



AGENDA
Planning Commission
Regular Meeting
February 27, 2024
7:00 p.m.

Hoyer Hall at Clayton Community Library
6125 Clayton Road, Clayton, California
and
Via Zoom Webinar
Webinar ID: 851 3023 1526

This meeting is being held with accommodations for both in-person and virtual attendance and participation by the public. Members of the public who prefer to view or listen to the meeting and to address the Planning Commission remotely during the meeting may do so using the methods listed under “Instructions for Virtual Planning Commission Meeting Participation” below.

Chair: Richard Enea
Vice Chair: Maria Shulman
Commissioner: Joseph Banchemo
Commissioner: Bretten Casagrande
Commissioner: Daniel Richardson

Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Clayton Library, 6125 Clayton Road; and 3) Ohm’s Bulletin Board, 1028 Diablo Street, Clayton. A digital copy of the Agenda with a complete packet of information including staff reports and exhibits related to each agenda item is available for public review on the City’s website at <https://claytonca.gov/community-development/planning/planning-commission/planning-commission-agendas/>.

Any writings or documents provided to a majority of the Planning Commission after distribution of the Agenda Packet and regarding any public item on this Agenda are available for review on the City’s website at <https://claytonca.gov/community-development/planning/planning-commission/planning-commission-agendas/>.

If you have a physical impairment that requires special accommodations to participate, please call the City Clerk’s office at least 72 hours in advance of the meeting at 925-673-7300.

Most Planning Commission decisions are appealable to the City Council within 10 calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in spoken testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter.

Instructions for Virtual Planning Commission Meeting Participation

The following options are provided as a courtesy for those who would prefer to view, listen to, or provide comments remotely for the meeting. While City staff will make every effort to facilitate virtual participation in the meeting, 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.

Videoconference: To join the meeting on-line via smart phone or computer, click on the link: <https://us02web.zoom.us/j/85130231526>; or, through the Zoom application, enter **Webinar ID: 851 3023 1526**. No registration or meeting password is required.

Phone-in: Dial toll free 877-853-5257. When prompted, enter the Webinar ID above.

E-mail Public Comments: If preferred, please e-mail public comments to the Community Development Director at danaa@claytonca.gov by 5:00 p.m. on the day of the Planning Commission meeting. All emailed public comments received prior to 5:00 p.m. on the day of the Planning Commission meeting will be forwarded to the entire Planning Commission.

Each person attending the meeting via video conferencing or telephone and who wishes to speak on an agendized or non-agendized matter shall have a set amount of time to speak as determined by the Planning Commission Chair.

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **ACCEPTANCE OF THE AGENDA:** The Planning Commission will discuss the order of the agenda, may amend the order, add urgency items, note disclosures or intentions to abstain due to conflict of interest on agenda items or action items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The Planning Commission may also remove items from the Consent Calendar prior to that portion of the Agenda.
5. **PUBLIC COMMENT (Non-Agenda Items):** This time has been set aside for members of the public to address the Planning Commission on items of general interest within the subject matter jurisdiction of the City. Although the Planning Commission values your comments, pursuant to the Brown Act, the Planning Commission generally cannot take any action on items not listed on the posted agenda. At the Chair's discretion, up to 3 minutes will be allotted to each speaker.
6. **CONSENT CALENDAR:** The following routine matters may be acted upon by one motion. Individual items may be removed by the Planning Commission for separate discussion at this time or under Acceptance of the Agenda.
 - A. **Minutes:**
Planning Commission Meeting of November 28, 2023
7. **PUBLIC HEARING**
 - A. **Extension of Approval of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Development.**
This is a request by Doug Chen of West Coast Home Builders, Inc. (Applicant), for a second, one-year extension to exercise the Development Plan Permit approval granted by the Clayton City Council on June 29, 2021, for the Oak Creek Canyon Residential Development (Project). The Project encompasses grading and site preparation, removal of nine of the 21 existing trees on the property, installation of a new roadway and utilities infrastructure, and construction of six detached single-family residences ranging from approximately 3,049 to 4,488 square feet in area and between 23 to 32 feet in height, along with Project-related landscaping, drainage, fencing, lighting, and retaining walls on a 9.03-acre property located on the north side of Marsh Creek Road at its intersection with Diablo Parkway (Assessor's Parcel No. 119-070-008).

Environmental Determination: Prior to approving the Project, the Clayton City Council adopted a Mitigated Negative Declaration and approved the Mitigation Monitoring and Reporting Program for the Project, pursuant to the California Environmental Quality Act (CEQA, Public Resources Code section 21000 *et seq.*), and the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000 *et seq.*), and determined that the

potentially significant environmental impacts of the Project could be reduced to levels of less than significant with implementation of certain mitigation measures (Public Resources Code section 21081.6 and State CEQA Guidelines section 15074). No additional findings are necessary for CEQA compliance for the current request for extension of permit entitlement of the approved Project.

8. COMMUNICATIONS: This time is set aside for the Planning Commission to make requests of staff, and/or for issues of concern to Planning Commissioners to be briefly presented, prioritized, and set for future meeting dates. This time is also provided for staff to share any informational announcements with the Commission.

9. ADJOURNMENT

The next Planning Commission Regular Meeting is Tuesday, March 12, 2024.

Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, November 28, 2023

1. CALL TO ORDER

Chair Richard Enea called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

Chair Enea led the Pledge of Allegiance.

3. ROLL CALL

Present: Chair Richard Enea
 Vice Chair Maria Shulman
 Commissioner Joseph Banchemo
 Commissioner Bretten Casagrande
 Commissioner Daniel Richardson

Planning Commission Secretary/Community Development Director Dana Ayers and Assistant Planner Milan Sikela were present from City staff.

4. ACCEPTANCE OF THE AGENDA

There were no changes to the agenda as submitted.

5. PUBLIC COMMENT

Clayton resident Bruce Campbell said he saw posts on Facebook about housing rezonings. Commissioner Richardson advised that that was an agenda item and that the speaker could address that matter later in the meeting. Mr. Campbell then said that he heard the Oktoberfest event was canceled. Chair Enea said that was not a City event, but he also noted that he was a member of the Clayton Business and Community Association (CBCA) that sponsored the event, and the CBCA had no plans to cancel it.

6. CONSENT CALENDAR

A. Minutes of Planning Commission Regular Meeting of November 14, 2023.

There being no member of the public attending in person or virtually who wished to comment on the Consent Calendar, Chair Enea invited a motion. Commissioner Casagrande moved to adopt the Consent Calendar with Meeting Minutes of the November 14, 2023 meeting, as submitted. Vice Chair Shulman seconded the motion. The motion passed by vote of 5 to 0.

7. PUBLIC HEARING

A. Recommendation on Amendments to Clayton Municipal Code Title 17 to Implement Adopted General Plan Housing Element Policy, Rezone Properties in Conformance with the Housing and Land Use Elements, Clarify Administrative Procedures, and Align with State Law.

This is a continued public hearing to consider proposed amendments to various chapters of Title 17 (Zoning) of the Clayton Municipal Code (CMC), to: 1) implement adopted Housing Element policies and amended Land Use Element policies and land use designations; 2) clarify administrative procedures; and 3) align with provisions of certain California statutes governing land use. Amended text is proposed in multiple chapters of CMC Title 17. In addition to amendments to text of the Zoning Ordinance, eight sites (or portions thereof) in the City are proposed to be rezoned to accommodate residential land uses.

Chair Enea acknowledged that this was the second meeting scheduled on this item. He then invited Community Development Director Dana Ayers to present the item. Director Ayers shared a slide deck summarizing the proposed Zoning Code amendments described in the current and previous meetings' staff reports. She noted that changes between the two meeting drafts were identified using track changes in the current meeting's staff report attachment. Director Ayers concluded by stating that staff recommended the Commission resume the public hearing and accept additional written and spoken testimony, close the public hearing, and adopt the resolution attached to the staff report recommending City Council adoption of the Municipal Code text and zoning map amendments as listed in Exhibits A and B to that resolution.

Chair Enea reiterated that the action at tonight's meeting was to enact policies already adopted by the City Council. He then resumed the public hearing on the item.

Bruce Campbell asked if the owners of the Eagle Peak and Easley Estates properties had agreed to the rezonings of their properties. Chair Enea advised that they had. Chair Enea further explained that the rezoning gave those owners the option to develop their lands for residential purposes. Mr. Campbell said he was afraid Clayton was going to have apartments with low-income housing on the sites.

A member of the audience attending the meeting in person asked if the amendments were recommendations from staff, or if they were intended to do what the State required, or if they were trying to do more. He suggested doing the minimum required by the State and nothing further. He said he was on the Planning Commission when properties were rezoned and said that housing was not being built in Clayton because it costs too much. He suggested that establishing minimum densities to facilitate apartment construction might satisfy the State but might prevent development from happening if a builder wanted to build single-family houses. He further suggested upzoning the Clayton Station shopping center to 1,000 units per acre but suggested against minimum densities because apartments were too costly to build and interest rates were increasing.

Lauren Kindorff said that the law is the law and there for a reason, and people can agree or disagree with it. She asked that decision-makers look at the law and understand the law's requirements. Anyone who does not personally like the law can discuss their disagreements at the State level. She felt that people used Clayton as fodder for making personal statements about individual wants. She recognized that decision-makers represent the community but also said that people must consider the law first and not create contention and problems by trying to get around it to advance personal opinions. She hoped that people would not make Clayton fodder to push an agenda that will get the City into trouble.

There being no other member of the public attending in person or virtually who wished to comment on the item, Chair Enea closed the public hearing.

Commissioner Richardson said that he has been a Clayton resident for 35 years and a Planning Commissioner for 10 years. He recalled that, for many years, the State has decided local agencies' allocations of the regional housing need. Cities would then take that number and write their housing plans but, subsequently, nothing would get built. Consequently, the State took stronger action to compel cities to accommodate their assigned units by removing impediments and barriers to housing construction, and with threats of financial penalties and local agency loss of design or land use control. Commissioner Richardson hoped that Clayton could avoid those penalties. He acknowledged that State legislative leaders were supportive of housing construction. He stated that Clayton had done rezonings following the last housing element update. As before, but under a more onerous housing planning process, Clayton now needed to show progress and to follow through with implementing the commitments in the adopted Housing Element. Commissioner Richardson supported moving the item forward to the City Council with the Planning Commission's support. He said that it made sense to him to include the few clean-up items that staff also recommended be done with this process.

Commissioner Banchero questioned the recommendation for minimum densities and suggested that minimum densities might be a disincentive for a developer who wanted to build at a density below the minimum. Director Ayers advised that the City Council had discussed establishing minimum densities during their meeting in January 2023, as a means to ensure that the development assumptions for each site in the City's housing site inventory could be realized. That comments from the Council were formalized in a new General Plan Land Use Element policy that supported establishment of minimum densities. Director Ayers further advised that a developer could request to build below the minimum specified density for a site, but in that scenario, the City would need to reevaluate its housing site inventory to ensure that its allocation of housing could still be achieved on the remaining sites. Director Ayers further advised that the Housing Element was not created in a vacuum, and that, in the process of writing the Housing Element, she had met with each of the owners of the sites that were proposed to be rezoned. For the sites currently proposed to be rezoned, the owners expressed support for the rezonings. In one instance, an owner did not want to see density increased on their property, so that site was removed from the list of recommended amendments. For another site, staff currently had a pending development application that conformed with the recommended rezoning.

In response to Commissioner Casagrande, Director Ayers advised that Sites B and Q in the Housing Element inventory had pending development applications. Of the two sites, only Site Q needed to be rezoned to accommodate its proposed development project.

Vice Chair Shulman reiterated the question and concern she expressed at the November 14 meeting about removal of the guest parking requirement for multifamily housing. Director Ayers said that the City's engineering subconsultant had provided the data from the Institute of Transportation Engineers' *Parking Generation Manual*, which indicated an observed vehicle parking demand of 1.3 stalls average per unit in a multifamily development. Director Ayers acknowledged that fewer parking stalls could create an inconvenience for people who would have to traverse a longer distance between their cars and their destinations; however, excessive and potentially infrequently used asphalt-paved parking stalls also have negative environmental impacts in the form of intensified urban heat islands, increased stormwater runoff and poorer water quality, and less area available for heat-mitigating and water quality restorative landscaping. Director Ayers added that the recommended amendment to remove guest parking requirements from the Zoning Code was based on specific language in adopted Housing Element policy.

Vice Chair Shulman asked if the recommendation to eliminate guest parking gave consideration to fair housing obligations or accessibility requirements for persons with disabilities. Director Ayers advised that Title 24 Accessibility requirements mandate accessible parking stalls based on ratios of accessible stalls to standard stalls as specified in Building Code. Removal of guest parking requirements from the City's Zoning Code did not waive a developer's obligation to provide accessible parking stalls in accordance with Title 24 Accessibility standards. Director Ayers reiterated that staff's recommendation was to reduce the minimum off-street parking stall requirements in the Zoning Code, and that a housing developer could elect to provide more parking stalls than the minimum required. Vice Chair Shulman stated that she still believed elimination of guest parking was a mistake, and that the increased runoff or heat from additional guest stalls was not going to make a difference. She re-iterated her concern for herself and others with mobility issues who might have to wait for parking spaces or cross long distances to get to residences where driveways were shared and on-street parking was unavailable.

Chair Enea said that development proposals come before the Planning Commission for approval, and the Commission could consider the parking proposed with the development. Director Ayers added that the Commission could ask but could not require, as a condition of permit approval, that a developer provide more than the minimum number of parking stalls required by the Zoning Code. She re-iterated that the recommendation was to require 1, 1.5 or 2 stalls per multifamily unit, depending on bedroom count, and that some units might be overparked for the number of occupants. She re-stated that developers could choose to provide more than the minimum number of stalls required. She reminded the Commission of the Site Plan Review Permit amendment considered by the Commission at their November 1, 2023 special meeting, stating that the applicant for that project chose to provide off-street parking when none was required because providing off-street parking made his units more marketable.

Chair Enea said that, in his neighborhood, off-street parking was limited and people sometimes had to park a good distance from their destination. Speaking to concerns expressed earlier about low unit counts making sites unbuildable, Chair Enea referenced Site Q on the corner of Clayton Road and Peacock Creek Drive. He stated that the owner of that property said that it was difficult to market the property with 30 townhouse units, and the developer of that site was looking for a means to increase the number of units to 60 to make the project more economically viable. Chair Enea said that housing that gets built in Clayton with a certain number of units would have to have affordable units. The City could not stop affordability, and the City could be fined if it tried to get around current State laws requiring affordable housing. The laws could change, but current State legislative leaders supported housing. He saw nothing wrong with building houses of

a variety of sizes; not all units had to have 2,000 or more square feet of floor area. He was glad to see the housing allocation being met and the Zoning Code being updated.

There being no further comments from Commissioners, Chair Enea invited a motion on the item. Commissioner Richardson moved to adopt the resolution attached to the staff report, recommending City Council approval of the proposed amendments to Clayton Municipal Code Title 17 (Zoning) to implement adopted General Plan Housing Element policy, rezone properties in conformance with the Housing and Land Use Elements, clarify administrative procedures, and align with State law. Vice Chair Shulman seconded the motion. The motion passed by vote of 5 to 0.

8. COMMUNICATIONS

There were no communications from staff or Commissioners.

9. ADJOURNMENT

The meeting was adjourned at 7:50 p.m. to the next regular meeting of the Planning Commission on December 12, 2023.

Respectfully submitted:

Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:

Richard Enea, Chair



AGENDA REPORT

To: Honorable Chair and Planning Commissioners

From: Dana Ayers, AICP
Community Development Director

Date: February 27, 2024

Subject: Agenda Item 7.A
Request for Extension of Approval of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Development

SUMMARY

This is a public hearing to consider a request by Doug Chen of West Coast Home Builders, Inc. (Applicant), for a second, one-year extension to exercise the Development Plan Permit approval granted by the Clayton City Council on June 29, 2021, for the Oak Creek Canyon Residential Development (Project). The Project encompasses grading and site preparation, removal of nine of the 21 existing trees on the property, installation of a new roadway and utilities infrastructure, and construction of six detached single-family residences ranging from approximately 3,049 to 4,488 square feet in area and between 23 to 32 feet in height, along with Project-related landscaping, drainage, fencing, lighting, and retaining walls on a 9.03-acre property located on the north side of Marsh Creek Road at its intersection with Diablo Parkway (Assessor's Parcel No. [APN] 119-070-008).

At its meeting of June 29, 2021, the City Council adopted the Oak Creek Canyon Final Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) in accordance with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code section 21000 *et seq.*), and the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000 *et seq.*). No additional findings are necessary for CEQA compliance for the current request for extension of entitlements of the approved Project.

RECOMMENDATION

Staff recommends that the Planning Commission open the public hearing and accept testimony, close the public hearing, and adopt the attached Resolution approving a one-year extension of development permit approvals for the Oak Creek Canyon Residential Project to February 19, 2025.

PROJECT INFORMATION

Developer/Property Owner:	West Coast Home Builders, Inc. 4021 Port Chicago Highway Concord, CA 94520
Acreage/Location:	9.03 acres on the north side of Marsh Creek Road at its intersection with Diablo Parkway, APN 119-070-008
General Plan Designation:	Private Open Space (PR), and Single-Family Low-Density (LD, 1.1 to 3 units per acre)
Marsh Creek Road Specific Plan Designation:	Private Open Space, and Low-Density Residential
Zoning Classification:	Planned Development (PD)
Environmental Review:	On June 29, 2021, the City Council, on appeal, adopted Resolution No. 38-2021 adopting the Final IS/MND and MMRP for the Oak Creek Canyon Residential Project (ENV-02-16), in accordance with the California Environmental Quality Act (CEQA, Public Resources Code section 21000 <i>et seq.</i>) and section 15074 of the State CEQA Guidelines (California Code of Regulations section 15000 <i>et seq.</i>)
Public Notice:	On February 16, 2024, notice of the public hearing to consider the extension of approval of the Project's Development Plan Permit (DP-01-19) was posted at the notice boards at Clayton City Hall, Clayton Community Library, and Ohm's posting board 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.

BACKGROUND

The approved Oak Creek Canyon Residential Development consists of subdivision of the proposed Project site into six single-family lots, construction of six single-family residences with at least one accessory dwelling unit, and installation of related infrastructure, including a 20-foot-wide paved private road and a detention basin on Project Lot 6. The entitlements approved for the project included a General Plan Land Use Map Amendment (GPA-02-18), Marsh Creek Road Specific Plan (MCRSP) Land Use Map Amendment (SPA-01-18), Zoning Map Amendment (ZOA-01-18), a Vesting Tentative Map for subdivision to create the residential lots (MAP-01-16); Development Plan Permit for the architecture of the proposed residences and related landscaping, drainage, fencing, lighting, and retaining walls (DP-01-19); and a Tree Removal Permit to

remove nine of the 21 trees on the Project site (TRP-31-19). The 9.03-acre site of the approved Project is on the north side of Marsh Creek Road at its intersection with Diablo Parkway, APN 119-070-008.

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. With these concerns, the Commission directed staff to prepare findings and a resolution (Resolution No. 01-2021) recommending denial of the Project without prejudice, which the Commission adopted on March 9, 2021. The Commission's adoption of Resolution No. 01-2021 recommending denial of the Project without prejudice terminated proceedings on the Project in accordance with Government Code section 65856.

The Applicant subsequently appealed the Planning Commission's denial of the Project and made modifications to the plan details of the Project to address inconsistencies and other concerns identified at the Commission's public hearings. On June 29, 2021, the City Council conducted a public hearing on the appeal of the Project's denial. After closing the 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 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.

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.

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.¹ 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.

¹ 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.

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. Following a 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.

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. See Attachment B for Applicant's letter requesting a second extension of the entitlement.

Staff notes that, while the extension of approval of the Development Plan Permit is requested due to its expiration date of February 19, 2024, no extension request needed to be filed for the approvals of the IS/MND, General Plan Amendment, MCRSP Amendment and Zoning Map Amendment, as those actions are not permit entitlements and therefore do not expire. Additionally, no extension request needs to be filed for the Vesting Tentative Map approval, which is valid for three years from the effective date of its approval and does not expire until August 19, 2024 (CMC sections 16.08.029 and 16.40.080). The Tree Removal Permit expired 90 days after the effective date of the entitlement; before construction of the Project commences, the Applicant will need to apply for a new Tree Removal Permit, which can be administratively approved by City staff (CMC section 15.70.030.A).

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, and in their request, has stated intent to submit a second draft Final Map for the subdivision within the next 3 months, and prior to the August 19, 2024 expiration of the Vesting Tentative Map.

The Applicant requests no amendments that would trigger new discretionary review or revision of the development entitlements previously granted by the City. With the extension, all Conditions of Approval adopted by the City Council with Resolution No. 41-2021 would continue to be applicable to the Project, and no new CEQA determination would be needed. Should the Planning Commission approve the extension with additional conditions, any such conditions should be reasonably required and limited to address a change to the site or Project that has occurred since the original approval of the Project.

PUBLIC COMMENTS

As of the writing of this agenda report, City staff has not received any comments on the extension request.

ATTACHMENTS

- A. Proposed Resolution
- B. Applicant's Extension Request
- C. City Council Resolution No. 41-2021
- D. Project Plans Approved June 28, 2021, online at <https://claytonca.gov/fc/agendas/council/Addendum-to-Oak-Creek-Canyon-Staff.pdf>
- E. Vicinity Map

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

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 27th day of February 2024.

AYES:

NOES:

ABSTAINED:

ABSENT:

APPROVED:

ATTEST:

Richard Enea
Chair

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 1st 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

RECEIVED

FEB 14 2024

**CITY OF CLAYTON
COMMUNITY DEVELOPMENT DEPT.**

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.

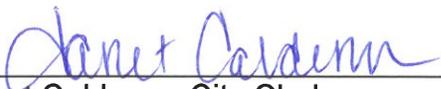
ABSTAIN: None.

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 Review	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.



VICINITY MAP

 <p>CITY OF CLAYTON Founded 1987 Incorporated 1984</p>	<p>Oak Creek Canyon Residential Subdivision APN 119-070-008</p>	 <p>N</p>
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(Not to Scale)