



Agenda

Planning Commission Meeting

7:00 P.M. on Tuesday, July 12, 2011

Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Selection of Chair and Vice Chair.
- 1B. Review of agenda items.
- 1C. Chair Johnson to report at the City Council meeting on July 19, 2011.

Public Comment

Approval of Minutes

- 2A. Approval of minutes from the meeting of June 14, 2011.
- 2B. Approval of minutes from the meeting of June 28, 2011.

Public Hearing

- 3. A public hearing pertaining to the proposed Diablo Estates at Clayton residential subdivision involving the construction of 24 single-family residences on the 24-acre former Diablo Pointe property. The applicant is Toll Brothers Home Builders. The project site is located at the northeast corner of Regency Drive and Rialto Drive (APNs 119-630-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, 119-640-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014). The entitlements that will be considered for approval are listed below (**continued from the June 28, 2011 Planning Commission meeting**):

- **SPR 01-11, Site Plan Review.** A site plan review permit to allow the construction of 24 single-family residences measuring approximately 3,500 to 4,900 square feet in area (includes garage space).
Proposed Action: Approval, with conditions.
- **LLA 01-11, Lot Line Adjustment.** A lot line adjustment to adjust the lot lines on Lots 1, 2, 20, and 21.
Proposed Action: Approval, with conditions.
- **VAR 01-11, Variance.** A variance to allow the front and side setbacks on Lots 1, 2, 3, 4, 16 to be less than the required minimum setbacks in the respective Single Family Residential Districts and also to allow only the porches on all residences to project five feet into the front and side setbacks.
Proposed Action: Approval, with conditions.

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Old Business

4. None.

New Business

5. None.

Communications

- 6A. Staff.
6B. Commission.

Adjournment

7. The next meeting of the Planning Commission is scheduled for **Tuesday, July 26, 2011.**

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.

Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

Minutes
Clayton Planning Commission Meeting
Tuesday, June 14, 2011

Call to Order

Chair Sandra Johnson called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton.

Present: Chair Sandra Johnson, Vice Chair Dan Richardson, Commissioner Tuija Catalano, Commissioner Ted Meriam

Absent: Commissioner Bob Armstrong

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

Administrative

1A. Review of agenda items.

1B. Chair Johnson to report at the City Council meeting on June 21, 2011.

Public Comment

None.

Approval of Minutes

2. None.

Public Hearing

3. A public hearing pertaining to the proposed Diablo Estates at Clayton residential subdivision involving the construction of 24 single-family residences on the 24-acre former Diablo Pointe property. The applicant is Toll Brothers Home Builders. The project site is located at the northeast corner of Regency Drive and Rialto Drive (APNs 119-630-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, 119-640-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014). The entitlements that will be considered for approval are listed below:

- **SPR 01-11, Site Plan Review.** A site plan review permit to allow the construction of 24 single-family residences measuring approximately 3,500 to 4,900 square feet in area (includes garage space).
- **LLA 01-11, Lot Line Adjustment.** A lot line adjustment to adjust the lot lines on Lots 1, 2, 20, and 21.
- **VAR 01-11, Variance.** A variance to allow the front and side setbacks on Lots 1, 2, 3, 4, 16 to be less than the required minimum setbacks in the respective Single Family Residential Districts and also to allow only the porches on all residences to project five feet into the front and side setbacks.
- **UP 01-11, Use Permit.** A use permit to allow a temporary sales trailer and related parking lot to be installed on Lot 18.

Director Woltering presented the staff report and highlighted the following items:

- The Site Plan Review Permit, Lot Line Adjustment, and Variance are being introduced to the Planning Commission tonight; however, staff is requesting that a Commission decision be rendered at tonight's meeting on the Use Permit request.
- The project site was the former location of the Diablo Pointe residential subdivision project, for which a final map of the 24-lot residential subdivision was approved with private streets and utility easements included. The subdivision also included a Lot 25 for dedication to the State Parks Department.
- Toll Brothers purchased the site after Lemke Construction (original developer of the previously-approved Diablo Pointe project) lost the property to foreclosure.
- Toll Brothers is proposing new residential designs, a minor shift in the location of certain lot lines, variances for smaller setbacks to create larger useable rear yard areas and to minimize impacts to existing slopes potentially caused by grading, and a Use Permit for a temporary sales trailer and associated parking lot.
- A concern of staff regarding this proposal is that the developer is wanting to enable some development for future homeowners within the steeply sloped areas beyond the proposed open view fencing at the back of the rear yard areas on individual lots.
- Staff is proposing a condition of approval that will require the applicant to submit an application to rezone Lots 1, 2, and 3 from R-40-H to R-40 to do away with the equestrian uses that could potentially increase slope degradation on those lots.

Commission comments and questions included:

- Variances are needed to minimize impacts to sloped areas? Director Woltering indicated that, the closer the residences are to the street, the further they will be away from the tops of slopes and toes of slopes on the respective lots. Approval of the variance request will allow certain residences to be located closer to the street, thereby orienting the residences further away from the sloped areas, and, as a result, minimizing impacts to the slopes.
- What will be the maintenance mechanism for the landscaped areas outside of the open view fence? Director Woltering indicated that a benefit assessment district could be established to address maintenance needs for the landscaped areas.
- Why is corrective grading occurring at the project site? Director Woltering indicated that the previous developer, Lemke Construction, performed grading to a certain point, but did not complete the grading, so Toll Brothers will have to complete the unfinished grading to obtain the necessary certification that the grading was satisfactorily completed.
- Were there environmental impacts that needed mitigation? Director Woltering indicated that there are mitigation measures in the environmental document pertaining to drainage, habitat protection, etc.

Rick Nelson, Division President, Toll Brothers, indicated the following:

- Toll Brothers purchased the property from the bank that foreclosed on Lemke Construction.
- Since the prior grading was not completed, Toll Brothers developed a remedial grading plan and are doing corrective work on the project site to gain proper certification.
- Toll Brothers intent is that the Diablo Estates project conforms to the prior approvals related to the Diablo Pointe project.
- We are proposing smaller residences. Our largest residence is 4,200 square feet (i.e., habitable space) in area.
- We were concerned there was not enough rear yard space on the lots approved as part of the Diablo Pointe Site Plan Review Permit, so we designed Diablo Estates residences to be smaller than the residences approved as part of the Diablo Pointe project. Additionally, we are requesting variances to move specified residences to the street.

- The reason we pre-plotted residences on only a portion of the Diablo Estates site is to retain flexibility and provide some level of choice in the location of different residential designs on different lots for prospective homebuyers.
- We are proposing to install open view fencing at the terminus of the formal, individual rear yard areas and, for privacy purposes, solid fences between the residences.

Dick Hunt, Principal, Hunt Hale Architects, the project architect for Toll Brothers, indicated the following:

- We tried to provide more animation of the streetscape by utilizing six different residential plan types with two or three color schemes and front elevation options per plan type.
- The residences have been designed to “address” the street.
- To soften the visual impact of the two-story residences, we mixed single-story elements with two-story elements.
- Courtyards were included in the design of many of the residences to create interior, useable, sheltered open space.
- We are offering different floor plans to provide more livability for different lifestyles.
- We designed smaller residences than what was approved for the Diablo Pointe project.
- In order to minimize the visual impact to off-site areas, the residences are proposed to be sited further away from the top of slope as viewed from Rialto Drive, Regency Drive, and Petar Court.

Commissioner Meriam inquired about the temporary sales trailer. Mr. Hunt indicated that the ramps shown on the trailer in the photograph will not be used for the trailer at the Diablo Estates site. Instead the trailer will be placed below grade to enable direct access into the unit.

Commissioner Catalano inquired about the distribution of one- and two-story residence on lots 16 through 24. Mr. Hunt indicated that, in order to comply with the requirement that single-story residence designs be predominantly used on those lots, we will utilize single-story residences and two-story residences with single-story elements on a majority of these lots.

Vice Chair Richardson inquired how the strategy of using mixed residential frontages and various plan types will work with the flexible plotting of residences. Mr. Hunt indicated that the Diablo Estates project is being proposed with that the proposed condition of approval to limit how often options are used within the subdivision should assure the variety and interest that the Planning Commission would hope for.

Vice Chair Richardson inquired about the impetus for the variance requests. Mr. Hunt indicated that we are asking for the variances to allow the residences to be placed closer to the street and pulling the residences further away from the slopes in the rear yard areas of certain lots, thereby providing minimization of visual impact, maximization of yard space, and reduction of grading impacts.

Commissioner Catalano inquired about the landscape fencing beyond the yard areas adjacent to the residences. Mr. Hunt indicated that no fencing will be located on the downslope or upslope rear yard areas beyond the proposed lateral open view fencing, other than the perimeter fencing at the rear property lines of the lots.

Commissioner Catalano inquired if there was a construction schedule. Mr. Hunt indicated that Toll Brothers was anticipating construction of the model home within six months and hoping to build-out the entire subdivision within approximately two years.

Vice Chair Richardson inquired who would be responsible for maintaining the fire clearance on each lot. Mr. Hunt indicated that, through use of a benefit assessment district, the property owners of the lots would be responsible.

Commissioner Meriam inquired about the dedication of Lot 25. Mr. Hunt indicated that it is still anticipated Lot 25 would be dedicated to State Parks.

The public hearing was opened.

Marianna Behdjet, 32 Petar Court, indicated the following:

- Concerned about assuring weed abatement on the site.
- A benefit assessment district should be established to help ensure the property owners address weed abatement.
- Single-story residences should be located on the lots above Petar Court so that the existing residential properties on Petar Court will not be visually impacted by a wall of two-story structures.

Ann Upton, 38 Petar Court, indicated the following:

- The benefit assessment district should include maintenance of the drainage v-ditches.
- Hopefully, the grading being done on the site should prevent drainage problems. I have had flooding on my property caused by runoff from the project site.
- The open view fencing at the top of the slopes above Petar Court should run along the top of the slope, rather than being located beneath the top of slope. Mr. Hunt indicated that open view fencing matches the topography of the slope in order to have a more consistent trajectory.

Tom Fannin, 61 Regency Drive, inquired what the fence design would be for the fence running along Regency Drive. Mr. Hunt indicated that there will be open-view fencing located on Regency Drive.

Ron Cerruti, 20 Rialto Drive, indicated concerns about proper weed abatement on the almost three-acre Lot 4, which is located behind his property on Rialto Drive. He inquired if a "French drain" system had been installed at the edge of the subject property above Rialto Drive. Mr. Nelson indicated that he would research the matter.

The public hearing was closed.

Chair Johnson inquired how the property owners would be penalized if they do not perform proper weed abatement. Director Woltering indicated that a lien could be levied against the property owner in violation of the benefit assessment district terms.

Vice Chair Richardson confirmed, per staff's recommendation, that the Use Permit is the only entitlement that the Planning Commission anticipates making a motion on tonight and that the other entitlements will be continued to the next meeting. He added that it would be helpful to have more information on the location of the open-view fencing and easements on sloped areas of the rear portions of lots.

Commissioner Catalano indicated the following:

- We need to be sure that Lot 25 is still deed over to Mount Diablo State Park in the event that only 19 residences (or less) are constructed.

- We need to ensure that architectural variation is included in the designs of the residences.
- It would be good to have a copy of the environmental mitigation measures and association conditions of approval.

Commissioner Meriam indicated the following:

- We want to ensure that we include single-story residences on Lots 16 through 24. Director Woltering indicated that the mitigation measures require that the residences on Lots 16 through 24 be predominantly single-story.

Chair Johnson indicated the following:

- We want to make sure that the property owners do not replace open-view fencing with a solid wood fence.
- Construction of structures by the property owners on downslope or upslope areas of the lot should be prohibited.

Director Woltering indicated that staff would research the scenic easement on the subject property.

Commissioner Catalano moved and Vice Chair Richardson seconded a motion to approve Use Permit UP 01-11, with the Conditions of Approval as recommended by staff; and to continue Site Plan Review Permit SPR 01-11, Lot Line Adjustment LLA 01-11, and Variance VAR 01-11 to the next meeting of the Planning Commission on June 28, 2011. The motion passed 5-0.

Old Business

4. None.

New Business

5. None.

Communications

6A. Staff

Director Woltering provided a status report on the update of the Housing Element implementation program.

6B. Commission – None.

Adjournment

7. The meeting was adjourned at 9:30 p.m. to the following regularly-scheduled meeting of **June 28, 2011.**

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Sandra Johnson
Chair

Minutes
Clayton Planning Commission Meeting
Tuesday, June 28, 2011

Call to Order

Chair Sandra Johnson called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton.

Present: Chair Sandra Johnson, Vice Chair Dan Richardson, Commissioner Bob Armstrong, Commissioner Tuija Catalano, Commissioner Ted Meriam

Absent: None

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

Administrative

1A. Review of agenda items.

1B. Chair Johnson to report at the City Council meeting on June 21, 2011.

Public Comment

Marlyne Hadley, 928 Hamburg Circle, inquired if the comments received at the May 24, 2011 Planning Commission meeting, as presented in the minutes from that meeting, would be included in the Response To Comments document. Vice Chair Richardson responded, yes, the comments received on the project at the May 24, 2011 Planning Commission meeting would be included and responded to as appropriate in that document.

Kris Krueger inquired if the Diablo Estates Use Permit request for the temporary sales trailer was going to be heard at tonight's meeting. Director Woltering indicated the Use Permit request for the temporary sales trailer was approved at the previous Planning Commission meeting on June 14, 2011.

Approval of Minutes

2A. Approval of minutes from the meeting of May 24, 2011.

2B. Approval of minutes from the meeting of June 14, 2011 (not completed for distribution at this meeting).

Commissioner Catalano moved and Vice Chair Richardson seconded a motion to approve the minutes from the meeting of May 24, 2011, as amended. The motion passed 5-0.

Public Hearing

3. A public hearing pertaining to the proposed Diablo Estates at Clayton residential subdivision involving the construction of 24 single-family residences on the 24-acre former Diablo Pointe property. The applicant is Toll Brothers Home Builders. The project site is located at the northeast corner of Regency Drive and Rialto Drive (APNs 119-630-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, 119-640-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014). The entitlements that will be considered for approval are listed below:

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- **VAR 01-11, Variance.** A variance to allow the front and side setbacks on Lots 1, 2, 3, 4, 16 to be less than the required minimum setbacks in the respective Single Family Residential Districts and also to allow only the porches on all residences to project five feet into the front and side setbacks.

Director Woltering indicated that Toll Brothers requested a continuance of the Site Plan Review Permit, Lot Line Adjustment, and Variance to the next regularly-scheduled Planning Commission meeting on July 12, 2011.

Vice Chair Richardson moved and Commissioner Armstrong seconded a motion to continue Site Plan Review Permit SPR 01-11, Lot Line Adjustment LLA 01-11, and Variance VAR 01-11 to the next meeting of the Planning Commission on July 12, 2011. The motion passed 5-0.

Old Business

4. None.

New Business

5. **GPA 02-11, Conformity with General Plan, Capital Improvement Program (CIP).** Review of City of Clayton CIP projects anticipated to be undertaken in the coming fiscal year (FY 2011 – 2012) for conformity with the General Plan.

Director Woltering presented the staff report.

Commissioner Armstrong inquired if the Planning Commission will see plans for the modifications slated to occur at the Clayton Community Library. Director Woltering indicated that Clayton Community Library plans would be handled by the City Engineer and likely would not come before the Planning Commission.

Commissioner Catalano inquired about the un-funded projects. Director Woltering that, as funding would become available, work would be done on those projects this fiscal year.

Communications

- 6A. Staff

Director Woltering indicated that Keith Haydon would be returning to serve on the Planning Commission in July 2011 and then updated the Planning Commission that the comment period had closed on the Clayton Community Church Draft Environmental Impact Report and that the comments were being gathered to forward to the consultant working on the project so that responses could be prepared.

6B. Commission – None.

Chair Johnson, Vice Chair Richardson, Commissioner Armstrong, and Commissioner Catalano commended Commissioner Meriam on his contributions and hard work while serving on the Planning Commission.

Commissioner Meriam indicated that he enjoyed serving on the Planning Commission and will be seeking clarification from the Fair Political Practices Commission on the issue of his near the Town Center affecting his ability to participate as a Commissioner on matters in that area of the community.

Adjournment

7. The meeting was adjourned at 7:30 p.m. to the following regularly-scheduled meeting of **July 12, 2011.**

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Sandra Johnson
Chair

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PLANNING COMMISSION STAFF REPORT

Meeting Date: July 12, 2011

From: David Woltering, AICP
Community Development Director



Subject: Diablo Estates at Clayton Residential Subdivision
Site Plan Review (SPR 01-11)
Lot Line Adjustment (LLA 01-11)
Variance (VAR 01-11)

(This staff report supplements and updates the staff reports submitted to the Planning Commission at its June 14, 2011 and June 28, 2011 meetings regarding this matter)

REQUEST

Approval of the entitlements listed below to allow construction of 24 residences in accordance with the applicant's submitted plans on the already-subdivided 24-acre subject property located at the northeast corner of the intersection of Regency Drive and Rialto Drive:

1. **SPR 01-11, Site Plan Review.** A site plan review permit to allow the construction of the 24 single-family residences measuring approximately 3,500 to 4,900 square feet in area (includes garage space).
2. **LLA 01-11, Lot Line Adjustment.** A lot line adjustment to adjust the existing lot lines on Lots 1, 2, 20, and 21.
3. **VAR 01-11, Variance.** A variance to allow the front and side setbacks on Lots 1, 2, 3, 4, 16 to be less than the required minimum setbacks in the respective Single Family Residential Districts and also to allow only the porches on all residences to project five feet into the front and side setbacks.

PROJECT INFORMATION

Applicant/Location: Toll Brothers Home Builders
Northeast Corner of Regency Drive and Rialto Drive
(APNs 119-630-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, 119-640-001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -013, -014)
(See **Exhibit A** for Vicinity Map)

General Plan Designation: Single Family Low Density (LD) and Public Park/Open Space/Open Space and Recreation (PU).

Zoning: R-10; R-40; R-40-H; and Public Facility (PF)

Public Notice: On May 26, 2011 public hearing notices were placed on the City's three standard community posting boards, sent to the Contra Costa Times for publication, and mailed to property owners within 300

feet of the site. After receiving a presentation of the staff report and opening and closing the public hearing at their meeting of June 14, 2011, during which public testimony was received, the Planning Commission approved a Use Permit request for a temporary sales trailer on the subject property and continued the public hearing to the Planning Commission meeting of June 28, 2011 to further consider the requests for approvals of a Site Plan Review Permit, Lot Line Adjustments, and Variances to construct 24 proposed homes in the subject subdivision. This matter was further continued at the request of the applicant to the Planning Commission's July 12, 2011 meeting.

Authority: Section 17.44.030 of the *Zoning Ordinance* authorizes the Planning Commission to approve a site plan in accordance with standards in Section 17.44.050.

Section 16.02.030.D. of the *Municipal Code* authorizes the Planning Commission to approve a lot line adjustment in accordance with the requirements stated therein.

Section 17.52.030 of the *Zoning Ordinance* authorizes the Planning Commission to approve a variance in accordance with the findings stated therein.

BACKGROUND AND ANALYSIS

This proposed development application was presented and discussed in detail at the June 14, 2011 Planning Commission meeting. In addition to staff presenting its report on the item, the applicant provided a detailed overview of the proposal, the Commission discussed the matter, and public testimony was received. Staff identified several issues that require further consideration and resolution, based on the discussion and testimony that occurred at the June 14th meeting. These issues are as follows:

1. The need to mitigate the possible visual prominence of the residences located on Lots 16-24 as required by Mitigation Measure 1;
2. The need to ensure the architectural and aesthetic variety and interest of the residences being plotted in the subdivision, particularly given that the applicant is pre-plotting only seven of the residences and asking for flexibility in terms of the particular homes plotted on the remaining lots; and
3. The need to address the possible use and maintenance requirements of the rear portion of specified lots (Lots 1-6, 8, 9, and 11-24) beyond the proposed open view fencing.

This matter was continued by the Planning Commission at its June 28, 2011 meeting to its July 12, 2011 meeting at the request of the applicant.

1. Visual Prominence of Residences on Lots 16-24

Mitigation Measure 1 of the Project Mitigation Monitoring Program requires that "*Lots 16-24 shall be predominantly single-story dwellings*". This measure indicates further that split-level and partial two-story homes may be included to satisfy this requirement. The applicant is proposing to satisfy this requirement by committing to four full single-story residences in this range of lots and some two-story homes that have a combination of single- and two-story elements. Staff suggests that compliance with the intent of Mitigation Measure #1 could be

better assured by adding a condition of approval that stipulates a minimum of four full single-story residences be plotted in this range of lots and that not more than two two-story and/or partial two-story homes be constructed on adjacent lots within this range of lots. The condition recommended by staff is as follows:

“The visual prominence of the residences to be located on Lots 16-24 will be mitigated by assuring that, at minimum, four (4) full single-story residences are constructed in this range of lots, with a maximum of not more than two (2) two-story and/or partial two-story residences being constructed on adjacent lots within this range, to the satisfaction of the Community Development Director. (MM 1)” (See Proposed Condition 76)

2. Architectural and Aesthetic Variety and Interest of Residences

The applicant is proposing to pre-plot seven of the proposed 24 residences within the subdivision. On the remaining lots, the applicant is requesting some flexibility in terms of the plan types/front elevations/colors and materials that could be offered to prospective buyers. There was general interest indicated at the June 14th Planning Commission meeting to allow the flexibility being sought by the applicant, but to still ensure architectural and aesthetic variety and interest of residences within the subdivision. Staff suggests adding the condition listed below, which is an edited version of one suggested by the applicant, to ensure the variety and interest being sought:

“The following criteria shall be satisfied with the final plotting of residences to ensure architectural and aesthetic variety and interest of the residences within this subdivision, to the satisfaction of the Community Development Director:

- No combination of plan type/elevation/color scheme shall be used more than twice within this development;
- The same color scheme shall not be applied to more than four residences within this development;
- The same plan type and architectural elevation shall not be used on adjacent lots on the same side or opposite sides of the same street; and
- Every effort shall be made to provide an interesting mix of plan types/elevations/materials/color schemes within this development.” (See Proposed Condition 77)

3. Use and Maintenance Requirements of Rear Portions of Lots 1-6, 8, 9, and 11-24

At the June 14th meeting, there was considerable discussion about how the areas in the rear yards of specified lots beyond the open view fencing could be used and would be maintained. Neighbors were concerned that drainage facilities, including j-ditches, be properly maintained, and that weed abatement would be addressed in a timely and uniform manner to address safety and aesthetic concerns. Neighbors were also concerned about how these areas might be used over time. The applicant has indicated a desire to offer some use of these areas to future home owners for some limited improvements; surrounding property owners were generally opposed to this allowance.

As indicated by staff at the June 14th meeting, generally along the rearmost 150 feet of Lots 1-4, there is a recorded conservation easement which precludes the improvement of this area with any structures. Additionally, at the rear of Lots 9, and 11-20, inclusive, there is a recorded scenic easement on the Assessors Parcel Map for this subdivision. Based on its research, staff found that this easement is a Slope and Incidental Easement likely recorded to protect the property downhill from activities that could undermine slope stability in these areas. However, staff did not find any narrative describing the specific purpose of this easement.

Nevertheless, staff is concerned about assuring that proper maintenance of these areas occurs over time and that legitimate aesthetic and safety concerns are addressed. The subject property is a transition property to the open space found in the adjacent Mount Diablo State Park. Most of the areas in the rear yard areas beyond the open view fencing are fairly steeply sloped. It would be beneficial to avoid disturbing these areas over time so that both the soil stability and drainage patterns are not adversely altered. Allowing for improvements in these areas could adversely affect both soil stability and drainage patterns and the public safety. Additionally, keeping these areas open and accessible would facilitate being able to provide effective, timely, and more uniform weed abatement and related fire safety. Allowing for limited improvements in these areas, even with the benefit of a Use Permit or Site Plan Review as suggested by the applicant, allows for a fair amount of subjectivity as to the type, size, and improvements that may be allowed. And, over time, these improvements may hinder slope stability, drainage patterns, or adversely affect the aesthetics of the area. Moreover, the environmental document for this project discusses maintaining the steeply sloping portions of the site as undeveloped and undisturbed. Accordingly, staff suggests that these areas be maintained in a natural state, assured by the recordation of a conservation easement, and that there be the formation of a benefit assessment district or Homeowners Association (HOA) to assure the property owners involved perform the required maintenance over time. Staff is recommending the following condition to address this issue:

The rear yard areas of Lots 1-6, 8, 9, and 11-24 shall comply with the following to the satisfaction of the Community Development Director and the City Engineer:

- “Open wire fencing” shall be installed at the rear of the level portion of the building pads on Lots 1-6, 8, 9, and 11-24, inclusive. No additional fencing shall be permitted between the open wire fencing and the rear lot lines, except for fencing installed as part of the project’s perimeter fencing
- The areas down slope and beyond the open wire fencing on Lots 1-6, 8, 9, and 11-24 shall remain in a natural condition, with improvements, including any ornamental landscaping, structures, or grading, in these areas prohibited. This limitation shall be stated in the project’s CC&Rs and recorded against the applicable lots prior to the close of escrow of the first residence/lot associated with this limitation.
- To ensure the maintenance of the natural areas at the rear of Lots 1-4, access will need to be provided from the interior street of the subdivision. Accordingly, a 9-foot wide all weather access way and easement, along with a 9-foot wide access gate through the open wire fencing, shall be provided in the area of Lots 1 through 4 to provide access to the slope areas east and south of the proposed open wire fencing, prior to the close of escrow of the first residence/lot within the subdivision. Alternatively, the Developer can offer other suitable access to this area for mechanical equipment to the satisfaction of the City Engineer and Community Development Director.

- Repair and maintenance, including, but not limited to, weed abatement and maintenance and repair of the j-ditches for drainage purposes, in the described areas down slope and beyond the open wire fencing on Lots 1-6, 8, 9, and 11-24 shall be the collective responsibility of the subject property owners and subject to the formation of a benefit assessment district prior to the issuance of a certificate of occupancy for the first residence within the subdivision. (See Proposed Condition No. 78)

RECOMMENDATION

Staff recommends that the Planning Commission approve Site Plan Review (SPR 01-11), Lot Line Adjustment (LLA 01-11), and Variance (VAR 01-11), subject to the proposed findings and conditions in **Exhibit 1**.

EXHIBITS

1. Proposed Findings and Conditions of Approval
2. Letter from Fire Protection District , dated June 30, 2011

SPR\2011\01-11.sr.pc.7.12.11

Exhibit 1: Proposed Findings and Conditions of Approval

Diablo Estates at Clayton Subdivision (SPR 01-11; LLA 01-11; and VAR 01-11)

PROPOSED FINDINGS FOR APPROVAL

This proposed project has been designed to be within the impact parameters of the previously approved Diablo Pointe subdivision project, and, accordingly, the previously adopted IES/MND and MMP (ENV 01-03) will be used for this project. Some substitution of condition/mitigation language has been needed; however, it is expected that the substitution language will be “equivalent or more effective” than the original language in avoiding or reducing to a less than significant level the related impacts being addressed. This substitution of mitigation measures is provided for under Section 15074.1 of the CEQA guidelines. Accordingly, the Initial Environmental Study/Negative Declaration (ENV01-03) document and Mitigation Monitoring Program (ENV 01-03) have been updated and attached (Attachments A and B, respectively)

Site Plan Review (SPR 01-11)

Based upon the evidence set forth in the staff reports, which includes relevant information from the project file, as well as testimony at the public hearing, the Planning Commission makes the following findings regarding the Site Plan Review Permit for the addition:

1. Is consistent with the General Plan designation and policies.
2. Meets the standards and requirements of the Zoning Ordinance.
3. Preserves general safety of the community regarding seismic, landslide, flooding, fire, and traffic hazards.
4. Maintains solar rights of adjacent properties.
5. Reasonably maintains the privacy of adjacent property owners and/or occupants.
6. Reasonably maintains the existing views of adjacent property owners and/or occupants.
7. Is complementary, although not identical, with adjacent existing structures in terms of materials, colors, size, and bulk.
8. Is compatible with the neighborhood and surrounding land uses.

Lot Line Adjustment (LLA 01-11)

Based upon the evidence set forth in the staff reports, which includes relevant information from the project file, as well as testimony at the public hearing, the Planning Commission makes the following findings regarding the Site Plan Review Permit for the addition:

1. Is consistent with the General Plan designation and policies.
2. Conforms with the Zoning Ordinance.

The above-stated findings assume acceptance and approval of the proposed conditions of approval listed below.

Variance (VAR 01-11)

Based on the evidence in the staff report and project file, as well as testimony at the hearing, the Planning Commission finds that:

Lot 1: This would not be a grant of special privilege since the reduced setback is still greater than the setback distances required on lots 5-24, and maintains at least 30’ between the home on Lot 1 and the home on Lot 2.

Strict application of the 20' side yard setback would place the home too close to the slope on the North side of Lot 1, and would deprive the homeowner on Lot 1 of the same size backyard enjoyed by other lots on the property.

Authorizing this variance would meet the intent and purpose of the R-40H District which entails allowing a reasonable amount of residential construction as well as preservation of the rural character, natural terrain, and open space within residential neighborhoods.

Lot 2: This would not be a grant of special privilege since the reduced setback is still greater than or equal to the setback distances required on lots 5-24, and maintains at least 30' between the home on Lot 2 and the home on Lot 1.

Strict application of the 20' side yard setback and 40' front yard setback would eliminate any usable backyard for this homeowner.

Authorizing this variance would meet the intent and purpose of the R-40H District which entails allowing a reasonable amount of residential construction as well as preservation of the rural character, natural terrain, and open space within residential neighborhoods.

Lot 3: This would not be a grant of special privilege since the reduced setback is still greater than or equal to the setback distances required on lots 5-24, and maintains at least 30' between the home on Lot 2 and the home on Lot 3.

Strict application of the 20' side yard setback and 40' front yard setback would eliminate any usable backyard for this homeowner.

Authorizing this variance would meet the intent and purpose of the R-40-H District which entails allowing a reasonable amount of residential construction as well as preservation of the rural character, natural terrain, and open space within residential neighborhoods.

Lot 4: This would not be a grant of special privilege since the reduced setback is equal to the setback distances required on lots 5-24.

Strict application of the 20' side yard setback and 40' front yard setback would eliminate any usable backyard for this homeowner.

Authorizing this variance would meet the intent and purpose of the R-40 District which entails allowing a reasonable amount of residential construction as well as preservation of the rural character, natural terrain, and open space within residential neighborhoods.

Lot 16: This would not be a grant of special privilege since, due to the access easement on Lots 14 and 15, the reduced setback maintains 20' between the home on Lots 16 and those on Lots 14 and 15, as required on all other lots in the community.

Due to the flag shape of Lot 16, strict application of the 10' side yard setback in this area would push the home back on the lot so far that it would eliminate any usable backyard for this homeowner.

Authorizing this variance would meet the intent and purpose of the R-10 District which entails

allowing a reasonable amount of residential construction as well as preservation of the rural character, natural terrain, and open space within residential neighborhoods.

General: This would not be a grant of special privilege since all homes in the community would adhere to the same restriction.

Strict application of the setbacks in this instance would eliminate front porches, which activate the street for homeowners and pedestrians, and in some cases push homes back on the lot so as to eliminate usable back yard spaces.

Authorizing this variance would meet the intent and purpose of the R-10, R-40, and R-40H Districts which entails allowing a reasonable amount of residential construction as well as preservation of the rural character, natural terrain, and open space within residential neighborhoods.

PROPOSED CONDITIONS OF APPROVAL

Site Plan Review (SPR 01-11)

PLANNING CONDITIONS

1. The final map shall show a conservation easement on Lots 1- 4 along the property lines adjacent to Mt. Diablo State Park. The easement shall be 150 feet wide, as measured from the project site's exterior property lines and is intended to preserve an open and attractive visual character adjacent to the park. Construction of all buildings shall be prohibited within the easement area.
2. The developer shall be responsible for submitting an application for rezoning those lots classified R-40-H to R-40 prior to the sale of those lots to a subsequent buyer to the satisfaction of the Community Development Director.
3. The project shall have covenants, conditions, and restrictions (CC&R's) which address the issues listed below. The CC&R's shall be submitted to the Community Development Director for review and approval, prior to sale of first lot.

Property owners are responsible for the repair and maintenance of the required fences along their respective property lines. The fences shall be maintained in a style consistent with the design approved by the City.

- a. Property owners shall comply with the Tree Retention Conditions.
- b. Property owners, *unless expressly assigned as the responsibility of the benefit-assessment district (BAD)*, shall maintain any gates needed for access to above-ground or under-ground drainage facilities.
- c. No fencing, grading, or other improvements of any kind will be allowed between the developer-installed open wire fencing and the rear lot lines on Lots 1-6 and Lots 8, 9, and 11-24, inclusive, except for that fencing, landscaping and irrigation installed as part of the project's perimeter landscaping along Regency Drive and Rialto Drive.
- d. No provision in the CC&R's which is included as a result of these Conditions of Approval may be amended without the prior written approval of the City of Clayton.

4. The Developer agrees to dedicate Lot 25 to the California Department of Parks and Recreation as an addition to Mount Diablo State Park, *or in the alternative, to a third party non-profit organization acceptable to the City Council.* The Developer shall provide proof of acceptance of Lot 25 by the California Department of Parks and Recreation *or the accepted third party non-profit organization* prior to the issuance of a building permit for the twentieth (20th) dwelling. The Developer shall be responsible for the care and maintenance of Lot 25 until the dedication has been accepted by the State *or accepted third party non-profit organization.* This responsibility for care and maintenance may not be transferred to any entity, other than the State *or the accepted third party non-profit organization,* without the expressed written approval of the City. The Developer shall provide a performance deposit to the State *or accepted third party non-profit organization* prior to acceptance of Lot 25 by the State to ensure that at least 75 percent of the plantings installed for remediation survive for five (5) years following installation. In the event that less than 75 percent of the trees and shrubs survive, the Developer shall (in consultation with the State *or accepted third party non-profit organization*) install and maintain replacement trees and shrubs.

In the circumstance that the State or an accepted third party non-profit organization has not accepted Lot 25 and the Developer is in a position to request issuance of the twentieth (20th) building permit, the Developer may petition the City Council to allow issuance of the 20th and subsequent building permits. In the circumstance that Lot 25 is not accepted by the State or an accepted third party non-profit organization, the benefit assessment district or alternatively a Homeowners Association (HOA) shall be responsible for the installation of the plantings, on-going management of the property, with all associated costs being the responsibility of the property owners of this subdivision in accordance with the conditions and mitigation measures associated with Lot 25.

5. The Developer shall provide one dwelling unit as a very low-income housing unit; one dwelling unit as a low-income housing unit; and one dwelling unit as a moderate-income unit; or an in-lieu fee, as determined by the City Council. Affordability requirements and resale restrictions shall be subject to the review and approval of the City Attorney. Resale of the units shall be subject to recorded restrictions for fifty-five (55) years in order to ensure the units' long-term affordability. The units may be located on- or off-site. If the units are located off-site, the units shall be subject to the review and approval of the Community Development Director. Escrow for sale of the low-income and moderate-income units shall close prior to issuance of the certificate of occupancy for the project's twentieth (20th) unit. Escrow for sale of the very low-income unit shall close prior to issuance of the certificate of occupancy for the project's tenth (10th) unit. If the affordable unit is ready for sale and the potential buyer of the affordable housing unit is not ready to close escrow, the respective certificate of occupancy for the project unit shall not be withheld. (The initial Developer of this proposed project satisfied the requirement for the very low-income residential unit; accordingly, satisfaction of the requirement for the low-income and moderate units remains at this time.)
6. The Developer shall file annual reports in January with the Community Development Department which indicate the number and price of new residences sold in the previous calendar year.

7. The Developer shall pay a fair share contribution to the City for improvement of open space lands. Payments shall be made at the time of issuance of the building permits for each of the project's units. Payments shall be based on an initial amount of \$264,365, as adjusted by the San Francisco-Oakland Consumer Price Index from December 2003 to the time of payment. [MM 29]¹
8. The Developer shall pay a fair share contribution to the City for impacts to police staffing directly related to project's impacts for a five-year period. The calculation and payment shall be made at the time of issuance of building permits for each of the project's units and shall be approved in advance by the City Manager in accordance with the formula provided in Mitigation Measure 26, based upon twenty three (23) net additional units. [MM 26]
9. All conditions of approval, which are applicable to the construction of the subdivision improvements, shall appear on the improvement drawings.
10. Pursuant to Government Code Section 66474.9, the applicant (including the Developer or any agent thereof) shall defend, indemnify, and hold harmless the City of Clayton and its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul the City's approval provided for in Section 6499.37.
11. 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, but not limited to, attorney's fees, costs, 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, and any environmental review conducted under the California Environmental Quality Act for this entitlement and related actions.

¹ Mitigation measures (MM) listed in the *Diablo Pointe Residential Subdivision Initial Environmental Study/Negative Declaration* Final Draft, dated September 2004, are referenced by number (e.g., MM 2 for Mitigation Measure 2).

12. All mitigation measures set forth in the *Diablo Pointe Residential Subdivision Initial Environmental Study/Negative Declaration*, including those updated June 2011, are hereby incorporated into these Conditions of Approval, as if fully contained herein, except those found infeasible pursuant to Section 15091 of the California Environmental Quality Act Guidelines.
13. The Developer shall be responsible for all fees and environmental review costs, including those charged by the California Department of Fish and Game.

TREE RETENTION CONDITIONS

14. The tree preservation measures listed in the *Tree Preservation Report - Diablo Pointe Project* prepared by HortScience (dated November 2003) shall be implemented to protect trees to be retained on the site. Specific tree protection and preservation actions shall be listed on all grading and constructions plans and specifications for the Project. [MM 10a]
15. The Developer shall fund the retention of a consulting certified arborist under the direction of the Community Development Department to assist in the review of plans and construction activities for the protection of on-site native trees. The funding shall be provided prior to the approval of the grading plan or improvement plans, whichever occurs first. The consulting arborist shall provide services including, but not limited to those listed in the *Tree Preservation Report*, and the following:
Review project plans, including subdivision improvement plans, grading plans, and residential site plans;
 - a. Identify actions necessary to retain healthy trees and minimize losses from construction impacts;
 - b. Attend meetings involving representatives from the City and Developer;
 - c. Conduct on-site inspections before, during, and after construction;
 - d. Make on-site field determinations regarding minor variations to the approved tree retention actions regarding the retention and removal of additional trees; and
 - e. Establish a value for all "Good" and "Moderate" on-site native trees to be retained.
16. The Community Development Department shall review and approve grading and improvement plans to ensure adequate measures are taken to protect trees.
17. All trees greater than six inches in diameter at four feet six inches above ground level on Lots 1 and 25 shall be retained.
18. If, during construction, it is found that it is necessary to remove oaks or other significant trees (as identified by the arborist), construction shall be halted in the immediate area of the subject tree(s) until a revision to the tree retention actions shown on the grading plan is reviewed and approved by the Community Development Director.

19. Compensation for “Good” and “Moderate” native trees (as identified in the *Tree Preservation Report*) damaged or removed by construction, shall be provided either on or off the project site, by installation of new native trees equal to the value of the trees damaged or removed as approved by the Community Development Director. Replacement native trees shall include oaks with similar genetics if reasonably available. The new trees shall be irrigated, unless the certified arborist indicates that irrigation is not appropriate. [MM 10b]
20. Native trees which are identified for preservation, and are subsequently removed during construction, shall be replaced by new trees (equal to 150% of the value of the original tree(s) to be preserved. [MM 10b]
21. All tree removals are subject to issuance of a tree removal permit by the Community Development Department.

LANDSCAPING CONDITIONS

22. The improvement drawings shall include landscape and irrigation plans. The landscape and irrigation plans shall show the items listed below; meet the requirements of Chapter 17.80 of the *Zoning Ordinance*; and be submitted for review and approval by the
 - a. Perimeter landscaping along Regency Drive and Rialto Drive in a 25-foot wide strip extending from the back of sidewalk.
 - b. Groundcover and high maintenance landscaping at the Rialto Drive project entry shall be on private property.
 - c. All trees shall be 24-inch box size, except as noted below for Lot 25.
 - d. Native trees, including oaks with genetics similar to native oaks in the Clayton area (if such oaks are reasonably available).
 - e. Perimeter trees shall be provided at an average density of 1 tree/25 feet; perimeter shrubs shall be 5 gallon size and provided at an average density of 1 shrub/5 feet. Perimeter trees and shrubs are not required along the project's El Portal Drive frontage.
 - f. All trees installed pursuant to these conditions of approval shall not be removed or severely pruned without a tree removal permit. Trees planted on Lot 25 are exempt from this stipulation.
 - g. Water meters and irrigation systems with automatic controls.
 - h. All anti-siphon water valves shall be screened.
 - i. All newly-graded areas in or adjacent to the public right-of-way shall not exceed a 3:1 (horizontal:vertical) ratio.
 - j. A layer of mulch two to four inches thick shall be applied in all landscape areas.
 - k. Remediation plantings for all disturbed areas on Lot 25. Native species of trees and shrubs shall be used (e.g., oaks, big leaf maple, California bay, buckeye, California rose, snowberry, coffeeberry, and California blackberry). Trees (D-pot or citrus-pot size) shall be planted at a ratio of 150 trees/acre; shrubs (one gallon size) shall be planted at a ratio of 400 shrubs/acre. A certified arborist with demonstrated experience in riparian

remediation shall supervise the planting and provide specifications to the Developer regarding irrigation and care.

23. Three sets of the landscape and irrigation plans shall be submitted with the grading and improvement plans for review and approval by the Community Development Department, Engineering Department, and the Maintenance Department. These plans irrigation plans shall be prepared by a landscape architect; shall have overall dimensions Engineer, and Maintenance Department; and shall show all existing and proposed public
24. **Front yard** landscaping to be maintained by the individual property owner(s) shall be installed (or, at the sole discretion of the City, bonded) in conformance with the approved plans prior to occupancy of the individual residence(s).
25. All plant material ***within the perimeter landscaping along Regency Drive and Rialto Drive in a 25-foot wide easement extending from the back of sidewalk*** is subject to inspection by the Maintenance Department and must be guaranteed for one year from the date of final inspection.
26. Installation of all irrigation and landscaping ***related to this condition*** shall be performed by a licensed contractor. Open trench inspection of the irrigation installation in City right-of-way (and areas to be maintained by the City via a new benefit assessment district) is subject to approval of the Maintenance Department. Prior to the final inspection by the Maintenance Department, the installation shall be approved by the landscape architect.
27. All trees shall be planted at least ten feet away from any public water, sewer, or storm drain lines, unless a closer location is approved by the City. All trees shall be installed with support staking. All nursery stakes must be removed from trees. All trees planted within eight feet of a sidewalk or driveway shall be installed with root guards.
28. Landscape areas improved as a part of this development that are ultimately to be maintained by Maintenance Department or staff contracted by the City shall be included within a landscape maintenance easement and shall be inspected by representatives of the City Engineer and Maintenance Department prior to turning the area or areas over for City maintenance. This inspection shall include a water audit of the landscape areas to identify any irrigation problems. The water audit shall be performed by City staff or contracted for by City staff and paid for by the Developer. All corrective measures shall be satisfactorily completed prior to turning the area over for City maintenance. Final recommendation for the release of maintenance bonds shall be in writing and signed by the City Engineer.
29. The Developer shall maintain all landscaped areas, ***within the perimeter landscaping along Regency Drive and Rialto Drive in a 25-foot wide easement extending from the back of sidewalk*** ~~within and adjacent to the subdivision~~, both

new and modified, for a period of 90 days after final acceptance of the subdivision improvements by the City Council.

30. Prior to the issuance of a building permit for the first residence (including model homes), the Developer shall submit written consent to the formation of a benefit assessment district under the auspices of the Landscaping & Lighting Act of 1972 (Streets and Highways Code 22500). Prior to issuance of a certificate of occupancy for the first residence (including model homes), the Developer shall participate in the formation, including the holding of a ballot election, of the new benefit assessment district. Assessments shall be levied to fund the cost of all operating, maintenance, and repair needs for the irrigation and landscaping, ***including the fencing delineating the limits of the landscape area and any decorative structures or features located within the landscape area***; periodic inspections; City administrative and reporting costs; City overhead charges; and reserve funds for replacement and major repairs. The benefit assessment district shall include the land area of Lots 1-24. Note: This district is separate from the existing City-wide landscape district. The project site (and the future lots) will remain in and be assessed for the existing City-wide district. [MM 27]
31. Upon completion of the 90-day maintenance period, maintenance of the irrigation and landscaping installed along Regency Drive and Rialto Drive shall be performed by the City using either City personnel or contracted forces at the City's sole option. The property owners shall pay for such maintenance work through the collection of annual assessments by a new benefit assessment district. alternatively the developer may form a Homeowners Association and include this maintenance as part of the HOA.
32. Final landscape and irrigation plans shall be submitted for review and approval prior to the installation of individual lot front and rear yard landscaping in compliance with the approved Preliminary Landscape Plans and the requirements of Chapter 17.80 of the City's *Zoning Ordinance* to the satisfaction of the Community Development Director. ***Front yard landscaping and irrigation shall be the responsibility of the Developer and shall be installed prior to the issuance of the certificate of occupancy for the related individual residence. The homeowner shall be responsible for the permitting and installation of the rear yard landscape and irrigation improvements which may be installed after the issuance of the certificate of occupancy.***

FENCING CONDITIONS

33. As part of the site plans for the individual residences, the Developer shall provide a fencing plan for the entire subdivision. The fencing plan shall indicate the design, height, materials, and location of all fences. Fencing adjacent to Mount Diablo State Park (including Lot 25) shall be subject to review by the State Park and shall contain no gates or breaks. The fencing plan shall include open-style fences along the following property lines:
 - a.. Southern property lines of Lots 1-4;

- b. Rear property lines adjacent to Rialto Drive and/or Regency Drive on Lots 11-15;
 - c. Common property lines between Lots 1 and 25; Lots 20 and 25; Lots 21 and 25; Lots 22 and 25; Lots 23 and 25; Lots 24 and 25. [MM 25]
34. The covenants, conditions, and restrictions (CC&R's) for the project's subdivision map (MAP 01-03) shall limit fences in the locations listed below to an open-view design and a maximum of six feet in height. The affected areas are the rear yard down slope areas (not flat pad areas) on Lots 11 (exclusive of the solid fence located on the shared property line with Lot 9), 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24. ~~The CC&R's shall allow the property owners of Lots 15-20 to replace the open view fences originally (1) foot of the rear property lines which Lots 15-20 share with the residential lots on Petar Court.~~

GRADING CONDITIONS

35. The Grading Plan shall be amended as follows:
- a. An adequate buffer, as determined by the certified arborist, shall be maintained between the toe of the northern fill area and subdrain outlet and the existing "Good" and "Moderate" oak trees on the slopes of Lots 1 and 25 in order to retain all of the oak trees. [MM 9]
 - b. Designs and actions listed in the *Tree Preservation Report* to retain identified native trees shall be incorporated into the grading plan.
 - c. A licensed surveyor or engineer shall survey the locations and limits of the trunk and dripline of all trees to be retained that could be affected by any work during project construction. The locations and limits shall be shown on the grading plans and appropriate construction and plot plans.
 - d. Following removal of the existing residence on Lot 25, the former residential pad, Mount Diablo Creek riparian corridor, and associated drainage swale shall be remediated below the 580-foot contour to limit erosion. Specific measures to remediate existing soil erosion in the vicinity of the banks of Mount Diablo Creek on a permanent basis may include installation of fabric mats, planting, rip-rap, and remedial grading. If remedial grading is necessary, such grading shall be field supervised by a biologist and a certified arborist to strictly limit potential impacts to adjacent resources. Remediation plantings shall be provided as stated in the Landscaping Conditions above. A performance deposit shall be provided as stated in Condition 6.
 - e. All slopes steeper than 10% (except slopes on Lot 25) shall be track-walked for surface compaction, covered with jute netting and hydroseeded, or stabilized with other techniques acceptable to the City Engineer.
 - f. The exterior edges of the pads for Lots 11-24 which are visible from off-site locations shall be contoured and feathered so transitions between flat areas and graded slopes, or between graded and ungraded areas, are rounded off to avoid a mass-graded, padded lot effect. All new graded

- slopes must be configured to undulate and avoid relatively flat planes or sharp transitions to ungraded areas.
- g. All required side setbacks shall contain at least five feet of flat, unoccupied area. "Flat" means a cross-slope between 2% and 10%. "Unoccupied" means no encroachments by fireplaces, building popouts (with or without a foundation), air conditioning pads, and the like.
 - h. Two feet of flat area shall be provided between a property or right of way line and the top of slope.
 - i. All retaining walls in the project shall constructed of segmental (a.k.a., keystone), masonry block, or concrete. All retaining walls visible from street or sidewalk areas shall be covered with a stone fascia. Retaining walls greater than three feet in height shall be designed by a licensed engineer.
 - j. A "snake-exclusion fence" shall be erected along the boundary of the construction footprint prior to construction to prevent Alameda whipsnake and California tiger salamanders from venturing onto the site. The exclusion fence shall also be installed along the project site's boundaries adjacent to existing residences to discourage rattlesnakes from entering the adjacent residential yards. The exclusion fence shall be constructed of an opaque heavy-duty silt fence sufficient to with both wet conditions and extreme sun exposure during the construction season, when snakes are active. [MM 6b]
 - k. Straw waddle to be used on the site shall be "snake friendly". Waddle with highly degradable jute covering with mesh or net size large enough to prevent snakes from becoming entrapped shall be used. Straw waddle with nylon type netting cover shall not be used. Placement of the waddle should be within the exclusion fence versus on the open space/ State Park side of the exclusion fence. [MM 6c]
 - l. The existing driveway on Lot 25 extending from the Petar Court cul-de-sac shall be removed and replaced with a 10-foot wide rock path or comparable vehicular accessway acceptable to Mount Diablo State Park and the City Engineer. Removable bollards or comparable barricade acceptable to Mount Diablo State Park shall be installed on Lot 25 adjacent to the Petar Court public right-of-way.
 - m. The land area in the vicinity of the existing residence on Lot 25 shall be restored to its natural condition following removal of the residence.
 - n. Signature blocks shall be provided for the Community Development Director and the City Engineer.
36. All grading shall be performed and certified under the direction and inspection of a Registered Soils Engineer and shall be in accordance with the recommendations of the geotechnical report and the requirements of the City Engineer.
37. Grading permits and stormwater permits shall be obtained from the City Engineer.

38. If archeological, historical or Native American materials are uncovered during any construction or pre-construction activities on the site, all work within 100 feet of these materials shall be immediately stopped. The Community Development Department and a qualified professional archeologist shall be notified. Work within this area shall not re-commence until the archeologist has had an opportunity to evaluate the significance of the find, and outline appropriate mitigation measures, if they are deemed necessary. [MM 11]

STREET CONDITIONS

39. A homeowners association (*HOA*), or similar mechanism, subject to City approval, shall be established for the purpose of maintaining private, common improvements including, but not limited to, streets, curb markings, and signage, and may include street lighting *and weed abatement*. Parking shall be prohibited on the cul-de-sacs (if less than 42 feet in radius) and one side of the street. The parking prohibition shall be indicated by painting the face and top of curb red, with the words "Fire Lane" clearly marked.
40. The Developer shall submit a written request for the City to enforce the "No Parking" zones on A Street, B Court, and C Court.
41. All streets, sidewalks, curbs, and gutters adjacent to this subdivision shall be improved as necessary to connect improvements constructed within this subdivision to existing improvements. Any existing street, sidewalk, curb, gutter, or other existing improvement which, in the sole opinion of the City Engineer, is damaged, either on- or off-site, by the Developer or his agents or employees or contractors, shall be repaired by the Developer to the satisfaction of, and in the manner required by, the City Engineer.
42. All street grades and geometrics shall be subject to the approval of the City Engineer. Grades shall not exceed 6% through intersections. The grade break between a minor street and a major street, at the projected curb line of the major street, shall not exceed 6%. Street grades shall not exceed 16% grade, shall have a minimum outside turning radius of 42 feet, and must be capable of supporting the imposed loads of fire apparatus (i.e., 31 tons). The connection of A Street to Rialto Drive as shown on the tentative map is not approved as shown and shall be modified as required by the City Engineer.
43. All mailbox locations shall be constructed and grouped in accordance with US Post Service standards and the grouping of mailboxes shall be architecturally treated to reduce massing and visual impact. All mailbox locations are subject to review and approval of the Community Development Department and the US Postal Service.
44. Lots 13 and 15 shall have shared driveway easements with an adjoining lot. The location of said driveway easements shall be subject to the review and approval of the Planning Commission during the site plan review phase.

DRAINAGE CONDITIONS

45. All J-ditches for conveying stormwater runoff shall be constructed of tan-colored reinforced concrete and shall have a maximum longitudinal slope of 10%. Total storm runoff peak flows from the site shall not exceed pre-development levels. All stormwater runoff from impervious areas on the individual lots including driveways/walkways etc. shall comply with stormwater regulations, be treated and contaminants removed, through bio-infiltration landscape methods prior to discharge out of the site or into a natural water channel. The sign of the detention and treatment facilities shall be subject to the approval of the City Engineer.
46. Any fences crossing easements for landscape or drainage facility maintenance shall have 9-foot wide, lockable gates which shall be maintained by the property owners on whose lot they are located.
47. Prior to the issuance of a building permit for the first residence (including model homes), the Developer shall submit written consent to the formation of a benefit assessment district in accordance with the Benefit Assessment Act of 1982 (California Government Code, Section 54703, et seq.). Prior to issuance of a certificate of occupancy for the first residence (including model homes), the Developer shall participate in the formation, including the holding of a ballot election, of the benefit assessment district. Assessments shall be levied to fund the cost of all operating, maintenance and repair reporting costs, City overhead charges, and reserve funds for replacement and major repairs *for the required City maintenance of the drainage facilities (v-ditches, inlets, pipes, storage tanks, treatment system, etc.)*. The benefit assessment district shall include the land area of Lots 1-24. Alternatively the developer may establish a Homeowners Association for such maintenance responsibility.
48. All drainage collection (J-ditches, V-ditches, storm drains, subdrains, etc.) and treatment facilities, and access to such facilities, shall be located in public storm drain easements, which shall be shown on the final map. City personnel or contracted forces shall have the right of access to conduct inspections and maintenance of all on-site drainage devices. Maintenance of such facilities shall be performed by the City using either City personnel for contracted forces at the City's sole option. (There shall be no obligation on the City related to the maintenance of any subdrains.) The property owners shall pay for such district. [MM 22]. Alternatively the developer may establish a Homeowners Association to assume responsibility for the subdrains.
49. The deeds for lots 1-24 shall include deed restriction which allows the City and other public agencies (i.e.: Mosquito and Vector Control District) and its contractors ~~shall have~~ the right of access to conduct inspections and maintenance if necessary of all on-site drainage devices; lot owners shall pay any fees related thereto. [MM 22]

50. The deeds for Lots 1-24 shall contain authorization for the City to require the respective property owners to provide monitoring reports of any stormwater discharges and pay any fees related thereto for the on-lot treatment. [MM 21]
51. Secondary outlets shall be provided for storm drain inlets located in sump conditions.
52. Storm drain lines shall have a maximum depth of ten (10) feet from finished grade to invert.
53. All roofs shall have rain gutters with rain water leaders that discharge onto the lot landscaping through sheet flow or into a bio-infiltration planter area.
54. The improvement plans shall reflect that all on-site storm drain inlets shall be labeled "No Dumping – Drains to Creek" using thermoplastic stenciling or comparable method.
55. The Developer shall comply with all rules, regulations, and procedures of the National Pollution Discharge Elimination System (NPDES) as promulgated by the California State Water Resources Council, the San Francisco Bay Regional Water Quality Control Board, and the Contra Costa County Clean Water Program. The project management and design shall include best management practices during construction and post-construction phases for the elimination of storm water pollutants to the maximum extent practicable and as stipulated in the Municipal Regional Permit (MRP).
56. The Developer shall ensure that all project contractors shall conform to the requirements of the "Best Management Practices for Construction Sites" required by the City, and the State Municipal Regional Permit (MRP), including detention and/or filter materials to preclude an increase in water quantity and quality impacts from debris and sediments entering the stormwater system over "non-development" conditions. [MM 19]

UTILITY CONDITIONS

57. The Developer shall connect to the sanitary sewer system, obtain applicable permits, and pay applicable fees required by the City of Concord Public Works Department.
58. Underground facilities crossing lots shall be located in flat portions of the lots, not within slope areas.
59. Any existing underground facilities, either on-site or adjacent to the site, no longer required shall be either removed or filled, as directed by the City Engineer.
60. Street lighting shall be installed and activated prior to occupancy of the first residence. Developer shall pay for the cost of installation, activation, and

electrical usage until final acceptance of subdivision improvements by the City Council. Following acceptance by the City Council, the operation and maintenance of the street lighting shall be the responsibility of the homeowners association (or similar mechanism, subject to City approval) unless the Developer opts to include the street lighting in the benefit assessment district for landscape maintenance, as described in the "Landscaping Conditions."

61. Concurrent with acceptance of the subdivision improvements as complete, the subdivision shall be annexed into the existing City of Clayton Street Light Assessment District, which shall not be responsible for the maintenance or operating costs of the street lights on A Street, B Court, or C Court.

ENGINEERING CONDITIONS

62. All work shall be designed and constructed in accordance with the Municipal Code, as well as the City's Standard Plans and Specifications.
63. Upon recording of the final map, the City shall be given a full size, reproducible, photo mylar copy of the recorded map and an electronic file of the map in a form which can be imported into AutoCAD, and configured as directed by the City Engineer. Upon completion of the improvements and prior to City Council acceptance, the City shall be given a full size, reproducible, photo mylar copy of the improvement plans, and an electronic version in AutoCAD, annotated to reflect any changes that occurred during construction and signed by the Project Engineer.
64. Should the construction of any offsite improvements required in these conditions of approval, necessitate the acquisition of sufficient title or interest in lands not controlled by the Developer, the Developer shall make a good faith effort to obtain the necessary title or interest prior to the filing of the final map pursuant to Section 66457 of the Subdivision Map Act. If the Developer is unable to obtain the necessary title or interest preparation of an appraisal and submittal of a bona fide offer based on the appraisal), the necessary title or interest in accordance with Section 66462.5 of the Subdivision Map costs, involved in the acquisition of the necessary title or interest.

FIRE PROTECTION CONDITIONS

64. The Developer shall obtain the necessary approvals from the Contra Costa County Fire Protection District.
65. The Developer shall provide an adequate and reliable water supply for fire protection as set forth in the Uniform Fire Code.
66. The Developer shall provide fire hydrants of the East Bay type. Hydrant locations will be determined by the Fire Protection District upon submittal of three copies of a tentative map or site plan.

67. At least 13 feet, 6 inches of vertical clearance shall be provided to within 150 feet of travel distance to all portions of the exterior walls of every building.
68. All open space areas left in their natural state shall meet the Fire Protection District's weed abatement standards.
69. Access roads and hydrants shall be installed and in service prior to construction of residences.
70. The following notification shall be recorded on the deeds for Lots 1-4 and 20-24, "This constitutes notice that the State of California and the Department of Parks and Recreation (Mount Diablo State Park) are not responsible for homeowner fire prevention. Property owners are hereby notified that they are solely responsible for providing their own fire breaks, buffers, and prevention measures, within the boundaries of their own properties, necessary to prevent the spread of fire."
71. Per the approved improvement plans, dated 9/12/07, Seminary Ridge Place shall have ***NO PARKING – FIRE LANE*** signs posted or curbs painted red on ~~the west~~ ***side*** both sides to the "T" intersection, and on the ~~north~~ ***side*** south side of Promontory Place and Seminary Ridge Place after the "T" intersection. (503.3) CFC
72. All homes as proposed shall be protected with an approved automatic fire sprinkler system complying with the 2010 Edition of NFPA 13D or Section R313.3 of the 2010 California Residential Code. Submit three (3) sets of plans to the Contra Costa Fire Protection District office for review and approval prior to installation. (903.2) CFC, (R313.3) CRC
73. The developer is responsible for contacting the water district to determine if the existing domestic water services (meters) are adequate for a dual-service application.

WATER DISTRICT CONDITIONS

74. The following requirements shall be satisfaction to the satisfaction of the Contra Costa Water District (CCWD):
 - a. Treated and Untreated water service is governed by CCWD Code of Regulations Section 5 (Reg 5).
 - b. Existing CCWD water infrastructure should be protected during construction.
 - c. The water system has been installed by a previous developer; the line should be pressure tested again. The inspectors report for the previously installed water system should be reviewed to determine any outstanding issues.
 - d. Standard backflow prevention requirements are to be observed.
 - e. Further information and answers to a number of frequently asked questions regarding water services and District regulations can be found on the District's web site at www.ccwater.com.

GENERAL CONDITIONS

75. An easement shall be recorded or amended, as necessary, to address the assigning of rights and responsibilities for the detention basin proposed within an existing public easement adjacent to and for the purpose of serving the stormwater detention requirements for Lot 9 to the satisfaction of the City Engineer.
76. The visual prominence of the residences to be located on Lots 16-24 will be mitigated by assuring that, at minimum, four (4) full single-story residences are constructed in this range of lots, with a maximum of not more than two (2) two-story and/or partial two-story residences are constructed on adjacent lots within this range to the satisfaction of the Community Development Director. (MM 1)
77. The following criteria shall be satisfied with the final plotting of residences to ensure architectural and aesthetic variety and interest of the residences within this subdivision to the satisfaction of the Community Development Director:
- a. No combination of plan type/elevation/~~color scheme~~ ~~exterior materials~~ shall be used more than twice within this development;
 - b. The same exterior ~~materials~~/color scheme shall not be applied to more than four residences within this development;
 - c. The same plan type and architectural elevation shall not be used on adjacent lots on the same side or opposite sides of the same street; and
 - d. Every effort shall be made to provide an interesting mix of plan types/elevations/materials/color schemes within this development.
78. The rear yard areas of Lots 1-6, 8, 9, and 11-24 shall comply with the following to the satisfaction of the Community Development Director and the City Engineer:
- a. "Open wire fencing" shall be installed at the rear of the level portion of the building pads on Lots 1-6, 8, 9, and 11-24, inclusive. No additional fencing shall be permitted between the open wire fencing and the rear lot lines, except for fencing installed as part of the project's perimeter fencing.
 - b. The areas down slope and beyond the open wire fencing on Lots 1-6, 8, 9, and 11-24 shall remain in a natural condition, with improvements, including any ornamental landscaping, structures, or grading, in these areas prohibited. This limitation shall be stated in the project's CC&Rs and recorded against the applicable lots prior to the close of escrow of the first residence/lot associated with this limitation.
 - c. To ensure the maintenance of the natural areas at the rear of Lots 1-4, access will need to be provided from the interior street of the subdivision. Accordingly, a 9-foot wide all weather access way and easement, along with a 9-foot wide access gate through the open wire fencing, shall be provided in the area of Lots 1 through 4 to provide access to the slope areas east and south of the proposed open wire fencing, prior to the close of escrow of the first residence/lot within the subdivision. Alternatively, the Developer can offer other suitable access to this area for mechanical equipment to the satisfaction of the City Engineer and Community Development Director.

- d. Repair and maintenance, including, but not limited to, weed abatement and maintenance and repair of the j-ditches for drainage purposes, in the described areas down slope and beyond the open wire fencing on Lots 1-6, 8, 9, and 11-24 shall be the collective responsibility of the subject property owners and subject to the formation of a benefit assessment district prior to the issuance of a certificate of occupancy for the first residence within the subdivision. (See Proposed Condition No. 78)

Lot Line Adjustment (LLA 01-11)

1. A deed or record of survey for the lot line adjustment shall be recorded with proof of recordation submitted to the Community Development Department.
2. For purposes of drainage and access, the applicant agrees to grant additional easements by a separate instrument as may be required by the City Engineer.
3. 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, but not limited to, attorney's fees, costs, 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, and any environmental review conducted under the California Environmental Quality Act for this entitlement and related actions.

Variance (VAR 01-11)

Language describing the particular setback Variances granted shall be recorded against the individual parcels prior to issuance of a building permit for new residential construction on the respective parcel to the satisfaction of the Community Development Director.

Advisory Notes

Advisory notes are provided to inform the applicant of: (a) Clayton Municipal Code requirements; or (b) requirements imposed by other agencies. The advisory notes state requirements that may be in addition to the conditions of approval.

1. The applicant shall comply with all applicable state, county, and city codes, regulations, and adopted standards, including, but not limited to the City's Landscape Water Conservation Ordinance, state and local stormwater regulations; and the City's Construction and Demolition Recycling Ordinance, as well as pay all associated fees and charges.
2. Prior to obtaining a building permit, the applicant shall prepare an erosion and stormwater control plan for review and approval by the City Engineer (CMC §13.12.050).
3. Prior to the commencement of grading, demolition, or construction activities, the applicant shall obtain City approval of a construction and demolition recycling plan (CMC § 5.80.040).
4. This Site Plan Review Permit shall be used, exercised, or established within twelve months after the granting of the Permit, or a time extension must be obtained from the Planning Commission, otherwise the Permit shall be void

(CMC §17.64.010-030).

5. All grading, construction, and other work shall occur only between 7:00 a.m. and 5:00 p.m. Monday through Friday. Any such work beyond these hours and days is strictly prohibited unless previously authorized in writing by the City Engineer (CMC §15.01.010) located at 5375 Clayton Road, Concord, 925-363-7433.
6. The applicant shall obtain the necessary building permits from the Contra Costa County Building Inspection Department.
7. Additional requirements may be imposed by the Contra Costa County Fire Protection District. Before proceeding with the project, it is advisable to check with the Fire District located at 2010 Geary Road, Pleasant Hill.
8. If the project site is located within an area subject to covenants, conditions, and restrictions (CC&R's) administered by a homeowners' association, additional requirements and/or Approvals may be required by the homeowners' association. Before proceeding with the project, it is advisable to check with the homeowners' association to ensure any applicable requirements are met.
9. This project shall be subject to all applicable City of Clayton Development Impact Fees as well as parkland dedications and mitigation fees.

SPR\2011\01-11.Exhibit B.Proposed Findings and Conditions of Approval

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INTRODUCTION

The project site is located at the northeast corner of Regency Drive and Rialto Drive in Clayton. The site area is 24.1 acres and in September 2004 Lemke Construction Inc. received subdivision approval and recorded a final map for subdividing the site into 24 lots for single-family residences, plus an open space parcel (termed the “open space parcel”) to be dedicated to Mount Diablo State Park. At this same time Lemke also received approval for the Site Plan review of the homes on the site. The Site Plan entitlements provide for the individual lot development design and construction. Because construction of the homes did not commence the Site Plan Review entitlements have expired. The site currently has street, curb and street drainage, and other underground utility infrastructure installed. Shortly after this phase of construction the project stopped due to the economy and was recently acquired by the Toll Brothers. Toll Brothers has proposed different house plans for the lots. The prior Negative Declaration with Mitigation Measures and Mitigation Monitoring Plan need to be updated relative to Hydrology to reflect a new Non Point Source Discharge Permit (MRP- Municipal Regional Permit) issued by the San Francisco Regional Water Quality Control Board that would apply to the new entitlement (Site Plan Review) as additional impervious surfaces beyond those existing will occur with the lot development.

The MRP was adopted by the San Francisco Regional Water Quality Control Board after the City adopted the IS/MND in 2004, this document is proposing to substitute the current, MS4 provisions for stormwater discharges reflected in the updated c.3 requirements for the relevant adopted hydrology mitigation measures contained in the 2004 Diablo Pointe IS/MND.

CEQA Guidelines Section 15074.1 allows a lead agency to conclude that certain mitigation measures identified in the MND are infeasible or otherwise undesirable. Before approving the project, the lead agency may delete the approved mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective. The substituted measures also must not result in new significant impacts, themselves.

The Toll Brothers plans for the lots actually uses a smaller size plan thus a lesser amount of initial impervious materials would result in the project than that previously evaluated. In addition the new MRP has increased standards which provide increased mitigation than that previously approved.

The purpose of this document is to update the language of the Hydrology section - the measures are all the same or greater than that previously required thus no new impacts or new potential significant impacts would result. The potential impacts would actually be less than that of the prior Site Plan Review or even further reduced under the current Site Plan Review proposal and new MRP requirements [ie: comply with the 2009 amended c.3 provisions of the RWQCB Order related to NPDES program municipal separate storm sewer systems (MS4s)].

I. PROJECT /APPLICANT INFORMATION

1. Lead Agency: City of Clayton
6000 Heritage Trail
Clayton CA 94517
2. Lead Agency Contact: ~~Jeremy Graves, David Woltering,~~
Community Development Director
Community Development Department
925/673-7343
3. Project Name: Diablo Pointe ~~Estates~~ Residential Subdivision
4. Project Location and Size: Northeast corner of Regency Drive and Petar Court
~~Assessor's Parcel No. 122-060-011~~ (24.1-acre site)
5. Project Sponsor: ~~Lemke Construction, Inc. Toll Brothers-~~
~~Attn: Susan Larson~~
~~49 Cosmie Court, Suite C~~
~~Copperopolis, CA 95228~~
~~209/785-0700~~
6. City Approvals Required: ~~General Plan Amendment (GPA 03-03)~~
Rezoning (ZOA 04-03))
~~Tentative Map (MAP 01-03)~~
Variance (VAR 02-03)
Site Plan Review Permits
Grading and Encroachment Permits
Storm Water Pollution Prevention Plan (SWPPP)
7. Existing *General Plan* Designation: ~~Private School~~
Single Family Residential, Low Density (1.1-3
units/acre) and Public Park/Open Space
8. ~~Proposed General Plan~~ ~~Designations:~~ ~~Single Family Residential, Low Density (1.1-3~~
~~units/acre) and Public Park/Open Space~~
9. Existing Zoning: ~~Planned Development~~
40-H (Revised Lots 1-3)
R-40 (Revised Lot 4)
R-10 (Revised Lots 5- 24)
Public Facility (Lot 25)
10. Proposed Zoning: R-40 (Revised Lots 1-3 only)
~~40-H (Revised Lots 1-3)~~

~~R-40 (Revised Lot 4)~~
~~R-10 (Revised Lots 5-24)~~
~~Public Facility (Lot 25)~~

11. Existing Land Uses: ~~Private seminary complex including a 39,870-sq.-ft. seminary building, parking lot, and single family dwelling. Partially construction subdivision, streets, curb and underground utilities installed – remainder rough graded for 24 residential single family detached lots~~
12. Other Public Agency Approvals Required: Water Connections (Contra Costa Water District)
 Sewer Connections (City of Concord)
 Building Permits (Contra Costa County)
 Demolition Permit (Contra Costa County)
 Fire District (Contra Costa County Fire District)
 Notice of Intent (State Water Resources Control Board)

The environmental factors checked below would be potentially affected by this project. The following Evaluation of Environmental Impacts identifies at least one impact that is a "Potentially Significant Impact" or "Potentially Significant Unless Mitigated" for each of the checked environmental factors.

X	Aesthetics	--	Agricultural Resources	X	Air Quality
X	Biological Resources	X	Cultural Resources	X	Geology/Soils
X	Hazards	X	Hydrology	X	Land Use
-	Mineral Resources	--	Noise	--	Population/Housing
X	Public Services	X	Recreation	--	Traffic and Transportation
--	Water, Sewer, & Stormwater Systems	X	Mandatory Findings of Significance		

II. PROJECT DESCRIPTION

Project Location and Setting

The Project site is located in the southeast portion of the City of Clayton. Specifically, the Project site is bounded by Regency Drive and Rialto Drive on the west; El Portal Drive on the north and Mount Diablo State Park on the east and south. Adjacent land uses include single-family residential dwellings to the west and north; Mount Diablo Creek on the north; and oak woodlands and grasslands on the east and south. The Assessors Parcel Number for the site is 122-060-011.

Exhibit 1 shows the regional location of Clayton; **Exhibit 2** shows the context of the Project site.

The Project site is generally hilly grassland and exhibits moderate to steep topographic relief, although other portions of the site are relatively flat. The western portion of the site adjacent to Regency Drive abruptly rises by approximately 40 to 70 vertical feet above Regency Drive. Similarly, the site rises steeply south from the single family residences along Petar Court. A large, relatively flat area on the westerly portion of the site accommodates a two-story seminary building with adjacent paved parking. East of the seminary building, the site continues to rise to a small knoll located in the approximate center of the site. The topography continues in to rise to the southeast, towards Mount Diablo. In total, there is an approximate 200 foot increase in elevation on the site from Mount Diablo Creek to the southern property line adjacent to Mount Diablo State Park.

Exhibit 5 shows the sloped areas of the Project site, classified by steepness (0-20%, 20-26%, and 26+%).*

An existing slope stability easement area has been recorded on portions of the Project site adjacent to Regency Drive, south of the existing single-family residences along the south side of Petar Court and along the north side of Rialto Drive. This easement area varies between approximately 15 and 180 feet in width and, under the terms of the easement, limited construction and grading is permitted within the easement area so long as slope stability is maintained.

~~A strip of land immediately adjacent to Regency Drive and Rialto Drive remains under the ownership of the Seeno Company the developer of the adjacent subdivision. The width of this ownership varies from approximately 10 feet in the northerly portion of the proposed Diablo Pointe subdivision at Regency Drive to approximately 25 feet at the intersection of Regency and Rialto Drives.~~

The site was approved for use as a seminary in Contra Costa County in 1961 (prior to incorporation of the City of Clayton). The primary existing structure on the site is a two-story building constructed as part of the seminary complex. In recent years, the seminary building has been used for retreats and occasional meetings by various groups. A paved parking lot is located to the south and east of the building with access provided by a driveway from Rialto Drive. Chain link fencing has been erected around the seminary complex to preclude public access.

* Full-size copies of all project maps are available at the Clayton Community Development Department.
Initial Environmental Study/Negative Declaration (ENV 01-03)
Diablo Estates IES Site Plan Review

In addition to the seminary complex, a detached single-family dwelling is located on the northerly portion of the site. The residence is accessed by a driveway from the terminus of Petar Court.

Project Site History

The project site has been considered for a variety of uses and activities in past years. While prior developers submitted application for several projects, none have received final approval for a variety of reasons, including withdrawal of the applications by the project developers. Lemke Construction Inc. is not associated with any of the prior applications.

1973 – Use permit for medical clinic.

1977 – Use permit for church and religious school.

1980 – General Plan amendment/development plan for 33-unit single-family subdivision.

1981 – Development plan for military academy.

1983 – General Plan amendment/development plan for religious school.

1993 – Use permit for boarding school.

Proposed Project

The applicant, Lemke Construction, proposes to demolish the seminary building, parking lot, and single family dwelling. The 24.1 acre site would be subdivided into 25 lots. The proposed tentative map (Tentative Tract Map No. 8719) is shown on **Exhibit 3**. Access into the site would be provided by a private street (A Street) extending into the site from Rialto Drive. Two internal residential streets (B and C Courts) would branch off of A Street and provide access to *Revised Lots 1-24*. Access to the open space parcel (*Revised Lot 25*) would be from Petar Court.

The central portion of the site would be graded to allow for development of individual pads and dwellings, road improvements, and related site improvements. The proposed grading plan is shown on **Exhibit 4**. The existing knoll would be removed to provide fill material for generally flat pads adjacent to C Court. Portions of the existing slopes in the eastern and southern portion of the site would be graded and recontoured to allow for building pads and internal roads. *No grading is proposed on the open space parcel or in the Mount Diablo Creek corridor. A setback of approximately 300 feet will be maintained between the top of the creek bank and the closest residential lot.*

The maximum depth of proposed cut is 19 feet, which would be located on *Revised Lot 23*. The maximum amount of fill would be 16 feet, located on the pad for *Revised Lot 16*. Overall, the applicant's civil engineer estimates that 40,000 cubic yards of material would be moved on the site as part of the Project. The amount of cut and fill would balance so that no material would be required to be imported or exported from the site.

The residential lots would range in size from approximately 13,300 square feet (*Revised Lot 10*) to approximately 125,800 square feet (*Revised Lot 4*). A majority of the revised lots would exceed 20,000 square feet. In many instances, steeply sloping portions of individual lots would remain undeveloped and undisturbed. *The open space parcel (Revised Lot 25) would be approximately 5.5 acres.*

A variance has been requested to allow a several lots to be created with less than the required lot width in order to minimize grading.

Stormwater drainage from the building pads on Revised Lots 1–24 would *drain to on-site landscape areas as is required in the MRP. The existing streets were installed prior to the adoption of the MRP and drain to the adjacent street (i.e., A Street, B Court, or C Court) and then to* an on-site catch basin. All catch basins *would drain to previously installed a new* underground detention basin and treatment facility in A Street at the project's entrance at Rialto Drive, *which were allowed under previous stormwater regulations. Any removal of the streets below the compacted gravel layer prior to completion of the project would require stormwater treatment in accordance with the MRP.* Surface and subsurface water draining toward Rialto Drive on the undeveloped upland portions of Revised Lots 3–4 would be captured in a J-ditch or underground subdrain installed along the toe of the western slope on Revised Lot 4. The J-ditch and subdrain would drain to the underground treatment facility at the project entrance. Surface and subsurface water draining toward Petar Court on the undeveloped downslope portions of Revised Lots 15–21 would be captured in a J-ditch or underground subdrains. The J-ditch and subdrains would discharge in the gutter at the eastern end of the existing cul-de-sac on Petar Court. A subdrain would also be installed in a "keyway" installed for slope stability on Revised Lots 1–4. The subdrain would discharge water at an outlet on Revised Lot 1. Subdrains would also be installed in keyways on Revised Lots 5, 6, 8, 15, and 24.

The internal streets *and drainage improvements* would be privately maintained by the property owners through a ~~street~~ maintenance agreement or similar mechanism (e.g., benefit assessment district). A Street, B Court, and C Court would have a curb-to-curb width of 28 feet.

The applicant has not submitted individual site plans for the residences. However, preliminary information provided to the City indicate that residences would have the same general design theme and style as those constructed in the Oakwood Circle and Rachel Ranch developments in Clayton. Residences are anticipated to range in size between 3,500 to 4,300+ square feet each with 4 to 6 bedrooms and 3 to 4 bathrooms. Each residence would also have a 3 to 4 car garage. Residences on Revised Lots 7 through 9, would be designed with interior grade splits to minimize grading. It is anticipated that two-story dwellings would be constructed on approximately 75% of the lots and single-story dwellings would be built on the remainder of the lots. The residences (*including landscaping and fencing*) would be subject to design review in accordance with the City's site plan review requirements.

If requested by Mount Diablo State Park, the applicant proposes to stabilize portions of the bank of Mount Diablo Creek along the north side of Revised Lot 25 to reduce or eliminate historic erosion into the Creek. This would be done through the use of "bio-engineering" involving use of fabric mats, planting of native vegetation and similar measures to stabilize and retain existing slopes.

Pursuant to the Housing Element of the City's *General Plan*, the developer is responsible for providing five percent of the Project's units as very-low income units and five percent as low income units. In the past, the City has accepted off-site units in lieu of constructing on-site units.

The Project's frontages on Regency Drive and Rialto Drive would be landscaped with street trees consisting of Chinese pistache, London plane trees and coast live oak trees. The Project entry at A Street is proposed to be landscaped with crape myrtle and crabapple trees. Landscaping is not proposed at the D Court Project entry. The preliminary landscaping plan is shown on **Exhibit 6**.

IV. LIST OF MITIGATION MEASURES

Hydrology

Mitigation Measure 16. Prior to commencement of any site work or applicable land disturbances as defined in the State General Construction Permit regulations, ~~that will result in a land disturbance of one acre or more,~~ the developer shall provide evidence to the City ~~that they have received coverage under the requirements for a stormwater~~ State General Construction Permit. ~~have been met.~~

Mitigation Measure 17. ~~Prior to commencement of any site work, including demolition of existing structures or site improvements, the developer shall submit a completed Stormwater Pollution Prevention Plan (SWPPP) to the City Engineer. The SWPPP shall include:~~

- ~~a) Sampling of Mount Diablo Creek for sediments in accordance with State General Permit regulations.~~
- ~~b) Hydro seeding or landscaping of all disturbed areas.~~
- ~~c) Best Management Practices, including landscaping of front and rear yards prior to acceptance of the subdivision.~~
- ~~d) A site spill response plan.~~

Mitigation Measure 17: Consistent with the requirements of the ~~Statewide Construction General Permit,~~ the project applicant shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce potential adverse impacts to surface water quality through the project construction period. The SWPPP shall be designed to address the following objectives: (1) all pollutants and their sources, including sources of sediment associated with construction, construction site erosion and all other activities associated with construction activity are controlled; (2) where not otherwise required to be under a Water Board permit, all non-storm water discharges are identified and either eliminated, controlled, or treated; (3) site Best Management Practices (BMPs) are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity to the BAT/BCT standard; (4) calculations and design details as well as BMP controls for site run-on are complete and correct; and (5) stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.

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The SWPPP shall ~~be~~ prepared by a Qualified SWPPP Developer. The SWPPP shall include the minimum BMPs required in Attachment D for Risk Level 2 dischargers, or Attachment E for Risk Level 3 dischargers (as applicable, based on final determination of the project's Risk Level status [to be determined as part of the Notice of Intent for coverage under the Construction General Permit]). These include: BMPs for erosion and sediment control, site management/housekeeping/waste management, management of non-stormwater discharges, infiltration and runoff controls, and BMP inspection/maintenance/repair activities. BMP implementation shall be consistent with the BMP requirements in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction¹ or the Caltrans Storm Water Quality Handbook Construction Site BMPs Manual.²

¹ California Stormwater Quality Association, 2003. *Stormwater Best Management Handbook-Construction*, with updates through 2006.

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² Caltrans, 2003. *Storm Water Quality Handbook Construction Site Best Management Practices (BMPs) Manual*. March.

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The SWPPP shall include a construction site monitoring program that identifies requirements for dry weather visual observations of pollutants at all discharge locations, and as appropriate (depending on the Risk Level), sampling of the site effluent and receiving waters (receiving water monitoring is only required for some Risk Level 3 dischargers). A Qualified SWPPP Practitioner shall be responsible for implementing the BMPs at the site and performing all required monitoring and inspection/maintenance/repair activities. If the project is Risk Level 2 or 3, the project applicant shall also prepare a Rain Event Action Plan as part of the SWPPP.

The following are the minimum types of BMPs that shall be implemented for the project, subject to review and approval by the City Engineer.

Erosion Control BMPs

- *Scheduling.* To reduce the potential for erosion and sediment discharge, construction shall be scheduled to minimize ground disturbance during the rainy season. The project applicant shall:
 - a. Sequence construction activities to minimize the amount of time that soils remain disturbed.
 - b. Stabilize all disturbed soils as soon as possible following the completion of ground-disturbing work.
 - c. Install erosion and sediment control BMPs prior to the start of any ground-disturbing activities.
- *Preservation of Existing Vegetation.* Where feasible, existing vegetation shall be preserved to provide erosion control.
- *Landscaping of front and rear yards prior to acceptance of the subdivision.*
- *Stabilize Soils.* Hydroseeding, geotextile fabrics and mats, mulch, or soil binders shall be used, as appropriate, to reduce erosion on exposed soil surfaces.
- *Stabilize Streambanks.* When working along stream banks or within channels, BMPs shall be implemented to minimize channel erosion and sedimentation. Proper erosion and sediment controls, such as silt fences, mulch, geotextiles, and hydroseeding, shall be used. To the extent possible, existing vegetation that stabilizes the stream banks shall be preserved.
- *Earth Dikes, Drainage Swales and Slope Drains.* Earth dikes, drainage swales, or slope drains shall be constructed to divert runoff away from exposed soils and stabilized areas, and redirect the runoff to a desired location, such as a sediment basin.
- *Outlet Protection and Velocity Dissipation Devices.* Rock, concrete rubble, or grouted riprap shall be installed at culvert and pipe outlets to drainage conveyances, to prevent scour of the soil caused by concentrated high-velocity flows.

Sediment Control BMPs

- *Silt Fence/Fiber Roll.* Silt fences or fiber rolls shall be installed around the perimeter of the areas affected by construction, at the toe of slopes, around storm drain inlets, and at outfall areas, to prevent offsite sedimentation.
- *Street Sweeping and Vacuuming.* Areas with visible sediment tracking shall be swept or vacuumed daily, to prevent the discharge of sediment into the stormwater drainage system or creeks.
- *Storm Drain Inlet Protection.* Storm drains shall be protected using a filter fabric fence, gravel bag barrier, or other methods, to allow sediments to be filtered or settle out before runoff enters drain inlets.

- *Check Dams.* Barriers shall be constructed of rock, gravel bags, sand bags, or fiber rolls across a constructed swale or drainage ditch, to reduce the effective slope of the channel. This reduces the velocity of runoff, which allows sediment to settle and reduces erosion.
- *Sediment Traps.* Sediment traps shall be constructed where sediment-laden runoff may enter the stormwater drainage systems or creeks. Sediment traps are appropriate for drainage areas less than 5 acres.

Wind Erosion Control BMPs

- *Dust Control.* Potable water shall be applied using water trucks to alleviate nuisance caused by dust. Water application rates shall be minimized to prevent erosion and runoff.
- *Stockpile Management.* Silt fences shall be used around the perimeter of stockpiles, and stockpiles shall be covered to prevent wind dispersal of sediment.

Tracking Controls

- *Stabilized Construction Entrance/Exit.* Construction site entrances and exits shall be graded and stabilized to reduce the tracking of mud and dirt onto public roads by construction vehicles.
- *Stabilized Construction Roadway.* Access roads, parking areas, and other on-site vehicle transportation routes shall be stabilized immediately after grading is completed, and frequently maintained to prevent erosion and to control dust.
- *Tire Wash.* A tire washing facility shall be installed at stabilized construction access points to allow for tire washing when vehicles exit the site to prevent tracking of dirt and mud onto public roads.

Non-Stormwater Controls

- *Dewatering.* The SWPPP shall include a dewatering plan for non-contaminated groundwater specifying methods of water collection, transport, treatment, and discharge. The discharger shall consult with the Water Board regarding any required permit (other than the Construction General Permit) or Basin Plan conditions prior to discharging groundwater to land, storm drains, or receiving waters. Water produced by dewatering shall be impounded in holding tanks, sediment basins, or other holding facilities to settle the solids and provide other treatment as necessary prior to discharge to receiving waters. Discharges of water produced by dewatering shall be controlled to prevent erosion.
- *Illicit Connection/Discharge Detection and Reporting.* Contractors shall regularly inspect the site for evidence of illicit connections, illegal dumping, or discharges. Such illicit activities shall immediately be reported to the City.
- *Vehicle and Equipment Cleaning.* Construction equipment shall be washed regularly in a designated stabilized area on-site, or offsite. Steam cleaning shall not be performed on-site. Phosphate-free, biodegradable soaps shall be used for on-site activities. Wash water from on-site activities shall be contained and infiltrated, to avoid discharges to drain inlets and creeks.
- *Vehicle and Equipment Fueling and Maintenance.* Vehicles and equipment shall be inspected daily for leaks. Perform vehicle maintenance and fueling off-site whenever possible. If maintenance and fueling must take place on-site, designated areas shall be located at least 50 feet away from storm drain inlets, drainage courses, and receiving waters. Fueling areas shall be protected with berms and dikes to prevent infiltration and runoff, and to contain spills. Fueling shall be performed on level grade. Nozzles shall be equipped with automatic shutoffs to control drips. Stored fuel shall be enclosed or covered. Drip pans shall be used for all vehicle and equipment maintenance activities. Spill kits shall be available in maintenance and fueling areas, and spills shall be removed with absorbent materials and not washed down with water. If spills or leaks occur, contaminated soil and cleanup materials shall be properly disposed.

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- *Paving and Grinding Operations.* Proper practices shall be implemented to prevent infiltration and runoff, and to properly dispose of waste. Paving and grinding activities shall be avoided during the rainy season, when feasible.

Waste Management and Materials Pollution Control BMPs

- *Material Delivery and Storage and Use.* Materials such as detergents, concrete compounds, petroleum products, and hazardous materials shall be stored in a designated area away from vehicular traffic, drain inlets, and Mitchell Creek. The materials shall be stored on pallets with secondary containment. Spill clean-up materials, material safety data sheets, a material inventory, and emergency contact numbers shall be maintained in the storage area.
- *Spill Prevention and Control.* Proper procedures shall be implemented to contain and clean-up spills and prevent material discharges into the storm drain system.
- *Waste Management.* Solid waste shall be collected in designated areas, and stored in watertight containers located in a covered area, or with secondary containment. Waste shall be removed from the site regularly. Hazardous wastes shall be stored and disposed in accordance with applicable regulatory requirements.
- *Sanitary/Septic Waste Management.* Portable toilets shall be located at least 50 feet away from drain inlets and waterbodies, and away from paved areas.
- *Stockpile Management.* Stockpiles shall be surrounded by sediment controls, covered, and located at least 50 feet from concentrated flows of stormwater, inlets, and creeks.
- *Concrete Waste Management.* Concrete washout shall be performed offsite, or in a designated area at least 50 feet away from storm drain inlets or creeks. A temporary pit or bermed area shall be constructed where the waste can be discharged and allowed to set for proper disposal.
- *Training.* Construction site personnel shall receive training on implementing all BMPs included in the SWPPP. A Qualified SWPPP Practitioner shall perform all BMP inspection/maintenance/repair and site monitoring activities. (LTS)

Mitigation Measure 18. The developer shall submit a water quality plan addressing any direct or incremental degradation of downstream water quality. The impacts to downstream water bodies shall be mitigated by:

- a) On-site retention and treatment of stormwater through the use of water quality basins, grassy swales, biofilters and/or other methods acceptable to the City Engineer and the RWQCB. The Project shall mitigate run-off **quantities** to the extent currently required by the City's NPDES Permit and Municipal Separate Storm Sewer System permit, **or**
- b) ~~Installation of structural treatment facilities to remove total suspended solids and total petroleum hydrocarbon products to the extent currently required by the RWQCB, or to the satisfaction of the City Engineer.~~

Mitigation Measure 19. All Project contractors shall conform to the requirements of the "Best Management Practices for Construction Sites" required by the City, including detention and/or filter materials to preclude an increase in water quantity and quality impacts from debris and sediments entering the stormwater system over "non-development" conditions. **During the final design process, the project applicant shall calculate pre- and post-project peak flow rates for the 25-year and 50-year storm events which would be conveyed via overland flow. If required, the project applicant shall provide on-site flood control detention where post-project peak discharge rates exceed pre-project rates, in accordance with the City of Clayton's standard conditions of approval.**

Mitigation Measure 20. The developer shall dedicate to the City runoff control easements to mitigate impacts of drainage patterns. The City Engineer may establish controls on the volume and rate of stormwater runoff from the site. *The quantity and rate of stormwater runoff from the site shall be coordinated with the Contra Costa County Flood Control District to ensure that the quantity and rate of runoff from the site does not exceed historic rates and does not impact downstream drainage facilities.* The Project shall bear the financial responsibility of the construction and perpetual maintenance, including monitoring of these facilities with a funding mechanism acceptable to the City that addresses costs for capital replacement, inflation, and administration. *In accordance with the MRP, the County's Stormwater C.3 Guidebook, and City of Clayton Municipal Code Chapter 13.12, the project applicant shall submit an Operations and Maintenance (O&M) Plan to the City with the application for a building permit. The O&M Plan shall identify the party responsible for maintenance and the sources of funds, and shall include the maintenance agreement for the Ownership Association. The O&M Plan shall include the design information/calculations and construction specifications for the Integrated Management Practices (IMPs), a maintenance plan, schedule, inspection checklist, and maintenance log for each stormwater treatment facility.*

Mitigation Measure 21. *Revised Lots 1-24 shall contain a deed restriction which authorizes the City to require the respective property owners to provide monitoring reports and pay any fees related thereto of on-lot treatment. and of any stormwater discharges into Mount Diablo Creek.*

Mitigation Measure 22. *Revised Lots 1-24 shall include deed restrictions which provide City and other public agency personnel with the right of access to inspect all on-site stormwater control devices and pay any fees related thereto.*

Mitigation Measure 23. The developer shall provide all Project property owners with Clean Water Program educational materials. *The owners association shall provide at least semi annual information materials on pollution prevention to all residents of the project. Copies of the materials and documentation of the outreach shall be provided annually to the City as part of the annual O&M plan.*

Note: The following is deleted as the project would not include R40 H zoning (i.e.:no horses)

Mitigation Measure 24. *The Developer shall either provide the following (or a deed restriction or similar mechanism approved by the City which assures the following) on all lots designated R-40-H:*

- a) ——— Containment basin and septic system to capture and treat on-site surface water runoff from pasture and paddock areas.*
- b) ——— Water quality monitoring and maintenance plan acceptable to the City for the containment and treatment systems. The plan shall address funding and enforcement provisions.*

These requirements may be superseded by City adoption of zoning regulations which address the water quality impacts of horses in the R-40-H district.

8. Hydrology

Environmental Setting

Mount Diablo Creek, which traverses the northerly portion of the Project site, is the major watercourse draining the area. Mount Diablo Creek flows northwesterly from Mount Diablo, through the cities of Clayton and Concord, ultimately discharging into Suisun Bay.

Based on the Federal Emergency Management Agency *Flood Insurance Rate Map* (Community Panel Number 0600270002 C, dated September 7, 2001), the Project site lies substantially outside of the 100-year flood plain. A small portion of the northerly area of the site on *Revised Lot 25*, within and immediately adjacent to the Mount Diablo Creek channel, is designated Zone AE and subject to 100-year flood events. *Revised Lots 1-24 are outside of the area designated Zone AE.*

Existing on-site drainage consists of open drainage swales and channels that direct stormwater run off from the seminary complex into the City's storm drain within adjacent streets, which discharge in Mount Diablo Creek. Drainage from undeveloped portions of the Project site follow existing gullies and natural channels into Mount Diablo Creek and/or into nearby streets.

The City owns and maintains the storm drain system consisting primarily of underground pipes which transport stormwater to nearby creeks. The City and underlying property owners are responsible for maintenance of the creek channels.

Regulatory Framework

Surface water quality is regulated by the State Water Resources Control Board (State Board) and San Francisco Bay Regional Water Quality Control Board (Water Board). According to the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan),³ beneficial uses of Mount Diablo Creek and its tributaries are cold freshwater habitat; warm freshwater habitat; fish migration; fish spawning; wildlife habitat; water contact recreation; non-contact water recreation; and navigation. Beneficial uses for Suisun Bay are industrial service supply; industrial process supply; ocean, commercial and sport fishing; estuarine habitat; fish migration; preservation of rare and endangered species; fish spawning; wildlife habitat; water contact recreation; non-contact water recreation; and navigation.

Suisun Bay is on the Clean Water Act (CWA) 2006 303(d) list due to impairment from legacy pesticides (chlordane, DDT, dieldrin), dioxin and furan compounds, mercury, nickel, polychlorinated biphenyls, and selenium. Mount Diablo Creek and its tributaries are not currently listed on the 303(d) list; however, like many San Francisco Bay Area urban creeks, Mount Diablo Creek is impaired due to diazinon and is subject to the Total Maximum Daily Load (TMDL) for diazinon and pesticide-related toxicity in all San Francisco Bay Area urban creeks; the TMDL was incorporated as a Basin Plan amendment in 2005. The U.S. Environmental Protection Agency (EPA) phased out urban diazinon applications at the end of 2004; however, replacements for diazinon (such as pyrethroids) may now potentially pose similar water quality and sediment concerns as diazinon.

³ San Francisco Bay Water Quality Control Board, 2007. *San Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan)*. January 18.

As part of the Surface Water Ambient Monitoring Program, in 2003-2004 the Water Board performed water quality, sediment, and benthic macroinvertebrate sampling in the Mount Diablo watershed, including locations upstream and downstream of the project site. The data are summarized in the report entitled *Water Quality Monitoring and Bioassessment in Four San Francisco Bay Region Watersheds in 2003-2004: Kirker Creek, Mt. Diablo Creek, Petaluma River, San Mateo Creek*.⁴ In 2006-2007, Friends of Mount Diablo Creek also monitored conventional water quality parameters at several sites in the watershed, including Mount Diablo Creek and Mitchell Creek.⁵

Applicable federal, State, and local regulations are described below.

a. Municipal Stormwater Management Requirements. Pursuant to Section 402 of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act, municipal stormwater discharges in the City of Clayton (the City is part of the Contra Costa Clean Water Program) are regulated under the San Francisco Bay Region Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit, Order No. R2-2009-0074, NPDES Permit No. CAS612008, adopted October 14, 2009 (MRP).

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MRP Provision C.3 addresses post-construction stormwater management requirements for new development and redevelopment projects that add and/or replace 10,000 square feet or more of impervious area. Provision C.3 requires the City to require incorporation of site design, source control and stormwater treatment measures into development projects, to minimize the discharge of pollutants in stormwater runoff and non-stormwater discharge, and to prevent increases in runoff flows. The MRP requires that Low Impact Development (LID)⁶ methods be the primary mechanism for implementing such controls.

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MRP Provision C.3 requires that stormwater treatment best management practices (BMPs) are designed per the following hydraulic sizing criteria:

- **Volume Hydraulic Design Basis** – Treatment systems whose primary mode of action depends on volume capacity shall be designed to treat stormwater runoff equal to: (a) the maximized stormwater capture volume for the area, on the basis of historical rainfall records, determined using the formula and volume capture coefficients set forth in Urban Runoff Quality Management, Water Environment Federation Manual of Practice No. 23/American Society of Civil Engineers Manual of Practice No. 87, (1998), pages 175–178 (e.g., approximately the 85th percentile 24-hour storm runoff event); or (b) the volume of annual runoff required to achieve 80 percent or more capture, determined in accordance with the methodology set forth in Section 5 of the California Stormwater Quality Association's Stormwater Best Management Practice Handbook, New Development and Redevelopment (2003), using local rainfall data;
- **Flow Hydraulic Design Basis** – Treatment systems whose primary mode of action depends on flow capacity shall be sized to treat: (a) 10 percent of the 50-year peak flow rate; (b) the flow of runoff produced by a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the

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⁴ San Francisco Bay Regional Water Quality Control Board, 2007. *Water Quality Monitoring and Bioassessment in Four San Francisco Bay Region Watersheds in 2003-2004: Kirker Creek, Mt. Diablo Creek, Petaluma River, San Mateo Creek*. June (revised 2008).

⁵ Mount Diablo Creek Watershed Planning Group and Contra Costa Resource Conservation District, 2007. *Mount Diablo Creek Watershed Plan*. April.

⁶ The goal of LID is to reduce runoff and mimic a site's pre-development hydrology by minimizing disturbed areas and impervious cover and then infiltrating, storing, detaining, evapotranspiring (i.e., evaporating water from soil and plants), and/or biotreating stormwater runoff close to its source.

applicable area, based on historical records of hourly rainfall depths; or (c) the flow of runoff resulting from a rain event equal to at least 0.2 inches per hour intensity; or

- **Combination Flow and Volume Design Basis** – Treatment systems that use a combination of flow and volume capacity shall be sized to treat at least 80 percent of the total runoff over the life of the project, using local rainfall data.

MRP Provision C.3.g pertains to hydromodification management.⁷ The MRP requires that stormwater discharges shall not cause an increase in the erosion potential of the receiving stream over the existing condition. Increases in runoff flow and volume shall be managed so that the post-project runoff shall not exceed estimated pre-project rates and durations, where such increased flow and/or volume is likely to cause increased potential for erosion of creek beds and banks, silt pollutant generation, or other adverse impacts on beneficial uses due to increased erosive force. Such increases are to be controlled through the implementation of hydromodification management controls, which are referred to as Integrated Management Practices (IMPs)⁸ in Contra Costa County; the IMPs are to be designed to control flows up to 20 percent of the 2-year peak flow.

The Contra Costa Clean Water Program has summarized the requirements for development projects in the *Stormwater C.3 Guidebook, Stormwater Quality Requirements for Development Applications* (Fifth Edition, September-October 20, 2010). The Guidebook provides direction on selecting stormwater site design, source control, treatment, and flow control BMPs, and summarizes the requirements for preparation of a Stormwater Control Plan, which specifies the permanent site features and facilities designed to control stormwater pollutants and flows for the life of the project. The Stormwater Control Plan must be submitted to the City for review and approval with the planning and zoning application. The Guidebook provides a spreadsheet to be used to size IMPs for water quality treatment and flow control. The Guidebook also includes requirements for preparing an Operation and Maintenance Plan, which is to be submitted to the City for review with the building permit application.

Chapter 13.12 of the City of Clayton Municipal Code (Stormwater Management and Discharge Control) requires project applicants to submit a Stormwater Control Plan and an Operation and Maintenance Plan, and specifies additional BMPs (e.g., for litter, and paved areas). The responsible party is required to obtain annually a valid operation and maintenance certificate of compliance certifying the inspection and proper operation and maintenance of the treatment measures and other appropriate source control and site design measures. The responsible party shall request an inspection from the City every 12 months, or arrange for an inspection from a private company authorized to conduct inspections by the City.

b. Construction General Permit and Local Requirements for Construction. Pursuant to CWA Section 402 and the Porter-Cologne Water Quality Control Act, on September 2, 2009, the State Board adopted an NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, NPDES No. CAS000002 (Construction General Permit). To obtain coverage under the Construction General

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⁷ Hydromodification or hydrograph modification causes streambank erosion, channelization, increased flood flows, and other physical modifications that can adversely affect aquatic ecosystems due to increased sedimentation and reduced water quality (e.g., higher water temperatures and lower dissolved oxygen concentrations).

⁸ An Integrated Management Practice is a facility that provides small-scale treatment, retention, and/or detention and is integrated into site layout, landscaping and drainage design.

Permit, the project applicant must provide via electronic submittal, a Notice of Intent, a Storm Water Pollution Prevention Plan (SWPPP), and other documents required by Attachment B of the Construction General Permit. Activities subject to the Construction General Permit include clearing, grading, and disturbances to the ground, such as grubbing or excavation. The permit also covers linear underground and overhead projects such as pipeline installations. Construction activities covered under the Construction General Permit are regulated at a local level by the Water Board.

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The Construction General Permit exercises a risk-based permitting approach, and mandates certain requirements based on the risk level of the project (Level 1, Level 2, or Level 3). The risk level of the project is based on the risk of sediment discharge and the receiving water risk. The sediment discharge risk depends on the project location and timing (i.e., wet season versus dry season activities). The receiving water risk depends on whether the project would discharge to a sediment-sensitive receiving water, defined by specific beneficial uses of the receiving water in the Basin Plan (i.e., cold freshwater habitat, fish migration, and fish spawning), a listing on the CWA 303(d) list due to sediment impairment, or a Total Maximum Daily Load in place to address excessive sedimentation. The project would not be Risk Level 1 because it would discharge to a sediment-sensitive creek (Mount Diablo Creek). The determination of the project as Risk Level 2 or 3 would be made by the preparer of the SWPPP, based upon the criteria established by the State.

The performance standard in the Construction General Permit is that dischargers shall minimize or prevent pollutants in stormwater discharges and authorized non-stormwater discharges through the use of controls, structures, and management practices that achieve Best Available Technology (BAT) for treatment of toxic and non-conventional pollutants and Best Conventional Technology (BCT) for treatment of conventional pollutants.⁹ The permit also imposes numeric action levels (Level 2 and Level 3 projects) and numeric effluent limits (Level 3 projects) for pH and turbidity, as well as minimum BMPs that must be implemented at all sites.

A SWPPP must be prepared by a Qualified SWPPP Developer that meets the certification requirements in the Construction General Permit. The purpose of the SWPPP is to: (1) to help identify the sources of sediment and other pollutants that could affect the quality of stormwater discharges; and (2) describe and ensure the implementation of BMPs to reduce or eliminate sediment and other pollutants in stormwater as well as non-stormwater discharges resulting from construction activity. BMPs must be overseen by a Qualified SWPPP Practitioner that meets the requirements outlined in the permit. For Level 2 and Level 3 projects, the discharger must also prepare a Rain Event Action Plan as part of the SWPPP that must be designed to protect all exposed portions of the construction site within 48 hours prior to any likely precipitation event.

The SWPPP must also include a construction site monitoring program. The monitoring program includes, depending on the project risk level, visual observations of site discharges, water quality monitoring of site discharges (pH, turbidity, and non-visible pollutants, if applicable), and

⁹ As defined by the U.S. EPA, Best Available Technology (BAT) is a technology-based standard established by the CWA as the most appropriate means available on a national basis for controlling the direct discharge of toxic and non-conventional pollutants to navigable waters. The BAT effluent limitations guidelines, in general, represent the best existing performance of treatment technologies that are economically achievable. Best Conventional Technology (BCT) is a technology-based standard that applies to treatment of conventional pollutants, such as total suspended solids.

receiving water monitoring (pH, turbidity, suspended sediment concentration, and bioassessment).

Chapter 13.12 of the City of Clayton Municipal Code (Stormwater Management and Discharge Control) requires that construction shall conform to the requirements of the California Stormwater Quality Association Stormwater Best Management Practices Handbooks for Construction Activities, the Association of Bay Area Governments Manual of Standards for Erosion and Sediment Control Measures, the City's grading and erosion control ordinance, and other generally-accepted engineering practices for erosion control, as required by the City Manager when undertaking construction activities. Chapter 15.60 of the City of Clayton Municipal Code (Grading Rules and Regulations) requires the project applicant to obtain a grading permit from the City for conditions that include but are not limited to: the extent of land disturbance exceeds 1 acre and/or the work would occur from October 15 to April 15. The application for a grading permit must include project plans and specifications, a soils engineering report, an engineering geology report, and any additional material requested by the City to demonstrate compliance of the proposed grading with the requirements of the Municipal Code. Project applicants must also comply with the general grading requirements included in Section 15.60.130 of the Municipal Code.

~~The San Francisco Bay Regional Water Quality Control Board (RWQCB) recently issued an Order requiring all municipalities within Contra Costa County and the County itself to develop more restrictive surface water control standards for new development projects as part of the renewal of the Countywide National Pollution Discharge Elimination System (NPDES) permit. Known as the "C-3 Standards," new development or redevelopment projects that disturb one or more acres of land area must contain and treat stormwater runoff from the site. Enhanced Best Management Practices (i.e., permanent post-construction control measures) to protect stormwater runoff from development sites are also required under the City's current NPDES permit and C-3 Standards.~~

~~According to the RWQCB, the C-3 Standards are applicable to private and public development projects in the project review and approval pipeline which have not received all entitlements as of February 15, 2005. Hence if a project has received local planning entitlements but has not obtained all construction permits before February 15, 2005, the project could still be subject to the C-3 Standards. Therefore, the project plans should address the C-3 Standards to the maximum extent practicable.~~

~~On March 10, 2003, the State Water Resources Control Board began regulating all stormwater discharges associated with construction activities where clearing, grading, or excavation results in a land disturbance of one or more acres. Stormwater discharges from a construction activity that results in a land disturbance of less than one acre, but which is part of a larger common plan of development or sale, also require a permit. Performance Standard NDCC-13 of the City's NPDES permit requires applicants to show proof of coverage under the State's General Construction Permit prior to receipt of any construction permits. Therefore, lots which are later sold as custom lots and not developed at one time by a common developer need to demonstrate compliance with the State's General Construction Permit.~~

Project Impacts and Mitigation Measures

Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
<i>Would the proposal:</i>				
a. Violate any water quality standards or waste discharge requirements?		X		
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level?				X
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?			X	
d. Substantially alter the drainage pattern of the site or area, including through the alteration of a course of a stream, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on-or off-site?			X	
e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?			X	
f. Otherwise substantially degrade water quality?		X		

g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?			X
h. Place within a 100-year flood hazard area structures which would impede or redirect flood flows?			X
i. Altered direction or rate of flow of groundwater?			X
j. Inundation by seiche or mudflow?		X	

Discussion

a,f) The Project would generate increased quantities of stormwater runoff from a portion of the Project site based on the construction of new roads, building areas, walkways and other impervious surfaces that block absorption of water into the ground. Drainage from the Project site will flow into Mount Diablo Creek, which is a significant regional intermittent creek and considered sensitive area under the NPDES permit. This increased level of runoff could be a *potentially significant impact unless mitigated* in terms of adding pollutants to and increase the erosion potential of Mount Diablo Creek and other nearby bodies of water. In recognition of the above impacts, adherence to the following mitigation measures is necessary.

Measures to protect receiving waters from the effects of erosion and siltation during the construction phase are addressed in the following Mitigation Measures. In addition, if grading is performed between October 15 and April 15, the project applicant must obtain a grading permit from the City and comply with the City's grading requirements. In the post-construction phase, the runoff from impervious areas would not cause erosion or siltation because, as discussed below and described in the Preliminary Stormwater Control Plan, the runoff would be treated in IMPs to remove sediment prior to discharge into the stormwater drainage system. In addition, the project would not cause erosion or siltation that would cause or contribute to stream channel hydromodification because the IMPs required by the City have been sized in the draft Stormwater Control Plan for the lot development impervious area to control flows that could cause hydromodification. Therefore, the potential for the project to alter drainage patterns and cause substantial erosion or siltation would be less than significant.

The project would discharge to the existing stormwater drainage system, which is designed to convey flows for the 10-year storm. Flows in excess of the 10-year storm and up to the 100-year storm would be conveyed to Mount Diablo Creek via overland flow. The City of Clayton's standard conditions of approval specify that post-development peak runoff flows shall not exceed pre-development flows for up to a 100-year design storm. The project

Preliminary Hydrology and Detention Study shows that peak discharge rates for the 100-year storm would increase, thus requiring on-site flood detention for the 100-year storm to maintain pre-project peak flow rates; this would be achieved via construction of an underground detention system, which would reduce flooding impacts from the 100-year storm to a less-than-significant level. However, the Preliminary Hydrology and Detention Study does not evaluate if flows smaller than the 100-year event but larger than the 10-year event (i.e.: the 25 -year event) which would be conveyed via overland flow, would require flood detention. The project's Stormwater Control Plan, as discussed under HYD-3, demonstrates that flows up to the 10-year storm would be maintained at pre-project conditions in accordance with the MRP standard for hydromodification management; therefore the potential for project flows to exceed the capacity of the underground stormwater drainage system would be less than significant. The Mitigation Measures, requires the project applicant to provide flood detention if necessary for runoff events greater than the 10-year storm and smaller than the 100-year storm, which would be conveyed via overland flow, would reduce impacts to a less-than-significant level.

Project construction period activities could generate stormwater runoff that could cause or contribute to a violation of water quality standards or waste discharge requirements, provide substantial additional sources of polluted runoff, or otherwise substantially degrade the water quality of Mount Diablo Creek and ultimately Suisun Bay.

In areas of active construction, soil erosion may result in discharges of sediment-laden stormwater runoff into Mitchell Creek and Mount Diablo Creek, if not properly controlled. Additional sediment input to the creeks from construction of the project could contribute to degradation of downstream water quality and impairment of beneficial uses. Sediment can also be a carrier for other pollutants, such as heavy metals, nutrients, pathogens, oil and grease, fuels and other petroleum products. In addition to sediment, other pollutants associated with the various phases of construction, such as trash, paint, solvents, sanitary waste from portable restrooms, and concrete curing compounds, can discharge into and impair receiving waters if released during construction.

Mitigation Measures which requires preparation and implementation of a site-specific SWPPP in accordance with the Construction General Permit, in addition to obtainment of a grading permit from the City if grading is performed during the rainy season, would reduce the adverse impacts to water quality associated with discharges of construction site runoff to a less-than-significant level.

Residential developments are a source of various stormwater pollutants that may be deposited on impervious surfaces, such as sediment, metals, organic compounds such as pesticides, polynuclear aromatic hydrocarbons, oil and grease, pathogens, nutrients, and trash and debris. Such pollutants may also be present in non-stormwater discharges, such as runoff from landscape irrigation. The project would increase impervious area which would increase the area upon which pollutants would accumulate. The increase in impervious area would also increase runoff volumes and pollutant loading into Mount Diablo Creek **and ultimately** Suisun Bay. It could cause or contribute to a violation of water quality standards or waste discharge requirements, provide substantial additional sources of polluted runoff, or otherwise substantially degrade the water quality of Mount Diablo Creek and ultimately Suisun Bay. If not properly controlled, pollutant loading to receiving waters could adversely affect water quality and beneficial uses of waterways.

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The project applicant has submitted a Preliminary Stormwater Control Plan¹⁰ (SCP) to the City (available for review at the Community Development Department), in accordance with the Clean Water Program's *Stormwater Guidebook, Stormwater Quality Requirements for Development Applications, 5th edition*. The SCP identifies the locations and sizes (using required engineering design calculations) of IMPs designed for water quality treatment and flow control (including control of stream channel hydromodification effects). The IMPs consist of vegetated bioretention areas, flow-through planters, and in-ground planters. The SCP also summarizes the source control BMPs to minimize the discharge of pollutants from potential source areas (such as pesticide use in landscaped areas, and pollutants in refuse storage areas). The SCP meets the City's requirements, and its implementation would reduce operational impacts on water quality to a less-than-significant level. However, lack of maintenance is the primary reason why IMPs fail to function as designed. Therefore, per the Clean Water Program's *Stormwater Guidebook 5th Edition*, the City must verify that the IMPs would be adequately maintained. This includes preparation of an Operation and Maintenance Plan that identifies the entity that will be responsible for maintaining the IMPs in perpetuity and the detailed requirements for each IMP. The project applicant intends to form an Ownership Association that ~~would be responsible for maintaining the IMPs.~~ Mitigation Measures require the project applicant to submit an Operation and Maintenance Plan for City approval, would ensure that the stormwater management facilities identified in the SCP would be maintained and would reduce the adverse impacts associated with post-construction stormwater runoff to a less-than-significant level.

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Mitigation Measure 16. Prior to commencement of any site work or applicable land disturbances as defined in the State General Construction Permit regulations, ~~that will result in a land disturbance of one acre or more,~~ the developer shall provide evidence to the City that they have received coverage under the ~~requirements for a stormwater~~ State General Construction Permit. ~~have been met.~~

Mitigation Measure 17. ~~Prior to commencement of any site work, including demolition of existing structures or site improvements, the developer shall submit a completed Stormwater Pollution Prevention Plan (SWPPP) to the City Engineer. The SWPPP shall include:~~

- ~~a) Sampling of Mount Diablo Creek for sediments in accordance with State General Permit regulations.~~
- ~~b) Hydro seeding or landscaping of all disturbed areas.~~
- ~~c) Best Management Practices, including landscaping of front and rear yards prior to acceptance of the subdivision.~~
- ~~d) A site spill response plan.~~

Mitigation Measure 17: Consistent with the requirements of the Statewide Construction General Permit, the project applicant shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce potential adverse impacts to surface water quality through the project construction period. The SWPPP shall be designed to address the following objectives: (1) all pollutants and their sources, including sources of sediment associated with construction, construction site erosion and all other activities associated with construction activity are

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¹⁰ Carlson, Barbee & Gibson, Inc., 2010a, op. cit.
Initial Environmental Study/Negative Declaration (ENV 01-03)
Diablo Estates IES Site Plan Review

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controlled; (2) where not otherwise required to be under a Water Board permit, all non-storm water discharges are identified and either eliminated, controlled, or treated; (3) site Best Management Practices (BMPs) are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity to the BAT/BCT standard; (4) calculations and design details as well as BMP controls for site run-on are complete and correct; and (5) stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.

The SWPPP shall be prepared by a Qualified SWPPP Developer. The SWPPP shall include the minimum BMPs required in Attachment D for Risk Level 2 dischargers, or Attachment E for Risk Level 3 dischargers (as applicable, based on final determination of the project's Risk Level status [to be determined as part of the Notice of Intent for coverage under the Construction General Permit]). These include: BMPs for erosion and sediment control, site management/housekeeping/waste management, management of non-stormwater discharges, infiltration and runoff controls, and BMP inspection/maintenance/repair activities. BMP implementation shall be consistent with the BMP requirements in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction¹¹ or the Caltrans Storm Water Quality Handbook Construction Site BMPs Manual.¹²

The SWPPP shall include a construction site monitoring program that identifies requirements for dry weather visual observations of pollutants at all discharge locations, and as appropriate (depending on the Risk Level), sampling of the site effluent and receiving waters (receiving water monitoring is only required for some Risk Level 3 dischargers). A Qualified SWPPP Practitioner shall be responsible for implementing the BMPs at the site and performing all required monitoring and inspection/maintenance/repair activities. If the project is Risk Level 2 or 3, the project applicant shall also prepare a Rain Event Action Plan as part of the SWPPP.

The following are the minimum types of BMPs that shall be implemented for the project, subject to review and approval by the City Engineer.

Erosion Control BMPs

- *Scheduling.* To reduce the potential for erosion and sediment discharge, construction shall be scheduled to minimize ground disturbance during the rainy season. The project applicant shall:
 - d. Sequence construction activities to minimize the amount of time that soils remain disturbed.
 - e. Stabilize all disturbed soils as soon as possible following the completion of ground-disturbing work.
 - f. Install erosion and sediment control BMPs prior to the start of any ground-disturbing activities.
- *Preservation of Existing Vegetation.* Where feasible, existing vegetation shall be preserved to provide erosion control.
- *Landscaping of front and rear yards prior to acceptance of the subdivision.*
- *Stabilize Soils.* Hydroseeding, geotextile fabrics and mats, mulch, or soil binders shall be used, as appropriate, to reduce erosion on exposed soil surfaces.

¹¹ California Stormwater Quality Association, 2003. *Stormwater Best Management Handbook-Construction*, with updates through 2006.

¹² Caltrans, 2003. *Storm Water Quality Handbook Construction Site Best Management Practices (BMPs) Manual*. March.

- *Stabilize Streambanks.* When working along stream banks or within channels, BMPs shall be implemented to minimize channel erosion and sedimentation. Proper erosion and sediment controls, such as silt fences, mulch, geotextiles, and hydroseeding, shall be used. To the extent possible, existing vegetation that stabilizes the stream banks shall be preserved.
- *Earth Dikes, Drainage Swales and Slope Drains.* Earth dikes, drainage swales, or slope drains shall be constructed to divert runoff away from exposed soils and stabilized areas, and redirect the runoff to a desired location, such as a sediment basin.
- *Outlet Protection and Velocity Dissipation Devices.* Rock, concrete rubble, or grouted riprap shall be installed at culvert and pipe outlets to drainage conveyances, to prevent scour of the soil caused by concentrated high-velocity flows.

Sediment Control BMPs

- *Silt Fence/Fiber Roll.* Silt fences or fiber rolls shall be installed around the perimeter of the areas affected by construction, at the toe of slopes, around storm drain inlets, and at outfall areas, to prevent offsite sedimentation.
- *Street Sweeping and Vacuuming.* Areas with visible sediment tracking shall be swept or vacuumed daily, to prevent the discharge of sediment into the stormwater drainage system or creeks.
- *Storm Drain Inlet Protection.* Storm drains shall be protected using a filter fabric fence, gravel bag barrier, or other methods, to allow sediments to be filtered or settle out before runoff enters drain inlets.
- *Check Dams.* Barriers shall be constructed of rock, gravel bags, sand bags, or fiber rolls across a constructed swale or drainage ditch, to reduce the effective slope of the channel. This reduces the velocity of runoff, which allows sediment to settle and reduces erosion.
- *Sediment Traps.* Sediment traps shall be constructed where sediment-laden runoff may enter the stormwater drainage systems or creeks. Sediment traps are appropriate for drainage areas less than 5 acres.

Wind Erosion Control BMPs

- *Dust Control.* Potable water shall be applied using water trucks to alleviate nuisance caused by dust. Water application rates shall be minimized to prevent erosion and runoff.
- *Stockpile Management.* Silt fences shall be used around the perimeter of stockpiles, and stockpiles shall be covered to prevent wind dispersal of sediment.

Tracking Controls

- *Stabilized Construction Entrance/Exit.* Construction site entrances and exits shall be graded and stabilized to reduce the tracking of mud and dirt onto public roads by construction vehicles.
- *Stabilized Construction Roadway.* Access roads, parking areas, and other on-site vehicle transportation routes shall be stabilized immediately after grading is completed, and frequently maintained to prevent erosion and to control dust.
- *Tire Wash.* A tire washing facility shall be installed at stabilized construction access points to allow for tire washing when vehicles exit the site to prevent tracking of dirt and mud onto public roads.

Non-Stormwater Controls

- *Dewatering.* The SWPPP shall include a dewatering plan for non-contaminated groundwater specifying methods of water collection, transport, treatment, and discharge. The discharger shall consult with the Water Board regarding any required permit (other than the Construction General Permit) or Basin Plan conditions prior to ~~discharging groundwater~~ to land, storm drains, or receiving waters. Water produced by ~~dewatering shall be impounded in holding tanks, sediment basins, or other holding facilities to settle the solids and provide other treatment as necessary prior to discharge to receiving waters. Discharges of water produced by dewatering shall be controlled to prevent erosion.~~
- *Illicit Connection/Discharge Detection and Reporting.* Contractors shall regularly inspect the site for evidence of illicit connections, illegal dumping, or discharges. Such illicit activities shall immediately be reported to the City.
- *Vehicle and Equipment Cleaning.* Construction equipment shall be washed regularly in a designated stabilized area on-site, or offsite. Steam cleaning shall not be performed on-site. Phosphate-free, biodegradable soaps shall be used for on-site activities. Wash water from on-site activities shall be contained and infiltrated, to avoid discharges to drain inlets and creeks.
- *Vehicle and Equipment Fueling and Maintenance.* Vehicles and equipment shall be inspected daily for leaks. Perform vehicle maintenance and fueling off-site whenever possible. If maintenance and fueling must take place on-site, designated areas shall be located at least 50 feet away from storm drain inlets, drainage courses, and receiving waters. Fueling areas shall be protected with berms and dikes to prevent infiltration and runoff, and to contain spills. Fueling shall be performed on level grade. Nozzles shall be equipped with automatic shutoffs to control drips. Stored fuel shall be enclosed or covered. Drip pans shall be used for all vehicle and equipment maintenance activities. Spill kits shall be available in maintenance and fueling areas, and spills shall be removed with absorbent materials and not washed down with water. If spills or leaks occur, contaminated soil and cleanup materials shall be properly disposed.
- *Paving and Grinding Operations.* Proper practices shall be implemented to prevent infiltration and runoff, and to properly dispose of waste. Paving and grinding activities shall be avoided during the rainy season, when feasible.

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Waste Management and Materials Pollution Control BMPs

- *Material Delivery and Storage and Use.* Materials such as detergents, concrete compounds, petroleum products, and hazardous materials shall be stored in a designated area away from vehicular traffic, drain inlets, and Mitchell Creek. The materials shall be stored on pallets with secondary containment. Spill clean-up materials, material safety data sheets, a material inventory, and emergency contact numbers shall be maintained in the storage area.
- *Spill Prevention and Control.* Proper procedures shall be implemented to contain and clean-up spills and prevent material discharges into the storm drain system.
- *Waste Management.* Solid waste shall be collected in designated areas, and stored in watertight containers located in a covered area, or with secondary containment. Waste shall be removed from the site regularly. Hazardous wastes shall be stored and disposed in accordance with applicable regulatory requirements.
- *Sanitary/Septic Waste Management.* Portable toilets shall be located at least 50 feet away from drain inlets and waterbodies, and away from paved areas.
- *Stockpile Management.* Stockpiles shall be surrounded by sediment controls, covered, and located at least 50 feet from concentrated flows of stormwater, inlets, and creeks.
- *Concrete Waste Management.* Concrete washout shall be performed offsite, or in a designated area at least 50 feet away from storm drain inlets or creeks. A temporary pit or bermed area shall be constructed where the waste can be discharged and allowed to set for proper disposal.

- **Training.** Construction site personnel shall receive training on implementing all BMPs included in the SWPPP. A Qualified SWPPP Practitioner shall perform all BMP inspection/maintenance/repair and site monitoring activities. (LTS)

Mitigation Measure 18. The developer shall submit a water quality plan addressing any direct or incremental degradation of downstream water quality. The impacts to downstream water bodies shall be mitigated by:

- a) On-site retention and treatment of stormwater through the use of water quality basins, grassy swales, biofilters and/or other methods acceptable to the City Engineer and the RWQCB. The Project shall mitigate run-off ~~quantities~~ to the extent currently required by the City's NPDES Permit and Municipal Separate Storm Sewer System permit, and/or
- ~~b) Installation of structural treatment facilities to remove total suspended solids and total petroleum hydrocarbon products to the extent currently required by the RWQCB, or to the satisfaction of the City Engineer.~~

Mitigation Measure 19. All Project contractors shall conform to the requirements of the "Best Management Practices for Construction Sites" required by the City, including detention and/or filter materials to preclude an increase in water quantity and quality impacts from debris and sediments entering the stormwater system over "non-development" conditions. ~~During the final design process, the project applicant shall calculate pre- and post-project peak flow rates for the 25-year and 50-year storm events which would be conveyed via overland flow. If required, the project applicant shall provide on-site flood control detention where post-project peak discharge rates exceed pre-project rates, in accordance with the City of Clayton's standard conditions of approval.~~

Mitigation Measure 20. The developer shall dedicate to the City runoff control easements to mitigate impacts of drainage patterns. The City Engineer may establish controls on the volume and rate of stormwater runoff from the site. *The quantity and rate of stormwater runoff from the site shall be coordinated with the Contra Costa County Flood Control District to ensure that the quantity and rate of runoff from the site does not exceed historic rates and does not impact downstream drainage facilities.* The Project shall bear the financial responsibility of the construction and perpetual maintenance, including monitoring of these facilities with a funding mechanism acceptable to the City that addresses costs for capital replacement, inflation, and administration. ~~In accordance with the MRP, the County's Stormwater C.3 Guidebook, and City of Clayton Municipal Code Chapter 13.12, the project applicant shall submit an Operations and Maintenance (O&M) Plan to the City with the application for a building permit. The O&M Plan shall identify the party responsible for maintenance and the sources of funds, and shall include the maintenance agreement for the Ownership Association. The O&M Plan shall include the design information/calculations and construction specifications for the Integrated Management Practices (IMPs), a maintenance plan, schedule, inspection checklist, and maintenance log for each stormwater treatment facility.~~

Mitigation Measure 21. *Revised Lots 1-24 shall contain a deed restriction which authorizes the City to require the respective property owners to provide monitoring reports and pay any fees related thereto of on-lot treatment, of any stormwater discharges into Mount Diablo Creek.*

Mitigation Measure 22. *Revised Lots 1-24 shall include deed restrictions which provide City and other public agency personnel with the right of access to inspect all on-site stormwater control devices and pay any fees related thereto.*

Mitigation Measure 23. *The developer shall provide all Project property owners with Clean Water Program educational materials. The owners association shall provide at least semi annual information materials on pollution prevention to all residents of the project. Copies of the materials and documentation of the outreach shall be provided annually to the City as part of the annual O&M plan.*

Based on the Kleinfelder geotechnical report, portions of the site are presently eroding into Mount Diablo Creek. This is an existing, pre-project condition and approval of the project would not increase erosion into the Creek since Revised Lot 25, nearest the Creek, would be dedicated to the State for permanent open space. The nearest residential lot would be located at least 300 feet from the top of bank of the creek so that any erosion directly into the creek caused by project construction would be less-than-significant.

The applicant has indicated that, if requested by Mount Diablo State Park, portions of Mount Diablo Creek banks which are eroding will be stabilized with bio-engineering techniques. This would result in a beneficial impact to surface water quality of the creek by eliminating historic erosion. Any work within the creek would be done in compliance with Mitigation Measure 5 which requires approval by appropriate federal and state wildlife regulatory agencies prior to commencement of such work.

Note: The following is deleted as the project would not include R40 H zoning (ie: no horses). The proposed R-40-H zoning would allow horses or other large animals to be kept on the lots along the southern edge of the project site. Runoff from these lots containing animal wastes could be a source of surface water degradation in Mount Diablo Creek and other drainage facilities. This is a potentially significant impact unless mitigated and could be made more severe by proposed construction activities associated with the Project. In recognition of this impact, adherence to the following mitigation measures is necessary:

Mitigation Measure 24. *The Developer shall provide the following (or a deed restriction or similar mechanism approved by the City which assures the following) on all lots designated R-40-H:*

- a) Containment basin and septic system to capture and treat on-site surface water runoff from pasture and paddock areas.*
- b) Water quality monitoring and maintenance plan acceptable to the City for the containment and treatment systems. The plan shall address funding and enforcement provisions.*

These requirements may be superseded by City adoption of zoning regulations which address the water quality impacts of horses in the R-40-H district.

- b) *No impact* is anticipated with regard to depletion of groundwater resources. Domestic water to serve the Project would be supplied by Contra Costa Water District, which relies primarily on imported supplies of water for domestic and firefighting purposes, not pumped groundwater.
- c-e) The Project would generate increased quantities of stormwater runoff from a portion of the Project site based on the construction of new roads, buildings, walkways, and other impervious surfaces that block absorption of water into the ground. Portions of the site are currently developed with buildings, paved parking lots, and walkways.

Stormwater drainage from the building pads on Revised Lots 1–24 would drain to on-site landscape areas as is required in the MRP. The existing streets were installed prior to the adoption of the MRP and drain to the adjacent street (i.e., A Street, B Court, or C Court) and then to an on-site catch basin. All catch basins would drain to previously installed a new underground detention basin and treatment facility in A Street at the project's entrance at Rialto Drive, which were allowed under previous stormwater regulations. Any removal of the streets below the compacted gravel layer prior to completion of the project would require stormwater treatment in accordance with the MRP. Surface and subsurface water draining toward Rialto Drive on the undeveloped upland portions of Revised Lots 3–4 would be captured in a J-ditch or underground subdrain installed along the toe of the western slope on Revised Lot 4. The J-ditch and subdrain would drain to the underground treatment facility at the project entrance. Stormwater leaving the treatment facility would be metered out at historic flow rates into the City's existing underground drainage system for ultimate disposal in Mount Diablo Creek. Surface and subsurface water draining toward Petar Court on the undeveloped downslope portions of Revised Lots 15–21 would be captured in a J-ditch or underground subdrains. The J-ditch and subdrains would discharge in the gutter at the eastern end of the existing cul-de-sac on Petar Court. A subdrain would also be installed in a "keyway" installed for slope stability on Revised Lots 1–4. The subdrain would discharge water at an outlet on Revised Lot 1. Subdrains would also be installed in keyways on Revised Lots 5, 6, 8, 15, and 24.

Implementation of the on lot bio infiltration planters along with the existing stormwater devices for the street catch basins proposed stormwater detention basin would allow for safe accommodation of increased levels of stormwater on the site and would result in a less-than-significant impact with regard to stormwater increases. Similarly, the historic drainage patterns on the Project site would not be substantially altered with development of the proposed Project. Removal of the existing residence and driveway on Revised Lot 25 will reduce the impervious surface area in the vicinity of Mount Diablo Creek. As a result a less-than-significant impact would be created with respect to off-site erosion or flooding.

- g-h) Based on information contained in the *Flood Insurance Rate Map*, the development portion of the Project site lies outside of the 100-year flood plain. A small portion of the site adjacent to Mount Diablo Creek is within the 100-year flood plain, but is not proposed for development since Revised Lot 25 would be dedicated as open space. *No impacts are therefore anticipated.*
- i) *No impact* is anticipated with regard to the direction or flow of groundwater resources, since geotechnical report prepared by Kleinfelder did not find groundwater resources on the site and the Project does not include any wells or barriers to the flow of groundwater.

- j) The Project site is not located near major bodies of water that could result in a seiche affecting the property. *No impact* is anticipated. Potential impacts related to mudflow from higher elevations would be *less-than-significant* with adherence to grading, drainage and compaction requirements set forth in the Kleinfelder geotechnical report prepared for this Project.

**Diablo Pointe Residential Subdivision
Mitigation Monitoring Program
ENV 01-03**

Final – Approved December 21, 2004
Updated revisions – June 2011 for Diablo Estates

The California Environmental Quality Act (CEQA) and CEQA Guidelines require Lead Agencies to adopt a program for monitoring the mitigation measures required to avoid significant environmental impacts of a project. The monitoring program ensures that mitigation measures imposed by the City are completed at the appropriate time in the development process.

The mitigation measures identified in the Initial Environmental Study / Mitigated Negative Declaration for the Diablo Pointe residential subdivision are listed below along with the party responsible for implementation; the party responsible for monitoring implementation of the mitigation measure; the milestones for implementation and monitoring; and a sign off that the mitigation measure has been implemented. **They are updated in red print and strikeout for changes related to updates that clarify or enact mitigations that were more stringent than the 2004 document related to other public agency regulatory changes/updates.**

CEQA Guidelines Section 15074.1 allows a lead agency to conclude that certain mitigation measures identified in the MND are infeasible or otherwise undesirable. Before approving the project, the lead agency may delete the approved mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective. The substituted measures also must not result in new significant impacts, themselves.

The Toll Brothers plans for the lots actually uses a smaller size plan thus a lesser amount of initial impervious materials would result in the project than that previously evaluated. In addition the new MRP has increased standards which provide increased mitigation than that previously approved.

The purpose of this document is to update the language of the Hydrology section - the measures are all the same or greater than that previously required thus no new impacts or new potential significant impacts would result. The potential impacts would actually be less than that of the prior Site Plan Review or even further reduced under the current Site Plan Review proposal and new MRP requirements [ie: comply with the 2009 amended c.3 provisions of the RWQCB Order related to NPDES program municipal separate storm sewer systems (MS4s)].

Mitigation Measure**Implementing Parties****Monitoring Parties****Milestones for Monitoring****Verification****Mitigation Measure 1 -Aesthetics**

Building plans for residences on the Project site shall include specific measures to reduce the visual prominence of proposed dwellings from Marsh Creek Road, Clayton Community Park, surrounding residential streets, and Mount Diablo State Park. The specific measures shall include but are not limited to:

- a) Use of non-reflective glass and roof materials.
- b) Limit building heights to the fullest extent possible through architectural design and use of down- or side-split foundations.
- c) Use of earth tone exterior colors to the fullest extent feasible.
- d) Design building elevations that are visible from off-site to be fully articulated so that large, flat walls and other building planes are avoided.
- e) Graded areas shall be re-vegetated with plant material as soon as possible.
- f) Dwellings on Revised Lots 13-15 shall be limited to single-story or a maximum height of 21 feet, whichever is taller. Dwellings on Revised Lots 16-24 shall be predominantly single-story dwellings. Split level dwellings and partial second-stories may be allowed on some of Revised Lots 16-24, subject to the City's Site Plan Review process.
- g) Landscape plans reviewed by the Planning Commission during the Site Plan Review process. The landscape plans shall address the front, side, and rear yards.

Project Developer

Clayton Planning Commission

Prior to approval of Site Plan

Community Development Department

Prior to approval of building permit

Mitigation Measure 2 -Aesthetics

The proposed grading plan and associated subdivision map should be modified to eliminate grading within slope areas of 26% or greater. Alternatively, as allowed by the Hillside Development Ordinance, the Project developer shall obtain specific direction from the Planning Commission and/or City Council to allow grading in such areas, and demonstrate that the proposed grading is in the spirit of the Hillside Development Ordinance and Safety Element of the *General Plan*.

Project Developer

Clayton Planning Commission

Prior to approval of Tentative Map

City Engineer

During grading

City Engineer

Review certification upon completion of grading

Mitigation Measure**Implementing Parties****Monitoring Parties****Milestones for Monitoring****Verification**

Mitigation Measure 3 - Aesthetics Street lights shall be equipped with cut-off lenses and oriented in a downward fashion. Exterior residential lighting shall not create glare and shall minimize spillover of light onto adjacent streets, properties and Mount Diablo State Park. As part of the subdivision improvement plans, the Project developer shall submit photometrics for street lights which show proposed locations and levels of illumination.	Project Developer	Community Development Department	Prior to approval of Subdivision Improvements Plans	
		Community Development Department	Prior to approval of Site Plans	
Mitigation Measure 4 - Air Quality The following measures shall be adhered to during all construction phases of the Project: a) Earthmoving or other dust-producing activities shall be suspended during periods of high winds, defined as instantaneous wind gusts of 25 mph and greater; b) All exposed or disturbed soil surfaces shall be watered with a dust suppressant at least twice daily on any day of high winds or when construction activities occur, including weekends and holidays; c) Stockpiles of debris, soil, sand or other materials that can be blown by the wind, shall be watered or covered; d) Construction area, adjacent streets, and routes for construction traffic shall be swept on a daily basis (minimum) of all mud and debris, since this material can be pulverized and later re-suspended by vehicle traffic; e) A compliance officer, responsible for implementation and monitoring, shall be identified as part of the grading permit process.	Project Contractor	Clayton City Engineer	Prior to approval of Subdivision Improvements Plans	
		City Grading Inspector	During project construction	

Mitigation Measure**Implementing Parties****Monitoring Parties****Milestones for Monitoring****Verification**

Mitigation Measure 5 -Biological Resources The applicant shall obtain any and all permits required by the USFWS, CDFG, and US Corps of Engineers, as required by federal and state law, to reduce, offset, or avoid impacts to any species listed under either the state or federal Endangered Species Act or protected under any other state or federal law. The applicant shall informally consult with state and federal wildlife agencies. Evidence that the applicant has complied with the requirements of these agencies shall be submitted to the City prior to issuance of any grading or building permits for the Project.

Project Developer

Community Development Department

Prior to issuance of grading permit or building permit, which ever comes first

City Engineer

Prior to issuance of grading permit or building permit, which ever comes first

Mitigation Measure 6 -Biological Resources
a) Pre-construction reptile and amphibian surveys shall be conducted for California red-legged frog and western pond turtle in accordance with the Guidance on Site Assessment and Field Surveys for California Red-legged Frog prior to ground disturbance activities within 300 feet of Diablo Creek.

Project Developer

Community Development Department

Prior to approval of Subdivision Improvements Plans

b) An exclusion fence shall be erected along the boundary of the development footprint prior to construction to prevent Alameda whipsnake and California tiger salamanders from venturing onto the site. The exclusion fence shall be constructed of an opaque heavy-duty silt fence sufficient to with both wet conditions and extreme sun exposure during the construction season, when snakes are active.

c) Straw waddle to be used on the site shall be "snake friendly." The type of waddle with highly degradable jute covering with mesh or net size large enough to prevent snakes from becoming entrapped shall be used. Straw waddle with nylon type netting cover shall not be used. Placement of the waddle should be within the exclusion fence versus on the open space/State Park side of the exclusion fence.

Mitigation Measure**Implementing
Parties****Monitoring
Parties****Milestones
for
Monitoring****Verification**

d) Contractor education shall be conducted for all construction personnel within one week prior to the start of construction. Contractor education shall include identification of special-status reptiles and amphibians, a review of the federal and state Endangered Species Acts, regulatory obligations, compliance, and "take" provisions, and familiarization with procedures should any special-status species be observed onsite.

e) A biologist shall monitor construction activities and ensure the exclusion fence is maintained by the construction contractor. The monitor shall have the authority to halt construction in the vicinity of a situation which may result in adverse impacts to special-status reptile or amphibian species, until such time that the situation is properly evaluated and rectified, and appropriate agency personnel have been notified.

Mitigation Measure 7 -Biological Resources
Pre-construction nesting surveys for horned lark, loggerhead shrike and raptors shall be conducted if initial grading for the Project is to be conducted during the months of April through July. The surveys shall be conducted by a qualified biologist (approved by the Community Development Director) no more than 30 days prior to initiation of grading or tree removal. If any of these species are found within the construction area after April of the construction year, grading and construction in the area shall either stop or continue only after the nests are protected by an adequate setback approved by a qualified biologist. If permanent avoidance of nests is not feasible, impacts on kite, shrike, and raptor nests shall be minimized during the nesting season unless a qualified biologist verifies that the birds have either a) not begun egg-laying and incubation, or b) that the juveniles from those nests are foraging independently and capable of independent survival at an earlier date.

Project
Developer

Community
Development
Department

City Engineer

Grading
Inspector

Prior to
approval of
Subdivision
Improvements
Plans

Prior to
issuance of
grading
permit

During project
construction

Mitigation Measure**Implementing
Parties****Monitoring
Parties****Milestones
for
Monitoring****Verification**

Mitigation Measure 8 - Biological Resources Pre-construction surveys shall be conducted for burrowing owl within 30 days of Project-related ground-disturbing activities throughout the year to determine whether any nesting owls are present and to provide for their protection during the active breeding season or passive relocation during the non-breeding season if nests are encountered. The surveys shall be conducted by a qualified biologist and shall comply with the latest version of the *Burrowing Owl Protocol and Mitigation Guidelines*.

Project
Developer

Community
Development
Department

Approval of
Subdivision
Improvements
Plans

City Engineer

Prior to
issuance of
grading permit

Mitigation Measure 9 - Biological Resources

The Preliminary Grading Plan shall be revised to ensure there is an adequate buffer between the toe of the fill and all of the existing "Good" and "Moderate" oak trees on Revised Lot 1. Revisions to the grading plan may include a reduction of the fill on the north side of Revised Lot 1, modifying of the size or elevation of the building pad on Lot 1, off-hauling material from the site, and/or installation of retaining walls.

Project
Developer

Community
Development
Department

Approval of
Subdivision
Improvements
Plans

City Engineer

Prior to
issuance of
grading permit

Mitigation Measure 10 - Biological Resources

The following tree preservation methods shall be followed:
Tree preservation measures listed in the *Tree Preservation Report* by HortScience shall be implemented to protect trees to be preserved on the site. Specific tree protection and preservation policies shall be listed on all grading and constructions plans and specifications for the Project. The following tree preservation methods shall be followed:

Project
Developer

Community
Development
Department

Approval of
Subdivision
Improvements
Plans

City Engineer

Prior to
issuance of
grading permit

Grading
Inspector

During project
construction

Mitigation Measure**Implementing
Parties****Monitoring
Parties****Milestones
for
Monitoring****Verification**

- a) Tree preservation measures listed in the *Tree Preservation Report* by HortScience shall be implemented to protect trees to be preserved on the site. Specific tree protection and preservation policies shall be listed on all grading and constructions plans and specifications for the Project.
- b) The conceptual Landscape Plan for the Project shall be revised to include a native tree replacement program (including use of oaks with similar genetics, if reasonably available). The program shall be based on the dollar value of "Good" and "Moderate" native trees removed by Project construction. The value of the removed trees shall be determined by a certified arborist, selected by the City. New trees (equal to the value of the removed trees) shall be planted either on or off of the Project site, as approved by the Community Development Director. Native trees which are identified for preservation, and are subsequently removed during construction, shall be replaced by new trees (equal to 150% of the value of the original tree(s) to be preserved).

Mitigation Measure 11 - Cultural Resources
Should archeological, historical, or Native American artifacts or remains be discovered during construction of the Project, work in the vicinity of the find shall stop immediately until a qualified archeologist or paleontologist, as appropriate, can evaluate the site and determine the significance of the find. Project personnel shall not collect or alter cultural resources. Identified cultural resources shall be recorded on forms DPR 422 (archeological sites) and/or DPR 523 (historic resources). If human remains are found, the County Coroner shall be contacted immediately

Project
Developer

Community
Development
Department

Grading
Inspector

Prior to
approval of
Subdivision
Improvements
Plans

During project
construction

Mitigation Measure**Implementing
Parties****Monitoring
Parties****Milestones
for
Monitoring****Verification****Mitigation Measure 12 - Geology and Soils**

An erosion control plan shall be prepared and approved by the City Engineer prior to the issuance of a grading permit for the Project. The erosion control plan shall employ NPDES-related Best Management Practices as set forth by the Regional Water Quality Control Board. The plan shall include such items as installation of berms, silt fences, sedimentation basins and other measures should be taken to minimize off-site transport of soil. Topsoil should be stockpiled during grading and distributed over the ground surface after grading has been completed. Erosion-resistant vegetation should be planted on all exposed soil.

Project
Developer

City Engineer

Prior to
issuance of
grading permit

Grading
Inspector

During
grading
Operations

Mitigation Measure 13 - Geology and Soils

Portions of the site identified as "earth flow deposit" and "undocumented fill areas" shall be remediated as part of the Project grading plan and under the supervision of a registered geologist or registered engineering geologist to ensure that no damage occurs to downslope properties on or off of the Project site. Remediation of erosion adjacent to Mount Diablo Creek shall use techniques which minimize impacts to the Creek.

Project
Developer

City Engineer

Prior to
issuance of
grading
permit

City Engineer

Certification
that
remediation is
complete
prior to
issuance of
building
permit

Mitigation Measure	Implementing Parties	Monitoring Parties	Milestones for Monitoring	Verification
Mitigation Measure 14 - Hazards Prior to commencement of demolition activities, the Project developer shall retain a qualified consultant to test for the presence of asbestos, lead-based paint, and other potentially hazardous materials that could be disturbed by demolition activities. If such substances are found, a remediation plan shall be prepared and approved by the City of Clayton, the Contra Costa County Environmental Health Department, the Contra Costa County Building Inspection Department, and the Hazardous Materials Division of the Contra Costa County Fire Protection District prior to commencement of demolition. A worker safety plan shall also be prepared if applicable. Demolition materials shall be recycled by a qualified contractor with a recycling plan approved by the City of Clayton. Appropriate documentation regarding recycling shall be provided to the City.	Project Developer	Contra Costa County Building Department County Environmental Health County Fire Protection District	Prior to issuance of demolition permits Prior to issuance of demolition permits Prior to issuance of demolition permits	
Mitigation Measure 15 - Hazards A construction staging plan for the Project shall be approved by the Clayton City Engineer prior to the issuance of a grading permit, identifying location of material and equipment storage. No storage of materials shall take place within public road rights-of-way.	Project Developer	City Engineer City Engineer	Prior to issuance of grading permit; During project construction	
Mitigation Measure 16 - Hydrology Prior to commencement of any site work or applicable land disturbances as defined in the State General Construction Permit regulations, that will result in a land disturbance of one acre or more, the developer shall provide evidence to the City that they have received coverage under the requirements for a stormwater State General Construction Permit. have been met.				

Mitigation Measure

Implementing
PartiesMonitoring
PartiesMilestones
for
Monitoring

Verification

Mitigation Measure 17 - Hydrology:

~~Mitigation Measure 17. Prior to commencement of any site work, including demolition of existing structures or site improvements, the developer shall submit a completed Stormwater Pollution Prevention Plan (SWPPP) to the City Engineer. The SWPPP shall include:~~

- ~~a) Sampling of Mount Diablo Creek for sediments in accordance with State General Permit regulations.~~
- ~~b) Hydro-seeding or landscaping of all disturbed areas.~~
- ~~c) Best Management Practices, including landscaping of front and rear yards prior to acceptance of the subdivision.~~
- ~~d) A site spill response plan.~~

Mitigation Measure 17: Consistent with the requirements of the Statewide Construction General Permit, the project applicant shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce potential adverse impacts to surface water quality through the project construction period. The SWPPP shall be designed to address the following objectives: (1) all pollutants and their sources, including sources of sediment associated with construction, construction site erosion and all other activities associated with construction activity are controlled; (2) where not otherwise required to be under a Water Board permit, all non-storm water discharges are identified and either eliminated, controlled, or treated; BAT/BCT standard;

Project
Developer

City
Engineer

Prior to approval of Subdivision Improvement Plans; grading plans and construction plans for homes.

Mitigation Measure**Implementing
Parties****Monitoring
Parties****Milestones
for
Monitoring****Verification**

(3) site Best Management Practices (BMPs) are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity to the BAT/BCT standard; (4) calculations and design details as well as BMP controls for site run-on are complete and correct; and (5) stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.

reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity to the BAT/BCT standard; (4) calculations and design details as well as BMP controls for site run-on are complete and correct; and (5) stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.

The SWPPP shall be prepared by a Qualified SWPPP Developer. The SWPPP shall include the minimum BMPs required in Attachment D for Risk Level 2 dischargers, or Attachment E for Risk Level 3 dischargers (as applicable, based on final determination of the project's Risk Level status [to be determined as part of the Notice of Intent for coverage under the Construction General Permit]). These include: BMPs for erosion and sediment control, site management/housekeeping/waste management, management of non-stormwater discharges, infiltration and runoff controls, and BMP inspection/maintenance/repair activities. BMP implementation shall be consistent with the BMP requirements in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction¹ or the Caltrans Storm Water Quality Handbook Construction Site BMPs Manual.²

¹ California Stormwater Quality Association, 2003. *Stormwater Best Management Handbook-Construction*, with updates through 2006. Contra Costa Clean Water Program Guidebook October 2010 with updates.

² Caltrans, 2003. *Storm Water Quality Handbook Construction Site Best Management Practices (BMPs) Manual*. March.

The SWPPP shall include a construction site monitoring program that identifies requirements for dry weather visual observations of pollutants at all discharge locations, and as appropriate (depending on the Risk Level), sampling of the site effluent and receiving waters (receiving water monitoring is only required for some Risk Level 3 dischargers). A Qualified SWPPP Practitioner shall be responsible for implementing the BMPs at the site and performing all required monitoring and inspection/maintenance/repair activities. If the project is Risk Level 2 or 3, the project applicant shall also prepare a Rain Event Action Plan as part of the SWPPP.

The following are the minimum types of BMPs that shall be implemented for the project, subject to review and approval by the City Engineer.

Erosion Control BMPs

- *Scheduling.* To reduce the potential for erosion and sediment discharge, construction shall be scheduled to minimize ground disturbance during the rainy season. The project applicant shall:

- a. Sequence construction activities to minimize the amount of time that soils remain disturbed.

- b. Stabilize all disturbed soils as soon as possible following the completion of ground-disturbing work.

- c. Install erosion and sediment control BMPs prior to the start of any ground-disturbing activities.

- *Preservation of Existing Vegetation.* Where feasible, existing vegetation shall be preserved to provide erosion control.

- Landscaping of front and rear yards prior to acceptance of the subdivision.

- *Stabilize Soils.* Hydroseeding, geotextile fabrics and mats, mulch, or soil binders shall be used, as appropriate, to reduce erosion on exposed soil surfaces.

- *Stabilize Streambanks.* When working along stream banks or within channels, BMPs shall be implemented to minimize channel erosion and sedimentation. Proper erosion and sediment controls, such as silt fences, mulch, geotextiles, and hydroseeding, shall be used. To the extent possible, existing vegetation that stabilizes the stream banks shall be preserved.

- *Earth Dikes, Drainage Swales and Slope Drains.* Earth dikes, drainage swales, or slope drains shall be constructed to divert runoff away from exposed soils and stabilized areas, and redirect the runoff to a desired location, such as a sediment basin.

- *Outlet Protection and Velocity Dissipation Devices.* Rock, concrete rubble, or grouted riprap shall be installed at culvert and pipe outlets to drainage conveyances, to prevent scour of the soil caused by concentrated high-velocity flows.

Sediment Control BMPs

- *Silt Fence/Fiber Roll.* Silt fences or fiber rolls shall be installed around the perimeter of the areas affected by construction, at the toe of slopes, around storm drain inlets, and at outfall areas, to prevent offsite sedimentation.

- *Street Sweeping and Vacuuming.* Areas with visible sediment tracking shall be swept or vacuumed daily, to prevent the discharge of sediment into the stormwater drainage system or creeks.

- *Storm Drain Inlet Protection.* Storm drains shall be protected using a filter fabric fence, gravel bag barrier, or other methods, to allow sediments to be filtered or settle out before runoff enters drain inlets.

Mitigation Measure**Implementing
Parties****Monitoring
Parties****Milestones
for
Monitoring****Verification**

- *Check Dams.* Barriers shall be constructed of rock, gravel bags, sand bags, or fiber rolls across a constructed swale or drainage ditch, to reduce the effective slope of the channel. This reduces the velocity of runoff, which allows sediment to settle and reduces erosion.

- *Sediment Traps.* Sediment traps shall be constructed where sediment-laden runoff may enter the stormwater drainage systems or creeks. Sediment traps are appropriate for drainage areas less than 5 acres.

Wind Erosion Control BMPs

- *Dust Control.* Potable water shall be applied using water trucks to alleviate nuisance caused by dust. Water application rates shall be minimized to prevent erosion and runoff.

- *Stockpile Management.* Silt fences shall be used around the perimeter of stockpiles, and stockpiles shall be covered to prevent wind dispersal of sediment.

Tracking Controls

- *Stabilized Construction Entrance/Exit.* Construction site entrances and exits shall be graded and stabilized to reduce the tracking of mud and dirt onto public roads by construction vehicles.

- *Stabilized Construction Roadway.* Access roads, parking areas, and other on-site vehicle transportation routes shall be stabilized immediately after grading is completed, and frequently maintained to prevent erosion and to control dust.

- *Tire Wash.* A tire washing facility shall be installed at stabilized construction access points to allow for tire washing when vehicles exit the site to prevent tracking of dirt and mud onto public roads.

Mitigation Measure**Implementing
Parties****Monitoring
Parties****Milestones
for
Monitoring****Verification****Non-Stormwater Controls**

- *Dewatering.* The SWPPP shall include a dewatering plan for non-contaminated ground-water specifying methods of water collection, transport, treatment, and discharge. The discharger shall consult with the Water Board regarding any required permit (other than the Construction General Permit) or Basin Plan conditions prior to discharging groundwater to land, storm drains, or receiving waters. Water produced by dewatering shall be impounded in holding tanks, sediment basins, or other holding facilities to settle the solids and provide other treatment as necessary prior to discharge to receiving waters. Discharges of water produced by dewatering shall be controlled to prevent erosion.

- *Illicit Connection/Discharge Detection and Reporting.* Contractors shall regularly inspect the site for evidence of illicit connections, illegal dumping, or discharges. Such illicit activities shall immediately be reported to the City.

- *Vehicle and Equipment Cleaning.* Construction equipment shall be washed regularly in a designated stabilized area on-site, or offsite. Steam cleaning shall not be performed on-site. Phosphate-free, biodegradable soaps shall be used for on-site activities. Wash water from on-site activities shall be contained and infiltrated, to avoid discharges to drain inlets and creeks.

- *Vehicle and Equipment Fueling and Maintenance.* Vehicles and equipment shall be inspected daily for leaks. Perform vehicle maintenance and fueling off-site whenever possible. If maintenance and fueling must take place on-site, designated areas shall be located at least 50 feet away from storm drain inlets, drainage courses, and receiving waters. Fueling areas shall be protected with berms and dikes to prevent infiltration and runoff, and to contain spills.

Fueling areas shall be protected with berms and dikes to prevent infiltration and runoff, and to contain spills. Fueling shall be performed on level grade. Nozzles shall be equipped with automatic shutoffs to control drips. Stored fuel shall be enclosed or covered. Drip pans shall be used for all vehicle and equipment maintenance activities. Spill kits shall be available in maintenance and fueling areas, and spills shall be removed with absorbent materials and not washed down with water. If spills or leaks occur, contaminated soil and cleanup materials shall be properly disposed.

- *Paving and Grinding Operations.* Proper practices shall be implemented to prevent infiltration and runoff, and to properly dispose of waste. Paving and grinding activities shall be avoided during the rainy season, when feasible.

Waste Management and Materials Pollution Control BMPs

- *Material Delivery and Storage and Use.* Materials such as detergents, concrete compounds, petroleum products, and hazardous materials shall be stored in a designated area away from vehicular traffic, drain inlets, and Mitchell Creek. The materials shall be stored on pallets with secondary containment. Spill clean-up materials, material safety data sheets, a material inventory, and emergency contact numbers shall be maintained in the storage area.

- *Spill Prevention and Control.* Proper procedures shall be implemented to contain and clean-up spills and prevent material discharges into the storm drain system.

- *Waste Management.* Solid waste shall be collected in designated areas, and stored in watertight containers located in a covered area, or with secondary containment. Waste shall be removed from the site regularly. Hazardous wastes shall be stored and disposed in accordance with applicable regulatory requirements.

- *Sanitary/Septic Waste Management.* Portable toilets shall be located at least 50 feet away from drain inlets and waterbodies, and away from paved areas.

Mitigation Measure

Implementing Parties

Monitoring Parties

Milestones for Monitoring

Verification

- **Stockpile Management.** Stockpiles shall be surrounded by sediment controls, covered, and located at least 50 feet from concentrated flows of stormwater, inlets, and creeks.
- **Concrete Waste Management.** Concrete washout shall be performed offsite, or in a designated area at least 50 feet away from storm drain inlets or creeks. A temporary pit or bermed area shall be constructed where the waste can be discharged and allowed to set for proper disposal.
- **Training.** Construction site personnel shall receive training on implementing all BMPs included in the SWPPP. A Qualified SWPPP Practitioner shall perform all BMP inspection/maintenance/repair and site monitoring activities. (LTS)

Mitigation Measure 18 - Hydrology

The developer shall submit a water quality plan addressing any direct or incremental degradation of downstream water quality. The impacts to downstream water bodies may be mitigated by such methods as:

- On-site retention and treatment of stormwater through the use of water quality basins, grassy swales, biofilters and/or other methods acceptable to the City Engineer and the RWQCB. The Project shall mitigate run-off quantities to the extent currently required to by the City's NPDES Permit and Municipal Separate Storm Sewer System permit, ~~or~~
- ~~Installation of structural treatment facilities to remove total suspended solids and total petroleum hydrocarbon products to the extent currently required by the RWQCB, or to the satisfaction of the City Engineer.~~

The methods and designs shall be shown on the grading and improvement plans, as appropriate, for the review and approval of the City Engineer

Project Developer

City Engineer

Grading Inspector

Prior to approval of Subdivision Improvement Plans;
Grading plans and construction and landscape plans for homes

During construction and prior to final inspection

Mitigation Measure**Implementing Parties****Monitoring Parties****Milestones for Monitoring****Verification****Mitigation Measure 19 - Hydrology**

All Project contractors shall conform to the requirements of the "Best Management Practices for Construction Sites" required by the City, including detention and/or filter materials to preclude an increase in water quantity and quality impacts from debris and sediments entering the stormwater system over "non-development" conditions. During the final design process, the project applicant shall calculate pre- and post-project peak flow rates for the 25-year and 50-year storm events which would be conveyed via overland flow. If required, the project applicant shall provide on-site flood control detention where post-project peak discharge rates exceed pre-project rates, in accordance with the City of Clayton's standard conditions of approval.

Project Developer

City Engineer

Prior to grading permit and construction permit

Mitigation Measure 20 - Hydrology

The developer shall dedicate to the City appropriate easements for the drainage improvements. The volume and rate of stormwater runoff from the site shall be comparable to pre-development conditions to the maximum extent practicable. The Project shall bear the financial responsibility of the construction and perpetual maintenance, including monitoring and reporting of these facilities with a funding mechanism acceptable to the City that addresses costs for capital replacement, inflation, and administration.

In accordance with the MRP, the County's Stormwater C.3 Guidebook, and City of Clayton Municipal Code Chapter 13.12, the project applicant shall submit an Operations and Maintenance (O&M) Plan to the City with the application for a building permit. The O&M Plan shall identify the party responsible for maintenance and the sources of funds, and shall include the maintenance agreement for the Ownership Association. The O&M Plan shall include the design information/calculations and construction specifications for the Integrated Management Practices (IMPs), a maintenance plan, schedule, inspection checklist and maintenance log for each stormwater treatment facility.

Project Developer

City Engineer

Prior to grading and construction permit

City Engineer

Prior to issuance of building permit for homes

Mitigation Measure**Implementing
Parties****Monitoring
Parties****Milestones
for
Monitoring****Verification****Mitigation Measure 21 – Hydrology**

In determining the quantity and rate of stormwater runoff from the site, the City Engineer may take into consideration any applicable comments from the Contra Costa County Flood Control District to ensure that the quantity and rate of runoff from the site does not exceed historic rates and does not adversely impact downstream drainage facilities.

Revised Lots 1-24 shall contain a deed restriction which authorizes the City to require the respective property owners to provide monitoring reports and pay any fees related thereto of on-lot treatment. and of any stormwater discharges into Mount Diablo Creek.

Project
DeveloperCity
EngineerPrior to
approval of
Final Map
and issuance
of building
permit for
construction
of homes**Mitigation Measure 22 – Hydrology**

Revised Lots 1-24 shall include deed restrictions which provide City and other public agency personnel with the right of entry and access to inspect all on-site stormwater control devices.

reports and pay any fees related thereto of on-lot treatment. and of any stormwater discharges into Mount Diablo Creek.

Project
DeveloperCity
EngineerPrior to
approval of
Final Map
and issuance
of building
permit for
construction
of homes**Mitigation Measure 23 – Hydrology**

The developer shall provide all Project property owners with Clean Water Program educational materials. The owners association shall provide at least semi annual information materials on pollution prevention to all residents of the project. Copies of the materials and documentation of the outreach shall be provided annually to the City as part of the annual O&M plan.

Project
DeveloperStormwater
ManagerPrior to
issuance of
Certificates
of
Occupancy

Mitigation Measure

Implementing Parties

Monitoring Parties

Milestones for Monitoring

Verification

Note: Mitigation Measure 24 is deleted as the projecDiablo Estates does not include R40 H zoning (i.e.:no horses)

Mitigation Measure 24. The Developer shall either provide the following (or a deed restriction or similar mechanism approved by the City which assures the following) on all lots designated R-40-H:

- a) ——— Containment basin and septic system to capture and treat on-site surface water runoff from pasture and paddock areas.*
- b) ——— Water quality monitoring and maintenance plan acceptable to the City for the containment and treatment systems. The plan shall address funding and enforcement provisions.*

These requirements may be superseded by City adoption of zoning regulations which address the water quality impacts of horses in the R-40-H district.

Project Developer

Stormwater Manager

Prior to issuance of Certificate of Occupancy

Community Development Department

Prior to approval of Subdivision Improvement Plans

City Engineer

Prior to approval of Final Map

Mitigation Measure 25 - Land Use

Open-style fencing shall be provided along all portions of the Project site abutting Mount Diablo State Park, with no breaks or gates. The design of the fence shall be approved by the Clayton Community Development Department and Mount Diablo State Park Facilities Manager, or equivalent.

Project Developer

Community Development Department

Prior to issuance of Certificates of Occupancy

Mitigation Measure 26 - Public Services

The Project developer shall pay a fair share contribution to the City of Clayton for impacts to police staffing directly related to impacts of the proposed Diablo Pointe Project for a five-year period. The calculation and payment shall be made at the time of issuance of building permit for each of the Project's units and shall be approved in advance by the Clayton Police Chief and City Manager.

Project Developer

Community Development Department

Prior to issuance of building permits

Mitigation Measure**Implementing
Parties****Monitoring
Parties****Milestones
for
Monitoring****Verification****Mitigation Measure 27 - Public Services**

A benefit assessment district shall be established to provide funding for maintenance of the Project's perimeter and entry landscaping. Funding of the benefit assessment district shall fully account for increased costs including maintenance costs, capital replacement costs, and administration.

Project
Developer

City
Engineer

Prior to
issuance of
first
building
permit

Mitigation Measure 28 - Public Services Prior to the commencement of grading, demolition or construction activities, the developer shall submit a construction and demolition recycling plan to the City for review and approval. The plan shall include that all materials that would be acceptable for disposal in the sanitary landfill be recycled/reused. Documentation of the material type, amount, where taken and receipts for verification and certification statements shall be included in the plan. The developer shall submit a performance deposit, as established in the Project's conditions of approval, to the City to ensure recycling of demolition materials. In addition the developer shall cover all staff costs related to the review, monitoring and enforcement of this condition through the deposit account.

Project
Developer

Assistant to
City
Manager

Prior to
issuance of
demolition,
grading or
building
permit,
whichever
first

Mitigation Measure 29 - Recreation

The Project applicant shall enter into an agreement with the City for either: the provision and maintenance of off-site active recreational facilities which are comparable to the amenities required for a Planned Development residential project of comparable size to the proposed Project; or a comparable contribution to the City for such facilities.

Project
Developer

Community
Development
Department

Prior to
approval of
final map

Contra Costa County



Fire Protection District

June 30, 2011

RECEIVED

JUL 07 2011

CLAYTON COMMUNITY
DEVELOPMENT DEPT

Mr. David Woltering
City of Clayton
Community Development
6000 Heritage Trail
Clayton, CA 94517

Subject: Diablo Estates: Sub. 8719
Seminary Ridge Place and Promontory Place, Clayton
CCCFPD Project No.: P-C05-11-0555

Dear Mr. Woltering:

We have made corrections to condition #1 (listed below) for the application to construct 24 single-family homes in an existing 24-lot subdivision at the subject location. The following is required for Fire District approval in accordance with the 2010 California Fire Code (CFC), the 2010 California Residential Code (CRC), and adopted standards:

1. Per the approved improvement plans, dated 9/12/07, Seminary Ridge Place shall have "**NO PARKING – FIRE LANE**" signs posted or curbs painted red on the **west side** to the "T" intersection, and on the **north side** of Promontory Place and Seminary Ridge Place after the "T" intersection. (503.3) CFC
2. All homes as proposed shall be protected with an approved automatic fire sprinkler system complying with the 2010 Edition of NFPA 13D or Section R313.3 of the 2010 California Residential Code. Submit three (3) sets of plans to this office for review and approval prior to installation. (903.2) CFC, (R313.3) CRC
3. The developer is responsible for contacting the water district to determine if the existing domestic water services (meters) are adequate for a dual-service application.

If you have any questions regarding this matter, please contact this office at (925) 941-3300.

Sincerely,

A handwritten signature in blue ink that reads "Ted Leach".

Ted Leach
Fire Inspector

TL/cm

c: Toll Brothers, Inc.
100 Park Place, Suite 140
San Ramon, CA 94583

File: P-C05-11-0555.ltr