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Attorneys at Law

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February 23, 2024

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

SENT VIA EMAIL

Phone: 925-673-7300

Email: Community Development Director - DanaA@claytonca.gov;

Assistant Planner - MilanS@claytonca.gov

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

Dear City of Clayton Planning Commission,

Last year Jim Moita and I attended a Planning Commission meeting in November. At that time the lawsuit inducing Olivia project's high density and height in the downtown area of Clayton ruffled feathers with many Clayton residents.

At the time this Oak Creek Canyon ("Project") was entitled, the City of Clayton's RHINA allocation was 141 units. This year's Housing Element Updated, 6th Cycle 2023 – 2031, it is clear the City must build additional housing to a tune of 570 units by 2031.¹ As a potential path to realistically achieving this goal, the City should continue to revisit the Marsh Creek Road Specific Plan for which this Oak Creek Canyon development project is among the first keys to unlocking access, utilities, and storm drainage infrastructure.

Given the significant delay in this project's development, seeing that the original entitlements were granted in 2021, we feel that it is wholly appropriate for the Planning Commission to revisit the project with fresh eyes. We have some comments related to existing conditions of approval, but more importantly a significant deviation from the Marsh Creek Road Specific Plan's ("MCRSP") Infrastructure Element.

While we believe the existing conditions of approval are clear, we propose the following conditions of approval be amended to leave no doubt that the 48' right of way road improvements shall serve as the gateway to Subsection A of the MCRSP.

¹ City of Clayton Housing Element Revised December 2023



Condition of Approval # 122

Existing Language:

122. _____ 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.

Suggested Modification:

122. _____ 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~~ **to** adjoining property owners. Refer also to Advisory Notes. (~~Strike Through~~ & **Bold**)

Condition of Approval # 85

Per condition of Approval 85, given Mr. and Mrs. Moita are the only current residents whose physical access and address will be changed, we respectfully request the road be named Diablo Road with their address bearing the name 1 Diablo Road, consistent with City Council Resolution No. 68-2003.

**NON-CONFORMANCE WITH MARSH CREEK ROAD SPECIFIC PLAN
INFRASTRUCTURE ELEMENT**

The current project, as approved in 2021 is not in conformance with the MCRSP’s requirements in that the Project does not provide adequate approximate runoff storage detention sizing as memorialized and defined in Table 5 on page 117 of the MCRSP.

The Marsh Creek Road Specific Plan at page 117 states:

**Table 5
RUNOFF DETENTION REQUIREMENTS**

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

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

^b Peak Only Storage is the storage required to maintain the maximum outflow at the predevelopment level for the design storm. This is a lower bound on the estimate of required storage.



“Detention basins should be located as follows:

- Development Area A: At the mouth of Oak Creek Canyon on the North State Development property near the intersection of Marsh Creek Road and Diablo Parkway, and/or along the general alignment of Oak Creek.”
Marsh Creek Road Specific Plan, at pg 117

The MCRSP is clear in defining the Project site’s location as the designated detention location for the entirety of Subsection A. The Project’s proposed detention is wholly inadequate and falls significantly short of the 7.8 Acre Feet required by the plan. While it is understandable that the City is only requiring this Project to build out a detention facility with capacity to serve the immediate project, the concern and issues lies in the fact that the Project now divorces itself entirely from the MCRSP’s Chapter IX Infrastructure Element’s planning for Subsection A’s detention infrastructure.

In fact, the approved plan modified the land use to allow for an additional home, specifically Lot 6, to be built on the prior identified detention location. This unfairly deprives the Moitas, successors in interest to the Heartland properties, of their rights with respect to the MCRSP. The Staff Report provides zero analysis or justification for granting such deviation. Attached you will find a copy of the Moitas financial contribution contract for planning of this area from 1992.

By granting an extension at this time, the city opens the door to legal liability anew for judicial mandamus review of the inconsistencies between the Project and the MCRSP, and potentially a fresh claim for a regulatory taking. We therefore respectfully request the City to continue this item until the sufficiency of the detention basin to serve Subsection A of the MCRSP can be properly evaluated by the City Engineer, and if needed –and as we suspect—the proposed plan can be modified to accommodate Subsection A’s detention basin needs and be found in conformance with the MCRSP.

As outlined in the 2005 letter from Heartland (#4 attachment below) we would like to clear title for the City and for ourselves. The Moitas, in good faith, have approached the Seeno’s with the agreement that proposed funding/access agreement that clears the issue that Heartland wrote to the City to clear 24 years ago.

Given the City’s 570 net new unit allocation under the 6th RHINA Cycle, we believe it is prudent for the City to evaluate this Project carefully to not stem future development of the MCRSP to necessitate future density similar to the Olivia project within Clayton’s already built out city. This may take some time so we would appreciate if the decision on the 1-year extension be delayed at a minimum 60 days until the storm drain basin sizing sufficiency is answered and we can work with Albert Seeno II to hopefully resolve our ongoing access issue by Seeno signing the proposed funding/access agreement.

I have also attached the following documents:



1. Draft funding/access Agreement that Albert Seeno III provided when he controlled the project 3 years ago.
2. Updated draft funding/access Agreement sent to Albert Seeno II (who is controlling the project in 2024) last week.
3. Copy of 1992 contract between Jim Moita and the City of Clayton for a specific analysis of the 32 acres owned by Moita at that time.
4. Heartland letter dated 2005 requesting to clear title issues caused by City, Seeno, and Heartland in a joint agreement. Note the current drafted funding/access agreement clears title moving forward which is what should be completed now to avoid problems in the future.
5. Relevant Sections of the Approved 1995 Marsh Creek Road Specific Plan (1995 MCRSP).

A handwritten signature in blue ink, appearing to read "Vincent Moita", written over a horizontal line.

Vincent Moita
Attorney at law

Attachment 1

2021 Seeno Funding Agreement

FUNDING AGREEMENT

This Funding Agreement ("Agreement") is made this [] day of June, 2021 by and between West Coast Home Builders, Inc. ("West Coast") and Clayton Estates, LLC ("Clayton Estates"), sometimes collectively referred to herein as "the parties".

- A. West Coast is the owner of certain real property in the City of Clayton ("City") described in Exhibit "A" hereto for which it has applied for approval by the City of a six (6) single family residential unit project commonly known as Oak Creek Canyon, Subdivision 6826 ("Project"). The Project Vesting Tentative Map (VTM) is generally shown in Exhibit "C" attached hereto.
- B. Clayton Estates is the owner of certain real property in the unincorporated area of Contra Costa County described in Exhibit "B" hereto located adjacent to Oak Creek Canyon which it intends to develop for residential uses. Under the 1995 Marsh Creek Road Specific Plan ("MRCSP"), Clayton Estates, subject to agency approvals, may develop single family residential units within its property.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. In the event that the Project is approved by the City, and the City accepts the offer of dedication by West Coast of the 48' right of way (R/W) depicted in the VTM as "Saltbrush Lane", then West Coast shall, subject to approval by the City, construct Saltbrush Lane to 32' wide pavement (instead of 24' wide pavement to serve the Project) as shown in the VTM, which construction includes extending the Project's wet utilities (water and sanitary sewer) and joint trench (electric, phone, and cable), all within Saltbrush Lane, to the approximate termination of Saltbrush Lane (or at locations to be approved by agencies/entities with jurisdiction) in order to avoid grading or encroaching into Clayton Estates land. As noted in the VTM, West Coast will make an offer of dedication to the City, on the final map, for Saltbrush Lane.

Parties recognize that Saltbrush Lane as shown in the VTM is a placeholder street name, and that the actual name will be subject to City approval once the Project advances to final map after entitlement approval. At such time, West Coast will submit "Oak Creek Canyon Drive" as the preferred name.

2. In good faith, Clayton Estates agrees to advance funds toward reimbursing West Coast for the costs of constructing Saltbrush Lane as 32' wide pavement by payment in full to West Coast the sum of \$100,000. West Coast shall provide Clayton Estates with 30 calendar days prior written notice of its contracting for the Saltbrush Lane paving work. Within fifteen calendar days of such notice, Clayton Estates shall deposit the full sum of \$100,000 into an accommodation escrow account with Old Republic Title Company in Concord CA

(attn Donna Jones). Should Clayton Estates fail to make said deposit within said time limit, this Agreement shall be void, notwithstanding any other provisions herein. Upon mobilization of West Coast's contractor, evidenced by written notice by said contractor, and grading and improvement permits to include the 32'-wide road, such funds shall be released to West Coast, without the need for further instruction from Clayton Estates.

3. Clayton Estates' funding obligations set forth herein shall remain in effect even if Saltbrush Lane is not accepted by the City as a public road such that it remains as private road to be maintained by the benefitting property owners. In such case, in addition to its reimbursement obligation to West Coast, Clayton Estates shall share in the maintenance costs of Saltbrush Lane with the Oak Creek Canyon property owners in perpetuity. Initially, Clayton Estates' share of such maintenance costs shall be 25% (which is 8' divided by 32'), which shall be increased to reflect its pro-rata fair share should Clayton Estates receive approval for additional dwelling units within its property, Clayton Estates may seek to expand and modify the Detention Basin system located on the Project, subject to City of Clayton and other relevant entity approvals. Clayton Estates shall be solely and fully responsible for such modification and/or expansion, including all expenses, planning, engineering, permitting, compliance, construction, restoration, etc. West Coast shall have no obligation whatsoever directly or indirectly related to such modification and/or expansion.
4. Neither party will oppose or interfere the other party's project (including entitlement and post-entitlement approvals).
5. The parties acknowledge that the Clayton Estates property has not yet been approved for development. Neither party is aware as to whether or not Clayton Estates' project will be approved or whether the applicable jurisdiction will approve the use of Saltbrush Lane for use by the Clayton Estates development. The funding obligations set forth herein shall remain in full force and effect regardless of whether or not Clayton Estates' project or the use of Saltbrush Lane for the Clayton Estates property are approved.
6. Nothing herein is intended to supersede or amend any prior agreements, or the reimbursement provisions in the MCRSP. This Agreement shall be binding on and inure to the benefit of the parties and their successors.
7. West Coast shall not interfere with the existing paved access road or Clayton Estates' use and enjoyment thereof. However, if required by the City, Clayton Estates will, at its sole cost and expense, remove all encroachments within West Coast property.
8. Upon acceptance by the applicable agency having jurisdiction on Saltbrush Lane, Jim and Julie Moita, Clayton Estates LLC and their invitees, successors and assigns, shall have access on and over the new road, subject to the terms of the executed License Agreement per Section 11.

9. A covenant shall be included in the HOA for home purchasers of the Project, stating that homes may be constructed on Subdivision A of the MCRSP and City of Clayton General Plan.
10. Once the City has approved West Coast's grading and improvement plans, West Coast agrees to authorize the City to release such plans to Clayton Estates.
11. West Coast shall execute a License Agreement to provide Clayton Estates access over Saltbrush Lane. Said License shall be deposited in escrow with Old Republic Title Company and shall be released to Clayton Estates upon the completion of Project grading and improvement, and the City's release of all bonds for said grading and improvement, provided that the full sum of \$100,000 has been released to West Coast.

Miscellaneous Provisions:

Governing Law: This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. Any court action arising under this Agreement shall be filed and tried in the Superior Court of Contra Costa County.

Interpretation: This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purpose of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. All parties have been represented by competent counsel in the negotiation and preparation of this Agreement.

Severability: In any provision of this Agreement is to be determined by a court to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purpose of this Agreement.

Successors in Interest: The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.

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

WEST COAST HOME BUILDERS, INC.
A California Corporation

CLAYTON ESTATES, LLC.
A California limited liability company

By: _____
Name: Albert D. Seenoo, III
Title: President

By: _____
Name: Jim J. Moita
Title: Managing Member

Attachment 2

2024 Seeno Funding Agreement

FUNDING AGREEMENT

This Funding Agreement ("Agreement") is made this day of _____ 2024 by and between West Coast Home Builders, Inc. ("West Coast") and Clayton Estates, LLC ("Clayton Estates"), sometimes collectively referred to herein as "the parties".

- A. West Coast is the owner of certain real property in the City of Clayton ("City") described in Exhibit "A" hereto for which it has applied for approval by the City of a six (6) single family residential unit project commonly known as Oak Creek Canyon, Subdivision 6826 ("Project"). The Project Vesting Tentative Map (VTM) is generally shown in Exhibit "C" attached hereto.
- B. Clayton Estates is the owner of certain real property in the unincorporated area of Contra Costa County described in Exhibit "B" hereto located adjacent to Oak Creek Canyon which it intends to develop for residential uses. Under the 1995 Marsh Creek Road Specific Plan ("MRCSP"), Clayton Estates, subject to agency approvals, may develop single family residential units within its property.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. In the event that the Project is approved by the City, and the City accepts the offer of dedication by West Coast of the 48' right of way (R/W) depicted in the VTM as "Saltbrush Lane", then West Coast shall, subject to approval by the City, construct Saltbrush Lane to 32' wide pavement (instead of 24' wide pavement to serve the Project) as shown in the VTM, which construction includes extending the Project's wet utilities (water and sanitary sewer) and joint trench (electric, phone, and cable), all within Saltbrush Lane, to the approximate termination of Saltbrush Lane (or at locations to be approved by agencies/entities with jurisdiction) in order to avoid grading or encroaching into Clayton Estates land. As noted in the VTM, West Coast will make an offer of dedication to the City, on the final map, for Saltbrush Lane.

Parties recognize that Saltbrush Lane as shown in the VTM is a placeholder street name, and that the actual name will be subject to City approval once the Project advances to final map after entitlement approval. At such time, West Coast will submit **“Diablo Road” as the preferred name. The existing Moita residence address to become “1 Diablo Road.”**

2. In good faith, Clayton Estates agrees to advance funds toward reimbursing West Coast for the costs of constructing Saltbrush Lane as 32' wide pavement by payment in full to West Coast the sum of \$100,000. West Coast shall provide Clayton Estates with 30 calendar days prior written notice of its contracting for the Saltbrush Lane paving work. Within fifteen calendar days of such notice, Clayton Estates shall deposit the full sum of \$100,000 into an accommodation escrow account with Old Republic Title Company in Concord CA

(attn Donna Jones). Should Clayton Estates fail to make said deposit within said time limit, this Agreement shall be void, notwithstanding any other provisions herein. Upon mobilization of West Coast's contractor, evidenced by written notice by said contractor, and grading and improvement permits to include the 32'-wide road, such funds shall be released to West Coast, without the need for further instruction from Clayton Estates.

3. Clayton Estates' funding obligations set forth herein shall remain in effect even if Saltbrush Lane is not accepted by the City as a public road such that it remains as private road to be maintained by the benefiting property owners. In such case, in addition to its reimbursement obligation to West Coast, Clayton Estates shall share in the maintenance costs of Saltbrush Lane with the Oak Creek Canyon property owners in perpetuity. Initially, Clayton Estates' share of such maintenance costs shall be 25% (which is 8' divided by 32'), which shall be increased to reflect its pro-rata fair share should Clayton Estates receive approval for additional dwelling units within its property, Clayton Estates may seek to expand and modify the Detention Basin system located on the Project, subject to City of Clayton and other relevant entity approvals. Clayton Estates shall be solely and fully responsible for such modification and/or expansion, including all expenses, planning, engineering, permitting, compliance, construction, restoration, etc. West Coast shall have no obligation whatsoever directly or indirectly related to such modification and/or expansion.
4. Neither party will oppose or interfere with the other party's project (including entitlement and post-entitlement approvals).
5. The parties acknowledge that the Clayton Estates property has not yet been approved for development. Neither party is aware as to whether or not Clayton Estates' project will be approved or whether the applicable jurisdiction will approve the use of Saltbrush Lane for use by the Clayton Estates development. The funding obligations set forth herein shall remain in full force and effect regardless of whether or not Clayton Estates' project or the use of Saltbrush Lane for the Clayton Estates property are approved.
6. **This agreement is** intended to supersede or amend any prior agreements, or the reimbursement provisions in the MCRSP. This Agreement shall be binding on and inure to the benefit of the parties and their successors.
7. West Coast shall not interfere with the existing paved access road or Clayton Estates' use and enjoyment thereof. However, if required by the City, Clayton Estates will, at its sole cost and expense, remove all encroachments within West Coast property.
8. Upon acceptance by the applicable agency having jurisdiction on Saltbrush Lane, Jim and Julie Moita, Clayton Estates LLC and their invitees, successors, and assigns, shall have access on and over the new road, subject to the terms of the executed License Agreement per Section 11. **Jim and Julie Moita agree to drive on new road only after Seeno builds and sells three new homes within the subdivision.**

9. A covenant shall be included in the HOA for home purchasers of the Project, stating that **the detention basin along Marsh Creek Road may be enlarged and residential homes may be constructed on the adjoining 164 acres shown on Exhibit B and planned** per the MCRSP and City of Clayton General Plan.
10. Once the City has approved West Coast's grading and improvement plans, West Coast agrees to authorize the City to release such plans to Clayton Estates.
11. West Coast shall execute a License Agreement **as shown and attached in Exhibit C** to provide Clayton Estates access over Saltbrush Lane. Said License shall be deposited in escrow with Old Republic Title Company and shall be released to Clayton Estates upon the completion of Project grading and improvement, and the City's release of all bonds for said grading and improvement, provided that the full sum of \$100,000 has been released to West Coast.

Miscellaneous Provisions:

Governing Law: This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. Any court action arising under this Agreement shall be filed and tried in the Superior Court of Contra Costa County.

Interpretation: This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purpose of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. All parties have been represented by competent counsel in the negotiation and preparation of this Agreement.

Severability: In any provision of this Agreement is to be determined by a court to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purpose of this Agreement.

Successors in Interest: The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.

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

WEST COAST HOME BUILDERS, INC.
A California Corporation

CLAYTON ESTATES, LLC.
A California limited liability company

By:
Name: Albert D. Seenoo, II
Title: President

By:
Name: Jim J. Moita
Title: Managing Member

Attachment 3

Letter of Agreement for Site Specific Analysis of the
Moita Property as Part of the Marsh Creek Road
Specific Plan EIR



CITY OF CLAYTON

Founded 1857... Incorporated 1964

P.O. Box 280 • CLAYTON, CALIFORNIA 94517
TELEPHONE (510) 672-3622

Telephones
CITY HALL (510) 672-3622
COMMUNITY DEVELOPMENT (510) 672-6690
ENGINEERING (510) 672-9700

City Council

GREGORY J. MANNING, *Mayor*
WILLIAM R. WALCUTT, *Vice Mayor*
ROBERT C. KENDALL
PETER A. LAURENCE
JEANNE R. MUSTO

October 27, 1992

Mr. Jim Moita
8117 Marsh Creek Road
Clayton, CA 94517

**SUBJECT: LETTER OF AGREEMENT FOR SITE SPECIFIC ANALYSIS OF THE
MOITA PROPERTY AS PART OF THE MARSH CREEK ROAD
SPECIFIC PLAN EIR**

Dear Mr. Moita:

This letter is intended to serve as a three-party agreement between you, the City of Clayton and Brady and Associates, Inc. for inclusion of your property in the Marsh Creek Road Specific Plan and for project-specific analysis of the proposed development plan on your property in the Specific Plan EIR. Your signature on this letter will indicate your agreement to have the attached Scope of Work, dated October 13, 1993, completed for your property. The Scope of Work has been prepared by Brady and Associates, the City's consultants for the Specific Plan and EIR.

The Scope of Work is designed to provide the level of environmental review required by State law to allow for potential development, shown on a plan dated September 4, 1992, on your parcel without further environmental review after adoption of the Specific Plan. This means that the consultant team will complete site-specific surveys for geological and hydrological conditions, and biological and archaeological resources on your site. The consultants will carefully review land use, noise and visual factors to ascertain the potential impacts of any allowed development. The consultant team will also develop mitigation measures for allowed development on your site as necessary.

The level of environmental review completed will be specifically tied to the proposed site plan dated September 4, 1992. After the Specific Plan is approved, if you were to submit a development proposal that did not conform to the site plan reviewed, it is likely that your proposal would require additional environmental review at an additional expense.

RECEIVED

NOV 30 1992

CITY OF CLAYTON

Mr. Moita
October 27, 1992
Page 2

Your total cost for the site-specific environmental analysis under this Scope of Work will be as follows:

- Specific Plan Fee (reimbursement for the existing Specific Plan and EIR scope of work to Heartland Partnership) @ \$144 per acre for the entire area of the parcel in question (32²⁵ acres) *JM R# SM* *3,600 JM R# SM*
\$4,608
 - Fee for the enclosed Scope of Work \$15,670
 - City administration fee (15% of \$15,670) \$2,351
- Total \$22,629
21,621 JM R# SM

Your total fee for the project is to be deposited to the City of Clayton within 20 days of your signing this letter. The City will make payments to Brady and Associates as work is completed.

This Letter of Agreement and the Scope of Work do not ensure that a specific level or type of development will be allowed on your property as a result of the Specific Plan.

Project delays beyond the control of the consultant, changes in the project and/or project description, or changes in the agreed-upon statement of work will require a contract modification.

If you agree to this Scope of Work, please sign this Letter of Agreement and return all three copies of it to the City of Clayton as soon as possible. Once you have returned this letter, it will be signed by Brady and Associates, and one copy will be returned to you for your files.

Sincerely,



Randall Hatch
Community Development Director

APPROVED

BY: *Jim J. Moita*

Property Owner: Mr. Jim Moita

Date: 11/12/92

APPROVED

BY: *Sheila Brady*
Title: Sheila Brady, Brady and Associates, Inc.

Date: 11/21/92

SCOPE OF SERVICES

■ ■ ■

This scope of services outlines the work program and fees for Brady and Associates and its subconsultants to complete additional work on the Moita site as part of the Marsh Creek Road Specific Plan Environmental Impact Report.

The work described in this scope of work will be completed in conjunction with the Marsh Creek Road Specific Plan, which is being completed under a separate contract. The intent of this additional work would be to allow for full environmental documentation to meet California State law for a potential development proposal for the Moita site, as shown on a plan dated September 4, 1992, and included as Exhibit A.

The Moita site, hereinafter referred to as "the site," is marked on the attached map of the Marsh Creek Road Specific Plan Area, and has a total area of approximately 32 acres.

This Letter of Agreement and the Scope of Work do not ensure that a specific level or type of development will be allowed on your property as a result of the Specific Plan.

A. Recommended Work Program

In addition to the work carried out for the Marsh Creek Road Specific Plan, this phase of the work will include visits to the site by all relevant members of the consultant team. Site surveys will include specific site visits to ascertain existing visual, geotechnical, hydrological, biotic, and archaeological conditions.

TASK A: BASELINE DATA ANALYSIS

In addition to the general findings made for the Marsh Creek Road Specific Plan, this task will include preparation of additional information on the following factors related to the site. Findings will be documented in both text and maps, as necessary, and will be available for incorporation into appropriate sections of the EIR.

1. Visual and Aesthetic Factors

The specific visual character and form of the site will be described, with emphasis on physical relationships with the rest of the study area and existing areas of the City of Clayton.

Significant viewsheds within or through the site will be examined to identify significant foreground, intermediate, and distant viewpoints. Views from key viewpoints, such as Mt. Diablo State Park, will be evaluated in terms of value, vulnerability, distance, number and situations of potential viewers, extent of view (focused, through, panoramic, intermittent) and scenic quality.

2. Geology, Soils and Seismicity

The Brady and Associates team will review the existing geotechnical and soils report for accuracy, verify its results through review of maps and background data collected for the Heartland project, and recommend necessary building setbacks or mitigation measures based on the results of the review. The results of this report will be incorporated into the EIR.

3. Hydrology

The Brady and Associates team will identify specific hydrological constraints on the site, including potential flooding and the need for on-site detention facilities. This review will include a quantitative analysis of changes in run-off.

4. Vegetation and Wildlife

The Brady and Associates team will complete a site survey to ascertain the existence of rare and endangered species on the site and any other sensitive plant communities or wildlife species. It will also assess any significant trees on site.

5. Archaeological and Historical Resources

A generalized site reconnaissance and records search will be conducted. Visible prehistoric or historic archaeological sites will be identified, and, if necessary, recommendations will be made for further evaluation at additional cost.

TASK B: ENVIRONMENTAL IMPACT ANALYSIS AND PREPARATION

Under the scope of work for the Specific Plan and EIR, the Brady and Associates team will prepare an Environmental Impact Report for the Specific Plan in fulfillment of California Environmental Quality Act (CEQA) and City guidelines. In order to expedite the review process, the EIR will be completed as a part of the Draft Specific Plan. Where information required by CEQA is discussed in the Specific Plan itself, those pages will be summarized and referenced in the EIR, consistent with Section 15150 of the State CEQA guidelines.

Under this additional scope of work, the scope of the EIR will be expanded to include analysis and mitigation measures for the site-specific environmental impacts of development of 10 single-family residences on the 32-acre Moita site as part of the Specific Plan. This analysis will allow for completion of all CEQA-required analysis for development of the site as shown on a plan dated September 4, 1992, and provided that unforeseen on-site resources requiring additional documentation or mitigation are not discovered.

This Letter of Agreement and the Scope of Work do not ensure that a specific level or type of development will be allowed on your property as a result of the Specific Plan.

Analysis of the following topics will specifically be expanded:

1. Visual and Aesthetic Factors

Impacts of the site development on the visual character of the site and its vicinity, including blockage of significant views.

2. Geology, Soils and Seismicity

Potential impacts and mitigation measures for on-site development in keeping with the site's geotechnical and soils evaluation.

3. Hydrology

Quantitative evaluation of increases in run-off and identification of necessary measures to mitigate increases such as detention facilities.

4. Vegetation and Wildlife

Identification of impacts on identified rare and endangered species and other significant biotic resources. Appropriate development restrictions or setbacks will be identified for each of these biotic factors. If rare and endangered species are found on the site, additional effort to prepare a full mitigation program may be necessary, at an additional cost, before development can occur.

5. Archaeological and Historical Resources

Development impacts on identified archaeological and historical resources on the site. Mitigation measures for cultural resources known to exist on the site will be formulated.

6. Alternatives Analysis

Two alternatives will be analyzed including the "No Project" Alternative and a Mitigated Site Plan Alternative.

B. Project Costs

The Work Program described in this document will be completed for a total cost of \$15,670. An itemized breakdown of costs is shown in Table 1. The cost includes the preparation of necessary graphics in finished form as outlined in the Work Program.

Table 1
PROJECT COSTS

Brady and Associates	
Labor	\$9,420
Expenses	400
Total Brady and Associates	\$9,820
Subconsultants	
Alan Kropp and Associates, Geology	\$1,500
Philip Williams and Associates, Hydrology	2,400
Dr. Philip Northen, Biology	1,200
Suzanne Baker/Laurence Shoup, Archaeology	750
Total Subconsultant	\$5,860
TOTAL CONTRACT FEE	\$15,670

Attachment 4

Heartland Letter - 2005

HEARTLAND

April 1, 2005

RECEIVED

APR 4 2005

CLAYTON COMMUNITY
DEVELOPMENT DEPT.

Jeremy Graves, Community Development
City of Clayton
6000 Heritage Road
Clayton, CA 94517
CC: Julie Pierce

RE: Marsh Creek Road Specific Plan

Dear Jeremy:

This letter is to formally request that the Clayton City Council pursue the annexation of the lands that are most suitable for development that were within the Marsh Creek Road Specific Plan, including the 40 acres that we currently own under Heartland California Clayton Limited Partnership.

Beginning almost 18 years ago, we worked with the City through extensive public meetings to identify what lands along Marsh Creek Road were the most appropriate for development. The area eventually identified amounted to only a fraction of the area originally considered. In working with the City, the water district and Contra Costa County, we paid several hundred thousand dollars to enlarge the water tank to serve this limited area when Oakhurst was being developed. We also advanced over half of a million dollars to pay the various consultants engaged by the City for the Marsh Creek Road Specific Plan process.

As I believe you know, when the real estate market was severely affected in the later 1990's and we had not been able to annex our property and commence development, we ended up having to return a substantial part of our property to the underlying lien holder that resulted in a further loss to us. At this time, we continue to own a 40- acre parcel that was identified as an area appropriate for development in the Marsh Creek Road Specific Plan.

Given the extensive public involvement over numerous years that indicated that our 40 acres and portions of the land now managed by Jim Moita were appropriate to be annexed and developed for relatively very limited residential uses, we urge the City Council to work with Contra Costa County in completing this long awaited annexation.

On another matter that I would like to bring to your attention, we have not been able to sell or develop our property over the ensuing years because the City and West Coast Home Builders, unbeknownst to us, became parties to an old development agreement that we had with West Coast when the City asked us to obtain one main point of access from Marsh Creek Road through West Coast's property. This development agreement between the City and West Coast now adversely affects the title to our property preventing us from being able to sell our property. While we

524 SECOND AVENUE
SUITE 200
SEATTLE, WA 98104

TEL 206.682.2500
FAX 206.467.1429

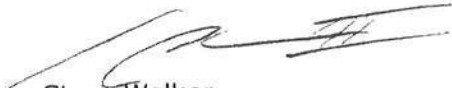
HEARTLANDLLC.COM
HTLAND.COM

ATTACHMENT 5
(2 PAGES)

could pursue costly legal action, we have been promised that at such time that the City and West Coast Home Builders have completed the entitlements for the Oak Creek Canyon Residential Subdivision that are currently being processed through the City, that the development agreement will be terminated and the title restriction on our property will be removed. We are in support of the entitlements that West Coast is asking for. What we request is for the City to require and follow through with the termination of this development agreement as a condition of issuing these entitlements.

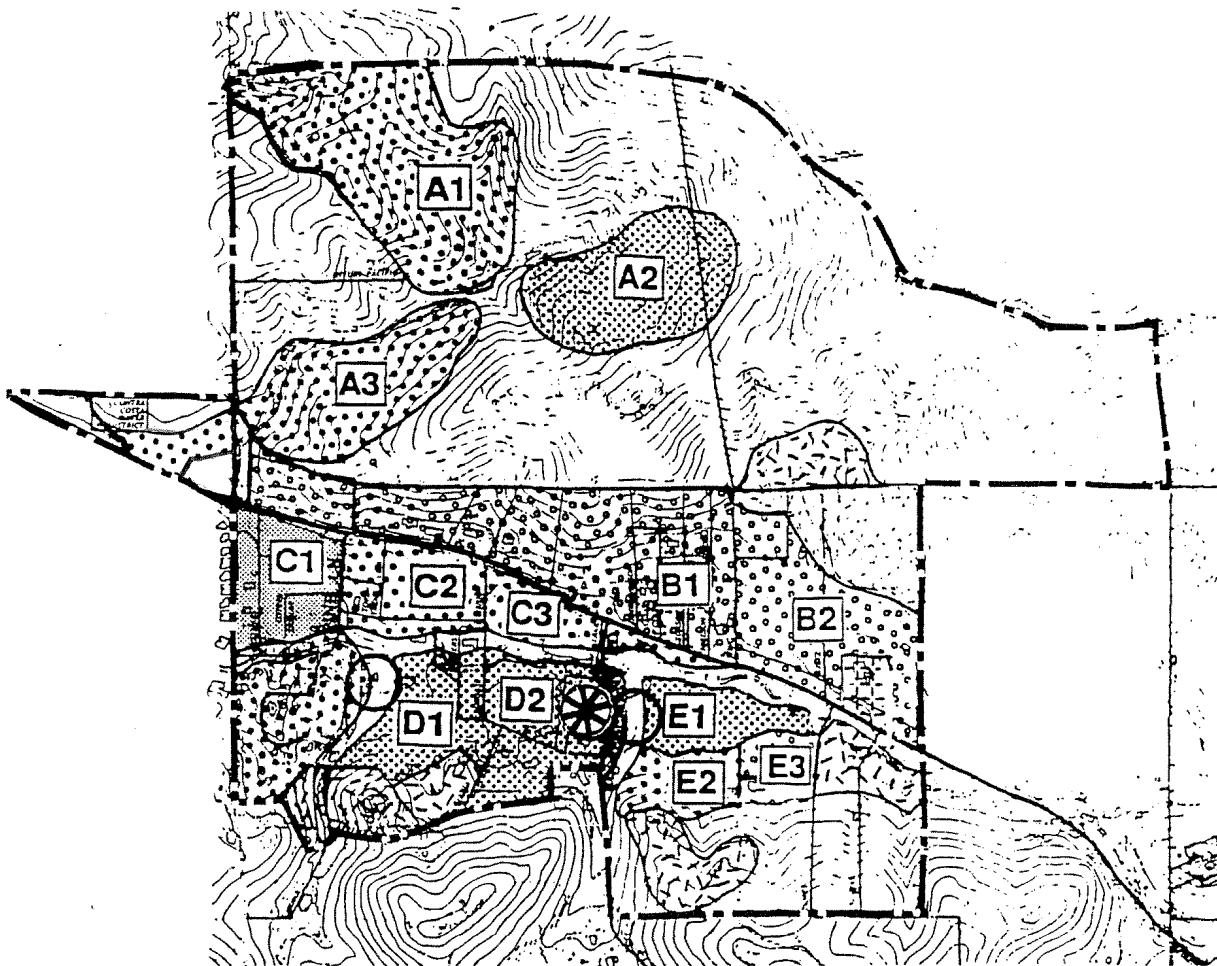
Thank you for considering my requests.

Sincerely,












A handwritten signature in black ink, appearing to read "Steve Walker", written over a horizontal line.

Steve Walker
Managing Director

Attachment 5
Relevant Sections
of
Marsh Creek Road Specific Plan

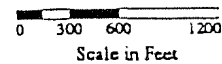


Legend

-  Specific Plan Boundary
-  Ranchette Residential
1 unit/5 acres
-  Rural Residential
0.21 - 1.1 units/acre
-  Low Density Residential
1.11 - 1.5 units/acre
-  Medium Density Residential
1.51 - 2.2 units/acre
-  Suburban Density Residential
2.21 - 3.0 units/acre
-  Convenience Commercial
-  Open Space
-  Conceptual Location of Potential Park Site
-  Historic Building and Potential Park Sites
-  Development Area Designation



5 Acres



Scale in Feet

**MARSH
CREEK
ROAD
SPECIFIC
PLAN**



FIGURE 6

Land Use Designations

Amended by Resolution 14-2005, dated 4/5/05

C. Storm Drainage

Policy IN-6: Development under the Specific Plan shall not cause increases in peak flood flows in Mount Diablo Creek inside or downstream of the study area, as calculated for the 5, 10, 25, 50 and 100-year storms of durations to be determined by the Contra Costa County Flood Control and Water Conservation District.

The proposed development areas within the planning area drain to Mount Diablo Creek through the tributary creeks, natural swales, and existing culverts identified in Baseline Data Report #2. Drainage sub-basins in the planning area are shown in the Baseline Data Report. The proposed development areas shown in Figure 6 are generally within individual sub-basins.

1. Drainage Requirements

The drainage systems within each development area will be defined by local topography and the presence of existing streams and drainage facilities. In some locations, existing drainage culverts will have to be cleaned out and repaired, and natural channels will have to be enlarged and stabilized to provide adequate flow capacities and prevent the localized flooding that now occurs during a heavy rainfall. These improvements will be installed on a site by site basis, as part of the design of individual development areas. All work within existing stream channels and drainage swales will be performed in accordance with the requirements of the Contra Costa County Flood Control and Water Conservation District (CCCFC & WCD) and of the California Department of Fish and Game.

Development within the Specific Plan area would increase the amount of impervious surface at the upstream end of Mount Diablo Creek's watershed. This will decrease the infiltration of rainwater into the ground and increase the rate and total volume of runoff into the creek. In addition, newly installed stormwater collection systems will convey runoff to Mount Diablo Creek more rapidly, which will also contribute to higher peak flows. As described in the Baseline Study, flooding already occurs along several downstream reaches of Mount Diablo Creek, and the City Engineer has stated that Specific Plan area development should not cause any worsening of these existing conditions.

To prevent an increase of downstream flooding, projects developed under the Specific Plan must limit post-development rates of stormwater runoff to predevelopment conditions. Runoff will be controlled through the installation of stormwater detention facilities, which will hold a portion of an area's runoff until the peak of a storm has passed. The stored water will then be slowly released into the drainage system, when flow has subsided and the receiving stream is able to handle the additional runoff. By controlling peak rates of flow, detention basins will also limit the velocity of runoff within stream channels, which will help prevent increased erosion within Mount Diablo Creek and its tributary drainage basin.

2. Detention Sizing

Table 5 shows estimates of future storage needs for each development area, calculated for a 100 year design storm with three hour duration and 3-inch rainfall. These calculations were made for a project of slightly larger size, and represent a conservative estimate. More information on the calculation of these storage requirements is contained in the EIR on the Specific Plan. There would be only minimal changes in run-off in Ranchette areas, since their development would be very dispersed.

3. Drainage Improvements

The actual design of detention basins or other storage facilities, including infiltration rates, outlet structures, and allowable rates of discharge, should be performed in accordance with guidelines set forth by CCCFC&WCD. This analysis cannot be performed until layouts for individual properties are completed by property owners.

Policy IN-6 gives guidance for the design of storm drainage facilities. Facilities are to be designed to mitigate flood flows from storms with recurrence intervals from five to 100 years, which will ensure that adequate drainage is available for large flood events, and that the drainage regime and natural conditions will also not be altered in smaller floods.

In the meantime, however, preliminary plans for drainage improvements in each of the drainage basins can be made. This section looks at two types of development areas: those in which all development would be under the control of a single owner, and those in which development would be controlled by several landowners.

a. Development Areas with One Major Developer. The Heartland and Temps properties, located in Development Areas A and E, respectively, will generally constitute the major development within their individual areas. In these areas, the major developer may be required to acquire and/or set aside land for a surface detention basin near the downstream end of the area. All development must be configured so that it drains to this detention basin before discharging into Mount Diablo Creek.

Table 5
RUNOFF DETENTION REQUIREMENTS

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

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

^b Peak Only Storage is the storage required to maintain the maximum outflow at the predevelopment level for the design storm. This is a lower bound on the estimate of required storage.

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

Detention basins should be located as follows:

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

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