



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, September 13, 2011
Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Chair Richardson to report at the City Council meeting on September 20, 2011.

Public Comment

Approval of Minutes

- 2A. Approval of minutes from the meeting of July 12, 2011.
- 2B. Approval of minutes from the meeting of August 23, 2011.

Public Hearing

- 3A. **SPR 02-11, Site Plan Review Permit, Second Story Balcony, 227 Stranahan Circle, APN 119-620-051.** A request for a site plan review permit to consider a previously-constructed second-story balcony, located on the rear of a two-story single-family residence within the Stranahan subdivision. The balcony measures approximately 60 square feet in area and is located 10 feet above ground level. *Continued from the meeting of August 23, 2011.*

Proposed Action: Approve with conditions, based on one of the three options provided for consideration.

- 3B. **SPR 05-11, Rezone, Toll Brothers, APNs 119-630-001, 119-630-002, and 119-630-003.** A proposal to rezone Lots 1, 2, and 3 in the Diablo Estates at Clayton residential subdivision from R-40-H to R-40. The applicant is Toll Brothers. The Diablo Estates at Clayton residential subdivision is located at the northeast corner of Regency Drive and Rialto Drive.

Proposed Action: Recommend City Council approval, with conditions.

Old Business

- 4. None.

New Business

- 5. None.

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Communications

- 6A. Staff.
- 6B. Commission.

Adjournment

- 7. The next meeting of the Planning Commission is scheduled for **Tuesday, September 27, 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.

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Minutes
Clayton Planning Commission Meeting
Tuesday, July 12, 2011

Call to Order

Chair 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, and Commissioner Ted Meriam

Absent: None

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

Administrative

1A. Selection of Chair and Vice Chair.

Commissioner Catalano moved and Commissioner Armstrong seconded a motion to elect Vice Chair Dan Richardson as Chair of the Planning Commission. The motion passed 5-0.

Chair Johnson moved and Commissioner Catalano seconded a motion to elect Commissioner Haydon as Vice Chair of the Planning Commission. The motion passed 5-0.

1B. Review of agenda items.

1C. Chair Johnson to report at the City Council meeting on July 19, 2011.

Public Comment

None.

Approval of Minutes

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

Chair Catalano moved and Commissioner Johnson seconded a motion to approve the minutes, as amended. The motion passed 3-2 (Vice Chair Haydon and Commissioner Armstrong abstained because they did not attend the June 14, 2011 Planning Commission meeting).

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

Commissioner Johnson moved and Commissioner Armstrong seconded a motion to approve the minutes, as amended. The motion passed 4-1 (Vice Chair Haydon abstained because he did not attend the June 28, 2011 Planning Commission meeting).

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).
- **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.

Director Woltering introduced the item and presented the staff report. Mr. Woltering indicated this item had been continued from the June 14, 2011 and then the June 28, 2011 Planning Commission meetings. At that meeting staff had been directed to further research several issues of concern raised by the Planning Commission. These issues concerned the following:

1. Mitigating (reducing) the possible visual prominence of the residences located on Lots 16 through 24;
2. Ensuring the architectural and aesthetic variety and interest of the residences being plotted generally throughout the subdivision; and,
3. Use and maintenance requirements for the rear portion of specified lots (Lots 1-6, 8, 9, and 11-24) beyond the proposed open view fencing.

Director Woltering indicated that staff further researched these issues and prepared conditions to address the Commission's concerns. Condition 76 pertaining to Item 1 requires a minimum of four full single-story residences and a maximum of two two-story or partial two-story residences on adjacent lots within the range of lots specified. Condition 77 pertaining to Item 2 requires a specified mix of plan types, front elevations, and color schemes throughout the subdivision. Condition 78 pertaining to Item 3 requires that the areas between the "open view" fencing and the rearmost lot lines remain unimproved and in a natural condition.

Director Woltering also indicated that staff is proposing a modification to Condition 4 that requires the developer to petition the City Council to determine the disposition of Lot 25 in the circumstance that the California State Parks System does not accept that property. The intent would be for the developer and the City to determine a suitable third party that would accept Lot 25 for its intended use as a mitigation parcel.

Finally, Director Woltering indicated that certain letters had been placed at the dais for the Commission's consideration regarding this matter. These letters include a July 12, 2011 letter from Toll Brothers' attorney, Ms. Alicia Guerra. Director Woltering summarized and commented on the letter from Ms. Guerra. His comments rebutted certain positions of Attorney Guerra and supported staff's proposed Conditions 76, 77, 78, and the modified Condition 4. In addition, Director Woltering indicated that a letter had been received from Save Mount Diablo.

The public hearing was opened.

Richard (Rick) Nelson, Division President, Toll Brothers, indicated that he and his team members had been working with staff regarding the concerns raised at that meeting. He indicated that Attorney Guerra's letter represented the Toll Brothers' positions on the various matters. He indicated that the firm believed that a range of limited improvements should be allowed in the area between the "open wire" fencing and the rearmost property lines of the specified lots mentioned earlier by the Community Development Director and that he hoped that the offer of dedication of Lot 25 to the State Parks system would be adequate to satisfy the Condition 4. He was concerned that requiring acceptance of Lot 25 could delay completion of the project.

Vice Chair Keith Haydon indicated that he had reviewed past minutes and staff reports regarding this application and that he believed he was prepared to participate in any discussion or action on the matter. Vice Chair Haydon then indicated the following:

- He applauded the efforts to move the proposed residences closer to the street to reduce grading impacts and provide larger rear yard areas.
- He believed it would be beneficial to preclude development on the sloped areas between the open view fencing and the rearmost property boundaries.

Commissioner Armstrong asked Toll Brothers' representative Rick Nelson if the conditions as presented by staff would be a deal-breaker. Mr. Nelson indicated, while Toll Brothers differs with staff on several of the conditions, the firm is committed to the project.

Seth Adams, Project Manager, Save Mount Diablo, indicated the following:

- Save Mount Diablo worked closely with the prior developer of this project, Lemke Construction, Inc. and its representative, John Lemke.
- His organization was committed to seeing Lot 25 offered and accepted by an appropriate entity, preferably the State Park system, as a mitigation parcel as was originally intended.
- Save Mount Diablo would be willing to accept for some interim period Lot 25 and assist in the restoration process.
- Save Mount Diablo does not support allowing development on the sloped areas between the open view fencing and the rearmost property boundaries.
- His organization has had a longstanding commitment to support the environmental restoration efforts associated with this project.

Kris Krueger, 44 Petar Court, indicated the following:

- She supported the staff proposal of keeping the sloped areas undeveloped and having a benefit assessment district maintain them.

The public hearing was closed.

Commissioner Catalano indicated the following:

- This is a new Site Plan Review process which allows the City to establish new conditions of approval in accordance with that section of the City's code.
- Does Condition 78b preclude the installment of trees? Director Woltering answered yes.
- Regarding the BMI units, since the providing of the units is contingent upon construction of the 20th unit, we should make sure we have a way to ensure that the three BMI units are provided in the instance that only 19 units are built. Director Woltering indicated that the requirement to provide BMI units does not go away if only 19 units are built. The developer has already satisfied the very-low income requirement.
- Believes that it is a good project overall.

Vice Chair Haydon indicated the following:

- Support for Conditions 76, 77, and 78 as proposed by staff.
- Did not see any triggers for an affordable housing in-lieu payment option. Director Woltering indicated that, typically, the City would not be looking for an in-lieu payment but, rather, for the units themselves. The low and moderate unit requirements still need to be satisfied. The very-low unit has been satisfied.
- Support for keeping the sloped areas between the open view fencing and the rearmost property boundaries undeveloped as this condition could facilitate weed abatement and the general health and safety.

Chair Richardson indicated the following:

- Supports restricting development in the sloped areas as mentioned by Vice Chair Haydon.
- It is important to address the matter of maintaining the sloped areas free of improvements at this time. This action will help the project better fit into the surrounding area and address concerns related to slope stability and fire safety.

Commissioner Johnson indicated the following:

- The easements are necessary in ensuring ongoing slope stability, appropriate drainage patterns, and weed abatement.

Commissioner Armstrong indicated the following:

- Will gates be allowed in the open wire fencing? Director Woltering indicated that, yes, gates will be allowed in the open wire fencing.
- How will improvements to slope areas be addressed? Director Woltering indicated that any improvements in the sloped areas will be precluded by restrictions in the CC&Rs.

Commissioner Johnson moved and Commissioner Armstrong seconded a motion to approve SPR 01-11, LLA 01-11, and VAR 01-11, as conditioned. The motion passed 5-0.

Old Business

4. None.

New Business

5. None.

Communications

6A. Staff.

Director Woltering indicated LSA Associates informed him that the comments they received for the Clayton Community Church Draft Environmental Impact Report were among the top five mostly heavily commented upon projects that they have ever worked on.

6B. Commission.

Vice Chair Haydon indicated that he was glad to be serving on the Planning Commission again.

Adjournment

7. The meeting was adjourned at 8:47 p.m. to the following regularly-scheduled Planning Commission meeting of **July 26, 2011**.

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Dan Richardson
Chair

Attachments:

Letter from Attorney Alicia Guerra, Briscoe Ivester & Bazel LLP
Letter from Seth Adams, Save Mount Diablo

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BRISCOE IVESTER & BAZEL LLP

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San Francisco California 94104
MAIN (415) 402-2700
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July 12, 2011

Chair Johnson and Members of the Planning Commission
City of Clayton City Hall
6000 Heritage Trail
Clayton, CA 94517

**Re: Diablo Estates at Clayton – SPR 01-11
Planning Condition # 3.c., General Condition #78.b. and Condition #4**

Dear Chair Johnson and Members of the Planning Commission:

Thank you for the opportunity to offer our comments on behalf of Toll Brothers, Inc. ("Toll Brothers") regarding the Diablo Estates at Clayton Project (including SPR 01-11, LLA 01-11; VAR 01-11) (the "Project"). We appreciate Mr. Woltering's and all of staff's efforts to process the requested entitlements for the Project in an expeditious and thorough manner. With the exception of three conditions of approval proposed for the Site Plan Review (SPR 01-11), Toll Brothers concurs with all of the conditions of approval that staff has recommended be imposed on the Project.

**Planning Condition #3.c and General Condition #78.b. Exceed the Scope of the
Previously Addressed Impacts**

Toll Brothers is concerned that two of the proposed conditions, Conditions #3.c. and #78.b., would now prohibit *any* use in the rear portions (beyond the open wire fencing) of all designated lots when such uses previously were allowed under the existing entitlements approved by the City of Clayton ("City") in 2004. Due to the significant impact of these conditions on the marketability of the lots, we respectfully request your consideration of our proposed alternative condition as discussed below. Planning Condition # 3.c. provides that:

- "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."

General Condition #78.b. further states:

- o "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:

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. 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."

The July 12, 2011 Planning Commission Staff Report indicates that at the June 14th meeting the Planning Commission discussed the nature of allowable uses in the rear yards of specified lots beyond the open view fencing. City Staff previously addressed this issue in the 2004 Initial Study/Mitigated Negative Declaration (IS/MND), and imposed conditions of approval to minimize the Project's visual and slope stability impacts in these areas. At no time did the City prohibit *any* use of the steeply sloped portions of the designated lots. In fact, City Staff noted in responses to comments contained in the final 2004 IS/MND, that fencing and play structures were allowed on hillsides. Accessory structures over 4 feet in height and encompassing an area 10 square feet or greater on hillsides required Site Plan Review under Chapter 17.44 of the Zoning Ordinance (see e.g., Diablo Pointe Initial Study/ Mitigated Negative Declaration (IS/MND), page 120), thereby recognizing that future homeowners would be subject to existing City regulations just like any other resident in Clayton.

City Staff also acknowledged in 2004 that Clayton General Plan Policy 2.A stated that the open space areas of the project site needed to be protected from deterioration of scenic areas. Thus, as part of the Tentative Map, the City imposed a condition of approval on the Diablo Pointe project which would require a 150-foot wide conservation easement along the project's boundaries with the State Park. Construction of habitable structures would be prohibited, but fencing would be allowed in that area. Additionally, only small incremental areas of the site would be developed as part of the project (see e.g., page 148 of the IS/MND). With all of these requirements, in addition to Mitigation Measures 1 and 2, the Planning Commission concluded that because the project site previously was developed for urban uses, and the project included mitigation measures to minimize future visibility of dwellings, aesthetic and grading impacts

would be less than significant and the project would be consistent with the General Plan. Consistent with these requirements, the Diablo Estates Site Plan Review application incorporates all of these mitigation measures and conditions of approval.

Based on a review of the 2004 IS/MND mitigation measures, the conditions of approval and the Clayton Municipal Code provisions, the Diablo Estates Site Plan Review application complies with the City's requirements pertaining to allowable uses and structures within the steeper portions of the proposed lots. Moreover, the incorporation of all required mitigation measures and conditions of approval, and the further limitations in building heights, reduction in building footprints, and elimination of horses on the lots identified in the application, as well as the conservation easement and limitations on fencing in the easement area, further mitigates the potential visual impacts to a less-than-significant level. Thus, we remain concerned that Condition #3.c. and #78.b. exceed the scope and extent of the condition necessary to address the concerns previously considered in 2004 and reiterated in the July 12, 2011 Staff Report. Moreover, we do not believe that these conditions should apply to four of the lots for which the steeply-sloped portions of the lots are not even visible to surrounding residents (Lots 1-4).

Conditions #3.c. and #78.b Conflict with Government Code Section 65961 and the Subdivision Map Act

Conditions #3.c. and 78.b. could have been imposed earlier on November 30, 2004 when the City approved the Diablo Pointe Residential Subdivision Tentative Subdivision Map and Variance (see Planning Commission Notice of Decision dated December 2, 2004), but the Planning Commission chose at that time to rely in the future on its adopted Municipal Code provisions to regulate individual lots. The City already had the opportunity to impose conditions in 2004 on the Tentative Map (and through the re-zoning) to address the allowable uses of Lots 1-6, 8, 9 and 11-24, but the Planning Commission did not do so. Instead, the Planning Commission referred to the Municipal Code for the process to be applied in the future if an individual future homeowner were to propose a use or structure that did not otherwise meet the zoning requirements (and it specifically referenced those provisions in its CEQA document).

The City's approach is inconsistent with the Permit Streamlining Act. Under the Permit Streamlining Act and interpretative case law, the Planning Commission cannot impose a condition on a later permit or approval that it could have imposed on the tentative map with limited exceptions (Gov't Code §65961; see e.g., *Golden State Homebldg. Assocs. v. City of Modesto* (1994) 26 Cal.App. 4th 601). For example, the conditions could be imposed on a later permit if: (1) more than 5 years have passed since the final map was recorded, or the condition is necessary to (2) protect public health and safety, or (3) comply with state or federal law; or (4) ensure compliance with applicable zoning ordinances. We do not have those circumstances here.

The final map was recorded March 10, 2008, so 5 years have not lapsed. Further, the two conditions are not necessary to protect public health and safety because the existing Municipal Code (and the mitigation measures included in the project) already establish a process by which future homeowners must address geotechnical constraints associated with their respective lots as further discussed above. Moreover, the conditions are not necessary to comply with state or federal laws because there are no state or federal laws governing allowable land uses on private lots. Finally, as demonstrated in the proposed findings and resolutions, the proposed Site Plan Review and the approved project comply with the existing zoning and General Plan.

With respect to the potential conflicts with the Subdivision Map Act, the conditions imposed on the approved tentative map were authorized by the ordinances, policies and standards in effect at the time the application for the tentative map was deemed complete (Gov't Code § 66474.2). Clayton had not adopted at that time an ordinance, policy or standards precluding a private property owner from using its private lot, even in hillside areas. And, as noted above, the issue previously was addressed by the City as part of the tentative map review process and the IS/MND. In fact, in responses to comments at that time, the City expressly stated that certain accessory structures were allowed under the existing zoning ordinance.

Toll Brothers Proposes the Following Alternative Condition.

Toll Brothers appreciates the concerns that have been raised about the steeply-sloped portions of the lots. In the spirit of moving forward and in effort to address Staff's concerns, we believe an alternative approach to address this concern would be to focus instead on the specific activities that would be visible to surrounding residents. Thus, in order to address the concerns about future use of the steeply-sloped portions of the rear of the designated lots, we propose for your consideration the following alternative condition of approval:

"Any improvements by homeowners beyond the flat pad area of their property (up-slope or down-slope) on Lots 1-6, 8, 9, and 11-24 shall be subject to the City's Site Plan Review and/or Use Permit Application process as deemed necessary by the Community Development Director. Applicants must address impacts of any proposed improvements on slope stability, drainage including J and V ditches, and potential visual impacts to neighboring lots. Grading or improvements, except for repair, within 20' of any J or V ditch are prohibited. Grading within slope areas of 26% or greater is prohibited. Improvements must adhere to the Hillside Development Ordinance and Safety Element of the General Plan. This limitation shall be stated in the project's CC&R's."

Chair Johnson and Members of the Planning Commission
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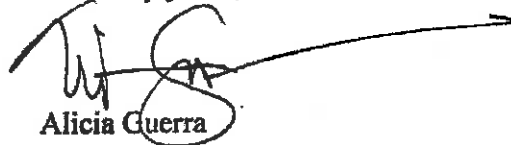
We believe the proposed alternative condition would address the concerns noted in the Staff Report in a manner that would not compromise the marketability concerns of the 24 lots that would otherwise be subject to this condition.

Planning Condition #4 Unfairly Requires Toll Brothers to Guarantee Acceptance of Lot #25 by Others

Condition #4 requires that Toll Brothers dedicate Lot #25 to the California Department of Parks and Recreation or third party non-profit organizations. Toll Brothers is more than willing to make the offer of dedication and has, in fact reached out to the Department of Parks and Recreation to no avail. Toll Brothers also agreed to the conditions concerning maintenance and vegetation planting on the Lot until such time as the Department of Parks and Recreation or a third party non-profit organization were to accept the property. But Toll Brothers cannot make a third party accept the offer of dedication to satisfy a condition that the City has decided to impose on the Project. Other third parties are not bound by the conditions. Thus; to hold Toll Brothers accountable for the performance of a third party is unfair, particularly in this instance where the State appears to not have the resources to accept the offer and where Toll Brothers already has assumed the maintenance obligations until such time as the property is accepted. Accordingly, we respectfully request that the Planning Commission revise Condition #4 to require that Toll Brothers provide evidence of its offer to dedicate Lot #25 to State Parks or a third party rather than requiring that Toll Brothers provide evidence that the State or third party has accepted the offer. This change also would be consistent with the Subdivision Map Act.

We appreciate your consideration of our comments regarding the Diablo Estates project SPR 01-11. Please feel free to contact us if you have any questions or need further information regarding our concerns.

Sincerely yours,



Alicia Guerra

cc: David Woltering
Gary Mayo
Richard M. Nelson
Andrew Warner



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www.SaveMountDiablo.org

David Woltering, Community Development Director
Community Development Department
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

July 12, 2011

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Re: Diablo Estates, Toll Brothers Home Builders, SPR 01-11, Site Plan Review; LLA 01-11, Lot Line Adjustment; VAR 01-11, Variance. (formerly Diablo Pointe Subdivision (Lemke Construction, Inc.) (Claretian Missionaries site)

Planning Commissioners,

Save Mount Diablo is an 8000-member conservation organization which works to preserve, defend and restore the land on and around Mount Diablo to ensure healthy ecosystems and continued access for people and wildlife to enjoy. Since Save Mount Diablo's founding in 1971, preserved open space has increased from less than 7,000 acres to over 100,000 acres in more than 60 parks and preserves.

We have been involved with the Claretian Missionaries site for almost thirty years. It's adjacent to Mt. Diablo State Park on two sides. It's a spur ridge falling from within the State Park to the old school site, dropping down a wooded draw to a narrow riparian corridor along Mt. Diablo creek. The State Park area east of the property was preserved in two acquisitions and one dedication (the creek corridor as a condition of the Regency Meadows development) through the mid 1980s.

We could have very easily opposed development of a site adjacent to the State Park but we worked closely with the city, the planning commission, the city council, neighbors, State Parks and Lemke on the Diablo Point project, coming to mutual agreement on approval of a project including important mitigation:

- A buffer to the State Park on both sides with a setback prohibiting structures – which also accomplishes fire and hillside protection.
- Removal of the house on Lot 25 so that native plants could be planted and the streamside woodland could be widened – the first time a house has been torn down in Contra Costa County for environmental restoration.
- Dedication of Lot 25 to the Park – for which we had approval at three levels of the State Park system agreeing to acceptance.
- We worked with Lemke and expressed willingness to collaborate with them using volunteer labor to install the native plants, if they provided water and irrigation equipment from the development site.

As a result of these agreements, we supported the project.

Staff Directors

Ronald Brown
Executive Director

Seth Adams
Land Program Director

Julie Seelen
Development Director

Monica E. Oei
Finance Director

Founders

Arthur Bonwell
Mary L. Bowerman

Proud member of

Land Trust Alliance
California Council of Land Trusts
Bay Area Open Space Council

When we heard that Toll Brothers had acquired the property, we met with them to reiterate our concern about these issues and that these mitigations be carried out.

- We discussed the current situation with State Parks and that they would need to be proactive and that we could help with the dedication process.
- If a dedication couldn't be accomplished immediately, we discussed a potential willingness to accept Lot 25 ourselves on an interim basis, given the State budget problems, and then to transfer the property to the State once the budget situation improves.
- We discussed our continued willingness to be involved in the native plant restoration on Lot 25.

We haven't heard from Toll Brothers since that meeting.

We haven't heard a word from them about the native plant restoration.

We have heard that they want to allow structures and other improvements in parts of lots that are meant as buffers and to remain open, including in areas with steep slopes. Those lots were configured originally based on the city's and Lemke's guarantees that they would stay open. They are meant to provide a transition to the Park, as is the open view fencing. Structures will defeat the reasons for the open areas. We are opposed to the change.

Without a word to us, or any request of help, we have heard that they want to be exempted from the required State Park dedication if they can't get easy approval from State Parks. The condition allows for third party acceptance for just that circumstance. ^{new}

At its simplest, the condition requiring offer of dedication of Lot 25 can

- be required to be a perpetual offer of dedication, and implemented when the State once again has the capacity to accept.
- A Homeowner Association can be required and the lot can be encumbered with deed restrictions.
- A Benefit Assessment District can help maintain the dedication area.
- Save Mount Diablo can consider interim ownership until the State is ready to accept the dedication, and then carry out the dedication process ourselves.

We offered to help with the dedication process seven years ago, before the recession and before State budget problems became acute. We had letters of agreement from State Parks at that time. That the project applicant then or now hasn't carried out the condition is not the public's fault.

Toll Brothers bought this project with full knowledge of the Conditions of Approval. They say their intent is to conform to prior approvals but they're now asking for exemptions and changes in conditions.

Community support for this project, mitigations and environmental review were based on a number of factors including the State Park buffer, the dedication, and the environmental restoration. To not implement those protections and conditions would represent bad faith.

We respectfully ask that promises made to our organization and to the community be kept.

Thank you for your consideration of my comments.

Sincerely,



Seth Adams
Director of Land Programs



DEPARTMENT OF PARKS AND RECREATION
Diablo Vista District – Bay Sector
96 Mitchell Canyon Road
Clayton, CA 94517
925-673-2891

Ruth G. Coleman, Director

August 10, 2004

Jeremy Graves
Community Development Director
City of Clayton
600 Heritage Trail
Clayton, CA 94517

Dear Mr. Graves:

City of Clayton, Diablo Pointe Residential Subdivision
Public Review Draft Initial Study/Negative Declaration, SCH Number: To Be Assigned

We understand that Save Mount Diablo and Lemke Co. have reached agreement on a new map for the Diablo Pointe Residential Subdivision, removing the three lots along Mt. Diablo creek, and eliminating grading and formerly proposed drainage facilities in this area and along the property's eastern boundary. District Superintendent Brian Hickey has reviewed a map of the proposed change and he and I have both toured the site.

As a result, this letter supersedes the Department's earlier comments regarding a proposed dedication of the area along the creek and eastern boundary. The Department is now willing to accept this dedication area—although we would appreciate dedication of an endowment to support necessary maintenance, and understand that Save Mount Diablo is negotiating with the applicant to this end. When appropriate, we will forward a Gift Acceptance form to our Sacramento offices and aid in the transfer of the dedication area.

There are other conditions of approval still to work out, including fencing, and notice to potential homeowners of their responsibility to reduce fuel loads to limit fire danger, but we appreciate the progress made by the City, the applicant and Save Mount Diablo.

Sincerely,

Don Monahan
Diablo Vista District Superintendent

Minutes
Clayton Planning Commission Meeting
Tuesday, August 23, 2011

Call to Order

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

Present: Chair Dan Richardson, Vice Chair Keith Haydon, Commissioner Bob Armstrong
Absent: Commissioner Sandra Johnson and Commissioner Greg Manning
Staff: Community Development Director David Woltering
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Review of agenda items.

Chair Richardson proposed reorganizing the agenda to consider Item 3B prior to Item 3A and to continue 3B to the next regular Planning Commission meeting on September 13, 2011 so that a full five-member Commission could consider that Item. Commissioner moved to support Chair Richardson's proposal and Vice Chair Haydon seconded the motion. The motion passed 3-0.

1B. Chair Richardson to report at the City Council meeting on September 20, 2011 (September 6, 2011 City council meeting has been cancelled)

Public Comment

None.

Approval of Minutes

2. None.

Public Hearing

3A. DP 01-09, ENV 02-09, Clayton Community Church Economic/Fiscal Evaluation (Final Draft). Review of the Final Draft of the Economic/Fiscal Evaluation of the Clayton Community Church Development Proposal (DP 01-09, ENV 02-09). This report was prepared by Bay Area Economics, a Northern California based consulting firm.

The Clayton Community Church project is located in Clayton's Town Center on the north side of Main Street east of the Oak Street off ramp and south of Clayton Road (APNs 118-560-010 and 119-011-003) and entails removing the former Pioneer Inn building, which exists on the subject property, and redeveloping the site with four buildings: a two-story 22,244-square-foot church sanctuary building containing up to 500 seats; a two-story 8,516-square-foot building encompassing 2,261 square feet of retail space and 6,255 square feet of office space, church classrooms, and a welcome center; and a two-story 10,204-square-foot building encompassing 5,696 square feet of retail space and 4,508 square feet of office space; and a one-story 1,200-square-foot teen center. The project requires an environmental review under the California Environmental Quality Act as well as City approval of a General Plan Amendment (to allow assembly uses); Specific Plan

Amendment (to allow assembly uses and establish lower on-site parking requirements); Zoning Amendments (to allow assembly uses; establish a consistent zoning designation for the site; and establish lower on-site parking requirements); Use Permit; Development Plan; and a Tentative Parcel Map.

The purpose of the Economic/Fiscal Evaluation is to determine and report on the possible fiscal impacts to the City as well as the economic implications to the City's Town Center area should the proposed project be approved and implemented.

Director Woltering introduced the item and presented the staff report. Director Woltering provided written comments to the Planning Commission received on this matter from the following (See Attached):

- A letter opposed to the project from Jonathan W. Heck and Virginia S. Burns-Heck, 5478 Tara Drive.
- A letter opposed to the project from Nani Patten Luebke, P.O. Box 269, Eden, Montana.
- A letter opposed to the project from Richard Dulkan and Ilene Dulkan, 561 Mt. Dell Drive.
- A letter addressing the Economic/Fiscal Report from Glenn D. Miller, 1005 Pebble Beach Drive.

Matt Kowta, Principal, Bay Area Economics (BAE) summarized the Final Draft Economic/Fiscal Evaluation of the Clayton Community Church development. He indicated it appeared the proposed development project could be made compatible with the overall Town Center Specific Plan goals if parking concerns are resolved. More specifically, these concerns have to do with the provision of adequate parking and management of large church events so as to minimize conflicts with other Town Center activities. If adequate parking spaces and other parking management measures are not provided such that periods of peak parking demand cannot be managed to ensure sufficient parking for all other downtown activities, then this would undermine other efforts to revitalize downtown Clayton. It will be very important for the City to review and confirm the appropriateness and long-term viability of a parking management plan, as called for in the Draft Environmental Impact Report (EIR) for the proposed project. The parking management plan should not only address proposed church activities but, in addition, have a contingency for growth of the congregation and for special church events that would not be approved as part of the current application, in addition to addressing other current and future Town Center land uses.

Mr. Kowta indicated that both the proposed project and the Policy Consistent Alternative would generate slight fiscal surpluses for the Clayton General Fund. Under the law that existed at the time the report was completed, the net impacts would be greater to the Redevelopment Agency. The anticipated net Redevelopment Agency property tax increment would be approximately \$15,000.00 annually for the proposed project, whereas developing the site consistent with the current General Plan and Town Center Specific Plan he anticipated would generate approximately \$100,000.00 in increment annually. Mr. Kowta indicated that these allocations could change depending on the outcome of litigation over recent changes in Redevelopment law that were enacted as part of the State's 2011/2012 budget. In addition, he mentioned other opportunity costs to the City, discussed in the report, if the church is developed in the Town Center area as proposed.

After Mr. Kowta's presentation, the Planning Commission had questions of clarification and comments for him regarding his presentation and the Evaluation.

- Vice Chair Haydon suggested that Table 7 should include an explanation about the impact to revenue distribution in the circumstance that the Redevelopment Agency is eliminated.
- Chair Richardson also commented about Table 7. He asked why the indication for sales tax for the proposed project is \$0. Mr. Kowta indicated the model that was used is very conservative; it reacts to new dwelling units and, therefore, new consumer demand created within the trade area. The proposed project has no new dwelling units; therefore, there would not be new consumers. Conservatively, the model assumes that if new retail space is provided without an increase in resident demand, essentially, this circumstance would be a re-distribution of sales tax that would already exist. In the Policy Consistent Alternative, which assumes the site would be developed consistent with the General Plan and Town Center Specific Plan, there would be new dwelling units with residents who would represent new retail demand, so an increase in sales tax was indicated. The amount of sales tax for that Alternative is estimated to be \$696.00 annually.

The public hearing was opened.

Gayle Balfour, 1170 Easley Drive, indicated the following:

- The four other cities analyzed in the report were larger than Clayton and did not appear suited for comparison purposes.
- Concerned about lack of clarity in the comment that parking would need to be dealt with in an "appropriate manner."
- Clayton is a good small town.
- The site has the opportunity to be a commercial anchor.
- Concerned about the magnitude of the current proposal.

Don Boyd, 308 Mountaire Parkway, indicated the following:

- Commended Clayton on being 83rd best city in the recent Money Magazine listing of best cities in the United States.
- Asked whether a parking in-lieu fee paid by the Church would be used to purchase land for parking in the downtown which would further reduce land available for development in that area?
- Concerned about the so-called parking management plan.

Dolores Austin, owner of the Clayton Club property at 6096 Main Street, indicated the following:

- The size of the proposed project would overwhelm the downtown.
- Concerned that the project will make it difficult, or eliminate altogether, the annual Art and Wine Festival that is held in the Town Center.
- The frequency of the events proposed by the Church will disrupt the downtown.
- There is not adequate parking in the Town Center to supplement the project's parking shortfall.
- Opposed to the proposed project.

Scott Blount, 5316 Oakpoint Court, Concord, indicated the following:

- He considers Clayton to be his family's home.
- The Evaluation does not address the impact to the character and charm of the community as a result of the proposed project.
- Perhaps the study was overly conservative given that we are in a down turned economy.
- The proposal would result in losing the opportunity for a commercial anchor at the subject site.
- The project will cause potential visitors to the Town Center to go elsewhere.

Joyce Atkinson, 282 Mountaire Circle, indicated the following:

- When the Clayton Community Library was built, that project had to satisfy the parking requirements by providing on-site parking.
- Concerned that the proposed project will adversely impact Library patrons since individuals attending Church activities will use Library parking spaces.

Jackie Finkelstein, 190 El Molino Drive, on behalf of family members that reside in Clayton, indicated the following:

- The proposed mega-church is out of character and out of proportion with the downtown.
- The church should be placed over by Diablo View Middle School.

Glenn Miller, 1005 Pebble Beach Drive, indicated the following:

- The surface area and parking requirement for the Policy Consistent Alternative should be checked for feasibility and accuracy.
- Did the Economic/Fiscal consultant review the Collier's Development Study submitted by the applicant?
- Did the projections come to fruition in the other economic studies of the City of Clayton reviewed by the economic/fiscal consultant?
- Did the parking analysis review other community events relative to proposed Church events and activities?
- Was the TJKM traffic/parking analysis used? Were actual counts taken of parking spaces?
- Am a member of the Clayton Community Church.
- It would be worthwhile to check with the Clayton Community Church regarding the "Terrific Tuesdays" program to obtain information about the potential financial spillover effect of the Church use in the Town Center.
- When will minutes be ready from this meeting? Director Woltering responded that minutes would be ready in approximately 30 days.

Dave Atkinson, 282 Mountaire Circle, indicated the following:

- A parking management plan will be ludicrous.
- Any parking management plan established as part of this project should not be detrimental to existing Town Center merchants.

Doug LaVenture, 112 Mt. Whitney Way, Chairman of the Labor Day Derby and Car Show, indicated the following:

- Off-site parking is provided for the Labor Day Derby and Car Show Event.
- Am a member of the Clayton Community Church.

- The Church currently has approximately 200 members at its first service and 300 members at its second service. Based on his count, there were 113 cars at the first service, and 118 cars at the second service.

The public hearing was closed.

Bob Armstrong indicated that the reference to the Library being closed on Sunday should be corrected since the Library is open on Sunday.

Chair Richardson indicated the following:

- The community has invested in parking spaces in the Town Center area. These parking spaces are a resource. The potential economic impact of the loss of these parking spaces should be considered.
- Concerned about not acknowledging any sales tax for the proposed project in Table 7 of the Evaluation.
- By dedicating the use of parking spaces as proposed, the City would lose flexibility to secure a larger commercial user in its downtown

Commissioner Armstrong indicated the following:

- Supports Chair Richardson's comments.
- The infrastructure that has been planned and provided in the Town Center area supported a vision for a small downtown.
- The fiscal impacts to Endeavor Hall should be evaluated, given that both Endeavor Hall activities and proposed Church activities would compete for use of the City parking lot spaces next to Endeavor Hall.

Vice Chair Haydon indicated the following:

- Supports Chair Richardson's comments.
- Concerned about how this project would be consistent with the Town Center Specific Plan vision; those involved in the development of that vision did not anticipate this type of use in the Town Center.

Director Woltering indicated the following:

- The Final Draft of the Economic/Fiscal Evaluation of the Clayton Community Church Development Proposal would be modified, as needed, generally to address factual corrections, based on information received at this meeting.
- It is anticipated that the minutes from this meeting will be completed within approximately 30 days.
- The Final Draft of the Economic/Fiscal Evaluation of the Clayton Community Church Development Proposal (revised) and minutes from the August 23, 2011 Planning Commission meeting will go forward as part of the packet materials when public hearings for the proposed project occur. At this time, it is necessary to prepare responses to the large number of comments received on the project's Draft EIR. An initial public hearing will not occur until a minimum of 45 days after the completion of the Draft EIR response to comments document is completed.

Old Business

4. None.

New Business

5. None.

Communications

6A. Staff

Director Woltering indicated the City has hired a new City Attorney. This new attorney is yet to be formally introduced to staff, but that introduction is to occur shortly. (The new City Attorney is Malathy [Mala] Subramanian with the law firm of Best Best & Krieger, LLP, Walnut Creek, California)

6B. Commission.

Chair Richardson, Vice Chair Haydon, and Commissioner Armstrong all acknowledged receiving letters inquiring if they were members of the Clayton Community Church. Chair Richardson and Vice Chair Haydon indicated that they had not responded. Commissioner Armstrong responded and indicated that he was not a member.

Adjournment

7. The meeting was adjourned at 9:47 p.m. to the following regularly-scheduled meeting of **September 13, 2011.**

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Dan Richardson
Chair

Attachments:

Letter from Jonathan W. Heck and Virginia S. Burns-Heck, 5478 Tara Drive

Letter from Nani Patten Luebke, P.O. Box 269, Eden, Montana

Letter from Richard Dulkan and Ilene Dulkan, 561 Mt. Dell Drive

Letter from Glenn D. Miller, 1005 Pebble Beach Drive

P\ng Comm\Minutes\2011\0823

Jonathan W. Heck
Virginia S. Burns-Heck
5478 Tara Drive
Clayton, CA 94517

July 22, 2011

Mr. Keith Haydon
Planning Commission
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

Re: Opposition to Clayton Community Church Project

Dear Mr. Haydon:

I implore you to stop the construction of the proposed Clayton Community Church in downtown Clayton.

My husband has been a resident of Clayton for 25 years and when we got married, he insisted Clayton was the place to raise our family. One of the biggest draws to Clayton is the non-congested, quiet downtown area, the annual community events (e.g, Art & Wine Festival, Oktoberfest), and the accessibility to park our vehicle on any given day and patronize the local eateries.

Allowing construction of the proposed Clayton Community Church would, at bottom, disable the ability to hold these types of events in Clayton at a significant expense to the cohesion of our local community.

As a young family with two children under the age of 2 years old, I am concerned about the impact the church will have on limiting the children's games and rides during events. We are disappointed that there will be large crowds, limited parking, noise, and potential rift from evening parties (e.g., weddings).

Thank you in advance for your attention to this matter. We appreciate your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Virginia Burns-Heck". The signature is fluid and cursive, with the first name "Virginia" being more prominent and the last name "Burns-Heck" written in a more compact, connected style.

Virginia Burns-Heck
Jonathan Heck

August 21, 2011

Clayton City Council

Clayton Planning Commission

600 Heritage Trail

Clayton, CA. 94517

Received
AUG 22 2011
City of Clayton

Dear Council Members and Planning Commission Members,

I am writing to you as a former citizen of Clayton, primarily, as I grew up living in the DeMartini Winery you are currently using as your city offices. I visit Clayton on a fairly regular basis. Our family takes great pride in how the city has developed the winery and feels honored by the character, functionality and charm it adds to the city of Clayton. It is a credit to a vision that you have preserved for the big picture of Clayton.

Sadly, the same cannot be said for the current plans you are reviewing for the Community Church superstructure on Main St. I have read the BAE Final draft Economic/Fiscal report. I must inquire if you have all read this entire report?

The main topic concerned the parking or lack of it. Huge parking lots are a visual abscess. The down town area cannot support the numbers "estimated" to attend the functions the church proposes. Much of Clayton's charm is that it does not have enormous parking lots that attract garbage, loitering and other bad behavior during times when empty. The current parking available encourages a walk-about town to shop, eat and visit businesses. It is pure speculation to anticipate the numbers of churchgoers that will frequent Clayton.

It is a pipe dream to estimate that the church will make a significant difference to the long time retail businesses already operating in Clayton. If this was the case, the businesses would already see a boost in their receipts from current churchgoers. The BAE report does not indicate this is the case.

Clayton should be careful what you wish for: i.e. big box retailers and the like. Clayton has always been a destination for good dining, specialty shopping, basic goods and services as well as some peace and quiet which is rare at almost every other place one shops. On page 24 of the BAE report, it cites the focus on restaurants and small businesses. Preserve that quality so hard to find these days. Retail shops in the church building are doomed to fail.

Changing the zoning and tearing down the Historic Pioneer Inn is a travesty. The Church is now, I suspect, and will be, tax exempt, therefore the benefit to Clayton and residents is limited. The BAE report cites an opportunity to use the church message board for announcements etc. Frankly, you have got to be kidding! The BAE report was lacking on real benefit to Clayton in the long run. It was all speculation, dangerous in these times of fiscal/economic uncertainty and endless numbers of empty buildings in every city. What happens when the Church runs out of money or fails? Who gets stuck in the end? My guess is that the Clayton taxpayers will be bitter about that in a big way.

There is no doubt in my mind that the huge building complex the Clayton Community Church has planned is an egregious eyesore and will ruin the essence of Clayton itself. The outline of the proposed structure that has been on display is proof. One must ask the Church, why were you attracted to Clayton in the first place? Why do you want to change what attracted you to this unique and historic small town, into every-city in California? My guess is that they are

taking advantage of the recession and depressed real estate prices and desperation on the City's part to generate income, no matter the source or what principles must be sacrificed.

The City of Clayton has a good website. On the home page, the mission statement is written. Everything about this project violates that statement. On the government page of the website, the citizens of Clayton are listed above everyone else in the chain of government. Where is the input for the citizens? This should matter the most in any consideration of development in town, before any zoning changes or plans considered. You have an opportunity at this juncture, to really make the City of Clayton government work by the people and for the people. I urge you to not abandon everything that drew you to the area in the first place. Preserve it for now and the future. Let the citizens of Clayton have a voice in this issue. Clayton is a rare gem, stop this proposed development.

I am sincerely yours,

Nani Patten Luebke

Nani Patten Luebke

PO Box 269

Ennis, MT. 59729-0269

406-682-4518-home

925-989-5115-cell

nanibobmt@gmail.com

August 23, 2011

To Those It May Concern:

We first bought our house in Clayton in 1976 and have lived here continuously since April 1st of that year. We have seen a lot of changes:

- > From wood plank sidewalks;
- > Pheasants in the road; and a
- > Lot of growth.

Some good, like the park, turning the winery into a City Hall, as well as the way Main Street and the rest of the downtown streets still reflect the city we moved to 36 years ago. Growth of the downtown area has, to this date, reflected the city's "Old West" heritage.

But this "mega-church" no longer would reflect that feeling. I am not against growth, I am not against religious buildings; I do not feel that the addition of this type of structure will enhance and beautify our city:

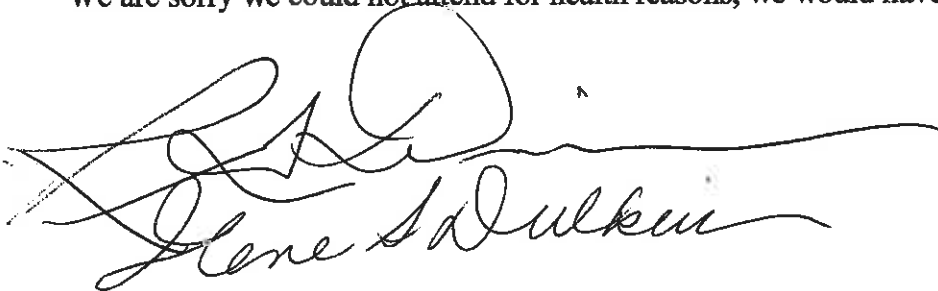
It would be terribly out of proportion to any other structure; a smaller building, such as a small chapel, like the wayfarer's chapel in Sonoma County, or the small little chapel in Walnut Creek, would be apropos, especially if it were a multi-religion one, usable by all.

If this "mega-church" were to be added to the downtown area, we might as well rename the city "Clayton Community Church City" as this would be the predominant structure. It would stand out like a sore thumb, being disproportional to everything around it. I would not mind a "mega-church" for them in an "out lying area" either in the overall Clayton area, or even in adjacent Concord. Clayton is simply a small, picturesque town and its architecture should reflect that. Why not put it on the side of the hill over by the Diablo View Middle School, for example; just not the focal point of, and supreme pinnacle for all of Clayton.

Respectfully submitted,

Richard and Ilene Dulkan
561 Mt. Dell Drive – Clayton

We are sorry we could not attend for health reasons, we would have liked to.

A handwritten signature in black ink, appearing to read "Ilene Dulkan". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke extending to the right.

ASKED THAT THESE COMMENTS BE INCLUDED IN MN
SUBMITTED BY GLENN D. MILLER
@ 1005 PEREGRINE BEACH DRIVE CLAYTON CA.

August 23, 2011

glennandlisa@skglobal.net

Also ask the consultant to address in his final report.

Review of the Economic/Fiscal Report (My page numbers match the PDF document, not the numbering in the document itself)

Main Findings:

1. Parking is the main concern of the report. Whether there will be adequate space available. All study's (This one and the TJKM) said the parking could issue could be mitigated (EIR) or TJKM that there was not overlap (TJKM) and it was not an issue.
2. Page 6 of the Study concludes – City of Clayton would not be impacted to accommodate its full commercial absorption potential with the inclusion of this building proposal.
3. Page 7 – Economic Opportunity cost is not significant. If you don't build anything, there is no tax revenue, with the retail spaces being considered there is tax revenue. The City is unlikely to get the Downtown built out.
4. Page 10 – The peak of hours of the Church do not overlap with the peak hours of the business trades. The project would not create a parking short fall (TJKM Study)
5. Page 15 – The parking space for the retail in the Church Planned Project should be considered to fall under the parking waiver variance that the city adopted in effect until 2014.
6. Page 18 – Because of its physical location, the base of consumers is small. (It is probable that very limited business will come to this city.
7. Page 23 – The competitive potential of the town center is limited.
8. Page 26-30 – My own Thoughts – I agree that the only type of business that will work from a commercial standpoint is boutique in nature or food service related. Larger retail or chain will not be able to support units in the city. – The only change that could bring a difference is more traffic. Unlikely given how Clayton sits and its access to major roads.
9. Page 32 – only 5 businesses of 15 commented. 3 said they were unqualified, 1 said no impact, and one said it could help. Sample size is totally unreliable and would be considered statistically invalid. If you considered the two samples appropriate, one said no impact and one said it could help.
10. Pages 32-52 – Case studies on similar churches – No to Limited parking problems, positive synergy, positive impact to business albeit small.
11. Page 68 – Comparing the revenue that the city could get on a piece of property that is owned by the church to its ideal use is not very helpful. Retail will always generate more tax than the church, but you can't hope to get any if left in the church hands because no building gets you zero.
12. Page 69 – Conclusion is fair for the following reasons:
 - a. Parking – Just need to have a mitigation plan
 - b. P.71 Pedestrian Activity – Is in keeping with the Town Plan
 - c. P.71 Opportunity Cost – Not great, hence a limited impact
 - d. P.74 Viability of Site for Commercial – Limited as best.
 - e. P.74 Compatibility with Town – It is compatible and could be a "draw"

My point of view: When you hire a firm to represent your point of view, you get the best reading possible in your favor. This own firm said the following – Commercial interest would not be high, the City could still meet its development plan, pedestrian activity would increase, and parking could be mitigated, but is the biggest factor.

I think our Church should work to mitigate the parking with the City so that there is a win/win solution. I also think the parking study that finds the need for 171 mid spaces should seriously be questioned. (Just go to any church parking lot during the week of a church of our size or future size) In addition, there is no more strain caused by the Labor Day derby or Friday night movies than already exists today. Hence no additional impact is caused. In addition, there is a need for the church for the Art and Wine festival that can be traded in kind. One final thing could be to not hold a Saturday night congregation meeting in the first 3 years of the building life so that this could be study in context of the new retail.

PLANNING COMMISSION STAFF REPORT

Meeting Date: September 13, 2011

From: Milan J. Sikela, Jr. *MS*
Assistant Planner

Subject: Second Story Balcony at 227 Stranahan Circle
Site Plan Review Permit (SPR 02-11)

Review of this project by the Planning Commission was continued from the August 23, 2011 Planning Commission meeting to the September 13, 2011 Planning Commission meeting.

REQUEST

A request for a Site Plan Review Permit to consider a previously-constructed second-story balcony, located on the rear of a two-story single-family residence within the Stranahan subdivision.

PROJECT INFORMATION

Applicant / Location: Tom Jensen
227 Stranahan Circle
APN 119-620-051

General Plan Designation: Single Family High Density (5.1 to 7.5 units per acre)

Zoning: PD – Planned Development

Environmental Review: Categorically exempt per Sections 15303(e), Class 3 of the California Environmental Quality Act (CEQA) Guidelines.

Public Notice: On August 12, 2011, a public hearing notice was posted at the notice boards and mailed to property owners within 300 feet of the site. To date, no comments have been received by staff.

Agency Referrals: The City Engineer had no comments. The Contra Costa County Building Inspection Department, Contra Costa County Fire Protection District, and Contra Costa Water District did not respond.

Authority: Section 17.44.020 of the Zoning Ordinance authorizes the Planning Commission to approve a Site Plan Review Permit in accordance with the Standards of Review in Section 17.44.040.

DISCUSSION

The applicant is requesting approval of a Site Plan Review Permit for a previously-constructed second-story balcony, located on the rear of the applicant's residence. The balcony measures approximately 60 square feet in area and is located 10 feet above ground level. The site plan, roof plan, and architectural elevations are provided as **Attachment 1**.

The balcony is accessible from an exterior stairway that wraps around from the left side of the residence to the second story of the rear elevation of the residence where the balcony is located. Prior to construction of the balcony, a first-story patio cover existed (see photographs in **Attachment 2**) where the deck of the balcony is currently located. Subsequently, the applicant constructed a stairway, reinforced the patio cover to provide for the balcony deck, and installed a safety railing on the stairway and balcony (see photographs in **Attachment 3**).

In analyzing the balcony and discussing project-related issues with the applicant, the applicant indicated that the project was designed to blend with the home through use of similar colors and materials. Additionally, the applicant attempted to minimize aesthetic impacts to surrounding properties by utilizing metallic balustrades and horizontal cross-supporting cables which, because of their smaller size, reduced the volume and massing of the project.

Setback Analysis

The project meets the Stranahan (Center) Planned Development setback standards as shown below.

Required Setbacks	Setbacks Prior to Construction		Setbacks After Construction		Project Compliance
Front Setback 20'	South	71'	South	No Change	Yes
Side Setback 3' minimum	West	8'	West	No Change	Yes*
	East	5'	East	No Change	Yes
6' aggregate	Aggregate	13'	Aggregate	No Change	Yes*
Rear Setback 22'	North	31.5'	North	24.5'	Yes

*See discussion below.

Section 17.36.030 of the Municipal Code exempts open stairways from setback requirements as long as such structures “do not obstruct the light and ventilation of any adjoining parcel of land.” Since the access stairway to the balcony does not create a light or ventilation obstruction, the stairway portion of the project would qualify for this exemption and would not be counted against the required setbacks.

Residential Floor Area Analysis

Section 17.78.030.D.3 of the Municipal Code excludes balconies and other structures (stairways) from floor area calculations “where at least one of the longest dimensions in unenclosed.” Since the balcony and stairway are unenclosed, these structures would not be subject to floor area requirements. Furthermore, Section 17.78.040.D of the Municipal Code exempts projects involving additions or accessory buildings located within the Stranahan Planned Development from the floor area calculations, requiring that such projects are “subject to the Site Plan Review requirements and development standards originally approved” as part of the Stranahan subdivision. As a result, the project is both excluded and exempt from the residential floor area requirements.

Project Integration

Staff analyzed project compliance with the Site Plan Review standards listed in Section 17.44.040 of the Municipal Code. Staff observed that components of the project may benefit from improved integration which, in turn, would provide greater project consistency with the standards. Based on the analysis and observations, staff has provided the following options for Planning Commission consideration:

- **Option A – Approval With Current Design**

As it exists, the project incorporates, in part, similar colors and materials as the residence through use of off-white wood treatments. These colors and materials—which are utilized on the stairway, balcony deck, and hand railing—blend with the off-white trim and belly-banding on the residence. This provides project consistency with Section 17.44.040.G of the Municipal Code which states that the “new development, taken as a whole, need not be identical, but should be complementary with the adjacent existing structures in terms of materials, colors, size, and bulk.” However, staff notes that consideration of project approval with its current design would include approval of the gray/chrome coloring and metallic material of the balustrades and horizontal cross-supporting cables. The applicant has indicated that the reason the non-wood material was used was to provide project screening and minimization of visual impacts. The applicant was concerned that use of white-colored wood for the balustrades and cross-supports would cause greater project massing and volume and, hence, cause a greater visual impact to off-site areas. Stated differently, the applicant attempted to provide a maximum amount of integration with a minimal amount of visibility. It should be noted that the reduction of project volume through use of smaller-sized materials (cable vis-a-vis larger wood components) provides project compliance with Sections 17.44.040.D and 17.44.040.F which address maintenance of solar rights and existing views of adjacent areas. Since the deck portion of the balcony replaces a previously-existing patio cover, the only additional area of the project that would increase visibility above and beyond what already existed would be the balustrades, cross-supports, railing, and stairs—components of the project which the applicant attempted to visually minimize.

- **Option B – Approval With Color Modifications**

From staff’s perspective, painting the metallic balustrades and cross-supporting cables the same color as the off-white wood treatments on the rest of the structure would improve visual consistency while still maintaining the smaller massing and volume (which minimizes aesthetic impacts) that the current balustrades and cross-supports provide. The Planning Commission may wish to consider adding a condition that matching colors be used on the non-wood segments of the project.

- **Option C – Approval With Color and Material Modifications**

Staff notes that project design integration would benefit by replacing the metallic balustrades and cross-supporting cables with matching off-white wood elements. By including similar colors and materials on all segments of the project, improved architectural cohesion would be achieved. The Planning Commission may wish to consider adding a condition that matching colors and materials be used to replace the non-wood segments of the project.

Compliance with Uniform Building Code Requirements

During discussions with City staff, the applicant was informed that a building permit would need to be obtained from the Contra Costa County Building Inspection Department for the project. The applicant indicated that a building inspector had visited the project site and did not note any Uniform Building Code (UBC) violations related to the balcony during the field visit. However, the structure will still undergo formal inspections as part of the building permit process and be subject to all applicable UBC requirements. Staff has provided an Advisory Note regarding obtaining the proper permits from the Contra Costa County Building Inspection Department.

RECOMMENDATION

Staff recommends that the Planning Commission:

- Review the options provided by staff;
- Provide direction to staff; and
- Approve Site Plan Review Permit SPR 02-11 with conditions of approval, as required by the Planning Commission, that support the Planning Commission's determination of project design consistency.

Proposed Findings of Approval

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 that Site Plan Review Permit SPR 02-11:

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.

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

Proposed Condition of Approval

This condition of approval applies to the Jensen Residence Site Plan, Roof Plan, Architectural Elevations, and Photographs, prepared and submitted by the applicant, date stamped August 3, 2011.

1. 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, judgements, 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.

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 as well as pay all associated fees and charges.
2. 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).
3. 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 specifically authorized in writing by the City Engineer (CMC §15.01.101) located at 5375 Clayton Road, Concord, 925-363-7433.
4. The applicant shall obtain the necessary building permits from the Contra Costa County Building Inspection Department.
5. 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, 925-930-5500.
6. If the project site is located within an area subject to covenants, conditions, and restrictions (CC&Rs) 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.

ATTACHMENTS

- 1 Jensen Residence Site Plan, Roof Plan, Architectural Elevations, prepared and submitted by the applicant, date stamped August 3, 2011
- 2 Photographs of project site prior to construction, prepared and submitted by the applicant, date stamped August 3, 2011
- 3 Photographs of project site after construction, prepared and submitted by the applicant, date stamped August 3, 2011

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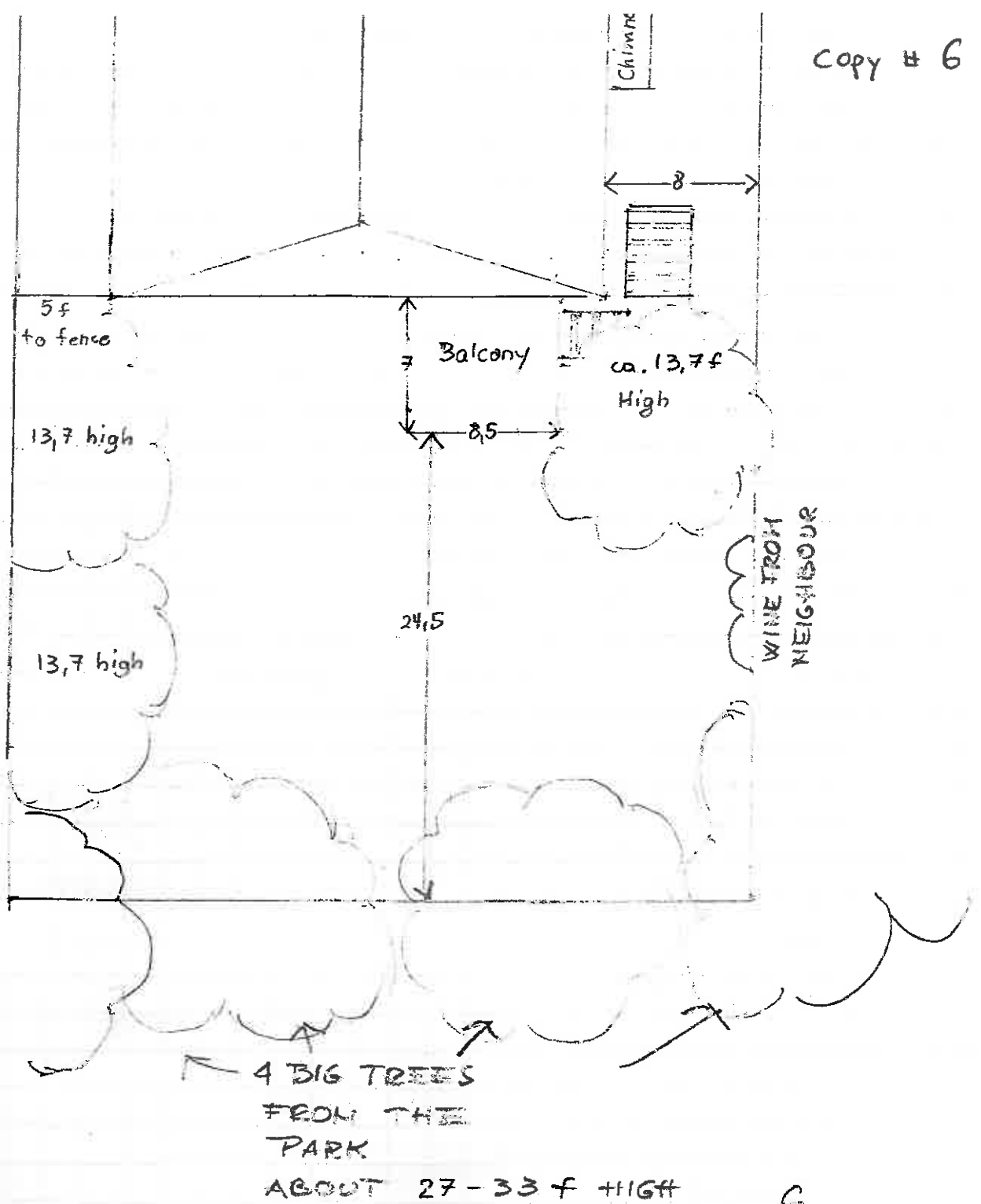
REAR YARD
SITE PLAN

SHEET

1 OF 4

N.T.S

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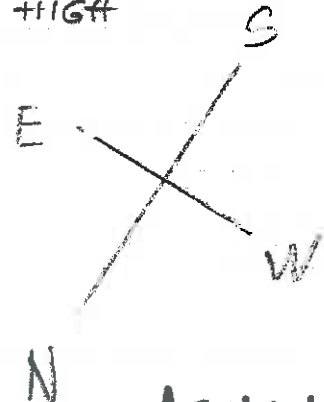


Balcony addition

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CLAYTON COMMUNITY
DEVELOPMENT DEPT



ATTACHMENT

1

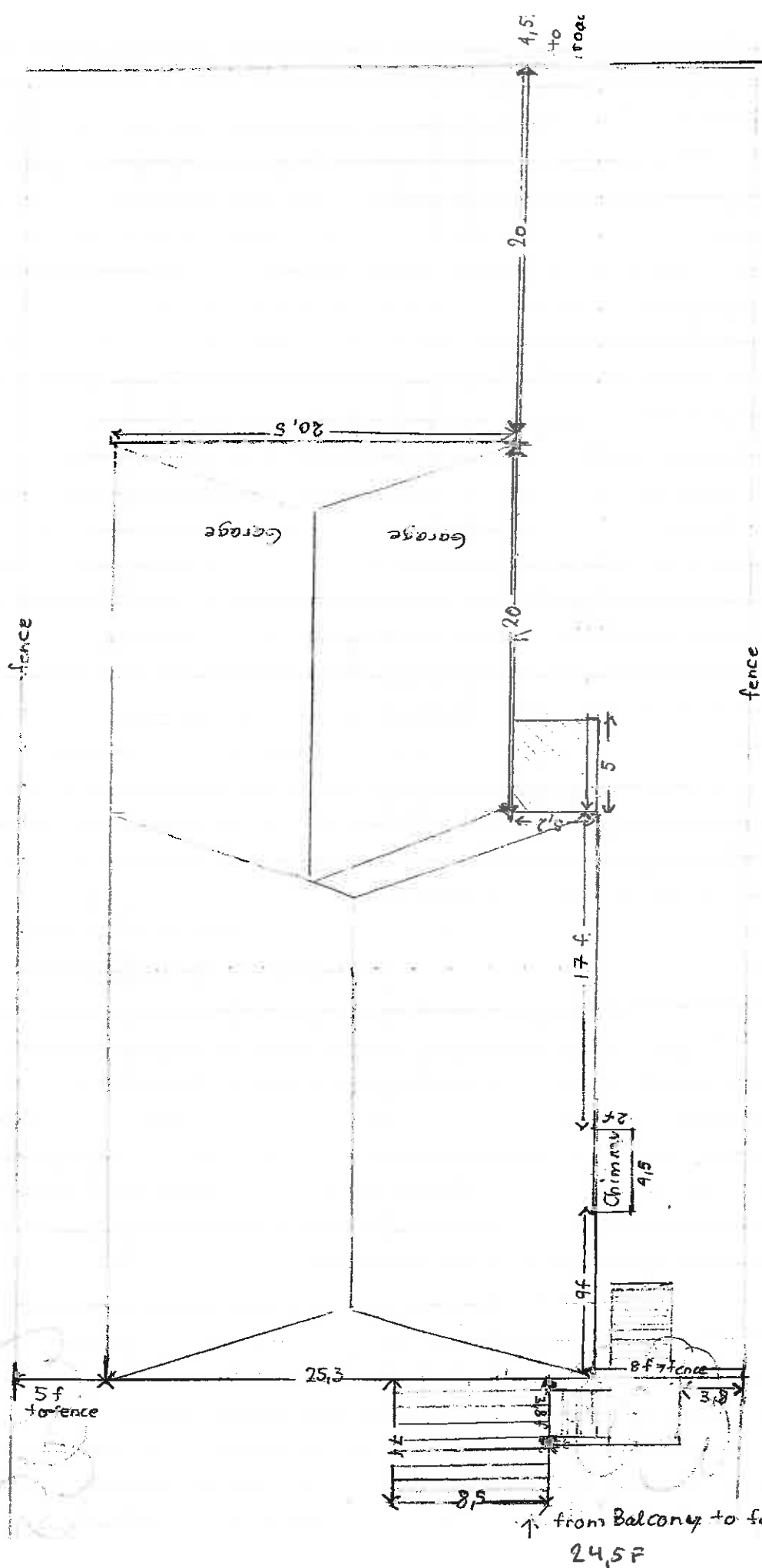
Tom Jensen

227 Stranahan cir

Clayton Ca 94517

(925) 524 0057

N.T.S



REAR ELEVATION

3 OF 4

N.T.S

The house exterior is constructed of horizontal wood siding in a cream yellow (Lemon burst) color with white trim around Doors and windows, for the balcony addition natural wood has been used and painted white to match the house trim. To minimize the visual impact of the structure to the surroundings galvanized piping and cable has been used to meet the safety and standards for the project.

Balcony addition

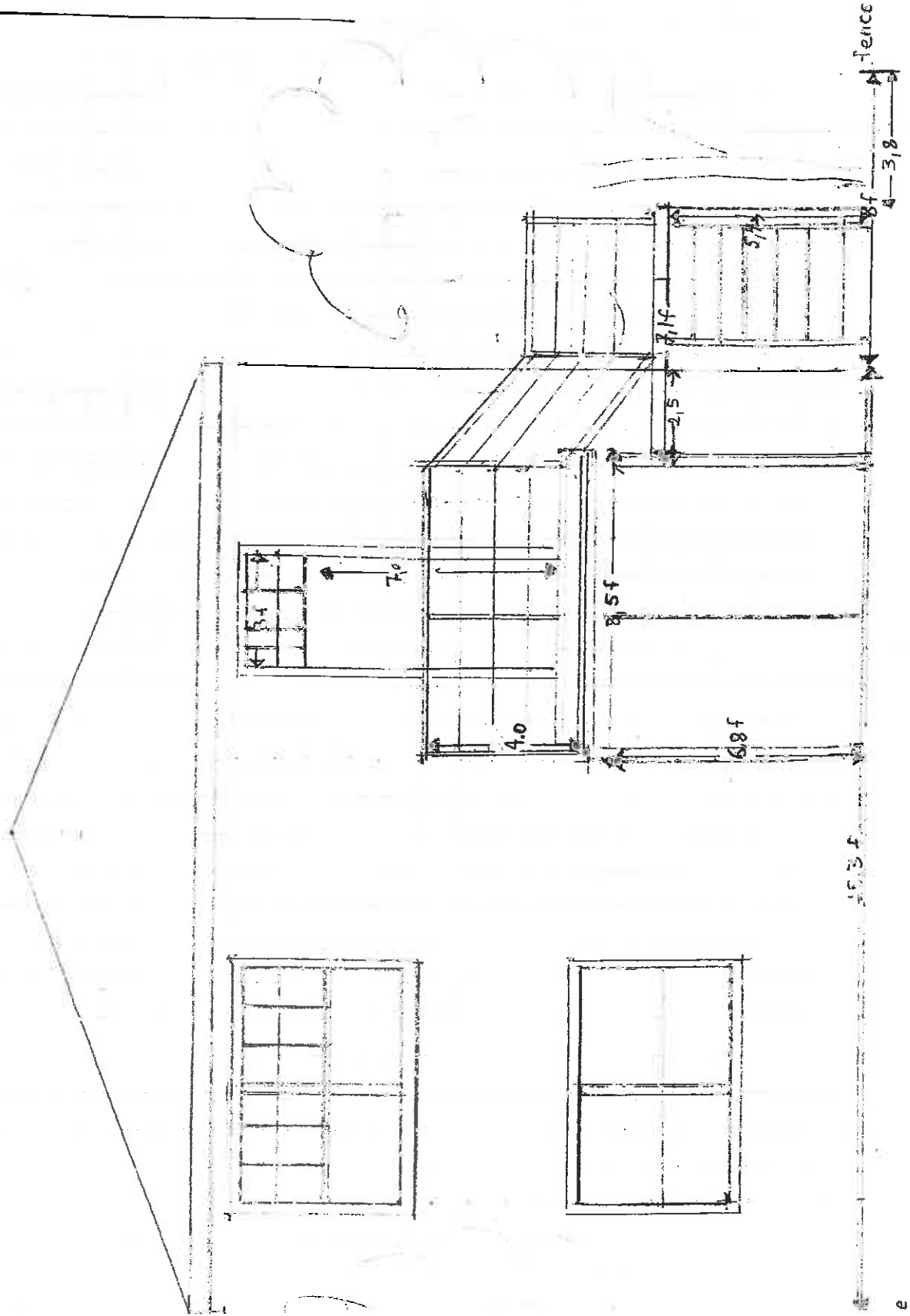
Tom Jensen

227 Stranahan cir

Clayton Ca 94517

(925) 524 0057

(925) 482 5320



REAR ELEVATION

4074

NT'S

Ties to the roof

Balcony addition

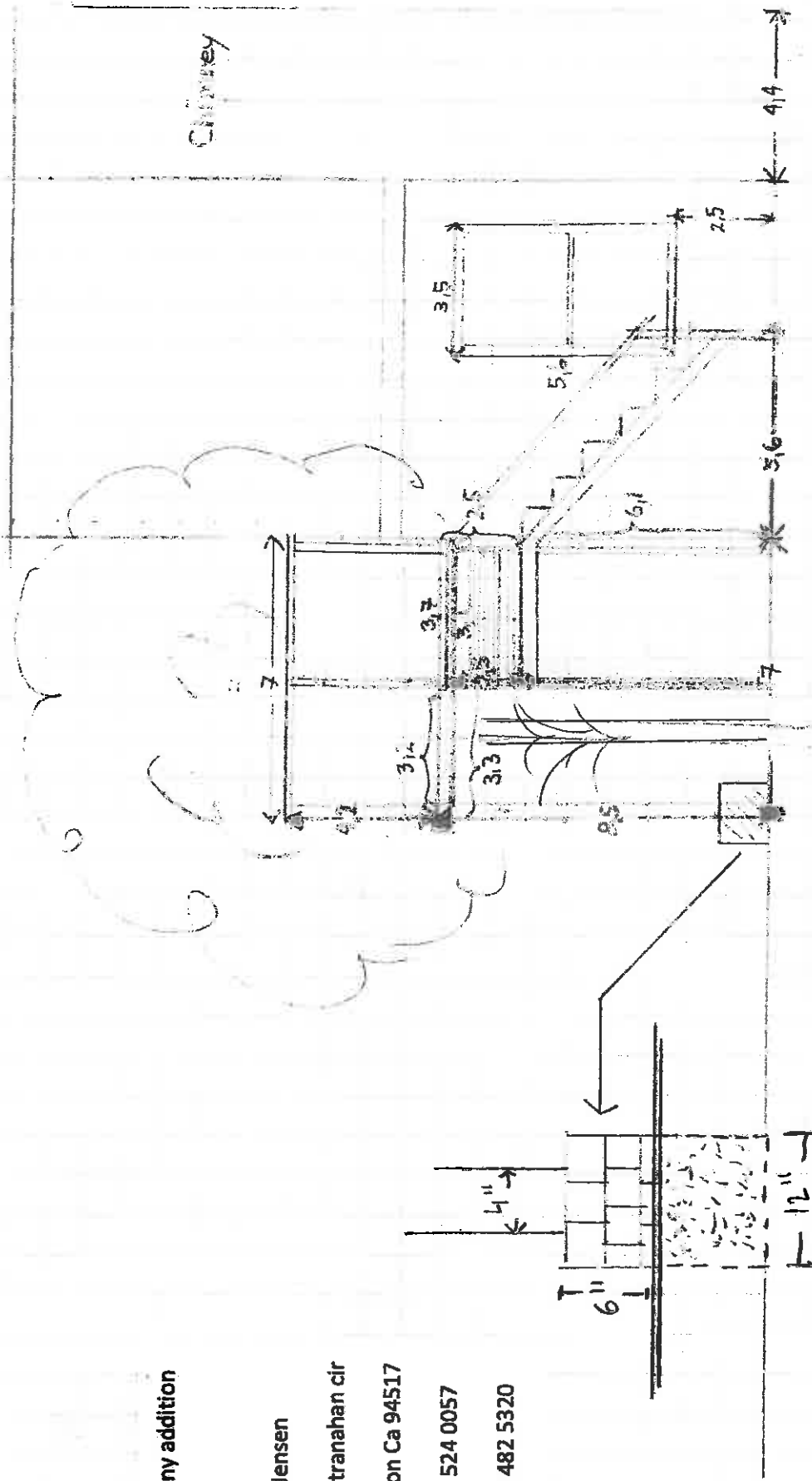
Tom Jensen

227 Stranahan cir

Clayton Ca 94517

(925) 524 0057

(925) 482 5320





ATTACHMENT
2







ATTACHMENT
3













PLANNING COMMISSION STAFF REPORT

Meeting Date: September 13, 2011 
From: David Woltering, AICP
Community Development Director
Subject: Toll Brothers
Diablo Estates at Clayton Residential Subdivision Rezone
(ZOA 05-11)

REQUEST

Recommend City Council approval to change the zoning on Lots 1, 2, and 3 of the Diablo Estates at Clayton residential subdivision from R-40-H to R-40.

PROJECT INFORMATION

Applicant: Toll Brothers, Inc.
Northern CA Division Office
2000 Crow Canyon Place, Suite 200
San Ramon, California 94583

Location: Lots 1, 2, and 3 of the Diablo Estates at Clayton residential subdivision (APNs 119-630-001, 119-630-002, and 119-630-003)

General Plan Designation: Low Density – Single Family Residential (1.1 to 3.0 units per acre). This proposal complies with the Clayton General Plan designation.

Zoning: Current – Single Family Residential R-40-H District (40,000 square-foot minimum lot area, equestrian uses permitted by right).

Proposed – Single Family Residential R-40 (40,000 square-foot minimum lot area, equestrian uses not permitted by right).

Environmental Review: Categorically exempt per Section 15061(b)(3), Article 5 of the California Environmental Quality Act (CEQA) Guidelines.

Public Notice: A public hearing notice was posted at the notice boards, mailed to property owners within 300 feet of the site, and mailed to all interested parties. To date, one verbal comment has been received in support of maintaining the R-40-H zoning classification on the subject lots.

Authority: Chapter 17.56 authorizes Planning Commission review and recommendation to the City Council of zone changes.

BACKGROUND AND ANALYSIS

On November 30, 2004, the Planning Commission adopted Resolution No. 05-04, recommending City Council approval to rezone the Diablo Estates at Clayton residential subdivision project site (at that time referred to as the Diablo Pointe residential subdivision, a 24-acre site that had been split into 25 individual lots [24 lots for single-family residential development and a 25th lot to be preserved for open space and conditioned to be dedicated to California Department of Parks and Recreation as an addition to Mount Diablo State Park]). The recommendation of approval for the rezone, that was later adopted by the City Council under Ordinance No. 380, involved changing the zoning on the project site from Planned Development (PD) to four separate zoning districts: R-40-H (Lots 1-3), R-40 (Lot 4), R-10 (Lots 5-24), and Public Facility (PF) (Lot 25).

On July 12, 2011, the developer of the Diablo Estates at Clayton project site, Toll Brothers, received Planning Commission approval of the companion Site Plan Review Permit, Variance, and Lot Line Adjustment for the subdivision. As part of that approval, Condition 2 in the Planning Commission Notice of Decision required that the developer rezone Lots 1-3 from R-40-H to R-40 to assure consistency with other conditions of approval that require the more steeply sloped areas beyond the building pad and standard yard areas remain unimproved for safety and aesthetic purposes and to address prior concerns raised about keeping horses at this location related to degradation of water quality. The current R-40-H zoning designation of Lots 1-3 allows equestrian uses to be permitted by right. Approval of the rezone to R-40 would no longer allow equestrian uses to be permitted by right on these lots.

During City review and approval of the Diablo Estates at Clayton Site Plan Review Permit, the City and Toll Brothers reached a consensus that equestrian uses would no longer be proposed on Lots 1-3 (resulting in this zone change request for Lots 1-3). It was agreed that having equestrian uses on the steeply sloped areas located on the rear portions of these lots would impact slope stability, drainage routes, and weed abatement, in addition to the water degradation concerns. The keeping of horses involves the maintaining of paddock areas as well as construction of barns, stables, troughs and other structures which would further impact the sloped areas. Aesthetic impacts must also be considered as horse movement across the slopes and construction of equestrian structures would foster an inconsistent visual pattern in the rear yard areas of Lots 1-3 (which are higher in elevation, and, therefore, more visible, than any other location in the subdivision), detracting from the consistent natural appearance that would be created by protecting the sloped areas of these lots. As a result of the consensus reached and direction given by the City during approval of related project entitlements, engineering work on the slopes for grading, drainage, and slope stabilization purposes has already been performed by the developer with the idea that the lots would not have equestrian uses. In addition, the topography of the subject lots does not serve equestrian uses well. The level areas of Lots 1-3 are comprised of the front setback area, the residence, and the rear yard area, leaving no space for paddock areas and associated horse-related structures. Placement of horses and associated structures in the level areas would locate such amenities in close proximity to on-site and adjacent residences and would cause impacts created by horse manure, flies, and odors.

RECOMMENDATION

Staff recommends that the Planning Commission approve the attached Resolution No. 04-11, thereby recommending City Council approval of ZOA 05-11 to rezone Lots 1, 2, and 3 in the Diablo Estates at Clayton residential subdivision from R-40-H to R-40, based upon the following findings and subject to the following condition.

Proposed Findings of Approval

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 finds the Diablo Estates at Clayton residential subdivision rezone, as conditioned:

1. Conforms with the General Plan designation and policies.
2. Is necessary for public necessity, convenience, and general welfare.
3. Preserves the general safety of the community regarding landslide, flooding, and fire hazards.
4. Creates more compatibility within the Diablo Estates at Clayton subdivision as well as with adjacent existing neighborhoods and surrounding land uses.

Proposed Condition of Approval

This condition of recommendation for approval applies to the zone change diagram submitted by the applicant, date stamped August 4, 2011 (See Attached); and the Diablo Estates at Clayton Application to Re-zone Lots 1-3 Environmental Impact Assessment Questionnaire submitted by the applicant, date stamped August 4, 2011 (See Attached).

1. 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.

EXHIBITS

- 1 Resolution No. 04-11
- 2 Diablo Estates at Clayton Environmental Questionnaire received from Toll Brothers, date stamped August 4, 2011
- 3 Rezone Exhibit, date stamped August 4, 2011
- 4 Rezone Exhibit depicting Lots 1, 2, and 3

ZOA\2011\05-11.sr.pc.9.13.11

**CITY OF CLAYTON PLANNING COMMISSION
RESOLUTION NO. 04-11**

**AMENDMENT OF THE ZONING MAP REGARDING THE
DIABLO ESTATES AT CLAYTON RESIDENTIAL SUBDIVISION (ZOA 05-11)**

Whereas, Section 17.56.060 of the Zoning Ordinance requires the Planning Commission to make a recommendation to the City Council on zone changes; and

Whereas, Toll Brothers has requested amendment of the Zoning Map for a portion of the Diablo Estates at Clayton residential subdivision located at the northeast corner of Regency Drive and Rialto Drive in accordance with its prior Site Plan Review approval (SPR 01-11); and

Whereas, the requested zoning of Lots 1, 2, and 3 of the Diablo Estates at Clayton subdivision will result in consistency with other requirements of the SPR 01-11 approval to retain specified sloped areas in a natural condition without improvement as well as address concerns about assuring slope stability, the integrity of drainage improvements, facilitating weed abatement, helping to assure water quality standards, and avoiding nuisance concerns related to the keeping of horses; and

Whereas, the Planning Commission held a duly-noticed public hearing on September 13, 2011 on amendment of the Zoning Map; and

Whereas, the Planning Commission considered the all public testimony and staff reports information received at the September 13, 2011 public hearing; and

Whereas, the Planning Commission determined that the attached Ordinance is exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3), Article of the CEQA Guidelines.

Now, Therefore, Be it Resolved that the Planning Commission recommends that the City Council approve the attached ordinance, based on the following:

Section 1. Amendment of the *Zoning Map* to change the zoning of the area associated with subject Lots 1, 2, and 3 of the Diablo Estates at Clayton residential subdivision from R-40-H to R-40, as depicted in the attachment, appropriately addresses the concerns mentioned above and is based on the following findings:

- A. Conforms with the General Plan designation and policies.
- B. Is necessary for public necessity, convenience, and general welfare.
- C. Preserves the general safety of the community regarding landslide, flooding, and fire hazards.
- D. Creates more compatibility within the Diablo Estates at Clayton subdivision as well as with adjacent existing neighborhoods and surrounding land uses.

Adopted by the Planning Commission on September 13, 2011.

APPROVED

ATTEST

Dan Richardson
Chair

David Woltering, AICP
Community Development Director

Attachment: Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON
AMENDING THE ZONING MAP FOR LOTS 1, 2, AND 3 IN THE
DIABLO ESTATES AT CLAYTON RESIDENTIAL SUBDIVISION SITE
AT THE NORTHEAST CORNER OF REGENCY DRIVE AND RIALTO DRIVE
FROM R-40-H TO R-40
(ZOA 05-11)**

THE CITY COUNCIL OF THE CITY OF CLAYTON FINDS AS FOLLOWS:

WHEREAS, Chapter 17.56 of the Clayton Municipal Code authorizes the City Council to amend the Official Zoning Map of the City of Clayton; and

WHEREAS, the Planning Commission held a duly-noticed public hearings on September 13, 2011 on amendment of the zoning classifications of Lots 1, 2, and 3 of the Diablo Estates at Clayton residential subdivision, generally located at the northeast corner of Regency Drive and Rialto Drive, from R-40-H to R-40; and

WHEREAS, the Clayton Planning Commission approved Planning Commission Resolution No. 04-11, which recommended City Council approval of the amendment; and

WHEREAS, on _____, 2011, the Clayton City Council held a duly-noticed public hearing and gave due consideration to all testimony, comments and documents received; and

WHEREAS, the requested zoning of Lots 1, 2, and 3 of the Diablo Estates at Clayton subdivision will result in consistency with other requirements of the prior SPR 01-11 approval to retain specified sloped areas in a natural condition without improvement as well as address concerns about assuring slope stability, the integrity of drainage improvements, facilitating weed abatement, helping to assure water quality standards, and avoiding nuisance concerns related to the keeping of horses; and

WHEREAS, this zoning amendment is exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3), Article of the CEQA Guidelines.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The above-stated citations are true and accurate.

SECTION 2. The Official Zoning Map of the City of Clayton is hereby amended to change the zoning classification of Lots 1, 2, and 3 in the Diablo Estates at Clayton residential subdivision from R-40-H to R-40, as more specifically shown on the attached figure.

SECTION 3. If any provision of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses of the Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause it to be posted in the three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Clayton held on _____, 2011.

Passed, adopted and ordered posted at a regular meeting of the City Council of the City of Clayton on _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON

David T. Shuey, Mayor

ATTEST

Laci J. Jackson, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian
City Attorney

Gary A. Napper
City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on [month] [day], 2011, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on [month] [day], 2011.

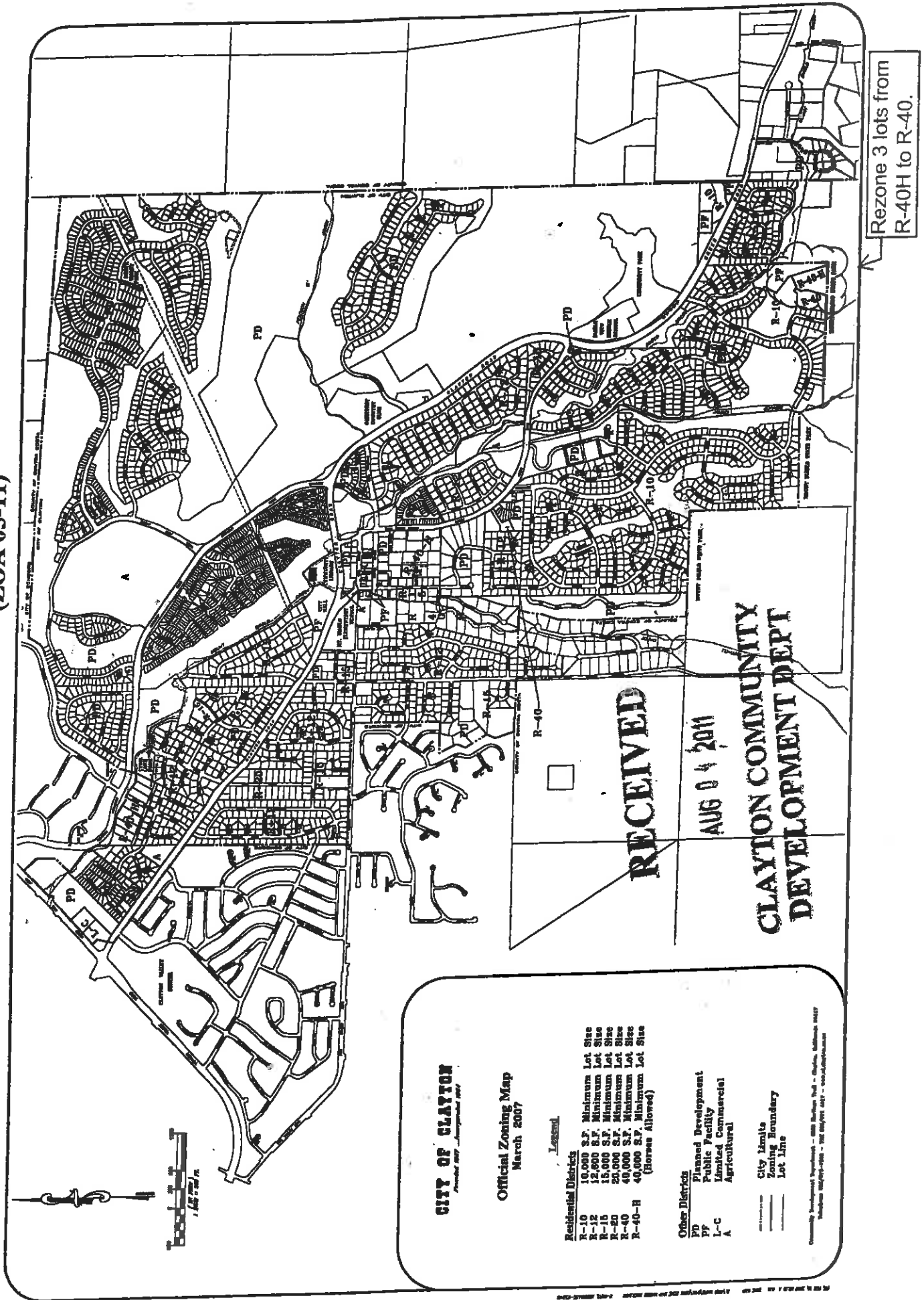
Laci J. Jackson, City Clerk

Attachment: Amended Zoning Map Classifications (Figure)

ZOA\2011\05-11.ord.diablo.estates.rezone

**Toll Brothers
Diablo Estates at Clayton Residential Subdivision Rezone
Area comprising Lots 1, 2, and 3 from R-40-H to R-40
(ZOA 05-11)**

FIGURE



Diablo Estates at Clayton
Application to Re-zone Lots 1-3
Environmental Impact Assessment Questionnaire

1. There are no other approvals required for this project. Final Map has been recorded, and Clayton Planning Commission has approved the Site Plan Review Permit. We are relying on previous Initial Environmental Study – Negative Declaration that applied to the SPR approval.
2. The project site consists of 24 parcels fully approved for single family homes. One (1) zoned R-40, Three (3) zoned R-40H, and 20 zoned R-10.
3. Surrounding properties are single family residential homes and Mt. Diablo State Park.
4. The proposed project has already been approved by the Planning Commission. It consists of 24 single family homes.
5. Lots 1-3 are currently zoned R-40H. We are requesting to re-zone these 3 lots to R-40. Variances and Lot Line Adjustments previously approved by the Planning Commission will remain in effect on these lots. The purpose of the re-zone is to make clear that horses are not permitted to be kept anywhere within this 24 unit subdivision.

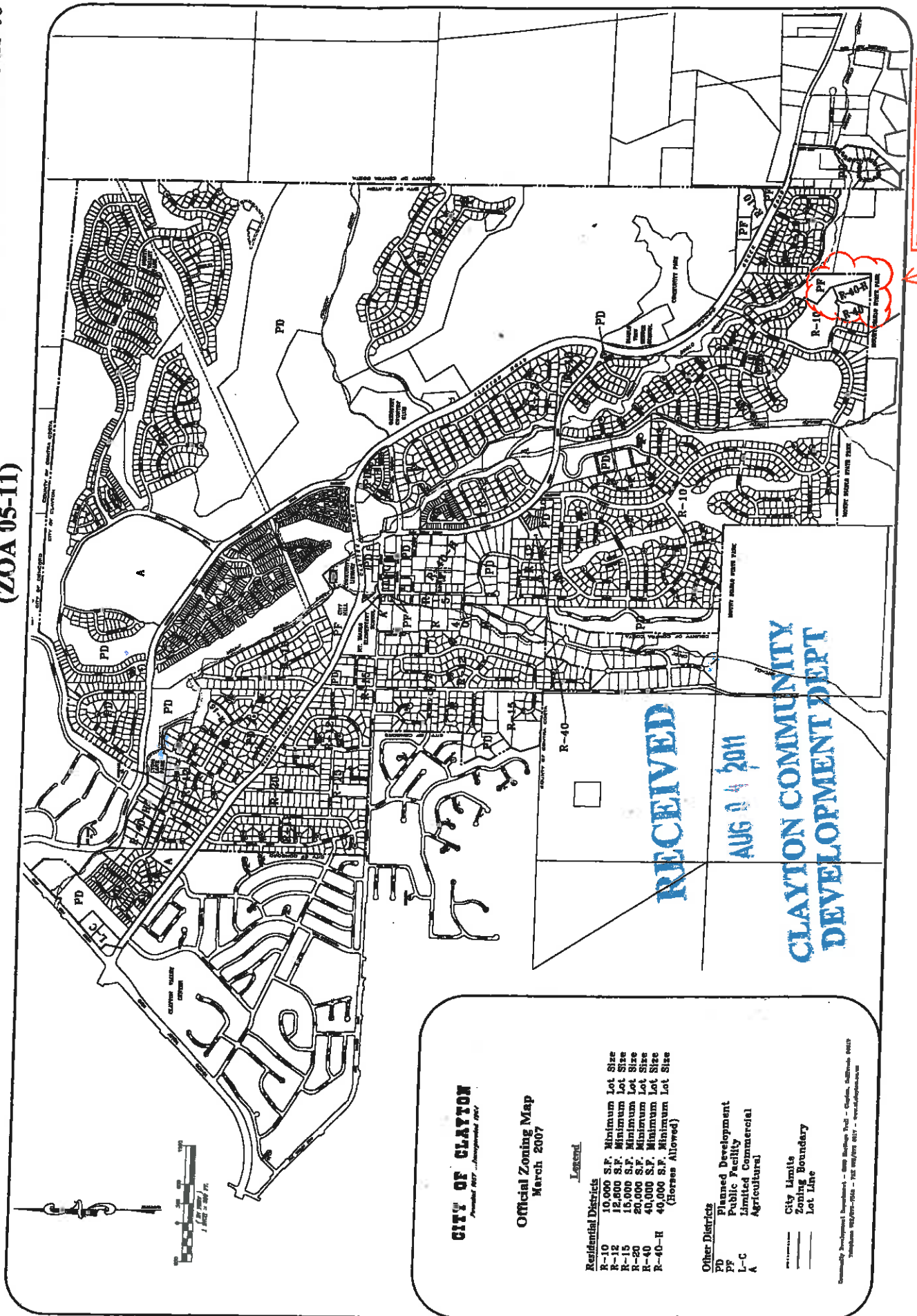
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**CLAYTON COMMUNITY
DEVELOPMENT DEPT**

**Toll Brothers
Diablo Estates at Clayton Residential Subdivision Rezone
Area comprising Lots 1, 2, and 3 from R-40-H to R-40
(ZOA 05-11)**

EXHIBIT 3



Rezone 3 lots from
R-40H to R-40.

CITY OF CLAYTON
Founded 1887 - Incorporated 1967

Official Zoning Map
March 2007

Legend

Residential Districts
R-10 10,000 S.F. Minimum Lot Size
R-12 12,000 S.F. Minimum Lot Size
R-15 15,000 S.F. Minimum Lot Size
R-20 20,000 S.F. Minimum Lot Size
R-40 40,000 S.F. Minimum Lot Size
R-40-H 40,000 S.F. Minimum Lot Size
(Horses Allowed)

Other Districts
PD Planned Development
PF Public Facility
L-C Limited Commercial
A Agricultural

City Limits
Zoning Boundary
Lot Line

Community Development Department - 4000 Redwood Trail - Clayton, California 92027
Telephone 951/970-1500 - FAX 951/970-0517 - www.ci.clayton.ca.us



ATTENTION:

1	BL 2004-028378-00	CONTRIN COSTA COUNTY
2	SUBDIVISION 4545 (139 & 34)	CONTRIN COSTA COUNTY
3	SUBDIVISION 4545 (171 & 10)	CONTRIN COSTA COUNTY
4	SUBDIVISION 4643 (171 & 21)	CONTRIN COSTA COUNTY
5	SUBDIVISION 5722 (281 & 4)	CONTRIN COSTA COUNTY