CITY OF CLAYTON
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PLANNING COMMISSION
REGULAR MEETING AGENDA

TUESDAY, MARCH 10, 2026
7:00 PM
Hoyer Hall, Clayton Community Library
6125 Clayton Road, Clayton, CA 94517

Daniel Richardson, Chair

Joseph Banchero, Vice Chair *Maria Shulman,*

Bretten Casagrande, *Nate Brzovich,*

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1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

4. ACCEPTANCE OF THE AGENDA
The Planning Commission will discuss the order of the agenda, may amend the order, add urgency items, note disclosures or intentions to abstain due to conflict of interest on agendized public hearing or action items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The Planning Commission may also remove items from the Consent Calendar prior to that portion of the Agenda.

5. PUBLIC COMMENT (Non-Agenda Items)
This time has been set aside for members of the public to address the Planning Commission on items of general interest within the subject matter jurisdiction of the City. Although the Planning Commission values your comments, pursuant to the Brown Act, the Planning Commission generally cannot take any action on items not listed on the posted agenda. At the Chair's discretion, up to 3 minutes will be allotted to each speaker.

6. CONSENT CALENDAR
No Items scheduled.

7. PUBLIC HEARING

(a) Public Hearing to Consider the Silver Oak Estates Project Environmental Impact Report, Vesting Tentative Subdivision Map and Development Plan for a Planned Development located at 5701 Clayton Road (APNs: 118-020-028 and 029) *(continued from 02/10/2026)*
(View)

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

9. ADJOURNMENT
The next Planning Commission Regular Meeting is Tuesday, March 24, 2026.

Meeting Information and Access

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail and on the City's website at www.claytonca.gov
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.claytonca.gov
- Any writings or documents provided to a majority of the City Council after distribution of the agenda packet and regarding any public item on this agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours and is available for review on the City's website at www.claytonca.gov
- If you have a physical impairment requiring special accommodation to participate, please call the City Clerk's office at least 72 hours (about 3 days) before the meeting at (925) 673-7300.
- E-mail Public Comments: Public comment may also be sent to the City Clerk at cityclerk@claytonca.gov by 12:00 p.m. on the day of the meeting. All e-mailed public comments will be forwarded to the entire committee and made part of the official meeting file.

Each person attending the meeting who wishes to speak on an agendized or non-agendized matter (within the council's jurisdiction), shall have a set amount of time to speak as determined by the Mayor.

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STAFF REPORT

TO: **PLANNING COMMISSION**

FROM: **Kraig Chalem, Senior Planner**

DATE: **March 10, 2026**

SUBJECT: **Public Hearing to Consider the Silver Oak Estates Project Environmental Impact Report, Vesting Tentative Subdivision Map and Development Plan for a Planned Development located at 5701 Clayton Road (APNs: 118-020-028 and 029)** ***(continued from 02/10/2026)***

REQUEST
See attached Staff Report.

ATTACHMENTS
Staff Report 20260310.pdf

AGENDA REPORT

To: Honorable Chair and Planning Commissioners

From: Kraig Chalem, Senior Planner Lance E. Lowe, AICP
Senior Planner, CSG Consultants, Inc.

Date: March 10, 2026

Subject: Public Hearing to Consider the Silver Oak Estates Project Environmental Impact Report, Vesting Tentative Subdivision Map and Development Plan for a Planned Development located at 5701 Clayton Road (APNs: 118-020-028 and 029) *(continued from 02/10/2026)*

SUMMARY

A Public Hearing continued from February 10th, 2026, to consider the Silver Oaks Estates Project Environmental Impact Report (ENV-02-10), Vesting Tentative Subdivision Map (9541)(MAP-01-10) and Development Permit for a Planned Development (DP-01-10) for the construction of 32 single family dwellings with three Junior Accessory Dwelling Units (JADUs) on a ±13.96-acre parcel in the Planned Development (PD) Zone located at 5701 Clayton Road (APNs: 118-020-028 & 029). Please see attachment materials submitted to the Planning Commission and posted to the City of Clayton website, February 10, 2026.

RECOMMENDATION

That the Planning Commission approve the Silver Oaks Estates Project, as presented, or as modified by the Planning Commission which includes the following actions:

1. Adoption of Resolution No. 01-2026 Certifying the Environmental Impact Report, including adoption of a Statement of Overriding Considerations, prepared for the project, as the appropriate level of environmental review, in accordance with the California Environmental Quality Act (CEQA) and Guidelines;

2. Adoption of a Mitigation Monitoring & Reporting Program (MMRP), implementing and monitoring all Mitigation Measures, in accordance with the California Environmental Quality Act (CEQA) and Guidelines;

3. Adoption of Resolution No. 02-2026 Approving a Vesting Tentative Subdivision Map (VTSM9541) for the subdivision of the ±13.96-acre parcel into 32 residential lots; seven common Parcels A – G including private road, common areas, and open space;

4. Approval of a Development Plan (DP-01-10) for a Planned Development Project including the following subcomponents:
   a. Affordable Housing Plan that includes the development of Inclusionary Units on-site on Lots 9, 12 and 31);
   a. Habitat Conservation Plan for the project site in accordance with the East Contra Costa Habitat Conservation Plan; and,
   b. Tree Removal Permit (TRP-14-14), including method of tree replacement, as well as tree replacement ratios, for the removal of ±145 protected on-site trees, in accordance with Section 15.70.040 of the Clayton Municipal Code; and,

5. Adoption of Findings of Fact and Conditions of Approval for the Silver Oaks Estates Project, as presented.

PROJECT INFORMATION

Applicant/Representative:	Clyde Miles Construction 1850 Mount Diablo Blvd., Suite 440 Walnut Creek, CA 94596 Contact: Jim Hildenbrand (925) 639-4204
Location:	5701 Clayton Road APNs: 118-020-028 and 029 See **Attachment A** for Vicinity Map
General Plan Designation:	MD (Single Medium Density) Residential (3.1 – 5 DU/Acre)
Zoning Classification:	Planned Development (PD) Zone District
Flood Zone:	As proposed, the Southern portion of the property adjoining Mount Diablo Creek is subject to inundation by flood water and lies within the 100-year flood plain (AE). Base Flood Elevation: 328.33. Project improvements are located outside of the 100-year flood plain.
Environmental Review:	An Environmental Impact Report has been prepared for the project in accordance with the California Environmental Quality Act (CEQA) and Guidelines.
Public Notice:	On July 1, 2025, a Notice of Availability of the Environmental Impact Report (EIR) and a Notice of a Public Hearing for the Silver Oaks Estates Project was published in the Contra Costa Times, posted on the notice boards, and mailed to property owners within 300-feet of the project site. The 45-day public review period for the project's EIR was from July 1, 2025, to August 14, 2025. The original public hearing date was noticed January 30th for the February 10th hearing date,

and again, on or before February 27th, 2026.

BACKGROUND

The Planning Commission considered the Silver Oaks Estates Project at its February 10, 2026, Planning Commission meeting. After receiving public comments, the Planning Commission unanimously continued the public hearing and directed staff to provide further analysis of three specific issues: 1) CEQA Alternative Analysis; 2) Coordination with California Department of Fish and Wildlife (CDFW) and Regional Water Quality Control Board (RWQCB); and, 3) HOA Maintenance Responsibility and Enforcement.

The three issues are addressed below for Planning Commission consideration.

See February 10, 2026, Planning Commission Staff Report for Silver Oaks Estates Project Description including: Vesting Tentative Subdivision Map, Development Plan for Planned Development, Access, Circulation and Off-Street Parking, Lot Sizes, Setbacks, and Building Heights, Landscaping, Residential Architectural Design, Lighting, Grading and Retaining Walls, Tree Removal, Open Spaces, Utility and Infrastructure, Water, Wastewater, Storm Drainage, Analysis of Project and Environmental Review.

ANALYSIS:

As directed by the Planning Commission as its February 10, 2026, meeting, staff offers the following analysis for Planning Commission consideration:

1. **CEQA Alternative Analysis** –

   a. **Provide a brief overview of how the CEQA alternatives were selected and whether any environmentally superior or reduced-impact alternatives were eliminated early in the process?**

In accordance with CEQA and the *State CEQA Guidelines* (Section 15126.6), an EIR must describe a reasonable range of alternatives to the project, or to the project's location, that could attain most of the project's basic objectives while avoiding or substantially lessening any of the significantly adverse environmental effects of the project. The three alternatives to the proposed project discussed and analyzed in Chapter 5.0, Alternatives, of the EIR are 1) No Project Alternative; 2) Reduced Development Alternative; and 3) Base Level Alternative. These alternatives represent a reasonable range of potential alternatives to the proposed project in light of the objective of avoiding or reducing the severity of significant and unavoidable impacts and/or impacts identified as less than significant with mitigation, while still being consistent with the City's 2023-2031 Housing Element. A few other potential alternatives were also considered; however, none of these alternatives would substantially reduce or avoid the environmental impacts of the proposed project and/or would not meet many of the basic project objectives and therefore were ultimately not selected for further analysis. Section 5.4 on page 5-19 of the EIR includes a description of the preliminary alternatives that were considered but rejected from further analysis. The EIR compared the potential environmental effects of the proposed project to the potential effects of each alternative in relation to the environmental baseline and existing physical environmental setting.

Under the *State CEQA Guidelines*, the Lead Agency must consider a reasonable range of alternatives that would feasibly attain all or most of the project objectives but would avoid or substantially lessen any of the significant impacts of the proposed project. An EIR need not consider *all* potential alternatives to the project. Rather, CEQA requires that the EIR discuss only a “reasonable range” of alternatives.

CEQA does not require that the EIR study every specific alternative proposed by the public or other agencies. The Lead Agency must make a good faith effort to identify and study a reasonable range of appropriate alternatives to the proposed project.

To summarize, the Draft EIR must include alternatives that are:
1) Potentially feasible,
2) Attain most of the basic objectives of the project, and,
3) Avoid or substantially lessen any of the significant effects of the project.

Under CEQA, a Lead Agency may structure its alternatives analysis around a reasonable definition of a fundamental underlying purpose and need not study alternatives that cannot achieve that basic purpose. An EIR need not consider alternatives that are infeasible (*State CEQA Guidelines* Section 15126.6).

CEQA establishes no legal imperative as to the scope of alternatives to be analyzed in an EIR, and there is no set number of alternatives that must be analyzed to fulfill the requirements of CEQA. Rather, as stated in Section 15126.6 of the *State CEQA Guidelines* and supported by abundant CEQA case law, the range of alternatives required in an EIR is governed by the “rule of reason,” which requires the EIR to set forth only those alternatives necessary to permit a reasoned choice.

In summary, the EIR followed the requirements of CEQA in identifying a range of reasonable alternatives to the project, or to the location of the project, that feasibly attain the project’s basic objectives while avoiding or substantially lessening significant adverse environmental effects of the project for consideration by City decision-makers.

As described on page 5-21 of the EIR, the Reduced Development Alternative would avoid the significant and unavoidable VMT impact associated with the proposed project. As such, the Reduced Development Alternative is considered the Environmentally Superior Alternative.

However, as noted in the EIR, because the Reduced Development Alternative, and Base Level Alternative would include reduced density housing development of the site, less than the 32 units stated in the Regional Housing Needs Assessment numbers as allocated in the City’s Housing Element, the project would be inconsistent with the City’s adopted 2023-2031 Housing Element of the City’s General Plan. As such, the City would be required to designate the “loss of units’ on another site in the City in accordance with State law.

As noted in the February 9, 2026, staff report, the site is identified as Vacant Site B of the Housing Element and recognizes the existing application submitted, which includes the proposed 32 single-family units plus three ADU’s. Although, the Medium Density General Plan designation allows for higher-intensity development (3.1 – 5 du/ac), the potential yield for this site, as shown in Housing Element Table 5-5, reflects the currently pending Silver Oaks Estates application. For site B, 32 units have been assigned to the Above Moderate Regional Housing Needs Allocation (RHNA) income category, and the three proposed JADUs have been assigned to lower-income categories. Accordingly, the Silver Oaks Estates density yield for this site is effectively a reduced alternative considering the Medium Density (MD) Residential General Plan designation.

As noted in the Housing Element, the Project and recommended affordable units would progress the City’s efforts in providing above moderate and affordable housing pursuant to its regional housing allocations assigned by the Association of Bay Area Governments.

Again, reducing the 32-unit density is inconsistent with State law. Specifically, in accordance with Section 56863 of the Government Code, entitled Regional Housing Needs: Local Share (b)(2): *If a city, by administrative, quasi-judicial, legislative, or other action, allows development of any parcel with fewer units by income category than identified in the jurisdiction’s housing element for that parcel, the city shall make a written findings supported by substantial evidence as to whether or not remaining sites identified in the housing element are adequate to accommodate the jurisdiction’s share of the regional housing needs. The findings shall include a quantification of the remaining unmet need for the jurisdiction’s share of the regional housing need at each income level and the remaining capacity of sites identified in the housing element to accommodate that need by income level.*

Moreover, the Housing Accountability Act (“HAA”) (Gov. Code §65589.5) strictly limits the City’s ability to deny or reduce the density of a housing development project that complies with applicable, objective General Plan and zoning standards, as the Silver Oak Project does. Under §65589.5(j), a compliant housing project can be denied or reduced in density **only if** the City makes written findings, supported by a preponderance of the evidence in the record, that the project would result in a “specific, adverse impact upon the public health or safety.” The statute defines that term narrowly to mean a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards in effect when the application was deemed complete.

HCD’s Housing Accountability Act Technical Assistance Advisory (Sept. 15, 2020) reiterates that this exception is extremely limited and must be grounded in objective written standards—not generalized policy concerns, discretionary judgments, or speculative impacts. Generalized traffic or greenhouse gas impacts do not meet this statutory threshold, and the record here identifies no objective, written public health or safety standard that would support the required findings, nor any evidence that such an impact could not be feasibly mitigated without denying or reducing the Project's density.

To date, there are no reported appellate decisions upholding a denial or density reduction of a code-compliant housing project under the HAA's "specific, adverse impact" exception. Courts have consistently construed this exception narrowly and require substantial, objective, and preponderant evidence in the record.

Lastly, the Legislature has also ensured that violations of the HAA carry serious consequences. Pursuant to §65589.5(k), a court must issue an order compelling compliance if a jurisdiction improperly denies or reduces the density of a compliant housing project. The statute mandates an award of attorney's fees to a prevailing plaintiff and authorizes significant monetary penalties where a jurisdiction acts in bad faith, including fines payable to the Housing Trust Fund. These remedies are mandatory, not discretionary. Accordingly, any action to deny or reduce the density of a code-compliant housing development absent legally sufficient findings may expose the City to substantial litigation risk, mandatory fee liability, and potential court-ordered approval of the Project.

An EIR that identifies unavoidable impacts is required to discuss alternatives to the project to reduce the unavoidable impacts. But when the project is a housing project that complies with the General Plan and zoning (and other applicable standards) like the Silver Oaks Estate Project, those alternatives cannot be adopted in lieu of the Project without making the near impossible findings for rejecting the Project.

A reduced density project of less than 32 units would therefore be inconsistent with the City's 2023-2031 Adopted Housing Element of the City's General Plan. Accordingly, based upon the aforementioned, staff recommends that the Planning Commission not pursue a reduced density alternative, which has already been discounted as being inconsistent with the City's 2023-2031 Housing Element.

b. Was a reduced-intensity or reconfigured site alternative evaluated in a way that would meaningfully reduce impacts to the creek or riparian corridor?

Because impacts to the creek or riparian corridor were not identified as significantly adverse and the topic of Biological Resources was focused out of the EIR, the EIR does not include any alternatives designed specifically to reduce creek or riparian impacts. However, as described above, the EIR evaluated two alternatives that would reduce the number of units on the project site – the Reduced Development Alternative (20 units) and the Base Level Alternative (25 units). However, as described above, these alternatives would not be consistent with the City's 2023-2031 Adopted Housing Element.

As described on page 4-26 of the Initial Study (Appendix B of the EIR), with implementation of the proposed project as currently designed, the majority of the riparian woodland would be permanently protected by the proposed project within a deed-restricted open space corridor of approximately 8.21 acres. This conservation area would include the bed, bank, and channel of Mount Diablo Creek, along with its riparian vegetation and a 50-foot (and greater) setback from the top-of-bank of the creek channel.

Impacts to the riparian habitat associated with Mount Diablo Creek would occur as a result of installation of a stormwater outfall and removal of 15 trees from the area within 50 feet of Mount Diablo Creek. Standard Conditions BIO-1 and BIO-2, which require the project applicant to obtain the applicable regulatory permits from the Regional Water Quality Control Board and the California Department of Fish and Wildlife, implement best management practices (BMPs) during project construction, and pay the aquatic resources mitigation fee to obtain coverage under the East Contra Costa County Habitat Conservation Plan (ECCCHCP), would be implemented to reduce potential impacts to less than significant.

Implementation of either the Reduced Development Alternative or the Base Level Alternative would result in the development of single-family residential uses and associated infrastructure on the project site, but with a potentially smaller project footprint and less overall ground disturbance. With fewer units proposed, a greater setback from Mount Diablo Creek could be provided and riparian tree removal may be minimized. However, construction of the stormwater outfall would still be required to convey stormwater runoff into the creek, resulting in impacts to riparian habitat and jurisdictional waters. Therefore, Standard Conditions BIO-1 and BIO-2 would still be required. In addition, development of either of these alternatives would still have the potential to impact special-status species and would require some tree removal. Therefore, Mitigation Measures BIO-1 through BIO-6, which are required for the proposed project, would also apply to both the Reduced Development Alternative and the Base Level Alternative. Similar to the proposed project, impacts to biological resources would be less than significant with mitigation incorporated for either of these two alternatives.

c. **If future agency permit conditions require site modifications, would that implicate or require revisiting the alternatives analysis?**

As described above, CEQA does not require that the EIR study every specific alternative proposed by the public or other agencies. The Lead Agency must make a good faith effort to identify and study a reasonable range of appropriate alternatives to the proposed project. The EIR followed the requirements of CEQA in identifying a range of reasonable alternatives to the project, or to the location of the project, that feasibly attain the project's basic objectives while avoiding or substantially lessening significant adverse environmental effects of the project for consideration by City decision-makers.

It should be noted that the Regional Water Quality Control Board and the California Department of Fish and Wildlife have had multiple opportunities to review the project. However, to date, RWQCB has not commented on the project and CDFW have had limited comments on the proposed project.

As described further below, if site modifications are required due to permit requirements, a subsequent CEQA analysis may be required to determine if environmental impacts were adequately addressed in the EIR or if new or substantially more severe significant impacts would result from the modified project. Presumably, environmental impacts would be reduced given the mandate of the regulatory agencies to protect biological resources;

however, the City would need to review the project design modification and determine if changes are substantial.

Again, however, the Regional Water Quality Control Board and the California Department of Fish and Wildlife have had multiple opportunities to review the project and have had no issues relating to site design. In staff's experience, trustee/responsible agency permit conditions have never resulted in site modifications requiring redesign of a project.

2. **Coordination with CDFW and the Regional Water Quality Control Board** –

   a. **What coordination has occurred to date with CDFW, and have they provided any written or informal feedback on the project?**

As described on page 1-2 of the EIR, the City circulated a Notice of Preparation (NOP) informing responsible agencies and interested parties that an EIR would be prepared for the proposed project, and which indicated the environmental topics anticipated to be addressed in the EIR. The NOP and Initial Study were published on April 3, 2024, and the NOP was mailed to public agencies, neighborhood organizations, and property owners within the same zip code as the project site, as well as individuals likely to be or who had previously expressed an interest in the potential impacts of the proposed project. The NOP was also posted to the State Clearinghouse, which distributes CEQA documents to the State agencies, including the California Department of Fish and Wildlife (CDFW) and the Regional Water Quality Control Board (RWQCB). Neither agency provided comments on the NOP or the Initial Study.

Similarly, the Draft EIR was made available for public review on July 7, 2025, and was distributed to local and State responsible and trustee agencies. The Draft EIR and an announcement of its availability were posted electronically on the City's website at: https://claytonca.gov/community-development/planning/ and uploaded to the State Clearinghouse on July 1, 2025. The Notice of Availability (NOA) for the Draft EIR was provided to all individuals and organizations who made a written request for notice and was filed with the Contra Costa County Clerk.

The CDFW submitted a comment letter on the Draft EIR on August 12, 2025. CDFW's comments and the City's responses to those comments are provided in the Response to Comments document (pp. 3-10 through 3-22). In accordance with the CEQA Guidelines, the Response to Comments document was provided to the CDFW and was made available for review as part of the City's public noticing for the Planning Commission hearing; no further comments from CDFW have been received to date.

   b. **Has the Regional Water Quality Control Board reviewed the stormwater approach, or is that review still pending?**

As described above, both the NOP/Initial Study and the Draft EIR were made available for review by the public and distributed to local and State responsible agencies and trustee agencies through the State Clearinghouse, including the RWQCB. RWQCB provided no comments on the CEQA document either during the scoping period or the public review period for the Draft EIR. As described above, the Response to Comments document was made available for review as part of the City's public notice for the Planning Commission hearing; no comments from the RWQCB have been received to date.

c. Based on staff experience, are there likely permit conditions from either agency that could materially affect outfall design, buffers, grading limits, or mitigation measures?

As described above, both trustee/responsible agencies were given several opportunities to comment on the EIR as part of the CEQA process. The CDFW submitted a comment letter on the Draft EIR on August 12, 2025. CDFW's comments and the City's responses to those comments are provided in the Response to Comments document (pp. 3-10 through 3-22). All feasible recommendations were incorporated as revisions to the Draft EIR. None of the CDFW's recommendations would substantively alter the project design.

As described on page 3-21 of the Response to Comments document, the proposed project is considered a covered activity under the Eastern Contra Costa County Habitat Conservation Plan/Natural Communities Conservation Plan (ECCCHCP/NCCP). The purpose of the ECCCHCP/NCCP is to protect and enhance ecological diversity and function within eastern Contra Costa County by identifying methods to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on covered species and their habitats and wetlands while allowing for permitted growth. The ECCCHCP/NCCP provides take authorization for covered species and sets the CDFW and USFWS mitigation standards for the ECCCHCP/NCCP coverage area, including measures for special-status species, and setbacks for streams and channels. As the proposed project and the mitigation measures identified in the EIR are consistent with the ECCCHCP/NCCP and the project applicant would be required to obtain coverage under the ECCCHCP/NCCP and implement the required ECCCHCP/NCCP measures, it is not anticipated that permit conditions from either agency would materially affect the proposed project as evaluated in the EIR or the mitigation measures identified in the EIR.

Further, in accordance with Standard Conditions BIO-1 and BIO-2, the project applicant would be required to obtain regulatory approval from CDFW and RWQCB, restore the streambed following installation of the proposed outfall, seed the creek bank, replant impacted trees, implement Best Management Practices (BMPs) to control erosion and pay the aquatic resources mitigation fee as required for coverage under the ECCCHCP. These measures ensure compliance with regulatory requirements that are designed to reduce environmental impacts and are therefore sufficient to reduce potential environmental impacts. None of these anticipated mitigation measures would materially alter the project as defined and evaluated in the EIR.

d. If agency-required changes are imposed, would those changes fall within the scope of the EIR as currently analyzed?

As described above, it is not anticipated that permit conditions required by either the CDFW or RWQCB would materially alter the project as defined and evaluated in the EIR or change the analysis or conclusions in the EIR. However, as described above, if changes to the project design are required, City staff would review the changes to the previously approved project to determine if additional environmental review is required. As described in the Section 15162(a) of the CEQA Guidelines, a supplemental or subsequent EIR (SEIR) may be required if another discretionary approval is being considered and:

i. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
ii. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
iii. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
iv. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
v. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
vi. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
vii. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

As any project design modifications imposed by the CDFW or RWQCB would be proposed to reduce environmental impacts, it is unlikely that such modifications would trigger any of the criteria identified above. Again, in staff's experience, trustee/responsible agency permit conditions have never resulted in site modifications requiring redesign of a project.

e. Would any substantive permit-driven modifications return to the Planning Commission for review?

The current entitlements represent the sole discretionary action for this project and future approvals (e.g., Final Map, grading permit, building permits and MMRP) would be ministerial actions undertaken by City staff. The EIR evaluates the potential environmental impacts of the proposed project, as currently proposed. The project design will need to be substantially consistent with the Planning Commission's approval of the project as it proceeds through both the City's ministerial and the trustee/responsible agency regulatory permitting processes.

To this end, Condition of Approval No. A-3 states that: *The project shall be constructed in accordance with the Vesting Tentative Subdivision Map (9541) and Development Permit for a Planned Development approved by the Planning Commission. Minor design changes may be approved by the Community Development Director when determined to be in substantial compliance with the Vesting Tentative Subdivision Map and Planned Development Permit. Major design changes not in substantial compliance shall be approved by the Planning Commission as determined by the Community Development Director.*

However, as noted, it is not anticipated and very unlikely that any agency permit conditions that would be required to further protect environmental resources would materially change the analysis or conclusions in the EIR or trigger subsequent environmental review.

3. **Homeowners Association Maintenance Responsibilities and Enforcement** –

    a. **What long-term maintenance responsibilities would the HOA assume, particularly related to stormwater facilities and creek-adjacent improvements?**

As noted, the Silver Oaks Estates on-site private facilities, including, but not limited to, private street, streetlights, common-area landscaping, mailboxes and bio-retention and storm drain facilities will be owned and maintained by the established Homeowner's Association created for the property. The 32 individual lots will be owned and maintained by the respective property owners.

Conditions of Approval, I 1-13 and J 1 relating to HOA responsibilities and CC&Rs have been imposed for the project. These conditions include:

a. The Final Map shall show private and open space deed restrictions. The restrictions are intended to preserve the open space and attractive visual character and prohibit grading (except for remedial grading, drainage improvements, and dicing the weed abatement); construction of all buildings and structures; and storage of any motor vehicles, trailers, recreational vehicles, graders, tractors, or similar equipment.
b. No alterations of Storm Drain Management Easement shall be allowed, except for activities approved as part of the maintenance, preservation, and/or enhancement plan. The deed restriction shall prohibit, in perpetuity, use and improvements within the Storm Drain Management Easement, Specifically, the deed restriction shall prohibit any physical alterations within the Storm Drain Management Easement, including vegetation removal, vegetation planting, landform alterations, or construction of structures or improvements.
c. A deed restriction shall alert each property owner to the possible presence of buried

human remains and/or artifacts.

d. Prepare a deed disclosure to be recorded with each lot that they are in a Community Facilities District (CFD). Should the HOA become defunct for any reason, the CFD will require annual assessment installments, hereinafter collectively referred to as special liens. If the special liens described above are not paid, foreclosure proceedings may be initiated at any time. After property taxes become delinquent, property may be sold for the delinquent amounts earlier than the regular property taxes.

Moreover, Condition of Approval No. K 1-2 requires the project to be annexed into the City's existing landscape and maintenance district and/or Grove Park maintenance district prior to the first Certificate of Occupancy or sale of any lot, whichever comes first.

The City's existing landscape and maintenance district pays for costs related to public roadway landscape maintenance of Clayton Road, Lydia Lane, and Oakhurst Drive (among others), City trail system, open space weed abatement, and the Clayton Fountain at the corner of Oakhurst Blvd., and Clayton Road. Combined, these areas have two million square feet of landscaping and irrigation, 515 acres of open space, 2,871 street trees and 27 miles of public trails. Maintenance of facilities not maintained by the District shall be the responsibility of the HOA.

b. Are there reserve funding or financial assurance requirements tied to those obligations?

Prior to selling any of the lots within the Silver Oaks Estates Project. The California Department of Real Estate (DRE) requires a Real Estate Public Report for the project. A California Department of Real Estate Public Report (White Paper) for a common interest development (HOA) requires the developer to submit detailed governing documents (CC&Rs), a proposed operating budget, and evidence of financial arrangements for common areas owned and maintained by the established Homeowners Association created for the project. The report must disclose to buyers all assessments, maintenance responsibilities, and management details.

The California Department of Real Estate (DRE) requires new Homeowners Associations (HOAs) to establish financially solvent budgets and reserve studies to ensure long-term maintenance of common areas. Key requirements include submitting a detailed operating budget, conducting reserve studies at least every three years, and, if necessary, using subsidy agreements for developer-controlled projects. Key HOA Requirements for DRE Public Report include approval of the following documentation by the State Department of Real Estate (DRE):

1. Governing Documents: Submission of the Declaration of Covenants, Conditions, and Restrictions (CC&Rs), Articles of Incorporation, and Bylaws as reviewed by the City.

2. HOA Budget Formulation: A DRE-compliant budget must be submitted, including operating expenses (landscaping, insurance, security) and reserve contributions for

major components. The budget is required to be approved prior to issuance of a Public Report and sale of any lots within the Silver Oaks Estates Project.

3. DRE HOA Solvency Requirements & Guidelines include the following:
   a. Initial Budget & Approval: Developers must submit a detailed budget (Forms 623, 624A, etc.) to the DRE for approval before issuing a Public Report, ensuring income covers operating costs and reserve funding.

      The budget must define how assessments are allocated, such as equal sharing or based on unit size. Budgets must be calculated based on realistic costs, with recommendations for specific per-unit costs for amenities like security or cable.

      Information on the management company, initial board members (often developer-controlled initially), and the timing for transferring control to homeowner members.

   b. Reserve Study Requirements: Associations must review major common area components and, at least every three years, perform a study to ensure sufficient funds are set aside for repairs and replacements.

      Evidence of financial arrangements (bonds, impound accounts) for the completion of common areas is required. HOA budgets, reserve studies, and financial summaries must be provided to members annually.

      Developers must also ensure that the HOA budget includes a contingency fund (typically 3-6% of operating expenses). The Public Report must disclose all fees, assessments, restrictions, and special, "unusual" costs” to the buyer.

   c. Operating Cost Manual: The DRE provides guidelines for realistic, minimum costs for maintenance, services, and utilities to ensure the budget is not artificially low. Reserve funds must be maintained for all components the association is obligated to repair, replace, or maintain.

   d. Developer Subsidy Agreement: If a developer chooses to subsidize an HOA to keep assessments low during initial sales, a formal, DRE-approved subsidy agreement must be in place.

   e. Budget Deficiencies: If an HOA is underfunded, it must produce a plan, and often levy special assessments, to address the financial shortfall.

c. If the HOA fails to maintain required facilities, what enforcement or backstop mechanisms are available to the City?

In addition to the DRE requirements, several Conditions of Approval have been imposed on the project that require documentation be provided to ensure HOA maintenance responsibilities are satisfactory.

Condition of Approval No. I 1. in part states: Maintenance responsibilities and ownership of any open space parcels upon approval by the Community Development Director may be ceded to a successor conservancy entity, which shall be subject to these conditions of approval and the maintenance obligations established through the CC&Rs.

Condition of Approval No. I 4 requires that the CC&Rs shall clearly note that all subdivision maintenance is to be done by the property owner, or the HOA, or the community facilities district.

Condition of Approval No. I 5 requires that the CC&Rs shall make adequate provision for funding road maintenance and establishing a maintenance cycle standard.

Condition of Approval No. I 6 states CC&Rs shall make adequate provision for funding the maintenance of the C.3 storm drainage facilities and establishing a maintenance cycle standard.

Condition of Approval No. I 8 states the CC&Rs shall include the stormwater operation and maintenance plan, as approved by the City Engineer.

Condition of Approval No. I 9 states routine inspection of the stormwater conveyance and treatment facilities, and the corresponding landscaping and irrigation improvements, shall be conducted by the HOA. The HOA shall be responsible for any needed maintenance work or repairs in their entirety.

Condition of Approval No. I 10 states The HOA shall perform and prepare annual inspections and reports for the stormwater conveyance and treatment facilities, which shall be submitted to the City along with payment of the City's required fees. In addition, the HOA shall be responsible for complying with the reports in relation to needed maintenance work or repairs.

Condition of Approval No. I 11 states No provision in the CC&Rs which is included as a result of these Conditions of Approval, may be amended without prior written approval of the City of Clayton.

Condition of Approval No. I 12 states The HOA shall be responsible for maintaining the landscaping and irrigation in the public right-of-way and the stormwater conveyance and treatment facilities.

Condition of Approval No. I 13 states an acceptable method, such as a tenant agreement and/or CC&Rs, must be provided to maintain the common areas, roadways, utilities, detention facilities, and open space. The developer shall provide the appropriate documentation for review by the Community Development Director and City Engineer (and City Attorney if determined necessary by the Community Development Director and/or City Engineer).

Condition of Approval No. I 14 states the applicant shall sign and record a covenant and agreement to ensure that the onsite storm water facilities will be maintained by the Home Owners Association (HOA).

These conditions of approval are to be carried forward in the approved DRE approved Conditions, Covenants and Restrictions (CC&Rs) for the Silver Oaks Estates Project as reviewed by the City of Clayton Community Development Department and City Attorney.

d. Has staff evaluated potential long-term municipal exposure if the HOA were to underperform or become insolvent?

As noted herein, safeguards are in place to assure that the established Silver Oaks Estates HOA is and remains solvent. Accordingly, staff have no reason to believe that there is long term municipal exposure should the Silver Oaks Estates HOA underperform or otherwise become insolvent. It should be noted that several HOAs and management companies operate in the area, so maintenance of the common areas and facilities by an established HOA is not a departure from City policy and practices.

Moreover, HOA insolvency and bankruptcy in California is considered rare, rather than common, due to the ability to enforce assessment increases and special assessments on homeowners to cover debts. While HOAs operate like businesses and can face financial distress from lawsuits or mismanagement, the legal requirement for members to pay for common area maintenance makes total financial collapse uncommon.

While financial struggles may occur, filing for bankruptcy is unusual for HOAs. If an HOA is in debt, California law generally allows the HOA board to raise dues or pass special assessments, spreading the debt across all owners rather than defaulting.

While some homeowners may face financial hardship due to high special assessments, the HOA as an entity usually finds ways to avoid total insolvency, ensuring that the community's financial obligations are eventually met by the homeowners.

When insolvency does occur, it is often due to major, uninsured lawsuits, mismanagement, or high rates of owner default on assessments.

4. Record Clarity –

a. From staff's perspective, does the current record clearly demonstrate that anticipated agency permit conditions would not materially alter the project analyzed in the EIR?

Consistent with Section 21082 of the CEQA Guidelines, the EIR was prepared by LSA under contract with the City of Clayton, as the CEQA Lead Agency. LSA is an established environmental planning firm that provides the required technical expertise to prepare environmental review documentation pursuant to CEQA. The technical analyses prepared by LSA were reviewed by City staff and the City Attorney and the EIR reflects the independent judgement of the City, pursuant to CEQA requirements.

The EIR, including the Initial Study (Appendix B of the EIR) includes an evaluation of all environmental issue topics outlined in the CEQA Guidelines and identifies impacts of the project relative to established significance criteria. In some cases, compliance with established regulations would ensure that the appropriate standards would be followed and appropriate measures would be implemented consistent with best practices to ensure that an environmental impact would not result with either construction or operation of the project. In other cases, specific mitigation measures are recommended to ensure that impacts would not exceed the established threshold. As described above, the Standard Conditions identified in the Initial Study require compliance with regulatory requirements, including the permitting processes established by the CDFW and RWQCB and the processes necessary to obtain take coverage under the ECCCHCP/NCCP. It is not anticipated that any agency permit conditions that would be required to further protect environmental resources would materially change the analysis or conclusions in the EIR or trigger subsequent environmental review.

b. Is there additional documentation from CDFW or RWQCB that staff expects to receive prior to the item returning to the Commission?

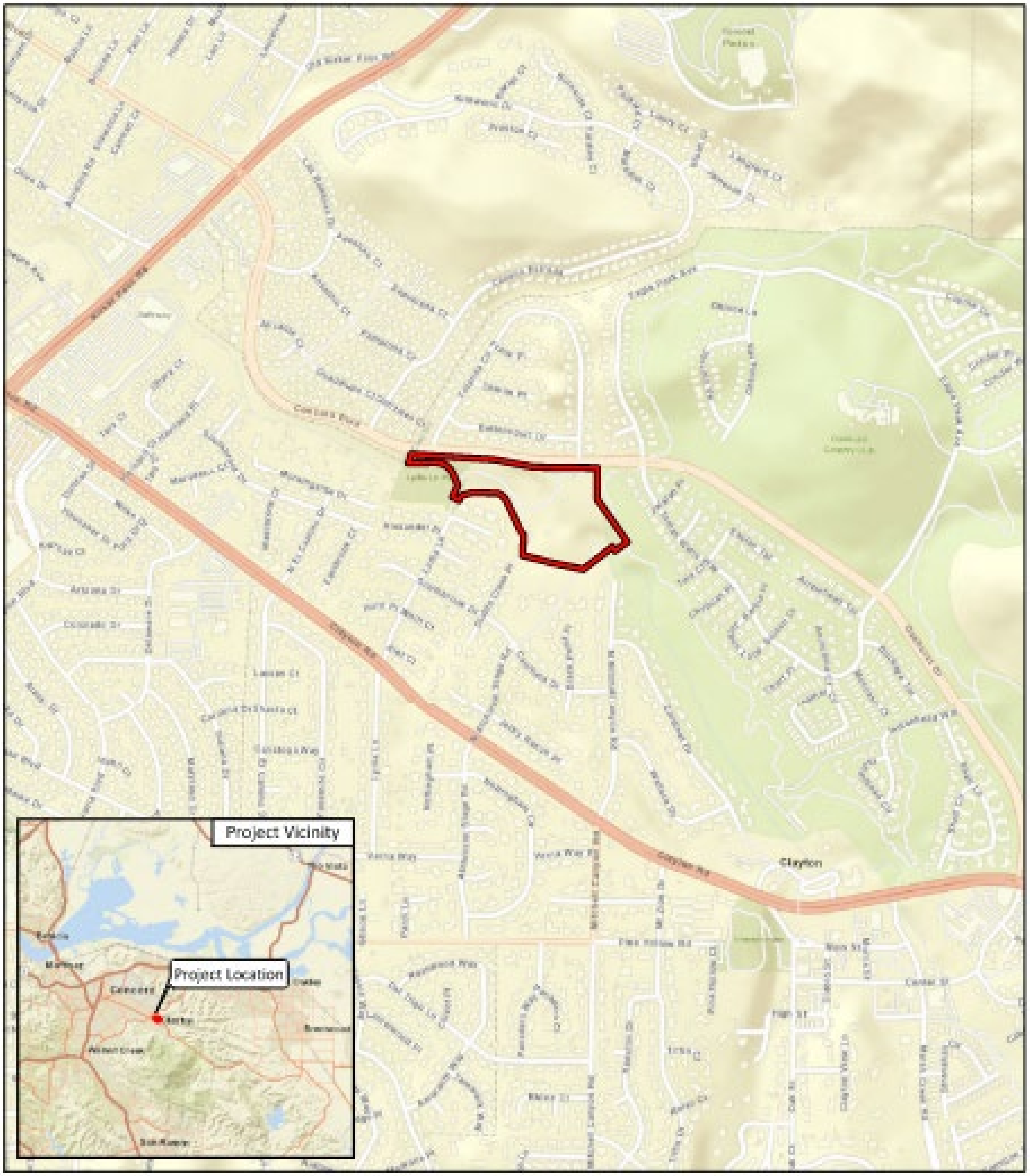
In accordance with Standard Conditions BIO-1 and BIO-2, the City must confirm that the project applicant has obtained the appropriate regulatory permits prior to commencement of project construction. As described above, both the CDFW and RWQCB were given several opportunities to provide comments on the CEQA document in accordance with the CEQA Guidelines. The CDFW submitted a comment letter on the Draft EIR on August 12, 2025. CDFW's comments and the City's responses to those comments are provided in the Response to Comments document (pp. 3-10 through 3-22). In accordance with the CEQA Guidelines, the Response to Comments document was provided to the CDFW and was made available for review as part of the City's public noticing for the Planning Commission hearing; no further comments from CDFW or the RWQCB have been received to date.

EXHIBIT A – Planning Commission Staff Report dated February 9, 2026, with the following Attachments:

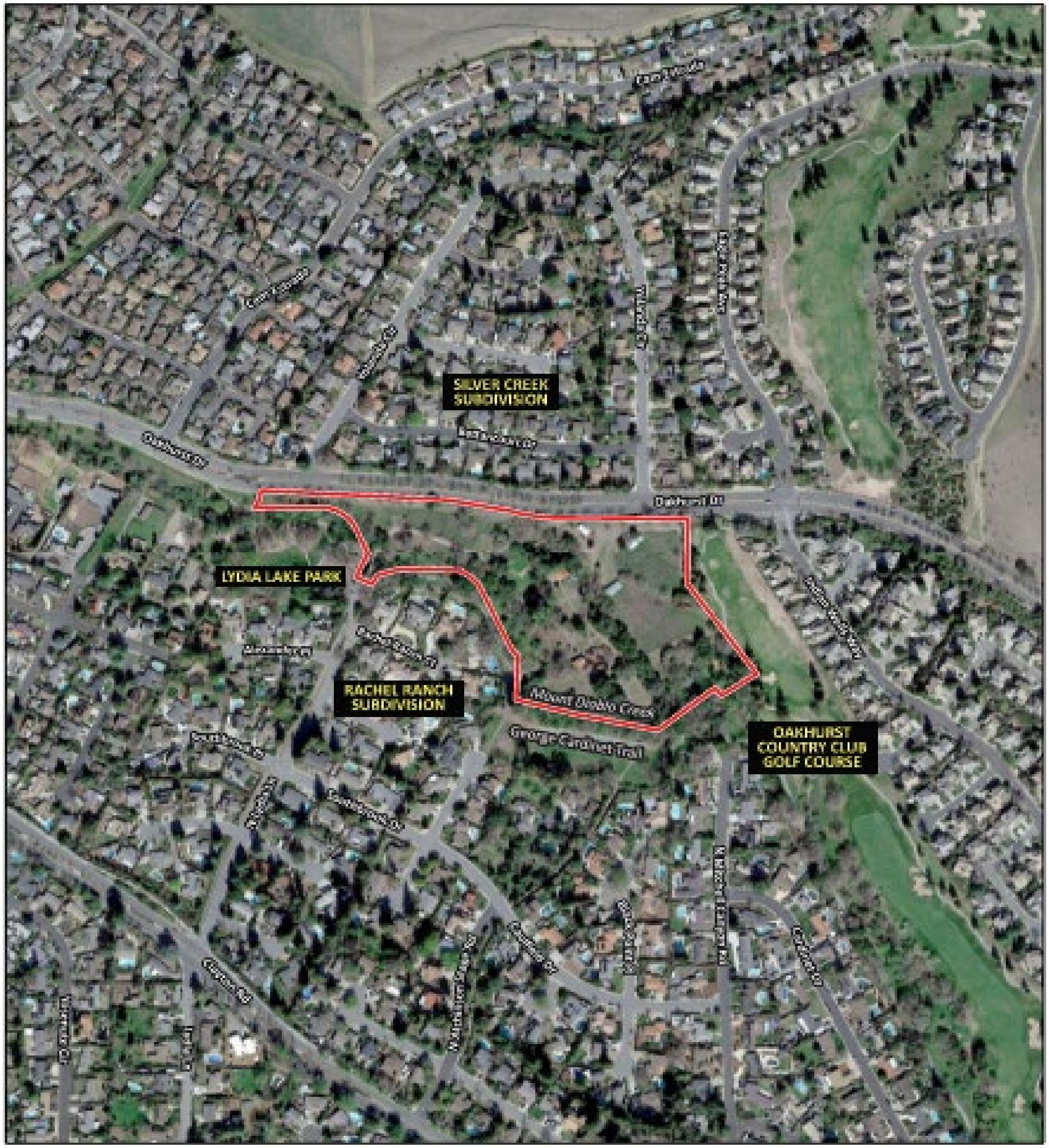
ATTACHMENTS:

A. Vicinity Map
B. Site Map
C. Development Plan and Vesting Tentative Subdivision Map prepared by DK Engineering dated May 8, 2023
D. Preliminary Landscape Plans prepared by Ripley Design Group dated May 4, 2023
E. Silver Oaks Estates Architectural Description, Architectural Plans, Floor Plans and Color Materials
F. City of Clayton Resolution No. XX-2025 Certifying the Silver Oaks Estates EIR, Adopting a Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program and CEQA Project Findings

G. City of Clayton Resolution No. XX-2025 Approving the Vesting Tentative Subdivision Map and Development Plan for a Planned Unit Development including Exhibit A – Findings and Exhibit B – Conditions of Approval
H. Silver Oaks Estates Draft Environmental Impact Report
I. Silver Oaks Estates Final Environmental Impact Report
J. Silver Oak Estates Mitigation Monitoring and Reporting Program



Attachment A



Attachment B