

Oak Creek Canyon Residential Project

- **Public Hearing to consider an Appeal of Planning Commission decision to extend the Development Plan Permit (DP-01-19) approval by one-year.**

Project Characteristics

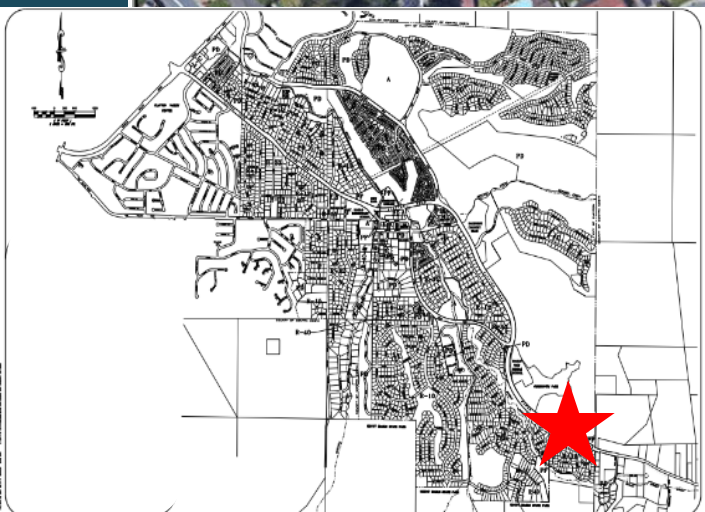
- **The 9.03-acre site of the proposed Project is on the north side of Marsh Creek Road at its intersection with Diablo Parkway**
- **Six Single-Family residences proposed.**
 - **With at least one income-restricted affordable ADU/JADU**
- **The project includes road and stormwater improvements**



**Water
Storage Tank**

Project Site

Residential



Summary of Project and Project Actions

- **Application(s) made 2018-2019**
- **March 9, 2021 – Planning Commission denial of the project**
- **June 29, 2021 – Council overturns the Planning Commission denial and approved the entitlements**
- **Extension Requests**
 - **February 14, 2023 – First one-year extension approved by the Planning Commission**
 - **February 27, 2024 – Second one-year extension approved by the Planning Commission**
- **March 8, 2024 – Appeal Application challenging the Planning Commission decision**
- **August 20, 2024 – Public Hearing on Appeal**

Analysis

- **Appeal Application Rationale**
 - **The basis of the Appeal Narrative is the 2021 City Council entitlements**
 - **Violation of the Housing Crisis Act of 2019**
- **Planning Commission's decision to extend the Project's Development Plan Permit is the only item subject to appeal.**
 - **The 2021 entitlements cannot be appealed.**
- **Clayton Municipal Code section 17.28.190 allows the City Council, on appeal to grant extensions related to the Development Plan Permit for not more than one year at a time, upon showing of good cause.**
- **Construction on the Project has not yet begun due to delays caused by the COVID-19 pandemic**

Analysis Continued

- **The Applicant has indicated that pre-construction work has been ongoing**
- **The Final Map has been submitted with comments provided**
- **Field work to identify locations of petroleum pipelines within existing easements on site**

Recommendation

- **Staff recommends 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**

Appeal Planning Commission Decision to Extend Oak Creek Canyon Development Permits 8/20/2024

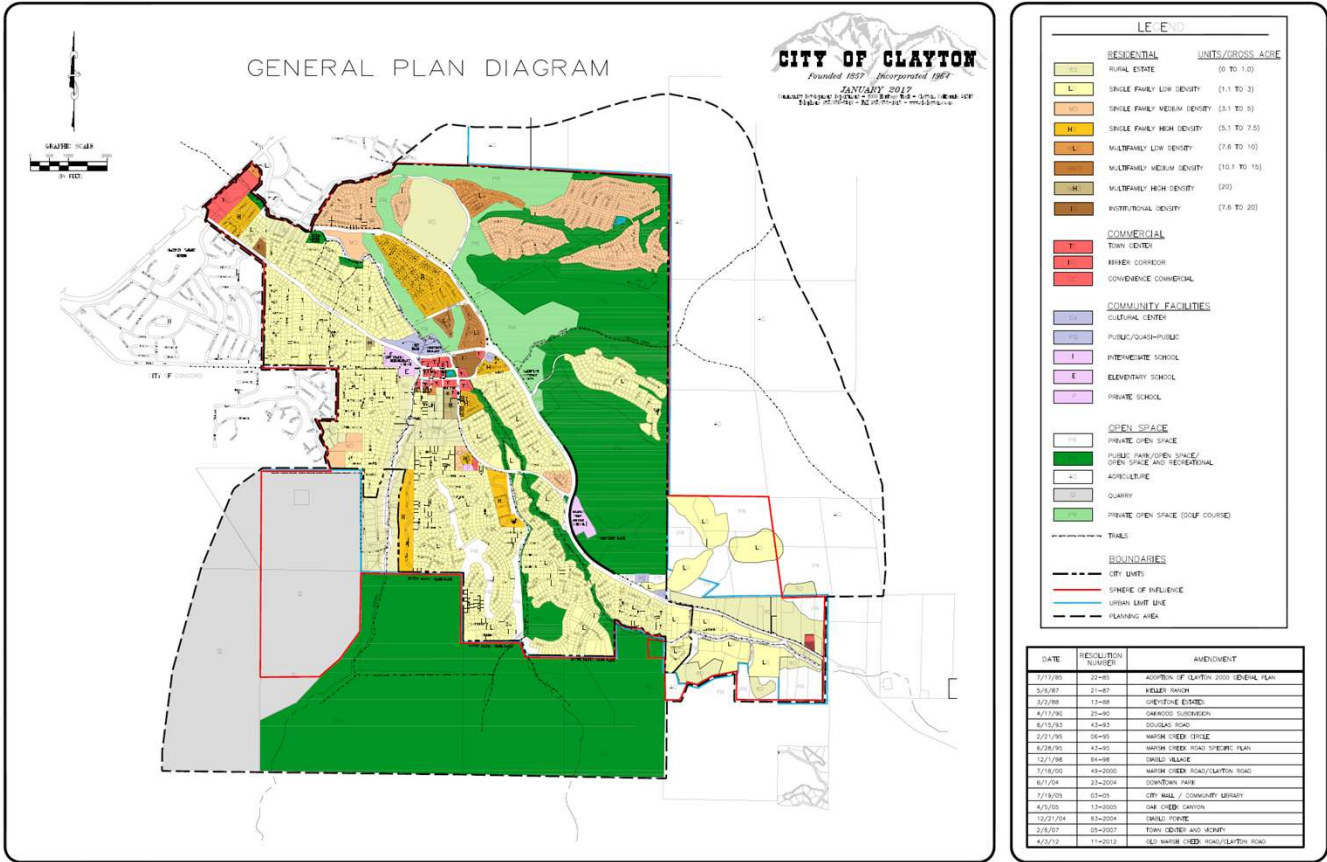
Vincent A. Moita



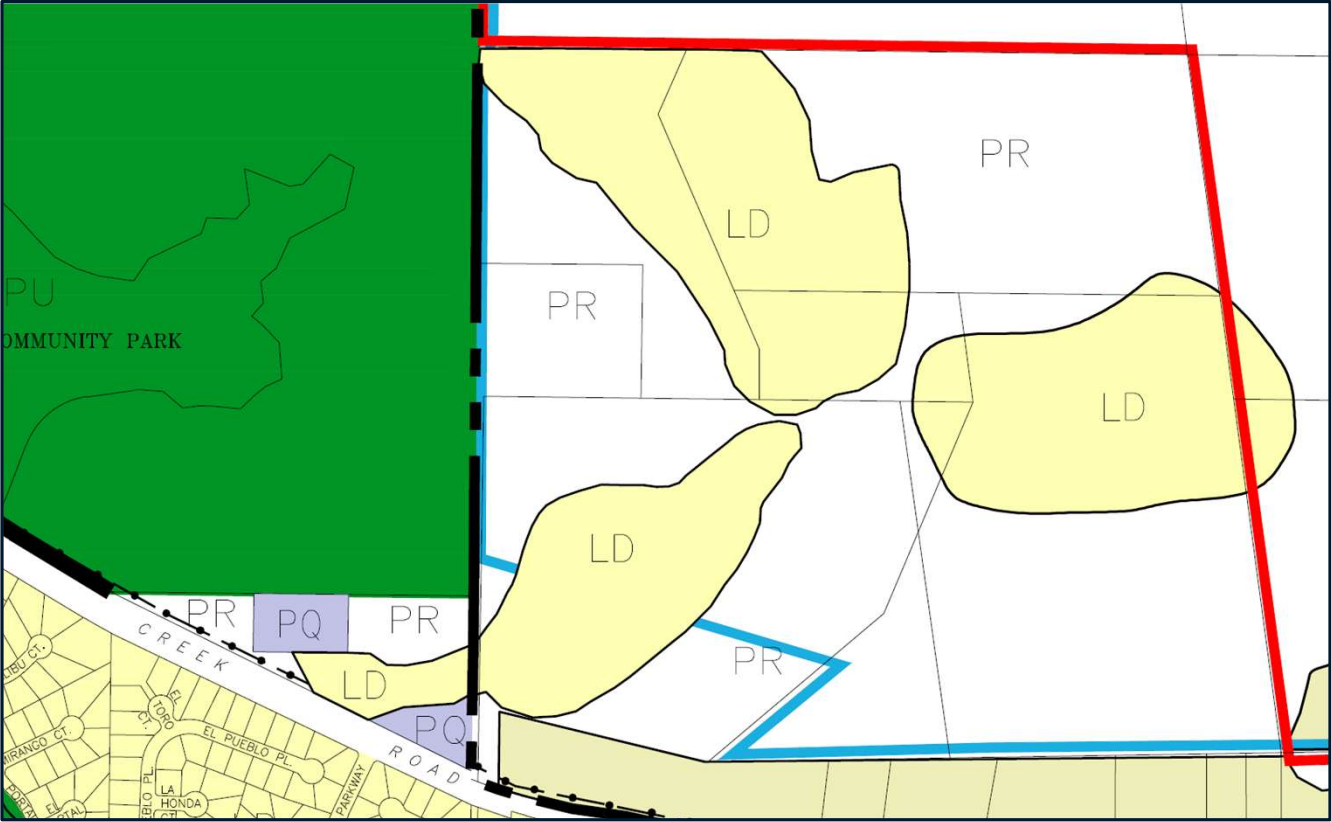
1990 CCWD 50,000 Gallon Expansion Provided 100 Unit Reservation Capacity



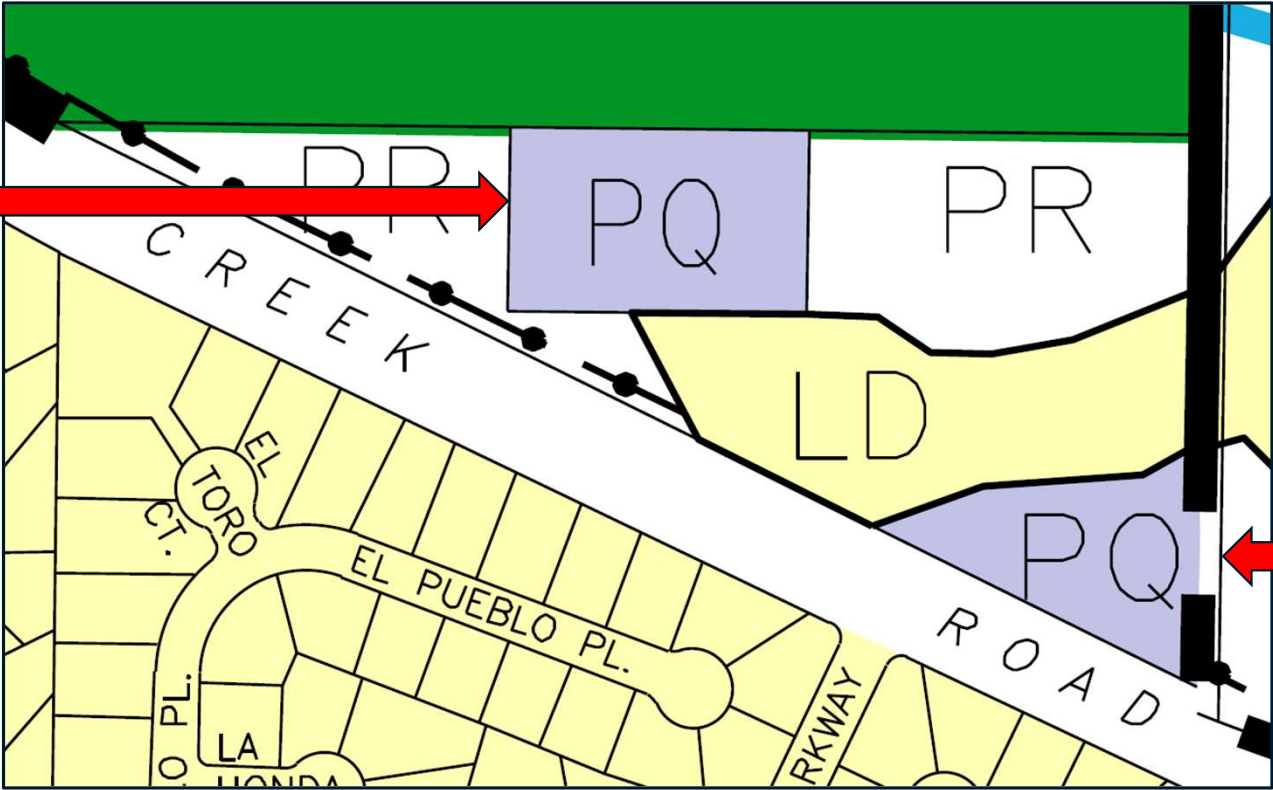
2017 City of Clayton General Plan



2017 City of Clayton General Plan



2017 City of Clayton General Plan



CCWD WATER TANK RESERVOIR

SEENO LAND CONDITIONED AS DETENTION FACILITIES SINCE 1995

Marsh Creek Road Specific Plan



MARSH
CREEK
ROAD
SPECIFIC
PLAN

■ ■ ■

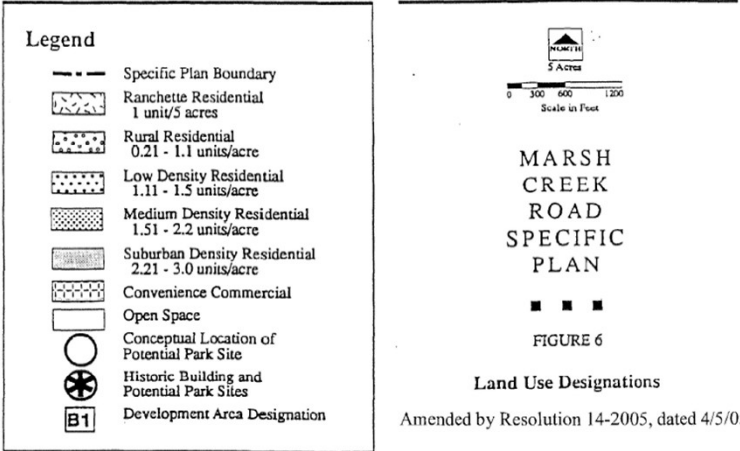
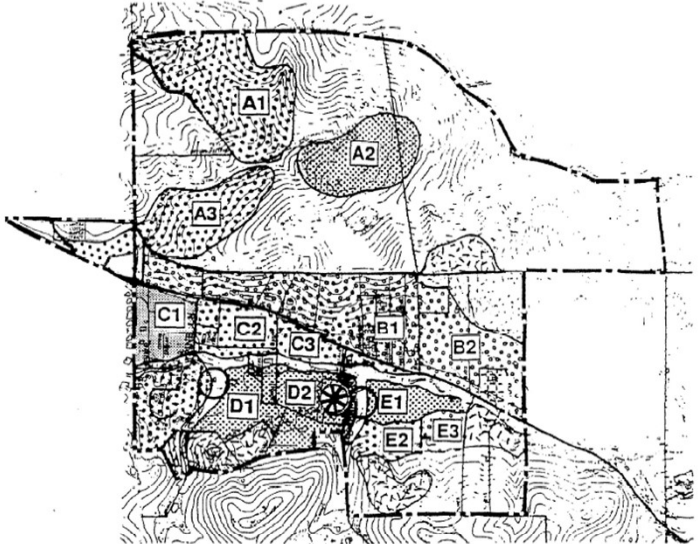
Prepared for the
City of Clayton

Adopted
June 23, 1995

Amended
April 2005

BRADY AND ASSOCIATES PLANNERS AND LANDSCAPE ARCHITECTS

Select Pages MCRSP



BRADY AND ASSOCIATES, INC. PLANNERS AND LANDSCAPE ARCHITECTS

Select Pages MCRSP

Table 2
SPECIFIC PLAN BUILDOUT POTENTIAL

Development Area	Major Property Owners	Approximate Acreage ^a	Designation	Anticipated Units ^b	Existing or Approved Units	Net New Units
A1	Heartland	19.6	Low	29	0	29
	Moita	7.2	Low	11	1	10
A2	Heartland	15.9	Medium	35	0	35
	Morgan	2.8	Medium	6	1	5
A3	Heartland	19.5	Low	29	0	29
	North State Development	4.4	Low	6	0	6
B1	Laurence	8.1	Rural	9	2	7
	Kelly	2.2	Rural	2	1	1
	Soares	4.6	Rural	5	1	4
	James/Iverson	8.4	Rural	9	1	8
	Torson	4.2	Rural	4	1	3
	P. Clark	2.0	Rural	2	1	1
	Carlson	2.2	Rural	2	1	1
	Nielson	1.4	Rural	1	1	0
	Wing	3.6	Rural	4	1	3
B2	Lietz	12.5	Rural	14	1	13
	Rodenburg	8.4	Rural	9	1	8
C1	Hellmers	2.8	Suburban	8	3	5
	Ostec	5.8	Suburban	17	1	16
	Shirley	1.9	Suburban	5	1	4
C2	Tobin/Trent	1.2	Low	2	0	2
	Lcal	1.6	Low	2	0	2
	Manion	5.9	Low	9	0	9
	Holmes	1.8	Low	2	0	2

Table 5
RUNOFF DETENTION REQUIREMENTS

Area	Approximate Development Acreage	Approximate Storage Requirement (Acre Feet)	
		Total ^a (Upper Bound)	Peak Storage ^b Only (Lower Bound)
A	53.4	7.8	3.2
B	32.5	4.1	1.3
C	25.7	1.1	0.1
D	22.1	3.3	0.6
E	21.0	1.4	0.3

^a Total Storage is the storage required to maintain the outflow from the detention basin at the predevelopment level for each time interval during the design storm. This is an upper bound on the estimated storage required.
^b Peak Only Storage is the storage required to maintain the maximum outflow at the predevelopment level for the design storm. This is a lower bound on the estimate of required storage.

Any landowners benefiting from the common detention basin shall participate in the acquisition and construction of such facilities on a fair share basis determined by the City.

Detention basins should be located as follows:

- Development Area A: At the mouth of Oak Creek Canyon on the North State Development property near the intersection of Marsh Creek Road and Diablo Parkway, and/or along the general alignment of Oak Creek.
- Development Area E: Near the confluence of Russellmann and Mount Diablo Creeks, at the northwest corner of the property.

Each of these basins will be constructed at the expense of the landowners or developers, and will then be turned over to the City for maintenance along with public streets. As an alternative, subsurface detention may also be provided in these areas, as long as it is adequate to contain all increases to peak flood flows.

1997 Development Agreement West Coast & City of Clayton pgs. 9 & 10

17012

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

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

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17012

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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04/08/97

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**Former City of Clayton
City Engineer
1986 - 2017
Rick Angrisani
Letter Re:
Infrastructure
Improvements**



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.

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

3021 Citrus Circle, Suite 150 Walnut Creek, California 94598-2635 Tel: (925) 210-9300

**Former
City of Clayton
Planning Director
1990 -2000
Director
Randy Hatch Letter
RE: MCRSP
Conformity**



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 Clayton 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.

7505 Oakcreek Drive, Stockton, California 95207 (209) 986-3977 randyhatch@sbcglobal.net

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,

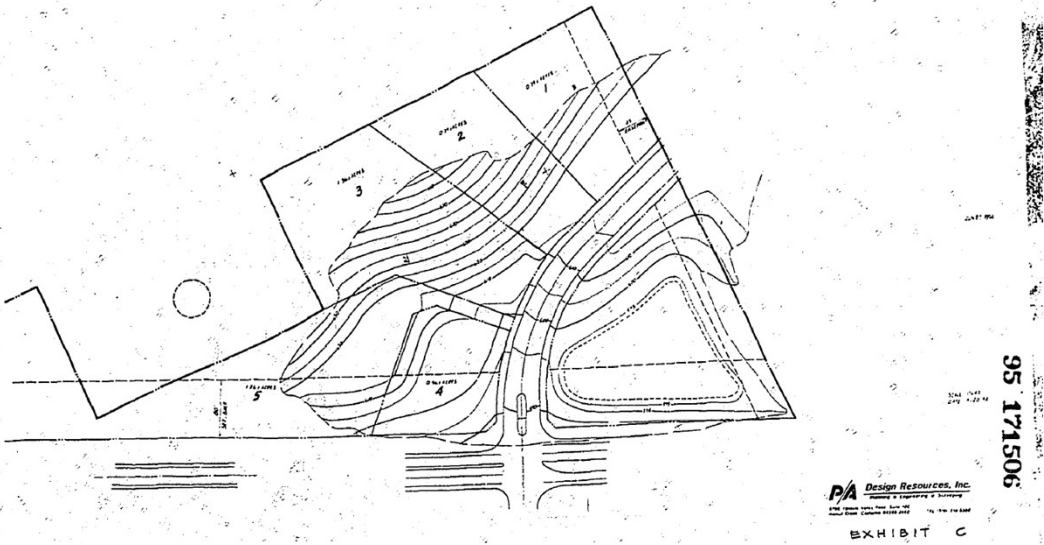
Randy Hatch
Randy Hatch

Phone: (209) 986-3977
Email: randyhatch@sbcglobal.net

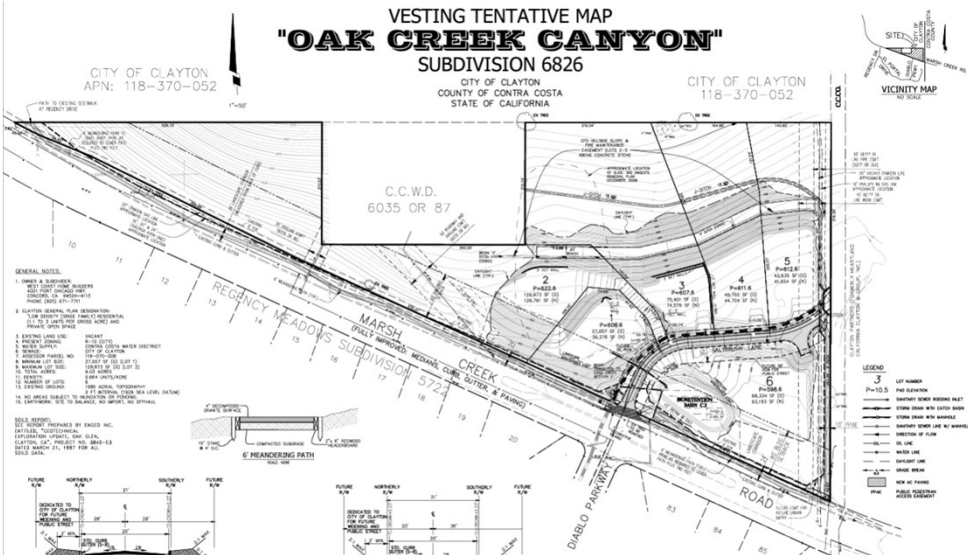
CC: Christina Gregory; Jim Moita; RickAngrisani

Planned Detention Basin Sizing vs. Project

1995 – Detention Basin Sizing



2021 – Detention Basin Sizing



Original 1995 MCRSP Detention Basin Sizing & 1997 Development Agreement

**1995 – Basin
Planned to treat 7.8 Acre
Feet**

**Approximately 27,000+
SF**



2021 Project Plan Detention Basin Sizing

2021 – Basin
No drainage calculations
publicly available.

Sized at ~5,185 SF



Engineering Analysis of Project Detention Basin



April 14, 2024

Clayton Estates, LLC
8125 Marsh Creek Road
Clayton, CA 94517

Attention: Jim Moita, Managing Partner

Re: An engineering analysis of a storm water detention basin volume reduction and effect of a future development of neighboring parcel of land.

Background:
This firm was retained to do a before and after analysis of a storm water detention basin ("Basin") after its size was reduced. The location and size of the basin was first shown and illustrated in the Marsh Creek Road Specific Plan (MCRSP), prepared by P/A Design Resources, Inc. approved and Amended by Resolution 14-2005, dated 4/5/05, together with excerpts Figure 6 Land Use Designations, Table 2 Specific Plan Buildout Potential (June 1995), Land Use and Conservation Element, Table 5 Runoff Detention Requirements including Detention Basin location, Exhibit "C" Location and schematic size of the detention basin (planned size = 7.8 Acre Feet).

The second location and reduced size of the Basin was later shown on the revised Vesting Tentative map "Oak Creek Canyon" "OCC" Subdivision 6826, by Isakson & Assoc. Inc., dated 5/04/2020, job number 200514, together with Preliminary Grading Plan as proposed New Lot 6 (originally 5 lots) with small Bioretention Basin (planned approximate size of 0.28 Acre-Feet)

Discussion:
According to the MCRSP the size of the basin was designed to support the total storm water storage capacity for a future 103 lot subdivision on the adjoining parcels as shown in Table 2, referenced above. The storm water runoff requirements were summarized in Table 5, referenced above, and the approximate development acreage of 53.4 acres.

The reduction in Basin size can be calculated as $(7.8-0.28)/7.8 = 96\%$. This reduction in capacity was directly proportional to the 53.4 acres, therefore reducing the Development Acreage to $53.4 \text{ acres} - (0.96 \times 53.4 \text{ acres}) = 2.1 \text{ acres}$.

Conclusion:
It was determined that the effect of adding an additional lot to Subdivision 6826 would result in reducing the planned Basin, thereby reducing the number of development acreage in the adjoining parcel(s). The reduction in acreage would directly reduce the number of planned lots from 103 to 4 lots.

Respectfully submitted,
John Maes, P.E.
C42514 *John Maes*

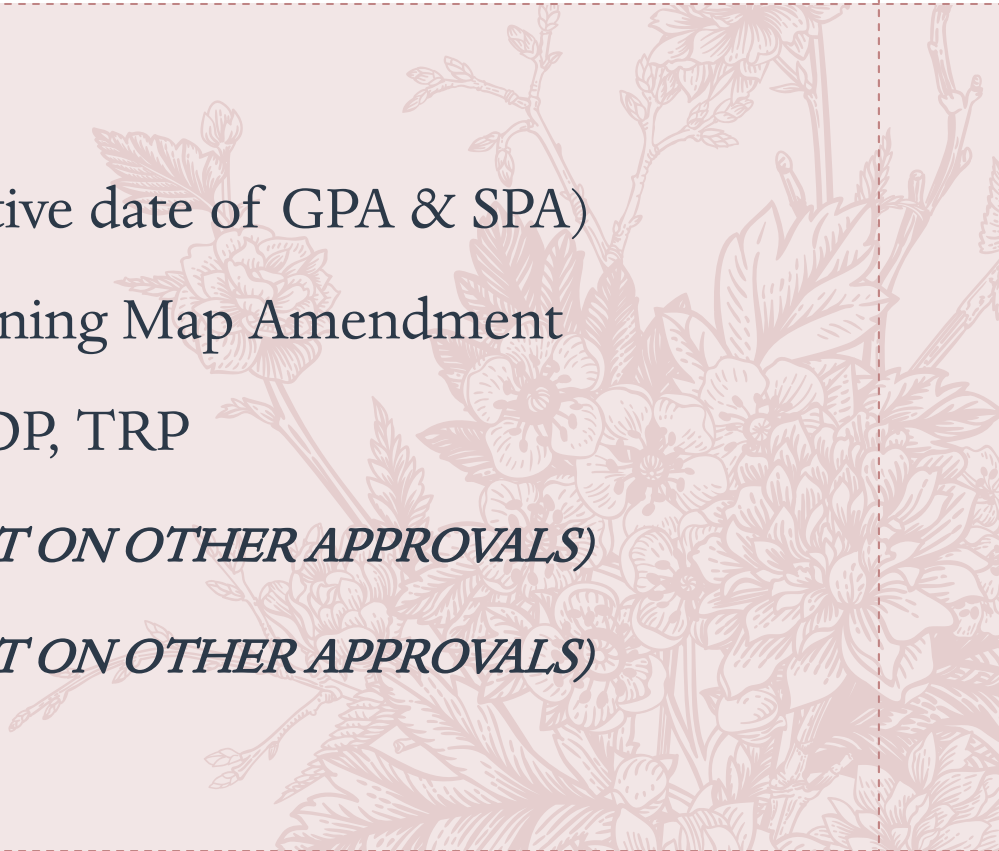
Summary

- The 2021 Decision was approved without the Council thoroughly reviewing the 1995 MCRSP which took four years to complete, cost \$469,292, and reduced storm water capacity to keep high density housing away from the Clayton Downtown by 96%.
- The City of Clayton General Plan remains internally inconsistent with the MCRSP per 2021 General Plan Amendment changing the PQ land use designation for the detention basin on the subject to site to a single family home.
- Request to preserve the MCRSP infrastructure element's requirement for the detention basin on subject property site for future MCRSP build out by allowing project to proceed on the 5 lots north of the collector road and denying the 6th single family lot south of the collector road located in the prior planned detention facilities.

Oak Creek Canyon

August 20, 2024

Key Dates

- 6/29/2021 Approval of GPA, SPA, MAP, DP, TRP (Effective date of GPA & SPA)
- 7/20/2021 Adoption of Ordinance 493 approving the Zoning Map Amendment
- 8/19/2021 Effective date of Rezoning Ordinance, MAP, DP, TRP
- 2/14/2023 Approval of 1-yr extension for DP *(NO EFFECT ON OTHER APPROVALS)*
- 2/27/2024 Approval of 1-yr extension for DP *(NO EFFECT ON OTHER APPROVALS)*
- 

Key Issues

- The 2021 entitlements cannot be appealed.
- Moita is appealing the February 27, 2024, approval to extend the Development Plan Permit (DP-01-09) for one (1) year



Moita's Appeal Letter, Assertions

1. Project violates the Marsh Creek Road Specific Plan (MCRSP).
2. Inadequate detention basin sizing.
3. City's failure to comply with the State Housing Element Law.
4. 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.
5. Claim under Code of Civil Procedures 338.

-- ALL NOT RELEVANT TO DP EXTENSION --

Moita's Claim:

1. Project violates the Marsh Creek Road Specific Plan (MCRSP).

West Coast's Response:

- The claim is beyond the scope of what can be appealed.
- 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 February 27, 2024, is limited to the extension of the Development Plan Permit only and cannot re-open any previous 2021 approvals by City Council.

Moita's Claim:

2. Inadequate detention basin sizing.

West Coast's Response:

- The claim is beyond the scope of what can be appealed.
- In approving the Project in 2021, the City Council already considered all public comments, including those raised by Moita, which comments include the sizing of the detention basin, width of the road, connection to the Moita property, sizing of utilities, etc.
- 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.

Moita's Claim:

3. City's failure to comply with the State Housing Element Law.

West Coast's Response:

- The claim is beyond the scope of what can be appealed.
- We understand 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 the Moita project is not only outside the City boundary but is mostly beyond the voter-approved Urban Limit Line.

Moita's Claim:

4. 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.

West Coast's Response:

- The claim is beyond the scope of what can be appealed.
- The approval itself incorporates those amendments into the General Plan and Specific Plan.
- Moita is free to submit an application to further amend the General Plan and Specific Plan.

Moita's Claim:

5. Claim under Code of Civil Procedures 338.

West Coast's Response:

- The claim is beyond the scope of what can be appealed.
- CCP 338: Statute of Limitations for lawsuit

Thank You

David Fish

925-602-7212

dfish@seenohomes.com

Applicant Presentation

