



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, April 29, 2008
Clayton Community Library Meeting Room
6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Vice Chair Catalano to report at the May 6, 2008 City Council meeting.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the regular meeting of April 8, 2008.

Public Hearings

- 3A. **ENV 01-08, Environmental Review, Rivulet Mixed Use Project, Uzoma Nwakuche, 1005 and 1007 Oak Street (APNs 119-050-009 and 119-050-034).** A study session to receive an update regarding the status of the environmental review being prepared for the project. *Continued from the regular meeting of April 8, 2008.*
Proposed Action: Receive and comment on progress report from staff and applicant regarding the environmental review document being prepared for this.
- 3B. **DP 01-08, Development Plan, Rivulet Mixed Use Project, Uzoma Nwakuche, 1005 and 1007 Oak Street (APNs 119-050-009 and 119-050-034).** A study session to receive an update and provide general feedback on some of the site planning aspects including parking layout, pedestrian circulation, trash collection, and stormwater conveyance for the project. *Continued from the regular meeting of April 8, 2008.*
Proposed Action: Receive and comment on progress report from staff and applicant regarding the site plan issues related to the project.
- 3C. **CDD 04-07, Large Family Day Care Permit, Shelly Alves, 6015 Golden Eagle Way, APN 118-630-001.** Review of project compliance with Conditions of Approval 1-6 as listed on the City Council resolution, Resolution No. 42-2007, denying the appeal of Planning Commission's decision to approve a Large Family Day Care permit. *Continued from the regular meeting of April 8, 2008.*
Proposed Action: Receive staff's report as well as applicant and public comments. Then, provide direction, if necessary, for follow-up action.

Old Business

4. None

New Business

5. None

Communications

- 6A. Staff
6B. Commission

Adjournment

The next meeting of the Planning Commission is scheduled for **Tuesday, May 13, 2008**.

Most Planning Commission decisions are appealable to the City Council within ten (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 oral 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. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340.

An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present.

Minutes
City of Clayton Planning Commission Special Meeting
Tuesday, April 8, 2008

Call to Order

Chair Haydon called the meeting to order at 7:00 p.m. at the Library Meeting Room, Clayton Community Library, 6125 Clayton Road, Clayton.

Present: Chair Keith Haydon, Vice Chair Tuija Catalano, Commissioner Bob Armstrong, Commissioner Ed Hartley, Commissioner Joe Odrzywolski

Absent: None

Staff: Interim Community Development Director David Woltering
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Review of agenda items.

1B. Commissioner Hartley to report at the April 15, 2008 City Council meeting.

Public Comment

None.

Approval of Minutes

2. Approval of minutes from the regular meeting of March 25, 2008.

Commissioner Odrzywolski moved and Vice Chair Catalano seconded a motion to approve the minutes from the regular meeting of March 25, 2008, as amended. The motion passed 5-0.

Public Hearings

3A. **CDD 04-07, Large Family Day Care Permit, Shelly Alves, 6015 Golden Eagle Way, APN 118-630-001.** Review of project compliance with Conditions of Approval 1-6 as listed on the City Council resolution, Resolution No. 42-2007, for the appeal of Planning Commission's decision to approve a large family day care permit.

The public hearing was opened. Director Woltering presented the staff report. The Planning Commission indicated that, since the public hearing notice was received by the recipients late, the public hearing is continued to the special meeting of April 29, 2008 to allow the recipients of the public hearing notice time to review the project. There were no public comments.

Commissioner Armstrong moved and Commissioner Odrzywolski seconded a motion to continue the public hearing for CDD 04-07 to the special meeting of April 29, 2008. The motion passed 5-0.

The meeting was recessed at 7:12 p.m. and reconvened at 7:15 p.m.

3B. **ENV 01-08, Environmental Review, Rivulet Mixed Use Project, Uzoma Nwakuche, 1005 and 1007 Oak Street (APNs 119-050-009 and 119-050-034).** A study session to discuss the status of the environmental review of the project. *Continued from the regular meeting of March 25, 2008.*

The continued study session for ENV 01-08 was re-opened.

Director Woltering indicated the following:

- Contract planner Nick Pappani is working with the sub-consultants on the environmental issues and we hope to have a schedule of Initial Environmental Study/Mitigated Negative Declaration milestones at the April 29, 2008 Commission meeting.
- It is anticipated that we will be focusing on site plan issues at the April 29, 2008 Commission meeting.
- Contacted Mr. Tony Bristol at Save Mount Diablo to provide an update of the project status.

There were no public comments. Commission questions and comments included:

- Have we found the area of Mitchell Creek to be to be a red-legged frog habitat? *Director Woltering indicated that no red-legged frogs have been found so far.*
- We should put the Rivulet public hearings first under public hearings on the April 29, 2008 Commission agenda.

Chair Haydon moved and Commissioner Odrzywolski seconded a motion to continue the study session for ENV 01-08 to the special meeting on April 29, 2008. The motion passed 5-0.

- 3C. **DP 01-08, Development Plan, Rivulet Mixed Use Project, Uzoma Nwakuche, 1005 and 1007 Oak Street (APNs 119-050-009 and 119-050-034).** A request for approval of a development plan to allow the construction of a two-story mixed-use commercial/residential building with approximately 7,000 square feet of commercial retail on the first floor and up to seven residential units on the second floor. *Continued from the regular meeting of March 25, 2008.*

The continued public hearing for DP 01-08 was re-opened. Assistant Planner Sikela presented the staff report.

Chair Haydon asked if there was any new information with regard to the July 1, 2008 deadline for the San Francisco Regional Water Quality Control Board's implementation of new creek setbacks. *Director Woltering responded that staff understands they may be moving the deadline later to possibly late 2008 or early 2009.*

Bob Staehle, the representative of the applicant, explained the status of the project and indicated the following:

- It is my understanding that the San Francisco Regional Water Quality Control Board has not acted on setting a deadline for implementation of creek setbacks.
- We have revised the column locations so that vehicle doors will not open into the columns.
- We have been in contact with Allied Waste regarding the project-related trash issues.
- Although staff supports inclusion of the turret on the southeast elevation, we prefer the elevation without the turret since it maintains the rhythm of the architectural design theme.
- We prefer to keep the trellis in the same location as the belly band. It would not look good to have the trellis lower on the exterior wall than the belly band.

The Commission unanimously indicated that they did not support inclusion of the turret.

Commissioner Armstrong distributed pictures of the architectural corbel-and-bracket detailing of the roofline of Moresi's Chophouse as possible considerations to improve the appearance of the southeast corner.

Director Woltering indicated that, in lieu of the turret, staff supported the addition of a cornice feature which should be a minimum of two feet in width.

Commissioner Odrzywolski asked the applicant what the proposed distance is between the belly band and the bottom of the windows. *Mr. Staehle responded that the distance is approximately eight to nine feet.*

The public testimony period was opened.

Jerry Davis, 6000 High Street, indicated the following:

- The southeast corner appears stark and ugly.
- How wide is High Street. *Mr. Staehle responded that the High Street right-of-way is 52 feet in width.*
- Not enough room on the site to fit a building of this size.
- Has concerns that members of the public may drive across the High Street bridge.
- The building would reduce the visibility of vehicles heading east on High Street trying to make a left turn onto Oak Street.
- Bridge is co-owned by City and property owners.
- Construction of this project would invite increased activity on the High Street bridge. Has concerns that kids would be walking on existing two-inch gas line that runs beneath the bridge.
- Traffic is a concern.
- Very rushed nature of the project is a concern.

Rich Batchelder, 983 Oak Street, indicated the following:

- Has been living at 983 Oak Street for 30 years.
- The project appears as if a one-quarter block of San Francisco has been dropped into downtown Clayton.
- Should use the project site for a park.
- Should not be building this type of project along Mitchell Creek.
- This project will impact the aesthetics and quality of life in the Town Center.

Gloria Utley, 5950 High Street, indicated the following:

- Not sure if the design of the project incorporates a western design theme only or a mix of craftsman and western.
- Where will trash be located?
- Concerns about access to garage impacting High Street.

Lanny Utley, 5950 High Street, indicated the following:

- Is this building part of the Town Center? *Chair Haydon responded that it is part of the Town Center.*
- There is not enough parking to accommodate the needs of the first-floor commercial units and second-floor residential units.

Rich Batchelder, 983 Oak Street, asked if the property had been purchased by the developer. *Mr. Staehle indicated that the issues related to project financing are a City Council matter and that the property was still owned by the City.*

Director Woltering explained the timeline for the anticipated milestones for the project.

There being no further comments, the public testimony period was closed. Commission questions included:

- Did you remove the “wraparound” design style of the northernmost and southernmost support columns for the walkway canopy along Oak Street? *Mr. Staehle responded “Yes.”*
- Will the sidewalk style be consistent throughout the project? *Mr. Staehle indicated that the design team is working with a civil engineer to explore options for a pervious walkway that will also be ADA compliant.*

Chair Haydon moved and Commissioner Hartley seconded a motion to continue the public hearing for DP 01-08 to the special meeting of April 29, 2008. The motion passed 5-0.

Old Business

4. None.

New Business

5. None.

Communications

6A. Staff – None.

6B. Commission – None.

Adjournment

7. The meeting was adjourned at 9:00 p.m.

Submitted by
David Woltering, AICP
Interim Community Development Director

Approved by
Keith Haydon
Chair

Plng Comm2008\Minutes\0408

PLANNING COMMISSION STAFF REPORT

Meeting Date: April 29, 2008

From: David Woltering, AICP 
Interim Community Development Director

Nick Pappani
Contract Planner

Subject: The Rivulet Project
(DP 01-08) (ENV 01-08)

REQUEST

Approval of a development plan to allow the construction of a two-story, mixed-use commercial/residential building with approximately 6,900 square feet of commercial retail on the first floor and seven residential units on the second floor.

PURPOSE OF APRIL 29, 2008 MEETING

The purpose of this meeting is for the staff and the applicant to update the Planning Commission and the public regarding the work that is underway to address various site planning issues that must be addressed with this project, including issues related to retail entry grading, guest parking along High Street, C.3 stormwater requirements, and trash collection service.

BACKGROUND

The City holds public title to the underlying land and improvements on three (3) parcels located on the west side of Oak Street between High and Center Streets in the Town Center area. Two (2) of the properties have improvements (of various condition and vintage) on the lands, one leased to PERMCO, Inc., the Engineering firm used by the City of Clayton, (APN 119-050-034), and the other leased to Clayton Mind and Body Spa (APN 119-050-009). The third parcel is primarily in open space condition (APN 119-050-008). Immediately adjacent to the north of the proposed development site is the largely-unused right-of-way extension to Center Street. It is not anticipated that Center Street will be extended, given the location of Mitchell Creek and the hillside to the west.

The buildings presently on the proposed development site, one leased by PERMCO (measuring approximately 2,400 square feet in area) and the other leased by the Clayton Mind and Body Spa (measuring 1,680 square feet in area), are in need of significant maintenance and structural repairs (wood decking, wood stairs and railings, painting, constant roof leaks). With new developments occurring in the vicinity (e.g. Endeavor Hall, Flora Square, and Mitchell Creek

Place residences), it is important for the City to maintain and upgrade these properties to positively contribute to the revitalization of the City's Town Center.

The lease with PERMCO is current while the lease with the Clayton Mind and Body Spa has elapsed and is on a month-to-month tenancy. PERMCO has announced and confirmed its intent to move its business elsewhere, possibly across the street to the Flora Square project. With the pending vacancy of one of these City buildings by a tenant, the question has been raised internally (and even externally in the community) as to the City's plans for these older buildings.

Pending Development Constraint

A major consideration with respect to the future use of these properties is the presence of the adjacent Mitchell Creek. While offering an idyllic setting, any new or significant rehabilitation of these existing buildings must comply with the current creek setback regulation imposed by the Regional Water Quality Control Board (RWQCB). Presently, there is not a prescribed minimum creek setback. The San Francisco RWQCB is in the midst of updating one of its Policies for stream and creek protections wherein the preliminary draft under review proposes increasing the creek setback in the range of 100 to 200 feet. This push for additional creek protection by the RWQCB obviously poses serious impacts to the future usability of this property (and other lands near creeks) as these properties range in width from 75 (at the northern edge) to 140 feet (at the southern edge). Application of a 200-foot creek setback would render this City-owned property not buildable. Although this pending action by the RWQCB does raise the legal question of a "taking of property", the RWQCB's extensive powers under the State Porter-Cologne Act, the Federal Clean Water Act, and confirmed by recent case laws (e.g. in southern California) does not give great comfort to land owners, particularly lands held in public title.

The City's existing Clean Water Permit is expected to renew with substantial amendments and local obligations, effective in July 2008. The RWQCB will then take subsequent action to fold in their new creek setback requirement. City staff learned this week that the setback impact could become effective near the end of 2008 or early 2009; therefore, a small window of opportunity is granted from previous reports of coinciding with the Permit's issuance in July 2008. However, it remains clear the City must act now should it wish to improve the commercial development of this public property.

Request for Concept Development Proposals

Given the background described above, including some more updated information, the City Council instructed the City Manager to solicit conceptual development proposals from four (4) companies or individuals who have expressed or undertaken recent interest in commercial development of the Clayton Town Center. The City's outreach in December of 2007 resulted in two formal proposals.

Interestingly, each respondent proposed residential use on the second (and third floor, in the PERMCO proposal). Ground-floor retail commercial use is uniform in each development proposal. Briefly, the PERMCO proposal was a stylistic Victorian building of 3 stories within the Town Center height restriction of 40 feet. The plan called for approximately 8,000 square feet of

retail commercial on the ground floor (two units) with a 9-foot ceiling and separated by a distinct and inviting plaza area. The second story had six (6) residential units of 1-3 bedrooms, which configuration was mirrored for the third floor. On-site parking was achieved by a subterranean parking garage for 28 vehicles.

The second proposal, a concept submitted by Mr. Uzoma Nwakuche, LLB, offered a Western-style frontage characteristic of schemes suggested in the Town Center Specific Plan (e.g. storefronts). The first floor encompassed approximately 7,000 square feet of retail commercial space with a 20-foot ceiling while the second floor houses eight (8) residential units of one bedroom plus a den in six (6) of the units. There was a terrace proposed on the creekside of the second story. Additional parking requirements were met by tandem-lift garages off the southern end (High Street) to service the residential parking needs, and 13 diagonal parking spaces on the west side of Oak Street utilizing some of the private property to accommodate a clear passing lane.

Both developers presented their proposals to the full City Council for deliberation on January 15, 2008. The City Council selected Mr. Nwakuche's proposal.

Neighborhood Outreach meetings

In an effort to involve the interested public in the processing of the Rivulet project, the applicant has held two neighborhood outreach meetings to date. The first meeting was held on February, 13 2008. This meeting was formally noticed, including by USPS to neighbors within a 300-foot radius plus a concerned citizens list provided by City Planning staff. No members from the public attended this first meeting.

The second outreach meeting was held on April 16, 2008. This meeting again was noticed by USPS to an expanded neighbors' list that included all residents who reside over the High Street bridge plus those listed on the aforementioned 300-foot radius. Several members from the public attended this outreach meeting. Some of the comments provided at the meeting included: sufficient parking, parking locations, speeding vehicles, overdevelopment of the subject parcels, the City's ability to deal with enforcement issues, increased traffic on Oak Street, traffic calming, raised crosswalk, modification of Diablo Street between Center Street and High Street to be one-way, modification of High Street between Diablo Street and Oak Street to be one-way, and adequate screening of rooftop equipment.

SITE PLAN

Since the presentation of the conceptual Site Plan at the January 29, 2008 study session, the Rivulet Site Plan has undergone several adjustments (see **Exhibit A**). Of primary importance is the construction of a new building further from the creek, providing generally a minimum of a 10 foot setback to allow for light and air to reach the banks of Mitchell Creek. In addition, the diagonal parking proposed along Oak Street has been eliminated to achieve the greater creek setback and reduce the amount of overall impervious surface area that would have only resulted. As also indicated in **Exhibit A**, the project's arcade columns were also relocated to create sufficient clear space to prevent car doors from hitting the columns.

Retail Entry Grading

The current grade of the project presents a potential issue associated with pedestrian access to the site from the public parking spaces along Oak Street. The current elevation of the on-street public parking spaces varies from 395.8 feet to 398.778 feet, and the current grade of the project site at the back of sidewalk slopes from 395.44 feet to 399.46 feet. The Town Center Specific Plan and ADA requirements necessitate that the sidewalk slope not exceed two percent (2%). In order to satisfy this requirement, the applicant has proposed two approaches for consideration by the Planning Commission:

Option 1:

The first option involves separating the building into four (4) pad elevations (see **Exhibit B**). The proposal will allow for a single contiguous sidewalk along Oak Street and connecting all the retail and residential entries. There is a need for a single small retaining wall towards the north end of the project proposed to span between two of the arcade columns. This solution will help to minimize the import and export of fill material, allow the building to conform to ADA standards, and achieve contiguous sidewalk between the curb and retail entries. The compromise of this particular design solution is the retail spaces will be below the 100-year flood plain. The proposed solution will be to provide similar flood gate and water infiltration prevention measures to those used in the Flora Square project.

Option 2:

The building would be raised onto a pedestal and served by a continuous sidewalk between the columns and retail entries. The grade difference would be taken up via ramps at both ends of the building and a retaining wall running parallel with the arcade columns (see **Exhibit C**).

High Street

After working with staff, the applicant team has refined the High Street civil/site design (see **Exhibit D** and **F**). The current concept is to retain the residential drive appearance of High Street east of Oak Street. The goal is to discourage vehicles from entering High Street unless the vehicles are occupied by residents (i.e., Rivulet residents or residents west of the High Street bridge) or guests of residents. The 50-foot right-of-way is shown with two 10-foot travel lanes, room for a 5-foot sidewalk on the south side, a 5-foot sidewalk on the north side plus and an 18-foot apron in front of each garage door. The 18-foot apron plus the 5-foot sidewalk is more than adequate space to allow vehicles to cue while entering a garage in addition to providing seven (7) guest parking stalls. By providing added guest parking spaces along High Street, in front of the proposed garages, the applicant would be providing seven more guest spaces than required for the on-site uses. For example, the amount of residential parking spaces for the project per Section 17.37.030 of the Clayton Municipal Code is 14 (resident parking: 7 units x 1.5 spaces per 1 bedroom unit = 10.5; guest parking: 7 units x 0.5 guest spaces per unit = 3.5). The garage alone provides 14 parking spaces; thereby, technically meeting the project's parking requirements. However, staff has expressed concerns about the potential difficulties associated

with guests trying to access available parking spaces via the proposed garage lift system. Therefore, in their willingness to address staff's concerns, the applicant team has proposed to provide an additional seven guest parking spaces along High Street, immediately south of the project garage. This would require the City to transfer ownership of approximately 18 feet of High Street right-of-way to the applicant.

C.3 Stormwater Requirements

The addition of the driveway aprons on High Street for the purposes of guest parking for the project residences plus 5-foot sidewalks along the project's High Street frontage appears to be impacting the design of the project by "creating" over 10,000 square feet of impervious paving area. According to the RWQCB's C.3 requirements, if a project is creating more than 10,000 square feet of impervious surface area, the project must meet State-imposed standards. Staff has been working with the applicant team to determine an appropriate means of satisfying the project's C.3 requirements given the limited on-site area to attain such an objective. It should be noted that, although the proposed project may create more than 10,000 square feet of impervious surface area, much of the project site is currently developed. For example, two buildings, a patio, a garage, and existing pavement along High Street (where the guest parking is proposed) is located on the project site, resulting in a total amount of over 9,000 square feet of existing impervious surface area. However, the C.3 requirements consider the disturbance of existing impervious surfaces towards the total amount of impervious area to be created by a particular project. Based on current calculations, the net increase of impervious surface created by the project is less than 7,500 square feet inclusive of the proposed High Street modifications. The approximate overall impervious surface area for the project per C.3 calculations would be 16,134 square feet.

Given the limited above-ground on-site area to install elements to address the project's C.3 requirements, the applicant's civil engineer is proposing to install a subterranean mechanical filtration device (see **Exhibit E**) located just north of the proposed building. It is anticipated that maintenance of the device would be detailed in a forthcoming Storm Water Control Plan. Additionally, the staff and applicant will study and include, as feasible, opportunities for passive stormwater infiltration.

Trash

Existing Trash Pick-Up Operations

The area directly southwest of the project site along High Street currently contains several trash cans, which service the neighbors to the west of the High Street bridge. During a site visit on April 21, 2008 attended by the applicant's representative Bob Staehle and David Sanchez (Clayton Route Supervisor) from Allied Waste, Mr. Sanchez confirmed that there is no place across the bridge for Allied Waste trucks to turn around safely. Therefore, the residents will have to continue to bring their trash bins to the High Street location prior to trash pick-up. Yet, even though the residents have been storing cans within the High Street right-of-way for many years, Allied Waste has indicated it would like to find a solution that enables these home owners to be in conformance to local codes and ordinances. One option being studied by staff and the

applicant's design professional would be to create a triangular parcel of land south of the existing bridge and attach said parcel to the bridge assessment district. An enclosure could then be placed on said parcel for bin storage. Each week the cans would need to be pulled from the enclosure to the curbside.

Project Refuse Service

Option 1 – Trash Bin Storage Area within Guest Parking Area

During the site visit on April 21, 2008 attended by the applicant's representative Bob Staehle and David Sanchez from Allied Waste, Mr. Sanchez indicated that the concept of a trash storage area within the proposed guest parking area along High Street would be acceptable. The area allocated on the plan appeared to be adequate assuming light retail trash usage. A restaurant, for instance, would require added trash considerations.

The original design concept included a trash chute and would require a manager/service person to pull the bin(s) out to High Street on pick-up day(s). Requiring the residents to haul their own trash downstairs would be a significant reduction in maintenance fees required as part of an association. Mr. Sanchez also indicated that no front load service is currently offered in Clayton. Front load service is used for the larger bins. Rear load service is offered in Clayton which will accommodate one yard bin. Mr. Sanchez does feel confident a 20-foot right-of-way is adequate for the currently used equipment in Clayton to maneuver along High Street and allow another vehicle to pass. It is staff's understanding that the Allied Waste truck would park parallel to High Street, pull the trash bins out of the storage area, and utilize the rear loader of the truck to dispose of the refuse.

With the relocation of the trash bin to an outdoor enclosure plus the thought of clustering all seven (7) garages together and shifting the resident entry toward the creek seems to be a logical improvement to the plan. That change would also serve to eliminate the doorway and paving at the top of bank that the biologist has requested to be removed.

Option 2 – Trash Chute

The current location of the residential entry was based on the installation of a community trash chute in the second floor, which would empty into the bins that would be located in the alcove. This would require a project maintenance/service person to pull the bin(s) to the street as discussed above.

School Drop-off

Many parents typically drop-off and pick-up students from Mount Diablo Elementary School on Oak Street just north of the project site near Center Street. Although this is not an official school loading area it provides a convenient route for many students to access the school without taking the circuitous route around on Clayton Road. Although there can be some short-term congestion and delays caused by this loading area, it appears to meet a community need. The use of this access to the school reduces the amount of trips that need to head over and go left at the signal

from Marsh Creek Road onto Clayton Road and then left again from Clayton Road onto Mitchell Canyon Road.

However, the traffic consultant for the project has some reservations about the safety risks posed by the current school drop-off and pick-up activities associated with the parking area north of the project site. It is important to note that this is an existing condition, and the traffic consultant is considering these activities because the project applicant is willing to work with the City to try and address pre-existing conditions north of their project.

Current concerns include the lack of visibility afforded to vehicles driving southbound on Oak Street due to the fact that vehicles are often parked near the location where school children cross Oak Street and continue towards the downtown. The traffic consultant has recommended various improvements that would potentially increase the safety of school children and the visibility of on-coming traffic. Among the improvement options is construction of a raised crosswalk across Oak Street, which would create a distinct transition, thereby making it clear to the children that they need to be cautious as they proceed. In addition, this raised crosswalk would be expected to slightly improve safety by reducing vehicle speeds. The traffic consultant has indicated that raised crosswalks usually require thorough studies to support their need, which often involves input from the public and numerous agencies. In addition, at this location, the neighborhood at the south end of Oak Street would routinely have to negotiate the raised crosswalk in order to come back into town on Clayton Road. Another alternative would be to bypass the off-ramp onto Oak Street and instead take Marsh Creek Road to Center Street. This would essentially equate to going four to six blocks out of the way.

The City Engineer is currently checking on traffic history in the area and staff will continue to study the possible merits of the elevated crosswalk. Other recommendations include installing appropriate signage along Oak Street to notify drivers of the school children crossing activities.

Landscape Plan

The project applicant's team is currently preparing a landscape plan (see **Exhibit G**) that will address on-site landscaping improvements, including landscaping along the banks of the creek, consistent with the preliminary direction that has been provided by the California Department of Fish and Game. The Landscape Plan will be submitted to the Commission at a subsequent meeting for review and comment.

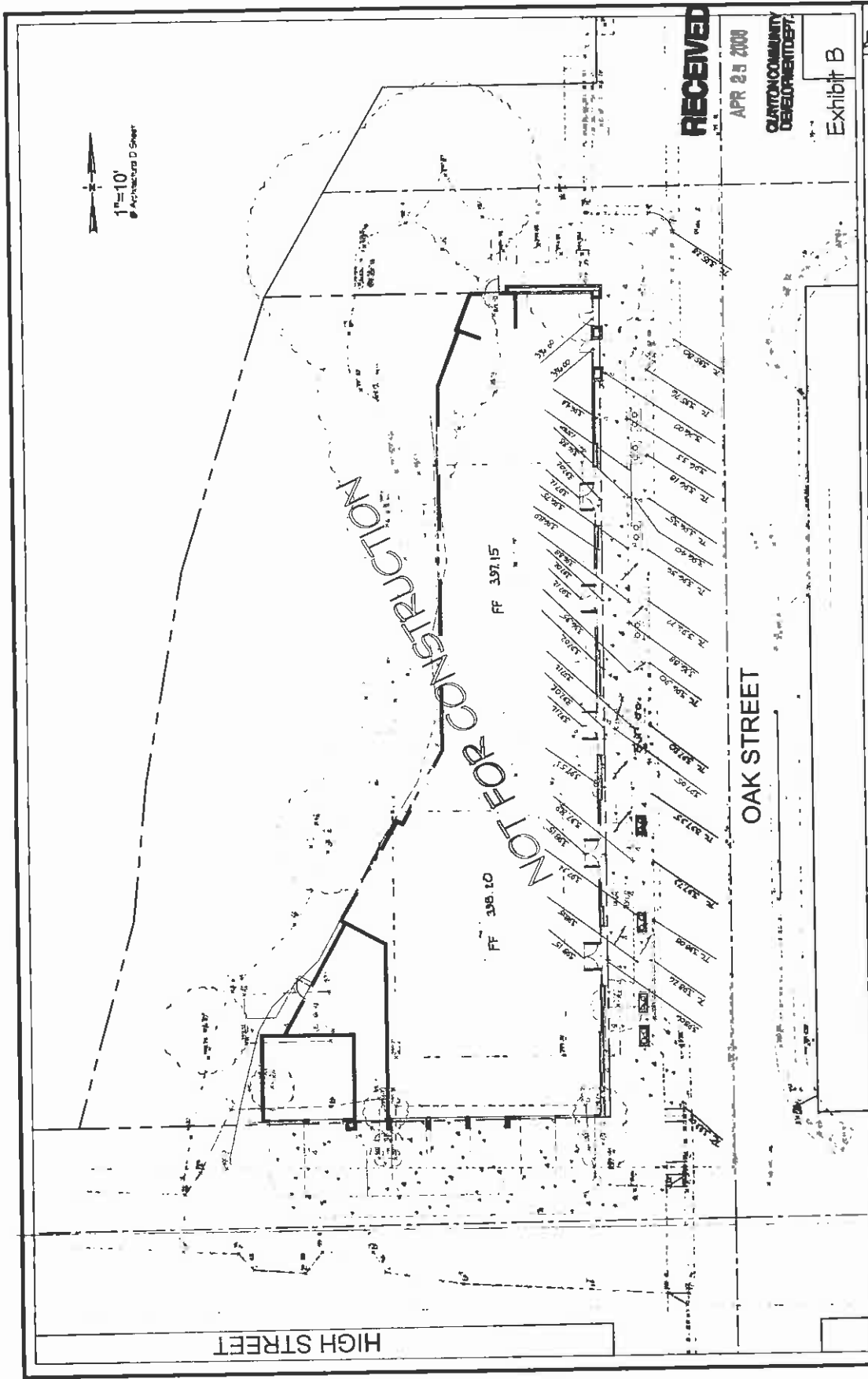
RECOMMENDATION

Staff recommends that the Commission review the current Site Plan (**Exhibit A**), and discuss and provide feedback regarding following project issues presented above: retail entry grading, guest parking along High Street, C.3 requirements, and trash service; and continue the public hearing to the next meeting on May 13, 2008.

EXHIBITS

- A Rivulet Site Plan, date stamped April 25, 2008
- B Sidewalk Option 1, date stamped April 25, 2008
- C Sidewalk Option 2, date stamped April 25, 2008
- D Rivulet Architectural Site Plan, date stamped April 25, 2008
- E Stormwater Mechanical Filtration Device Diagram, date stamped April 25, 2008
- F Rivulet Site Sections, date stamped April 25, 2008
- G Preliminary Rivulet Landscape Plan, date stamped April 25, 2008

DP 2008 01-08.sr-1



RECEIVED

APR 25 2008

CLAYTON COMMUNITY DEVELOPMENT DEPT.

Exhibit B

DeBolt Civil Engineering
811 S. Bascom Avenue
San Jose, California 95128
Tel: 408/233-3793
Fax: 408/233-3793

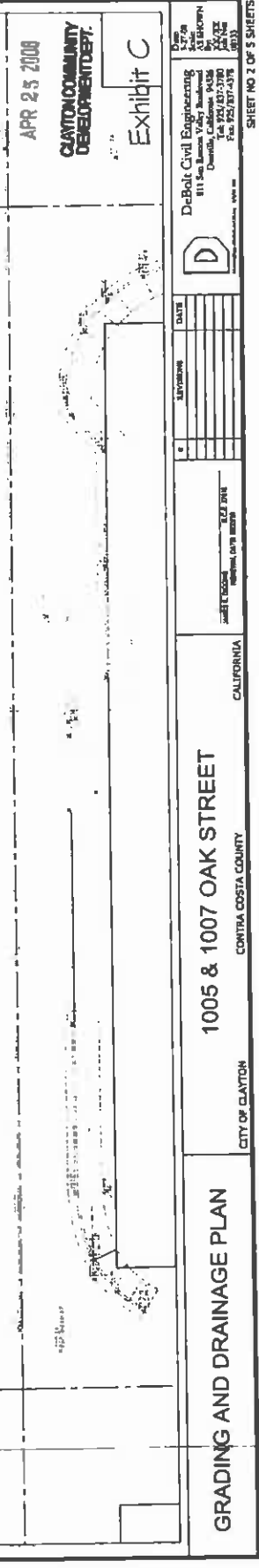
DATE	REVISIONS

PROJECT NO. 08010
SHEET NO. 08010

1005 & 1007 OAK STREET
CONTRA COSTA COUNTY
CALIFORNIA

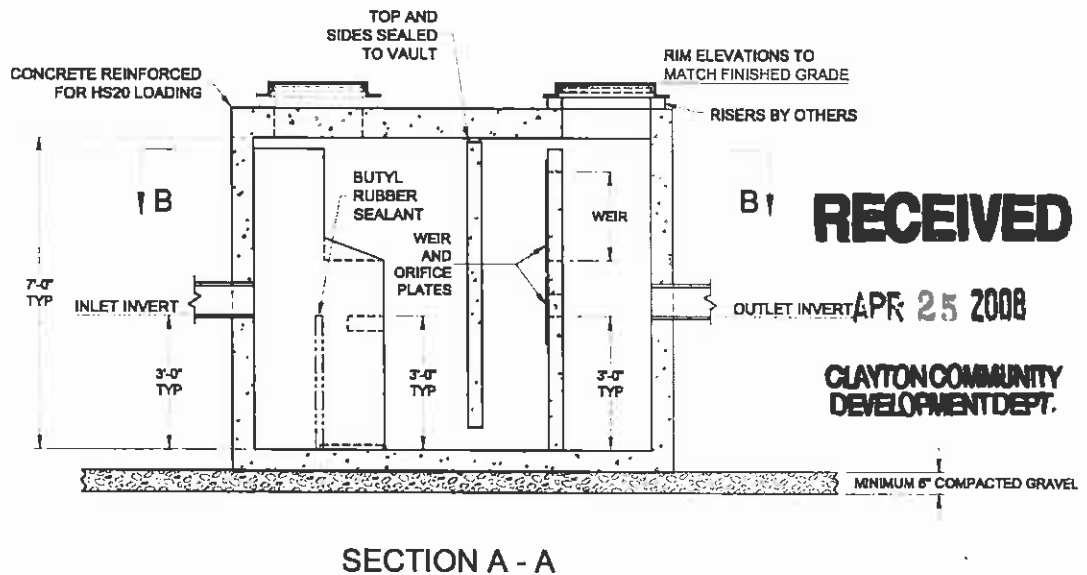
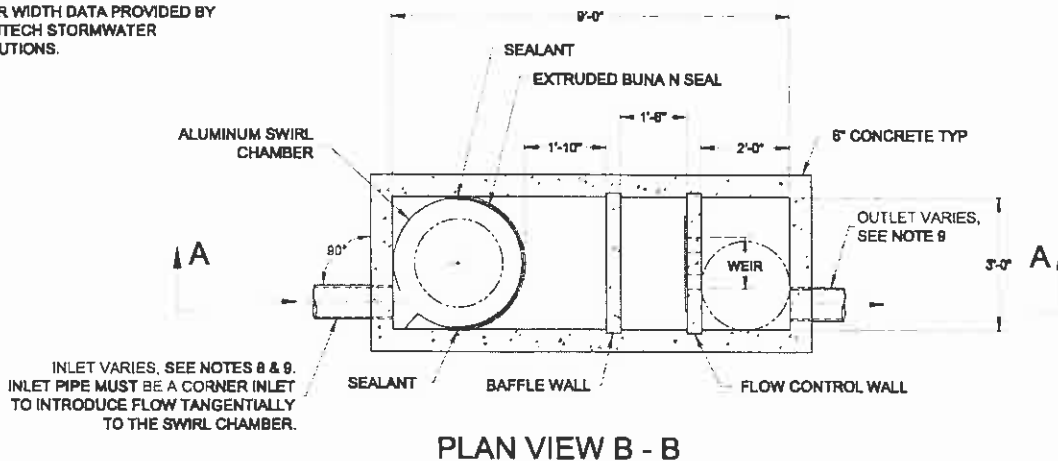
CITY OF CLAYTON

GRADING AND DRAINAGE PLAN



SHEET NO 2 OF 5 SHEETS

NOTE:
VORTECHS SYSTEMS INSTALLED IN
A BYPASS CONFIGURATION
REQUIRE AN UPSTREAM DIVERSION
STRUCTURE THAT SHALL BE
DETAILED BY THE CONSULTING
ENGINEER WITH ELEVATION AND
WEIR WIDTH DATA PROVIDED BY
CONTECH STORMWATER
SOLUTIONS.



NOTES:

1. STORMWATER TREATMENT SYSTEM (SWTS) SHALL HAVE:
PEAK TREATMENT CAPACITY: 1.8 CFS
SEDIMENT STORAGE: 0.75 CU YD
SEDIMENT CHAMBER DIA: 3' MIN
2. SWTS SHALL BE CONTAINED IN ONE RECTANGULAR STRUCTURE
3. SWTS REMOVAL EFFICIENCY SHALL BE DOCUMENTED BASED ON PARTICLE SIZE
4. SWTS SHALL RETAIN FLOATABLES AND TRAPPED SEDIMENT UP TO AND INCLUDING PEAK TREATMENT CAPACITY
5. SWTS INVERTS IN AND OUT ARE TYPICALLY AT THE SAME ELEVATION
6. SWTS SHALL NOT BE COMPROMISED BY EFFECTS OF DOWNSTREAM TAILWATER
7. SWTS SHALL HAVE NO INTERNAL COMPONENTS THAT OBSTRUCT MAINTENANCE ACCESS
8. INLET PIPE MUST BE PERPENDICULAR TO THE STRUCTURE
9. PIPE ORIENTATION MAY VARY; SEE SITE PLAN FOR SIZE AND LOCATION
10. PURCHASER SHALL NOT BE RESPONSIBLE FOR ASSEMBLY OF UNIT
11. MANHOLE FRAMES AND PERFORATED COVERS SUPPLIED WITH SYSTEM, NOT INSTALLED
12. PURCHASER TO PREPARE EXCAVATION AND PROVIDE CRANE FOR OFF-LOADING AND SETTING AT TIME OF DELIVERY
13. VORTECHS SYSTEMS BY CONTECH STORMWATER SOLUTIONS; PORTLAND, OR (800) 548-4687; SCARBOROUGH, ME (877) 807-8578; ELK RIDGE, MD (866) 740-3318

PROPRIETARY INFORMATION - NOT TO BE USED FOR CONSTRUCTION PURPOSES

This CADD file is for the purpose of specifying stormwater treatment equipment to be furnished by CONTECH Stormwater Solutions and may only be transferred to other documents exactly as provided by CONTECH Stormwater Solutions. Title block information, excluding the CONTECH Stormwater Solutions logo and the VORTECHS Stormwater Treatment System designation and patent number, may be deleted if necessary. Revisions to any part of this CADD file without prior coordination with CONTECH Stormwater Solutions shall be considered unauthorized use of proprietary information.

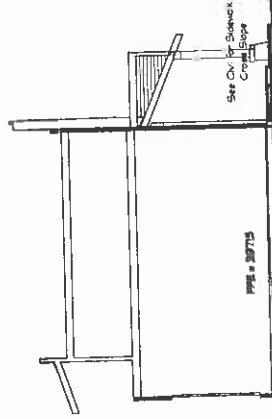
CONTECH®
STORMWATER
SOLUTIONS
contechstormwater.com

STANDARD DETAIL
STORMWATER TREATMENT SYSTEM
VORTECHS® MODEL 1000

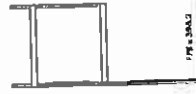
Exhibit E

DATE: 4/8/08 SCALE: NONE FILE NAME: STD1k DRAWN: GMC CHECKED: NDG U.S. PATENT No. 5,759,415

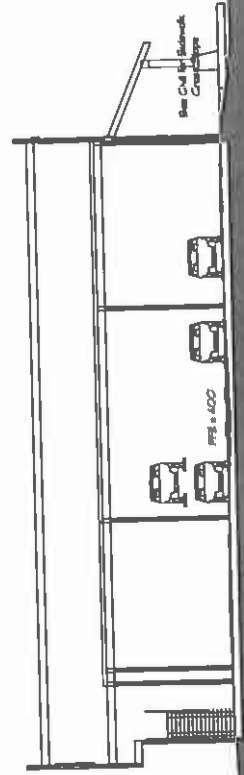
NOT FOR CONSTRUCTION



SECTION A-A



PARTIAL SECTION B-B



SECTION C-C

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QUANTICO COMMUNITY DEVELOPMENT

Exhibit F

Site Sections

SHEET TITLE

CONTRACT

OWNER

PROJECT NO.

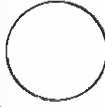
DATE

DESCRIPTION

Rivulet

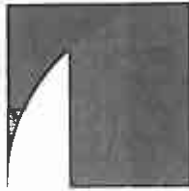
1005 - 1007 Oak Street, Clayton, CA

Uzoma Nwankwo L.L.B., MBA



CONSULTANTS

SHEET 2



GATES & ASSOCIATES
LANDSCAPE ARCHITECTURE
LAND PLANNING URBAN DESIGN

4000 Center Court, Suite 100, San Francisco, CA 94114
Tel: 415.774.1100 Fax: 415.774.1101
WWW.GATES-ASSOCIATES.COM

RIVULET

1005-1007 OAK ST.
CLAYTON, CALIFORNIA

REVISION DESCRIPTION DATE



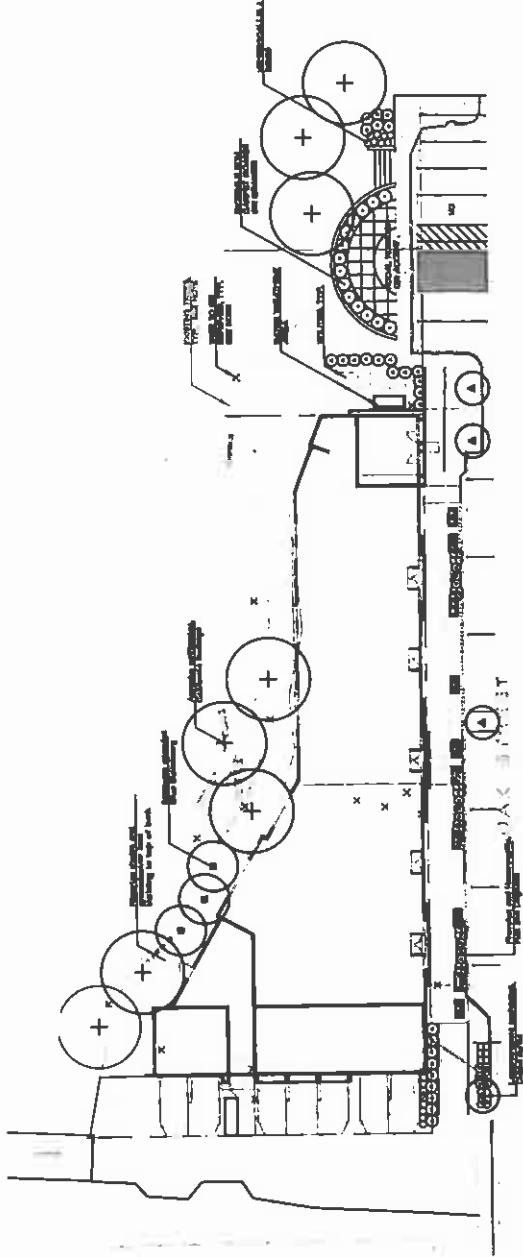
PROJECT NAME: RIVULET
PROJECT NO.:
SHEET NO.:
DATE: 11/11/07
Scale: 1/8" = 1'-0"

PLANTING PLAN



LX

Exhibit G



PLANT LIST

PLANT CODE	PLANT NAME	PLANT SIZE	PLANT QUANTITY
1	1.00' x 1.00' x 1.00'	1.00'	1
2	2.00' x 2.00' x 2.00'	2.00'	2
3	3.00' x 3.00' x 3.00'	3.00'	3
4	4.00' x 4.00' x 4.00'	4.00'	4
5	5.00' x 5.00' x 5.00'	5.00'	5
6	6.00' x 6.00' x 6.00'	6.00'	6
7	7.00' x 7.00' x 7.00'	7.00'	7
8	8.00' x 8.00' x 8.00'	8.00'	8
9	9.00' x 9.00' x 9.00'	9.00'	9
10	10.00' x 10.00' x 10.00'	10.00'	10
11	11.00' x 11.00' x 11.00'	11.00'	11
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15	15.00' x 15.00' x 15.00'	15.00'	15
16	16.00' x 16.00' x 16.00'	16.00'	16
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43	43.00' x 43.00' x 43.00'	43.00'	43
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92	92.00' x 92.00' x 92.00'	92.00'	92
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94	94.00' x 94.00' x 94.00'	94.00'	94
95	95.00' x 95.00' x 95.00'	95.00'	95
96	96.00' x 96.00' x 96.00'	96.00'	96
97	97.00' x 97.00' x 97.00'	97.00'	97
98	98.00' x 98.00' x 98.00'	98.00'	98
99	99.00' x 99.00' x 99.00'	99.00'	99
100	100.00' x 100.00' x 100.00'	100.00'	100

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CLAYTON COMMUNITY
DEVELOPMENT DEPT.

NOTES:
1. ALL PLANTS TO BE PLANTED BY THE END OF THE PROJECT.
2. PLANTING SHALL BE DONE IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.
3. PLANTING SHALL BE DONE IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.

PLANNING COMMISSION STAFF REPORT

Meeting Date: April 29, 2008

From: David Woltering, AICP *DW*
Interim Community Development Director

Nick Pappani
Contract Planner

Subject: The Rivulet Project
(DP 01-08) (ENV 01-08)

REQUEST

Approval of a development plan to allow the construction of a two-story mixed-use commercial/residential building with approximately 6,900 square feet of commercial retail on the first floor and seven residential units on the second floor.

PURPOSE OF APRIL 29, 2008 MEETING

The purpose of this meeting is for the staff and the applicant to present an update on work underway on the environmental review document being prepared for this project.

BACKGROUND

On January 29, 2008, the City Council and Planning Commission held a joint study session to review a mixed-use retail/residential project proposed for the two parcels at 1005 and 1007 Oak Street, now termed the "Rivulet" project. As discussed at the January 29th study session, given that Rivulet Project is an infill project within the downtown area of the City of Clayton, which is to be consistent with the Clayton General Plan, Town Center Specific Plan, and Clayton Zoning Ordinance designations for the project site, a possibility exists for the project to be exempt from CEQA review under Section 15332 of the CEQA Guidelines. However, it was indicated that this determination would not be made until additional information was provided by the project applicant and an Initial Environmental Study (IES) is completed.

Since the January 29th study session, Raney Planning & Management, Inc. has contracted with Environmental Collaborative to conduct a Biological Resources Assessment for the project site to determine the extent of riparian habitat along the banks of Mitchell Creek and the potential habitat value of the site for special-status species. Raney has also contracted with HortScience to conduct a Tree Evaluation of the on-site trees. These studies were commissioned in part to determine whether the infill exemption could be applied to the project site and the related question of whether or not project improvements would require a Streambed Alteration Agreement from the California Department of Fish and Game. Also, since the January 29th study

session, staff received a letter from Save Mount Diablo, dated January 30, 2008, which stated the organization's concerns about the project's potential to impact Mitchell Creek, which is known to be California red-legged frog habitat. In order to fully address these concerns, Raney worked with Environmental Collaborative to bring a California red-legged frog expert on the team. Project biologist Jim Martin of Environmental Collaborative has contracted with Mark Jennings of Rana Resources to conduct an assessment of the potential for the project site to provide habitat for California red-legged frog as well as steelhead.

Though the project site is not likely to adversely impact special-status species and/or riparian habitat, staff believes that, based in part on the level of public concern, it would be prudent to prepare a full CEQA Initial Environmental Study/Mitigated Negative Declaration (IES/MND) to evaluate all of the potential environmental impacts of the proposed project.

STATUS OF IES/MND

The total list of studies that are being prepared for the IES/MND analysis include:

1. **Biological Resources Assessment - Environmental Collaborative**

Jim Martin of Environmental Collaborative has been providing his expert services throughout the processing of the proposed project to ensure that the design of the project minimizes impacts to Mitchell Creek. Completion of the Biological Resources Assessment is predicated upon the completion of the technical studies listed under sub-sections 2-4 below, as well as the submittal of a project Site Plan that will not undergo any further changes that would potentially affect biological resources. The studies listed in sub-sections 2-4 below have recently been completed. However, a few items still need to be worked out relative to the Site Plan, which has prohibited the biologist from completing his report. Staff anticipates that a draft biology report will be submitted within 1-2 weeks.

2. **California red-legged Frog/Steelhead Assessment - Rana Resources**

Raney and staff received a draft of the Project California Red-Legged Frog and Steelhead Report on March 2, 2008. Raney and staff have provided edits on the draft report and a revised report was submitted to the project biologist, Environmental Collaborative, on April 7, 2008. The draft report indicates that there is no potential for impact to the red-legged frog or steelhead as a result of the proposed project. This analysis will be included in the overall biology analysis being completed by Environmental Collaborative (see sub-section 1 above).

3. **Tree Evaluation - HortScience**

Raney and staff received a draft of the Rivulet Tree Report. Raney and staff have provided edits on the draft report and a revised report was submitted on April 8, 2008.

4. Geomorphic and Engineering Assessment of Mitchell Creek - Balance Hydrologics

Raney and staff received a draft of the Proposed Bank Treatments on Mitchell Creek at the Oak Street Development in the City of Clayton. Raney and staff have provided edits on the draft report and a revised report was submitted on April 22, 2008.

5. Traffic and Parking Analysis - Abrams Associates

To date, Raney has received a draft of the Rivulet Traffic and Parking Analysis from Abrams Associates. Raney and staff have provided edits on the draft report and a revised report is expected to be submitted on April 25, 2008.

6. Stormwater Control Plan – Civil Engineer

Laura Hoffmeister, Assistant to the City Manager, has indicated that the applicant needs to submit a draft Stormwater Control Plan to address how the project will satisfy C.3 stormwater requirements. The expected submittal date of this Plan by the project Civil Engineer has not yet been determined.

Raney is in the process of preparing the portions of the IES/MND that can be completed without the submittal of the draft Biological Resources Assessment and Stormwater Control Plan.

RECOMMENDATION

There is no formal recommendation at this time. Staff will be sure to keep the Planning Commission apprised of the progress of the Rivulet IES/MND.

DP:2008-01-08.sr-7

PLANNING COMMISSION STAFF REPORT

Meeting Date: April 29, 2008

From: David Woltering, AICP 
Interim Community Development Director

Subject: Compliance Review of Alves Large Family Day Care Permit
(CDD 04-07)

PROJECT INFORMATION

Applicant / Location Shelly Alves
6015 Golden Eagle Way
APN 118-630-001 (See **Exhibit A** for Location Map)

General Plan Designation Single Family Residential- Medium Density. This proposal complies with the *General Plan* designation.

Zoning Planned Development (PD)

Environmental Review Categorically exempt per Section 15274 of the State CEQA Guidelines

BACKGROUND

This agenda item was formally continued from the April 8, 2008 Planning Commission meeting to give interested citizens sufficient time to prepare for and comment on this compliance review.

On April 8, 2008, staff did receive and provided to the Planning Commissioners at the April 8th meeting written comments from Paul and Jennifer Graves regarding this matter (see **Exhibit G**). Subsequently, the Large Day Care operator, Shelly (Alves) Goodrich provided a rebuttal memorandum to those comments, dated April 14, 2008 (see **Exhibit H**).

On October 2, 2007, the Clayton City Council adopted Resolution No. 42-2007 (See **Exhibit B**), a resolution denying an appeal of the Planning Commission's approval of a Large Family Day Care Permit at 6015 Golden Eagle Way. This action of the City Council was based on specified findings and conditions as included in the resolution. Condition 7 of this resolution requires a compliance review of Conditions 1-6 by the Planning Commission on or before April 15, 2008. The purpose of this Planning Commission agenda item is to perform this compliance review. The Large Day Care operator, Mrs. Shelly Alves Goodrich, has provided a letter, commenting on her compliance with conditions 1-6 (See **Exhibit D**). Conditions 1-7 of Resolution No. 42-2007 are listed immediately below:

1. The day care home may have one employee who is not a member of the resident household. The employee's vehicle must be parked in an off-street parking space on the subject property.
2. Noise which may create a nuisance to neighboring residents shall be avoided.
3. No signage shall be permitted on the subject property.
4. The Applicant shall revise the title of "Traffic & Parking Guidelines" to "Traffic & Parking Conditions" and shall incorporate the wording listed below. The revised document shall be submitted to the Community Development Director for review and approval, as well as inclusion in the project file. The document shall be provided to all clients.
 - a. All persons dropping off or picking up children must follow the routes shown on the map of "Drop-Off & Pick-Up Routes" when driving to and driving from the day care home from locations outside of the Windmill Canyon and Falcon Ridge neighborhoods.
 - b. All persons dropping off or picking up children are strongly discouraged from making U-turns in the driveways of any neighboring properties, or within any portion of Golden Eagle Way.
 - c. All persons dropping off or picking up children must park their vehicles in the driveway of the day care home or in the legal parking spaces located directly in front of and on the same side of the street as the day care home.
 - d. All persons dropping off or picking up children must practice safe driving habits and observe all traffic regulations when driving to and from the day care home.
 - e. Any parked vehicle which blocks a travel lane, public sidewalk, or driveway of the day care home or a neighboring residence is subject to citation by the Clayton Police Department.
 - f. Clients who do not insure that the above conditions are followed will be terminated from day care services.
5. The parking spaces in the garage and driveway shall be only used for the Applicant's and Applicant's household residents' motor vehicles. The driveway and garage shall not be used for parking or storage of any trailers, recreational vehicles, or similar equipment licensed for movement on public streets and highways.
6. The Applicant shall keep the on-street parking spaces in front of the residence available for the parking of clients' vehicles to the maximum extent practical. The Applicant shall not locate play equipment or park trailers or equipment licensed for movement on public streets and highways in the on-street parking spaces in front of the residence.
7. The Planning Commission shall review the Applicant's compliance with Conditions 1-6 at a public meeting on or before April 15, 2008.

ANALYSIS

Staff has visited the site of the Large Day Care operation; met with Mrs. Alves Goodrich and reviewed her letter of April 1, 2008; and checked in with the Clayton Police Department.

Comments Regarding Compliance with Conditions 1-6

1. There is one employee of the Large Day Care. This employee walks to the home. There appears to be compliance with this condition.

2. On occasion the children have made noise that may be a concern to neighbors. The Day Care operator indicates that she consistently reminds the children and their parents of the need to be considerate of the neighbors and lower their voices. She has limited the hours outside to mitigate any impacts to neighbors. There appears to be general compliance with this condition.
3. The only signage on the property at the time of the site visit was a small 8½" x 11" sign on the front door reminding parents of the need to comply with the parking requirements placed on the use. There appears to be compliance with this condition.
4. The Day Care Operator has prepared and had approved "Traffic and Parking Conditions." She has her client parents sign agreements to comply with these requirements, and she monitors for compliance. She admits that there have been some enforcement issues, but she has followed up immediately to resolve these situations. There appears to be general compliance with this condition.
5. The Day Care Operator indicated that at limited times her husband has had a work vehicle in the driveway, but that they have been able to generally comply with this condition during the operating hours of the day care. There appears to be general compliance with this condition.
6. The Day Care Operator has distributed informational flyers to her clients and monitors their parking to assure that they conform with this condition of approval. There appears to be general compliance with this condition.

Staff has also contacted the Clayton Police Department staff and learned that there have been 4-6 calls to that Department during this review period regarding parking and/or noise issues associated with this address. The calls, apparently, were for informational purposes and occurred sometime after the incidents. No official reports were filed. The Police Department staff indicated that there has not been any noticeable increase in speeding, citations, or accidents in the area of the subject property during this review period.

RECOMMENDATION

Staff has reviewed the additional information received from Paul and Jennifer and Graves and the rebuttal from Shelly (Alves) Goodrich and continues to recommend that the Planning Commission find that the Alves Large Family Day Care is in general compliance with conditions 1-6 of Resolution No. 42-2007. Additionally, staff recommends that the Planning Commission direct the Day Care Operator to continue to diligently monitor and enforce these conditions of approval.

In terms of this recommendation, staff has been requested by the Planning Commission to provide clarification regarding the basis for a determination of compliance. The fundamental findings for approving a Use Permit are summarized below from Section 17.60.060 of the City of Clayton Zoning Ordinance:

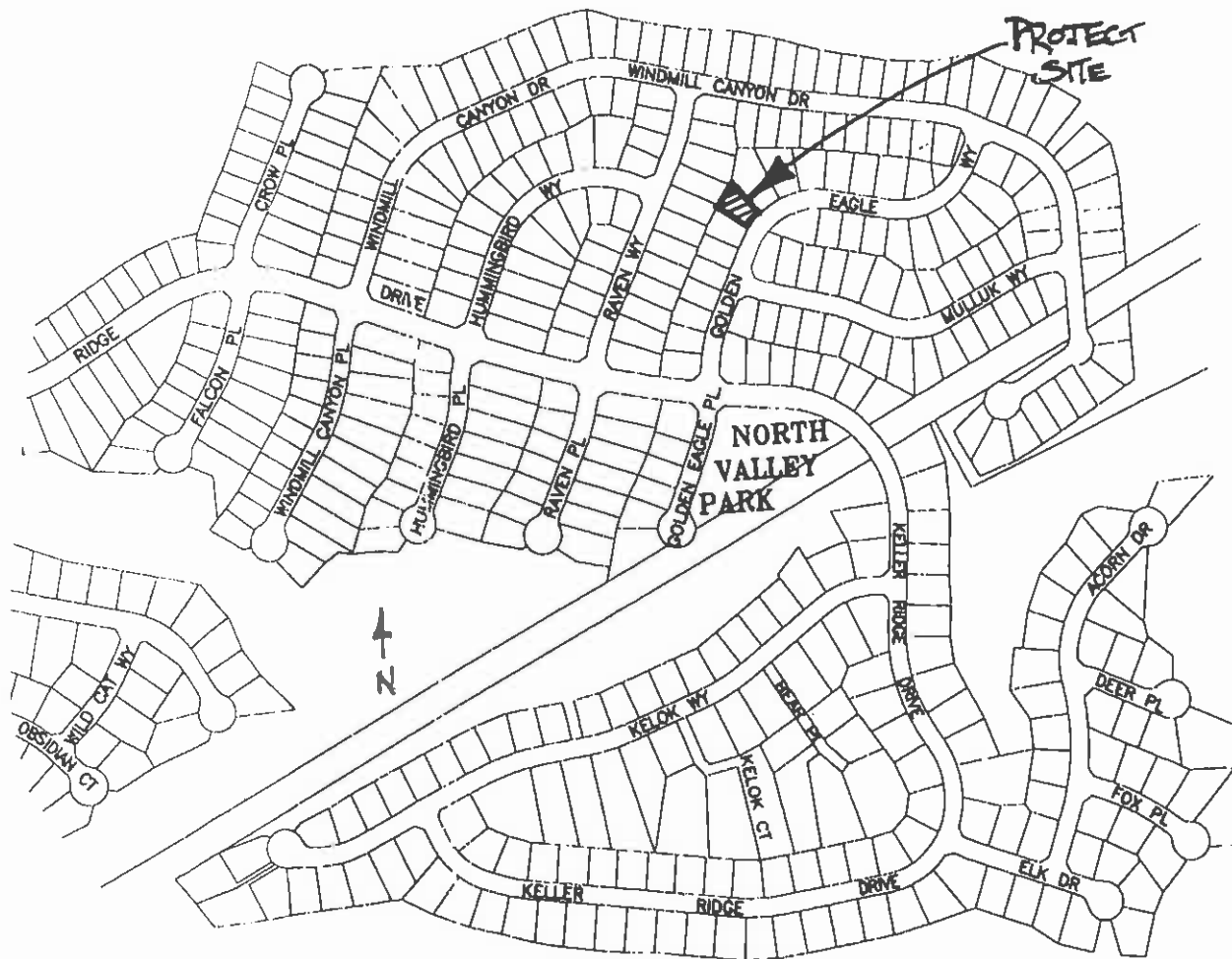
- A. Conformity with the General Plan and any applicable Specific Plan;
- B. Conformity with adopted City standards;
- C. The use shall not negatively affect the general safety (e.g., seismic, landslide, flooding, fire, traffic) of the surrounding area;
- D. The use shall not have significant negative impacts on the health or general welfare of residents or employees of the City; and
- E. The permit will be in accord with the purpose of Use Permits as provided within the code.

City of Clayton City Council Resolution No. 42-2007 (See **Exhibit B**) stipulates conditions to satisfy the applicable findings stated above. These findings are the basic measures for determining compliance. Generally, a review for compliance for a use such as this Large Family Day Care is focused on matters of possible non-compliance that would significantly jeopardize the safety, health or general welfare of residents or employees of the surrounding area. If that circumstance is identified, then the action of the Planning Commission would be to recommend to staff that action be initiated to consider revoking the Use Permit. That would involve a separate subsequent process with proper notice and hearing as required by law. Based on staff's review of this matter, no such circumstance was identified.

EXHIBITS

- A Location Map
- B City Council Resolution No. 47-2007
- C Excerpt from Section 1597.46 of California Health and Safety Code
- D Letter Submitted by Shelly Alves, Large Family Day Care Operator, dated 4/1/08
- E Copy of Shell's Lil' Angels Family Day Care Traffic & Parking Conditions Agreement
- F Alves Large Family Day Care Drop-Off & Pick-Up Routes
- G Written Comments from Paul and Jennifer Graves, received April 8, 2008
- H Rebuttal Memorandum, dated April 14, 2008, from Shelly (Alves) Goodrich

CDD\2007\04-07.sr8



Location Map
6015 Golden Eagle Way
APN 118-630-001

EXHIBIT A

RESOLUTION NO. 42-2007

**A RESOLUTION DENYING AN APPEAL OF THE PLANNING COMMISSION'S
APPROVAL OF LARGE FAMILY DAY CARE PERMIT CDD 04-07, AND
AMENDING THE CONDITIONS OF APPROVAL FOR
LARGE FAMILY DAY CARE PERMIT CDD 04-07
(6015 GOLDEN EAGLE WAY)**

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

WHEREAS, on May 16, 2007, the Community Development Director approved a Large Family Day Care Permit CDD 04-07, regarding operation of a large family day care home located at 6015 Golden Eagle Way (hereinafter referred to as the "Project Site") by Shelly Alves (hereinafter referred to as the "Applicant"); and

WHEREAS, on May 23, 2007, Steve Barber and Stephen Snow filed a timely written appeal of the Community Development Director's decision to the Planning Commission; and

WHEREAS, on May 29, 2007, Michael and Dolores Schmidt filed a timely written appeal of the Community Development Director's decision to the Planning Commission; and

WHEREAS, on June 12, 2007 and June 26, 2007, the Planning Commission held a properly-noticed appeal hearing and received and considered oral testimony, staff reports, and information from the Applicant, Steve Barber, Stephen Snow, Michael Schmidt, Dolores Schmidt, and public presented at the appeal hearing; and

WHEREAS, on June 26, 2007, the Planning Commission denied the appeal filed by Steve Barber and Stephen Snow, denied the appeal filed by Michael and Dolores Schmidt, and approved the large family day care permit with conditions; and

WHEREAS, on July 5, 2007, Paul J. Graves (hereinafter referred to as the "Appellant"), filed a timely written appeal of the Planning Commission's decision to the City Council; and

WHEREAS, at a regular meeting of the City Council on September 4, 2007, the City Council received public testimony regarding the appeal; and

WHEREAS, at a regular meeting of the City Council on September 18, 2007, the City Council conducted a properly-noticed appeal hearing and received further public testimony regarding the appeal; and

WHEREAS, the project is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15274 of the State CEQA Guidelines.

NOW, THEREFORE, the City Council of Clayton, California does hereby find and resolve as follows:

Section 1. Denial of Appeal

The appeal filed by the Appellant identified five grounds. On the basis of the evidence in the record, and the reasons set forth in this resolution, including this Section 1 as well as Sections 2 and 3, the City Council denies the appeal of the Planning Commission's decision and makes the following findings and determinations with respect to the Appellant's grounds of appeal:

- A. Traffic. There is no basis for the Appellants' allegation that the Applicant's residence is located at an unsafe location and that additional traffic created by the project will create an unreasonable risk. The Planning Commission considered the following information in making its decision:
 - 1. Golden Eagle Way is designated as a "Local Street" in the General Plan and has a pavement width of the pavement (curb to curb) of 40 feet. This width is constant over the course of the entire street. As a Local Street, Golden Eagle Way is designed for direct vehicular access to residences, including residents and visitors pulling vehicles into driveways and backing vehicles out of driveways.

2. The Project Site is on the outside of a downhill curve on Golden Eagle Way. Motorists driving in accordance with the 25 mph speed limit have adequate sight distances (considering the downhill curve) in the vicinity of the Project Site to allow U-turns and 3-point turns.
3. The vehicular capacity of Golden Eagle Way is a total of approximately 2000 vehicles per hour in both directions.
4. If a maximum of 14 children are cared for at the Project Site and each child is separately dropped off and picked up, 28 additional vehicle trips per day would be added to the existing baseline traffic. This increase will not adversely affect the traffic capacity of Golden Eagle Way or other local streets in the area.
5. According to the Police Department no citations have been issued for moving violations on Golden Eagle Way.

In recognition of neighborhood concerns regarding traffic generated by the proposed use, the Planning Commission imposed conditions of approval to ensure:

1. Clients must follow the routes shown on the map of "Drop-Off & Pick-Up Routes" when driving to and driving from the day care home from locations outside of the Windmill Canyon and Falcon Ridge neighborhoods.
2. Clients are strongly discouraged from making U-turns in the driveways of any neighboring properties, or within any portion of Golden Eagle Way.
3. Clients dropping off or picking up children must practice safe driving habits and observe all traffic regulations when driving to and from the day care home.
4. Clients who do not follow the above conditions will be terminated from day care services by the Applicant.

On the basis of the information considered by the Planning Commission and the conditions of approval imposed by the Planning Commission and amended by the City Council, the City Council finds that the Applicant's residence is not located at an unsafe location and that additional traffic created by the project will not create an unreasonable risk to motorists or pedestrians.

B. Parking. There is no basis for the Appellant's allegation that parking at the Applicant's residence is inadequate to support a large family day care home. The Planning Commission considered the following information in making its decision:

1. The subject residence has a two-car garage and a driveway which widens for parking of three vehicles.
2. The width of the subject lot at the street is approximately 55 feet, with approximately 20-22 feet used for the driveway.
3. Testimony from the Applicant and several state-licensed day care providers indicated that all persons dropping off and picking up children do not arrive at or near the same time. In addition, the Applicant indicated some children arrive with their siblings, thereby reducing the number of drop-off and pick-up trips.
4. The Applicant indicated client parents have been requested to drive around the block again if parking spaces are not available in applicant's driveway or on the street in front of her residence.
5. Golden Eagle Way is a public street with parking allowed on both sides of the street.

In recognition of neighborhood concerns regarding parking generated by the proposed use, the Planning Commission imposed conditions to ensure:

1. Clients dropping off or picking up their children must park their vehicles in the driveway of the day care home or in the legal parking spaces located directly in front of and on the same side of the street as the day care home.
2. Any parked vehicle which blocks a travel lane, public sidewalk, or driveway of the day care home or a neighboring residence is always subject to citation by the Clayton Police Department.

3. Clients who do not follow the above conditions will be terminated from day care services by the Applicant.
4. The day care home may have one employee who is not a member of the resident household. The employee's vehicle must be parked in an off-street parking space on the Project Site.
5. The parking spaces in the garage and driveway shall be only used for the Applicant's and Applicant's household residents' motor vehicles. The driveway and garage shall not be used for parking or storage of any trailers, recreational vehicles, or similar equipment licensed for movement on public streets and highways.
6. The Applicant shall keep the on-street parking spaces in front of the residence available for the parking of clients' vehicles to the maximum extent practical. The Applicant shall not locate play equipment or park trailers or equipment licensed for movement on public streets and highways in the on-street parking spaces in front of the residence.

On the basis of the information considered by the Planning Commission and the conditions of approval imposed by the Planning Commission and amended by the City Council, the City Council finds that parking at the Applicant's residence is adequate to support a large family day care home.

- C. Previous Issues with Parking and Traffic. There is no basis for the Appellant's allegations that the Applicant was unable to control parking and traffic at a former day care location or the current location. The Planning Commission considered the following information in making its decision:
 - I. Testimony from the Applicant that she had parking guidelines at her former small family day care home on Suisun Court. She noted that she had problems with some clients not complying with the guidelines, but after she spoke with the offending clients, the problems were resolved.

In recognition of neighborhood concerns regarding parking and traffic generated by the proposed use, the Planning Commission imposed the conditions of approval generally described above regarding traffic and parking. To ensure clients are aware of and abide by these conditions, the Commission required the Applicant to provide all clients with copies of the "Traffic & Parking Conditions" prepared by the Applicant and the Planning Commission Notice of Decision. Furthermore, the clients must sign a copy of the "Traffic & Parking Conditions" with the acknowledgment that failure to follow the conditions will result in termination from the day care.

On the basis of the information considered by the Planning Commission and the conditions of approval imposed by the Planning Commission and amended by the City Council, the City Council finds that Applicant adequately controlled parking and traffic at her former day care location and has adequately controlled parking and traffic at the Project Site.

- D. Other Large Family Care Homes. There is no basis for the Appellant's allegation that the Applicant's location is deficient in terms of parking availability and traffic safety in comparison to other residences in the Clayton area which may be operating as large family day homes.

The City Council noted that the State Health and Safety Code establishes four factors cities can consider in the evaluation of large family day care permits: spacing and concentration, traffic control, parking, and noise control. The Commission viewed photographs and heard testimony provided by local residents regarding the circumstances of other residences. The City Council also viewed photographs and considered testimony and evaluated the permit application on its own merits. At the conclusion of the public hearing, the City Council determined the permit application, with the addition of several conditions of approval, was consistent with the four factors established by the Health and Safety Code. On the basis of the information considered by the Planning Commission and the

conditions of approval imposed by the Planning Commission and amended by the City Council, the City Council finds that the Applicant's location is not deficient in terms of parking availability or traffic safety in comparison to other residences in the Clayton area which may be operating as large family day homes.

- E. Appellant's Conclusion. There is no basis for the Appellant's allegation that the cumulative effect of the Applicant's location, parking, and actions at the Applicant's prior residence on Suisun Court warrant denial of the current permit application or the Appellant's allegation that approval of the permit would mean any residence in the City would be appropriate for a large family day care permit.

The City Council considered the four state-mandated factors individually and cumulatively in making its determination. The City Council required several conditions of approval regarding traffic and parking issues including the following:

1. Traffic routes for parents;
2. Discouraging use of neighboring driveways for U-turns;
3. Requiring parents to park in the Applicant's driveway or directly in front of and on the same side of the street as the Applicant's home;
4. Mandates that the Applicant's garage will be only used for the Applicant's motor vehicles;
5. Restrictions on the storage of trailers, equipment, or recreational vehicles in the Applicant's driveway; and
6. Restrictions on the parking of trailers or equipment in the on-street parking spaces in front of the residence.

On the basis of the information considered by the Planning Commission and the conditions of approval imposed by the Planning Commission and amended by the City Council, the City Council finds that the cumulative effects of the Applicant's location, parking, and actions at the Applicant's prior residence on Suisun Court do not warrant denial of the current permit application. Furthermore, the City considers all large family day care permits on a case-by-case basis in view of the

circumstances of the individual residence and surrounding neighborhood conditions. Therefore, approval of the permit would not mean any residence in the City would be appropriate for a large family day care permit.

Section 2. Findings for Approval of Large Family Day Care Home Permit

Based on the evidence set forth in the staff reports which include all relevant information from the project file, as well as public testimony given before the City Council appeal hearing, the City Council confirms the Planning Commission's findings for approval that the large family day care home permit, as conditioned:

- A. Is consistent with the *General Plan* designation and policies.
- B. Is consistent with the Planned Development District residential zoning for the Project Site.
- C. Meets the following standards established in California Health and Safety Code Section 1597.46(a)(3) regarding city approval of large family day care homes.
 - 1. Spacing and concentration of large family day care homes. Four large family day care homes are located in Clayton. The subject large family day care home is located at least one mile from the nearest large family day care home in the Black Diamond subdivision. As a result, the subject large family day care home will not create an over-concentration of large family day care homes in the Windmill Canyon subdivision.
 - 2. Traffic control. Golden Eagle Way is designated as a "Local Street" in the Circulation Element of the *General Plan*; has a curb-to-curb pavement width of 40 feet; has a vehicular capacity of approximately 2000 vehicles per hour in both directions; and based upon the 25 mph speed limit, has adequate sight distances (considering vertical and horizontal curves) in the vicinity of the Project Site to allow U-turns and 3-point turns. In addition, the conditions of approval stipulate that the Applicant must notify client parents that U-turns in the driveways of any neighboring properties or within any portion of Golden Eagle Way is strongly discouraged. On the

basis of this information and the Drop-Off & Pick-Up Routes map, the maximum of 28 additional vehicles trips per day needed for parents to drop-off and pick-up their children at the subject large family day care home will not exceed the capacity of Golden Eagle Way or create traffic congestion in the immediate or nearby areas of the neighborhood.

3. **Parking.** The subject residence is located on a public street with parking allowed on both sides of the street; the conditions of approval stipulate that the applicant must notify clients that vehicles of persons dropping off or picking up children must be parked in the driveway of the day care home or in the parking spaces located directly in front of the subject day care home during drop-off and pick-up times and that these vehicles, if blocking travel lanes or driveways of neighboring residences, are always subject to citation by the Police Department; the conditions of approval also include stipulations regarding the parking spaces in the applicant's garage and driveway to ensure these spaces are not used for storage of equipment or vehicles. On the basis of these circumstances and the conditions of approval, the subject large family day care home will not create an adverse parking situation in the immediate or nearby areas of the neighborhood.
4. **Noise control.** The applicant's daily schedule indicates that day care activities are primarily located inside the subject residence and outdoor activities are generally limited to one hour or less. A noise permit, including notification of nearby property owners, is required by the *Municipal Code* for use of any sound-amplification permit. Drop-offs and pick-ups of children may generate up to 28 additional vehicle trips per day at the subject residence. These trips may create additional vehicular noise (e.g., engine noise, opening and closing vehicle doors) which may be noticeable to nearby residents, but would not be significant. The conditions of approval stipulate that noise which may create a nuisance to neighboring residents must be avoided. The Health and Safety Code states that noise

standards for large family day care must take into consideration the noise levels generated by children. On the basis of these circumstances, the conditions of approval, and the Health and Safety Code provisions, the subject large family day care home will not create an adverse noise situation in the immediate or nearby areas of the neighborhood.

Section 3. Approval of Large Family Day Care Permit

The Planning Commission's decision to approve the project is hereby approved by the City Council subject to the conditions listed below. The following conditions apply to the site plan (date stamped May 14, 2007) and "Traffic & Parking Guidelines" (date stamped June 22, 2007) submitted by the applicant, as well as the map of "Drop-Off & Pick-Up Routes"(dated June 22, 2007) prepared by the City staff.

1. The day care home may have one employee who is not a member of the resident household. The employee's vehicle must be parked in an off-street parking space on the subject property.
2. Noise which may create a nuisance to neighboring residents shall be avoided.
3. No signage shall be permitted on the subject property.
4. The Applicant shall revise the title of "Traffic & Parking Guidelines" to "Traffic & Parking Conditions" and shall incorporate the wording listed below. The revised document shall be submitted to the Community Development Director for review and approval, as well as inclusion in the project file. The document shall be provided to all clients.
 - a. All persons dropping off or picking up children must follow the routes shown on the map of "Drop-Off & Pick-Up Routes" when driving to and driving from the day care home from locations outside of the Windmill Canyon and Falcon Ridge neighborhoods.
 - b. All persons dropping off or picking up children are strongly discouraged from making U-turns in the driveways of any neighboring properties, or within any portion of Golden Eagle Way.

- c. All persons dropping off or picking up children must park their vehicles in the driveway of the day care home or in the legal parking spaces located directly in front of and on the same side of the street as the day care home.
 - d. All persons dropping off or picking up children must practice safe driving habits and observe all traffic regulations when driving to and from the day care home.
 - e. Any parked vehicle which blocks a travel lane, public sidewalk, or driveway of the day care home or a neighboring residence is subject to citation by the Clayton Police Department.
 - f. Clients who do not insure that the above conditions are followed will be terminated from day care services.
5. The parking spaces in the garage and driveway shall be only used for the Applicant's and Applicant's household residents' motor vehicles. The driveway and garage shall not be used for parking or storage of any trailers, recreational vehicles, or similar equipment licensed for movement on public streets and highways.
6. The Applicant shall keep the on-street parking spaces in front of the residence available for the parking of clients' vehicles to the maximum extent practical. The Applicant shall not locate play equipment or park trailers or equipment licensed for movement on public streets and highways in the on-street parking spaces in front of the residence.
7. The Planning Commission shall review the Applicant's compliance with Conditions 1-6 at a public meeting on or before April 15, 2008.
8. The Applicant agrees to indemnify, protect, defend, and hold harmless the City and its elected and appointed officials, officers, employees, and agents from and against any and all liabilities, claims, actions, causes, proceedings, suits, damages, judgments, 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.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 2nd day of October 2007, by the following vote:

AYES: Vice Mayor Manning, Councilmembers Pierce and Stratford.

NOES: Mayor Walcutt.

ABSENT: Councilmember Shuey.

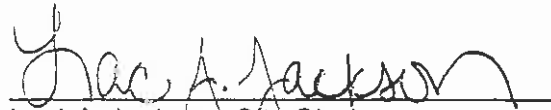
ABSTAIN: None.

THE CITY OF CLAYTON, CALIFORNIA



William R. Walcutt, Mayor

ATTEST:



Laci J. Jackson, City Clerk

CDD\2007\04-07-Resolution

Excerpt - California Health and Safety Code 1597.46

California Health and Safety Code Section 1597.46 establishes the procedures for city review of large family home day care homes, as listed below .

1597.46. All of the following shall apply to large family day care homes:

- (a) A city, county, or city and county shall not prohibit large family day care homes on lots zoned for single-family dwellings, but shall do one of the following:
 - (1) Classify these homes as a permitted use of residential property for zoning purposes.
 - (2) Grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to any large family day care home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control related to such homes . . .
 - (3) Require any large family day care home to apply for a permit to use a lot zone for single-family dwellings. The zoning administrator, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits, shall review and decide the applications. The use permit shall be granted if the large family day care home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes, and complies with subdivision (e) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise levels generated by children. The local government shall process any required permit as economically as possible. . . .

. . . Not fewer than 10 days prior to the date on which the decision will be made on the application, the zoning administrator or person designated to handle the use permits shall give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a 100-foot radius of the exterior boundaries of the proposed large family day care home. No hearing on the application for a permit issued pursuant to this paragraph shall be held before a decision is made unless a hearing is requested by the applicant or other affected person. The applicant or other affected person may appeal the decision. [Emphasis added.]

Tuesday, April 1, 2008

Community Development Director
Planning Commissioners
6000 Heritage Trail
Clayton, CA 94517

Subject: Six Month Review of Large Family Day Care Permit CDD 04-07

On October 2, 2007 the Clayton City Council approved Resolution No. 42-2007 regarding denial of the appeal of the Planning Commission's approval of the Aves Large Family Day Care Permit at 6015 Golden Eagle Way and amendment of the conditions of approval for the Permit.

"Condition No. 7 of Resolution No. 42-2007 requires a compliance review of conditions of approval 1- 6 on or before April 15, 2008." The following are the conditions as listed in the approved Resolution No. 42-2007 and the manner in which they have been met by the Large Family Day Care at 6015 Golden Eagle Way:

1. The day care home may have one employee who is not a member of the resident household. The employee's vehicle must be parked in an off-street parking space on the subject property.
 - a. I understand that I may not have more than one employee on the premises at any given time.
 - b. It is my understanding that the main reason for this condition was to limit the number of cars that might be parked at the property.
 - c. My employee lives in the Oakhurst community and thus walks to and from the day care. The employee does not drive a vehicle and does not ever intend to drive a vehicle to and from the day care.
2. Noise which may create a nuisance to neighboring residents shall be avoided.
 - a. As stated in previous meetings, the outside time for the children per the day care schedule is 10:30 to 11:30. We are typically back inside no later than 11:15. As well, in condition No. 10 of the Traffic & Parking Conditions contract: Do not play your radio so loudly that it can be heard within the neighborhood when driving on Golden Eagle Way or within the vicinity of the day care.
3. No Signage shall be permitted on the subject property.
 - a. No signage is posted on the property other than my personal vehicle.
4. The Applicant shall revise the title of "Traffic & Parking Guidelines" to "Traffic & Parking Conditions" and shall incorporate the wording listed below. The revised document shall be submitted to the Community Development Director for review and approval, as well as inclusion in the project file. The document shall be provided to all clients.
 - a. The title "Traffic & Parking Guidelines" was updated to read "Traffic & Parking Conditions" and was submitted to Jeremy Graves in September of 2007. All day care clients have read and signed this

EXHIBIT D
(3 PAGES)

- contract to be included in their file and mandated parent meetings have taken place to ensure their knowledge and understanding. Please see "Traffic & Parking Conditions attached.
- b. With regards to items a through f as listed in the approved Resolution No. 42-2007, please note, I have included some additional items to ensure compliance. See No. 6 through 11 on the "Traffic & Parking Conditions" attached.
 - c. With regards to these conditions, the errors that I have witnessed parents making are rare, only amongst the new clients, and have been immediately corrected. Current clients want to abide by the conditions and have worked hard to do so. New parents have acclimated quickly to the concerns of the neighbors and have also worked hard to make certain that the conditions have been met faithfully through my counseling and conducting mandated parent meetings.
 - d. Please note that not all vehicles coming to and from the day care are client vehicles and have parked only in an accordance with city vehicle code and not the "Parking & Traffic Conditions", i.e., visiting neighbors, friends & family, service workman, state licensing, etc. during day care hours who are not contracted with the day care and by the conditions of the permit.
5. The parking spaces in the garage and driveway shall be only used for the Applicant's and Applicant's household residents' motor vehicles. The driveway and garage shall not be used for parking or storage of any trailers, recreational vehicles, or similar equipment licensed for movement on public streets and highways.
- a. There are no trailers, recreational vehicles, or similar equipment in the applicant's garage or driveway.
6. The applicant shall keep the on-street parking spaces in front of the residence available for the parking of clients' vehicles to the maximum extent practical. The applicant shall not locate play equipment or park trailers or equipment licensed for movement on public streets and highways in the on-street parking spaces in front of the residence.
- a. The applicant has continuously kept the on-street parking spaces in front of the residence available for clients. No play equipment, or parked trailers have been maintained in the on-street parking spaces in front of the residence where clients should be parking. Moreover, within the "Traffic & Parking Conditions" clients are specifically requested to park their cars in a manner to make more parking available.

I would like to say that I am very proud of my day care parents and their labored efforts to make certain that the conditions of the permit have been met to the best of their ability. My day care parents are very aware of the scrutiny that they are under and continue to strive to provide their undivided attention to the serious nature of this matter. The majority of the families in my day care are located in the City of Clayton and having a day care right here in their community, and in

fact right here in their neighborhood for several of my families is vital to their livelihood and their family's welfare. And as important as it is to the neighbors of the Oakhurst Community that this Large Family Day Care not exist, it is equally and more important to the neighbors of the Oakhurst Community that currently rely upon this Large Family Day Care for their children's care that this Large Family Day Care does exist.

Thank you so very much for your consideration in this crucial matter.

Shelly A. Alves Goodrich

Shell's Lil' Angels
Family DayCare
6015 Golden Eagle Way
Clayton, CA 94517

TRAFFIC & PARKING CONDITIONS

In order for our family day care home to co-exist with our residential neighbors, it is necessary that traffic and parking laws be obeyed. In addition, the conditions listed below must be followed in order to respect and facilitate the building of good relations with our neighbors. As a result, Shell's Lil' Angels Family DayCare, through discussions with our neighbors and as a condition of our permit from the City of Clayton, must adhere to strict parking and traffic conditions. Parents driving to and from day care are required to follow these conditions when dropping-off and/or picking-up their child/children.

Failure to consistently follow these conditions may result in immediate termination of day care services.

1. Parents must follow the routes shown on the attached map of "Drop-Off & Pick-up Routes" when driving to and driving from the day care home from locations outside of the Windmill Canyon and Falcon Ridge neighborhoods.
2. Parents are strongly discouraged from making U-turns and 3-point turns in the driveways of any neighboring properties, or within any portion of Golden Eagle Way.
3. Parents dropping off or picking up their children must park their vehicles in the driveway of the day care home or in the legal parking spaces located in front of and on the same side of the street as the day care home. Parents should not park their vehicles across the street from the day care home.
4. Parents dropping off or picking up their children must practice safe driving habits and observe all traffic regulations when driving to and from the day care home.
5. Any parked vehicle which blocks a travel lane, public sidewalk, or driveway of the day care home or a neighboring residence is subject to citation by the Clayton Police Department.
6. When all spaces in the driveway and along the curb in front of the day care are filled, please continue driving slowly, following the map by turning left on Mulluk Way and follow up and around to Golden Eagle Way. This will avoid the stopping of cars in the street, waiting for parking.
7. When parking in the driveway, please park using only 1 space, leaving room for other cars. Do not park backing into the driveway!

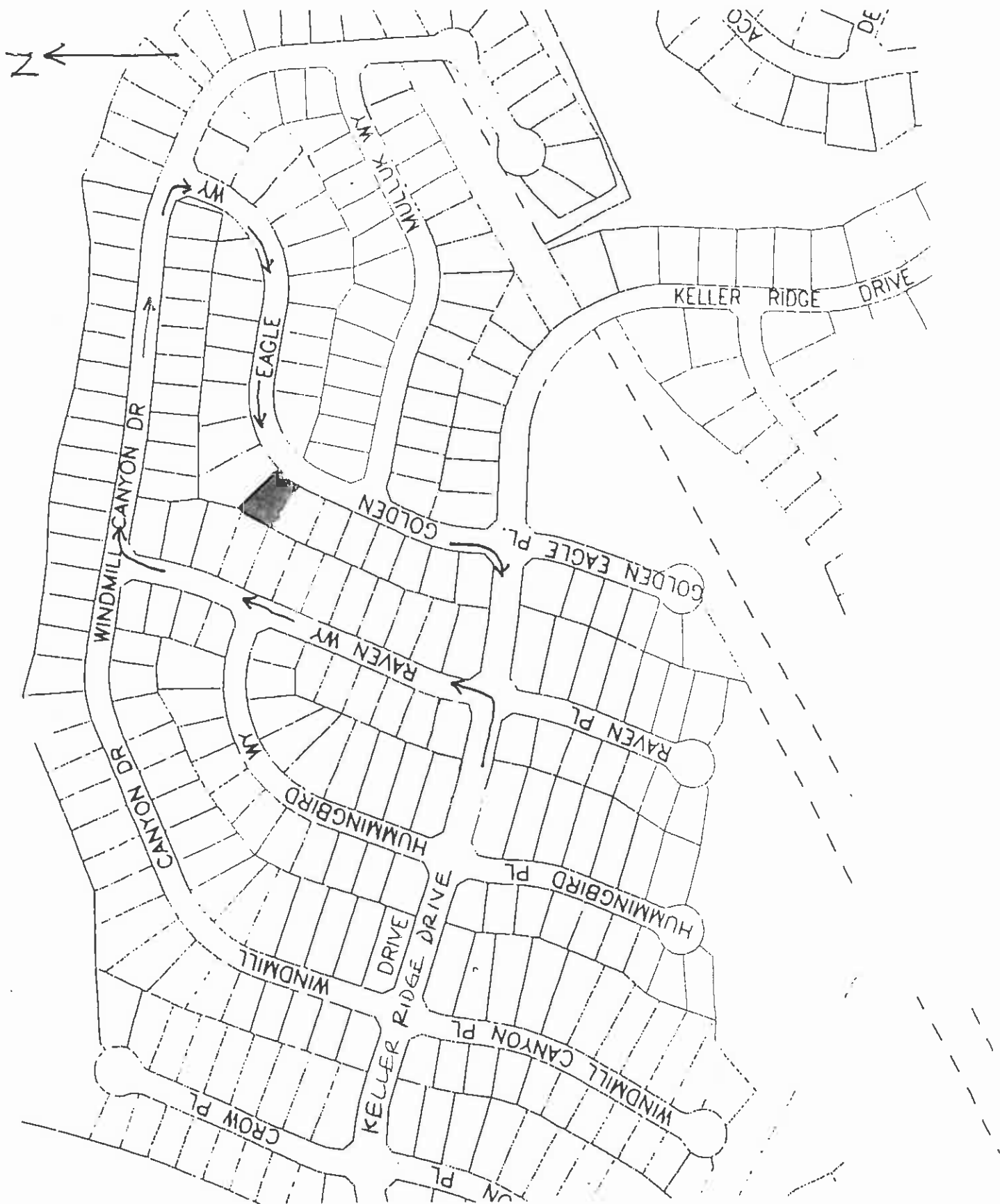
8. When parking on the curb in front of the day care, please pull forward. This will ensure that two cars will be able to park along the curb.
9. Do not leave your vehicle engine running unattended when dropping off or picking up your child.
10. Do not play your radio so loudly that it can be heard within the neighborhood when driving on Golden Eagle Way or within the vicinity of the day care.
11. When your child/children are dropped-off or picked-up by someone other than yourselves (parents), please ensure that these individuals also abide by these same "Parking & Traffic Conditions."
12. Parents who do not follow the above conditions will be terminated from day care services.

AGREEMENT

I/We, _____, parent(s)/legal guardian(s) of _____, have read and affirm that I/we understand the foregoing Traffic & Parking Guidelines. I/We agree to abide by such guidelines and understand that non-compliance will result in the termination of services.

Date _____ Signature _____

Date _____ Signature _____



*Alves Large Family Day Care
"Drop-off & Pick-up Routes"*

EXHIBIT F

**COMMENTS REGARDING THE PLANNING COMMISSION'S
REVIEW OF PROJECT COMPLIANCE WITH CONDITIONS
OF APPROVAL FOR LARGE FAMILY DAY CARE PERMIT
CD 04-07 (6015 GOLDEN EAGLE WAY)**

STATEMENT OF FACTS:

On May 16, 2007, the Community Development Director approved a Large Family Day Care permit CD 04-07 to Shelly Alves (hereinafter "applicant") for the address located at 6015 Golden Eagle Way. On May 23, 2007, Steve Barber and Stephen Snow filed a timely written appeal of the Community Development Director's decision to the Planning Commission. On May 29, 2007, Michael and Dolores Schmidt also filed a timely written appeal of the Community Development Director's decision to the Planning Commission.

On June 12, 2007, and June 26, 2007, the Planning Commission held hearings wherein strong opposition to the Large Family Day Care Center was presented by numerous individuals from the surrounding neighborhood. Despite the legitimate concerns of the neighborhood, and the applicant's demonstrated inability to conduct the operation of the day care center without destroying the peace and enjoyment of the other citizens of Clayton, the Planning Commission, on June 26, 2007, denied the appeals and approved the large family day care permit with very specific conditions of approval.

On July 5, 2007, Paul J. Graves (hereinafter "appellant") filed an appeal of the Planning Commission's decision to the City Council. After public hearing on the matter, the City Council denied the appeal and approved the large family day care center. However, the approval was subject to the terms and conditions set forth in Resolution No. 42-2007 pgs. 10-11. The City Council also indicated that the applicant's compliance with the terms and conditions would be reviewed by the Planning Commission "on or before April 15, 2007." See Resolution No. 42-2007, pg. 11 item #7.

On April 5, 2008, the Appellant received notification that the review of the applicant's compliance with the terms and conditions would occur on April 8, 2008. The Appellant is informed and believes that Mr. and Mrs. Barber have received notification, but Appellant has no information that the other interested parties have received notification of the public hearing.

OBJECTION TO THE PUBLIC HEARING ON APRIL 8, 2008

The Appellant would respectfully request that the Planning Commission postpone the scheduled public hearing so that all interested parties are afforded adequate notice of the hearing and an opportunity to be heard.

RECEIVED

APR 8 2008 EXHIBIT
6

CLAYTON COMMUNITY
DEVELOPMENT DEPT. (11 PAGES)

As stated above, all of the involved parties were notified at the City Council hearing that the review would occur "on or before April 15, 2008." Appellant and Steve and Nancy Barber received notice that the hearing would occur on April 8, 2008, on April 5, 2008, via mail. Appellant submits that 3 days notice on an issue of vital importance to our neighborhood and to the future of Clayton is completely insufficient. Appellant will be unable to attend the hearing, and I believe that the other interested parties who originally opposed the large family day care will be unable to attend due to the short notice.

Furthermore, the notice of the hearing received on April 5, 2008, indicated that there would be a staff report available on the website. Appellant has not located a staff report regarding this issue on the website, nor has Appellant been contacted by the staff attorney regarding the applicant's compliance with the terms and conditions implemented by the City Council. It is inconceivable to Appellant, how any review could be conducted by the City of Clayton without contacting any of the effected parties to determine if the applicant has, in fact, been in compliance with the terms and conditions of approval.

For the aforementioned reasons, Appellant would respectfully request that the Planning Commission set the public hearing for a later time so that all parties have sufficient notice of the hearing and are provided an adequate opportunity to respond to whatever is contained in the staff report and/or presented by applicant at the hearing. As will be set forth below, applicant has not been in strict compliance with the conditions of approval and has failed to terminate clients who have been in violation of those conditions.

If the Planning Commission is not inclined to respect the request of the Appellant and other concerned citizens and postpone the hearing, Appellant would respectfully request that the Planning Commission, after considering the information set forth below, place the matter back before the Planning Commission for further review of the applicant's compliance with terms and conditions of approval.

APPLICANT'S CONTINUED NON-COMPLIANCE WITH THE CONDITIONS OF APPROVAL

As is clear from the multiple public hearings on this matter, Appellant and other concerned Clayton citizens consider the Planning Commission's decisions regarding the continued viability of a large family day care at this particular location to be vitally important to the future of our neighborhood and the City of Clayton as a whole. Since, in Appellant's view, the granting of the large family day care permit to the applicant at this particular location has opened up the possibility of large family day cares at any location in Clayton, the Planning Commission's response to the applicant's non-compliance with the terms and conditions will set precedent for all future cases.

How many violations of the terms and conditions of approval will be tolerated before the Planning Commission will revoke a permit for a large family day care? Who

is responsible for enforcing the terms and conditions of approval? What recourse does the concerned citizenry have when the terms and conditions of approval are violated and the applicant does not invoke the mandatory punishment included in the terms and conditions of approval (i.e., termination of a client)? These are all questions that the Appellant and others in the neighborhood have as we have watched the day to day activities of the applicant's business.

Before addressing the areas of observed non-compliance over the last six months, the Appellant would like to point out three things. First, the City Council and the applicant had an exchange about whose responsibility it was to insure that clients were in compliance with the terms and conditions of approval. It was made abundantly clear, and I am sure that the applicant would agree, that the responsibility falls on the applicant to enforce, regulate, and take action when the terms and conditions of approval are not being complied with.

Second, Appellant submits that many of the applicant's clients have been abiding by the terms and conditions of approval and have caused few, if any, problems. However, it is important to note that, the applicant has not been running at full capacity for the entire 6 months. While Appellant is not absolutely clear on the numbers, it does not appear that she has operated a full, large family day care in the last 6 months. She may have recently increased the number of clients, but Appellant does not believe that the applicant has run at full capacity yet. Therefore, the Appellant would caution the Planning Commission that when it considers the below listed problems that it keep in mind the potential increase of problems as the number of clients increases.

Last, Appellant would also point out that the neighbors have been making an effort to coexist with the large family day care and are not spending every second of every day observing all that goes on at that location. Thus, the documented violations are only reflective of a small number of violations that occur at times when someone is fortuitously present to see and/or photograph the violation. It is inconceivable to conclude that these documented violations are the only times that violations have occurred. Instead, it is more reasonable to assume that they occur more frequently and we have only observed some of them.

A. Hours of Operation:

The applicant has stated that her hours of operation are to be 7:00 a.m. to 5:30 p.m. However, over the course of the entire time she has been providing day care at that location, those hours have not been adhered to. Over the last six months several people in the neighborhood have observed drop offs well before 7:00 a.m. and pick-ups well after 5:30 p.m.

Appellant understands and is aware that there are times when individuals may have emergencies and/or work related issues that necessitate an early drop of or pick up on a few occasions. However, the observed pattern and practice is that early drop offs and late pick-ups are more of a routine than a few isolated occurrences. This practice is

directly contrary to the applicant's own representation in obtaining her permit that the hours of operation would be between 7:00 a.m. and 5:30 p.m.. Appellant submits that, since this is a business operating in a residential neighborhood, that the applicant should be required to run it like any other business and insure that the peace and sanctity of the neighborhood is not disturbed outside of the confines of the hours of operation.

B. Left Turn Violations:

The Planning Commission originally set forth specific "Drop off & Pick-Up Routes" when driving to and from the day care home. That same condition was adopted by the City Council. It was abundantly clear that the specified routes do NOT include left hand turns into the applicant's driveway. Despite that clear condition, Appellant and Mr. Barber had a ½ hour tape of nothing but left turns into the driveway when we appeared in front of the City Council. The City Council reiterated that there were to be no left hand turns into the driveway of applicant's residence for pick up and drop off of clients. Specifically, the City Council's Conditions of Approval read: "4. *The Applicant shall revise the title of 'Traffic & Parking Guidelines' to 'Traffic and Parking conditions'. (a) All persons dropping off or picking up children must follow the routes shown on the map of 'Drop-off & Pick-Up Routes' when driving to and driving from the day care home from locations outside of the Windmill Canyon and Falcon Ridge neighborhoods.*" (See Resolution No. 42-2007 pg. 10, no. 4, emphasis added). The routes DO NOT allow for left hand turns. The City Council went on to impose condition (f) "*Clients who do not insure that the above conditions are followed will be terminated from day care services.*" (See Resolution No. 42-2007 pg. 11, condition f, emphasis added).

Despite this clear directive in the terms and conditions of approval, the same Black SUV violated the terms and conditions on at least two separate occasions, on Wednesday February 27, 2008, in the a.m. and again on Thursday, February 28, 2008, at 7:05 a.m. Yet, it does not appear that this client has been terminated by the applicant for these violations, even though that is what the terms and conditions of approval require.

C. Parking Violations

The City Council also implemented strict parking regulations as a term and condition of approval. Specifically, cars coming to and from the day care facility "*must park their vehicles in the driveway of the day care home or in the legal parking spaces located directly in front of and on the same side of the street as the day care home.*" (See Resolution No. 42-2007 pg. 11, condition (c) emphasis added.) The language of terms and conditions of approval could not be any clearer. The vehicles MUST park in the driveway of the applicant's residence or DIRECTLY in front of the residence. This condition is not subject to any other interpretation. A client who does "*not insure that the above conditions are followed [is to be] terminated from day care services.*" (See Resolution No. 42-2007 pg. 11, condition (f).)

Despite the clear language of the terms and conditions of approval, there continue to be parking violations occurring at the residence without the client being terminated. Unfortunately, the observations are not always at a time when someone has a camera immediately available; however, Appellant submits two clear violations of the parking terms and conditions supported by photographic evidence.

1. Tuesday March 4, 2008, at 8:21 a.m.

On this date and time, a Black Envoy driven by a client of applicant's day care parked his vehicle two houses away from the day care because a school bus was blocking the driveway of the day care. (See photos attached as Exhibit 1) The school bus was also transporting a client of the day care facility. The driver of the Envoy was in a hurry and could not wait for the school bus to pull way so he could park correctly. The driver left an older child unattended in the vehicle, while he carried a smaller child into the daycare.

Appellant submits that this scenario is exactly what Appellant and other neighbors were concerned about and cautioned the Planning Commission and the City Council about. There is a finite amount of available parking in front of the day care within the property lines of the day care facility. The City Council addressed the concerns of the neighborhood and attempted to strike a balance between the needs of the day care and the surrounding neighbors. This situation is NOT supposed to occur under the clear terms and conditions of approval. It is also a scenario that will occur again and again unless the Planning Commission strictly enforces the terms and conditions of approval and mandates that the client be terminated from the day care.

2. Tuesday March 11, 2008 at 3:47 p.m.

A large, blue Ford pick-up truck with a camper shell parked their vehicle one house away from the day care in front of the Schmidt's property line because another car was in the front parking space. (See photos attached as Exhibit 2).

Despite the fact that this conduct is not permitted under the terms and conditions of approval, the client was not terminated as a result of this violation.

D. Other Concerns:

Although not specifically set forth in the terms and conditions of approval, there are other concerns that impact the peace and sanctity of our neighborhood that are associated with having a day care down the street. It is important to remember that a vast majority of people who live on this block are parents themselves and take great pride in insuring the safety of our own children and looking out for the other children who live on our street. We realize the immense responsibility that the City Council has forced upon us by allowing this day care to exist in our neighborhood. It is incumbent on us to insure the safety of all children that come into our neighborhood. Unfortunately, with this

responsibility comes a certain trepidation when we observe parents leaving children unattended in our neighborhood. Yet, it occurs at a pace that is unacceptable to Appellant in our neighborhood.

In February of this year a child was left unattended in a convertible while the parent went to pick up a child inside the day care. In March of this year, a client did not walk her "special needs" child to the door of the day care but, instead, left as soon as the child got to the front steps. In yet another instance, a client left a child in their car, two houses away from the day care and walked a younger child to the day care, leaving the other child unattended in the car.

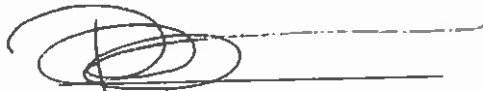
While these incidences may sound trivial on its face, it is a tremendous responsibility that we did not ask for in our every day lives. To me it is no different than coming out of the store and seeing a child unattended in a car. Do we assume that the parent is nearby? Do we call the police? This situation is occurring in our neighborhood all too frequently and it is something that should not occur at all. One would think that an individual dedicated to providing a day care for children and who takes on the responsibility of protecting children would not tolerate other children being placed in a dangerous situation or being left unattended for any appreciable period of time. Apparently that is not the case. Perhaps the arrest of one of applicant's supporters (a day care provider who testified on applicant's behalf at the previous planning commission meeting) was a portent for what we could expect from the day care in our own neighborhood. As the attached article explains, this woman was arrested by the Clayton Police and charged with child endangerment for leaving her own one year old child unattended in the parking lot of the Clayton Library.

CONCLUSION

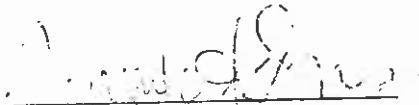
To the people who live on Golden Eagle Way and the citizens of Clayton as a whole, the manner in which the Planning Commission and the City Council deal with strictly enforcing the terms and conditions of approval is a very important matter that deserves more than 3 days notice. The City Council attempted to strike a balance between the need for residential day care and the rights and privileges of the citizens who live in the neighborhood. That balance is reflected in the terms and conditions of approval. Those conditions need to be strictly enforced with no excuses; otherwise they are worthless and provide no incentive for the applicant or any other day care provider to follow the rules in this community. That should not and cannot be tolerated. Appellant points out that the Planning Commission has already heard numerous witnesses' present evidence about problems and issues at the current day care site and the applicant's problems at her last day care site in Clayton. She has had numerous chances.

We are all trying to respect the rights of everyone in the neighborhood. The City Council has placed us in a position of being the only people to enforce the terms and conditions of approval. There have been multiple violations of the terms and conditions in the last six months and photographic evidence of two of the violations. Appellant submits that the Applicant should have her large family day care permit revoked or, at the

very least, have to terminate the clients who have violated the terms and conditions of approval.

A handwritten signature in dark ink, appearing to be "Paul J. Graves", written over a horizontal line.

Paul J. Graves
6018 Golden Eagle Way

A handwritten signature in dark ink, appearing to be "Jennifer A.E. Graves", written over a horizontal line.

Jennifer A.E. Graves
6018 Golden Eagle Way



Client Violation Date
Tuesday March 4, 2008 approx. 8:21AM

Violation: Parks vehicle two houses
away from daycare because school
bus picking up another child at
day care was blocking the driveway.



Client violation date

Tuesday March 11, 2008 approx. 3:47 p.m.

violation:

Parks vehicle at house next door
to daycare because another
car visiting the daycare was
parked in front of the house.

http://216.252.120.199/ya/securedownload?box=Inbox&MsgId=1495_5127542_3794_1858_36653_... 3/25/2008

Exhibit 2



- man carrying his child down to daycare.
- leaves older child unattended in vehicle .
- School bus has already pulled away from daycare

Woman leaves son in car, loses day care license

K. Martinez mom has 30 days to appeal suspension, at which point it could be lifted, revoked or re-granted with probation

By Tanya Rose
STAFF WRITER

A Martinez woman's in-home day care was shut down last month after she left her 1-year-old son alone in a parked van in Clayton.

On top of operating her own child care enterprise, Karen Binayas had been acting as an advocate for a proposed family day care expansion in Clayton, having spoken out at a Sept. 4 City Council meeting in favor of a permit request by Shelly Alves, a Clayton resident.

The Alves permit request came up again at the Sept. 18 council meeting in Clayton — hours after police were called to the library to investigate Binayas' van.

An investigation report issued by the California Department of Social Services Community Care Licensing Division says Binayas left her infant son in a parked van at the Clayton Community Library during the day for about 30 minutes. It says that the window was rolled down enough that a police officer was able to reach his hand in and unlock the

car, pulling out the crying child.

"The licensee was nowhere to be found, and only returned to the car after the child had been removed to protective custody," reads the report.

The report says that Binayas contends she was only inside the library for about 15 minutes. And, it notes, her son is now back home with her.

Binayas said by phone Thursday that she could not comment because her case is up for an appeal. She said she would pass on questions to her attorney, who didn't call the Times.

She was quoted in a Child Protective Services report saying, "My infant was returned to my custody after determining I do not pose a threat to my child or children in my care."

However, her operating license was suspended Sept. 25, and Darryl Jefferson, a licensing program manager with the social services department, said that Binayas has 30 days to appeal.

After that, the suspension could be lifted, the license could be revoked or it could be re-granted but with some sort of probation attached, he said.

"Those are basically the options when there's a suspension," said Jefferson, who noted he could not talk about the specifics of Binayas' case.

SATURDAY, OCTOBER 13, 2007

Local • Bay Area

Contra Costa

THE TIMES

ATTACHMENT

To: The City of Clayton Planning Commission

From: Shelly A. (Alves) Goodrich

Date: April 14, 2008

Subject: Rebuttal to an Appellant's Statements Regarding the Compliance Review of Alves Large Family Day Care Permit Hearing Scheduled for April 29, 2008

Before addressing the areas of observed non-compliance over the last six months, per the Appellant, I would like to point out to you that the Appellant submits that many of the clients of the day care have been abiding by the terms and conditions of approval (as is noted in paragraph 3 on page 3 of his comments) and have not caused any problems. But yet he continues on for 4 more pages of written text, 3 pictures, (of which 2 are illegible) and a Contra Costa Times article that is redundant to this case and has nothing to do with the operation of this day care.

The condition placed upon the day care at the time of the City Council Hearing in Sept., 2008, was that a review within 6 months would be conducted to determine compliance. The condition did not state at what capacity the day care should be operating at the time of this review. As is the nature of any day care, small or large, numbers of clients change constantly. A large day care does not always operate at full capacity as was testified by many other day care providers in previous hearings before The Planning Commissioners and The City Council. The chance of the numbers of clients remaining the same for any 6 month period would be rare. At the time of the City Council hearing in Sept, 2008, I was mandated to operate as a small family day care until such time as a permit was granted. A day care can not fill in an expedient manner. In particular, holidays are always a slow time as for any operation. I have operated as a large family day care on a part-time basis since November of 2007 and on a full-time basis since February of this year. I do not currently have openings for new clients.

I would like to also point out that the Appellant states that the neighbors have been making efforts to coexist with the family day care. Based on my observations, and those of other neighbors outside of the Appellants, you would not even know that a family day care exists with the exception of the signage on my vehicle in the driveway. Others on Golden Eagle Way and adjacent streets have made the same statements. My home is equally quiet

EXHIBIT
H
1 (5 PAGES)

and as peaceful as any other home. The clients that come and go at the limited early hours of the am and pm times have not interfered with the neighbor's comings and goings, nor has there been any additional congestion because the numbers of clients arriving at any given time have not exceeded 3. And this is upon a rare instance only. Four of my clients live within the neighborhood and arrive on foot. Eight of my clients are siblings and account for only 4 vehicles.

Hours of Operation:

As stated previously, my hours of operation are 7:00am to 5:30pm. I have only one client that arrives prior to 7:00am and this occurs two to three times within a month and in some months not at all. This client is a nurse at John Muir Hospital and has occasions when earlier care is needed. This client arrives quietly and leaves quietly; not disrupting the Appellants peace or privacy. Because this client has been with me for nearly 6 years, this client is the exception. I have no other clients arriving before this time. The Appellant's statement that there are many is incorrect and without supported proof. As well, the Appellant is correct in his understanding that there are times when parents may have emergencies that are work related, and or traffic that disallows for timely pick-ups. But this also is the exception and not a routine pattern as stated. Again, the Appellant has provided no supported proof of these instances. My time with my family is extremely important to me; hence the 5:30pm closing time.

Left Turn Violations:

The Planning Commission originally set forth specific routes for the clients to follow in order that u-turns could be avoided. These routes have been faithfully abided by the clients. These conditions do not apply to non-clients or to clients residing within the Windmill Canyon and Falcon Ridge neighborhoods. Four of my clients reside within the neighborhood as previously mentioned. One newer client earlier in March misunderstood the condition. They were counseled and since corrected their route in to the day care.

Parking Violations:

I don't currently and have not had a client with a black Envoy. I did however have an instance where a parent driving a black Toyota Sequoia, not well understanding the conditions of parking (this was his first time

dropping-off; usually the mother drops-off), did park further down the street. Upon advising him of this error, he has since not made this error again. His older child is a junior-high student and is of age to be left alone in the car per Clayton Police. This is not an instance where the Clayton Police would have sited the parent with child endangerment. If in fact the Appellant were concerned for the child's safety, why wasn't the police called? Why didn't the appellant stay with the child to ensure safety? This may not be his job, but he consistently sites his concern for the safety of the children.

I have also asked the early am bus driver to pull further up on the curb and not block the driveway and she was more than willing to cooperate and has done so. I have also spoken to the clients and reminded them on several occasions to go around the block again and this has worked for many who have abided by this condition that I incurred.

I was aware of the grandparent with the large blue Ford truck and she was also previously counseled and unfortunately no longer chooses to provide pick-ups for her grandchildren. The children's parents provide all pick-ups.

It was February 14th when a client's child went out to the convertible to wait for his mother to follow. His mother and I were standing at the door talking, as he was the last of my day care to leave. This child was not only supervised by both his mother and myself, but per the Clayton Police Dept., this child (nearly 9 years of age) was old enough to be safely left in the vehicle and this is not an instance in which the parent would be sited for child endangerment.

I have a small handful of clients with older children and per the Clayton Police; this is not considered child endangerment when left in a vehicle outside the day care. The attached article is merely the appellant grasping at straws in a need to prove that a family day care should not exist within their neighborhood. The State of California believes otherwise per the Health & Safety Code. This article does not contain information regarding either myself or the clients of the day care placing their children in danger.

The special needs child that attends the day care is not left alone to walk up to my door, but is greeted by myself and the parent does not leave until we wave to one another acknowledging that I have received this child. She is a high-functioning 14 year old, and is more than capable of walking to the door from her parent's vehicle and the bus alone. If the Appellant had

provided supported proof , than one would have noticed my presence at the front door each and every morning this child arrives.

Finally, upon much research, the day care has discovered that other neighbors in the neighborhood have taken it upon themselves to ensure that their child makes it on the bus up to and including following the bus to Golden Eagle Way and placing their child/children on the bus at the day care location. One such neighbor did just this on April 9, 2008 as well as other times previously and as admitted by this neighbor. I have since asked her not to follow the bus to the day care. This neighbor is not a client of the day care, drives a dark colored SUV, and most probably is included in the illegible pictures and or the additional pictures to come. She is a CHP officer and has never heard of such stringent conditions placed upon a family day care, but is willing to locate the bus elsewhere when her children miss it.

Conclusion:

There is still a tremendous need for family day care in Clayton and per the statistics, still more than any other city in Contra Costa County. The majority of Clayton families are still seeking care for their children outside of the City of Clayton. This family day care provides care for a large number of children, with the majority of them residing in Clayton.

No other day care in the City of Clayton has the stringent conditions placed upon them as does this day care. Are we the citizens of Clayton asking the clients of this day care to be perfect? The appellants themselves are not perfect and have also made parking and traffic violations just like the rest of us. The State of California recognizes perfection to be inhuman and allows for 3 strikes before you're out. And this is for hardened criminals! Not law-abiding citizens such as my clients. My clients have well-followed the driving laws of The Sate of California and the City Vehicle Code of Clayton. We are asking them to ignore these laws and drive and park under conditions like in no other neighborhood of California. I commend my clients. Despite the knots in their stomachs that many have expressed experiencing when they arrive on Golden Eagle Way, they have done tremendously well. We are all trying hard to respect the rights of everyone in the neighborhood. There has been no outright belligerence to the conditions. The photographic evidence would not even allow for counseling or termination. It's grainy and illegible.

I would ask the Planning Commissioners to define the parameters of condition number 4, letter f. And allow for limited counseling and correction of violations before termination. My clients, other than the client terminated in Sept of 2007, have heeded my advice and corrected their minute violations and have not acted with lack of consideration and or a defiant unwillingness to abide by the conditions.

Shelly A. (Alves) Goodrich