotechnical/Geological Peer	3/18/2020	Alan Kropp & Associates, Inc.	2
Review letter of ENGEO Updated	3/19/2008	Joyce Associates	3
ENGEO Updated Geotechnical	2/22/2008	ENGEO	84
Arborist Report	10/10/2019	Traverso Tree Service	8
Stormwater Control Plan	5/17/2015	Isakson & Associates Inc.	19
Rare Plant Survey Report	12/21/2018	Swaim Biological Inc.	32
Biological Resources Assessment and Attachment A Photos	06/11/2018	Swaim Biological Inc.	32
HCP Application and Planning Survey Report	May 2018	Swaim Biological Inc.	35
Initial Study/Mitigated Negative Declaration	August 2020	Raney Planning & Management	
Preliminary Title Report	1/21/2020	Old Republic Title	

2. Approval of the Vesting 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 (CMC) policies and standards unless a specific exception is granted thereto, or is otherwise modified in these conditions.

4. Prior to the issuance of building permits, architecture, fencing, mailboxes, lighting, accent paving, addressing, and landscaping for the entire Project shall be subject to review and approval by the Community Development Director.
5. Sound fence locations and elevations on Lots 1, 2, and 6 shall be included on the grading plan(s) subject to review and approval by City staff.
6. These entitlements supersede any previous entitlements or approvals.
7. Permits or approvals, whether discretionary or ministerial, will not be considered if the Applicant is not current on fees, reimbursements and/or other payments that are due to 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 of the Vesting Tentative Map shall be as stipulated in Section 16.08.029 of the CMC. Extension requests must be submitted prior to expiration of the initial approval and must be accompanied by the appropriate filing fee.
12. 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.
13. The Project is subject to development impact fees and parkland dedication fees, as established in the CMC at the time of payment.
14. All mitigation measures set forth in the Oak Creek Canyon Residential Subdivision Initial Study/Mitigated Negative Declaration (IS/MND) (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. The Applicant shall implement all mitigation measures set forth in the Oak Creek Canyon Residential Subdivision Initial Study/Mitigated Negative Declaration.
15. 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 United States Army Corps of Engineers (USACE).

16. 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 Community Development Director. If you owe additional fees, a bill will be sent to you shortly after permit issuance.

#### **General Plan Amendment/Rezone**

17. This Vesting 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].

#### **Residential Lot**

18. The maximum number of units approved is six (6) single-family residential Lots as shown on the Vesting Tentative Map, in the development package, and on the associated plan submittals noted above.

#### **Development Plan/Design Review**

19. Sixty (60) days prior to the review of the Final Map or upon obtaining a Grading Permit, whichever occurs first, the Applicant shall submit for review and approval by the Community Development Director a revised development plan set that depicts the modifications requested herein.
20. 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.
21. Final lot site plans and architectural elevations shall be subject to the review and approval of the Community Development Director.

#### **Affordable Housing**

22. The Developer shall provide one (1) low-income housing unit as part of the Affordable Housing Plan. The Affordable Housing Plan shall be submitted for the review and approval of the Community Development Director prior to the approval of the Final Map.

#### **Open Space**

23. To meet the intent of active open space, the Developer shall provide a public easement on the Final Map for the trail shown on the Vesting Tentative Map, and shall construct the trail to be shown on the approved final improvement plans.

#### **Modifications**

24. Revisions of the internal circulation plan or lot layout shall be subject to review and approval by the Community Development Director and City Engineer at least 60 days prior to filing the Final Map or obtaining a Grading Permit.

25. The Final Map shall show an offer of dedication for a public utility easement over the 48-foot Saltbrush Lane right-of-way in addition to an offer of dedication in fee title for the roadway right-of-way as approved by the City Engineer.

#### **Homeowners Association**

26. A Homeowners Association (HOA) shall be formed in compliance with regulations set forth by the California Department of Real Estate for the maintenance of the Project as shown on the Vesting Tentative Subdivision Map and development plans and noted below in the covenants, conditions, and restrictions (CC&Rs).

#### **Covenants, Conditions, and Restrictions**

27. The CC&Rs for the single-family residential Lots shall be submitted for the review and approval by the Community Development Director at least 60 days prior to filing the Final Map. This document shall, at a minimum, provide for establishment, ownership, responsibilities, enforcement, 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, and establishment of signs, and it shall include conditions as noted:
- a. Setbacks for the residences shall be as noted and shown on the approved Project Site Plan. Deviations from that Site Plan must be approved by the Community Development Director.
  - b. The minimum dimension for any modification shall be consistent with the development standards in the R-10 District listed in the CMC.
  - 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 and location 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.
  - l. Saltbrush Lane may be widened upon approval by the City and in conformance with the Phase 2 Marsh Creek Road Specific Plan (MCRSP) Buildout as shown on the Vesting Tentative Map and no encroachments, including tree planting, are permitted in the right-of-way adjacent to the property.
28. The CC&Rs document shall reference the approved drainage improvement maintenance plan and the fencing plan program.
  29. 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.
  30. The CC&Rs shall clearly note that all subdivision maintenance is to be done by the property owner, or the HOA, or the community facilities district.
  31. The CC&Rs shall make an adequate provision for funding road maintenance and establishing a maintenance cycle standard.
  32. 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.
  33. 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.
  34. The CC&Rs shall include the stormwater operation and maintenance plan, as approved by the City Engineer.
  35. Routine inspection of the stormwater conveyance and treatment facilities, and the corresponding landscaping and irrigation improvements, shall be conducted by the HOA. The HOA shall be responsible for any needed maintenance work or repairs in their entirety.
  36. The HOA shall perform and prepare annual inspections and reports for the stormwater conveyance and treatment facilities, which shall be submitted to the City along with payment of the City's required fees. In addition, the HOA shall be responsible to comply with the reports in relation to needed maintenance work or repairs.
  37. No provision in the CC&Rs which is included as a result of these Conditions of Approval, may be amended without prior written approval of the City of Clayton.
  38. The HOA shall be responsible to maintain the landscaping and irrigation in the public right-of-way and the stormwater conveyance and treatment facilities.

**CC&R Deed Restrictions**

39. The 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 discing for weed abatement); construction of all buildings and structures; and storage of any motor vehicles, trailers, recreational vehicles, graders, tractors, or similar equipment.
    - i. The western portion of lot 2, beginning at the western edge of the 50-foot-wide roadway and pipeline easement serving the CCWD parcel.
    - ii. The northern portions of Lots 3-5 above the V-ditch drainage bench generally located at an elevation of 630 feet above sea level.
    - iii. The detention basin on lot 6 in the Storm Drain Management Easement.
  - b. 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.
  - c. 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.

- d. 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.
- e. 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.
- f. The deeds for Lots 1, 2, and 3 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.
- g. Lot deeds shall contain language prohibiting any future land divisions to create additional home sites unless superseded by State law.

#### **Community Facilities District**

- 40. If not already a part of the City's existing landscape maintenance district and/or Grove Park 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.
- 41. 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.

42. 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**

43. 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.
44. 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.
45. 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 these trees, construction shall be halted in the immediate area of the subject tree(s) until a revision to the tree retention/removal actions shown on the entitlement plan are reviewed and approved by the Community Development Director.
46. 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. Prior to construction or grading, the Project contractor shall install fencing to construct a temporary Tree Protection Zone (TPZ) around trees #43 and #60.
  - b. 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.
  - c. 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.
  - d. 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).
  - e. Should TPZ encroachment be necessary, the Project contractor shall contact the Project arborist for consultation and recommendations.
  - f. 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.
  - g. Should any damage to the trees occur, the contractor shall promptly notify the Project arborist to appropriately mitigate the damage.
- [Mitigation Measure 5]**

47. 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 CMC.
48. 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 signature blocks for the Community Development Director, City Engineer, and Maintenance Department; and show all existing and proposed public utilities within the Project limits.
49. 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).
50. 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.
51. 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.
52. 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.
53. 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.
54. 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.

55. The Developer shall maintain all landscaping and other facilities that will become the responsibility of the HOA until transfer to the HOA. Prior to release of the Developer's maintenance responsibilities, all applicable 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 punchlist 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.
56. Landscaping shall be installed in conformance with the final approved plans prior to final inspection.
57. Plans shall conform with the Water Conserving Landscape Guidelines in Chapter 17.80 of the CMC and applicable stormwater regulations.

#### **Fencing Conditions**

58. All fences and sound fences shall be as shown on the plans contained herein.
59. All fences and in proximity to Marsh Creek Road public right-of-way shall be located at least one (1) foot inside the respective parcel.
60. 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.
61. A split rail fence shall be provided around the bioretention basin.

#### **Grading Conditions**

62. Prior to any ground disturbance related to covered activities, a United States 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]**
63. 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]**

64. 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 are described in the Biological Resources Assessment prepared for the proposed Project.
- 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 in accordance with CDFW and CNPS. **[Mitigation Measure 3]**
65. 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. Such verification shall be submitted to 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 United States 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 United States Geological Survey and other data sources is determined by regulatory agencies to be 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]**
66. 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]**
67. 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-interment 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]**
68. The Final Grading Plan shall incorporate the following:
- 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 forty-eight (48) 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 basins may be consolidated 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.
69. 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 applicable grading, improvement, and construction plans to the satisfaction of the City Engineer.
70. The Developer 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, including testing/observation reports of the Geotechnical Engineer, shall be provided to the City Engineer for review and approval. **[Mitigation Measure 8]**
71. 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.
72. 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]**

73. 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]**
74. 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]**
75. 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 from 7:00 a.m. to 5:00 p.m. from Monday through Friday, as specified in CMC Section 15.01.101. 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]**
76. 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 exposed (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved roads) shall be watered sufficiently to ensure dust is minimized.
  - b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - c. 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.
  - d. All vehicle speeds on unpaved roads shall be limited to 15 mph.

- e. 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.
- f. 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.
- g. 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.
- h. 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**

- 77. Developer shall provide an offer of dedication on the Final Map for the full 48-foot-wide right-of-way, shown on the Vesting Tentative Map as Saltbrush Lane (which street name is subject to the City's street name approval process). The road and related improvements shall be maintained by the HOA. This 48-foot-wide right-of-way is in conformance with the collector road width per the MCRSP. Developer shall construct Saltbrush Lane as shown on the Vesting Tentative Map, cross-section detail Phase 1 Alt, serving the Project's 6 Lots being a 24-foot-wide (face-of-curb to face-of-curb) local residential road per City standards. The Developer shall provide in a manner acceptable to the City, a performance bond, letter of credit or certificate of deposit for the full value of the work, as part of the Project's subdivision improvement bonds, to the City in order to guarantee the construction of the ultimate 32-foot-wide collector road to accommodate MCRSP Buildout (i.e., mainly the potential Lots on property owned by others to the east of the Project), including site and landscape restoration. This condition does not preclude Developer from collecting reimbursement from property owners to the east. This warranty bond shall have a term of 10 years but shall be released sooner by the City if replaced by an equivalent enforcement mechanism (e.g., an agreement among property owners to fund and construct the ultimate collector road).
- 78. The Final Map shall show dedication of a 10-foot-wide public access easement maintained by the HOA along the eastern edge of Lots 5 and 6. The Developer shall install a 6-foot-wide pedestrian trail shall be installed in the easement as shown on the MCRSP. 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.

79. 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.
80. 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).
81. The "Saltbrush Lane" name of the Project road shall be subject to review and approval in accordance with City Council Resolution No. 68-2003.
82. All mailbox locations shall be constructed and grouped in accordance with United States Postal Service standards, and the grouping of mailboxes shall be architecturally treated to reduce massing and visual impact. All mailboxes shall be locking. All mailbox locations and design are subject to review and approval of the Community Development Director and the United States Postal Service.
83. 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.
84. Prior to approval of the Final Map, the Developer shall contribute its fairshare, 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.
85. The Developer shall relinquish abutter's rights of access to Marsh Creek Road along the southerly lines of Lots 1, 2, and 6.
86. The Developer shall obtain an encroachment permit for all work in the public right-of-way.

#### **Drainage Conditions**

87. Prior to submittal of a grading plan, improvement plan, or Final Map, the Developer shall provide an updated preliminary stormwater control plan in accordance with the latest RWQCB and C.3 regulations.
88. The stormwater detention basin shall be sized and constructed to accommodate the stormwater flows solely created by the Project.

89. 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. 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. The Mosquito and Vector Control District and contractors shall have right of access to conduct inspections and maintenance of on-site drainage devices.
92. 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 and into the bioretention basin.
93. 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. 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. 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. 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. 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 General Constriction Permit have been met.
98. 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. 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.
100. 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.
101. 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.
102. The Developer shall provide all Project property owners with Clean Water Program educational materials.
103. The Developer shall construct the County Standard Plan CD52i, Type "M" Headwall Structure at the headwall proposed at the easterly property limits.
104. The Developer shall obtain a Contra Costa County Drainage Permit for any work within the County territory.

**Utility Conditions**

105. All utilities shall be sized to accommodate Buildout of the MCRSP, or adequate right-of-way and easement(s) shall be provided for expansion of utilities if needed for future annexation and development envisioned in the MCRSP.
106. 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.
107. 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.
108. 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.
109. 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.
110. 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.
111. The Developer shall connect to the sanitary sewer system, obtain applicable permits, and pay applicable fees required by the City of Concord.
112. 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.
113. Underground facilities crossing Lots shall be located in flat portions of the Lots, not within slope areas.
114. If not already a part of the City's existing Citywide Street Light Assessment District, the Developer shall annex into the Street Light Assessment District.
115. 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.
116. Street lighting shall be installed and activated prior to occupancy of the first residence.
117. Developer shall pay for the cost of installation, activation, and electrical usage until final acceptance of subdivision improvements by the City Council. After acceptance of the subdivision improvements by the City Council, the HOA shall be responsible.
118. 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. 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. Prior to filing of the Final Map, the Developer shall enter into a Subdivision Improvement Agreement, provide a performance bond in an amount and type to be determined by the City Engineer, for use by the City to ensure the completion of the applicable improvements as determined by the City Engineer.
121. 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. 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. 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. 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. 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. Should the construction of any improvements shown on the Vesting 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. 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 Vesting Tentative Map at some time in the future.
128. 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.
129. The pedestrian path to be built by the Developer on the north side of Marsh Creek Road along the length of the Project frontage shall be extended by the Developer, at the Developer's cost, westward along the north side of Marsh Creek Road to Regency Drive, if the timing of construction of the path along the Project frontage occurs prior to the City receiving grant funding for extending the path westward beyond the westernmost extent of the Project site.

**CITY OF CLAYTON  
PLANNING COMMISSION  
RESOLUTION NO. 02-2023**

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**A RESOLUTION OF THE CLAYTON PLANNING COMMISSION APPROVING A  
ONE-YEAR EXTENSION OF THE APPROVAL OF THE DEVELOPMENT PLAN  
PERMIT (DP-01-19) FOR THE OAK CREEK CANYON RESIDENTIAL PROJECT**

**WHEREAS**, the City received an application from West Coast Home Builders (Applicant) requesting review and consideration of applications for Environmental Review pursuant to the California Environmental Quality Act (ENV-02-16), a Tentative Subdivision Map (MAP-01-16), a General Plan Map Amendment (GPA-02-18), a Specific Plan Map Amendment (SPA-01-18), a Zoning Map Amendment (ZOA-01-18), a Development Plan Permit (DP-01-19) and a Tree Removal Permit (TRP-31-19) for the subdivision and development of six single-family residences on approximately 9.03-acres (“Project”). The Oak Creek Canyon Residential Project site is located on the north side of Marsh Creek Road at its intersection with Diablo Parkway, Assessor’s Parcel No. 119-070-008; and

**WHEREAS**, the City prepared an Initial Study/Mitigated Negative Declaration (“IS/MND”) and Mitigation Monitoring and Reporting Program (“MMRP”) to evaluate the potential environmental impacts of the Project, in accordance with the California Environmental Quality Act (“CEQA,” Public Resources Code section 21000 *et seq.*) and section 15063 of the State CEQA Guidelines (California Code of Regulations section 15000 *et seq.*); and

**WHEREAS**, following public hearings conducted on December 22, 2020, and February 23, 2021, the Planning Commission expressed concerns about the adequacy of the information provided by the Applicant to fully and accurately describe the proposed Project and its related improvements, and subsequently, on March 9, 2021, the Commission adopted Resolution No. 01-2021 recommending denial of the Project without prejudice; and

**WHEREAS**, adoption of Planning Commission Resolution No. 01-2021 terminated proceedings on the Project in accordance with Government Code section 65856 and Clayton Municipal Code (CMC) section 17.28.140, and the Applicant later filed appeal of the decision; and

**WHEREAS**, at its regular meeting of June 29, 2021, the Clayton City Council conducted a duly noticed public hearing on the appeal of the denial of the Project and received and considered testimony and evidence, both oral and documentary; and

**WHEREAS**, following close of the June 29, 2021, public hearing, the Council adopted Resolutions No. 38-2021, 39-2021, 40-2021 and 41-2021 adopting the IS/MND and MMRP for the Project, amending the General Plan Map and Marsh Creek Road Specific Plan (MCRSP) Land Use Map, and approving the Development Plan and Tree

Removal Permits for the Project. At that meeting, the Council also introduced Ordinance 493 approving the Zoning Map Amendment for the Project. The Council adopted Ordinance 493 at a subsequent meeting on July 20, 2021; and

**WHEREAS**, the approvals of the General Plan and MCRSP amendments became effective upon their adoption on June 29, 2021. Rezoning Ordinance 493 became effective on August 19, 2021, or 30 days after Ordinance 493 was adopted. In accordance with Condition No. 17 of Resolution No. 41-2021, the Vesting Tentative Map, Development Plan Permit and Tree Removal Permit approvals became effective on the effective date of the Rezoning Ordinance 493; and

**WHEREAS**, pursuant to CMC section 17.28.190, if construction pursuant to a Development Plan Permit approval has not commenced within 18 months of the City Council's approval, the Development Plan Permit becomes null and void. CMC section 17.28.190 goes on to state that "[t]he Planning Commission or City Council, on appeal, may grant extensions to commence construction for not more than one year at a time upon showing of good cause." As the Development Plan Permit became effective on August 19, 2021 (the effective date of the Rezoning Ordinance 493), that permit would expire on February 19, 2023, if construction had not started or a request for extension was not filed prior to that date; and

**WHEREAS**, construction of the Oak Creek Canyon Residential Development has not begun, and on January 20, 2023, in accordance with the provisions of CMC section 17.28.190, Doug Chen representing West Coast Home Builders, Inc., filed a timely request for a one-year extension of the Development Plan Permit granted for the Project. The extension request was filed as a result of Project delays caused by the COVID-19 pandemic and limited design consultant availability over the past three years; and.

**WHEREAS**, on February 2, 2023, notice of a public hearing to consider the request for a one-year extension of the Development Plan Permit was posted at the notice boards at Clayton City Hall, Clayton Community Library, and at the Ohm's posting in the Town Center, was electronically mailed to the Applicant and to interested parties who had requested such notice; and was mailed via first class mail to owners of property within 300 feet of the Project site; and

**WHEREAS**, on February 14, 2023, the Clayton Planning Commission held a duly-noticed public hearing on the request for extension of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Development, and received and considered testimony and evidence, both oral and documentary.

**NOW, THEREFORE**, the Planning Commission hereby determines the foregoing recitals to be true and correct and makes the following findings:

- A. The Applicant has shown good cause for extension of the Development Plan Permit previously approved for the Project. The COVID-19 pandemic has affected businesses, construction costs and supply chains in various

ways, including reduced availability of contractors and design consultants. With reduced availability of consultants, preparation and review of final improvement plans for the project have taken longer than the 18 months allowed by default in Clayton Municipal Code section 17.28.190, but, as the Applicant has already submitted final improvement plans for plan check, exercise of entitlements associated with the Project is anticipated to be completed within the one-year extension of time requested by the Applicant.

- B. Nothing in the Applicant's request for extension of current entitlements for the Project triggers new discretionary review or revision of the land use entitlements previously granted by the City, as no changes are proposed to be made to the Project as originally approved. With the one-year extension, all Conditions of Approval adopted by the City Council with Resolution No. 41-2021 will continue to be applicable to the Project.
- C. Prior to approving the Project on appeal, the City Council adopted Resolution No. 38-2021 adopting an IS/MND, approving an MMRP, and making findings pursuant to CEQA, including a finding that, based on evidence in the record, the Project would not have a significant effect on the environment with the incorporation of the mitigation measures identified in the MMRP. No additional findings are necessary for CEQA compliance for the current request for extension of entitlements of the approved Project. The impacts of approving the extension of time—separate and apart from any development—would be limited to the impacts of signing a piece of paper. Signing a piece of paper, if separated from the underlying development it allows, cannot qualify as a project subject to CEQA because it would not result in either a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, section 15060, subd. (c)(1)-(3), and section 15378, subd. (a).)

**NOW, THEREFORE, BE IT RESOLVED**, the Planning Commission hereby approves the request for a one-year extension, to February 19, 2024, of the term of the approval of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Project on 9.03 acres on the north side of Marsh Creek Road at its intersection with Diablo Parkway, Clayton. The record of proceedings for this matter is located at the City of Clayton, City Hall, 6000 Heritage Trail, Clayton, CA 94517. The custodian of records is the City Clerk.

**[Remainder of page left blank intentionally.]**

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 14<sup>th</sup> day of February 2023.

AYES: Cesarin, Enea, Miller, Richardson, Shulman

NOES: none

ABSTAINED: none

ABSENT: none

APPROVED:



Daniel Richardson  
Chair

ATTEST:



Dana Ayers, AICP  
Community Development Director

***WEST COAST HOME BUILDERS, INC.***

4021 Port Chicago Highway, Concord, CA 94520  
(925) 671-7711 Fax (925) 689-5979 CA Lic. #720955

February 14, 2024

City of Clayton - Community Development Dept.  
6000 Heritage Trail  
Clayton, CA 94517  
Attn: Dana Ayers

**Re: Oak Creek Canyon – Request for Extension of Development Plan Approval**


Dear Dana:

As a follow up to our communications concerning the subject Project, I am providing this letter as written request to extend the Project's Development Plan approval. The original approval was set to expire 18 months after the effective date of August 19, 2021 for the Zoning Map Amendment. It was extended at the February 14, 2023 Planning Commission for 12 months to February 19, 2024.

We have started field work on this project by investigating/excavating for the petroleum pipelines on the site, which may interfere with site grading. Additional field work is necessary to determine the more exact locations. We have reviewed the 1<sup>st</sup> plan check comments and expect to resubmit plans in May 2024, after locating the pipelines. We respectfully request a 12-month extension in order to provide more time for plan processing.

Please contact me if you have any questions.

Best Regards,

  
Doug Chen, RCE, LS  
West Coast Home Builders, Inc.  
4021 Port Chicago Highway  
Concord, CA 94520  
925.250.2658, [dchen@seenohomes.com](mailto:dchen@seenohomes.com)

**RECEIVED**

**FEB 14 2024**

**CITY OF CLAYTON  
COMMUNITY DEVELOPMENT DEPT.**

**CITY OF CLAYTON  
PLANNING COMMISSION  
RESOLUTION NO. 01-2024**

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**A RESOLUTION OF THE CLAYTON PLANNING COMMISSION APPROVING A  
ONE-YEAR EXTENSION OF THE APPROVAL OF THE DEVELOPMENT PLAN  
PERMIT (DP-01-19) FOR THE OAK CREEK CANYON RESIDENTIAL PROJECT**

**WHEREAS**, the City received an application from West Coast Home Builders (Applicant) requesting review and consideration of applications for Environmental Review pursuant to the California Environmental Quality Act (ENV-02-16), a Tentative Subdivision Map (MAP-01-16), a General Plan Map Amendment (GPA-02-18), a Specific Plan Map Amendment (SPA-01-18), a Zoning Map Amendment (ZOA-01-18), a Development Plan Permit (DP-01-19) and a Tree Removal Permit (TRP-31-19) for the subdivision and development of six single-family residences on approximately 9.03-acres (“Project”). The Oak Creek Canyon Residential Project site is located on the north side of Marsh Creek Road at its intersection with Diablo Parkway, Assessor’s Parcel No. 119-070-008; and

**WHEREAS**, the City prepared an Initial Study/Mitigated Negative Declaration (“IS/MND”) and Mitigation Monitoring and Reporting Program (“MMRP”) to evaluate the potential environmental impacts of the Project, in accordance with the California Environmental Quality Act (“CEQA,” Public Resources Code section 21000 *et seq.*) and section 15063 of the State CEQA Guidelines (California Code of Regulations section 15000 *et seq.*); and

**WHEREAS**, following public hearings conducted on December 22, 2020, and February 23, 2021, the Planning Commission expressed concerns about the adequacy of the information provided by the Applicant to fully and accurately describe the proposed Project and its related improvements, and subsequently, on March 9, 2021, the Commission adopted Resolution No. 01-2021 recommending denial of the Project without prejudice; and

**WHEREAS**, adoption of Planning Commission Resolution No. 01-2021 terminated proceedings on the Project in accordance with Government Code section 65856 and Clayton Municipal Code (CMC) section 17.28.140, and the Applicant later filed appeal of the decision; and

**WHEREAS**, at its regular meeting of June 29, 2021, the Clayton City Council conducted a duly noticed public hearing on the appeal of the denial of the Project and received and considered testimony and evidence, both oral and documentary; and



**WHEREAS**, following close of the June 29, 2021, public hearing, the Council adopted Resolutions No. 38-2021, 39-2021, 40-2021 and 41-2021 adopting the IS/MND and MMRP for the Project, amending the General Plan Map and Marsh Creek Road Specific Plan (MCRSP) Land Use Map, and approving the Development Plan and Tree Removal Permits for the Project. At that meeting, the Council also introduced Ordinance 493 approving the Zoning Map Amendment for the Project. The Council adopted Ordinance 493 at a subsequent meeting on July 20, 2021; and

**WHEREAS**, the approvals of the General Plan and MCRSP amendments became effective upon their adoption on June 29, 2021. Rezoning Ordinance 493 became effective on August 19, 2021, or 30 days after Ordinance 493 was adopted. In accordance with Condition No. 17 of Resolution No. 41-2021, the Vesting Tentative Map, Development Plan Permit and Tree Removal Permit approvals became effective on the effective date of the Rezoning Ordinance 493; and

**WHEREAS**, pursuant to CMC section 17.28.190 as written on the effective date of the entitlements, if construction pursuant to a Development Plan Permit approval had not commenced within 18 months of the City Council's approval, the Development Plan Permit would become void. CMC section 17.28.190 goes on to state that "[t]he Planning Commission or City Council, on appeal, may grant extensions to commence construction for not more than one year at a time upon showing of good cause." As the Development Plan Permit became effective on August 19, 2021 (the effective date of the Rezoning Ordinance 493), that permit would expire on February 19, 2023, if construction had not started or a request for extension was not filed prior to that date; and

**WHEREAS**, construction of the Oak Creek Canyon Residential Development has not begun, and on January 20, 2023, in accordance with the provisions of CMC section 17.28.190, Doug Chen representing West Coast Home Builders, Inc., filed a timely request for a one-year extension of the Development Plan Permit granted for the Project due to Project delays caused by the COVID-19 pandemic and limited design consultant availability over the past three years. Following a duly noticed public hearing held at its regular meeting of February 14, 2023, the Planning Commission adopted Resolution No. 02-2023 extending the term of approval of DP-01-19 for one year, to February 19, 2024; and

**WHEREAS**, on February 16, 2024, notice of a public hearing to consider the request for a second one-year extension of the Development Plan Permit was posted at the notice boards at Clayton City Hall, Clayton Community Library, and at the Ohm's posting in the Town Center, was electronically mailed to the Applicant and to interested parties who had requested such notice; and was mailed via first class mail to owners of property within 300 feet of the Project site; and

**WHEREAS**, on February 27, 2024, the Clayton Planning Commission held a duly-noticed public hearing on the request for extension of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Development, and received and considered testimony and evidence, both oral and documentary.

**NOW, THEREFORE,** the Planning Commission hereby determines the foregoing recitals to be true and correct and makes the following findings:

- A. The Applicant has shown good cause for approval of the request for extension of the Development Plan Permit for the Project. While construction on the Project has not yet begun, the Applicant has indicated that pre-construction work has been ongoing, inclusive of submittal of a first draft of the Final Map for the subdivision and field work to identify locations of petroleum pipelines within existing easements on the property. The Applicant has expressed intent still to pursue development of the Project and to obtain approval of a Final Map for the subdivision.
- B. Nothing in the Applicant's request for extension of current entitlements for the Project triggers new discretionary review or revision of the land use entitlements previously granted by the City, as no changes are proposed to be made to the Project as originally approved. With this one-year extension, all Conditions of Approval adopted by the City Council with Resolution No. 41-2021 will continue to be applicable to the Project.
- C. Prior to approving the Project on appeal, the City Council adopted Resolution No. 38-2021 adopting an IS/MND, approving an MMRP, and making findings pursuant to CEQA, including a finding that, based on evidence in the record, the Project would not have a significant effect on the environment with the incorporation of the mitigation measures identified in the MMRP. No additional findings are necessary for CEQA compliance for the current request for extension of entitlements of the approved Project. The impacts of approving the extension of time—separate and apart from any development—would be limited to the impacts of signing a piece of paper. Signing a piece of paper, if separated from the underlying development it allows, cannot qualify as a project subject to CEQA because it would not result in either a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, section 15060, subd. (c)(1)-(3), and section 15378, subd. (a).)

**NOW, THEREFORE, BE IT RESOLVED,** the Planning Commission hereby approves the request for a one-year extension, to February 19, 2025, of the term of the approval of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Project on 9.03 acres on the north side of Marsh Creek Road at its intersection with Diablo Parkway, Clayton. The record of proceedings for this matter is located at the City of Clayton, City Hall, 6000 Heritage Trail, Clayton, CA 94517. The custodian of records is the City Clerk.

*[Remainder of page left blank intentionally.]*

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 27<sup>th</sup> day of February 2024.


AYES: Banchemo, Casagrande, Enea, Richardson, Shulman

NOES: none

ABSTAINED: none

ABSENT: none

APPROVED:



Richard Enea  
Chair

ATTEST:



Dana Ayers, AICP  
Community Development Director



Attorneys at Law

Vincent A. Moita  
(925) 783-9688  
VM@moitalaw.com

PO Box 880  
Seal Beach, CA 90740  
MoitaLaw.com

Joseph D. Moita  
(925) 783-6260  
Joe@moitalaw.com

March 8, 2024

City of Clayton  
Planning Commission  
6000 Heritage Trail,  
Clayton, CA 94517

SENT VIA EMAIL & PERSONAL DELIVERY

Phone: 925-673-7300

Email: Community Development Director - [DanaA@claytonca.gov](mailto:DanaA@claytonca.gov);  
Assistant Planner - [MilanS@claytonca.gov](mailto:MilanS@claytonca.gov)

***Re: Request for Extension of Approval of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Development – Planning Commission Appeal***

Dear City of Clayton,

It shocks the conscience when one understands what has happened with this project under the City of Clayton’s stewardship and is a prime example of poor government management. As we understand it, the following events occurred with relation to the Oak Creek Canyon Development Project (the “Project”):

- 1990 - The City of Clayton announced the initial study for a specific plan that would become known as the Marsh Creek Road Specific Plan (“MCRSP”) and had affected property owners contribute financial support for the study and planning.
- 1995 - The City of Clayton adopted the MCRSP, which allowed 5-homes on the subject property and identified a portion of the North State’s land (Westcoast’s predecessor) to be used as the detention basin for all of Subsection A of the specific plan.
- 1995 - The City of Clayton and West Coast Builders, Inc. (“West Coast”) entered into a 10-year development agreement with a specific requirement of building a shared detention basin for Subsection A of the Marsh Creek Road Specific Plan. See attached Exhibit A.
- 2005 - West Coast filed and received approval to annex to the City of Clayton for a 5-unit subdivision that mandatorily required a detention basin sized for Subsection A of the MCRSP on the approved vesting tentative map. Due to the Great Financial Crisis, the life of the vesting tentative map was extended until 2016 as a matter of public policy.

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- 2016 - West Coast resubmitted plans with changes to the COA's that the City of Clayton denied creating potential legal liability.
- 2016 - The City of Clayton and West Coast entered into a tolling agreement to preserve West Coast's standing to sue based on the denied project.
- The tolling agreement was extended 5 times.
- 2021 - West Coast was granted (DP-01-19) a new plan with 6 homes, a general plan amendment (GPA-02-18), and a specific plan amendment (SPA-01-18) which included plans to build over the original MCRSP's identified detention basin that previously required 7.8-acre feet of storm drainage volume.

We take issue with the 2021 project in that it violates the MCRSP and infringes up on the rights of the former Heartland and now Moita, and Morgan properties, as well as effectuating a downzoning in direct conflict with the Housing Crisis Act of 2019:

“(b) (1) Notwithstanding any other law except as provided in subdivision (h), with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:

- (A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district in effect at the time of the proposed change, below what was allowed under the land use designation or zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B) or subdivision (h). For purposes of this subparagraph, “reducing the intensity of land use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, **or any other action that would individually or cumulatively reduce the site's residential development capacity.**” Cal. Gov. Code Section 66300(b)(1) – 66300(b)(1)(A).

By failing to address the reduced detention basin sizing and allowing West Coast's Project to change the general plan and specific plan's land use designations of PQ previously identified as the shared detention facilities location for Subsection A of the MCRSP, the City took actions that “would individually or cumulatively reduce the site's residential development capacity” Id. As has been the case since 1995, the Project Site was a critical key to unlocking housing development on the remainder of the MCRSP.

While the statute of limitations to challenge land use decisions is short in nature, typically 90 or 180 days, here the Development Plan Permit (DP-01-19) was premised upon a General Plan Amendment (GPA-02-18) and Specific Plan Amendment (SPA-01-18) that we assert fall under

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the three year statute of limitations afforded under CCP Section 338.<sup>1</sup> The general plan and specific plan amendments effectively downzoned Subsection A by taking away its detention basin facilities, which are contributing to Claytons current and enduring Housing Element noncompliance with the HCD.

The City of Clayton's current Housing Element, an essential component of the City's General Plan, has been rejected by the HCD subsequent to approval of DP-01-19, GPA-02-18, and SPA-01-18 for among other reasons, the failure to create a complete site analysis per California Gov. Code Section 65580 et seq. **The Housing Element fails to comply with State Housing Element Law.** (i.e. Gov. Code, Article 10.6). The City's failure to include Subsection A of the original MCRSP is among such failures, as the land is currently included in the General Plan and Specific plan maps and is vacant uncommitted land with designation and zoning that allow only residential uses, yet none is included in the housing inventory map presented to the HCD. The City's complete failure to include Subsection A's land in the inventory analysis for now several RHNA cycles goes hand in hand with it's failure adequately impose reasonable conditions of approval on the Project site that would prevent downzoning of the lands of Subsection A. Subsection A of the MCRSP could accommodate development of above moderate-income housing as well as the City's Low-Income and Moderate Income Regional Housing Needs Allocation requirements. As the MCRSP envisioned in 1995, development of Subsection A would progress from west to east with the Oak Creek Canyon project being the first development requirement for Subsection A's subsequent future development. It is counter intuitive that the City would not include Subsection A in this 6<sup>th</sup> RHNA Cycle given the entire constraint was the build out of the Project.

Since the initial approval of the Project in 2021, the City of Clayton is now mandated to produce 570 new units by 2031 and the identified sites inventory is wholly insufficient to meet such burden. Even as the City contends that it only has 437 units to now meet, among the sites identified in the City of Clayton's rejected Housing Element (version March 2024), nearly all the sites have long standing uses as single-family homes. There is no indication that the property owners are willing to give up their homes to accommodate density to meet the City's required goals. The 80% assumption of build out is flawed from the beginning. In fact, many of the identified sites in the rejected 6<sup>th</sup> RHNA Cycle Housing Element (version March 24) are identical to those identified in the 5<sup>th</sup> RHNA Cycle Housing Element without basis for change and without adherence to the heightened requirements for underutilized sites included in past housing elements under Government Code § 65583.2(c). The City merely identifies sites with the potential for redevelopment or development without assessing their realistic probability of redevelopment and sweeps them into a bucket under the assumption that 80% will build out. This is a flawed analysis.

What is more, the GPA-02-18, and SPA-01-18 have not been incorporated into the City of Clayton's General Plan and Specific Plan in accordance with Gov. Code, Section 65359:

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<sup>1</sup> [Travis, supra, 33 Cal.4th 757, 16 Cal.Rptr.3d 404, 94 P.3d 538](#), see also; *Urban Habitat Program v City of Pleasanton* (2008) 164 CA4th 1561, 1576.

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“Any specific plan or other plan of the city or county that is applicable to the same areas or matters affected by a general plan amendment shall be reviewed and amended as necessary to make the specific or other plan consistent with the general plan” Gov. Code Section 65359.

See also Gov. Code Section 65455:

“No local public works project may be approved, no tentative map or parcel map for which a tentative map was not required may be approved, and no zoning ordinance may be adopted or amended within an area covered by a specific plan unless it is consistent with the adopted specific plan.” Gov. Code Section 65455

State law mandates that the General Plan and Specific Plan amendments must be reviewed to bring about consistency with the amendments with the other provisions of the affected general or specific plans. The GPA-02-18, and SPA-01-18 spoke only to the land use elements and maps of the General and Specific Plan, but provided no analysis, commentary, or findings to update the underlying policies or goals insofar that the MCRSP still requires that the Project site be utilized for the detention basin and sizing for Subsection A of the MCRSP. The physical limitations for the Project, now that the City has unjustly approved an additional housing unit on the prior identified detention basin, make such requirement for the future build out of Subsection A of the MCRSP physically impossible as there is no physical space to treat the 1995 estimated 7.8 acre feet of detention sizing on the current approved Project site. In fact, at the Planning Commission meeting hearing that approved the extension of this project, a brief commentary was provided that the detention facilities sizing standards have changed since 1995 when the MCRSP was adopted. Indeed. However, what the meeting’s commentary was lacking was that standards have *increased* not decreased, mandating that the Oak Creek Canyon Project should have dedicated more land for the sufficiency of future build out of the MCRSP’s Subsection A.

Should this City amend its General Plan and Specific Plan to come into conformance with the land use changes adopted for the Project, as required by Gov. Code Section 65359, we content it amounts to a regulatory taking by denying the Heartland, Moita, and Morgan sites of their paid for planned detention basin. We estimate the damages from which exceed \$30 million dollars.

A reasonable solution would be to deny the extension of the Project, and or modify the conditions of the approval to be in conformance with the longstanding 1995 MCRSP, as the extension request is entirely discretionary. The project applicant should then reapply with a project that is consistent with the MCRSP under Gov. Code Section 65455, and fresh COA’s should be applied that is consistent with the current Housing Element with particular emphasis on how the project relates to the greater Subsection A’s build out. If for nothing else, we find Westcoast’s reasoning for an extension lacking. They have owned the property for over 30 years and have had every opportunity to locate the pipe.

Additionally, I have attached two letters that the City of Clayton did not follow when evaluating the Project. The first is from Rick Agrisani who served as the City of Clayton Engineer for 32 years and recently passed away. The second is from Randy Hatch who was the 10-year Planning Director for the City of Clayton running from 1990 to 2000 when the MCRSP was processed.

March 8, 2024

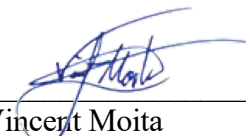
Page 5

Both professionals who worked a combined 42 years for the City of Clayton agreed that the detention basin and all other requirements set forth by the MCRSP should be followed. Instead, the City relied on then Community Development Director Matthew Feske's analysis, who we can only speculate either stepped down or the City of Clayton fired on March 19, 2021 for reasons undisclosed to us in the middle of this Project's approvals. The City Council representatives, some of whom remain on this body today, voted against their own long-term employee trusted experts and have now put the City of Calyton in peril. You know who you are, and you caused this problem.

Regardless of how the City rules, our claim under CCP 338 remains. Such actions by the City of Clayton as it pertains to **this Project violates State Law and are subject to intervention by the State of California's Attorney General under California Gov. Code Section 65585.01 which by CC of this letter we are requesting to look into the actions on this Project and also the failures of the numerous shortcomings of the City of Clayton's rejected Housing Element.**

Please do the right thing and not allow one home to jeopardize the development of over 100 approved homes on the adjoining land now owned by Clayton Estates LLC & Jim & Julie Moita.

Regrettably,



---

Vincent Moita  
Attorney at Law  
Clayton Resident 1993-2010

CC:

California Attorney General Housing Strick Force

[housing@doj.ca.gov](mailto:housing@doj.ca.gov)

David Zisser, Assistant Deputy Director of Local Government Relations and Accountability

[David.zisser@hcd.ca.gov](mailto:David.zisser@hcd.ca.gov)

Shannan West, Housing Accountability Unit Chief, California Department of Housing & Community Development

[Shannan.west@hcd.ca.gov](mailto:Shannan.west@hcd.ca.gov)



## **Exhibit A**

28 27

Recording Requested By:  
Frances Douglas

Return to:

CITY OF CLAYTON  
6000 Heritage Trail  
CLAYTON, CA 94517

CONTRA COSTA Co Recorder's Office  
STEPHEN L. WEIR, County Recorder

DOC - 99-0017012-00

Thursday, JAN 21, 1999 15:02:07

FRE \$0.00!!

T&L Pd \$0.00

Nbr-0000407086

nos/R7/1-21

Document Title(s)

Development Agreement between the City of Clayton and West Coast Home Builders, Inc.

17012

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter this "Agreement") is entered into on Dec 16, 1997 by and between the City of Clayton (hereinafter the "City"), and West Coast Home Builders, Inc. (hereinafter "West Coast"). This Agreement is entered into with reference to the following Recitals:

RECITALS

A. In order to strengthen the public planning process, to encourage private participation in comprehensive planning, and to reduce the economic risks of development, the Legislature of the State of California has adopted sections 65864 through 65869.5 of the Government Code which authorize parties to enter into development agreements such as this document for purposes of facilitating the development of property.

B. The City, by adopting Resolution No. 16-87, has adopted rules and regulations establishing procedures and requirements for the consideration of development agreements.

C. West Coast owns in fee that certain unimproved real property consisting of approximately 8.2 acres located in the unincorporated area of Contra Costa County, State of California, which property is more fully described and shown on Exhibit A attached hereto and incorporated by reference herein (hereinafter "West Coast Property" or "the Property"). The West Coast Property is within the territorial sphere of influence of City.

D. West Coast has heretofore indicated its desire to develop the West Coast Property in the manner provided for in this Agreement within the City. To accomplish their intent, the parties have heretofore taken the actions described in the Recitals set forth herein.

E. On June 28, 1995, the City Council of the City, after duly complying with the California Environmental Quality Act and all statutes, ordinances and resolutions applicable to the adoption of the General Plan Amendment, the Marsh Creek Road Specific Plan and certification of the appropriate environmental documents, adopted its Resolution No. 43-95 approving the Marsh

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Creek Road General Plan Amendment and Resolution No. 44-95 approving the Marsh Creek Road Specific Plan.

F. This Agreement is consistent with the Clayton General Plan, Marsh Creek Road General Plan Amendment and the Marsh Creek Road Specific Plan.

G. The terms and conditions of this Agreement have been reviewed by the City, its Planning Commission and its City Council and have been found to be fair, just and reasonable, to be in the best interest of the citizens of the City, and to serve public health, safety, and welfare, and the City Council has further found that the development of the Property in accordance with the Clayton General Plan, Marsh Creek Road General Plan Amendment, the Marsh Creek Road Specific Plan and this Agreement will provide substantial benefits to the City with respect to implementing City policies and goals which promote community, economic, public infrastructure, and high quality, managed development.

H. West Coast will in the future incur substantial costs in order to develop the Property in accordance with this Agreement, and West Coast would not incur such future costs without obtaining the legally enforceable assurances with respect to the development of the Property as contained in this Agreement.

I. Prior to entering into this Agreement, City complied with all legal requirements for notice, public hearings, findings, votes, and other procedural matters necessary as a condition precedent to entering into this Agreement.

J. In accordance with Section 65865 (b) of the Government Code, the parties hereto may enter in a Development Agreement before annexation of the Property to the City provided that the Agreement shall not become operative unless annexation of the Property to the City is completed within the period of time specified by this Agreement or by an extension of time provided for by the Agreement. Accordingly, the parties desire to complete annexation of the Property to City as soon as possible.

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COVENANTS

NOW, THEREFORE, in consideration of the above recitals, and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Agreement Date" means the date this Agreement is recorded with the Contra Costa County Recorder.

1.1.3 "City" means the City of Clayton, a municipality duly incorporated under the laws of the State of California.

1.1.4 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.5 "Development Approvals" means all permits and other entitlements for use that require approval or issuance by City in connection with development of the Property including, but not limited to,

- (a) General Plan designations and amendments;
- (b) Specific plan and specific plan amendments;
- (c) Zoning;

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- (d) Tentative and final subdivision and parcel maps;
- (e) Conditional use permits;
- (f) Development Plan approvals;
- (g) Variances;
- (h) Lot line adjustments;
- (i) Grading and building permits; and
- (j) Occupancy permits

1.1.6. "Development Exaction" means any requirement of the City in connection with or pursuant to any land use regulation or development approval for the dedication of land, the construction or improvement of public facilities, or the payment of fees adopted by action of the City Council or Planning Commission in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests; excepting therefrom development exactions by agencies other than the City applied through the land use regulation, development approvals or otherwise over which the City has no direct control.

1.1.7 "Effective Date" means the date the Property is annexed to City.

1.1.8 "Existing General Plan" means the City's General Plan as amended by the Marsh Creek Road General Plan Amendment approved by the City Council on June 28, 1995 by Resolution No. 43-95.

1.1.9 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, required setbacks and yards, provisions for reservation or dedication of land for public purposes, and the design, improvement and construction

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standards and specifications applicable to the development of the Property.

1.1.10 "Marsh Creek Road Specific Plan" means that certain specific plan for the Marsh Creek Road planning area approved by the City Council on June 28, 1995 by Resolution No. 44-95.

1.1.11 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender and their successors and assigns.

1.1.12 "Project" means the development of the Property allowed by the Existing General Plan, the Marsh Creek Road Specific Plan and this Agreement as such Project may be further defined, enhanced, or modified pursuant to the provisions of this Agreement.

1.1.13 "Property" means the real property described on Exhibit "A" to this Agreement.

1.1.14 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to West Coast under this Agreement and reserved to City under Subsection 3.7.1 of this Agreement.

1.1.15 "Subsequent Development Approvals" means all Development Approvals required or requested by West Coast and approved by City subsequent to the Agreement Date in connection with development of the Property.

1.1.16 "Subsequent Development Exactions" means all Development Exactions applied to the Development Approvals following the Agreement Date.

1.1.17 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Agreement Date.

1.1.18 "West Coast" means West Coast Home Builders, Inc. and its successors in interest to all or any part of the West Coast Property.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

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Exhibit "A" -- Legal Description of the West Coast Property.

Exhibit "B" -- Conceptual Plan of the West Coast Property dated May 20, 1994.

## 2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. West Coast represents and covenants that it is the owner of the fee simple title to the Property.

2.3 Term. The term of this Agreement shall commence on the Agreement Date and shall continue for a period of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

### 2.4 Assignment.

2.4.1 Right to Assign. West Coast shall have the right to sell, transfer, or assign its Property in whole or in part at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall be made only with notice to the City and shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or part of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within thirty (30) business days thereafter, West Coast shall notify the City in writing of such sale, transfer or assignment. The rights, duties and obligations of this Agreement shall be binding upon such purchaser, transferee or assignee.



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A sale, transfer, or assignment of the Property, in whole or in part, shall not, in and of itself, give City the right to apply subsequent Development Exactions or Subsequent Land Use Regulations upon the Project.

2.4.2 Release of Transferring Owner. Upon such above-referenced sale, transfer or assignment, the transferring Owner shall be released from the obligations set forth in this Agreement other than those in default and not cured at the conclusion of the transfer.

2.4.3 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section.

2.4.4 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease of any lot which has been subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of all of the following conditions:

(a) The lot has been subdivided and individually (and not in "bulk") leased for a period longer than one year, or sold to a member of the public or other ultimate user.

(b) A certificate of occupancy has been issued for a building on the lot in accordance with the Development Approvals and this Agreement.

(c) No defaults exist in the performance of obligations by West Coast under the provisions of this Agreement.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only by written consent of the parties in the manner provided for in Sections 401 and 402 of Article 4 of the City's "Regulations Establishing Procedures and Requirements for Consideration of Development Agreements" adopted by the City Council on April 15,

a-clayton/kb/aml  
04/08/97

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1987 as Resolution No. 16-87. ("City Development Agreement, Regulations") and Government Code Section 65868. This provision shall not limit any remedy of City or West Coast as provided by this Agreement.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) Completion of the development of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by the City and applicable public agencies of all required dedications and public improvements and satisfaction of all obligations of West Coast hereunder.

## 2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. All notices shall be addressed as follows:

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04/08/97

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If to City: City of Clayton  
 P.O. Box 280  
 Clayton, CA 94517  
 ATTN: City Manager

If to West Coast: West Coast Development Co.  
 4021 Port Chicago Highway  
 Concord, CA 94524  
 ATTN: Albert D. Secno, Jr.

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

### 3. DEVELOPMENT OF THE PROPERTY

3.1 Rights to Develop. Subject to the terms of this Agreement, including the Reservations of Authority, West Coast shall have a vested right to develop the Property in accordance with and to the extent of the Existing General Plan, the Marsh Creek Road Specific Plan and all applicable Land Use Regulations and Development Approvals and the provisions set forth in this paragraph 3.1 for the development of five (5) single-family residential lots and one (1) parcel for drainage detention on the Property. Development of the Property shall be subject to all Subsequent Development Approvals, Subsequent Land Use Regulations and Subsequent Development Exactions required by the City and this Agreement provided such Subsequent Development Approvals, Subsequent Land Use Regulations and Subsequent Development Exactions do not conflict with the Existing General Plan, the Marsh Creek Road Specific Plan and West Coast's ability to develop the Property thereunder. The City agrees to process in good faith the balance of approvals needed to develop the Property in accordance with this Agreement. Once approved, all Subsequent Development Approvals shall be deemed part of the Development Approvals and subject to the vested rights set forth herein. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Subsequent Development Approvals. This Agreement entitles West Coast to develop the Property pursuant to

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the Existing General Plan and the Marsh Creek Road Specific Plan on the following terms and conditions:

1. WEST COAST

- (i) West Coast agrees to dedicate that portion of its property as identified in the June 28, 1995 Marsh Creek Road Specific Plan for the right of way for Oak Creek Canyon Drive to the City of Clayton or the adjacent property owner upon the earlier of either: (1) the recordation of the final subdivision map for the Property, or (2) upon the request of the City if necessary for the development of the adjacent "Heartland" property.
- (ii) West Coast agrees to dedicate that portion of the West Coast property that is identified as the location for the storm water detention area in the Marsh Creek Road Specific Plan to the City or adjacent property owner upon the earlier of either: (1) the recordation of the final subdivision map for the Property or (2) upon the request of the City if necessary for the development of the adjacent "Heartland" property.
- iii. West Coast agrees to dedicate that portion of the West Coast Property adjacent to Marsh Creek Road (property frontage) and the necessary easement for utility lines to the City pursuant to the Marsh Creek Road Specific Plan upon the earlier of either: (1) the recordation of the final subdivision map for the Property or (2) upon the request of the City if necessary for the development of the adjacent "Heartland" property.
- iv. West Coast's obligations under Section 3.1 (i), (ii) and (iii) to dedicate upon the request of the City are contingent upon City providing West Coast written assurance that the approved improvement plans for the "Heartland" Property show water, sanitary sewer and utility stubouts to the proposed residential lots on the West Coast Property and such improvements have been bonded for by Heartland. Such utility stubs shall include gas, electric, telephone, and cable television service.

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v. Notwithstanding the foregoing, at the City's request, West Coast shall dedicate the property described in Section 3.1 (iii) above in consideration of the City constructing a Marsh Creek Road improvement project which includes improvements to the West Coast property frontage. Such dedication shall be made with the understanding that the City will construct the Marsh Creek Road improvements along the West Coast frontage at no cost to West Coast and with no requirement for future reimbursement to the City by West Coast for such improvements.

3.2. The design of Marsh Creek Road along the West Coast frontage, if undertaken by the City, shall include the curb returns for the future Oak Creek Canyon Drive which shall be coordinated with West Coast's civil engineer and shall be submitted to West Coast for review and comment prior to the start of construction.

3.3 Effect of Agreement on General Plan. The City and West Coast acknowledge that the feasibility of the development of the Property and the value of the Property is dependent in part upon the City permitting the development of the Property in accordance with the Existing General Plan and the Marsh Creek Road Specific Plan. Therefore, the City shall not amend the Existing General Plan or Marsh Creek Road Specific Plan in any manner which would materially and adversely impact West Coast's development or use of the Property as provided in this Agreement.

3.4 Changes and Amendments. Unless otherwise required by law or as determined in the City's reasonable discretion, a change in Development Approvals granted for the Property shall be deemed "minor," shall not require a public hearing, and not require an amendment to this Agreement, and shall be made administratively by the City at the request of West Coast provided such change does not:

(a) Alter the permitted uses of the relevant Property as a whole; or,

(b) Increase the density or intensity of use of the relevant Property as a whole; or,

(c) Increase the maximum height and size of permitted buildings; or,

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(d) Delete a requirement for the reservation or dedication of land for public purposes within the relevant Property as a whole; or,

(e) Constitute a project pursuant to Section 21000 et seq. of the Public Resources Code.

2.5 City agrees to use its best efforts to cooperate with West Coast in processing the annexation requests and agrees to cooperate and use its best efforts to expeditiously process applications for all necessary Development Approvals necessary to implement the development of the Property.

### 2.6 Reservations of Authority.

2.6.1 Limitations, Reservations and Exceptions. The development of the property shall be governed by the ordinances, policies, fees and regulations in effect at the time that West Coast's application for a vesting tentative subdivision map is deemed complete provided such ordinances, policies, fees and regulations do not conflict with the Existing General Plan and the Marsh Creek Road Specific Plan or West Coast's ability to develop the Property pursuant to Section 3.1 above. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations, and no others, may apply to the development of the Property.

(a) Application and processing fees and charges reasonably imposed by City to cover the reasonable estimated actual costs to the City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued provided that such fees and charges are applied uniformly or on an area of benefit basis to development in the City.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Regulations and policies governing construction standards, extensions of time and specifications including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.

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(d) Development Exactions, development fees, assessments or other such charges legally and properly charged by the City provide such exactions, fees and charges are applied uniformly or on an area of benefit basis to development in the City.

(e) Regulations which are not in conflict with the Existing General Plan, the Marsh Creek Road Specific Plan and this Agreement; however, any ordinance, resolution, regulation, or measure which is enacted, whether by action of the City, by initiative, referendum, or otherwise, which relates to the rate, timing or sequencing of the development or construction of the Property, shall be deemed to be in conflict with the Existing General Plan and shall therefore not be applicable to the development of the Property. Without limiting the foregoing, any limitation affecting timing of the availability of permits, approvals, or other entitlements relating to subdivision maps, building permits, utility connections, or other entitlements necessary for the development of the Property shall be deemed to be in conflict with the Existing General Plan and shall therefore not be applicable to development of the Property.

#### 2.6.2 Modification or Suspension by State or Federal Law.

In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

2.6.3 Intent. The parties acknowledge and agree that the City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to the City all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to the City all such power and authority which cannot be restricted by contract.

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3.7 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of the City possess authority to regulate aspects of the development of the Property separately from or jointly with the City and this Agreement does not limit the authority of such other public agencies acting separately from or jointly with the City. The City agrees to cooperate with and use its reasonable efforts in dealing with agencies which may be necessary for the development of Property in accordance with this Agreement.

3.8 Tentative Tract Map Extension. The terms of any tentative subdivision or tentative parcel map hereafter approved in connection with the development of the Property pursuant to this Agreement shall be the later of the term of the maps or the term of this Agreement as set forth herein or as subsequently extended.

3.9 Vesting Tentative Maps. If any tentative or final subdivision map, or tentative or final parcel map, heretofore or hereafter approved in connection with development of the Property, is a vesting map under Subdivision Map Act (Government Code Section 66410, et seq.) and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to West Coast, then and to that extent the rights and protections afforded to West Coast under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Except as set forth immediately above, development of the Property shall occur only as provided in this Agreement, and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

3.10 Fee Challenges. The parties acknowledge that, by executing this Agreement, West Coast is not waiving its right to challenge any fees imposed by the City on the Property.

#### 4. REVIEW FOR COMPLIANCE.

4.1 Periodic Review. The City shall review this Agreement annually, in order to ascertain the good faith compliance by West Coast with the terms of the Agreement. Such review shall be conducted in accordance with Sections 701-706 of Article 7 of the City Development Agreement Regulations. During such review, West Coast shall be required to demonstrate good faith compliance with the terms of this Agreement. The burden of



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proof on this issue shall be on West Coast. If the City finds on the basis of substantial evidence that West Coast has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded. If the City finds and determines on the basis of substantial evidence that West Coast has not complied in good faith with the terms and conditions of the Agreement during the period under review, the City may modify or terminate the Agreement in accordance with Sections 601 and 602 of Article 6 of the City's Development Agreement Regulations. West Coast may appeal such a determination to the City Council in accordance with the City's rules for consideration of appeal.

4.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 4.1, the City determines to proceed with modification or termination of this Agreement, the City shall give written notice to West Coast of its intention to do so. The notice shall be given at least thirty (30) calendar days prior to the scheduled hearing and shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not City proposes to terminate or to modify the Agreement; and,

(c) Such other information as is reasonably necessary to inform West Coast of the nature of proceeding.

4.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, West Coast shall be given an opportunity to be heard. West Coast shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on West Coast. If the City Council finds, based upon substantial evidence that West Coast has not complied in good faith with the Agreement, and that the decision of the City Council is in the best interest of the City, then pursuant to authority of Government Code Section 65865.1 the City Council may extend, terminate or modify this Agreement as it applies to West Coast and impose such conditions as are reasonably necessary to protect the interests of the City subject to first curing any outstanding defaults of the City properly noticed under Section 5.3. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

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## 5. DEFAULT AND REMEDIES.

5.1 Remedies in General. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement.

5.2 Suspension of Agreement for Default of Owner. The City may suspend West Coast's rights under this Agreement for any failure of West Coast to perform any material duty or obligation of West Coast under this Agreement or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, the City may suspend this Agreement pursuant to this Section only after providing written notice to West Coast of the default setting forth the nature of the default and the actions, if any, required by West Coast to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default.

5.3 Termination of Agreement for Default of City. West Coast may terminate this Agreement in the event of a default by the City in the performance of a material term of this Agreement and only after providing written notice to the City of default setting forth the nature of the default and the actions, if any, required by the City to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default.

## 6. THIRD PARTY LITIGATION.

6.1 Third Party Litigation Concerning Agreement. West Coast shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless the City, its agents, officers, employees and subcontractors or independent contractors from any claim, action or proceeding against the City, its agents, officers, or employees to attack, set aside, void, or annul the approval, enforcement or operation of this Agreement. The City

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shall promptly notify West Coast of any such claim, action or proceeding, and the City shall cooperate in the defense. If the City within sixty (60) days of being so notified of any claim, action or proceeding fails to notify West Coast of any such claim, action or proceeding, or if the City fails to cooperate in the defense, West Coast shall not thereafter be responsible to defend, indemnify, or hold harmless the City. The City may in its sole discretion participate in the defense of any such claim, action or proceeding.

6.2 Indemnity. In addition to the provisions of 6.1 above, West Coast shall indemnify and hold the City, its agents, officers, employees, subcontractors and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of West Coast, its agents, officers, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (West Coast employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from West Coast's acts or omissions related to the development of the Property, except claims for damages arising through the active negligence or willful misconduct of the City. West Coast shall defend, at its expense, including attorneys' fees, the City, its agents, agents, employees, subcontractors and independent contractors in legal action based upon such alleged acts or omissions. The City may in its discretion participate in the defense of any such legal action.

6.4 Attorneys Fees and Costs. Should any action or judicial proceeding be brought by any party hereto against any other party hereto to enforce the provisions of this Agreement the prevailing party shall be entitled to recover from the non-prevailing party(s) its reasonable attorney's fees and costs.

6.5 Survival. The provisions of this Section 6.1 through 6.5, inclusive, shall survive the termination of this Agreement.

## 7. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit West Coast, in any manner, at West Coast's sole discretion, from encumbering the Property or any portion thereof or any private improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the

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Property. The City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with West Coast and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement.

#### 8. MISCELLANEOUS PROVISIONS.

8.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the Clerk of the City within ten days after execution of this Agreement.

8.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

8.3 Severability. If any term, provision, covenant or conditions of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

8.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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8.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

8.6 Singular and Plural. As used herein, the singular of any word includes the plural.

8.7 Obligations Run With the Land. If, at any time during the term of this Agreement, an ownership interest in the Property is transferred to another entity, (i) any obligation under this Agreement which relates to or depends on the area of land owned shall be apportioned to the underlying ownership interest (by area of land) as though the predecessor owner had been an original party to this Agreement and (ii) all obligations which are not subject to apportionment shall additionally become an obligation of such successor owner. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement.

8.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

8.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist or demand strict compliance by the other party with the terms of this Agreement thereafter.

8.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right to action based upon any provision of this Agreement.

8.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the

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party's control, (including the party's employment forces), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligation hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

8.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed thereunder by such benefited party.

8.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (i) is for the benefit of and is a burden upon every portion of such Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each party and each successor in interest during ownership of such Property or any portion thereof.

8.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

8.15 Jurisdiction and Venue: Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Contra Costa, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

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8.16 Project as Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Property is a private undertaking, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between the City and West Coast is that of a government entity regulating the development of private property.

8.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment of affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

8.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by the City of its power of eminent domain.

8.19 Authority to Execute. The person or persons executing this Agreement on behalf of West Coast warrants and represents that he/she has the authority to execute this Agreement on behalf of the corporation, partnership or business entity and warrants and represents that he/she has authority to bind West Coast to the performances of its obligations hereunder.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

CITY: CITY OF CLAYTON.

By: [Signature]  
MAYOR, CITY OF CLAYTON

Attest: [Signature]  
CITY CLERK OF CITY OF CLAYTON

WEST COAST: WEST COAST HOME BUILDERS, INC.  
a California Corporation

By: [Signature]

(NOTARY ACKNOWLEDGEMENTS ATTACHED)

State of California )  
County of Contra Costa )  
City of Clayton )

On 10-14-98 before me, Frances Douglas, City Clerk for

the City of Clayton, personally appeared Richard A. Litterno, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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State of California

County of Contra Costa

On 10-5-98 before me, Lisa L. Connelley  
DATE NAME, TITLE OF OFFICE (i.e., CLERK, JUDGE OR NOTARY PUBLIC)

personally appeared Albert P. Secora, Jr.  
NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lisa L. Connelley  
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

INDIVIDUAL  
 CORPORATE OFFICER  
President  
TITLE(S)

PARTNER(S)  LIMITED  
 GENERAL

ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(ES)  
\_\_\_\_\_  
\_\_\_\_\_

DESCRIPTION OF ATTACHED DOCUMENT

Development Agreement  
TITLE OR TYPE OF DOCUMENT

25  
NUMBER OF PAGES

10/16/97  
DATE OF DOCUMENT

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

**17012**  
**EXHIBIT "A"**  
**1 of 2**

**LEGAL DESCRIPTION**

All that real property situated in the State of California, County of Contra Costa, an unincorporated area, described as follows:

That portion of Parcel "B" of Parcel Map filed August 19, 1982 in Book 102 of Parcel Maps, Page 29, Contra Costa County Records, lying northerly of the northerly line of Marsh Creek Road, as said Marsh Creek Road is shown on said map.

**EXCEPTING THEREFROM:**

All oil, gas, casinghead gas, asphaltum and other hydrocarbons and all chemical gas now or hereafter found, situated or located in all or any part of said lands lying more than 500 feet below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than 500 feet of the surface of the lands described in this deed, including the right to grant leases for all or any of said purposes, but without any rights whatsoever to enter upon the surface of said land or upon any part of said land, within 500 feet of the surface thereof, as reserved in the deed from Congregation of the Sons of the Immaculate Heart of Mary of the Western Province, dated December 27, 1963, recorded December 31, 1963 in Book 4522, Page 703, Official Records.

(Being APN 119-070-008-6)

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EXHIBIT "A"  
2 of 2

PARCEL MAP

SUBDIVISION MS 6-82  
PORTION OF THE NE 1/4 OF SECTION 8  
T1N, R1E, M10, A.D.D.M.

PLANNED DEVELOPMENT  
SUBDIVISION  
APPROVED BY THE BOARD OF SUPERVISORS  
ON 05/11/01

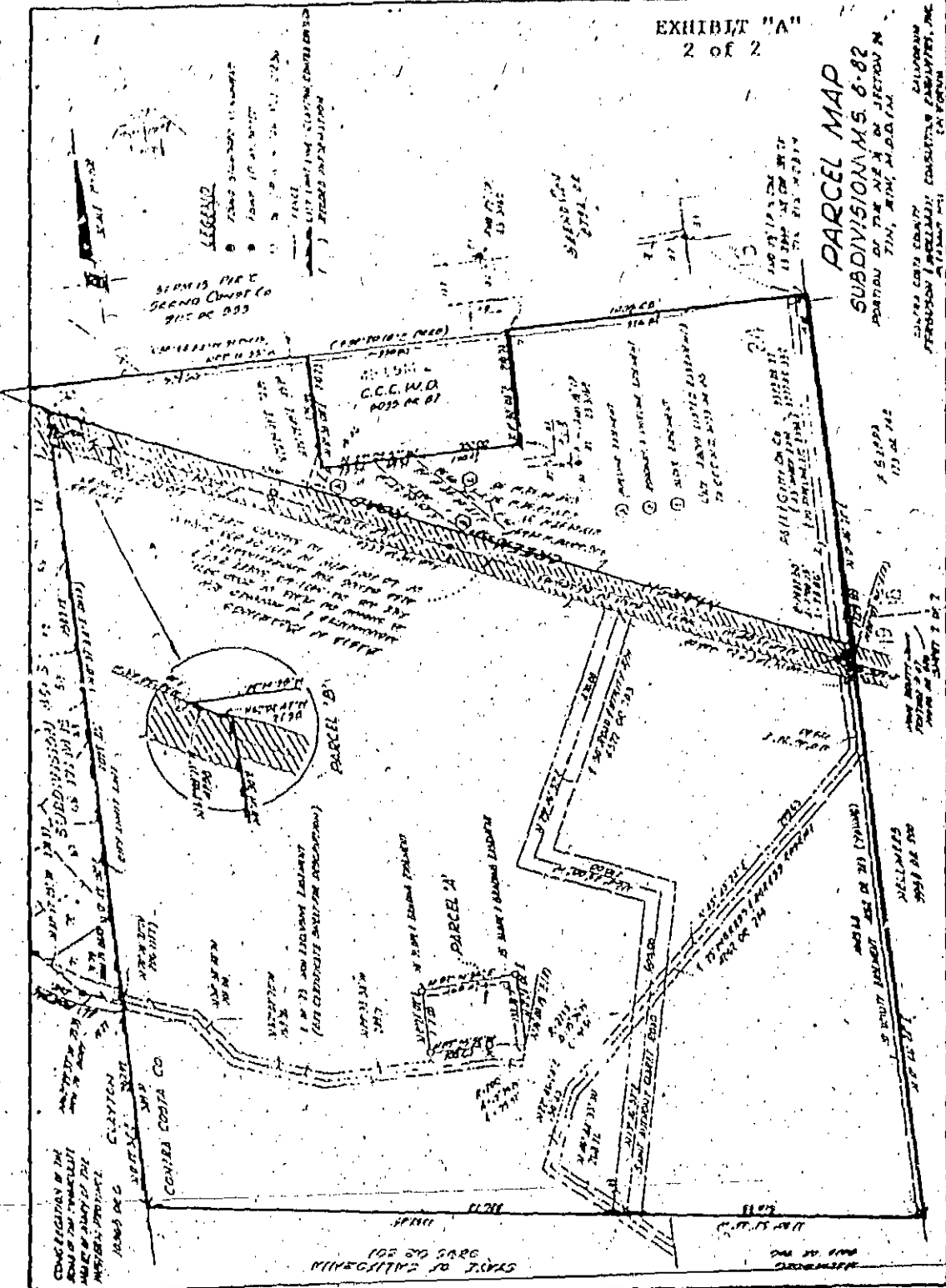
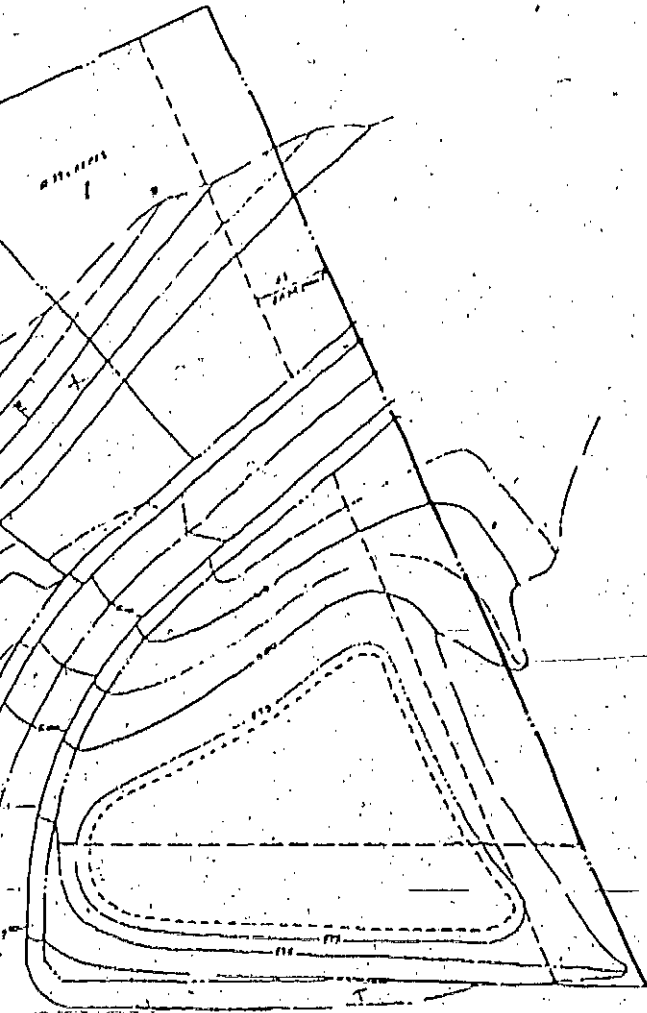


EXHIBIT "B"

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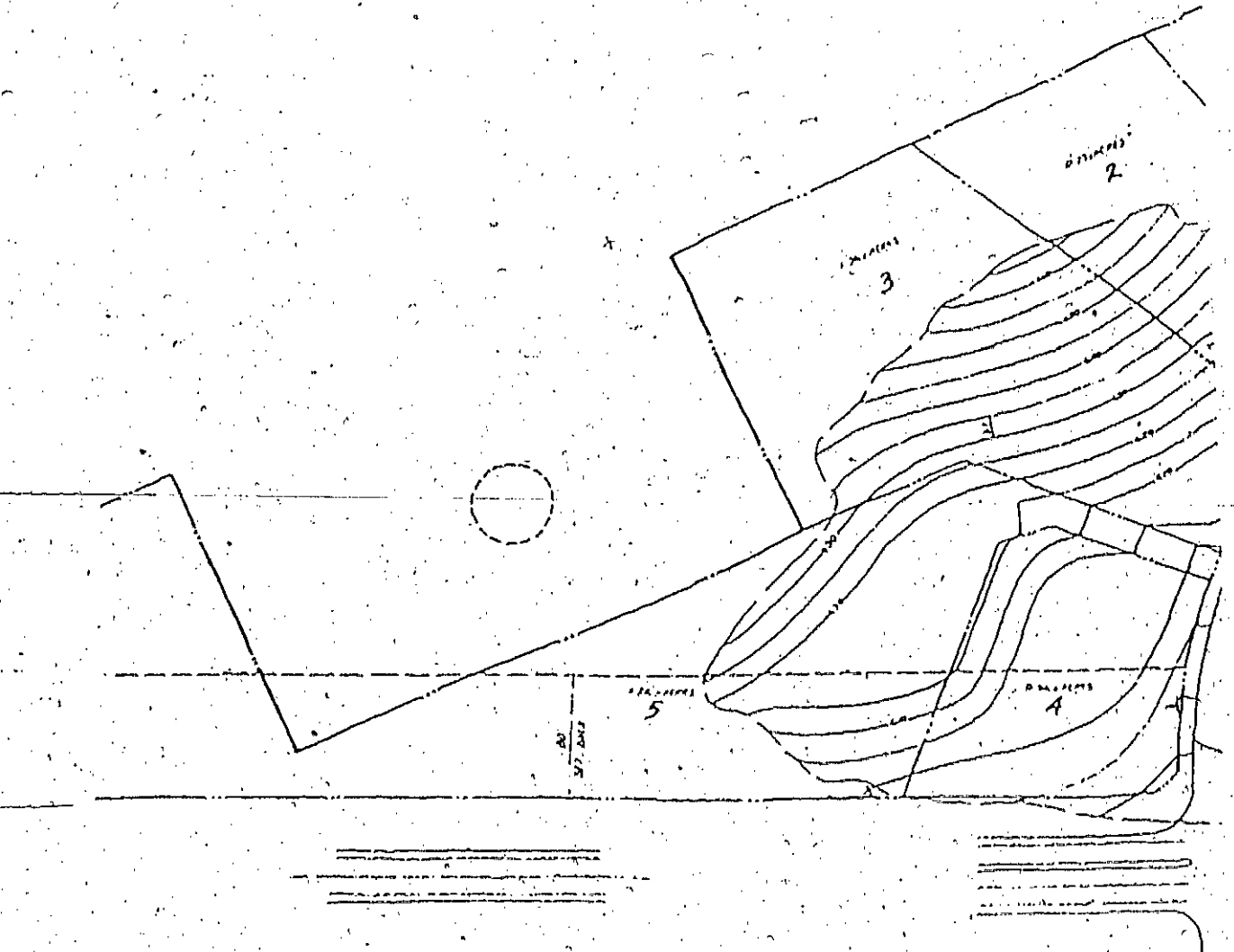
April 1994

Scale 1"=40'  
Date 7.20.94

**P/A** Design Resources, Inc.  
Planning & Engineering & Surveying

1700 Central Express Road, Suite 100  
Riverside, California 92506-3242 Tel: (951) 514-9200

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END OF DOCUMENT

## **Exhibit B**

### **Letters**

1. Rick Angrisani – August 28, 2020
2. Randy Hatch – August 30, 2020



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 horizontal line extending to the right.

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





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](mailto:randyhatch@sbcglobal.net)

CC: Christina Gregory; Jim Moita; RickAngrisani

**From:** [Doug Chen](#)  
**To:** [Dana Ayers](#)  
**Cc:** [David Fish](#); [Doug Chen](#)  
**Subject:** RE: Oak Creek Canyon, Moita's Appeal of Planning Commission Approval of the Extension of Development Plan Permit  
**Date:** Wednesday, May 1, 2024 9:17:56 AM

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Dana: Please let me know if you want me to add anything else. I did insert a word "letter" behind 3/8/2024 in the 3<sup>rd</sup> paragraph below. Also, Moita is asserting that the 3-yr statute of limitation under CCP 338 could apply, but our in-house counsel indicated to me that it would not. I can provide his explanation in my response, or just have him email the City Attorney directly.

Thanks,  
Doug

Doug Chen, RCE, LS  
ADSCO/Legacy Builders Inc  
4021 Port Chicago Hwy  
Concord CA 94520  
Main 926-671-7711; Direct 925-602-7211; Cell 925-250-2658

---

**From:** Doug Chen <dchen@seenohomes.com>  
**Sent:** Tuesday, April 30, 2024 5:11 PM  
**To:** Dana Ayers <danaa@claytonca.gov>  
**Cc:** David Fish <DFish@seenohomes.com>; Doug Chen <dchen@seenohomes.com>  
**Subject:** Oak Creek Canyon, Moita's Appeal of Planning Commission Approval of the Extension of Development Plan Permit

Dana: Sorry about my late response. I want to follow up with you on the 3/8/2024 letter from Vincent Moita, representing Clayton Estates LLC ("Moita"). Moita owns the adjacent property to the east of Oak Creek Canyon ("Project"), and is appealing the Planning Commission's 2/27/2024 approval of extension of the Development Plan Permit (DP-01-19) for the Project.

The Project's Environmental Review (ENV-02-16), General Plan Amendment (GPA-02-18), Specific Plan Amendment (SPA-01-18), Tentative Subdivision Map (MAP-01-16), Development Plan Permit (DP-01-19), and Tree Removal Permit (TRP-31-19) were approved by City Council on 6/29/2021. The Ordinance approving the Zoning Map Amendment (ZOA-01-19) was introduced on 6/29/2021 and adopted by City Council on 7/20/2021. After considering public comments and deliberating, City Council made the necessary findings and approved the Project.

Because Moita's 3/8/2024 letter raises several objections to the City Council's 2021 approval of the Project, it should be pointed out that only the current decision by Planning Commission to extend the Project's Development Plan Permit is subject to appeal. The other approvals cannot now be appealed.

Issues raised in Moita's 3/8/2024 letter:

- Project violates the Marsh Creek Road Specific Plan (MCRSP). (page 2 of the Moita letter).
  - Response: The City Council has already determined the Project to be consistent with MCRSP, among other requisite findings in approving the Project in 2021. The Planning Commission decision on 2/27/2024 is limited to the extension of the Development Plan Permit only and cannot re-open any previous 2021 approvals by City Council.
- Inadequate detention basin sizing. (page 2 of the Moita letter).
  - Response: In approving the Project in 2021, the City Council already considered all public comments, including those raised by Moita, which comments included the sizing of the detention basin, width of the road, connection to the Moita property, sizing of utilities, etc. (pages 34-39 of the attached Addendum to Item 8b from the 6/29/2021 City Council meeting, printed from the City's website). After consideration and deliberation, the City Council found the Project to be consistent with the MCRSP in approving the Project. Furthermore, the 1995 MCRSP predates the current stringent stormwater treatment requirements (e.g., C.3 provisions of the Municipal Regional Permit), which requirements go beyond simple detention and which Moita would be subject to.
- City's failure to comply with the State Housing Element Law. (page 3 of the Moita letter).
  - Response: I find Moita's assertion to be incoherent. My understanding is that the City is currently cooperating with the Department of Housing and Community Development (HCD), and is close to having a Housing Element approved. Moita seems to want the City to annex its property but that is beyond the scope of the subject Appeal. Incidentally, the Moita project is not only outside the City boundary, but is mostly beyond the voter-approved Urban Limit Line. For the City to include the Moita property in its Housing Element inventory map would likely raise questions from HCD on the remote likelihood of development of the Moita property.
- GPA-02-18 and SPA-01-18 have not been incorporated into the City of Clayton's General Plan and Specific Plan in accordance with Gov. Code, Section 65359.
  - Response: Perhaps this is a misunderstanding by Moita of the amendment process, but the approval itself incorporates those amendments into the General Plan and Specific Plan. Moita is certainly free to submit an application to further amend the General Plan and Specific Plan.
- Claim under Code of Civil Procedures 338. (page 4 of the Moita letter)

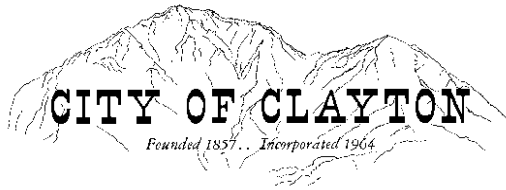
- Response: This claim, even if shown to be valid, is beyond the scope of the Appeal.

Please let me know if you have any questions. More than glad to get on a call or meet with you in person.

Thanks,

Doug

Doug Chen, RCE, LS  
ADSCO/Legacy Builders Inc  
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Concord CA 94520  
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City Council Agenda Item 8a

## STAFF REPORT

**TO:** Honorable Mayor and Councilmembers

**FROM:** Regina Rubier, Assistant City Manager

**DATE:** August 20, 2024

**SUBJECT:** Receive Presentation on the City of Clayton Strategic Plan, Implementation Action Plan

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### RECOMMENDATION

Receive an update from the City Manager's Office on the City of Clayton Strategic Plan, Implementation Action Plan.

(The Budget and Audit Committee reviewed and recommend this item at their August 12, 2024, meeting; Item 6.).

### **BACKGROUND**

In February 2024, the Clayton City Council unanimously approved five goals for the strategic plan and started setting strategies and priorities to guide the City's work over the upcoming years (Attachment 1).

The plan outlines the City's priority areas of focus aimed at supporting public safety, infrastructure, and accessibility; community parks and recreation division; economic development; balanced budget and landscape maintenance district.

The plan outlines the City Council's core goals

1. **Public Safety and Infrastructure:** Enhance the provision of public safety resources, invest in technological solutions, and maintain, repair, and improve public facilities and infrastructure.

2. Parks and Recreation Division: Evaluate the feasibility of expanding the usability of Clayton Community Park by adding lighting, upgrading fields, and enhancing related facilities. Additionally, explore options for recreational activities tailored to both youth and seniors.
3. Economic and Community Development: Promote effective use of existing amenities and resources to create future opportunities that enrich the community and promote a vibrant downtown business atmosphere.
4. Balanced Budget: Support fiscal health through long-term planning, cost control, heightened efficiency, increased revenue, and cost recovery.
5. Landscape Maintenance District: Prioritize funding for the Landscape Maintenance District (LMD) to develop a comprehensive maintenance and repair strategy, including detailed mapping and a timeline that identifies repair locations, completion schedules, and associated costs.

Staff presented the initial Implementation Measures at the August 12 Budget and Audit Committee and received feedback and direction from the committee members.

## **DISCUSSION**

The City Council completed its first strategic planning meeting on February 6, 2024, creating nine (9) initial strategic goals. The City Council broke out into various Ad Hoc committees to work on the strategic objectives related to each strategic goal. On February 20, 2024, strategic planning meeting #2 was held and the City Council narrowed down the nine (9) strategic goals to the final five (5) and brought back the work completed on the strategic objectives.

To bridge the work of the City Council to establish Goals and Objectives back in February, Staff has identified Implementation Measures that align with the Council's Goals to move the objectives forward between now and January of 2025. In January of 2025, Staff recommends reviewing the Goals, refreshing the objectives, and updating the Implementation Measures to align with the Resource Allocation Plan (the Budget).

City staff propose that the following Implementation Measures:

### Goal 1 - Public Safety, Infrastructure and Accessibility

- Develop a sidewalk repair pilot program.
- Climatec to complete installation of the HVAC system in the Clayton Community Library.
- Issue a Request for Proposal (RFP) for Landscape Maintenance services.

### Goal 2 - Parks and Recreation Division

- Review and Develop a Special Events Permit process to include:
  - ❖ City sponsored events;
  - ❖ Co-sponsored events; and
  - ❖ Community sponsored events.

- ❖ Review fees, insurance and other requirements for each of these three categories.

- Review and propose staffing needs to support Special Events.

#### Goal 3 - Economic Development

- No action, wait to review and discuss after the Council elections and the new City Manager is acclimated.

#### Goal 4 - Budget

- Present, review Quarterly Financial reports to verify that revenues and expenditures align with forecast.
- Evaluation of Front Desk staffing needs to support the organizational efficiencies.
- Review, evaluate and manage existing contracts.
- Evaluate the option of outsourcing planning services or consider returning to a traditional model by recruiting and hiring a Planning Director, Code Enforcement Officer and Assistant Planner.

#### Goal 5 - Landscape and Maintenance District

- Review the 2024-25 adopted budget with the Trails and Landscape Committee (TLC).
- Along with the new City Manager and the two (2) Council member liaisons, meet with the TLC to review and affirm the stated charge as established by the City Council .
- Begin visioning process – determine the long term and short-term needs of the community for improved trails and landscape maintenance City-wide.

#### **NEXT STEPS:**

With Council concurrence, Staff will work on the proposed Implementation Measures between now and January 2025 and return to Council with updates, and with Actions items for Council’s review, discussion, and approval.

#### **FISCAL IMPACT**

Receiving this report of the Strategic Plan, Implementation Action Plan does not establish any financial obligations for the City. Current-year costs of the Strategic Plan Implementation Action Plan will be defined in a budget amendment proposed for Council adoption within the next several months. Future year costs will be included in future-year budgets.

#### **CEQA IMPACT**

None

#### **ATTACHMENTS**

1. Goals and Objectives List



**CITY OF CLAYTON  
STRATEGIC PLAN  
GOALS**

1 Public Safety, Infrastructure, Accessibility

2 Community Parks & Recreation Division

3 Economic Development

4 Balanced Budget

5 Landscape Maintenance District

**Goal: 1****Public Safety, Infrastructure, Accessibility****Strategy**

**1.A** Develop a sidewalk repair pilot program.

**1.B** Climatec to complete installation of the HVAC system in the Clayton Community Library.

**1.C** Develop a city-wide improved pedestrian accessibility plan that includes general pedestrian and roadway safety (striping/repaving/bicycle lanes), safety around schools, and ADA improvement.

**1.D** Create a comprehensive Maintenance and Repair strategy with mapping and a timeline that identifies where the work/repairs need to be done and costs for completion.

**1.E** Conduct an assessment study of the current irrigation system at our 5 largest parks/fields.

**1.F** Add fast electric charging station in the corporation yard.

**1.G** Replace the 3 oldest maintenance trucks and replace them with 3 new Ford F150 Lighting trucks for the Maintenance Team.

**1.H** Post online quarterly maintenance schedules with high level maintenance objectives listed for the quarter: Fall Objectives, Winter Objectives, Spring Objectives and Summer Objectives.

## Goal: 2

### Community Parks & Recreation

#### Strategy

**2.A** Review and Develop a Special Events Permit process to include 1.) City sponsored events, 2.) co-sponsored events and 3.) community sponsored events. Review fees, insurance and other requirements for each of these three categories

**2.B** Review and propose staffing needs to support Special Events.

**2.C** Determine feasibility of expanding usability of the Clayton Community Park by adding lighting, improving fields, and related facilities.

**2.D** Explore options and locations for youth and/or senior recreation.

## **Goal: 3**

### Economic Development

#### **Strategy**

**3.A** Create a vibrant downtown business atmosphere that is compatible with the size and needs that our community will support.

**3.B** Create business and tax revenue beyond just Clayton residents.

**3.C** Commission an "Economic Development Plan" to evaluate support existing and create new businesses. Include the review of prior plans/studies plan (as appropriate).

**3.D** Institute a conscious "City Business Spotlight" through city media (e.g., city website, city manager newsletter) to highlight new and existing businesses.

**Goal: 4**

Balanced Budget

**Strategy**

**4.A** Present, review Quarterly Financial reports to verify that revenues and expenditures align with forecast.

**4.B** Evaluation of Front Desk staffing needs to support the organization efficiencies.

**4.C** Review, evaluate and manage existing contracts.

**4.D** Evaluate the option of outsourcing planning services or consider returning to a traditional model by recruiting and hiring a Planning Director, Code Enforcement Officer and Assistant Planner.

**4.E** Create a balanced budget for this year and future years.

**4.F** Create a comprehensive a long-term fiscal plan and forecasting.

## Goal: 5

### Landscape Maintenance District

#### Strategy

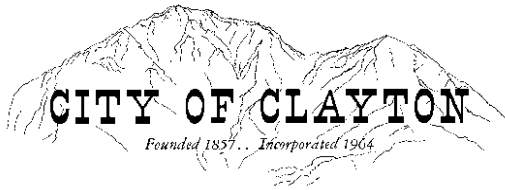
**5.A** Review the 2024-25 adopted budget with the Trails and Landscape Committee (TLC).

**5.B** Along with the new City Manager and the two (2) Council member liaisons, meet with the TLC to review and affirm the stated charge as established by the City Council .

**5.C** Bgin visioning process - determine the long term and short-term needs of the community for improved trails and landscape maintenance City-wide.

**5.D** Prioritize funding of the Landscape and Maintenance District (LMD).

**5.E** Create a comprehensive Maintenance and Repair strategy with mapping and a timeline that identifies where the work/repairs need to be done and costs for completion.



City Council Agenda Item 8b

## STAFF REPORT

**TO:** Honorable Mayor and Councilmembers  
**FROM:** Mala Subramanian, City Attorney  
**DATE:** August 20, 2024  
**SUBJECT:** Authorize the Mayor to Execute the City Manager Employment Agreement

---

### **RECOMMENDATION**

Authorize the Mayor to execute the City Manager's Employment Agreement.

### **BACKGROUND**

The City Council has been in the process of looking for a new City Manager since the resignation of the City Manager. The City Council directed the City Attorney to prepare an employment agreement with Kris Lofthus for City Manager.

Kris Lofthus currently serves as Recreation, Parks and Marina Director for the City of Suisun and prior to that as the Deputy City Manager for the same City. He has over 28 years of professional experience in finance, capital projects, community engagement, staff development, negotiations, and facility management.

The City Manager's Employment Agreement provides for a start date of September 16, 2024, a 3-year term, salary of \$240,000 for the first year and the potential to increase to \$250,000 the second year with a satisfactory review, a car allowance of \$400 per month and a technology allowance. The City Manager's Employment Agreement is attached here for your consideration.

### **FISCAL IMPACT**

The City Manager salary was approved with the Fiscal Year 2024-25 General Fund Budget and staff salary schedule, approved June 4, 2024 (Resolution 29-2024).

**CEQA IMPACT**

None.

**ATTACHMENTS**

1. City Manager Employment Agreement



EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Clayton, a municipal corporation of the State of California (the “City”) and Kris Lofthus (“Employee”). It is made effective as of the first date of Employee’s employment with the City.

This Agreement is entered into on the basis of the following facts, among others:

- A. The City desires to employ the qualified professional services of Employee as City Manager of the City of Clayton, as provided by the Clayton Municipal Code.
- B. Employee desires to accept employment by the City as its City Manager.
- C. The City Council and Employee desire to establish this employment relationship, subject to the terms and conditions set forth in this Agreement pertaining to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE CITY AND EMPLOYEE AGREE AS FOLLOWS:

1. Employee Appointed. The City appoints and employs Employee as City Manager, and Employee accepts the appointment and employment. Employee will commence work on September 16, 2024 (the “Effective Date”).

2. Duties of Employee. Employee shall perform the duties established for the City Manager by State law, the Clayton Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation.

(a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to the City’s business and affairs.

(b) No Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties for the City. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Clayton.

(c) Outside Activities. Employee shall not spend more than eight (8) hours per month in teaching, consulting, expert witness testimony, speaking, or other non-City connected business for which compensation is paid without express prior consent of the City Council. Employee will take personal leave (i.e. vacation time) for all outside activities of this nature.

3. Hours of Work. Employee is an exempt employee and is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. Employee does not have set hours of work as Employee is expected to be available at all times. It is recognized that Employee must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end Employee's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

4. Term. The term of this Agreement shall be for three (3) years from the Effective Date through September 16, 2027, unless terminated earlier by either party in accordance with the provisions set forth in Section 9.

5. Annual Evaluation. On or about six months of September 16, 2024 and then each year on or about September 16 thereafter or (Employee's anniversary date), the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction regarding the

City Council's goals and objectives which Employee shall be tasked with implementing. At the time of the evaluation, Employee shall be eligible to receive an increase in base salary, as determined by the City Council in its sole discretion. Employee shall be eligible for the first increase on Employee's first anniversary date, and then annually with the performance evaluation thereafter. Employee is not automatically entitled to any increase, which is subject to the sole discretion of the Council. While a formal evaluation will be conducted annually, the Council, at more frequent intervals and at times selected by the Council, can also conduct an informal review and/or provide other input to Employee regarding Employee's job performance.

6. Compensation. Employee shall receive the base annual salary of Two Hundred Forty Thousand Dollars (\$240,000), payable on a pro-rata basis on established paydays and in accordance with payroll in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings. In accordance with Section 5, provided that Employee receives overall satisfactory marks from the City Council on his first annual evaluation (conducted on or about the completion of his first year), Employee's salary will be increased to Two Hundred Fifty Thousand Dollars (\$250,000) effective on Employee's first anniversary date. Any increases awarded thereafter will be in accordance with Section 5.

7. Regular Benefits and Allowances. Employee shall be entitled to those employee benefits (in the form of health insurance and retirement benefits), adopted by Employer for department manager employees from time to time, subject to applicable qualification requirements and regulatory approval requirements, if any. Employer agrees to provide and pay the City allowance for vision, dental, and medical insurance for Employee and his dependents, if any, equal to that which is provided to department manager employees of Employer. Similarly, Employer agrees to enroll Employee in the City-provided disability insurance program and to obtain a life insurance policy in the amount of

\$50,000, for which Employee can designate the beneficiary(ies). All benefits provided to Employee are subject to change consistent with City policy, Council approval, and applicable law.

8. Additional Benefits and Allowances. In addition to the benefits specified in Section 7, Employee shall receive the following additional benefits and allowances.

(a) Vacation; Sick Leave; Administrative Leave

(i) Vacation. Employee shall accrue one hundred sixty (160) hours of vacation each year, earned on a pro rata basis each pay period, and subject to use in accordance with the vacation policy established for all full-time City employees.

(ii) Sick Leave. Employee shall be allowed to accrue and use paid sick leave in accordance with the sick leave policy established for all full-time City employees. As a one-time award, in addition to accruing sick leave on a monthly basis as hours are worked, Employee shall be provided with forty (40) hours of sick leave on his date of hire, available for use in accordance with the City's sick leave policy applicable to full-time City employees.

(iii) Administrative Leave. Employee will be granted up to a maximum of one hundred twenty (120) hours of paid Administrative Leave each fiscal year. This amount is awarded to Employee on July 1 of each fiscal year. If Employee has any amount of Administrative Leave remaining at the conclusion of the fiscal year, on July 1, the Employee will be awarded with however many hours are necessary to bring the total number of Administrative Leave hours to 120. (For example, if Employee has 80 hours of Administrative Leave remaining on June 30, 2024, Employee will be awarded with 40 hours on July 1, 2024, so that the total Administrative Leave equals 120 hours). Unused Administrative Leave will not be paid in cash or any other form of compensation upon separation from City employment. It remains available to Employee only to use in connection with active employment. On the Effective Date of this Agreement, Employee will be awarded one hundred

(120) hours of Administrative Leave, on account of commencing employment part-way through the current fiscal year.

(b) Automobile. Employee shall receive a monthly vehicle allowance of Four Hundred Dollars (\$400.00) per month. The parties intend for this taxable allowance to be in lieu of reimbursement on an itemized basis for mileage, gas, maintenance of a vehicle, etc. Employee shall not be separately reimbursed for mileage driven in a personal vehicle.

(c) Retirement.

(i) CalPERS: Employer agrees to enroll Employee into the California Public Employees Retirement System (“CalPERS”) and shall pay the PERS Employer share subject to this section. Employee shall be responsible for paying the PERS Employee share.

(ii) Deferred Compensation: Employer maintains a deferred compensation plan pursuant to Internal Revenue Code Section 457 (“the Plan”). Employer shall provide a monthly contribution of \$400, paid directly into the Plan on Employee’s behalf. In addition, Employee shall be allowed to make contributions from his own wages to the Plan, subject to limitations and restrictions imposed by the Plan and applicable law.

(d) Technology Allowance. Employee shall receive a \$50 monthly taxable technology allowance to use towards his personal discretionary technological purchases and expenses in furtherance of City employment (e.g. cellular phone, tablet, data plan, laptop computer). The parties intend this allowance to cover all technology-related costs that Employee incurs in the course and scope of employment with the City.

9. Termination of Employment.

(a) No Property Interest. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee’s employment as City Manager.

Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to Employee in writing. "Termination," as used in this Agreement, shall also include 1) a request that Employee resign; 2) a reduction in salary or other financial benefits provided by the City in a significant amount which is inconsistent with a reduction in salary or financial benefits for employees in the executive management unit; or 3) the elimination of the City Manager's position.

(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for gross mismanagement or an act of moral turpitude (as described in Section 9(f)), will be made within ninety (90) days either before a City Council election or immediately following a City Council election. Nothing in this paragraph alters the "at will" status of Employee's employment with City.

(c) Notice Required Of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days notice.

(d) Severance Pay. If Employee is asked to resign or is terminated as City Manager, then Employee shall be eligible to receive a cash payment equivalent to the sum of Employee's then-current monthly salary multiplied by three (3) (or by the remaining number of months in the Agreement, whichever is less) and the cash value, as determined by the City, of Employee's monthly non-salary COBRA-eligible benefits multiplied by three (3) (or [pursuant to Government Code section 53260] by the remaining number of months in the Agreement, whichever is less). Notwithstanding the above, if in or around September 2025, Employee receives a positive annual performance evaluation, as determined in the sole discretion of the City Council, then the amount of severance Employee is eligible to receive under this paragraph shall be equivalent to the sum of the Employee's then-current monthly salary multiplied by

six (6) (or by the remaining number of months in the Agreement, whichever is less) and the cash value, as determined by the City, of Employee's monthly non-salary COBRA-eligible benefits multiplied by six (6) (or [pursuant to Government Code section 53260] by the remaining number of months in the Agreement, whichever is less). This cash payment will be made on a pro-rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Employee shall also be paid for any accrued, but unused, vacation leave, but not accrued sick leave. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting employment elsewhere, and the City's obligation to pay any remaining severance benefits to Employee shall terminate upon Employee's acceptance of such alternative employment.

(e) Long-Term Disability. If Employee is unable to perform assigned duties because of sickness, accident, injury, mental incapacity or health for a period of four consecutive months (with or without reasonable accommodation), Employer shall have the option to terminate this Agreement. Employee agrees that, due to the importance of Employee's position with the City, an inability to perform duties for a period in excess of four consecutive months could not be reasonably accommodated. If Employee is terminated because of long-term disability, Employee shall be compensated in a lump sum for any accrued and unused vacation. Employer shall have no further responsibility to make, and Employee shall be deemed ineligible for, severance payments pursuant to subdivision (d). Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against Employer, and (ii) a covenant not to sue in a form provided by Employer.

(f) Ineligibility for Severance Under Certain Conditions. If the termination of Employee is the result of “good cause,” Employee shall not be paid any severance pay. For purposes of this section, “good cause” includes: (i) gross neglect of duties which has a negative impact on City operations; (ii) gross mismanagement which has a negative impact on City operations, and/or (iii) an act or acts of moral turpitude determined to have a negative impact on City operations or the Employee’s ability to serve the City. If Employee disagrees with the City’s determination of “good cause,” Employee’s sole remedy shall be a judicial action in declaratory relief to determine whether there was evidence of “good cause” as established above. If the court determines there was not substantial evidence of “good cause,” Employee shall receive the severance pay provided in this subsection, but no other damages.

10. Statutory Requirements. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.

11. Payment of Expenses of Employment. The City shall pay to Employee the usual and customary employment expenses incurred while performing the duties described in this Agreement, which may include travel, meals, lodging expenses, and parking fees, consistent with the City’s reimbursement policies. Employee shall submit a receipt and a description of the expenses to the City’s Finance Manager within thirty (30) days of the date each expense is incurred as a condition of obtaining reimbursement. In addition to these expenses, the City shall pay:

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) Subject to Section 12 of this Agreement, the cost to defend and indemnify Employee to the full extent of the law as provided by the California Government Claims Act (Government



Code §810 *et seq.*), or otherwise. Notwithstanding the foregoing, City's obligation to defend and indemnify Employee shall extend only to the entry of a final judgment by the trial court, and shall not extend to providing defense or indemnity in connection with an appeal of the judgment, unless otherwise specifically provided by law. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Reasonable dues for Employee's membership in the International City Management Association ("ICMA"). The City will allow Employee reasonable time away from the City to participate in the annual conference of this organization.

(d) Subject to budget approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Employee's duties. The City will not reimburse Employee for any expenses related to membership in service clubs.

12. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

- (i) served personally; or
- (ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or
- (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
- (iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City of Clayton  
Attn: Mayor  
6000 Heritage Trail  
Clayton, CA 94517  
Phone: (925) 673-7300  
Fax: (925) 672-4917

EMPLOYEE:

Kris Lofthus  
(Address in Employee's Personnel File)

(b) Compliance with Government Code §§53243, 53243.1, & 53243.2. If

Employee is convicted of a crime involving an abuse of his office or position, all of the following shall apply:

(i) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse the City for such amounts paid;

(ii) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and

(iii) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City or void if not yet paid to Employee.

For this subsection, "abuse of office or position" means either (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (2) a crime against

public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(c) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(d) Attorney's Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, each party shall bear their own fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

(e) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(f) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(g) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and City agree that venue for any dispute shall be in Contra Costa County, California.

(i) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(j) No Assignment. Employee may not assign this Agreement in whole or in part.

Dated: \_\_\_\_\_

CITY OF CLAYTON

\_\_\_\_\_  
Jim Diaz, Mayor

Dated: \_\_\_\_\_

EMPLOYEE

\_\_\_\_\_  
Kris Lofthus

Attest:

\_\_\_\_\_  
Stephanie Cabrera-Brown, City Clerk

Approved as to Form:

\_\_\_\_\_  
Mala Subramanian, City Attorney