EXHIBIT B

PUBLIC COMMENTS

GENERAL COMMENTS

From: Juliet Blake
To: DCD Advance Planning
Subject: Urban Limit Line
Date: Tuesday, March 18, 2025 8:24:33 AM

Hello!

I was told that CoCo County is planning to potentially move some of the urban limit lines. I am wondering if any of these plans will impact the Camino Tassajara area, between Blackhawk and Dublin?

Thank you so much.

Juliet

Sent from Juliet's iPhone

From: Patricia Bristow
To: Will Nelson
Subject: Fwd: Comments on the ULL
Date: Friday, May 30, 2025 2:32:43 PM

Sent from my iPhone

Begin forwarded message:

> **From:** Patricia Bristow <pattybristow@sbcglobal.net>
> **Date:** May 30, 2025 at 1:39:43 PM PDT
>
> **Subject: Comments on the ULL**
>
> To Wil Nelson:
> I'm concerned about the "clean up" of the ULL proposal. It will devalue properties located in the unincorporated areas of Byron, Knightsen, and Discovery Bay. It also restricts affordable housing development that is so desperately needed in Contra Costa County. There is a great need for affordable single family homes in rural East County. People want to live out in the country. This proposed ULL will make new home construction nonexistent in the south east end of Byron.
> Thank you for your time.
> Patricia Bristow
>
> Sent from my iPhone

From:	jagktac@goldstate.net
To:	DCD Advance Planning
Cc:	Dominique Vogelpohl; lwilley@placeworks.com; Tanya Sundberg
Subject:	Urban limit Line ~~ Comment ~~~~~ 2026 Ballot Measure
Date:	Monday, March 17, 2025 3:47:33 PM

Please make his request as part of the public record.

I would like to nominate and support maps # Figure #7 and/or Figure #8 Sub Map " J " page #38 and #39 of 50 sheets

25-696 - Exhibit A - Map Series

Thank you
John A Gonzales
P.O. Box 369
Knightsen, Ca 94548

925-260-4728

From: Cheryll Grover
To: DCD Advance Planning
Subject: Expansion of Urban Limit lines
Date: Tuesday, March 18, 2025 1:58:56 PM

It has been far too long since adjustments have kept up with growth. And the State now encourages more growth even in towns that have little available space or infrastructure to support it.

Growth is now forced upon any remaining neighborhoods with a couple acres within their communities by states laws that benefit developers in return to the accommodation for new housing.

Neighborhoods are being left behind with no ability to input about the disastrous
effect of increased traffic forced into small neighborhoods with small streets, or any accommodation for safe traffic patterns, where children increasingly rely upon the streets for play areas.

Nothing that is happening in my neighborhood, met the level of interest required to have the developer agree with any better plans even though I was commenting on day one of their presenting their plans for preliminary oversight by the planning department. Because the department says their hands are tied.

It's time to stop doing all things that benefit developments while we clamor to consider huge swaths of park lands. It IS possible to build in some places without being an eyesore to the public, and to stop encouraging the highest possible densities, with no controls, building into older, poorer neighborhoods.

We have allowed oil drilling withing our downtowns. We need to consider present residents while accomplishing all the other things government determines are reasonable, in spite of known health risks to communities, destruction of historic and lovely surroundings, and intrusion by smells, dust, pollution expansion without reciprocal accommodations to the community like natural trees planted surrounding the offending industrial use in neighborhoods.

This can be accomplished with an equal application to beautiful areas like Blackhawk, and areas that are being destroyed like Mt. View unincorporated.

We have tried to get the County to buy open or available lands with our park dedication fees but instead, for the last 40 years, it always goes to the Marina. Where young kids would not be safe to try to access alone, and parents working more than ever.

We have lost our fire station 12, never to be reopened for surrounding area

response- while we have watched 2 houses catch fire because of inadequate response or water pressure in the hydrants. Lost our neighborhood Mt. View (historic) school with playground for bike riding, on a County street that does not have sidewalks, and 100 year old neighborhoods; for housing and benefitting financially schools elsewhere. No reciprocal event for the loss in the neighborhood and the kids who live here, and have since moved. Gentrification.

So our neighborhoods are now too overcrowded for traffic, speed control, fire hydrant water distribution, and without resources to provide a safe place for tots to play or bikes to be ridden safely so they use the streets in the further back neighborhoods. Those safe places will soon be gone with a Builders Relief development.

I wont go into the deaths and injuries from traffic and delivery trucks. Its time to get the over building out of the extreme overuse of our neighborhoods.

But developers have long said that it was too expensive to lay new infrastructure so they continued to overuse existing infrastructure that the existing neighborhoods have to pay for, until the point that the State opened even more opportunities for them without a profit structure to keep them affordable for the benefit of such rules relaxing by the relaxation of local codes or any input from surrounding communities. So urban limit lines have now only advantaged a few. Older neighborhoods have become the place where the buck stops, while the sewer systems here are constantly rebuilt and monthly servicing from rotor rooter because of errant neighbors.

There is always a side effect of our actions of protecting things for 30 years that end up only benefitting some, without the that should be determined by the type of project being environmentally as inconspicuous as possible, as well as its impact on neighbors, and that it includes more affordable options.

- They should provide transportation options bus to BART, encouraging getting out of cars and reducing freeway traffic.

- They should build along freeways as much as possible for easy flow to work transit without going through existing neighborhoods. If there are any developments needing to cross through existing neighborhoods there should be a stop sign to allow them to view the children playing in the street or cars backing out of driveways before proceeding. ALL developments should have more than one way in or out. Our development will impact nearly 600 homes if they ever have to evacuate in this refinery town that has constant accidents from the hazards of the refinery. The new developments should include superior air

filtration to keep from becoming an environmental issue.

- They should move outside the current limit lines with precision by scalpel for best architectural style, for best properties and not considered completely private so they dont take away public dog walkers, etc, ie, next to park lands, or with water views. (Planning Departments have abandoned control over creating housing that is attractive, for housing elements that are cheap. We must take it back to be building things that are attractive as we give up lands special to us. (In Mt.View, we have a park-placed too far away for small children to access, but housing around it is quaint and beautiful for a reasonable price. We have good examples of how to improve the housing vs parks issues.)

- They should provide for a minimum of 3 cars parking per unit as the state has allowed highest density without sufficient parking which will now back flow parking onto already completely over filled street parking for existing neighborhoods and people who struggled to have enough jobs for the unaffordable homes we currently have.

- New housing should be tied to selling to current residents of that nearby town first for 6 months before opening up the buyers to a surrounding town. (The concept of we need more housing can add up to we just built it for someone from China to scoop it up for a rental, which further erodes our infrastructure of owned housing or American ownership, while we sacrifice areas that have been hard fought for over the years.)
-
- Out of state developers/and areas for developments near downtowns or with water views should be required to do apartments mixed with townhouses only, as affordable housing is much more needed for renters and housing developments are not adding enough ACTUALLY affordable housing to that inventory. The developer told us that 8 out of 41 units are affordable and the rest is market rate. Market rate 3 bedrooms definitely need more than one parking space per unit and that is all they provided for and no tot lot as well as zero setbacks from the existing housing that has been here since the 70's and 3 stories tall over two story long held previous code next door.

Please add my very sincere recommendations to the plans. If there are road blocks to any of what I have requested please call me or email me to discuss so I can at least understand why we are unable to make progress.

Thank you very much~

Cheryll Grover
(925) 383-4743

From: Marc Joffe
To: DCD Advance Planning
Subject: Urban Limit Line Comments
Date: Thursday, May 29, 2025 5:16:11 PM

Dear Mr. Nelson:

I am the President of the Contra Costa Taxpayers Association but am commenting in my personal capacity.

The Urban Limit Line should be relaxed to allow more home construction around Byron and other unincorporated communities.

Many are concerned about high home prices in the Bay Area. One way to remedy that is to increase housing supply. And the reality is that not everyone wants to live in an apartment adjacent to a BART station. Consequently, we need to build more single-family housing in outlying areas. Maintaining the ULL (let alone making it more restrictive) is totally inconsistent with the now popular “Abundance” approach and the opposite of successful land use policies in Texas suburbs that have kept home prices relatively low despite substantial in-migration.

Thank you for considering my views.

Marc Joffe
Walnut Creek
415-710-7159

From: John Jordan
To: DCD Advance Planning
Subject: urban limit line
Date: Friday, March 7, 2025 4:24:38 PM

John Jordan here, 6151 Park Ave. Richmond. We've talked a number of times over the years.
Quick question. The material you sent me seems to say that the ballot measure would change the few lots around me from farms (agricultural) zoning to residential (like the areas near me). This makes sense. I of course support it, and will actively support it as we get closer to the election.
I want to make sure that I am understanding it. Do I have it more or less correct?
-Thanks
-John

From:	Gretchen Logue
To:	Will Nelson
Cc:	John Kopchik
Subject:	ULL Renewal Expansion Questions
Date:	Friday, May 23, 2025 10:13:30 AM
Attachments:	Alamo & Diablo ULL Expansion Map.png TV ULL Expansion Map.png

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Hello Will,

As I was looking through the ULL Renewal Map Series, a couple expansion areas caught my eye in the Alamo and Diablo area. I attached the map "Alamo & Diablo ULL Expansion Map.

1. 34.7 Alamo - ac expansion to include the open space/park area inside the ULL - County notes reason as to "improve clarity by aligning ULL to park boundary".
    1. Is that land now under the Non-Urban Land Use Designation? If so, which designation?
    2. If the land is brought inside the ULL, then will the land fall under the Urban Land Use Designations?
    3. If the land is moved inside the ULL, what is the process to develop the land?
    4. As the ULL is now drawn, does the land act as a "greenwall'?
    5. Is the land less likely to be developed if it stays outside the ULL?
2. 2.3 ac Diablo - expansion to include existing development.
    1. What is the existing development on this parcel of land?

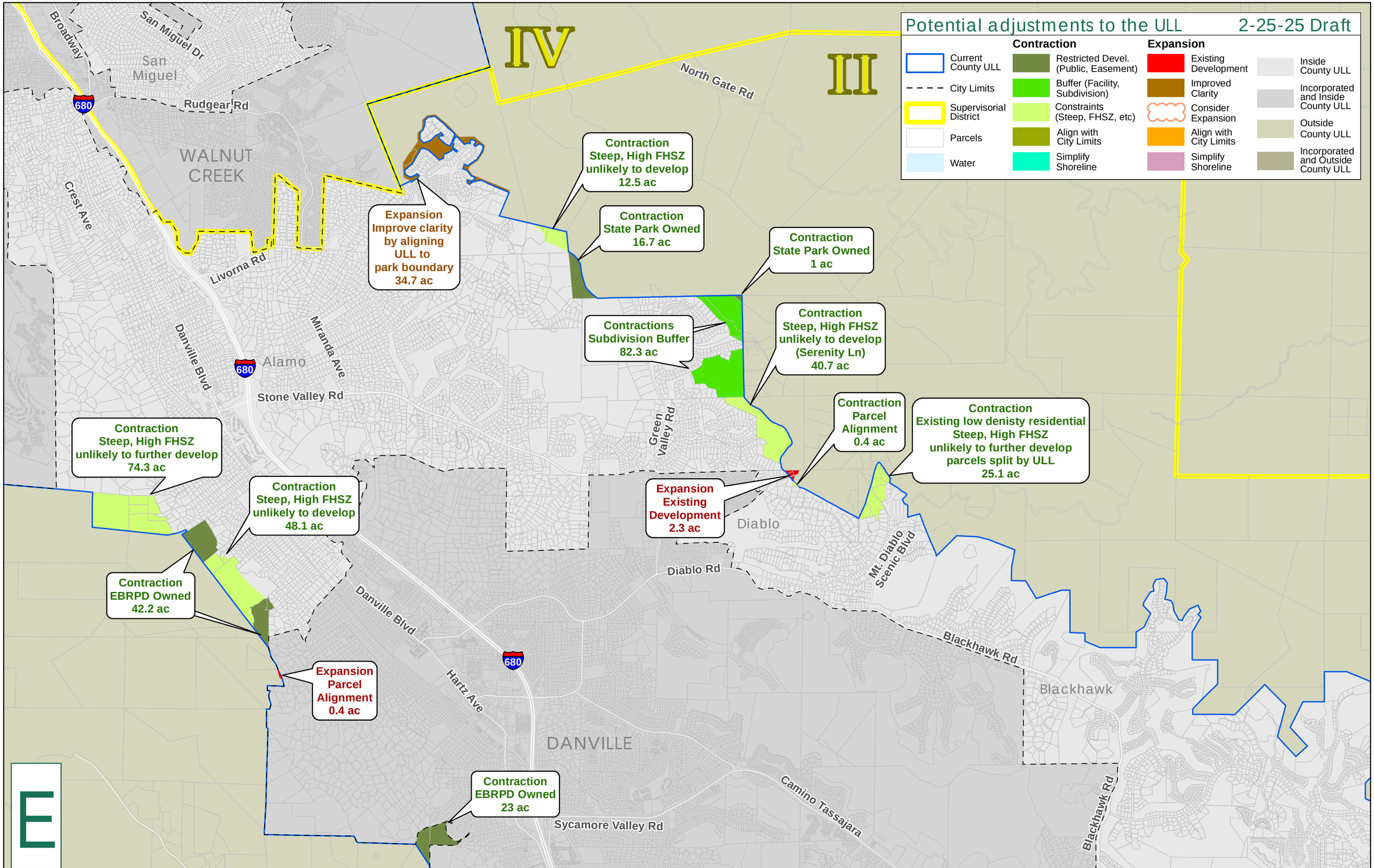
In the Tassajara Valley (TV ULL Expansion Map attached):

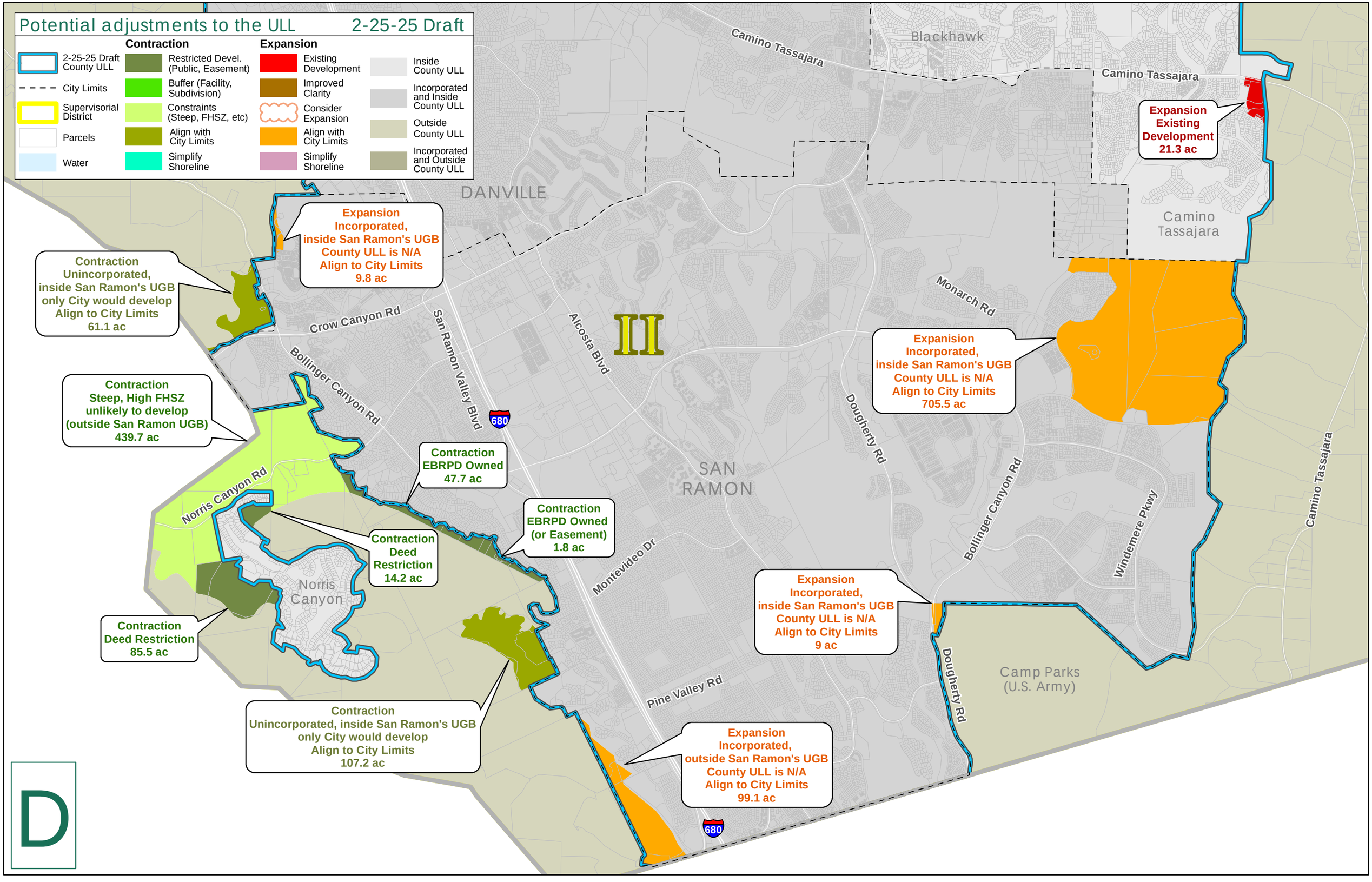
1. 21.3 ac expansion to include existing development to "clean up the line". This is the Mustang Soccer field area, Private/Public Recreation, which is under the Non-Urban Land Use Designation, so shouldn't the land stay outside the ULL?
    1. Isn’t it true that this recreation development is under the Non-Urban Land Use Designation, therefore the land should remain outside the ULL?
    2. If the land is brought inside the ULL, then will the land fall under the Urban Land Use Designations?
    3. If the land is moved inside the ULL, what is the process to develop the land?
    4. As the ULL is now drawn, does the land act as a "greenwall'?
    5. Is the land less likely to be developed under the Urban Land Use

Designations if it stays outside the ULL?

Thank you for your time.

Gretchen Logue
Tassajara Valley Preservation Association


Potential adjustments to the ULL
2-25-25 Draft
Contraction
Current County ULL
City Limits
Supervisorial District
Parcels
Water
Restricted Devel. (Public, Easement)
Buffer (Facility, Subdivision)
Constraints (Steep, FHSZ, etc)
Align with City Limits
Simplify Shoreline
Expansion
Existing Development
Improved Clarity
Consider Expansion
Align with City Limits
Simplify Shoreline
Inside County ULL
Incorporated and Inside County ULL
Outside County ULL
Incorporated and Outside County ULL
IV
II
E
Broadway
San Miguel Dr
San Miguel
Rudgear Rd
WALNUT CREEK
Crest Ave
Livorna Rd
Danville Blvd
Miranda Ave
Alamo
Stone Valley Rd
Green Valley Rd
North Gate Rd
Diablo
Diablo Rd
Mt. Diablo Scenic Blvd
Blackhawk Rd
Blackhawk
Hartz Ave
DANVILLE
Camino Tassajara
Sycamore Valley Rd
680
Expansion Improve clarity by aligning ULL to park boundary 34.7 ac
Contraction Steep, High FHSZ unlikely to develop 12.5 ac
Contraction State Park Owned 16.7 ac
Contraction State Park Owned 1 ac
Contractions Subdivision Buffer 82.3 ac
Contraction Steep, High FHSZ unlikely to develop (Serenity Ln) 40.7 ac
Contraction Parcel Alignment 0.4 ac
Contraction Existing low denisty residential Steep, High FHSZ unlikely to further develop parcels split by ULL 25.1 ac
Expansion Existing Development 2.3 ac
Contraction Steep, High FHSZ unlikely to further develop 74.3 ac
Contraction Steep, High FHSZ unlikely to develop 48.1 ac
Contraction EBRPD Owned 42.2 ac
Expansion Parcel Alignment 0.4 ac
Contraction EBRPD Owned 23 ac


Potential adjustments to the ULL
2-25-25 Draft
Contraction
Expansion
2-25-25 Draft County ULL
City Limits
Supervisorial District
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Water
Restricted Devel. (Public, Easement)
Buffer (Facility, Subdivision)
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Align with City Limits
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Consider Expansion
Align with City Limits
Simplify Shoreline
Inside County ULL
Incorporated and Inside County ULL
Outside County ULL
Incorporated and Outside County ULL
Camino Tassajara
Blackhawk
Camino Tassajara
Expansion Existing Development 21.3 ac
DANVILLE
Camino Tassajara
Expansion Incorporated, inside San Ramon's UGB County ULL is N/A Align to City Limits 9.8 ac
Contraction Unincorporated, inside San Ramon's UGB only City would develop Align to City Limits 61.1 ac
Crow Canyon Rd
San Ramon Valley Blvd
Alcosta Blvd
II
Monarch Rd
Expansion Incorporated, inside San Ramon's UGB County ULL is N/A Align to City Limits 705.5 ac
Bollinger Canyon Rd
Contraction Steep, High FHSZ unlikely to develop (outside San Ramon UGB) 439.7 ac
680
Dougherty Rd
Contraction EBRPD Owned 47.7 ac
SAN RAMON
Bollinger Canyon Rd
Windemere Pkwy
Camino Tassajara
Norris Canyon Rd
Contraction EBRPD Owned (or Easement) 1.8 ac
Contraction Deed Restriction 14.2 ac
Montevideo Dr
Norris Canyon
Expansion Incorporated, inside San Ramon's UGB County ULL is N/A Align to City Limits 9 ac
Contraction Deed Restriction 85.5 ac
Dougherty Rd
Camp Parks (U.S. Army)
Pine Valley Rd
Contraction Unincorporated, inside San Ramon's UGB only City would develop Align to City Limits 107.2 ac
Expansion Incorporated, outside San Ramon's UGB County ULL is N/A Align to City Limits 99.1 ac
680
D

From:	Mike Nisen
To:	Will Nelson
Subject:	FW: Urban Limit Line ULL)re
Date:	Wednesday, June 4, 2025 6:33:47 AM
Attachments:	DOC060225-06022025080213.pdf final-traffic-calming-guide_v2-a11y.pdf

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Good morning Mr. Nelson,

I sent this to you on Monday June 2, 2025. I looked in my junk mail this morning and apparently this didn't go through, as there was a message stating this.
Hopefully it goes though this time.

Mike Nisen
Evans Brothers Inc.
Office (925) 443-0225
Fax (925) 453-8619
Cell (925) 525-0502
mike@evansbrothers.com

-----Original Message-----
From: Mike Nisen
Sent: Monday, June 2, 2025 9:28 AM
To: Mike Nisen <mike@evansbrothers.com>
Subject: Urban Limit Line ULL)re

Good morning Mr. Nelson,

I have attached a page from the Contra Costa County - 2045 General Plan which specifically refers to the Byron area entitle Byron - Guidance - 4.
In the Policies section, Item #10 states "Support community efforts to establish a community services district (CSD) to provide basic services to Byron. I am not quite sure how that would be accomplished, as Byron is so greatly restricted by the ULL that almost no new growth can take place. Also, a good portion of the land contiguous to the eastern portion of the ULL has been designated for solar energy facilities. These solar facilities are also presently exempt from property taxes. Where is revenue supposed to be derived from to support a CSD? Stifling growth is certainly not going to make a CSD feasible for Byron.

In the Actions section of the Byron - Guidance - 4 , item #5 states "Study the feasibility and need for traffic calming along Byron's roadways". I have also attached a copy for your convenience.
A round-about for Camino Diablo in the 30 MPH zone has been discussed many times at the Byron MAC meetings. I beleive there is not enough room available for a round-about be feasible, as some large trucks are allowed to use this roadway occasionally. On September 25, 2024, I sent an email which included a document entitled "Traffic Calming Guide A Compenium of Stratagies" issued by the California Department of Transpotation to a manager in the Contra Costa County Transportation Department. The booklet contained several different traffic calming stratigies, including the lateral shift and chicanes methods that may possibly work on Camino Diablo, as they don't require a lot of excess room to be utilized. However, I never received a response back.

Thank you very much for the opportunity to provide comments,

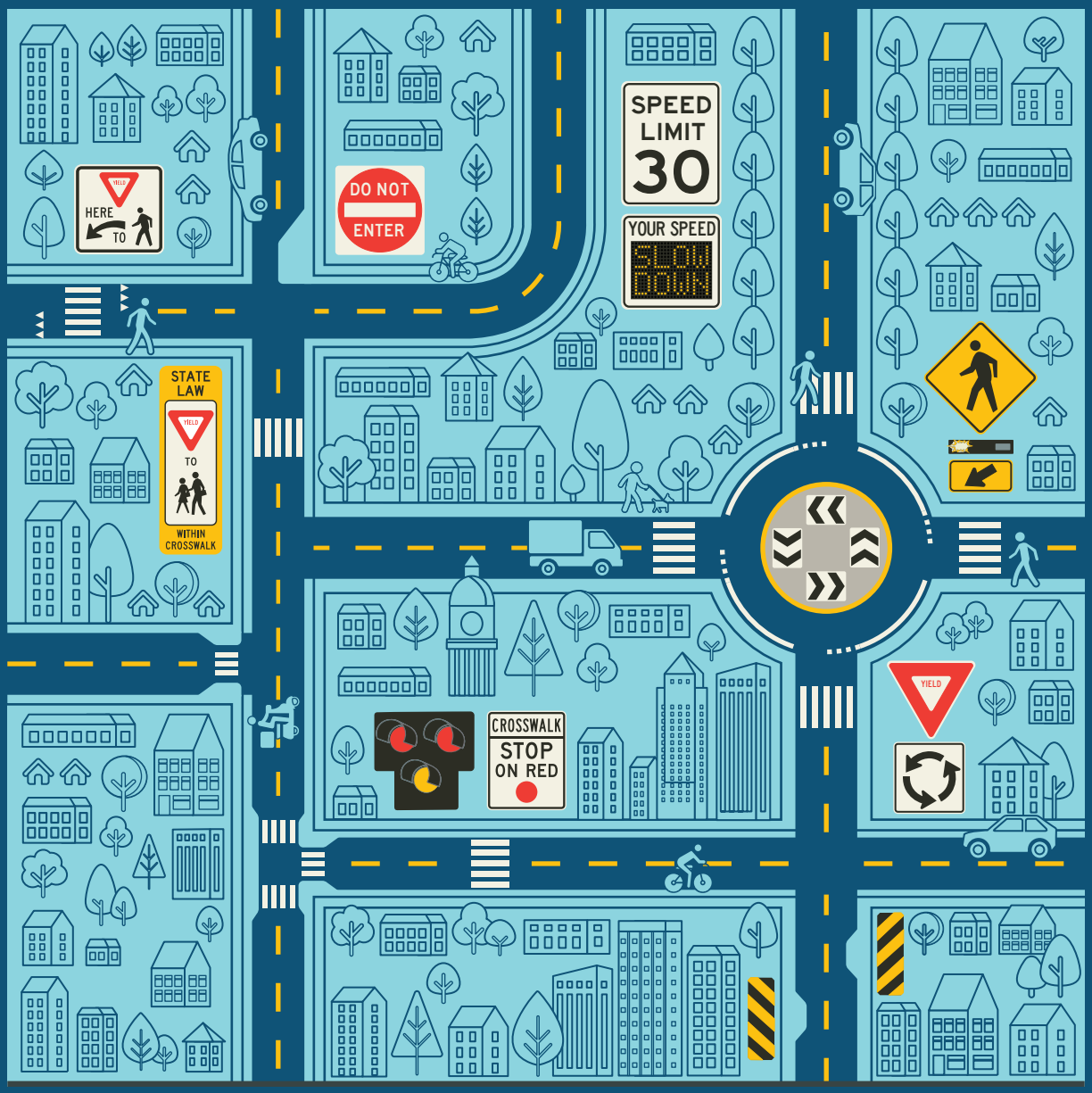
Mike Nisen
Evans Brothers Inc.
Office (925) 443-0225
Fax (925) 453-8619
Cell (925) 525-0502
mike@evansbrothers.com

POLICIES

1. Encourage business development that supports a full range of services for residents and is tailored to Byron's small-town character.
2. Encourage creative, compatible residential and commercial development on vacant parcels within Byron's existing footprint.
3. Attract small businesses and facilitate community events downtown.
4. Maintain and enforce regulations to curb illegal dumping and littering.
5. Encourage reuse of the previously developed portion of the Byron Hot Springs property in a way that is compatible with operations at Byron Airport, rehabilitates historic buildings, attracts regional tourists, and is not growth inducing.
6. Support agriculture, including animal keeping and raising, as an important part of Byron's character.
7. Encourage CCTA to prioritize the completion of the Vasco Road Byron Highway Connector Road project.
8. Address traffic conflicts and safety concerns around U-Pick areas, including along Marsh Creek Road, Vasco Road, and Walnut Boulevard, with consideration to agricultural equipment on roads.
9. Ensure that development projects do not conflict with potential alignments for the Vasco Road Byron Highway Connector Road/State Route 239 project, as shown in Figure TR-3, Roadway Classifications, in the Transportation Element.
10. Support community efforts to establish a community services district to provide basic services to Byron.

ACTIONS

1. Work with local businesses and community groups to establish an economic development strategy for Byron that includes guidance for on-going coordination of economic development efforts in the community. As part of this process, create a unique branding identity for Byron to support agricultural tourism.
2. Adopt zoning that provides more flexibility for downtown development, including relaxing parking requirements when street parking is available and expanding allowed uses to include light manufacturing for businesses that both manufacture and sell products on-site.
3. Install sidewalks and bikeways with street trees, signage, and crosswalks that connect downtown Byron to Byron Park and Saint Anne Church.
4. Maintain street trees in downtown Byron to support walkability and a more vibrant downtown.
5. Study the feasibility and need for traffic calming along Byron's roadways.
6. Upon completion of the Vasco Road-Byron Highway Connector Road, designate a truck route to separate truck traffic from other modes of transportation, including around U-Pick agricultural areas, such as along Marsh Creek Road, Vasco Road, and Walnut Boulevard.
7. Work with local and regional stakeholders to develop a trails plan that provides local and regional trail connections for Byron, including trails that connect to local destinations like Byron Hot Springs and trails that provide regional connections to recreational and commute destinations. As part of the planning process, consider potential recreational re-use along railroad rights-of-way as well as strategies to effectively communicate trail information to the public. (3-76)



Traffic Calming Guide

A Compendium of Strategies

California Department of Transportation

Caltrans

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Introduction

The California Department of Transportation (Caltrans) recognizes all modes of travel are integral to our vision of delivering a brighter future for all through a world-class transportation network. As Caltrans progresses towards achieving a transportation system that improves accessibility and connectivity to essential community destinations for all users, we continue to provide guidance that contributes to the livability and safety of all users of the State highway environment.

As established in Director's Policy 36 (DP-36): Road Safety, Caltrans has a vision to eliminate fatalities and serious injuries on California's roadways by 2050 and provide safer outcomes for all communities. To support this vision, Caltrans has adopted the Safe System Approach which is an international best practice in road safety. It includes the following five elements : safe road users, safe speeds, safe roads, safe vehicles, and post-crash care. Despite State highways being planned, designed, and constructed based on geometric criteria such as design speed, the highway will not function as intended with drivers who operate at excessive speeds. The data collected from the Statewide Integrated Traffic Records System (SWITRS) between 2011 to 2021 showed that 34% of single vehicle crashes related to fatalities and serious injuries were due to speeding and aggressive driving. Speed management is critical to the success of the Safe System Approach which is why "safe speeds" is one element of this Approach. As kinetic energy increases, the probability of a crash and the severity of that crash increases too. The Safe System Approach aims to reduce impact forces to levels that are tolerable for the human body to sustain. Operating speeds, roads, and vehicles should be designed and managed to reduce risk of fatalities and serious injuries when a crash occurs. The focus of this Traffic Calming Guide is to build self-enforcing roadways that guide road users to travel at a safe speed, especially through conflict points. To this end, the Traffic Calming Guide was developed from recommendations of the Zero Traffic Fatalities Task Force.

Caltrans recognizes that walking, biking, transit, and passenger rail are integral to our transportation network as established in Director's Policy 37 (DP-37) and developed guidance inclusive of this document to meet the goals stated in DP-37. Main Street, California discusses the possibilities and the types of questions that needed to be asked in order to foster a main street that helps people, communities, and the transportation system thrive. Design Information Bulletin 94 provides contextual guidance for complete street projects or facilities in Urban Area, Suburban Area, and Rural Main Street place types. These documents, along with the Traffic Calming Guide, provide guidance to those who implement traffic calming strategies to help achieve goals set forth by communities and agencies.

Traffic calming strategies should be implemented at locations along the State Highway System (SHS) where vehicle speed will have a negative impact on the non-motorized modes of travel. The Traffic Calming Guide provides best practices, relevant standards, and resources discussed in the FHWA Traffic Calming ePrimer. The traffic calming measures encompass various strategies including law enforcement, public education, as well as temporary and permanent highway features that become part of the highway infrastructure. Other important considerations should include the accommodation of emergency response services and the guidance published in Design Information Bulletin 93, Evacuation Route Design Guidance. The State Highway System should be reviewed from a holistic perspective and discussed with local agency partners and communities when working with adjacent private and public access.

Design flexibility is essential when implementing traffic calming strategies. A “one-size-fits-all” design philosophy is not Caltrans’ Departmental policy. Designers and planners need to consider land use, community context, and the associated user needs of each facility. Project decisions should be made to balance pertinent values (e.g., modal priorities, community goals and objectives, environmental resources, social impact, economic impacts, fiscal resources, etc.) alongside exercising engineering judgment and experience. The key to a successful project includes weighing and carefully considering each of these values and utilizing engineering judgment to achieve the desired traffic calming needs.

The traffic calming measures discussed in this guide can be implemented separately or be used in conjunction with other calming measures. The Speed Reduction category within this document refers to the speed that is being reduced by installing that specific measure. Additional analysis is required to capture the cumulative benefits when implementing multiple calming measures at a specific location. It is advisable to conduct spot speed surveys following the implementation of traffic calming measures. Engineering judgement should be exercised to evaluate whether the roadway warrants a lower posted speed limit.

The Traffic Calming Guide is prepared for Caltrans for use on the California State highway system and it is not a substitute for engineering knowledge, experience, or judgment. It is neither intended as, nor does it establish, a legal standard for these functions. The traffic calming strategies established and discussed herein are for the information and guidance of the officers and employees of Caltrans. Many instructions given herein are subject to amendment as conditions and experience warrant. Special situations may call for deviation from this guide. The publication of this guide shall not create, nor is it intended to be, a standard of conduct or duty toward the public.

Identifying the Need for Traffic Calming

Based on engineering judgment, traffic calming strategies should be considered whenever there is a need to reduce vehicle speeds and/or traffic volumes on a roadway or roadway network. Increased consideration should be given to the following areas: 1) Along Safety Corridors or roadway segments with a high percentage of speed-related collisions, 2) In locations or facilities that generate high concentrations of bicyclists and pedestrians (refer to CA MUTCD Section 2B.13 for definition of "Safety Corridor" and "land or facility that generates high concentrations of bicyclists or pedestrians"), 3) To support transitions from high speed to low speed contexts, such as in the Transitional Area place type or when approaching a Rural Main Street. Caltrans recognizes that the implementation of traffic calming strategies may not be suitable for some project types and scope of work. Caltrans may collaborate with local agencies and the community to identify the roadway segments of need and select the appropriate traffic calming strategies early in the project development phase.

How This Guide Is Organized

The Traffic Calming Guide consists of six categories: Signings and Markings, Physical Intersection Modifications, Roadway Narrowing, Vertical Roadway Elements, Physical Roadway Segment Modifications, and Others. Each category contains several traffic calming measures that belong to the category and information related to measures is presented in the following sub articles: Description, Placement, Performance, Maintenance Considerations, Other Considerations, References, and Sample Projects.

This guide was produced in close collaboration between Division of Safety Programs, Traffic Operations, and Design. Each individual calming measure was written by an editor, who is the subject matter expert in their respective Division. Any future updates after the initial publication will have a vertical line in the left or right-side margin with a revision date at the footer to mark the updated content to the readers.

Category A. Signings and Markings

Vehicle Speed Feedback Signs

Description

Vehicle Speed Feedback Signs (SFS), also known as Dynamic Speed Displays, provide drivers with a feedback display of vehicles speed, while reminding drivers of the posted speed limit. SFS can be an effective method for reducing speeds at a desired location when appropriately complemented with police enforcement.

SFS assembly with R2-1

Placement

Vehicle Speed Feedback signs can only collect and display the speed of one vehicle at a time. Vehicle Speed Feedback signs are most effective when there is only one lane of traffic in each direction with daily volumes low enough to allow for gaps in traffic. The usage can vary depending on the purpose of placement and site conditions.

Functional Classification: Principal Arterials, Minor Arterials, Collectors, and Local Roads

Appropriate Daily Volume Range: These signs are most effective on roadways where there are gaps between vehicles.

Maximum Posted Speed Limit: CA MUTCD section 2B does not indicate maximum posted speed limits for this countermeasure.

Performance

Speed Reduction: The FHWA cited 7 studies that ranged from a 2 MPH to 7 MPH speed reduction. This countermeasure is most effective when paired with enforcement and can lose its effectiveness over time as drivers become desensitized to the notification when it is not accompanied by enforcement.

Volume Reduction: N/A (This was not well documented and is not generally a goal of this measure)

Impact on Emergency Response: None

Mobility Impacts: Nominal

Maintenance Considerations

- Need to consider speed accuracy to avoid underestimation of speed
- Signs need to be calibrated regularly. The frequency can vary, but yearly is common
- Need to consider overall sign visibility
- Need to consider power source and need for backup power
- Contact Caltrans maintenance for maintainability, roles, and responsibilities when placed on the SHS

Other Considerations

- More effective if used with other information indicators or signs to reduce speed. Consider pairing with police enforcement
- Consider placement within School Zones
- Consider setting a maximum speed threshold over the speed limit to flash, “SLOW DOWN” instead of reporting the speed. A maximum of 10-15 MPH over the posted limit is common
- Specifications of the signs should be reviewed ahead of installation
- Consider the existing and future landscape on the visibility of the sign

References

1. California MUTCD - Caltrans
2. Traffic Calming ePrimer - FHWA

Sample Projects

H Street in Sacramento, CA (Google Earth)

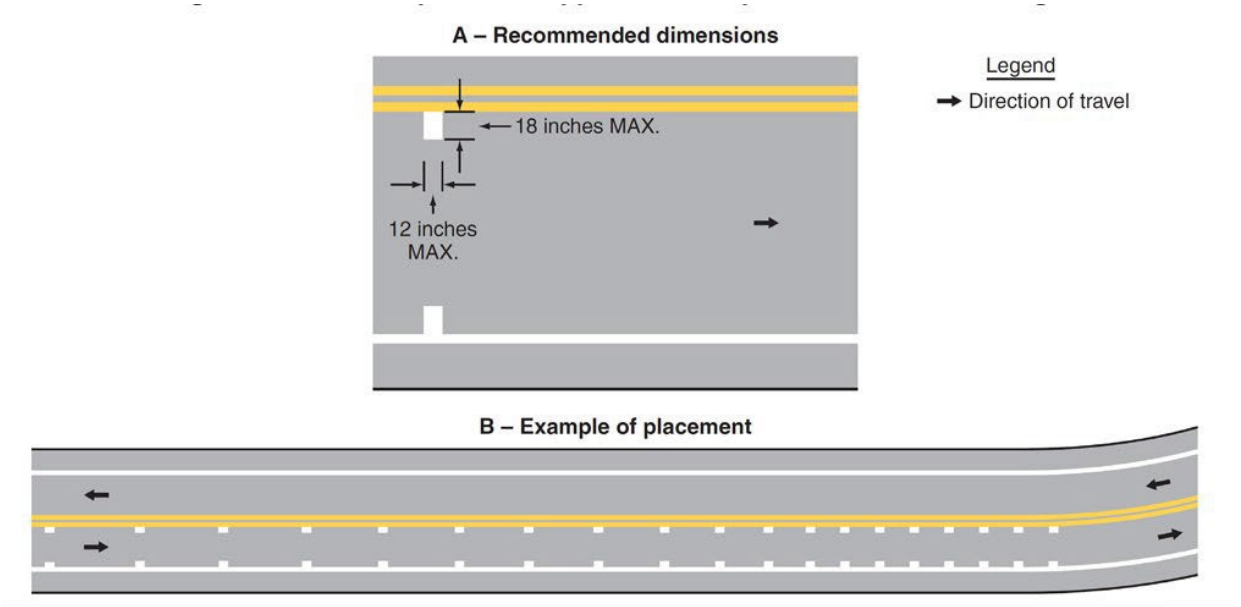
Project Description:

Vehicle Speed Feedback sign was installed along H Street in Sacramento to discourage excessive speeding through the residential neighborhood.

Speed Reduction Markings

Description

Speed Reduction Markings (also known as Optical Speed Bars) are transverse pavement markings placed with progressively reduced spacing on both edges of the traveled way to create the perception of increased speed. This illusion encourages drivers to slow down as they pass by the markings. Durable marking materials should be used as markings are exposed to increased wear from tires. See California MUTCD Section 3B.22 for additional details.



Speed Reduction Markings (CA MUTCD)

Placement

Speed reduction markings should be reserved for unexpected curves and should not be used on long tangent sections of roadway or in locations frequented mainly by local or familiar drivers. Speed reduction markings shall not be used in lanes that do not have a longitudinal line (center line, edge line, or lane line) on both sides of the lane.

Functional Classification: Collectors and Local Roads

Appropriate Daily Volume Range: Any

Maximum Posted Speed Limit: Table 3 in FHWA's Low-Cost Treatments for Horizontal Curve Safety 2016 contains guidelines for approach speeds from 45 MPH to 70 MPH and curve speeds from 15 MPH to 50 MPH.

Performance

Speed Reduction: 0-5 MPH reduction (FHWA)

Impact on Emergency Response: None

Maintenance Considerations

SNOW

- Impact of salt and other road treatments on markings
- Use durable marking materials that can withstand snowplow operations
- Use of depressions for markings, so that road plowing operations pass over the top without impacting the markings

OTHER

- Impact of constant traffic wear of the pavement markings

Other Considerations

- Where significant eradication of existing markings is required, it is recommended that this measure is implemented within a re-paving project
- CA MUTCD and latest applicable standards/other manuals should be utilized
- Check if there are conflicts with other pavement delineation and markers

References

1. California MUTCD (Section 3B.22) - Caltrans
2. Low-Cost Treatments for Horizontal Curve Safety 2016 (Chapter 3) - FHWA

Sample Project

Folsom Blvd approaching US 50 WB on-ramp in Folsom, CA (Google Earth)

Project Description:

Speed reduction markings were placed on the Folsom Blvd turn lane leading to the on-ramp. The pavement markings were placed in a pattern of progressively reduced spacing to give drivers the impression of increased speed, so drivers will slow down prior to entering the horizontal curve.

In-Street Pedestrian Crossing Signs

Description

In-street Pedestrian Crossing signs are placed within a roadway, either between travel lanes or in a median. The sign may be used to remind road users of laws regarding right of way at an unsignalized pedestrian crossing. In California, the R1-6 usage is limited because the sign does not enforce vehicles to stop per CVC 21950.

The In-street Pedestrian Crossing sign is used with other crosswalk visibility enhancements to indicate preferred locations for people to cross and help reinforce the driver requirement to yield the right of way to pedestrians at designated pedestrian crossing locations.

In-Street Pedestrian Crossing Signs (R1-6) (FHWA)

Placement

Most uncontrolled pedestrian crossings with high pedestrian volumes, especially on roadway crossings with 10,000+ ADT (FHWA). See Table 1 for additional recommendation for placement.

Functional Classification: Minor Arterials, Collectors, and Local Roads

Posted Speed Limit: 30 MPH or less (FHWA)

Performance

Speed Reduction: N/A (Driver compliance, such as drivers yielding for pedestrians increased significantly)

Volume Reduction: N/A

Impact to Emergency Response: None

Maintenance Considerations

SNOW

- Need appropriate width to avoid damaging the sign
- Consider seasonal removal of signs

OTHER

- Consider mountable design to avoid conflicts with commercial vehicles

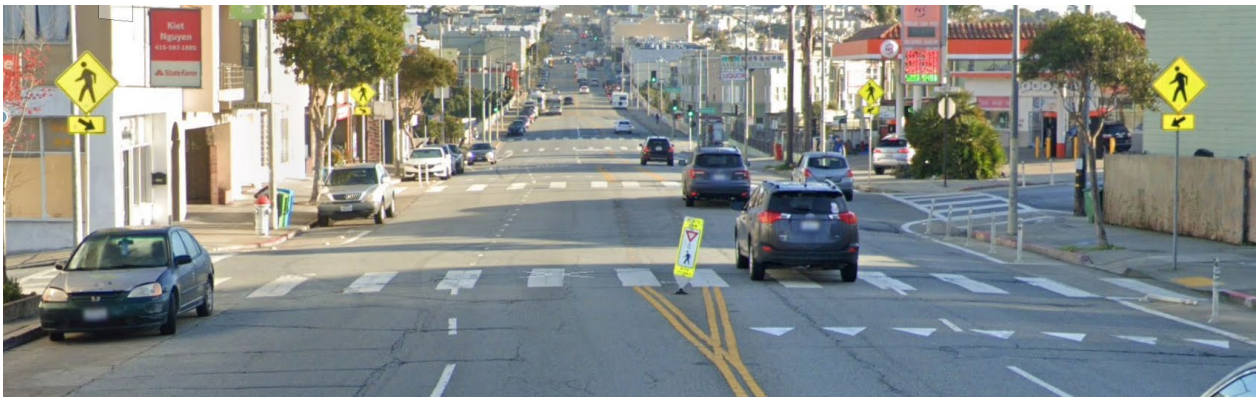
Other Considerations

- Should only be used at uncontrolled pedestrian crossing locations
- Consult with the District Pedestrians and Bicyclists Safety Engineer
- Must meet AASHTO breakaway requirements
- Should be removable for roadway maintenance
- Background can be yellow or fluorescent optic yellow

References

1. Crosswalk Visibility Enhancements - FHWA
2. California MUTCD - Caltrans
3. In-Street Pedestrian Crossing Sign - PEDSAFE

Sample Project



Mission St and Admiral Ave in San Francisco, CA (Google Earth)

Project Description:

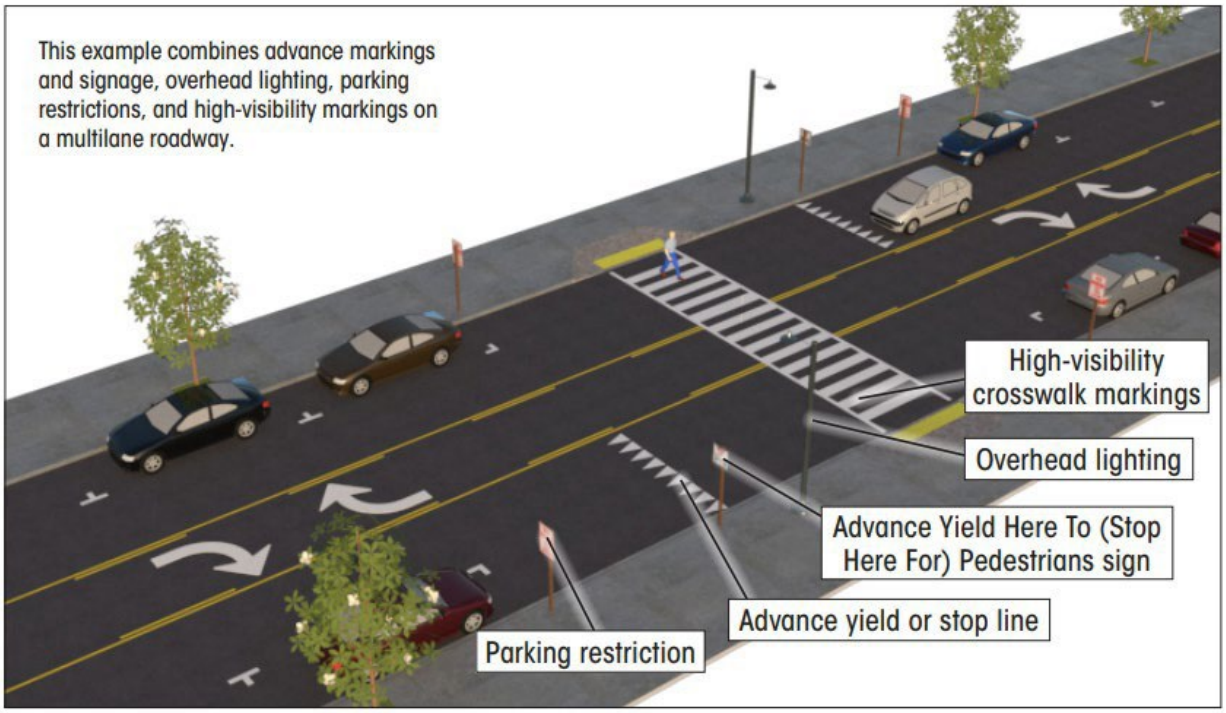
The In-Street Pedestrian Crossing sign (R1-6) was installed at this intersection to remind drivers of pedestrian right of way laws.

Crosswalk Enhancement

Description

Poor lighting and other factors that reduce driver visibility can cause safety issues at pedestrian crosswalks. In high speed or high vehicle traffic conditions, a substantially visible roadway crossing area could prevent or reduce the amount of pedestrian-related collisions. Any number of enhancements may be combined to increase vehicle operators' visibility of the crosswalk and pedestrian users. Enhancement options include:

- High-visibility crosswalk markings and marking patterns
- In-Street Pedestrian Crossing Sign
- Improved lighting
- Advance Stop/Yield/Pedestrian Crossing markings and signs
- Parking restrictions
- Curb Extension
- Raised Crosswalk
- Rectangular Rapid-Flashing Beacons (RRFB)
- Pedestrian Hybrid Beacons (see CA MUTCD Chapter 4F)



Crosswalk Enhancement Example (FHWA)

Placement

At a crosswalk location, especially on multilane roadways with vehicle volumes

exceeding 10,000 ADT (FHWA).

Functional Classification: Minor Arterials, Collectors, and Local Roads

Appropriate Daily Volume Range: Varies per improvement. See Table 1 below.

Roadway Configuration	Posted Speed Limit and AADT								
	Vehicle AADT <9,000			Vehicle AADT 9,000–15,000			Vehicle AADT >15,000		
	≤30 mph	35 mph	≥40 mph	≤30 mph	35 mph	≥40 mph	≤30 mph	35 mph	≥40 mph
2 lanes (1 lane in each direction)	❶ 2 4 5 6	❶ 5 6 7 9	① 5 6 ❼ ❾	❶ 4 5 6	❶ 5 6 7 9	① 5 6 ❼ ❾	❶ 4 5 6 7 9	① 5 6 7 9	① 5 6 ❾
3 lanes with raised median (1 lane in each direction)	❶ 2 3 4 5	❶ ❸ 5 7 9	① ❸ 5 ❼ ❾	① 3 4 5 7 9	① ❸ 5 ❼ ❾	① ❸ 5 ❼ ❾	① ❸ 4 5 7 9	① ❸ 5 ❼ ❾	① ❸ 5 ❾
3 lanes w/o raised median (1 lane in each direction with a two-way left-turn lane)	❶ 2 3 4 5 6 7 9	❶ ❸ 5 6 7 9	① ❸ 5 6 ❾	① 3 4 5 6 7 9	① ❸ 5 6 ❼ ❾	① ❸ 5 6 ❾	① ❸ 4 5 6 7 9	① ❸ 5 6 ❾	① ❸ 5 6 ❾
4+ lanes with raised median (2 or more lanes in each direction)	❶ ❸ 5 7 8 9	❶ ❸ 5 7 8 9	① ❸ 5 8 ❾	① ❸ 5 7 8 9	① ❸ 5 ❼ 8 ❾	① ❸ 5 8 ❾	① ❸ 5 ❼ 8 ❾	① ❸ 5 8 ❾	① ❸ 5 8 ❾
4+ lanes w/o raised median (2 or more lanes in each direction)	❶ ❸ 5 6 7 8 9	① ❸ 5 ❻ 7 8 9	① ❸ 5 ❻ 8 ❾	① ❸ 5 ❻ 7 8 9	① ❸ 5 ❻ ❼ 8 ❾	① ❸ 5 ❻ 8 ❾	① ❸ 5 ❻ ❼ 8 ❾	① ❸ 5 ❻ 8 ❾	① ❸ 5 ❻ 8 ❾

Given the set of conditions in a cell,

- # Signifies that the countermeasure is a candidate treatment at a marked uncontrolled crossing location.
- ● Signifies that the countermeasure should always be considered, but not mandated or required, based upon engineering judgment at a marked uncontrolled crossing location.
- ○ Signifies that crosswalk visibility enhancements should always occur in conjunction with other identified countermeasures.*

The absence of a number signifies that the countermeasure is generally not an appropriate treatment, but exceptions may be considered following engineering judgment.

1. High-visibility crosswalk markings, parking restrictions on crosswalk approach, adequate nighttime lighting levels, and crossing warning signs
2. Raised crosswalk
3. Advance Yield Here To (Stop Here For) Pedestrians sign and yield (stop) line
4. In-Street Pedestrian Crossing sign
5. Curb extension
6. Pedestrian refuge island
7. Rectangular Rapid-Flashing Beacon (RRFB)**
8. Road Diet
9. Pedestrian Hybrid Beacon (PHB)**

*Refer to Chapter 4 from Guide for Improving Pedestrian Safety at Uncontrolled Crossing Locations for more information using multiple countermeasures.
**It should be noted that the PHB and RRFB are not both installed at the same crossing location.

Table 1: Application of pedestrian crash countermeasures by roadway feature (Guide for Improving Pedestrian Safety at Uncontrolled Crossing Locations, FHWA)

Posted Speed Limit: N/A

Performance

Speed Reduction: N/A (Driver compliance, such as drivers slowing down/stopping for pedestrians have increased significantly, but the references did not analyze the reduction of speeds across the entire corridor)

Volume Reduction: N/A

Impact on Emergency Response: None

Maintenance Considerations

SNOW

- Provide sufficient lane width to avoid in-roadway signs and markings being damaged by snowplows
- Road salt and snowplows can shorten the lifespan of high-visibility crosswalk markings. Road salt can interfere with the bonding agent.

OTHER

- Marking durability
- The reflectivity of the markings will fade and lose effectiveness, so they will need to be monitored/updated regularly
- R1-6 signs may be damaged by vehicles if placed in the middle of the roadway

Other Considerations

- More complex installations such as lights or pavement treatments can be costly
- Inlayed thermoplastic markings can be more reflective than paint or brick
- Lighting should be placed in forward locations to avoid a silhouette effect of the pedestrian
- In-street signing should be considered for roadways with posted speeds of 30 MPH or less
- Consult with the District Pedestrians and Bicyclists Safety Engineer

References

1. The Relative Effectiveness of Pedestrian Safety Countermeasures at Urban Intersections – Crash Modification Factors Clearinghouse
2. Crosswalk Visibility Enhancements - FHWA
3. California MUTCD (Section 3B.16, 3B.18; Chapters 4E, 4F, 4L) - Caltrans
4. Proven Safety Countermeasures - FHWA
5. FHWA Guide for Improving Pedestrian Safety at Uncontrolled Crossing Locations
6. Field Guide for Selecting Countermeasures at Uncontrolled Pedestrian Crossing Locations - FHWA

Sample Project

Mission Ave in San Rafael, CA (Google Earth)

Project Description:

The City of San Rafael implemented additional signage (R1-5, W11- 2, and W16-7P), advance yield pavement markings, and ladder crosswalk pavement marking to slow down vehicles at Mission Ave. These enhancements increase the likelihood that motor vehicles will notice crossing pedestrians.

Pedestrian Hybrid Beacons (PHBs)

Description

Pedestrian hybrid beacons are a pedestrian-activated overhead signal consisting of two red lenses above a single yellow lens. The lenses remain “dark” until a pedestrian pushes the call button to activate the beacon, which then initiates a yellow to red lighting sequence that directs motorists to slow and come to a stop. The pedestrian hybrid beacon accompanied with appropriate signs and pavement markings provides greater visibility for locations, where a crosswalk is not accompanied by a signal-controlled intersection.

Pedestrian Hybrid Beacon (FHWA)

Placement

Midblock crossings, school crossings, and other uncontrolled crosswalks/bike crossings across multi-lane (3+ lanes) roadways. The location should be identified with a pedestrian and bike need. This measure should only be installed at marked crosswalks and the criteria for placement should follow marked crosswalk placement criteria. Refer to CA MUTCD Chapter 4F

Functional Classification: Minor Arterials, Collectors, and Local Roads

Appropriate Daily Volume Range: 9,000 ADT or more (FHWA). See Table 1 for more information on placement.

Posted Speed Limit: Varies. Refer to CA MUTCD Figure 4F-1 for posted speed limit less than or equal to 35 MPH. Refer to CA MUTCD Figure 4F-2 for posted speed limit greater than 35 MPH.

Performance

Speed Reduction: N/A (Driver compliance, drivers slowing down/stopping for pedestrians will increased significantly)

Impact on Emergency Response: Similar to other signalized crossings, where emergency response vehicles will need to slow down to verify pedestrian presence in the crossing if the beacon is activated.

Mobility Impacts: Nominal

Maintenance Considerations

- Keeping pedestrian indications red if beacons fail
- Activation method (button or sensor)
- Electrical and sign maintenance

Other Considerations

- Options such as improved lighting, advance or in-street warning signage, pavement markings, and geometric design elements can be combined to increase visibility of crosswalk. PHBs should only be installed with marked crosswalks and pedestrian countdown signals
- Community outreach should be performed if PHBs are not common within a community
- Consult with the District Pedestrians and Bicyclists Safety Engineer
- Adding signs to pole mast arms will require a wind load analysis from Structures Design and Geotechnical units
- Maintaining minimum sidewalk clear width in compliance with ADA if poles and foundations are placed within sidewalk. See DIB 82
- Right of way considerations if signal poles and foundations placed outside of right of way
- Signal pole foundations can impact existing utilities
- Consider the location of stop bars. Factors such as stopping sight distance to the stop bars and beacons should be verified. Consider adding transverse rumble strips in advance of stop bars

References

1. California MUTCD (Chapter 4F) - Caltrans
2. Design Information Bulletin 82 - Caltrans
3. Pedestrian Hybrid Beacon Tech Sheet - FHWA
4. Proven Safety Countermeasures - FHWA

Sample Project

State Route 168 and Edward St in Bishop, CA (Google Maps)

Project Description:

This project on State Route 168 was completed in November 2020 with the goal to enhance driver awareness of pedestrians at an uncontrolled crossing. Additional calming measures were incorporated, such as pedestrian crosswalk regulatory signs, pedestrian hybrid beacon, restriping with high-visibility markings, and upgrading the crosswalk to ADA standards.

Flashing Beacons

Description

Flashing beacons use repeating flashing lights to warn motorists. They are used to draw motorists' attention to a sign informing them of an upcoming change in the road conditions that could include unseen intersections, schools, curves, or applications discussed in the placement section below.

Flashing Beacons on US 50 EB to Business 80 Connector in Sacramento, CA (Google Maps)

Placement

CA MUTCD Chapter 4L lists the following typical applications:

- Signal ahead
- Stop signs
- Speed limit signs
- Other warning and regulatory signs
- Schools
- Fire stations
- Intersection control
- Freeway bus stops
- At Intersections, where a more visible warning is desired:
    - Obstructions in or immediately adjacent to the roadway
    - Supplemental to advance warning signs
    - At mid-block crosswalks
    - At intersections, where a warning is appropriate

Functional Classification: Principal Arterials, Minor Arterials, Collectors, and Local Roads

Appropriate Daily Volume Range: Appropriate for all volume ranges

Maximum Posted Speed Limit: Appropriate for all posted speed limits, but it is best suited to situations where the difference between the posted and advisory speed is greater than 10 MPH under the posted speed limit.

Performance

Speed Reduction: The Crash Modification Factors (CMFs) show a significant reduction in crashes, which suggests the most extreme speeds were likely reduced (FHWA).

Volume Reduction: N/A (This was not well documented and is not generally a goal of this measure)

Impact on Emergency Response: None

Maintenance Considerations

SNOW

- Ice can reduce the visibility of the flashing beacons and damage lights

OTHER

- Power source. Use of solar-power panels can eliminate the need for a power source and save energy cost
- Visibility in inclement weather
- Foliage obstructing beacons

Other Considerations

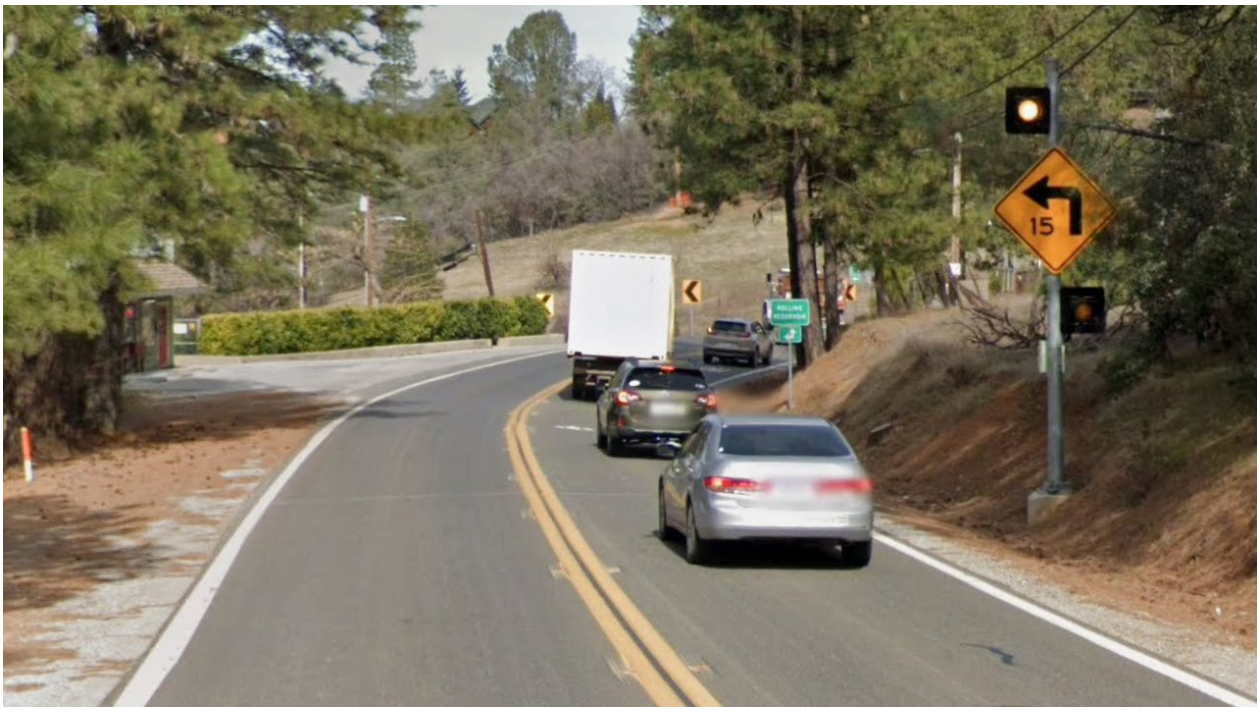
- Flashing beacons should be considered when warning signs have proven insufficient to gain driver attention
- The condition or regulation for justifying Warning Beacons should largely determine their placement. Warning Beacons should only operate during those periods or times when the condition or regulation exists
- Warning beacons shall be used only to supplement a warning or regulatory sign or marker
- Automatic dimming devices should be considered for night operations
- Beacon flash rate shall be between 50 and 60 times per minute
- Warning (yellow) beacons should not be used to emphasize Stop, Do Not Enter, Wrong Way, and Speed Limit signs
- Speed Limit Sign Beacon shall be used only to supplement a Speed Limit Sign.
- A Stop Beacon shall be used only to supplement a STOP sign, a Do NOT ENTER sign, or Wrong Way Sign.
- Beacons shall not be included in the border of a sign

- Edge of beacon signal housing should normally be no closer than 12” to the nearest edge of the sign
- 6” diameter lights
- Posts should be break-away and/or crash tested, otherwise will need to be shielded by guardrail, barrier or crash cushion

References

1. California MUTCD (Chapter 4L) - Caltrans
2. Low-Cost Treatments for Horizontal Curve Safety 2016 (Chapter 4) - FHWA

Sample Project



State Route 174 in Colfax, CA (Google Earth)

Project Description:

This project is located on State Route 174 in Placer County. A flashing beacon was implemented along with an advance warning sign in order to draw the attention of motorists to the upcoming curve in the roadway.

Category B. Physical Intersection Modifications

Roundabouts

Description

A roundabout is a form of circular intersection in which traffic travels counterclockwise around a central island and entering traffic must yield to the circulating traffic. They feature, among other things, a central island, a circulatory roadway, and splitter islands on each approach. Roundabout design has certain attributes that can reduce speed, such as geometric design of approach alignment and circular roadway of a roundabout. Modern roundabouts also have fewer conflict points, especially the high angle conflict points, which results in less severe crashes when compared to stop-controlled or signal-controlled intersections. Additionally, a roundabout also separates the conflict points which eases the ability of the driver, pedestrian, or bicyclist to identify a conflict and helps prevent conflicts from becoming crashes.

Roundabouts are included among FHWA's 28 Proven Safety Countermeasures due to their significant safety and operational benefits. Roundabouts are analyzed per Caltrans' Intersection Safety and Operational Assessment Process (ISOAP), which evaluates the various intersection control type designs on the State Highway System (SHS) to address intersection improvement project strategies. For more information about the ISOAP process, see, ISOAP Process Information Guide.

State Route (SR) 29 Napa Roundabout

Placement

Roundabouts can accommodate existing site constraints, such as intersections with skewed angles or other nontypical configurations. They are inherently flexible, which can lead to successful installations within or near main streets, schools, and railroads, among others.

Caltrans' roundabout guidance is provided in Highway Design Manual Index 405.10. See Figure 405.10A "Roundabout Geometric Elements" for nomenclature associated with roundabouts. Signs, striping and markings at roundabouts shall comply with the California Manual on Uniform Traffic Control Devices (CA MUTCD).

Roundabout intersections on the SHS must be developed and evaluated in accordance with the ISOAP memo. The FHWA Traffic Calming ePrimer Section 3.9 contains useful information on roundabouts as a traffic calming strategy.

Functional Classifications: Minor Arterial, Collectors, and Local Roads

Performance

Speed Reduction: Speed reduction is dependent on adequate advanced warning, vertical profile, driver familiarity or deflection of the travel path to slow vehicles. Speeds are approximately 40% lower in a roundabout than 350' away from the intersection (FHWA). Roundabouts should be designed so that the maximum entry speed for a single lane roundabout is 25 MPH and 30 MPH for a multilane roundabout. The entry speed should be verified by the fastest path performance check.

Volume Reduction: Negligible (FHWA)

Impact of Emergency Vehicle Access: Minimal – Roundabouts should be designed so that emergency vehicles can smoothly navigate through a roundabout without hitting a curb.

Mobility Impact: For any intersection alternative analysis, a transportation operational and safety analysis is needed to properly assess impacts either from the new or change in intersection control type to the project area and adjacent roadway network. Conformance to the ISOAP Memo and Process Information Guide is required for all projects that add new intersections or propose to change the existing intersection control configuration on the State Highway System.

Transportation analysis scope and methodology considerations include:

- Traffic control warrant analysis consistent with the CA MUTCD Section 4C may be needed when screening intersection alternatives. Note that there are no traffic control warrants for a roundabout
- Analysis of the project area and impacted parallel facilities
- Intersection analysis and modeling should be conducted to assess potential operational deficiencies

- Bicycle and Pedestrian analysis should be conducted consistent with Highway Capacity Manual (Chapters 4, 15, 24, and 35 and FHWA methodologies)
- Impacts to local freight and truck circulation should be considered. Truck turning templates used in the performance checks need to be validated and agreed by the District Truck Access Managers

For projects on the local road network, a transportation analysis that includes potential SHS impacts from diverted trips should be conducted through the Local Development Review (LDR) or Encroachment Permit process.

Maintenance Considerations

SNOW

- Consider snow storage in and around the roundabout and the shared use path
- Consider the difficulty in removing snow and provide mountable curbs and shared use paths widths to accommodate snow removal operations

OTHER

- Consider landscape maintenance
- Sweeping maintenance
- Striping and pavement marking maintenance
- If near a railroad, school or applied to a highly skewed intersection, additional parameters might need to be accommodated

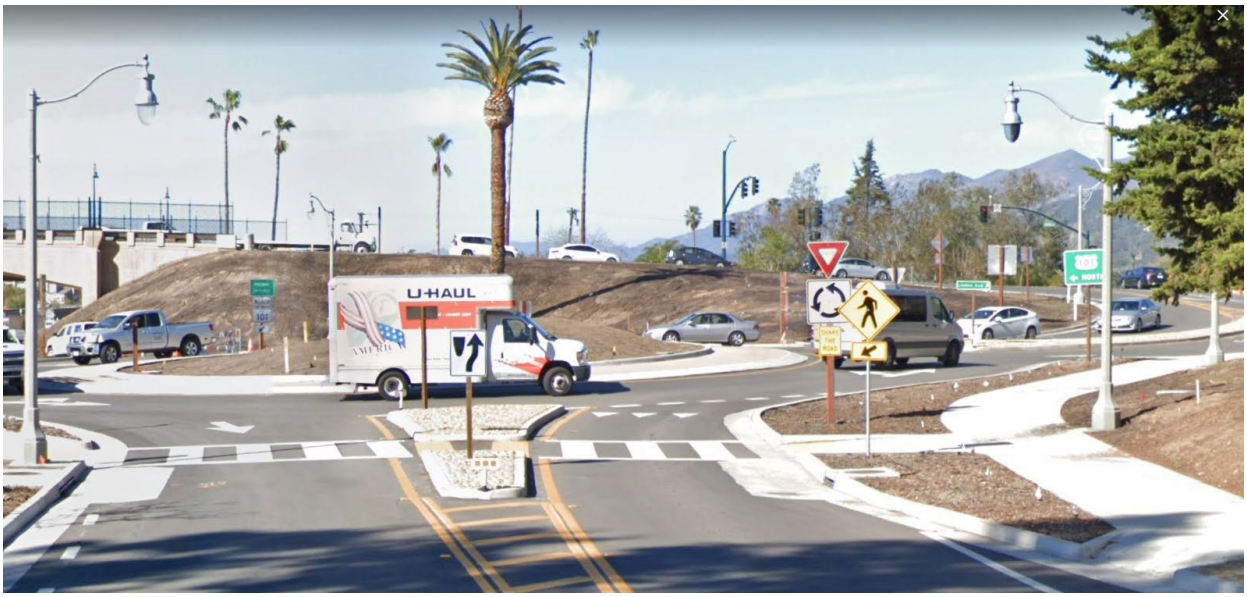
Other Considerations

- Roundabout design is an iterative process. The geometry is governed by performance check evaluations. Refer to NCHRP 672 Chapter 6, Section 6.7 for information regarding performance checks
- The sidewalk should be designed as a shared use path, since the path will serve both pedestrians and bicyclists, who are not comfortable taking the lane to proceed through the roundabout. Although the sidewalk is considered a shared use path, it does not need to meet the design standards in Index 1003, but it should meet the design standards within Index 405.10
- A landscape buffer/strip, detectable by cane and underfoot, between the sidewalk and the back of curb for the circular roadway of the roundabout should be a minimum of 2 feet wide
- Pedestrian activated push buttons should be considered for crossing more than one lane. If one leg of a roundabout has a crossing that includes crossing more than one lane, then consider providing push buttons for all crossings of that intersection. Refer to NCHRP 834
- Chicanes may be utilized at the approaches of the roundabout to reduce speeds prior to entering the roundabout
- Consult with the District Traffic Safety Engineer, District Traffic Operation Engineer, and District ISOAP Coordinator for guidance and recommendations

References

1. Highway Design Manual (HDM) Chapter 400
2. California Manual on Uniform Traffic Control Devices (CA MUTCD)
3. Design Information Bulletin 94, Complete Streets
4. Complete Intersections: A Guide to Reconstructing Intersections and Interchanges for Bicyclist and Pedestrians
5. 28 Proven Safety Countermeasures
6. Traffic Operations Policy Directive (TOPD) #13-02
7. ISOAP Process Information Guide | Caltrans
8. NCHRP 672
9. NCHRP 834
10. Oversize Overweight Vehicles – District Truck Access Manger (DTAM) / District Truck Coordinator Contract
11. Highway Capacity Manual 7th Edition: A Guide for Multimodal Mobility Analysis |The National Academies Press
12. Traffic Calming ePrimer- FHWA
13. Roundabouts for bikes and peds FHWA
14. Pedestrian & Bicycle Safety | FHWA

Sample Projects



Via Real extension & Ogan Rd, Carpentaria, CA (Google Maps)

Project Description:

The new Ogan Road roundabout will connect to the Via Real extension and provide easier access onto northbound Highway 101 with a longer on-ramp. Additionally, improvements within the project includes, concrete splitter islands, shared use pedestrian path with buffered landscape strip, light poles for illumination, etc.

Full Closure

Description

Typical full closure implementation can help improve safety by reducing intersection conflict points and cut-through traffic. These applications can also be designed to accommodate safer bicycle and pedestrian movements. An analysis of the shift in vehicular trips anticipated from full closures should be conducted in order to assess whether travel demand and certain traffic movements can be accommodated within the project area roadway network. It should be noted that the full closure implementation, as a traffic calming tool, is not applicable for state routes. Local public agencies may close local roads intersecting a state route.

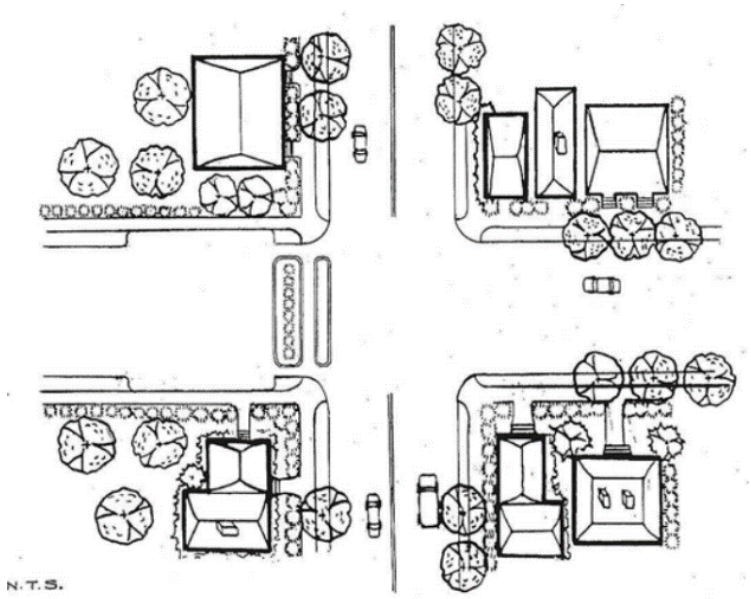


Image of Full-Street Closure (PennDOT)

Placement

At an intersecting through street, rather than the interior of a neighborhood (PennDOT)

Functional Classification: Local Roads

Place Type: Urban Area and Suburban Area, where there are near-by alternative routes. Only appropriate along a two-way roadway

Maximum Grade: N/A – However, adequate sight distance approaching the closure should be provided

Performance

Speed Reduction: Speed on the closed street will reduce to zero.

Volume Reduction: Reduction can be high but varies widely based on site specific conditions.

Impact on Emergency Response: Can Removes access – Not appropriate along a primary emergency access route or a street that provides access to a hospital/medical services. However, a 12' wide mountable curb (free of a barrier) can be installed if emergency vehicle access needs to be maintained (FHWA). This barrier should be clearly signed/marked for emergency use only (FHWA). Additionally, impacts to existing and potential future evacuation routes need to be considered in accordance with DIB 93. Project team should consult with Caltrans's Traffic Management, emergency response agencies, and law enforcement agencies for their input.

Mobility Impact: A transportation analysis may be needed to properly assess impacts of the capacity reduction associated with typical full closure projects within the project area and adjacent roadway network. Transportation analysis scope and methodology considerations include:

- Travel demand modeling to assess diversion impacts to other routes due to the reduction in capacity
- Analysis of the project area and impacted parallel facilities
- Intersection analysis and modeling should be conducted to assess potential operational deficiencies
- ISOAP and traffic control warrant analysis consistent with the California Manual on Uniform Traffic Control Devices (CA MUTCD) may be needed if there are major changes to travel demand
- Bicycle and Pedestrian analysis should be conducted consistent with HCM (Chapters 4, 15, 24, and 35) and FHWA methodologies
- Impacts of increased ADT due to diverted trips
- Impacts to local freight and truck circulation

For projects on the local road network, a transportation analysis that includes potential SHS impacts from diverted trips should be conducted through the Local Development Review (LDR) or Encroachment Permit process.

Maintenance Considerations

SNOW

- Provide adequate room for snowplows to turn around or navigate the road closure

OTHER

- Maintain landscaping

Other Considerations

- Eliminating parking on the approaches to the closure will assist u-turning traffic
- Diagonal diverter should have some type of barrier to physically prevent drivers from traversing it
- Drainage impacts
- Public engagement is recommended
- Impact to local businesses due to modified access
- Increase traffic to alternative parallel routes
- Impacts to existing utilities
- Impact to transit operator/user
- Advanced signing and appropriate notice need to be given for the closure
- Design cut-outs to accommodate bicycle, pedestrian, and wheelchair traffic
- Consider the consequences of an increase in traffic on alternative parallel routes

References

1. Design Information Bulletin (DIB) 93
2. Traffic Calming ePrimer - FHWA
3. Highway Capacity Manual 7th Edition - The National Academies Press
4. Pedestrian & Bicycle Safety - FHWA
5. Traffic Analysis and Intersection Considerations to Inform Bikeway Selection - FHWA

Sample Project

City of Stockton Traffic Calming Program

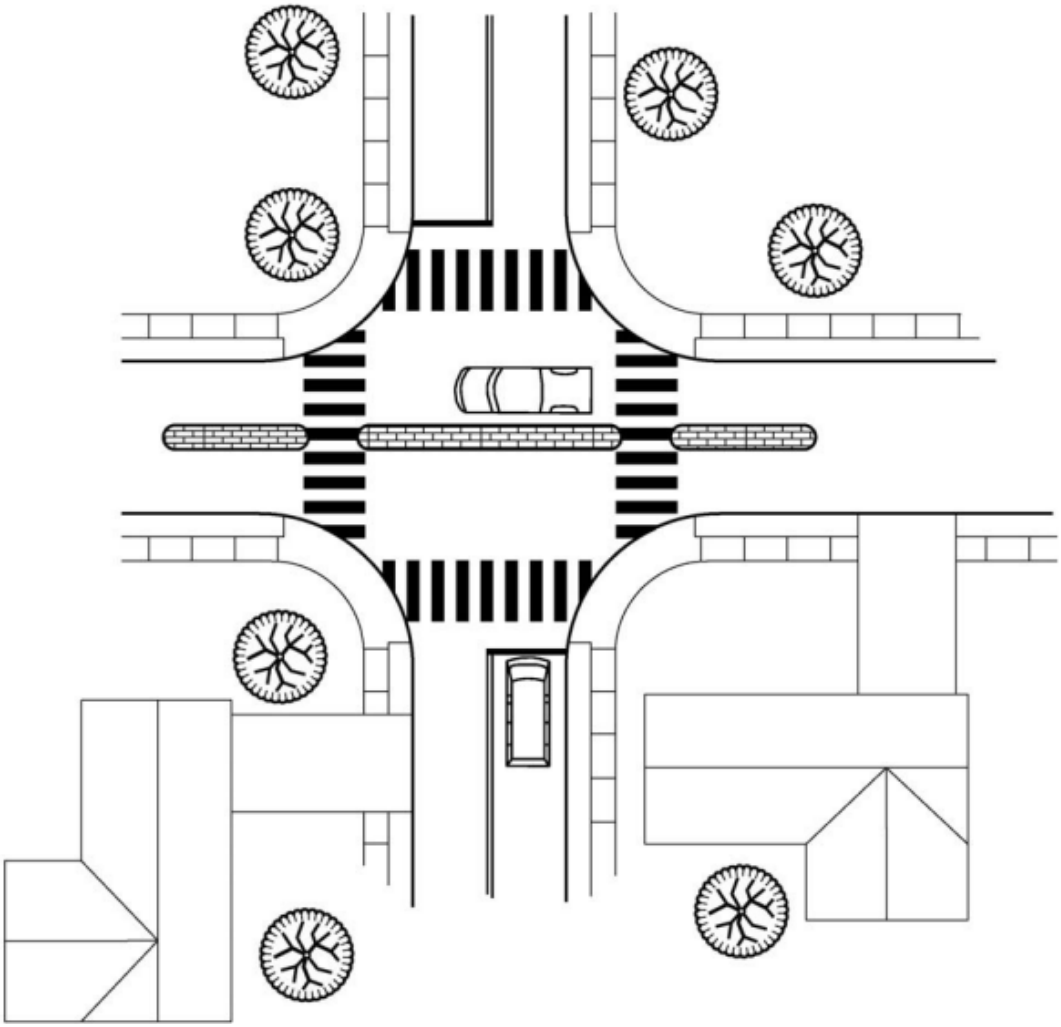
Project Description:

The City of Stockton implemented this full closure to help improve safety by reducing intersection conflict points and cut-through traffic.

Intersection Barrier

Description

A intersection barrier can be used to limit left-turn movements through an intersection. A fixed barrier such as a curb, raised island, or planter limits vehicle movements through the intersection, forcing drivers to reduce approach speeds. Advance warning signs and markings should clearly indicate limitations to movement, particularly in low visibility areas. Gaps in the barrier (commonly 8 feet) should be included to allow pedestrians and bicycles to pass through.



Intersection/Median Barrier (DelDOT)

Placement

Best suited for installation along minor arterials or collectors at their intersection with local (side) streets.

Functional Classification: Minor Arterials, Collectors, and Local Roads

Appropriate Daily Volume Range: All ADTs (FHWA)

Maximum Posted Speed Limit: 25 MPH or less for local (side) streets (FHWA). Appropriate for speeds below 45 MPH on SHS.

Performance

Speed Reduction: Not expected to reduce speeds along side streets, since all vehicles will come to a stop in both the before and after conditions. The primary road will not see a reduction in speed.

Volume Reduction: Up to 70% on local (side) streets (PennDOT)

Impact on Emergency Response: May restrict access and is not recommended for placement along emergency access routes. Project team should consult emergency response agencies along with local and state law enforcement agencies.

Maintenance Considerations

SNOW

- Fixed object in the traveled way may impact snowplow operations
- Keeping pedestrian/cyclist/emergency vehicle gaps clear of snow and debris

OTHER

- If landscaped, need to consider maintenance and access
- Durability of mountable curbs
- Road maintenance access and sweeping activities

Other Considerations

- Impact on drainage and utilities
- Mountable curb and/or a larger barrier opening (at least 10 feet and clearly signed for emergency vehicles only) to allow for emergency access
- Appropriate signing and pavement markings on approaches
- Public Engagement is recommended
- Check if lane width reduction through use of an intersection barrier affects Design Vehicle swept path and tracking (HDM Topic 404 - Design Vehicles)
- Impact on existing traffic. Restricting left-turn movement and reducing lane width may negatively impact access for trucks and other larger vehicles. Consider if alternative routes are available. May increase traffic volume on adjacent parallel streets
- Extend the intersection barrier beyond the intersection, typically 15 to 25 feet, to discourage left turns from the main street

References

1. Highway Design Manual (HDM) Topic 404 - Caltrans
2. Traffic Calming Fact Sheets - ITE

Sample Project

Martin Luther King Jr Way and Addison St in Berkeley, CA (Google Earth)

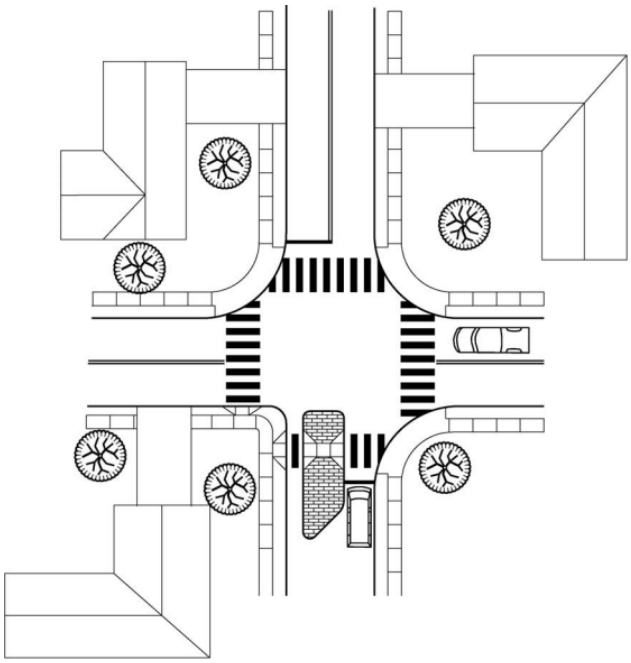
Project Description:

This intersection barrier provides a refuge for bicyclist and pedestrians, while allowing emergency vehicles to traverse its mountable curb. As a traffic diverter, the median restricts turning movements from Martin Luther King Jr Way, which eliminates a potential conflict point.

Partial Closure/Semi-Diverter

Description

Typical partial closure implementation can help improve safety by reducing intersection conflict points and cut-through traffic. These applications can also be designed to accommodate safer bicycle and pedestrian movements. An analysis of the shift in vehicular trips anticipated from partial closures should be conducted in order to assess whether travel demand as well as certain traffic movements can be accommodated within the project area roadway network.



Partial Closure/Semi-Diverter (DelDOT)

Placement

Best suited for installation along minor arterials or collectors at their intersection with a local road. Mid-block locations have a higher rate of violation (PennDOT). Extending the length of the semi-diverter can reduce violations.

Functional Classification: Minor Arterials, Collectors, and Local Roads

Appropriate Daily Volume Range: All ADTs (FHWA)

Maximum Posted Speed Limit: ≤ 25 MPH on minor leg. No maximum posted speed limit on major leg (FHWA)

Grade: <6% (DelDOT)

Performance

Speed Reduction: 2-5MPH (PennDOT); Not expected to reduce speeds along side streets by much, since all vehicles will come to a stop in both the before and after conditions.

Volume Reduction: Up to 35-40% on local streets (DelDOT), 40-60% on local streets (PennDOT)

Impact on Emergency Response: Not recommended for placement along emergency access routes. Additionally, impacts to existing and potential future evacuation routes need to be considered in accordance with DIB 93. Project team should consult with Caltrans's Traffic Management, emergency response agencies and law enforcement agencies.

Mobility Impact: A transportation analysis may be needed to properly assess impacts from the throughput capacity reduction associated with typical partial closure projects within the project area and adjacent roadway network. Transportation analysis scope and methodology considerations include:

- Travel demand modeling to assess diversion impacts to other routes due to the reduction in capacity
- Analysis of the project area and impacted parallel facilities
- Intersection analysis and modeling should be conducted to assess potential operational deficiencies
- ISOAP and traffic control warrant analysis consistent with the California Manual on Uniform Traffic Control Devices (CA MUTCD) may be needed if there are major changes to travel demand
- Bicycle and Pedestrian analysis should be conducted consistent with HCM (Chapters 4, 15, 24, and 35) and FHWA methodologies
- Impacts of increased ADT due to diverted trips
- Impacts to local freight and truck circulation

For projects on the local road network, a transportation analysis that includes potential SHS impacts from diverted trips should be conducted through the Local Development Review (LDR) or Encroachment Permit process.

Maintenance Considerations

- Specialized equipment will be needed for snow plowing the bike cut-out
- Consider maintenance and access if landscaped
- Consider surface treatment upkeep and maintenance of flex posts

Other Considerations

- Low-laying shrubbery are preferred to maintain sight lines if landscaped
- Impacts to large design vehicle tracking and swept width lines
- Consider mountable curb to allow emergency access
- Impact to drainage
- Public engagement is recommended

References

1. Traffic Calming ePrimer - FHWA
2. Design Information Bulletin (DIB) 93 - Caltrans
3. Highway Capacity Manual 7th Edition - The National Academies Press
4. Pedestrian & Bicycle Safety - FHWA
5. Traffic Analysis and Intersection Considerations to Inform Bikeway Selection - FHWA

Sample Project

29th St and G St in Sacramento, CA (Google Earth)

Project Description:

The City of Sacramento implemented partial closure calming measure to reduce conflict points and cut-through traffic. This measure has the added benefit of accommodating safer bicycle and pedestrian movements through the street by restricting traffic.

Right-In, Right-Out

Description

Typical right-in, right-out implementation can help improve safety by reducing intersection conflict points, cut-through traffic, and restricting movements that have a higher likelihood of more severe injury crashes. These applications can also be designed to accommodate safer bicycle and pedestrian movements. An analysis of the shift in vehicular trips anticipated from right-in, right-out projects should be conducted to assess whether travel demand and certain traffic movements can be accommodated within the project area and roadway network.

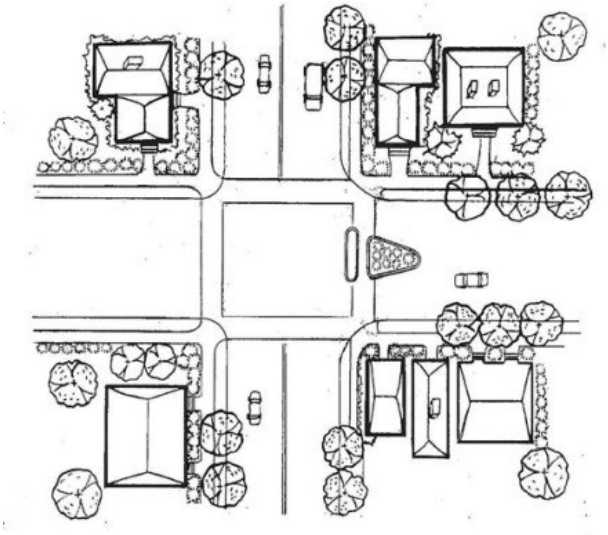


Image of Right-In, Right-Out (PennDOT)

Placement

At an intersection of a local road that intersects a collector or minor/ principal arterial in Urban Area or Suburban Area. Also recommended at intersections of local streets with major roadways that have a documented cut-through traffic issue or safety concerns with the left-turn movement.

Functional Classification: Local Roads

Appropriate Daily Volume Range: 500-7,500 ADT with >25% Non-Local Traffic (El Paso)

Maximum Posted Speed Limit: Generally, 25 MPH or less on local road (DelDOT)

Performance

Speed Reduction: Little to no impact on speed (PennDOT)

Volume Reduction: 20-60% along the local road (PennDOT)

Impact on Emergency Response Access: If along a primary emergency response route, the curb should be designed to allow emergency vehicles to make left-turns to/from the minor roadway. Additionally, impacts to existing and potential future evacuation routes need to be considered in accordance with DIB 93. Project team should consult with Caltrans's Traffic Management, emergency response agencies and law enforcement agencies.

Mobility Impact: A transportation analysis may be needed to properly assess impacts from the throughput capacity reduction associated with typical right-in, right-out projects within the project area and adjacent roadway network. Transportation analysis scope and methodology considerations include:

- Travel demand modeling to assess diversion impacts to other routes due to the reduction in capacity
- Analysis of the project area and impacted parallel facilities
- Intersection analysis and modeling should be conducted to assess potential operational deficiencies
- ISOAP and traffic control warrant analysis consistent with the California Manual on Uniform Traffic Control Devices (CA MUTCD) may be needed if there are major changes to travel demand
- Bicycle and Pedestrian analysis should be conducted consistent with HCM (Chapters 4, 15, 24, and 35) and FHWA methodologies.
- Impacts of increased ADT due to diverted trips
- Impacts to local freight and truck circulation

For projects on the local road network, a transportation analysis that includes potential SHS impacts from diverted trips should be conducted through the Local Development Review (LDR) or Encroachment Permit process.

Other Considerations

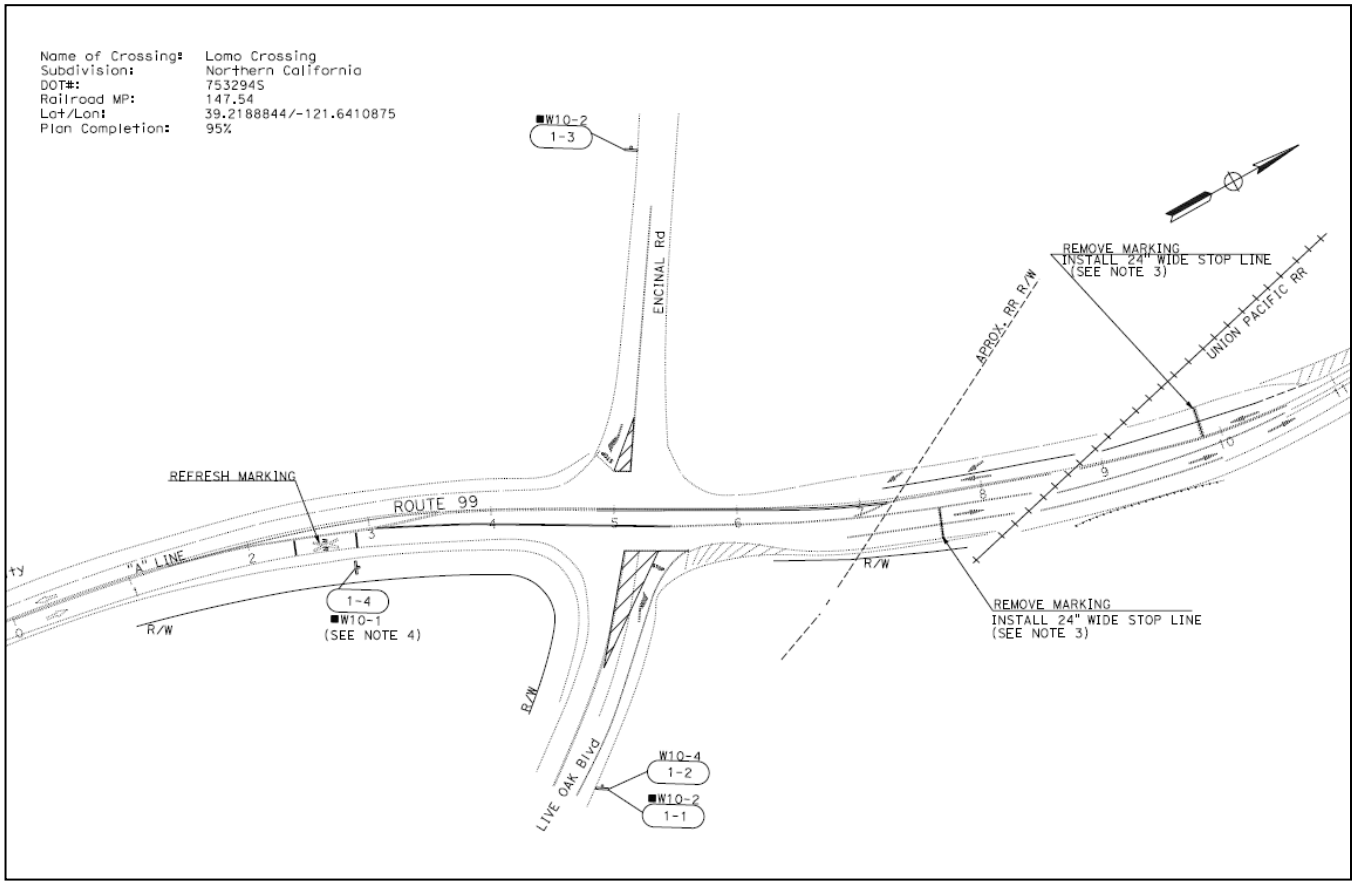
- Forced turn island can be designed with mountable curb to accommodate oversized vehicles. Refer to HDM Topic 404 Design Vehicles
- Force turn island can be designed as a pedestrian refuge if there is adequate roadway width
- Access for snow equipment
- May impact existing utilities

References

1. Design Information Bulletin (DIB) 93 - Caltrans
2. Traffic Calming ePrimer - FHWA
3. Traffic Calming Fact Sheets - ITE

4. Highway Capacity Manual 7th Edition
5. Pedestrian & Bicycle Safety - FHWA
6. Traffic Analysis and Intersection Considerations to Inform Bikeway Selection - FHWA

Sample Project



Lomo Crossing project on State Route 99 in Live Oak

Project Description:

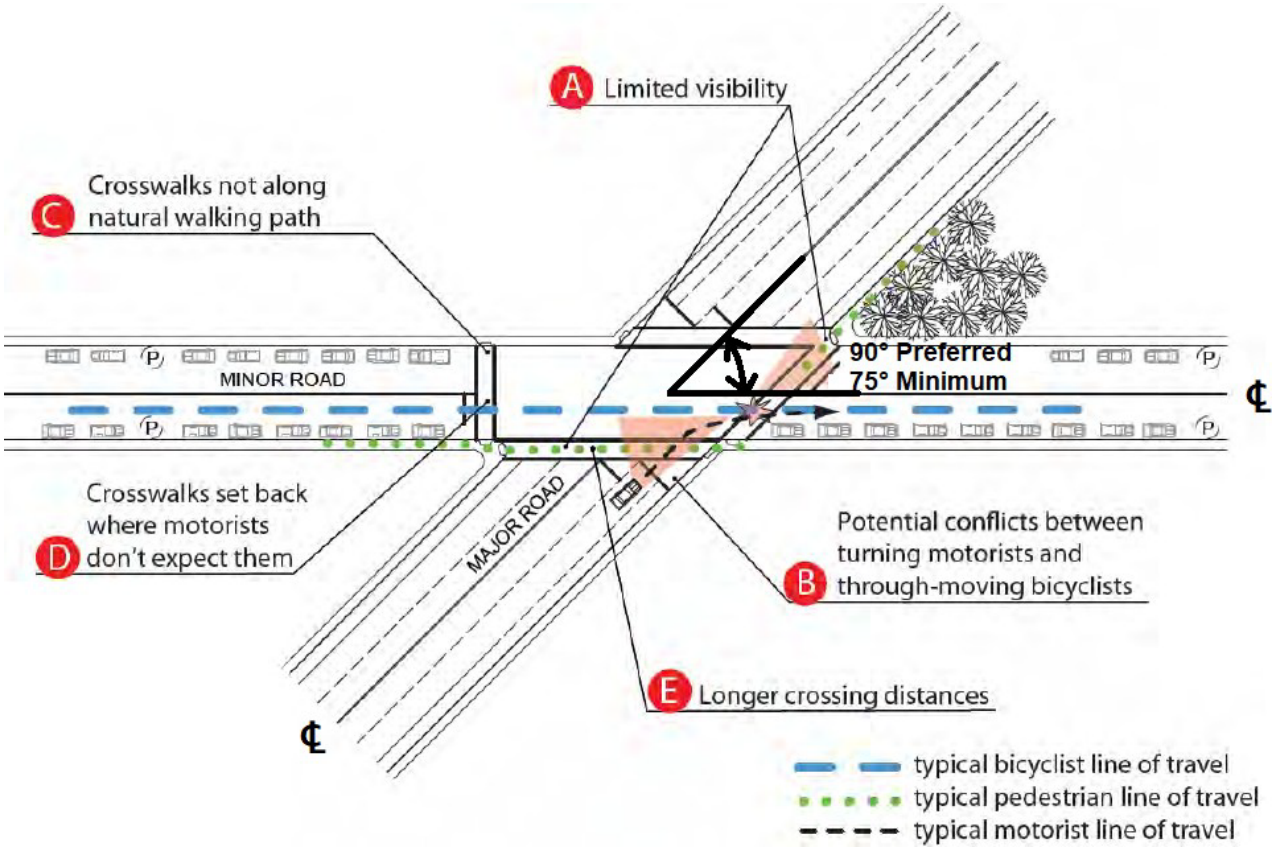
The Lomo Crossing project on State Route 99 in Live Oak, CA is proposing intersection improvements that include restricting through and left-turning movements with right-in, right-out implementation. The project will improve safety by reducing the likelihood of severe crashes, which occur from the minor street crossing movements. An interim temporary barrier was constructed to achieve right-in, right-out benefits before full project implementation.

Tee-up Intersection and Reduce Corner Radii

Description

Corner radii directly impacts vehicle turning speeds and pedestrian crossing distances. Minimizing the size of a corner radius is critical to creating compact intersections with safe turning speeds.

The prevalence of speeding vehicles at skewed intersections can have a negative effect on all users of the intersection. If the State highway alignment has an angle or curve, a reconstructed intersection with right angles will induce slower speeds to negotiate the turning movements. This concept is especially useful at interchange ramp intersections with local roads. Common issues seen at skewed intersections are illustrated in the figure below.



Minor Leg Skewed to the Right

Placement

A right angle (90°) intersection provides the most favorable conditions for intersecting and turning traffic movements. Large deviations from right angles may decrease visibility, hamper certain turning operations, encourage high speed turns, and may reduce yielding to turning traffic. Furthermore, it will increase the size of intersection and therefore increase crossing

distances for bicyclist and pedestrian. Guidance for angle of intersections is contained in the HDM Index 403.3.

The guidance within HDM Index 405.8 discusses design elements that should be accounted for when adjusting City Street Returns and Corner Radii.

Functional Classification: Minor Arterial, Collector, and Local Roads

Appropriate Daily Volume Range: N/A

Performance

Speed Reduction: Turning speeds should be limited to 15 MPH or less when reducing corner radii. Minimizing turning speeds is crucial to pedestrian safety, as corners are where drivers are most likely to encounter pedestrian crossing in the crosswalk (NACTO).

Volume Reduction: This is not well documented and depends on the level of discomfort experienced by turning vehicles as well as the availability of alternative routes.

Impact of Emergency Response Routes: Minimal

Mobility Impact: Varying. An assessment of the potential mobility impacts may be needed for intersections with heavy travel demand or concentrated peak hour movements. If applied to ramp termini intersections, additional improvements may be needed to reduce potential mobility impacts. Refer to ISOAP Process Information Guide for more information. Truck turning movement impacts should be considered.

Other Considerations

- Consider additional intersection lighting
- Consider existing drainage impacts and utility relocation
- Consider including all modes of transportation
- Consider extending median curbs, where necessary to discourage wrong-way movements onto the mainline at interchanges
- Additional right of way acquisition maybe required
- Where right of way is constrained in an urban environment, consider evaluating other types of intersections such as roundabouts
- Design Vehicle swept path and tracking analysis should be performed when reducing corner radii
- Corner Sight Distance Analysis

References

1. Highway Design Manual Chapter 400
2. Design Information Bulletin 94, Complete Streets
3. Complete Intersections-Caltrans
4. Urban Street Design Guide- NACTO

Sample Project

Before (Google Earth)

After (Google Earth)

Project Description:

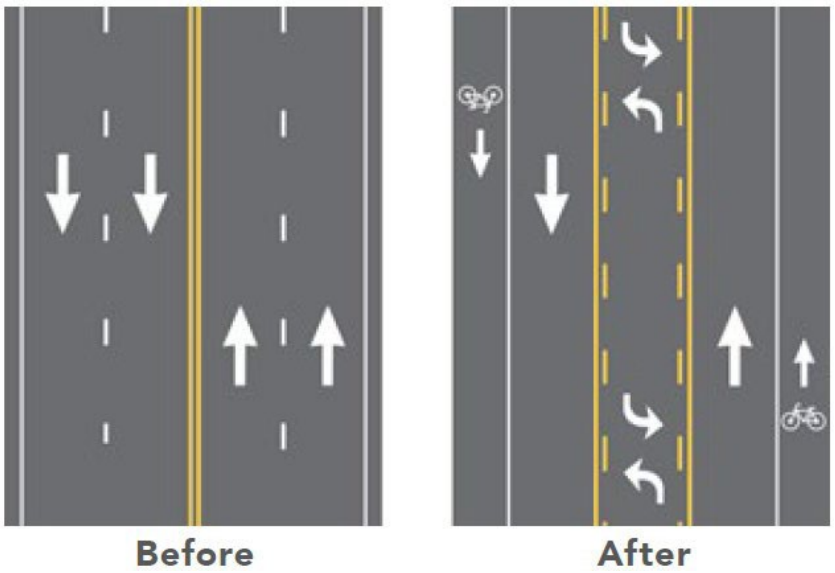
The project is located at Main Ave and Rio Linda Blvd in Sacramento County. Improvements include, tee-up intersection improvement, new bus stop, traffic signalization, dedicated bike lanes, turn pockets, crosswalk markings, etc.

Category C. Roadway Narrowing

Road Diet

Description

Typical road diets include roadway treatments that reduce the number of travel lanes and/or lane widths in order to address transportation deficiencies. Road diet in general allows reclaimed space to be allocated for other uses, such as bike lanes, sidewalks, bus islands and shelters, bus lanes, landscaping, pedestrian refuge islands, turn lanes, or parking. These modifications are intended to encourage slower operating speeds and provide new or enhanced facilities for bicycles, pedestrians, and transit users by reducing vehicular capacity. The reallocation of roadway space is intended to promote active transportation facilities as well as pedestrian and bicycle safety. A multi-modal transportation analysis is necessary to quantify mobility and safety impacts within the project area as well as adjacent roadway network.



Road Diet (FHWA)

Placement

See Table 1 for more information on placement.

Functional Classification: Principal and Minor Arterials, Collectors, and Local Roads

Appropriate Daily Volume Range: 20,000 ADT or less or a peak hour volume below 1,000 after implementation (FHWA). Caltrans Traffic Management should be consulted for road diet projects with volume beyond 20,000 ADT.

Speed Limit: Most common urban speed limits (FHWA)

Performance

Speed Reduction: There is a wide range of road diet layouts that can result in various levels of speed reduction. Speed reduction is mainly due to an increase in congestion as well as driver discomfort due to narrower lane widths. Two field studies measured reductions of 1-2 MPH for the 85th percentile speed (FHWA).

Volume Reduction: Low, assuming that the road diet was applied to roadways with low demand, so that the proposed configuration can meet the capacity of the roadway. Road diet implementation can increase the use of other multi-modal facilities, which can reduce the volume of motorist. A traffic impact analysis may be needed for road diets, where the roadway cannot fully meet the demand of the new configuration.

Impact to Emergency Response: Nominal. If the project is on emergency access routes, road diets should be assessed for changes in response time and alternative emergency access routes. Impacts to existing and potential future evacuation routes will need to be considered in accordance with Design Information Bulletin (DIB) 93. Project team should consult with Caltrans's Traffic Management, emergency response agencies, and law enforcement agencies for their input.

Mobility Impact: A transportation analysis is needed to properly assess impacts from the throughput capacity reduction associated with typical road diet projects within the project area as well as adjacent roadway network. Transportation analysis scope and methodology considerations include:

- Travel demand modeling to assess diversion impacts to other routes due to the reduction in capacity
- Analysis of the project area and impacted parallel facilities
- Intersection analysis and modeling should be conducted to assess potential operational deficiencies
- Intersection Safety and Operational Assessment Process (ISOAP) and Highway Safety Manual (HSM) analysis may be needed if there are major physical changes or travel demand in the project area. Traffic control warrant analysis should be consistent with the California Manual on Uniform Traffic Control Devices (CA MUTCD)
- Bicycle and Pedestrian analysis should be conducted consistent with HCM (Chapters 4, 15, 24, and 35) and FHWA methodologies.
- Impact of ADT due to diverted trips.
- Impact to local freight and truck circulation.

For projects on the local road network, a transportation analysis that includes potential SHS impacts from diverted trips should be conducted through the Local Development Review (LDR) or Encroachment Permit process. In addition to the considerations above, the analysis should

include ramp queueing.

Maintenance Considerations

- Consider durability of markings and reflectivity
- Ensure traces of old markings are removed
- Recess pavement marking for locations with snow operations

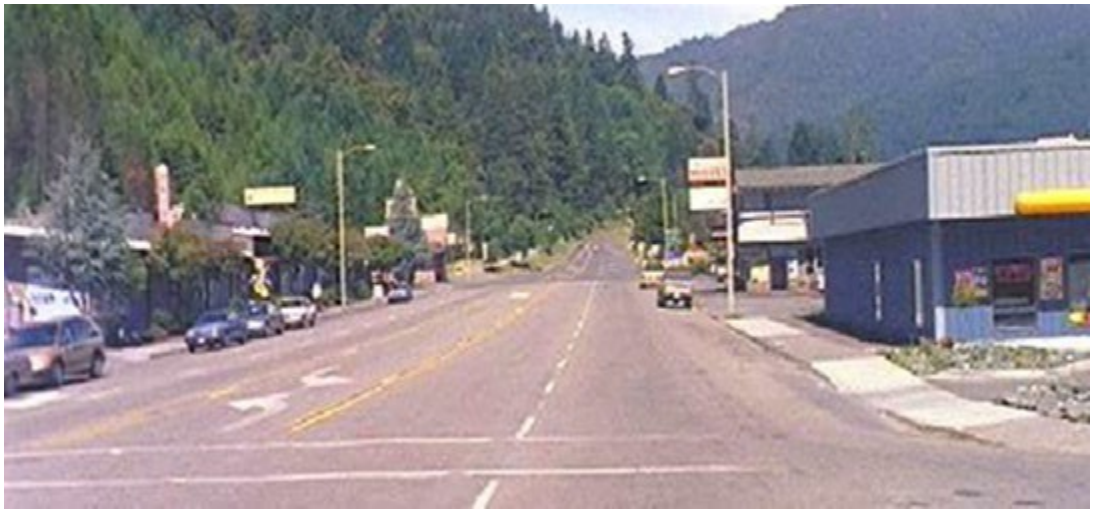
Other Considerations

- Provide consistency between adjacent roadway sections and provide transitions through intersections. Consider protected intersections for non-motorized users
- Project context and types of roadway users within a project segment can determine if road diets are appropriate to accommodate non-motorized users. See DIB 94 for low speed facilities in Urban Area, Suburban Area, and Rural Mainstreet
- Consider future plans for bus routes, bike facilities, pedestrian facilities, etc
- Signals may need to be modified with the implementation of a road diet, which can eliminate the number of lanes, turn pockets as well as providing a signal for bicycles
- Most common configuration: Reducing through lanes from four to two, while providing a center two-way left-turn lane (TWLTL)
- Can include bicycle lanes, transit lanes, bus turnouts, on-street parking, physical safety barriers (curb extensions, raised medians, pedestrian refuge islands, etc.), sidewalk widening, and/or wider shoulders (FHWA)
- Requirements from HDM Chapter 300 and the CA MUTCD should be considered depending on project scope
- Roadway narrowing with edge lines (creating 10.5 ft wide lanes) can reduce speeds 1 to 2 MPH. Reductions up to 5 MPH have been reported. Refer to DIB 94 for lane narrowing in Urban Area, Suburban Area, and Rural Mainstreet in low speed environment

References

1. Design Information Bulletin (DIB) 94
2. Highway Design Manual (HDM) Chapter 300 - Caltrans
3. California MUTCD - Caltrans
4. Traffic Calming ePrimer - FHWA
5. Road Diet Polices - FHWA
6. Proven Safety Countermeasures - FHWA

Sample Project



State Route 299 Willow Creek, CA (Before)

State Route 299 Willow Creek, CA (After)

Project Description:

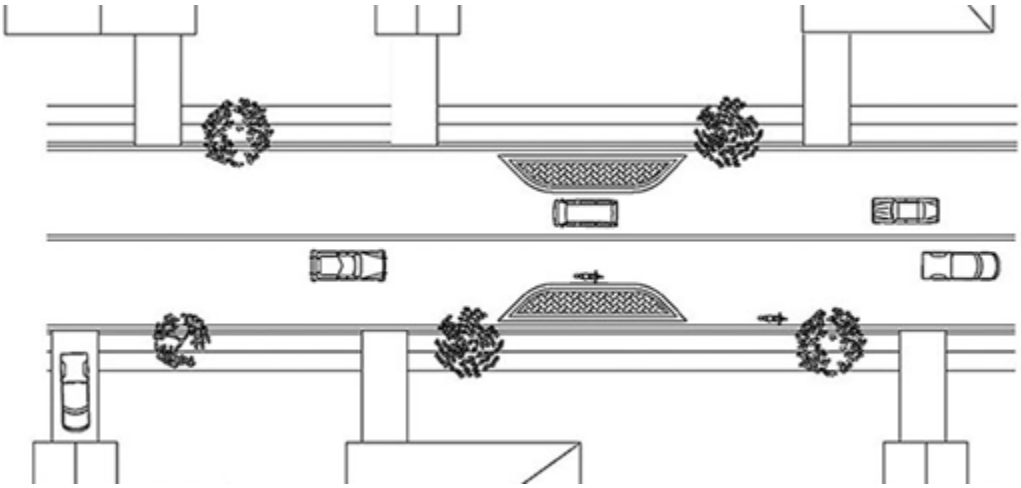
State Route 299 in downtown Willow Creek implemented a road diet treatment to convert an existing 4-lane roadway with two-way left turn lane (TWLTL) to a 2-lane roadway with TWLTL and a dedicated bike lane on each side. Some of the roadway cross-section was also reallocated to provide landscaping and street trees. These improvements lead to both a physical and perceived narrowing of the roadway. Refer to section F.1 for the traffic calming benefits of landscaping and street trees.

Neckdowns/Chokers

Description

A choker is a horizontal extension of the curb at a midblock on a street resulting in a narrower roadbed section.

Other terms for choker include: neckdown, midblock narrowing, midblock yield point, pinch point, constriction, or edge island. If the choker is a marked crosswalk, it is sometimes referred to as a safe cross.



Choker Schematic (Source: Delaware Department of Transportation)

Placement

Mid-block, along the shoulder on both sides of the street. The curb face of each choker should be setback a minimum of 2 feet from the class II bikeway or State Highway travel lane (HDM 303.4).

Functional Classification: Collectors and Local Roads (NOTE: Only local roads are suitable for neckdowns/chokers that reduce operations to one direction)

Appropriate Daily Volume Range: DelDOT: ≤ 20,000 ADT; El Paso: 500-7,500 ADT (NOTE: These daily traffic volumes refer to chokers that maintain two-way operations. Chokers that restrict travel to one direction at a time will require additional consideration to account for more complex operational impact.)

Speed Limit: 35 MPH or less (HDM 303.4)

Minimum Lane Width: The minimum lane width varies by ADT. For complete street contextual guidance, see DIB 94.

Maximum Grade: 5% (HDM 303.4)

Performance

Speed Reduction: 1-4 MPH reduction in 85th percentile speeds (FHWA); Up to 5 MPH (PennDOT)

Volume Reduction: Nominal impact (FHWA)

Impact to Emergency Response: Nominal. Determine whether your project is designated as an evacuation route. See DIB 93 for further guidance.

Mobility Impact: Nominal for vehicles. Vehicles are capable of passing each other without conflict within a choker. This narrowing is intended to discourage motorist from speeding and to reduce vehicle speeds in general. Bicycles may be impacted with the implementation of choker depending upon available shoulder/bike lane between vehicle lane and curb.

Maintenance Considerations

SNOW

- Design choker to accommodate snow storage
- Design choker to accommodate width of snowplow
- Consider signage or other devices to alert snowplow operators

OTHER

- Consider impact on drainage to gutter
- Consider maintenance and irrigation if landscaping is provided

Other Considerations

- Chokers can be created by either curb extensions or roadside islands. Roadside islands are less appealing aesthetically but leave existing drainage channels open. They also make it possible to provide a bicycle bypass lane on streets without curbside parking. If motor vehicle volumes are large, chokers can be challenging to bicyclists, who may need to navigate through traffic congestion. Bicycle bypass lanes should be considered in such cases
- Consider bicyclists during the design process. The probability of vehicles and bicycles meeting at a choker is low and require no special accommodation for bicycles when streets have little bicycle traffic and/or low motor vehicle volumes. Provide sharrow markings in advance of choker to alert vehicles of the need to share the space with bicyclists where no bicycle bypass lane is provided. Consider providing a bypass lane for bicycles that are separated from the travel lanes by the curb extension on wider streets with higher volumes

- The length of a choker can vary depending on the location of driveways and curbside parking but should be a minimum of 20 feet long (DelDOT)
- A choker may be a good location to place a midblock crosswalk and can be leveled with the roadbed or as a raised crosswalk. Chokers shorten the crossing distance as well as increasing the visibility of pedestrians, while providing protection with curbs
- To comply with the International Fire Code that has been adopted by emergency services, the minimum street width between the choker islands shall be 20 feet
- A midblock location near a streetlight is preferred for a choker
- May require relocation of drainage features and utilities
- Edge line tapers should conform to the CA MUTCD taper formulas and accommodate street sweeping equipment
- Curb extensions that create choker (narrowing) should include signs that are compliant with the CA MUTCD. Landscaping features can also enhance this calming measure by drawing motorist attention the chokers. The preference for landscaping are low-lying, slow growing shrubs or herbaceous perennial plants to maintain adequate sight lines and to minimize maintenance costs
- See HDM Topic 303 for selection of curb type
- See CA MUTCD for painting of curb adjacent to choker

References

1. Highway Design Manual (HDM) Index 303.4(1) - Caltrans
2. California MUTCD - Caltrans
3. Traffic Calming ePrimer - FHWA
4. Design Information Bulletin (DIB) 94 - Caltrans
5. Design Information Bulletin (DIB) 93 - Caltrans

Sample Project

Two-lane chokers in Stockton, CA

Project Description:

The City of Stockton implemented chokers on their two-lane roadway to slow vehicles within this corridor. Chokers can act as a transition between commercial and residential area. These chokers provide an added buffer for signage and planting that otherwise would restrict the existing pedestrian path.

Curb Extension/Bulbouts

Description

Bulbouts are a type of curb extension used for the benefit of pedestrians because it shortens the crossing distance and provides more area and visibility for pedestrians. Bulbouts have a traffic calming effect because it requires more attention from the driver, while inducing a speed reduction due to larger turning maneuvers.

Esparto Improvement project on State Route 16 in Esparto, CA

Placement

Bulbouts should comply with the HDM Figures 303.4A and B, while also considering site specific conditions. Bulbouts should be placed at all corners of an intersection. When used at mid-block crossing locations, bulbouts should be used on both sides of the street. The curb face of the bulbout should be setback a minimum of 2 feet from either the traveled lane or class II bikeway. For full details of the standards, refer to HDM 303.4.

Functional Classification: Minor Arterial, Collectors, and Local Roadways

Maximum Posted Speed Limit: Most appropriate for posted speeds 35 miles per hour or less. Refer to HDM 303.4

Minimum Lane Width: Varies based on ADT and other project site condition. For complete street contextual guidance, see DIB 94

Performance

Speed Reduction: 1 to 3 MPH reduction in 85th percentile speeds of through vehicles (FHWA). Turning speeds will be reduced more significantly

Volume Reduction: Nominal, but some turning volumes might decrease depending on the level of driver discomfort as well as the availability of alternative routes

Impact on Emergency Response: Nominal but turning radius of emergency vehicles should be considered if located along an emergency response route. See DIB 93 for further guidance

Mobility Impact: Nominal

Maintenance Considerations

SNOW

- Need to alert snowplow operators
- Consider snow storage

OTHER

- Consider impact to drainage and underground utilities
- Consider accommodations for commercial vehicles off-tracking (e.g., truck aprons)

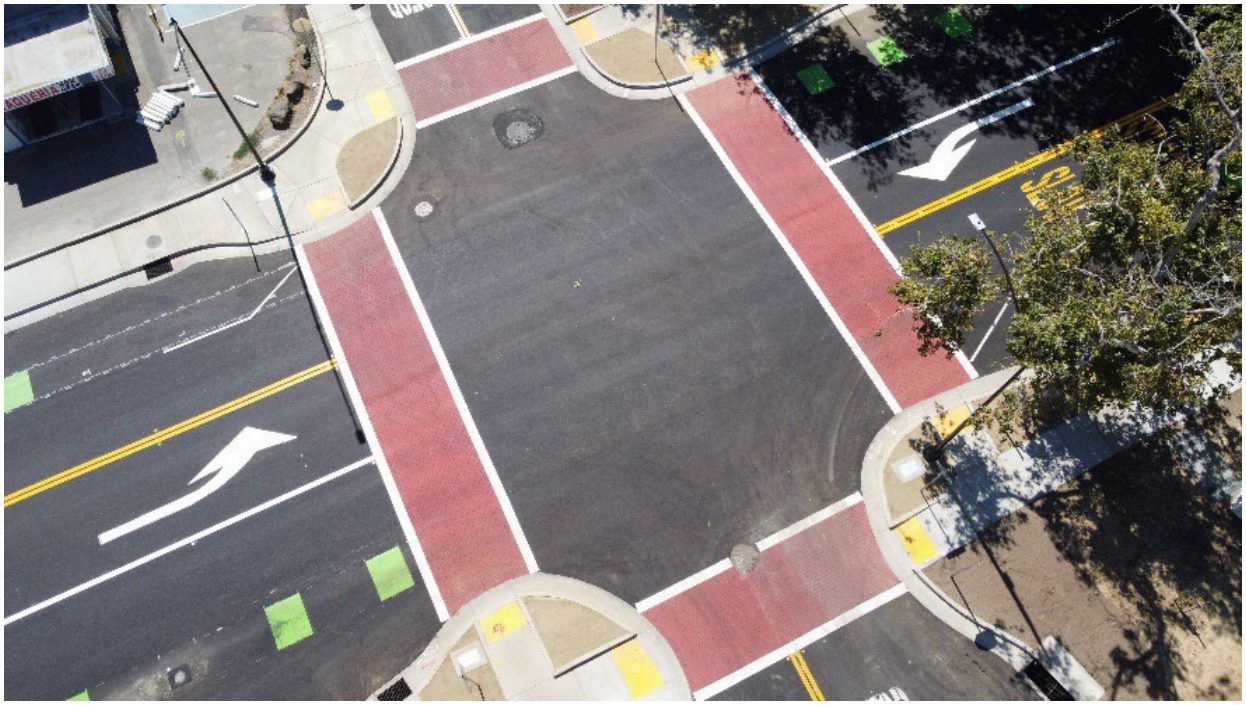
Other Considerations

- Drainage and existing utility relocation
- Should not extend into bicycle lanes
- Consult with the District Pedestrians and Bicyclists Safety Engineer
- Opportunities to provide green infrastructure
- Tracking and swept widths for Design Vehicles
- Bulbouts work well in situations where on-street parking is present. On-street parking may provide separation from errant vehicles
- Bulbouts may be designed to include protected crossings for bicycles
- Coordinate with the District Truck Access Manager to ascertain the oversize/overweight vehicles accommodation and as any additional vehicle requirements
- For added pedestrian visibility at mid-block crossings, consider crosswalk enhancement features discussed in “Category A, Signings and Markings”

References

1. Highway Design Manual (HDM) Index 303.4 - Caltrans
2. Highway Design Manual (HDM) Index 404.4 - Caltrans
3. Design Information Bulletin (DIB) 94 - Complete Streets
4. Design Information Bulletin (DIB) 93 – Evacuation Route Design Guidance
5. FHWA Traffic Calming ePrimer Section 3.16
6. NACTO Don't Give Up at the Intersection

Sample Project



Route 16 in Yolo County, CA

Project Description:

The project is located in Yolo County on State Route 16 from Orleans Street to County Road 21A. Pedestrian improvements include crosswalks, sidewalks, curb bulbouts, upgraded curb ramps, improved lighting, green bicycle lane treatment, pavement rehabilitation, parking, etc.

On-Street Parking

Description

On-street parking can assist in achieving lower operating speeds by constricting driver experience with increased side friction. On-street parking may also be used as bikeway separation from the traveled lane, which enhances bicyclist comfort by providing physical separation from motor vehicles as well as providing traffic calming. On-street parking can either be parallel or angled, parallel parking provides more potential for speed reductions. Typical applications can include parking on both sides of the roadway, either side, or alternating from one side to the other for a chicane effect. On-street parking can be combined with other traffic calming measures.

Back-Angled Street Parking (SR99 in Live Oak, CA)

Placement

Appropriate at midblock location or near an intersection. Parking should be prohibited within close proximity to an intersection to allow for adequate corner sight distance. Curb extension can be implemented to allow for on-street parking, while offering a shorter crossing distance for pedestrians

Functional Classification: Principal Arterials, Minor Arterials, Collectors, and Local Roads

Maximum Posted Speed Limit:Appropriate for common urban speed limit. Consider providing

shy distance between parked vehicles and the through lanes (FHWA)

Performance

Speed Reduction: 1-5 MPH reduction, with 2-3 MPH being the most common (FHWA)

Volume Reduction: Little to no impact

Impact on Emergency Response: Nominal

Mobility Impact: Analysis of impacts to the project area or roadway network that is consistent with HCM (Chapters 15, 16, 18, 29, and 30) methodologies should be conducted

Maintenance Considerations

- Consider impact on-street sweeping or snow plowing operations

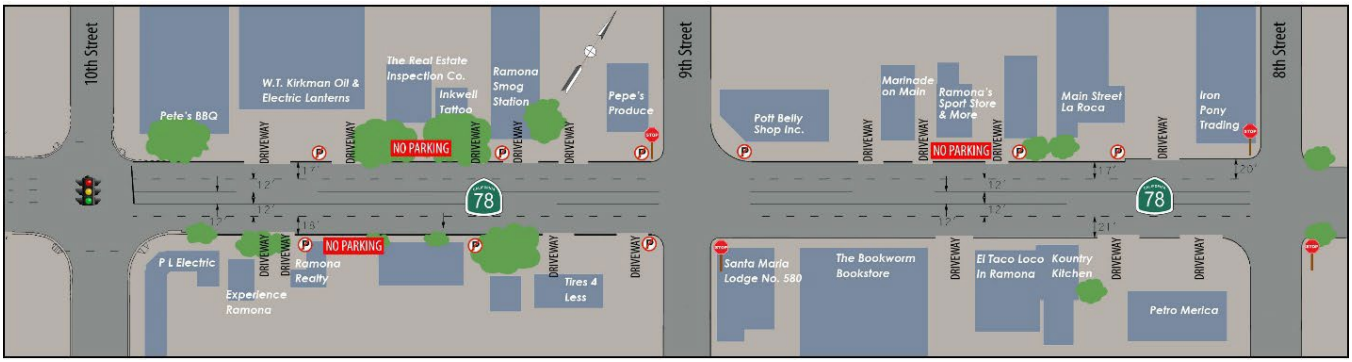
Other Considerations

- Requires local agency enforcement of no parking regulatory signage during plowing or sweeping operations
- Coordination with local agencies may be necessary to remove, change, or enforce parking
- May impact road user visibility and sight distance at driveways, alleys, and intersections
- If paired with bike lane, consider bike lane buffer and/or wider bike lane to protect cyclists from car doors
- Reduces effective width of roadway if more than half of a block-face is occupied
- Can be paired with curb extensions or bulb-outs to protect parking
- Parallel parking preferred for speed reduction
- Consider parking demand and back-in angle street parking
- Provides protective buffer between pedestrians and moving traffic
- Requirements from HDM Chapter 300 should be considered depending on project scope
- ADA-compliant spaces may be necessary depending on context. Refer to DIB 82
- Consult with the District Traffic Safety Engineer and/or the District Bicyclist and Pedestrian Safety Engineer for the implementation of this measure

References

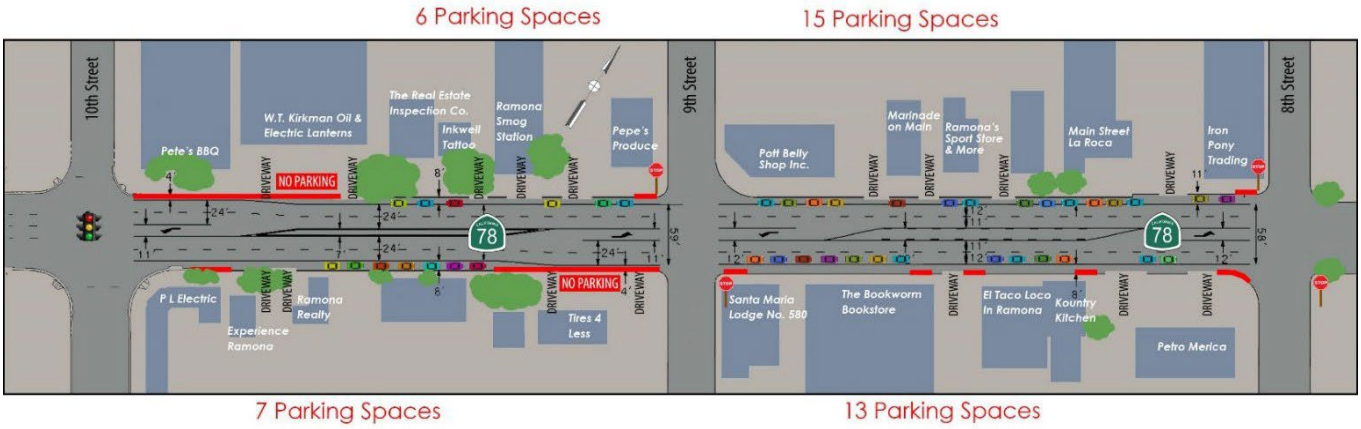
1. Highway Design Manual (HDM) - Chapter 300
2. Traffic Calming ePrimer - FHWA
3. Traffic Calming Fact Sheet - ITE
4. Highway Safety Manual - AASHTO
5. Highway Capacity Manual 7th Edition - The National Academies Press
6. California MUTCD - Caltrans

Sample Project



Before Project

- NO PARKING allowed on both sides of the street between 9th and 10th
- NO PARKING allowed on the westbound side of the street between 8th and 9th



After Project

- Parallel parking spaces for 21 vehicles on the westbound side and 20 on the eastbound side provided

Project Description:

41 additional parking spaces have been provided that were previously designated as no parking areas along State Route 78 in Ramona, California. This feature was implemented in addition to road diet implementation that narrowed the roadway to reduce vehicle speeds.

Raised Median Island/Traffic Island

Description

Traffic Islands are typically used for channelization but could also be used for traffic calming, since it introduces a curb adjacent to vehicles and has the effect of slowing vehicles. Pedestrian refuge islands and raised median islands are commonly used together. Landscaping the raised median island contributes to community livability and environmental sustainability. The proposed landscaping should not impair sight distances.

State Route 131 in Tiburon, CA (Google Earth)

Placement

For guidance on design and delineation of traffic islands / raised medians island, see the HDM Index 405.4. Table 405.4 provides information regarding commonly used parabolic curb flares. The California MUTCD should be referenced when considering the placement of traffic islands at signalized and unsignalized intersections. The HDM index 405.4 also provides additional information on pedestrian refuge. All traffic islands placed in the path of a pedestrian crossing must comply with DIB 82.

The guidance in the HDM Topic 904 applies if landscaping is provided within the island. The FHWA Traffic Calming ePrimer Section 3.18 contains useful information on Raised Median Islands/Traffic Islands.

Functional Classification: Minor Arterials, Collectors, and Local Roads

Maximum Posted Speed Limit: Appropriate for roadways under 35 MPH posted speed limit

Minimum Lane Width: Varies by ADT and other project specific site condition. For complete street contextual guidance, see DIB 94

Performance

Speed Reduction: 1-8 MPH Reduction of 85th percentile speed depending on the degree of lane narrowing and the volume of traffic (FHWA)

Volume Reduction: Negligible

Impact on Emergency Response: Nominal. Raised Median Islands and Traffic Islands can affect the ability to move large volumes of people and vehicles into and out of communities within designated evacuation routes. Refer to DIB 93, Evacuation Route Design Guidance.

Mobility Impact: Nominal

Maintenance Considerations

SNOW

- Need signage to alert snowplow operators

OTHER

- If landscaped, need to consider maintenance and access
- Need to consider impact on drainage and existing utilities, which may require relocation
- Consider effectiveness of mountable curbs

Other Considerations

- May impede with large vehicle turning movements
- Consider impact of blocking left turns from driveways.

References

1. Highway Design Manual (HDM) Index 405.4 - Caltrans
2. Highway Design Manual (HDM) Topic 904 - Caltrans
3. Traffic Calming ePrimer (Section 3.18) - FHWA
4. Design Information Bulletin (DIB) 82 - Caltrans
5. Design Information Bulletin (DIB) 94 - Caltrans
6. Design Information Bulletin (DIB) 93 - Caltrans

Sample Project

Live Oak Complete Streets on State Route 99 in Live Oak, CA

Project Description:

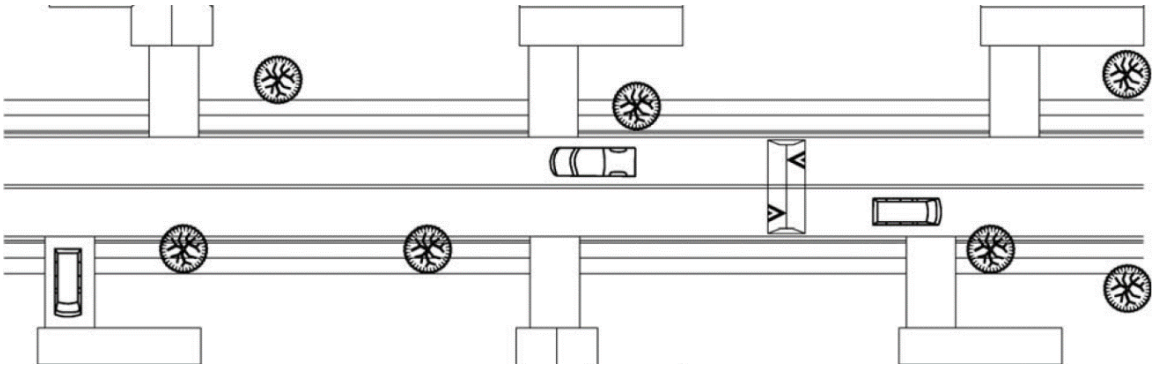
The project is located along SR 99, south of Coleman Ave and extends to the north of Nevada Street within the City of Live Oak in Sutter County. Improvements within this project include, rehabilitating pavement life, upgrading drainage systems, constructing new continuous sidewalks, improving traffic signals, providing parking, upgrading curb ramps, constructing raised median island, etc.

Category D. Vertical Roadway Elements

Speed Hump

Description

A speed hump is an elongated mound in the roadway pavement surface extending across the traveled way at a right angle to the traffic flow. A speed hump is typically 12 feet in length (in the direction of travel) and 3 to 4 inches in height. The purpose of a speed hump is to discourage speeding by producing sufficient discomfort to a motorist while driving through it. A speed hump is also referred to as a road hump or undulation.



Speed Hump Schematic (DelDOT)

Placement

Mid-block, not near an intersection. Should not be placed on a sharp curve.

Functional Classification: Local Roads

Appropriate Daily Volume Range: 3,500 ADT (PennDOT). Consider only if no more than 5% of the overall traffic flow consists of long-wheelbase vehicles (ITE)

Maximum Posted Speed Limit: 30 MPH (ITE)

Performance

Speed Reduction: A single speed hump reduces vehicle speeds to a range of 15 to 20 MPH when crossing the hump. To keep 85th percentile operating speed between 25 MPH to 30 MPH, a series of speed humps at spacing between 260’ to 500’ is recommended (ITE)

Volume Reduction: 20% (DelDOT) - The reduction will depend on the impact to travel time and the availability of an alternative route.

Impact to Emergency Route Access: Typically, delay for a fire truck is in the 3 to 5 seconds range. Delay can be as much as 10 seconds for an ambulance with a patient. Consider using a speed cushion or an offset speed table to help mitigate delay. See DIB 93 for further guidance.

Mobility Impact: Moderate

Maintenance Considerations

SNOW

- Signing to alert snowplows to avoid damage to approach ramps
- Consider snowplow design when choosing approach ramp shape (straight, sinusoidal, or parabolic)

OTHER

- Visibility of warning sign
- May impact street sweeping operations
- Pavement marking upkeep due to constant traffic wear

Other Considerations

- The SPEED HUMP (W17-1) sign should be used to give warning of a vertical deflection in the roadway that is designed to limit the speed of traffic. The SPEED HUMP sign should be supplemented by an Advisory Speed plaque. See CA MUTCD Section 2C.29 for additional information on Speed Hump Sign
- If speed hump markings are used, they shall be a series of white markings placed on a speed hump to identify its location. See CA MUTCD Section 3B.25 for additional information on Speed Hump Markings
- Speed humps may present a potential obstacle to all vehicles including bicyclists, motorcyclists, and emergency vehicles
- Speed humps implementation will result in an increase in vehicle noise
- Traffic may diverge from roads to adjoining parallel roads where speed humps are installed. Drivers may swerve to avoid speed humps
- Consult with regional transit, emergency services, and fire departments prior to the installation of speed humps
- May impact drainage on roadways where drainage gutter or flow of water is in the center of roadway
- Consider street lighting near speed humps
- Speed humps should not be installed in front of driveways or other significant access areas

References

1. California MUTCD - Caltrans
2. Design Information Bulletin (DIB) 93 - Caltrans
3. Traffic Calming ePrimer - FHWA
4. Updated Guidelines for the Design and Application of Speed Humps - ITE

Sample Project

Speed Hump in Stockton, CA

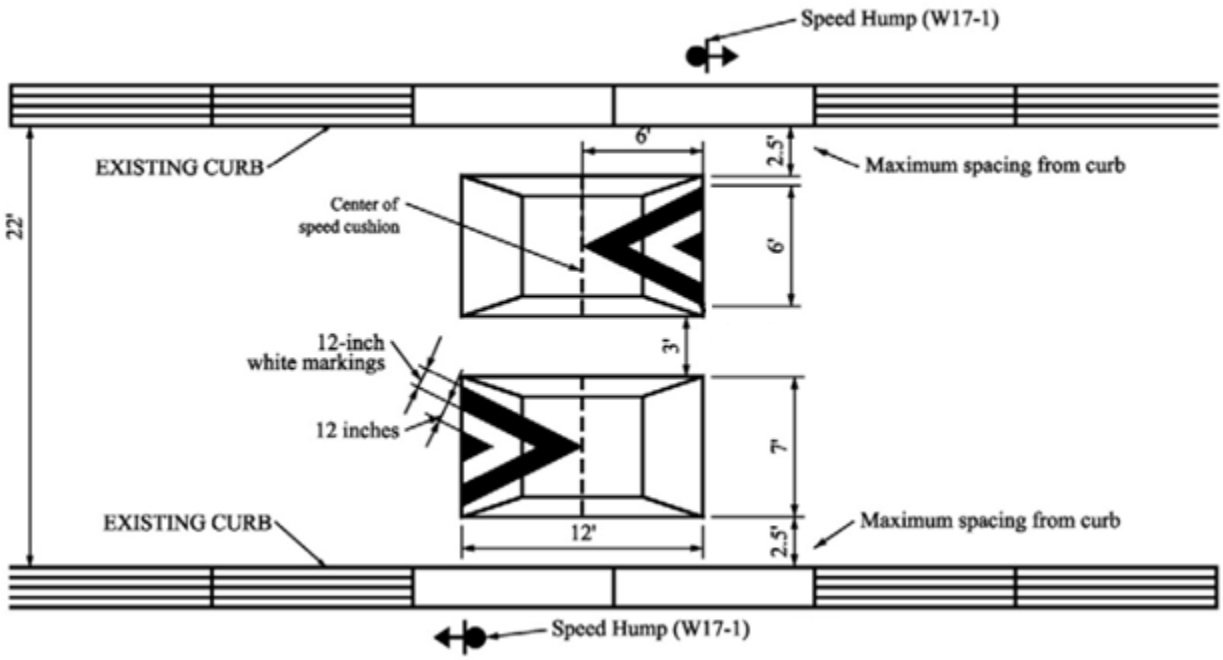
Project Description:

The City of Stockton implemented speed humps within residential area to discourage speeding.

Speed Cushion

Description

A speed cushion consists of two or more raised mounds placed laterally across a roadbed. The height and length of the raised mounds are comparable to the dimensions of a speed hump. The primary difference is that a speed cushion has gaps (often referred to as "cutouts") between the raised mounds to enable a vehicle with a wide track (e.g., a large emergency vehicle, some trucks, some buses) to pass through the feature without any vertical deflection. Another difference between a speed cushion and a speed hump is that the top of the speed cushion is usually levelled. Speed cushions can be more accommodating for users on two-wheeled modes such as cyclists and motorcyclists when compared to speed humps due to the gaps provided. A speed cushion is often the preferred alternative to a speed hump on a primary emergency response route, a transit route with frequent service, or when higher truck volumes are anticipated. A speed cushion is also known as a speed lump, speed slot, and speed pillow.



Speed Cushion Schematic with Median (DelDOT)

Placement

Appropriate at midblock, not near an intersection. Should not be placed on a sharp curve.

Functional Classification: Local Roads

Appropriate Daily Volume Range: 3,500 ADT (PennDOT)

Maximum Posted Speed Limit: 30 MPH (ITE)

Performance

Speed Reduction: Single speed cushion reduces vehicle speeds to a range of 15 to 20 MPH when crossing the hump. To keep 85th percentile operating speed between 25 MPH to 30 MPH, a series of speed humps spaced between 260' to 500' is recommended (ITE). Average speeds are typically higher when compared to a speed hump because speed cushion allows a motorist to pass over the cushion with one wheel on the cushion and one wheel off

Volume Reduction: Minimal as a single installation, but around 20% when installed in a series (PennDOT)

Impact on Emergency Vehicle Access: Negligible – Emergency vehicles can pass over the speed cushions at or near the speed limit.

Mobility Impact: Moderate

Maintenance Considerations

SNOW

- Signing to alert snowplows to avoid damaging approach ramps
- Consider snowplow design when choosing approach ramp shape (straight, sinusoidal, or parabolic)

OTHER

- Visibility of warning sign
- Pavement marking upkeep due to constant traffic wear
- Impacts to street sweeping operations

Other Consideration

- Pavement markings (e.g., striping, arrows) and signage for a speed cushion should replicate those for a speed hump. See CA MUTCD Section 2C.29 and Section 3B.25 for additional information
- Speed cushions implementation will result in an increase in vehicle noise
- Traffic may diverge to adjoining parallel roads from roads where speed cushions are installed. Drivers may swerve to avoid speed cushions
- Consult with regional transit, emergency services, and fire departments prior to the installation of speed cushions
- Consider placing street lighting near speed cushions

- The cushion width should be wide enough to slow personal passenger vehicles and yet narrow enough to permit fire trucks and transit vehicles to pass easily without overloading the rear axles of those heavier vehicles

References

1. California MUTCD - Caltrans
2. Design Information Bulletin (DIB) 93 - Caltrans
3. Traffic Calming ePrimer - FHWA
4. Updated Guidelines for the Design and Application of Speed Humps - ITE

Sample Project

Pamplico Dr in Santa Clarita, CA (Google Maps)

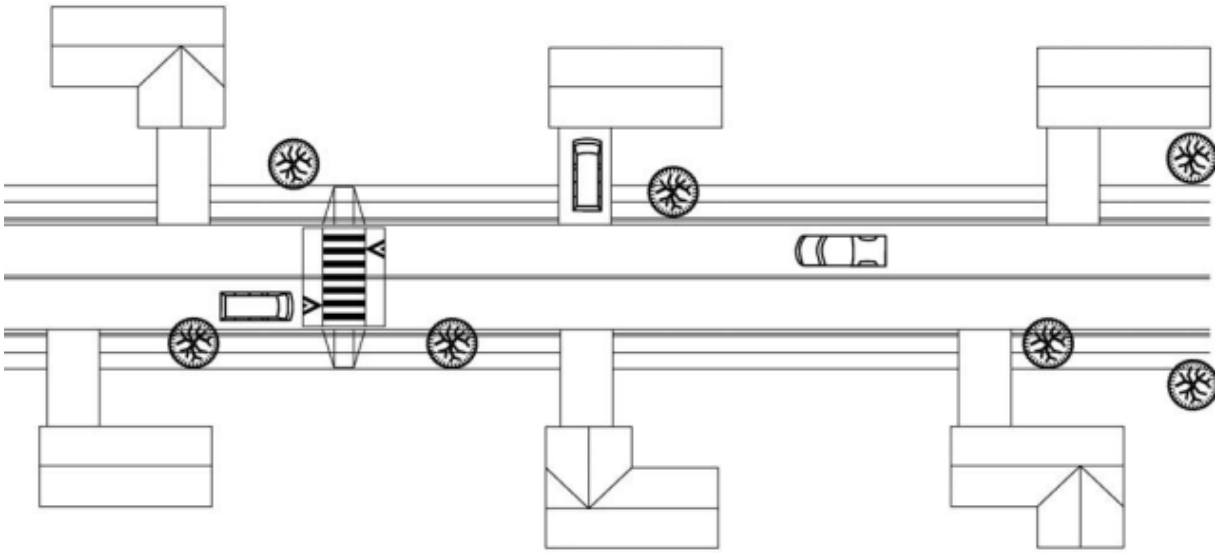
Project Description:

The City of Santa Clarita implemented speed cushions to discourage speeding within residential area. Emergency vehicles with wide tracks can pass through this calming measure without any vertical deflection.

Speed Table/Raised Crosswalk

Description

A speed table is a vertical traffic calming device, similar to a speed hump that runs transverse to the direction of traffic. The speed table is longer than a speed hump, typically having a ramp up of approximately 6 feet followed by a 10 feet minimum flat section, then a ramp down of 6 feet for a total width of 22 feet. The roadway transition will not exceed 5% grade relative to the roadway profile. The flat section may have a marked crosswalk placed on the flat section, which provides more visibility to the crosswalk and crossing pedestrians.



Speed Table / Raised Crosswalk (DelDOT)

Placement

Recommended for single-lane one-way or two-lane two-way roadways, where a crosswalk exist or if a crosswalk is warranted. Should not be placed on a sharp curve.

Speed tables can enhance marked crosswalk visibility, while having the added benefit of reducing vehicular operating speed at the crossing location. There are two types of speed tables: flush with the curb and open at the edges.

When speed tables are constructed flush with the curb, an ADA curb ramp is not required. However, detectable warning surfaces are needed at the sidewalk curbs. Drainage flow must be considered along the gutter line.

When speed tables are constructed with open ends, the crosswalk will taper to the pavement prior to the gutter, and an ADA curb ramp must be provided. The edge taper should meet ADA design requirements and can also conform prior to the bike lane to avoid impeding bicyclist

operation.

Functional Classification: Collectors and Local Roads

Appropriate Daily Volume Range: 9,000 ADT or less. Refer to Table 1 for more information on placement.

Maximum Posted Speed Limit: 30 MPH or less

Performance

Speed Reduction: 7-8 MPH reduction in 85th percentile operating speeds (FHWA)

Volume Reduction: Low, but more significant diversion can be achieved by combining this measure with other traffic calming measures.

Impact on Emergency Vehicle Access: Generally, not appropriate for a primary emergency vehicle route or on a street that provides access to a hospital or emergency medical services. See DIB 93 for further guidance.

Maintenance Considerations

SNOW

- Signing to alert snowplows to avoid damaging approach ramps
- Consider snowplow design when choosing approach ramp shape (straight, sinusoidal, or parabolic)

OTHER

- Visibility of warning sign
- Pavement markings require upkeep due to constant traffic wear
- Impacts to street sweeping operations

Other Considerations

- Pavement markings (e.g., striping, arrows) and signage for a speed table/raised crosswalk should replicate those for a speed hump. See CA MUTCD Section 2C.29 and Section 3B.25 for additional information
- Consult with the District Pedestrians and Bicyclists Safety Engineer
- Speed tables may present potential obstacle to all vehicles including bicyclists and motorcyclists
- Speed tables implementation will result in an increase in vehicle noise
- Speed Tables are typically 3” to 6” high
- Traffic may diverge to adjoining parallel roads from roads where speed tables are installed
- Consult with regional transit, emergency services, and fire departments prior to the

installation of speed cushions

- Requires Advanced Warning Signs
- Proximity of nearest intersection
- Impact to drainage, street parking, and existing utilities
- May require street lighting
- ADA compliance
- Flat top long enough (typically 10 feet) for the entire wheelbase of a passenger car to rest on top (FHWA)

References

1. Design Information Bulletin (DIB) 93 - Caltrans
2. Design Information Bulletin (DIB) 82 - Caltrans
3. California MUTCD (Section 3B.18) - Caltrans
4. Traffic Calming ePrimer - FHWA
5. Traffic Calming Fact Sheets - ITE
6. Urban Street Design Guide - NACTO

Sample Project

66th St in Emeryville, CA (Google Maps)

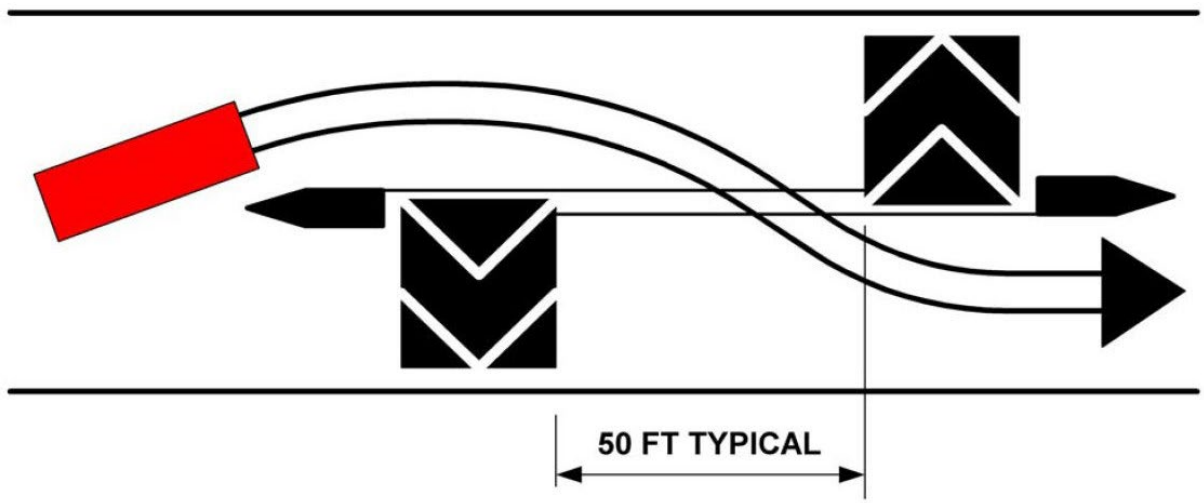
Project Description:

The City of Emeryville implemented a speed table/raised crosswalk. Additional crosswalk enhancements include RRFB signing, In-street Pedestrian Crossing signs, and pavement markings at the 66th St pedestrian crossing. These calming measures were implemented to help reduce vehicle speeds, improve driver awareness of the pedestrian crossing, and encourage motorists to yield to pedestrians.

Offset Speed Table

Description

An offset speed table provides the calming benefits of a speed table, while allowing emergency vehicles to pass through with minimal delay. An offset speed table is a speed table split in half down the street centerline with longitudinal separation between the two halves. This geometry allows for emergency vehicles to avoid the vertical device by weaving through the two halves of the speed table. An offset speed table is typically 3 to 4 inches in height with a 6 feet ramp up section, a 10 feet flat section, followed by a 6 feet ramp down section for a total width of 22 feet. A minimum separation distance between humps of 40 feet is necessary to allow emergency vehicles to bypass the speed table.



Offset Speed Table (NACTO, ITE)

Placement

Mid-block along a corridor that is suited to a speed hump but requires minimal impact for emergency response vehicle delay. Not recommended on a sharp curve.

Functional Classification: Local Roads

Appropriate Daily Volume Range: 9,000 ADT or less

Maximum Posted Speed Limit: 30 MPH

Performance

Speed Reduction: 7-8 MPH reduction in 85th percentile speeds

Volume Reduction: Low, but more significant diversion can be achieved by combining this measure with other traffic calming measures.

Impact of Emergency Response Access: Minimal. This countermeasure is specifically designed to minimize emergency vehicle delays, while still providing the speed reduction benefits of speed humps.

Mobility Impact: Nominal

Maintenance Considerations

SNOW

- Signing to help snowplows avoid damaging approach ramps
- Consider snowplows when choosing approach ramp shape (straight, sinusoidal, or parabolic)

OTHER

- Warning sign visibility
- Pavement marking upkeep due to constant traffic wear

Other Considerations

- Driver circumnavigation can be minimized by providing small median islands leading up to each table with a double-centerline and raised pavement markers
- Pavement markings (e.g., striping, arrows) and signage for an offset speed table should replicate those for a speed hump. See CA MUTCD Section 2C.29 and Section 3B.25 for additional information
- Offset speed tables may present a potential obstacle to all vehicles including bicycles and motorcycles
- Offset speed tables implementation will result in an increase in vehicle noise
- Traffic may diverge to adjoining parallel roads from where offset speed tables are installed. Drivers may swerve to avoid offset speed tables
- Consult with regional transit, emergency response services, and law enforcements.
- Emergency vehicles swerving to avoid the offset speed table may confuse opposing traffic. Consider proper signing
- Impact to drainage and street parking
- May require street lighting

References

1. California MUTCD (Chapters 2C and 3B) - Caltrans
2. Traffic Calming Fact Sheets - ITE
3. Traffic Calming ePrimer - FHWA
4. Offset Speed Tables for Reduced Emergency Response Delay – NACTO, ITE

Sample Project

SW 87th Ave in Beaverton, OR (Scott Batson)

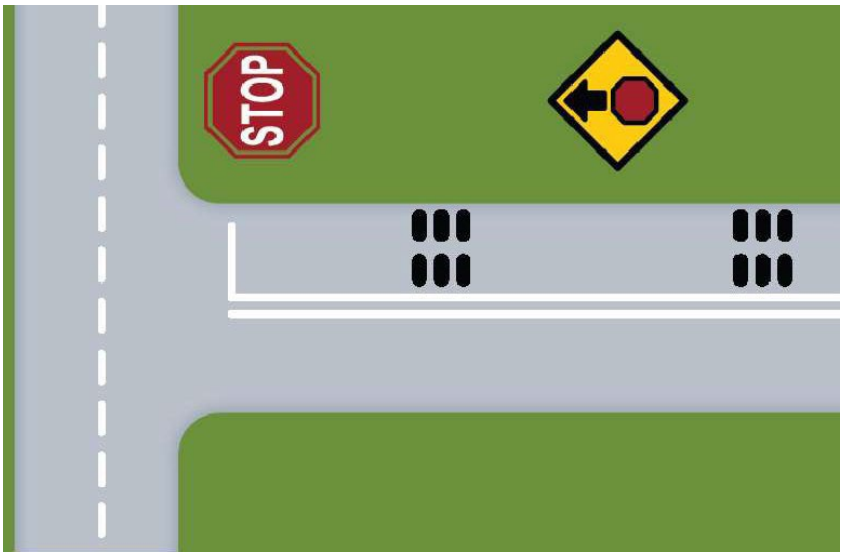
Project Description:

The City of Beaverton installed offset speed tables along SW 87th Ave. Offset speed tables were chosen due to the designation of the street for emergency response. The city saw a reduction in speed along this residential neighborhood. The City of Beaverton also added raised pavement makers with inset reflectors to deter vehicles from crossing the centerline.

Transverse Rumble Strips

Description

Transverse rumble strips are raised or grooved patterns installed perpendicular to the direction of travel in the roadway travel lane. Typically installed on rural roadways that have low volume and with infrequent traffic control devices. Transverse rumble strips provide an audible and tactile warning downstream of a decision point. They are different from center line and edge line rumble strips, which are located off the travel lane.



Transverse Rumble Strips (MNDOT)

Placement

On the approach of an unexpected roadway condition such as a stop condition or at a location that has a significant reduction in the speed limit. Examples include intersections, toll plazas, horizontal curves, end of highway/freeway, and work zones.

Functional Classification: Principal Arterials, Minor Arterials, Collectors, and Local Roads

Performance

Speed Reduction: 1-2 MPH on rural highways (FHWA)

Volume Reduction: Low

Impact on Emergency Response Vehicles: None. Emergency vehicles should be able to transverse the measure at or above the speed limit.

Mobility Impact: Nominal

Maintenance Considerations

SNOW

- Need signage to alert snowplow operators to avoid damaging the transverse rumble strips
- Using grooved rumble strips to avoid damage by snowplows

OTHER

- Need to be replaced or repaired frequently. The raised portions wear down rapidly due to constant traffic on them, which reduces their effectiveness

Other Considerations

- Noise pollution from rumble strips may impact surrounding land uses
- Will impact motorcyclists and bicyclists. Consider providing a center gap
- Raised or grooved options can be used for intersection approaches
- Grooved are generally 0.5” deep
- Raised are no more than 0.5” tall (multiple layers of thermoplastic for desired height)
- Can be used in combination of different length thermoplastics for more aggressive effect

References

1. Factors Influencing Operating Speeds and Safety on Rural and Suburban Roads - FHWA
2. California MUTCD (Section 3J.02) - Caltrans

Sample Project

Birch Ave and John St in Princeton, NJ (Google Earth)

Project Description

Transverse rumble strips were installed in a residential neighborhood in New Jersey. This calming measure was implemented to heighten motorist awareness of the pedestrian crossings and stop-controlled intersection ahead.

Raised Intersection

Description

A raised intersection is a vertical traffic calming device that raises the entirety of an intersection by 3 to 4 inches. The ramp sections of the intersection are approximately 6 feet in length with no greater than a 5% slope. Alternative paving methods such as colored asphalt, concrete, or pavers can be used to mark the intersection. A raised intersection provides many of the same benefits as other vertical traffic calming devices such as reducing vehicle speeds and increasing driver awareness of pedestrians and bicycles.

Raised Intersection (NACTO)

Placement

At the intersection of two local roadways with posted speeds less than 35 MPH. Commonly implemented in commercial areas with high pedestrian volumes

Functional Classification: Collectors and Local Roads

Maximum Grade: 8% or less

Performance

Speed Reduction: Speed should be reduced on all approaches, especially on un-controlled approaches (DelDOT)

Volume Reduction: Low

Impact on Emergency Response Access: Not recommended for use along primary emergency response routes, as it can add 4 to 6 seconds of delay.

Maintenance Considerations

SNOW

- Signage to help snowplows avoid damaging approach ramps
- Consider snowplow operations when choosing approach ramp shape (straight, sinusoidal, or parabolic)

OTHER

- Drainage impacts
- Crosswalks require tactile pavement for visually impaired pedestrians.
- Visibility of warning sign
- Upkeep of pavement markings due to constant traffic wear

Other Considerations

- Major impacts to drainage
- Changes to the existing drainage could impact existing utilities
- Detectable warning surface and/or color contrasts must be incorporated to differentiate roadway and sidewalk
- Pattern or tactile raised pavement

References

1. Traffic Calming ePrimer - FHWA
2. Design Information Bulletin (DIB) 82 - Caltrans
3. Traffic Calming Fact Sheets - ITE
4. Urban Street Design Guide - NACTO

Sample Project

Butte St and Market Pine Alley in Redding, CA (Google Maps)

Project Description:

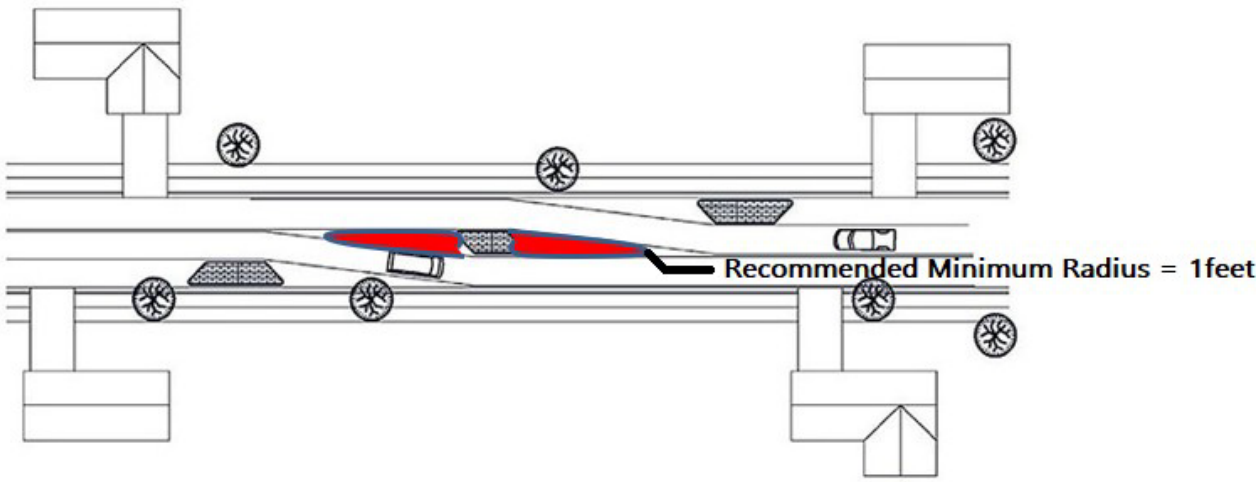
A raised intersection was implemented at Butte St and Market Pine Alley in Redding, CA. This calming measure was implemented to improve safety and accessibility at an intersection with high volumes of vehicles and pedestrians. The raised intersection improves pedestrian visibility, slows vehicle speeds, and provides a level pathway across the intersection.

Category E. Physical Roadway Segment Modifications

Lateral Shifts

Description

A lateral shift is a realignment of an otherwise straight street that causes travel lanes to shift. The primary purpose of a lateral shift is to reduce motor vehicle speed along the street. A typical lateral shift separates opposing traffic through the shift with the aid of a median island. Without the island, a motorist could cross the centerline and take the straightest path possible, thereby reducing effectiveness of the lateral shift. Additionally, a median island reduces the likelihood of a motorist veering into the path of opposing traffic. A chicane is a variation of a lateral shift except a chicane shifts alignment more than once.



Lateral Shift Schematic (DelDOT)

Placement

Along streets with a documented speeding problem, where more substantial measures (such as a chicane) are not appropriate; two-lane minor arterial.

Functional Classification: Minor Arterials, Collectors, and Local Roads

Appropriate Daily Volume Range: All volumes (FHWA)

Speed Limit: 35 MPH or less

Performance

Speed Reduction: 5 MPH (DelDOT)

Volume Reduction: Nominal impact

Impact to Emergency Response: Minimal

Maintenance Considerations

- Design lateral shift to accommodate snowplow operations and snow storage
- If the median island is landscaped, consider maintenance and irrigation

Other Considerations

- Lateral Shifts should follow the guidance in CA MUTCD Section 6C.08
- Applicable only at mid-block locations, preferably near a streetlight
- For locations with bicycle facilities, the preference is to separate bicycles from motor vehicle lanes
- Less effective in reducing vehicle speed when the volume of traffic is significantly higher in one direction than the other or when volumes are so low that the likelihood of a motorist encountering an opposing motorist within the lateral shift zone is low
- May require removal of some on-street parking to implement lateral shift, therefore slightly reducing the accessibility of adjacent properties
- Physical features can also be used as a landscaping opportunity
- A lateral shift can be created by means of either curb extension or edge island. A curb extension offers better opportunity for aesthetic enhancement through landscaping. An edge island can leave an existing drainage channel open and tends to be less costly to construct
- The curb extension or edge island should have 45-degree tapers to reinforce the edge lines
- A curb extension or edge island that forms a lateral shift should have a vertical element (e.g., signs, landscaping, a reflector, or some other measure to draw attention to it)
- Either a barrier or mountable curb can be used on an island that forms a lateral shift. The use of a mountable curb is more forgiving to motorists and is acceptable where the island is expected to serve as a pedestrian refuge
- Taper should comply with the HDM for taper angle and length
- Check if the lateral shifts affect the Design Vehicle swept path and tracking (HDM 404)
- May require drainage relocation. Impacts to existing utilities should be avoided
- Can provide a location for pedestrian crossings with a median refuge
- May reduce roadway space available for bicyclists depending on design

References

1. Design Information Bulletin (DIB) 93 - Caltrans
2. California MUTCD (Section 6C.08) – Caltrans
3. Traffic Calming ePrimer - FHWA
4. Traffic Calming Fact Sheets - ITE

Sample Project

Keystone Ave in Reno, NV (Google Earth)

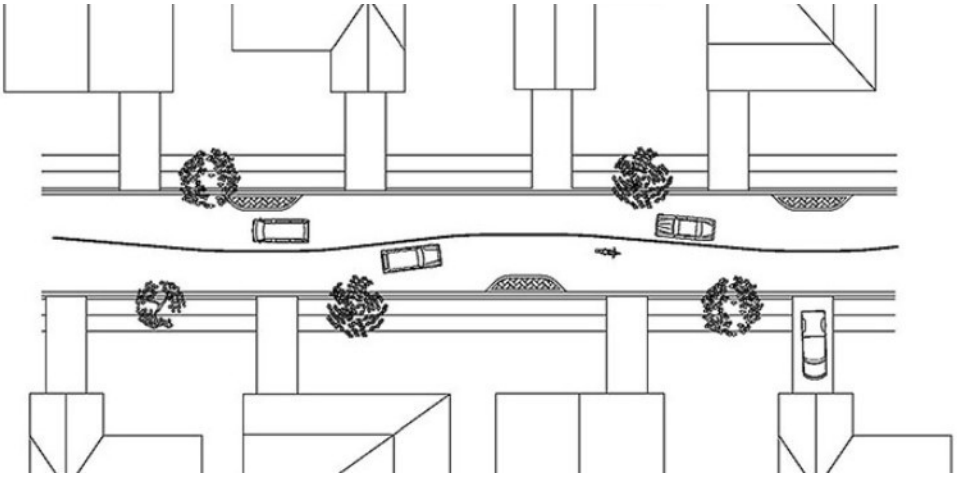
Project Description:

The City of Reno implemented a lateral shift within this residential neighborhood to reduce motor vehicle speeds along the street.

Chicanes

Description

Chicanes are a series of narrowing or curb extensions that alternate from one side of the street to the other, forming an S-shaped, curvilinear roadway alignment. They are also referred to as deviations, serpentines, or reversing curves. The purpose of a chicane is to introduce horizontal curvature to the road, breaking up the “runway effect” of wide and straight streets.



Chicanes (DelDOT)

Placement

Best suited to mid-block locations along local road where there are balanced traffic volumes in both directions to discourage drivers from crossing the center line. Adequate distance is needed between driveways and intersections.

Functional Classification: Collectors with low volume and Local Roads

Maximum Posted Speed Limit: 35 MPH or lower

Minimum /Maximum Number of Lanes: One-lane one-way or two-lane two-way roadways

Maximum Grade: Varies - 10% (El Paso, TX), 8% (PennDOT), 6% (DelDOT)

Performance

Speed Reduction: 3-9 MPH. 5-13 MPH within the chicane

Volume Reduction: Up to 20% (PennDOT). Traffic diversion is heavily dependent on the impact the chicane has on travel time and the availability of a nearby faster route.

Impact on Emergency Response: Minimal. When located along primary emergency response routes, the impact can be nominalized by designing the curb extensions to be mountable by emergency response vehicles.

Mobility Impacts: Nominal

Maintenance Considerations

- Design chicanes to accommodate snowplow operations
- Upkeep of reflective pavement markers if used

Other Considerations

- Check if the lateral shifts affect the Design Vehicle swept path and tracking (HDM 404)
- Changes to the existing drainage and lighting could impact existing utilities
- Optional reflective pavement markers
- Signage on bulbouts
- Object marker for 2-way traffic
- Driveway access maintained

References

1. Highway Design Manual (HDM) Topic 404 - Caltrans
2. Highway Design Manual (HDM) Index 303.4 - Caltrans
3. Traffic Calming ePrimer (3.4) - FHWA
4. Traffic Calming Fact Sheets – ITE

Sample Project

NW 56th St and 2nd Ave NW in Seattle, WA (Google Earth)

Project Description:

Chicanes were implemented in Seattle within a residential neighborhood to lower vehicles speeds by forcing vehicles to shift from one side of the road to the other. This calming measure was paired with appropriate signage to warn drivers of the upcoming lateral shift in lanes.

Category F. Others

Street Trees and Landscaping

Description

Street trees and landscaping have long been shown to improve comfort and livability, but recent research indicates that they can also contribute to a reduction in the rate of crashes. This effect is often attributed to a perceived narrowing of the roadway, a sense of rhythm and human scale created by framing the street, and the perception that the driver is in a place where they are more likely to encounter pedestrians, bicyclists, and cross-traffic. Trees and landscaping can also support the shift to more space-efficient modes such as walking and biking by making those modes more comfortable.

Mature trees line State Route 16 in Esparto, CA

Placement

Street trees are ideally placed behind curbs in sidewalk buffer zones and medians of Urban Area, Suburban Area, and Rural Main Streets where posted speeds are 35 mph or less. In Transitional Area (between high speed rural highways and low speed town centers), landscaping may be used alone or in combination with gateway monuments to indicate drivers of a changed environment. Large trees are not appropriate within the clear recovery zone of rural conventional highways, freeways, and expressways. Provide minimum clearances, clear recovery zones, and appropriate sight distance, per the HDM.

Functional Classification: Principal Arterials, Minor Arterials, Collectors, and Local Roads

Maximum Posted Speed Limit: Refer to HDM Table 904.5 and local codes

Performance

Speed Reduction: The quantitative impact is not well documented, but one study showed an average decrease in cruising speed of about 3 MPH. At gateway treatments combining landscaping with other elements, 3-10 MPH speed reductions have been documented.

Volume Reduction: N/A. Reduced volumes are not generally a goal of this measure.

Impact on Emergency Response: Nominal

Maintenance Considerations

SNOW

- Need to consider downed tree limbs during inclement weather
- Consider impact of landscaping on snow storage spaces

OTHER

- Consider maintenance access and worker safety
- Provide for plant establishment period and consult with Landscape Architecture and Maintenance regarding permanent irrigation
- Select plant material and design planting area to minimize impact of root systems on underground utilities and sidewalks
- Need to consider risk of run-off-road crashes when placing trees, particularly at intersections and conflict points
- Consider upkeep needs, climate-adapted species, and horticultural requirements of different plants
- Street trees and landscaping may be maintained via a maintenance agreement with local agencies

Other Considerations

- Consider sight distance and safety setbacks for street trees at intersections and conflict points
- Consider clear views of traffic control devices and street and pedestrian lighting requirements. See HDM Index 904.5 for information on locating trees, HDM Index 405.1 for Sight Distance, HDM Index 309.1(2) for Clear Recovery Zone, and DIB 82 for clear width for sidewalks
- Consider placement relative to on-street utility equipment to minimize potential conflicts

- Refer to utility providers for minimum utility offsets and maximum tree height under overhead utilities
- Consider locating street trees or landscaping between motor vehicle traffic lanes and bikeways or pedestrian facilities for pedestrian and bicyclist comfort
- In Transitional Area and at community gateways, consider varying landscape composition, spacing, and formality. Consider maintaining consistent landscaping throughout an urbanized area or main street corridor
- Solicit community engagement to inform landscape aesthetics and design
- Consult the District Landscape Architecture and Maintenance for design development

References

1. Highway Design Manual (HDM) Index 901.2 Landscape Architecture Design Standards Caltrans
2. Highway Design Manual (HDM) Index 904.3 Plant Selection - Caltrans
3. Highway Design Manual (HDM) Index 904.5 Locating Trees - Caltrans
4. Highway Design Manual (HDM) Topic 201 Sight Distance - Caltrans
5. Highway Design Manual (HDM) Index 309.1(2) Clear Recovery Zone (CRZ) - Caltrans
6. Highway Design Manual (HDM) Index 405.1(2) Corner Sight Distance - Caltrans
7. Encroachment Permits Manual (Section 506) – Caltrans
8. Design Information Bulletin (DIB) 82 – Caltrans
9. Speed Management ePrimer - FHWA
10. NCHRP Report 737 – Design Guidance for High-Speed to Low-Speed Transition Zones for Rural Highways

Sample Project

Existing Entrance to the City of Rio Vista on EB SR 12

Proposed Design with Street Trees, Landscaping, and Gateway Monument

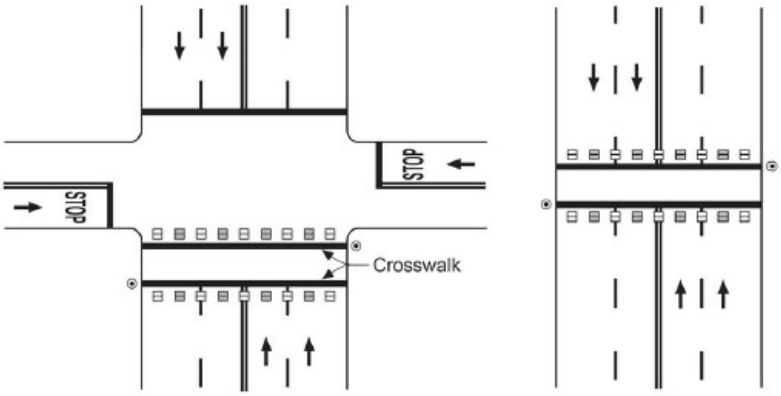
Project Description:

State Route 12 in Rio Vista is undergoing redesign as a Complete Street. The community felt it was important to alert drivers on this busy trucking route that they are entering the City of Rio Vista. Caltrans landscape architecture developed this sketch to illustrate how landscaping could be combined with a gateway monument to visually indicate the entrance and extent of the Rural Main Street. Several complete streets elements in this view contributes to the visual narrowing of the roadway, but the verticality of the proposed street trees plays a critical role in visually defining the corridor.

In-Roadway Light

Description

In-Roadway Lights (IRWLs) are a special type of highway traffic signal installed in the roadway surface to warn road users that they are approaching a condition on or adjacent to the roadway. They may draw drivers' attention to features that might not be readily apparent, so that drivers can slow down or come to a stop. IRWLs are actuated devices with flashing indications that provide real-time warning of a specific condition. See CA MUTCD Chapter 4N for additional guidance on IRWLs' application, IRWLs at crosswalks, and maintenance considerations.



In-Roadway Lights Schematic for crosswalk at an intersection and midblock crosswalk (CA MUTCD)

Placement

Marked midblock crosswalk, marked school crosswalk, marked crosswalks on uncontrolled approaches, crosswalks / bike crossings with higher pedestrian collision rates at night, and other roadway situations involving pedestrian crossings. This measure should only be installed at marked crosswalks, so the criteria for placement should follow marked crosswalk placement criteria.

Functional Classification: Minor Arterials, Collectors, and Local Roads

Appropriate Daily Volume Range: 5,000-30,000 ADT(MDOT)

Performance

Volume Reduction: Low

Impact on Emergency Response: None

Mobility Impacts: Nominal

Maintenance Considerations

SNOW

- Consider durability due to moisture buildup
- Minimize conflict with snowplow operations

OTHER

- These systems can be easily damaged and difficult to repair due to in-pavement installation and proprietary nature of these systems
- Replacement of these devices may be more frequent on heavy truck routes
- Lights are most effective when kept clean because they can collect debris rapidly

Other Considerations

- Do not place lights in the center of bike lanes or within the traveled way of Class III bikeway
- Consider using in-roadway light along with other overhead devices such as pedestrian hybrid beacons. In-roadway lights can sometimes be visible only to the first vehicle in line and not for the rest
- Consider vehicle wheel paths when locating devices
- Consider how lights can be activated (button or pedestrian sensor)

References

1. California MUTCD - Caltrans
2. Traffic Calming ePrimer – FHWA

Sample Project

Route 1 at Mountain Road in Laguna Beach, CA (Google Earth)

Project Description:

This project on State Route (SR) 1 at Mountain Road in Laguna Beach includes the installation of intersection lighting, high visibility crosswalks, in-roadway warning lights, mast arm mounted pedestrian crossing sign with warning beacons, etc.

THE CITY OF BRENTWOOD

HERITAGE ▪ VISION ▪ OPPORTUNITY

June 2, 2025

Will Nelson
Assistant Deputy Director
Contra Costa County Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Re: Comment Letter on Proposed Ballot Measure to Renew County Urban Limit Line

Dear Will,

Thank you very much for attending the May 27, 2025 City Council meeting, along with Director of Conservation and Development John Kopchik, to make a presentation on the proposed 2026 ballot measure to renew the County Urban Limit Line (ULL).

After the presentation, public comment, and discussion, the City Council unanimously adopted a motion directing staff to forward a letter to the County indicating that Brentwood is not interested in any expansion of the ULL that it adopted in 2008. The City Council also indicated that it was in support of the one proposed adjustment affecting Brentwood, which involves a contraction of the County ULL by approximately 48.3 acres to exclude the ECCID Main Canal, located along a portion of the City's southern boundary.

The City respectfully requests that the County continue to provide notification of any other proposed changes to the ULL that may affect Brentwood leading up to next year's ballot measure. Finally, please find attached to this letter the written public comments that were received leading up to last week's meeting.

Thank you very much for your collaboration on this issue. If you have any questions, please contact me at your convenience by phone at (925) 516-5137 or by e-mail at enolthenius@brentwoodca.gov.

Sincerely,

Erik Nolthenius
Planning Manager

COMMUNITY DEVELOPMENT
150 City Park Way • Brentwood, California 94513
Phone: 925-516-5405 • Fax: 925-516-5407
e-mail: dept-comdev@brentwoodca.com

From: Brooke Rogers
To: =yCouncil Members
Subject: ULL Change Request
Date: Tuesday, May 27, 2025 2:05:36 PM

CAUTION – EXTERNAL SENDER

To Brentwood City Council,
I am writing to oppose moving the urban limit line at Marsh Creek and also at Delta/Sunset Road.

California is losing an estimated 50,000 acres of agricultural land annually, primarily due to urban and suburban development, and Brentwood and the surrounding area already has approximately 1200 approved homes that have not been completed.

This poses significant impact and challenges to current infrastructure, traffic, and school capacity, that will only continue to pile on to the negative impacts of this decision, at the cost of tax payers who do not support this change.

Additionally, not only will the additional construction to develop on the land have negative impacts on the surrounding environment, but the continued pollution from additional businesses, housing, and residents will create irreversible damage to the habitats for natural wildlife, an already growing issue.

Do not let one family's greed create lasting negative effects on our communities and land simply because it now serves them financially to change what the land was always intended to be used for.

Sincerely,

Brooke Rogers

From: carolina villaseca
To: =yCouncil Members; Gale, Darin
Subject: ULL line
Date: Monday, May 26, 2025 5:55:47 PM

CAUTION – EXTERNAL SENDER

I would like to ask City Council to stay the line on the moving of ULL. If the people who support this change because they know that there could be plans for businesses, they should have a solid presentation and put it on the ballot for Brentwood residents only.
If you are considering moving the ULL line, then please consider eminent domaining the plot next to Heritage High School for a second exit. This would greatly benefit residents of Brentwood.
Saludos,
M. Carolina Villaseca
[redacted]
Brentwood, CA 94513

From: David W.
To: =yCouncil Members
Subject: Item G.1 - ULL again....
Date: Monday, May 26, 2025 5:36:02 PM

CAUTION – EXTERNAL SENDER

I write this brief message to say didn't we already vote no on the urban limit line? Why are we doing it again? Brentwood can not handle more growth. Stop the madness. Don't let a few dictate the entire city.

Sincerely,
David West

From: Evelia Hernandez
To: =yCouncil Members
Subject: NO to expanding the City Urban Limit Line
Date: Monday, May 26, 2025 11:28:11 PM

CAUTION – EXTERNAL SENDER

Hi

I would like to take this opportunity in addressing my concern as a Brentwood resident of what a bad idea it would be to expand our city's ULL.

First of all Brentwood prides itself in having such a beautiful country style city that still maintains its unique seasonal fruit picking farms that attracts many tourists throughout summer. Expanding our city limit and bringing more commercial business will not only affect our city's country style feeling but will also bring tons of more traffic into our area putting in more strain into our first responders and already busy highways.

Let's keep our Country Style City feeling alive!! NO in extending the Urban's City's Limit Line

Thanks
Evelia Hernandez
[redacted]

Sent from Yahoo Mail for iPhone

From: Josh Dizon
To: =yCouncil Members
Subject: Vote NO to expand Brentwood ULL
Date: Monday, May 26, 2025 9:44:45 PM

CAUTION – EXTERNAL SENDER

I live off of Sunset, I think expanding the Urban Limit Line in my area and in the Marsh Creek area is a horrible idea!!!

- Josh Dizon
Brentwood Resident

From: Kimberly Christian
To: =yCouncil Members
Subject: Comment - Presentation and Discussion of the proposed 2026 renewal of the Urban Limit Line
Date: Tuesday, May 27, 2025 2:49:36 PM

CAUTION – EXTERNAL SENDER

Dear Mayor and City Council Members,

I am writing to you today to comment on the proposed renewal of the Contra Costa Urban Limit Line.

My family has been residents of Brentwood for five generations, dating back to 1936, we have watched Brentwood grow into what it is today, and we believe it is our duty to maintain its roots in agriculture and the history of California. The Brentwood Urban Limit Line should not be expanded and the CCC ULL should be renewed, not to inhibit growth, but to protect the very things that make Brentwood such a special place to live, a destination, an opportunity for all who came here to experience what this wonderful region has to offer. Brentwood has grown exponentially over a short period of time, we still have a lot of work and catching up to do, the Council and City Staffs time would be better spent focusing on what is currently within the Brentwood ULL rather than infringing upon our Agricultural Core. Many years ago we put protections in place to prevent greedy landowners from building on the rich soil that produces our food, our geographic location for farming is the envy of the rest of the state, and if lost would be detrimental not just to our community, but to all Californians; we ask that you keep this in mind for future generations, this is not a decision that can be reversed once it is taken away and destroyed, please do not turn us into just another city.

For far too long there has been a few families in this community controlling the narrative, buying up land, and then recklessly selling it off for personal gain, developing on culturally, historically, and agriculturally significant land, its time they be good stewards to what little we have left.

Sincerely,
Kimberly Christian

From: Krystal Mendoza
To: =yCouncil Members
Subject: Do not expand urban limit line
Date: Tuesday, May 27, 2025 10:05:38 AM

CAUTION – EXTERNAL SENDER

Hello I am a fellow brentwood citizen writing in to state my opposition and concerns with the extension of the urban limit line. I am not In favor of this extension and would hate to see more farm land destroyed and built over. One of the many reasons to love Brentwood is the rich farm culture and open farm lands. I am not in agreement with putting an auto mall in the middle of historic farm land and think that this would be not only an eye sore but a shame to our cities farm lands.

From: Maritza Diaz
To: =yCouncil Members
Subject: Urban Limit Line
Date: Tuesday, May 27, 2025 2:30:36 PM

CAUTION – EXTERNAL SENDER

As a 43 year resident of Brentwood, I ask that you please continue to keep the ULL in order to protect our city that is rich in agricultural and open space. We are already well above the population cap the city had originally agreed to and you can see the affects of that now. The traffic is a nightmare, the children are at risk when walking to/from school, the police department is not fully staffed to what it should be for a city our size as well as the fire departments, so on and so forth. If you agree to what the Nunn's are suggesting, the traffic on Vasco Rd will be worse than what it already is. In a natural disaster, there would be no safe way out of Brentwood. Please take the safety of your residents in mind. The constituents of Brentwood are more important than lining the pockets of "investors" that are only looking out for themselves.

Respectfully,

Maritza Diaz

DeBray, Cydrice

From: Robert Chuck [redacted]
Sent: Tuesday, May 27, 2025 2:46 PM
To: webCityClerk; =yCouncil Members
Cc: Robert Chuck
Subject: 5/27/2025 Meeting - Item G.1

CAUTION – EXTERNAL SENDER

Brentwood City Council,

Regarding tonight's meeting, 5/27/2025 - Item G.1
Until our city can provide the infrastructure to handle our current needs, I am against moving the urban limit line.

Thank you,
Robert Chuck

Sent from Outlook

From: Robert Juracich
To: =yCouncil Members
Subject: ULL
Date: Tuesday, May 27, 2025 5:46:14 PM

CAUTION – EXTERNAL SENDER

Good evening Mrs. Mayor and City Council members,

I am extremely grateful for your dedication, the time and energy each of you spend trying keep Brentwood's charm and character in tact.

This is becoming evermore challenging with the state's changing regulations and what seems to be them chipping away at our local control, piece by piece. Please control the growth we can and hold the ULL as is for now. Infrastructure upgrades need to lead housing and growth, not lag behind it. Otherwise the infrastructure upgrades never seem to happen.

Smart growth is planned and phased growth, not a free for all. Stick with the general plan please for all growth decisions.

Thank you very much,
Robert Juracich

Sent from my iPhone

From: Shane & Michelle Ambrosino
To: =yCouncil Members
Subject: Urban Limit Line
Date: Tuesday, May 27, 2025 4:14:56 PM

CAUTION – EXTERNAL SENDER

To Brentwood City Council,

I am writing to strongly oppose moving the urban limit line at Marsh Creek and also at Delta/Sunset Road.

California is losing an estimated 50,000 acres of agricultural land annually, primarily due to urban and suburban development, and Brentwood and the surrounding area already has approximately 1200 approved homes that have not been completed.

This poses significant impacts and challenges to current infrastructure, traffic, and school capacity, that will only continue to pile on to the negative impacts of this decision.

Additionally, not only will the additional construction to develop on the land have negative impacts on the surrounding environment, but the continued pollution from additional businesses, housing, and residents will create irreversible damage to the habitats for natural wildlife.

Do not let one family's greed create lasting negative effects on our communities and land simply because it now serves them to change what the land was used for. Instead what can be done to preserve this land for the agricultural farming it was meant for? This means a great deal to us and the community at large.

Sincerely,
Shane Ambrosino and Michelle Kincaid

From: Shane Ambrosino
To: =yCouncil Members
Subject: Do not change Brentwood ULL
Date: Tuesday, May 27, 2025 2:11:47 PM

CAUTION – EXTERNAL SENDER

To Brentwood City Council,
I am writing to oppose moving the urban limit line at Marsh Creek and also at Delta/Sunset Road.

California is losing an estimated 50,000 acres of agricultural land annually, primarily due to urban and suburban development, and Brentwood and the surrounding area already has approximately 1200 approved homes that have not been completed.

This poses significant impact and challenges to current infrastructure, traffic, and school capacity, that will only continue to pile on to the negative impacts of this decision.

Additionally, not only will the additional construction to develop on the land have negative impacts on the surrounding environment, but the continued pollution from additional businesses, housing, and residents will create irreversible damage to the habitats for natural wildlife. Marsh creek already has enough problems without more people polluting it

Do not let one family's greed create lasting negative effects on our communities and land simply because it now serves them to change what the land was used for.

Sincerely,
Shane Ambrosino

From: Schofield, Taylor
To: =yCouncil Members
Subject: Expanding the Urban Limit line and 5/27 meeting
Date: Tuesday, May 27, 2025 8:56:23 PM

CAUTION – EXTERNAL SENDER

Hello,
As a concerned Brentwood citizen I would like to voice my contest to expanding the urban limit line. I have lived here since 2003 and I have slowly watch Brentwood turn from a small tight nit farm town to this monstrosity the city somehow sees as growth. Encroaching on every open space and squeeze every dollar out of it in the city seems ultimately be the city plan. Please do not expand the urban limit line, we already have droughts every year with the amount of population we already have, its not fair I have to continue to sacrifice my garden for poor city planning. Please stop the suburban sprawl, please save what little small town feel we still have.
I also have concerns about many comments made by council women Pierson, she said she was offended by comments made by concerned citizens saying shes tired of the phone calls and that if the meeting goes till 12 she will be leaving. As to which I say what disappointing behavior from a council person. Receiving calls from the public will always be part of your job as a public official and its in your best interest to grow thicker skin because its our American right to criticize your performance and question your motives. The offense seems suspicious at this point, authority should always be questioned and that should always be invited, otherwise that's tyranny. You think I'm having fun as a citizen trying to stay on long enough to voice my concerns? I hope the people in her district are aware of her capacity for council peoples forum. She seems annoyed with public feedback and sorry, that's her job
Thank You
Taylor Schofield

From: Vince Ambrosino
To: =yCouncil Members
Subject: Do not move urban limit line
Date: Tuesday, May 27, 2025 3:38:35 PM

CAUTION – EXTERNAL SENDER

I am writing to oppose moving the urban limit line at Marsh Creek and also at Delta/Sunset Road.

California is losing an estimated 50,000 acres of agricultural land annually, primarily due to urban and suburban development, and Brentwood and the surrounding area already has approximately 1200 approved homes that have not been completed.

This poses significant impact and challenges to current infrastructure, traffic, and school capacity, that will only continue to pile on to the negative impacts of this decision.

Additionally, not only will the additional construction to develop on the land have negative impacts on the surrounding environment, but the continued pollution from additional businesses, housing, and residents will create irreversible damage to the habitats for natural wildlife.

Do not let one family's greed create lasting negative effects on our communities and land simply because it now serves them to change what the land was used for.

Sincerely, Richard Ambrosino
Sent from my iPhone

OAKLEY
CALIFORNIA

Shannon Shaw
Mayor
District 4

Hugh Henderson
Vice Mayor
District 2

Aaron Meadows
Councilmember
District 1

George Fuller
Councilmember
District 5

Anissa Williams
Councilmember
District 3

April 22, 2025

John Kopchik
Director, Conservation and Development
30 Muir Road
Martinez, CA 94553
(john.kopchik@dcd.cccounty.us)

RE: Letter of Support for 2026 Ballot Measure to Renew the County Urban Limit Line with Amendments

Dear Mr. Kopchik,

Thank you for the opportunity to provide feedback on the County's efforts to renew the County Urban Limit Line ("ULL") through a 2026 ballot measure. The City of Oakley has reviewed the agenda item approved 5-0 by the Board of Supervisors on February 25, 2025, which resulted in direction to County Staff to move forward with preparation of the renewal and ballot measure. Oakley has also reviewed the proposed adjustments to the ULL, which include 1) contraction of the area outside Oakley's City limit line located between Sellers Avenue and Knightsen Road, and 2) expansion of areas along the Oakley shoreline that would bring portions of existing marinas within the ULL.

The City of Oakley is in support of the 2026 ballot measure to renew the County Urban Limit Line including the proposed contractions and expansions within and adjacent to the City of Oakley.

Sincerely,

Joshua McMurray, City Manager

C: Ken Strelo, Community Development Director
William R. Nelson, Principal Planner, Contra Costa County

CONTRA COSTA WATER DISTRICT

BOARD OF DIRECTORS
Ernesto A. Avila, P.E.
PRESIDENT
Antonio Martinez
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Connstance Holdaway
Patt Young

GENERAL MANAGER
Rachel Murphy, P.E.

May 20, 2025

Will Nelson
Principal Planner
Contra Costa County
advanceplanning@dcd.cccounty.us

Subject: Contra Costa County Urban Limit Line Renewal

Dear Mr. Nelson:

This letter is provided in response to the Contra Costa County (County) publication and request for comments on the proposed adjustments to the Urban Limit Line presented to the County Board of Supervisors on February 25, 2025 and made available for public review.

The Contra Costa Water District (CCWD) reviewed the proposed adjustments and generally found that many of the adjustments within CCWD's sphere of influence are in CCWD's existing service area and could be served by existing water infrastructure. However, CCWD is aware that some residents along the Marsh Creek corridor rely on domestic wells and have experienced challenges with water supply particularly during drought conditions. CCWD understands that the County is developing the Drought Resilience Plan in response to Senate Bill 552 that is intended to address drought and water shortage for domestic well and small water systems, and encourages the County and Cities to ensure adequate water supply is available for new development permitted within the adjusted urban limit line, especially during times of drought. CCWD is available to discuss water supply availability and concerns with the County or Cities for areas within or adjacent to the current service area boundary.

Thank you for the opportunity to review and provide comments. If you would like to discuss further or have any questions or concerns, please contact me at (925) 688-8216 or Jill Mosley at (925) 688-8127 or jmosley@ccwater.com.

Sincerely,

Kimberly Lin
Director of Planning

KL/JM:kh

COMMENTS AND REQUESTS RELATED TO SPECIFIC URBAN LIMIT LINE ADJUSTMENTS

Moita & Moita LLP

Attorneys at Law

Vincent A. Moita
(925) 783-9688
Vince@moitalaw.com

PO Box 40
Danville, CA 94526
www.MoitaLaw.com

Joseph D. Moita
(925) 783-6260
Joe@moitalaw.com

June 4, 2025

Will Nelson
Principal Planner, Advanced Planning
Department of Conservation and Development
Contra Costa County
30 Muir Road
Martinez, CA 94553

Email: advanceplanning@dcd.cccounty.us

Re: Proposed Urban Limit Line Adjustments Feb 25, 2025
APNs:002-150-005-3; 002-150-006-1

Dear Mr. Nelson:

This firm represents Charlotte Allison (the "**Property Owner**"), the owner of the above noted parcels, consisting of 18+ acres of land (the "**Property**"). It has come to our attention that Contra Costa County, (the "**County**") is seeking preliminary feedback from the community and stakeholders regarding County Staff's February 25, 2025 Draft Potential Adjustments presentation made to the Board of Supervisors (the "**Potential Adjustments**") to amend the Urban Limit Line (the "**ULL**").

We write to create a clear record that the Property Owner strongly supports the inclusion of her Property within the ULL as proposed in the Potential Adjustments, see **Exhibit A.** The Property is uniquely situated adjacent to the urban use cluster of unincorporated Byron proper, and the inclusion of the Property will create future housing opportunities and is suitable for urban uses.

On that note, we would like the County to simultaneously consider revisiting the General Plan Land use designation for parts of the Property. Currently, the 12 of the 18 acres are under the General Plan Land Use designation of Residential Low-Medium Density ("**RLM**"), allowing between 3-7 dwelling units per acre. Six (6) of the acres are designated as Agricultural uses. See **Exhibit B.**

Following the County's Potential Adjustments, it logically makes sense to simultaneously revisit the General Plan to redesignate all included lands for urban uses under the RLM General Plan Land Use designation. This is consistent with surrounding land use designations and supports cluster growth within unincorporated Bryon proper and by including in the Proposed Adjustments concurrently reduces cumulative impact review complexity and promotes regulatory efficiency.

In any event, to create additional certainty and provide the Property Owner a clear path to future build out, we would also like to open the door for a conversation on what zoning designation and densities the County would support on the RLM lands and possibly include a rezone as part of the ULL update process. The Contra Costa County General Plan's Land Use Designations table provides consistent zoning for RLM land of R-12, R-10,R-7,R-6, F-1, T-1, HE-C. See **Exhibit C.**

The Property Owner does not currently have a specific project planned, but fully supports a R-6 zoning change for all of the Property. Granting a rezone to the approved uses for RLM simultaneous to the land's inclusion in the ULL brings the zoning vertically and internally consistent with the General Plan's zoning designation.

The Property Owner also realizes that the future build out of SR-239 additionally creates linkage amenities for the Property to create housing that can serve the future build out of the Byron Airport's economic development. See **Exhibit D.**

We thank you very much for your time and effort in the ULL update, and again reiterate that the Property Owner fully endorses the Proposed Adjustments with respect to the inclusion of the Property. The Property owner additionally remains open to continue the conversation relative to rezoning of all of the acreage to a consistent and compatible zoning designation to realize the goals of the County's General Plan.

If you have any questions, please do not hesitate to contact me on this matter.

Respectfully Submitted,
Moita & Moita LLP

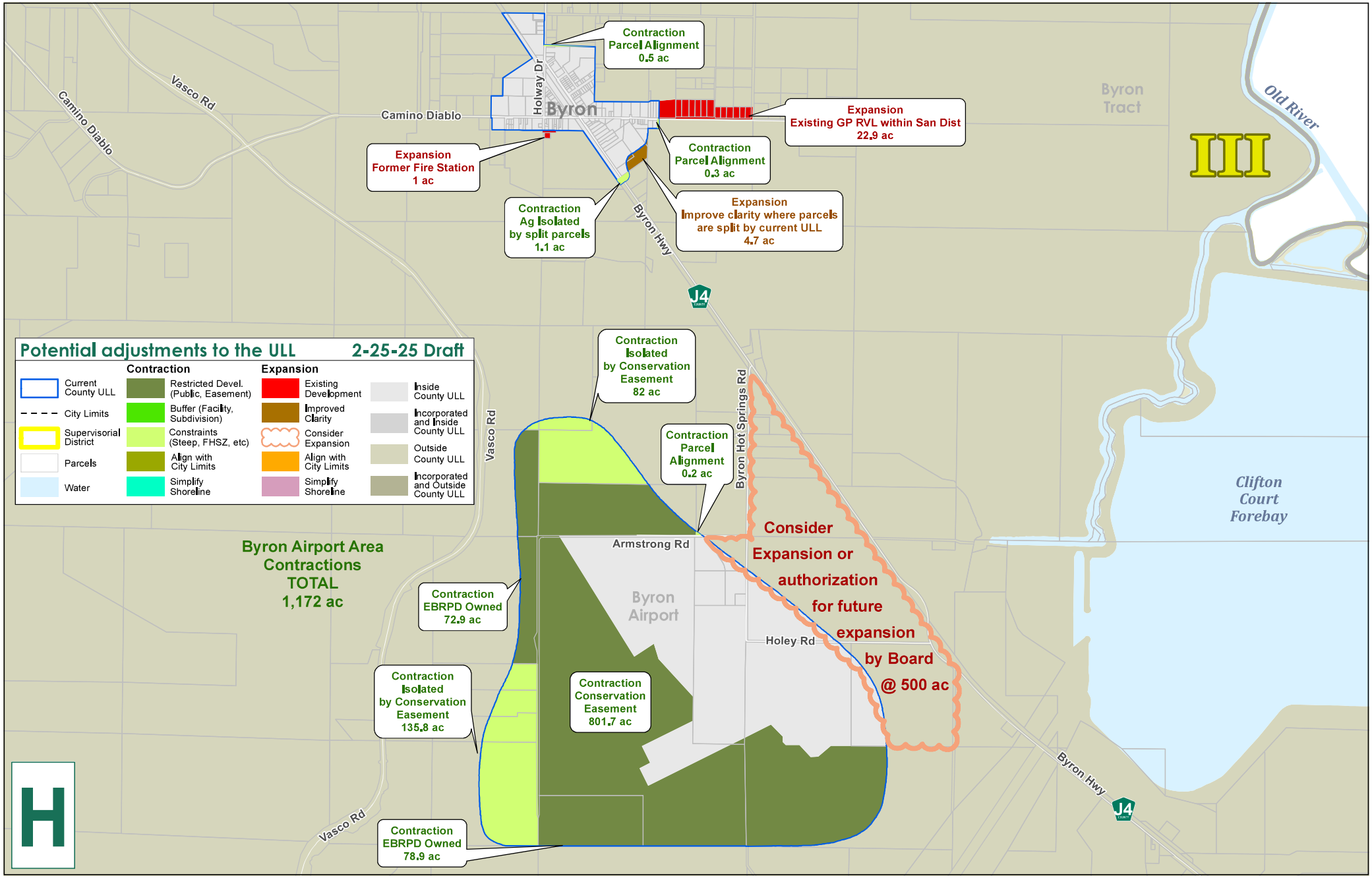
Vincent A. Moita

Exhibit A

Draft Potential Adjustments ULL,

February 25, 2025

Select Pages


Potential adjustments to the ULL
2-25-25 Draft
Contraction
Current County ULL
City Limits
Supervisorial District
Parcels
Water
Restricted Devel. (Public, Easement)
Buffer (Facility, Subdivision)
Constraints (Steep, FHSZ, etc)
Align with City Limits
Simplify Shoreline
Expansion
Existing Development
Improved Clarity
Consider Expansion
Align with City Limits
Simplify Shoreline
Inside County ULL
Incorporated and Inside County ULL
Outside County ULL
Incorporated and Outside County ULL
Contraction Parcel Alignment 0.5 ac
Expansion Existing GP RVL within San Dist 22.9 ac
Contraction Parcel Alignment 0.3 ac
Expansion Improve clarity where parcels are split by current ULL 4.7 ac
Expansion Former Fire Station 1 ac
Contraction Ag Isolated by split parcels 1.1 ac
Contraction Isolated by Conservation Easement 82 ac
Contraction Parcel Alignment 0.2 ac
Consider Expansion or authorization for future expansion by Board @ 500 ac
Byron Airport Area Contractions TOTAL 1,172 ac
Contraction EBRPD Owned 72.9 ac
Contraction Isolated by Conservation Easement 135.8 ac
Contraction Conservation Easement 801.7 ac
Contraction EBRPD Owned 78.9 ac
Byron
Byron Airport
Byron Tract
Clifton Court Forebay
Old River
Camino Diablo
Vasco Rd
Holway Dr
Byron Hwy
Byron Hot Springs Rd
Armstrong Rd
Holey Rd
J4
III
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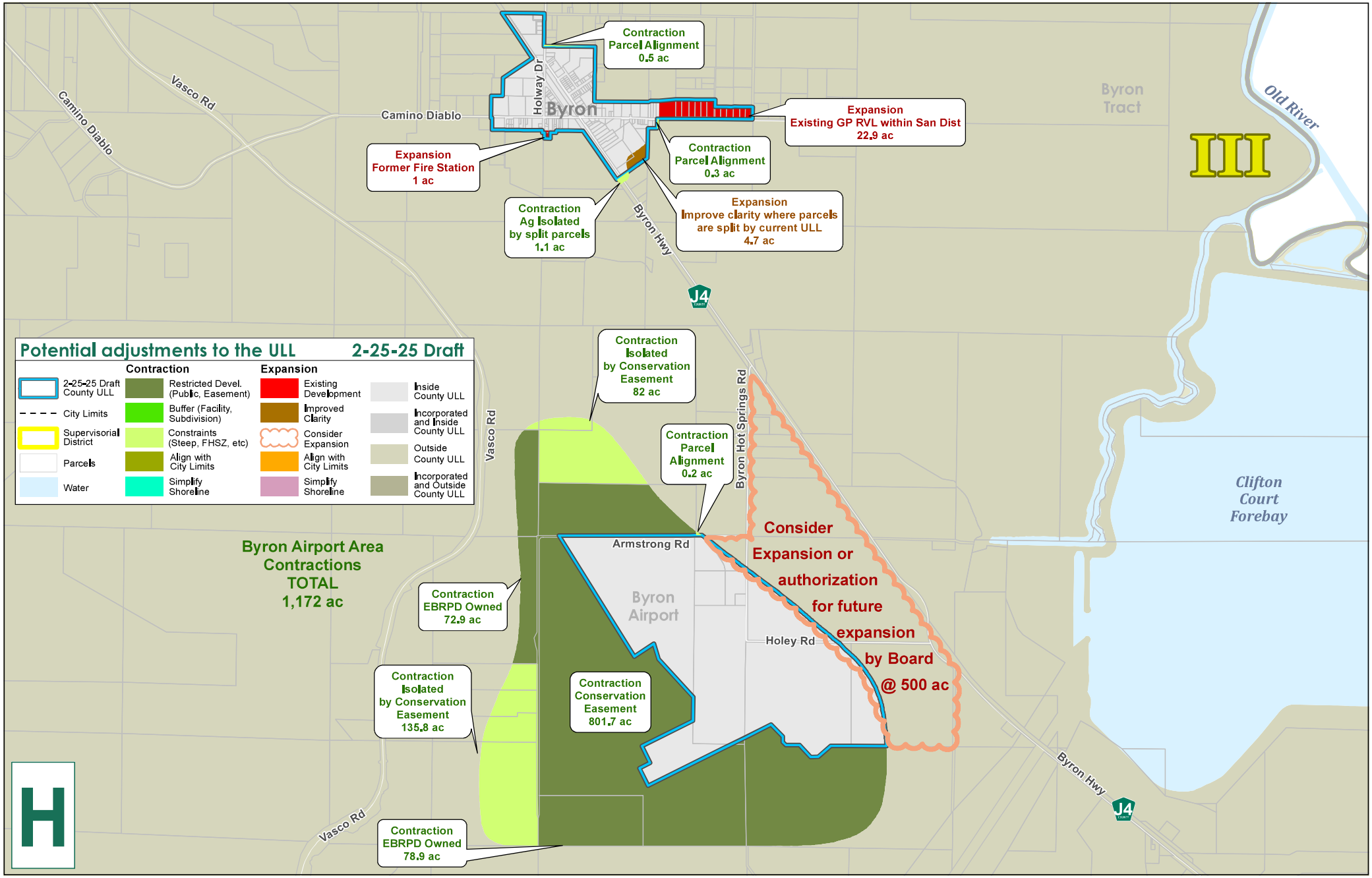
Potential adjustments to the ULL
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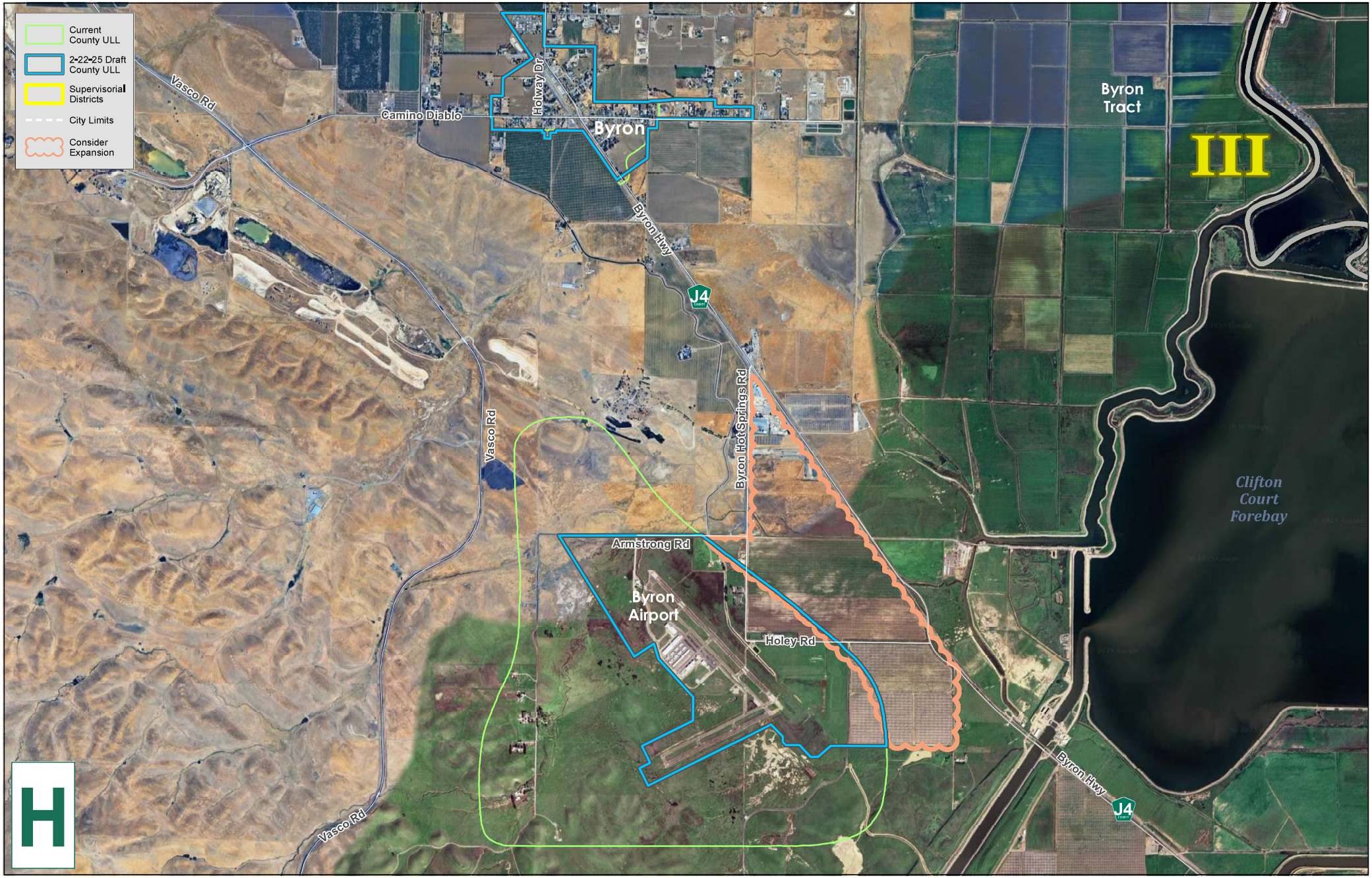
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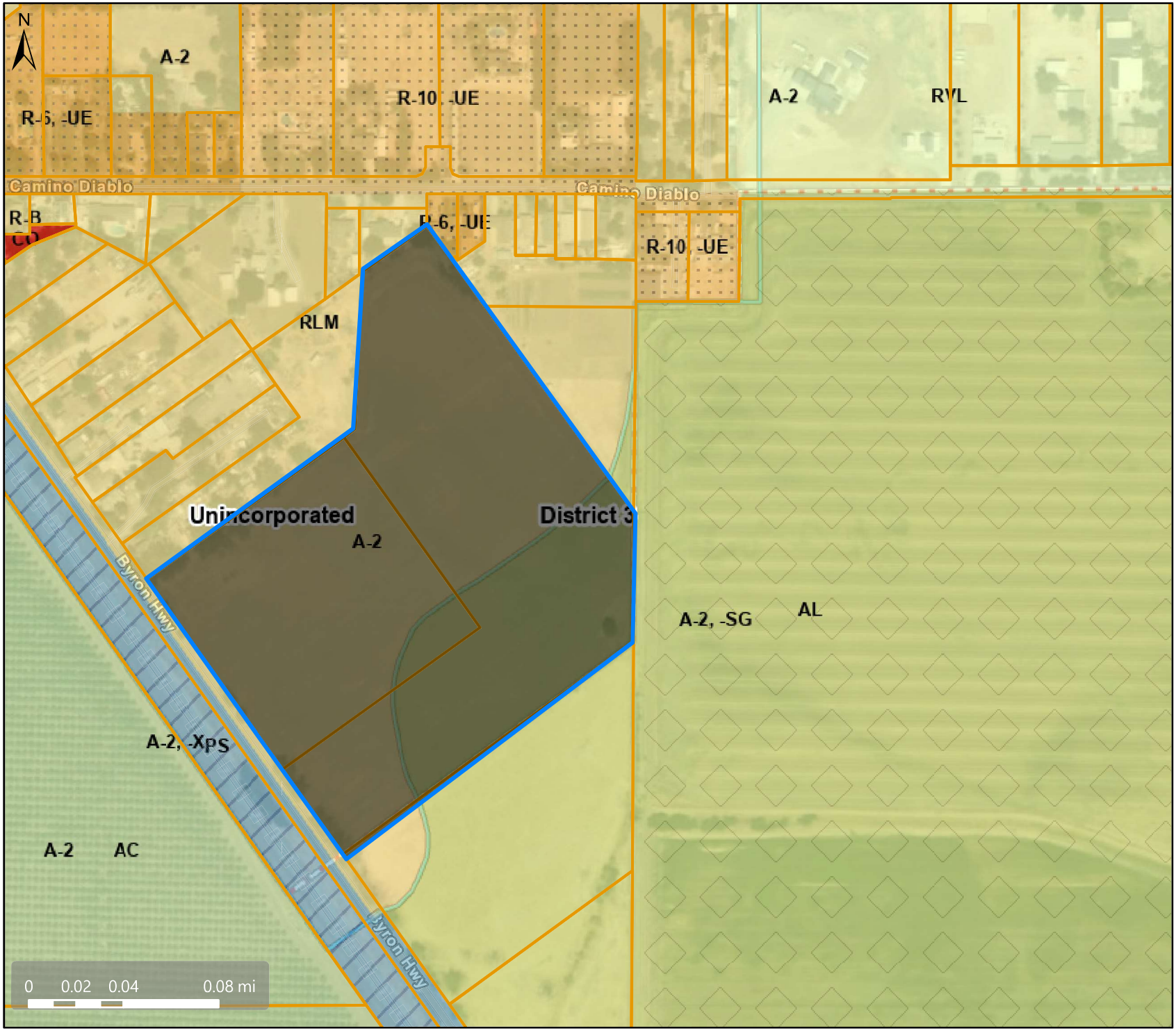
Exhibit B

Contra Costa County GIS Print Out

Showing Zoning and General Plan Designation

CCMap Export



Map Legend

Assessment Parcels

Planning Layers (DCD)

2-25-25 Draft County Urban Limit Line

County Urban Limit Line

Zoning

ZONE_OVER

R-6, -UE (Urban Farm Animal Exclusion)

R-10, -UE (Urban Farm Animal Exclusion)

A-2 (General Agriculture)

A-2, -SG (Solar Energy Generation Combining District)

A-2 -X (Railroad Corridor Combining District)

R-B (Retail Business)

General Plan

RVL (Residential Very-Low Density) (≤1 du/na)

RLM (Residential Low-Medium Density) (3-7 du/na)

CO (Commercial and Office) (C: 1.0 FAR O: 2.75 FAR)

PS (Public and Semi-Public)

AC (Agricultural Core) (1 du/40 ac)

AL (Agricultural Lands) (1 du/10

This map is a user generated, static output from an internet mapping application and is intended for reference use only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION.
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Spatial Reference
PCS: WGS 1984 Web Mercator Auxiliary Sphere
Datum: WGS 1984

Credits: Contra Costa County Development of Conservation and Department, Esri Community Maps Contributors, California State Parks, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, U

Exhibit C

Contra Costa County General Plan

Land Use Designation, RLM

TABLE LU-1 LAND USE DESIGNATIONS

	RESIDENTIAL VERY-LOW DENSITY | RVL Appropriate for transitions between urban development and agricultural/rural areas. Also appropriate for constrained sites where reduced densities are justified. Typically includes detached single-family units on lots 1 acre or larger and small-scale agricultural activities. *Consistent Zoning: R-100, R-65, R-40, HE-C* *Potentially Consistent Zoning: All A- districts, P-1*	**Density** ≤1 **FAR** N/A
	RESIDENTIAL LOW DENSITY | RL Appropriate for low-density, predominantly single-family residential development. Typically includes detached single-family units on lots approximately 15,000 square feet to 1 acre in size and limited nonresidential uses that serve and support nearby homes. Small-scale agricultural activities may be compatible on larger lots. *Consistent Zoning: R-40, R-20, R-15, R-12, HE-C* *Potentially Consistent Zoning: P-1*	**Density** 1-3 **FAR** N/A
	RESIDENTIAL LOW-MEDIUM DENSITY | RLM Appropriate for moderate-density, predominantly single-family residential development. Typically includes detached single-family units on lots approximately 6,000 to 15,000 square feet and limited nonresidential uses that serve and support nearby homes. Duplexes and triplexes may also be compatible. *Consistent Zoning: R-12, R-10, R-7, R-6, F-1, T-1, HE-C* *Potentially Consistent Zoning: P-1*	**Density** 3-7 **FAR** N/A
	RESIDENTIAL MEDIUM DENSITY | RM Appropriate for higher-density single-family and low-density multiple-family residential development. Typically includes single-family units on lots approximately 2,500 to 6,000 square feet, duplexes, triplexes, townhouses, condominiums, apartments, and mobile home parks. Also includes limited nonresidential uses that serve and support nearby homes. *Consistent Zoning: R-6, F-1, D-1, M-6, M-9, M-12, M-17, T-1, HE-C* *Potentially Consistent Zoning: P-1*	**Density** 7-17 **FAR** N/A
	RESIDENTIAL MEDIUM-HIGH DENSITY | RMH Appropriate for the highest-density single-family and medium-density multiple-family residential development. Typically includes single-family units on lots smaller than 2,500 square feet, tiny homes, fourplexes, townhouses, condominiums, apartments, and assisted living facilities. Also includes limited nonresidential uses that serve and support nearby homes. *Consistent Zoning: M-17, M-29, HE-C* *Potentially Consistent Zoning: P-1*	**Density** 17-30 **FAR** N/A
	RESIDENTIAL HIGH DENSITY | RH Appropriate for higher-density, multiple-family development. Typically includes condominiums, apartments, and assisted living facilities. Also includes limited nonresidential uses that serve and support nearby homes. *Consistent Zoning: HE-C* *Potentially Consistent Zoning: P-1*	**Density** 30-60 **FAR** N/A
	RESIDENTIAL VERY-HIGH DENSITY | RVH Appropriate near transit stations, employment centers, and other locations where providing exceptionally high density is a priority. Typically includes condominiums, apartments, and micro-units. Also includes limited nonresidential uses that serve and support nearby homes. *Consistent Zoning: HE-C* *Potentially Consistent Zoning: P-1*	**Density** 60-125 **FAR** N/A

Exhibit D

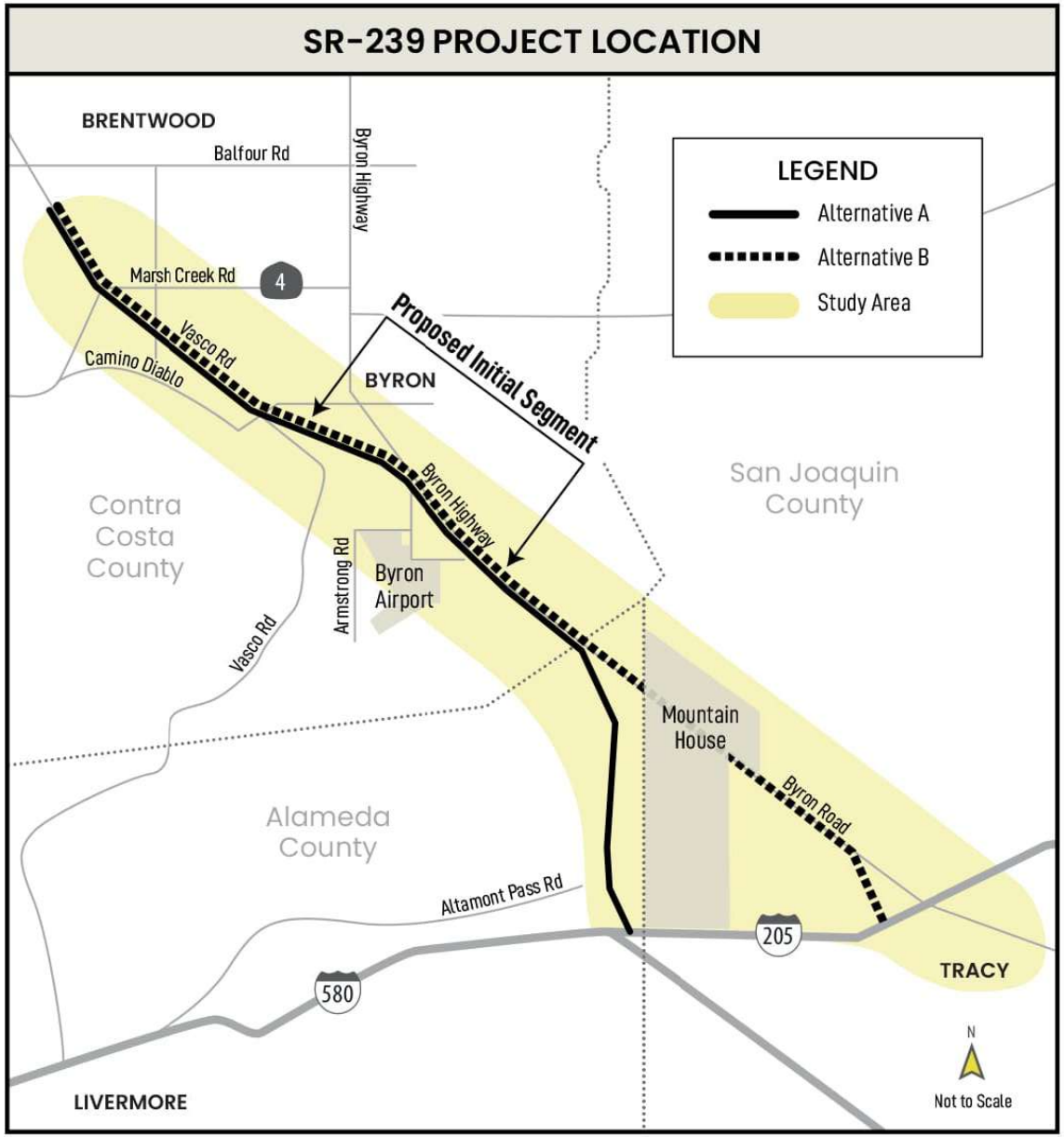
SR-239 Proposed Route

239
State Route

Project Location

Connecting Three Counties

This new state route will improve mobility between eastern Contra Costa County and the Central Valley by creating a new, four-lane highway. The new north-south roadway will connect State Route 4 at Marsh Creek Road in Contra Costa County to Interstate 580 in Alameda County or Interstate 205 in San Joaquin County. The project area covers an approximately 17-mile stretch between Brentwood and Tracy.



Caltrans
CONTRA COSTA transportation authority

Moita & Moita LLP

Attorneys at Law

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(925) 783-9688
Vince@moitalaw.com

PO Box 40
Danville, CA 94526
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Joseph D. Moita
(925) 783-6260
Joe@moitalaw.com

June 4, 2025

VIA EMAIL

Will Nelson
Principal Planner, Advanced Planning
Department of Conservation and Development
Contra Costa County
30 Muir Road
Martinez, CA 94553

Email: advanceplanning@dcd.cccounty.us

Re: Proposed Urban Limit Line Adjustments Feb 25, 2025
Address: 5400 Byron Hot Springs Rd
APNs: 002-200-007; 002-200-021

Dear Mr. Nelson:

This firm represents Robert Cort (the "**Property Owner**"), the owner of the above noted parcels, consisting of 291.82 acres of land north of the Byron Airport and colloquially known as the Byron Hot Springs (the "**Property**"). It has come to our attention that Contra Costa County, (the "**County**") is seeking preliminary feedback from the community and stakeholders regarding County Staff's February 25, 2025 Draft Potential Adjustments presentation made to the Board of Supervisors (the "**Potential Adjustments**") to amend the Urban Limit Line (the "**ULL**").

With respect to the Property, the Potential Adjustments propose to remove 70+ acres of the Property Owner's land from within the existing ULL without adequate justification. As you are aware, excluding property from the ULL severely restricts existing and possible future land uses to the detriment of the landowner. Expanding the ULL is practically impossible and adding land to ULL amounts to a *de facto* downzoning. Accordingly, the Property Owner strongly opposes the Potential Adjustments and removal of any portion of his property from the 2006 voter-approved ULL.

We submit this letter to create a record of the Property Owner's opposition and provide the legal and policy-based reasons why the County should amend its Potential Adjustments to preserve the Property's current ULL status, or alternatively expand the ULL to include all of the Property:

- Stated Justification is not a Permissible Criterion for Exclusion
- Proximity to Byron Airport has Potential to Create Regional Jobs
- Future State Route 239 Build Out Provides Opportunity to Create Regional Jobs
- The 65/35 Land Preservation Plan is Preserved

1. **Stated Justification is not a Permissible Criterion for Exclusion**

In the Potential Adjustments presentation, publicly available slides attached as **Exhibit A** hereto, state that the justification for removal of the 70+ acres that the Property is "Isolated by Conservation Easement[s]". See **Exhibit A**.

This justification is flawed. First, the 70+ acres are not isolated. The Property maintains access via Byron Hot Springs Road, and both parcels, (APNS 002-200-007 and 002-200-021) are under common ownership. Two canal crossings provide distinct ingress and egress points to access the subject acreage. Additionally, Parcel 002-200-007 connects directly to existing infrastructure along Armstrong Road, which could feasibly serve as a future roadway extension. The Property is not physically or functionally isolated.

Second, the decision by adjacent southern and western parcel owners to encumber their land with conservation easements has no legal bearing on the Property Owner's rights or land use designations. These private easements are irrelevant for the purpose of ULL delineation yet remain the sole justification for exclusion purposes.

Finally, the County's ULL, as codified in the Contra Costa County Code of Ordinances §82-1.010, provides no textual basis for removing property on the grounds that it is surrounded by or adjacent to conservation easements. The justification offered by County staff has no foundation in law or policy.

2. **Proximity to Byron Airport has Potential to Create Regional Jobs**

Since the ULL was first adopted in 1990, the land surrounding the Byron Airport has been recognized for its potential to foster regional job creation and economic expansion. Over the years, this future has been frustrated through private landowner sales to conservation and park groups that have recorded restrictive conservation easements that limit development on adjacent parcels.

The Proposed Adjustments purport to remedy this by designating a future expansion zone to include 500 acres of new land for possible future ULL expansion. However, this approach unjustly penalizes existing landowners like the Property Owner, whose parcels were originally included in the ULL and who have long maintained investment-backed expectations of future development potential.

Excluding the Property from the ULL now would thwart the intended airport-focused economic expansion that the Property is ideally positioned to support. Moreover, the unrealized economic

expansion has to a large extent been due to the significantly delayed SR 239 project that is on the cusp of breaking ground.

3. Future State Route 239 Build Out Provides Opportunity to Create Regional Jobs.

State Route 239, decades in the making, is expected to receive environmental clearance and finalized alignment by 2026 with construction starting within the next five years. Of the publicly available alternative routes, each proposed alignment appears to traverse some portion of the Property. See **Exhibit B**, State Route 239 Planning Documents.

This state, local, and federally funded infrastructure project is poised to completely transform the region's accessibility and create significant economic development opportunities. For example, the thousands of jobs that were created in adjacent counties of Alameda and San Joaquine via light industrial and warehousing opportunities due to proximity to I-580 and I-205 connections to I-5 will become available to Contra Costa. Beyond these uses, the SR-239 project opens the door to unlocking the long envisioned Byron Airport employment center.

Excluding 70+ acres of the Property from the ULL on the eve of SR-239's realization is deeply concerning. It appears to preemptively restrict the Property's development opportunities of any urban uses, potentially reducing its valuation in any future eminent domain proceedings that will be required for SR-239's completion. This raises serious concerns under both the Takings Clause of the Fifth Amendment and Article I, Section 19 of the California Constitution.

4. The 65/35 Land Preservation Plan is Preserved

Even with the Property retained within the ULL, the Proposed Adjustments maintain a sufficient balance under the County's 65/35 land preservation policy. The continued inclusion of the Property does not materially affect the County's broader open space goals, nor does it undermine the purpose of the ULL. To the contrary, preserving the Property's status within the ULL remains consistent with both the spirit and the letter of the County's preservation framework.

Conclusion

For the foregoing reasons, we respectfully request that the County revise the Draft Potential Adjustments to retain the entirety of the Property within the ULL. Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Moita & Moita LLP

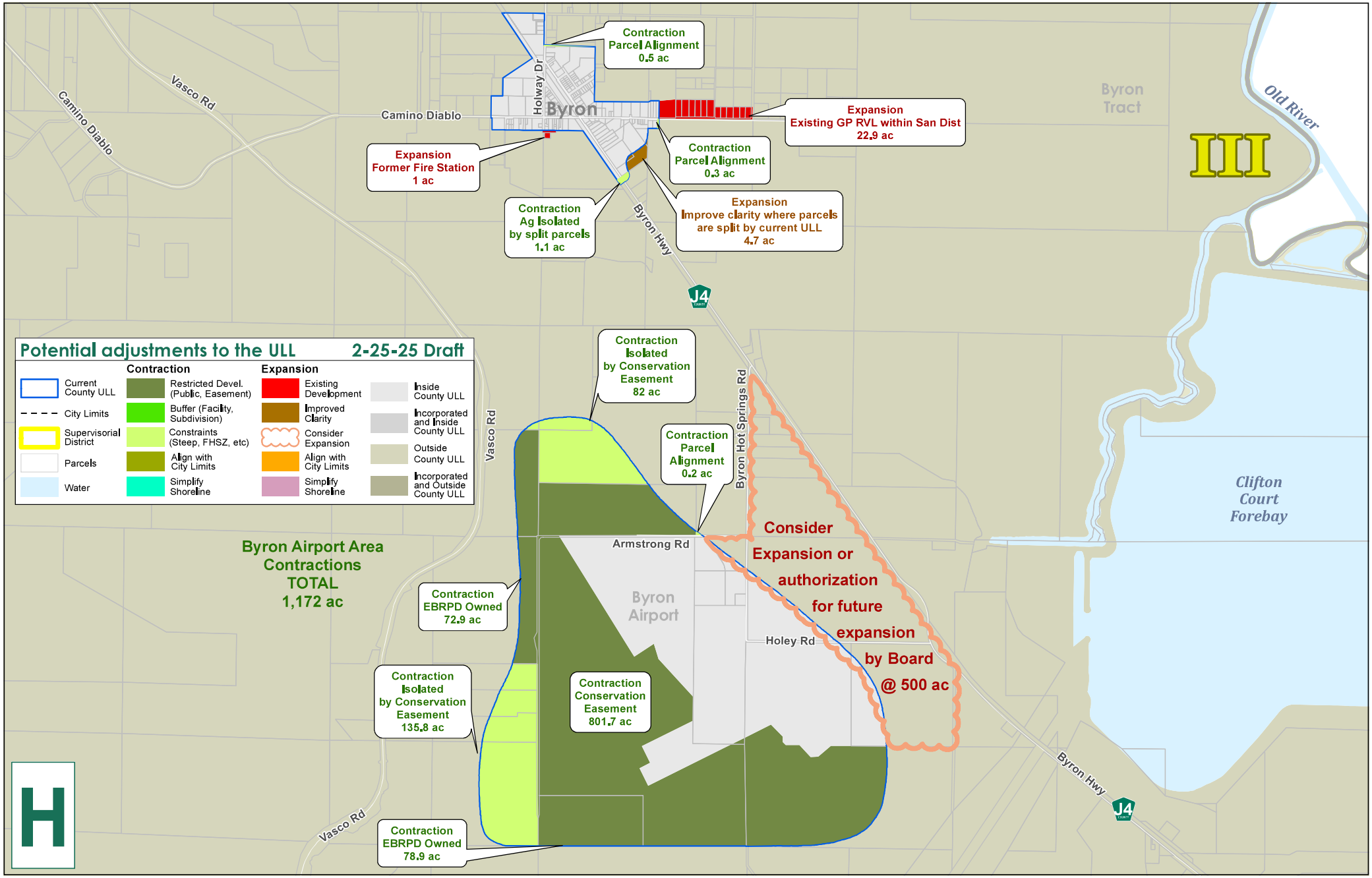
Vincent A. Moita

Exhibit A

Draft Potential Adjustments to ULL,

February 25, 2025

Select Pages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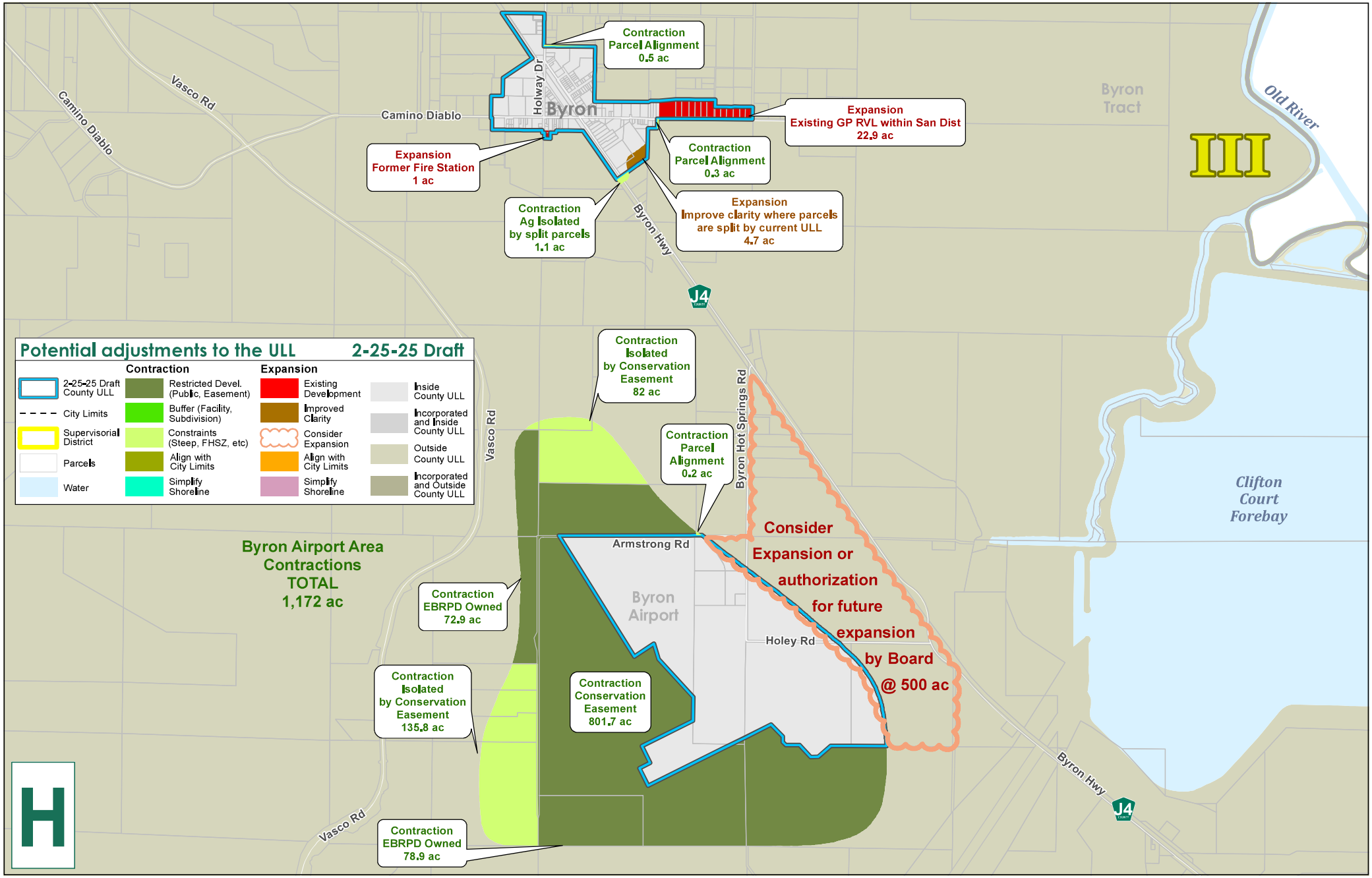
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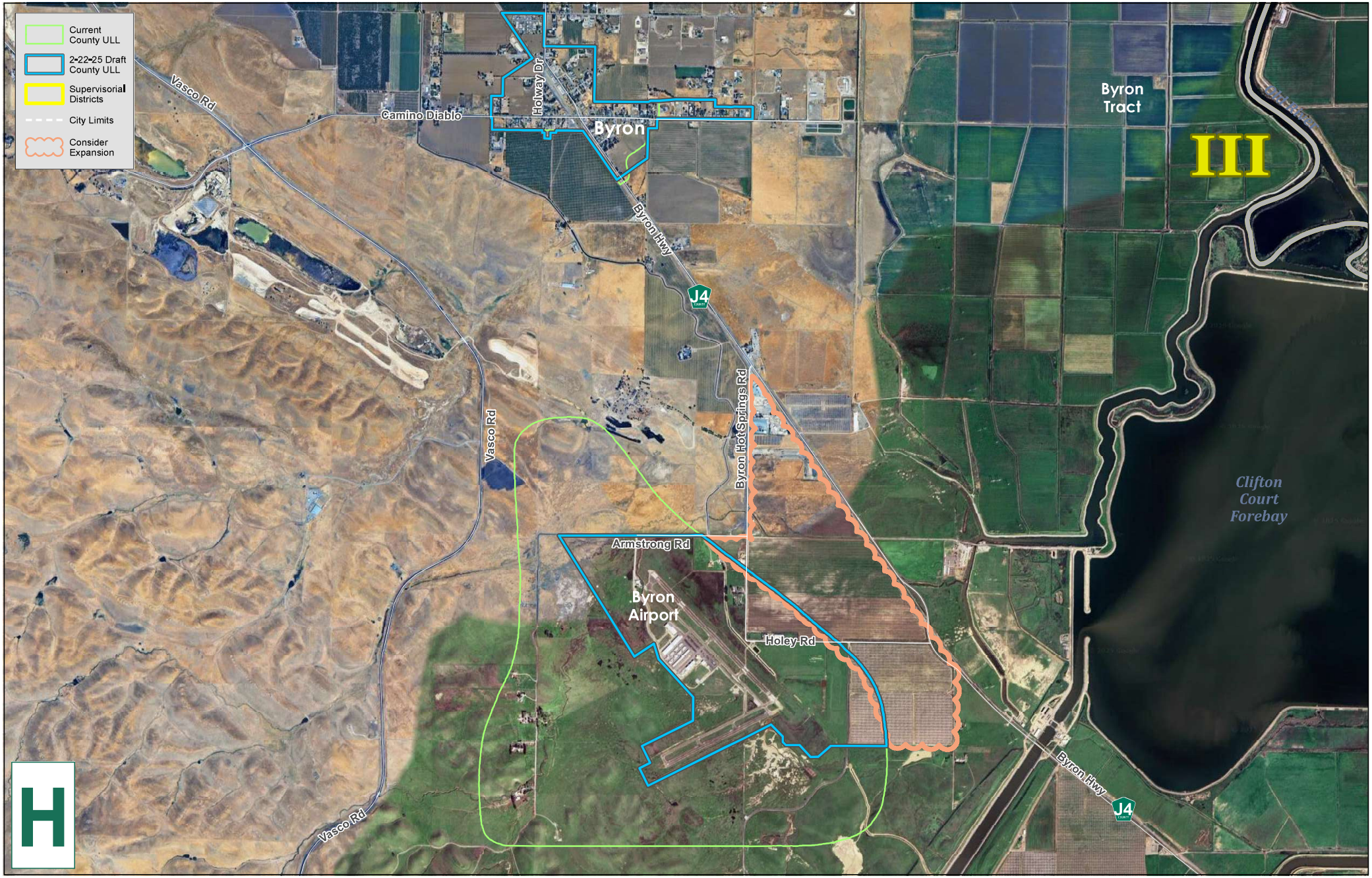
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Exhibit B

SR – 239 Location

SR – 239 Proposed Initial Segment

SR – 239 Poster History

239

State Route

Project History

From Initial Earmark to Environmental Review

The State Route 239 (SR-239) project was legislatively designated in 1959 to improve access between eastern Contra Costa County and San Joaquin County. Since then, the project has progressed through several important milestones.

1959

SR-239 legislatively designated as state route.

2005

The Byron Airport Master Plan was adopted.

Federal earmak funds secured for state route project.

2010

Contra Costa County receives federal funds to prepare a **Project Initiation Document (PID)** and a **feasibility study.**

Contra Costa's population exceeds 1 million.

2015

Public and stakeholder meetings held, identifying important environmental considerations and setting the stage for future outreach.

Feasibility report completed in May, 2014.

PSR/PDS (Project Study Report/Project Development Support) was completed, identifying **three potential alternatives** for SR-239.

2020

Caltrans and **CCTA** entered into a cooperative agreement to develop and execute the project.

The Project Approval and Environmental Document (PA/ED) phase was initiated to study the potential environmental impacts of the alternatives.

amazon

Amazon opens 150,000 square foot fulfillment center in Oakland.

2024

Federal earmark funds expire.

Caltrans

CONTRA COSTA transportation authority

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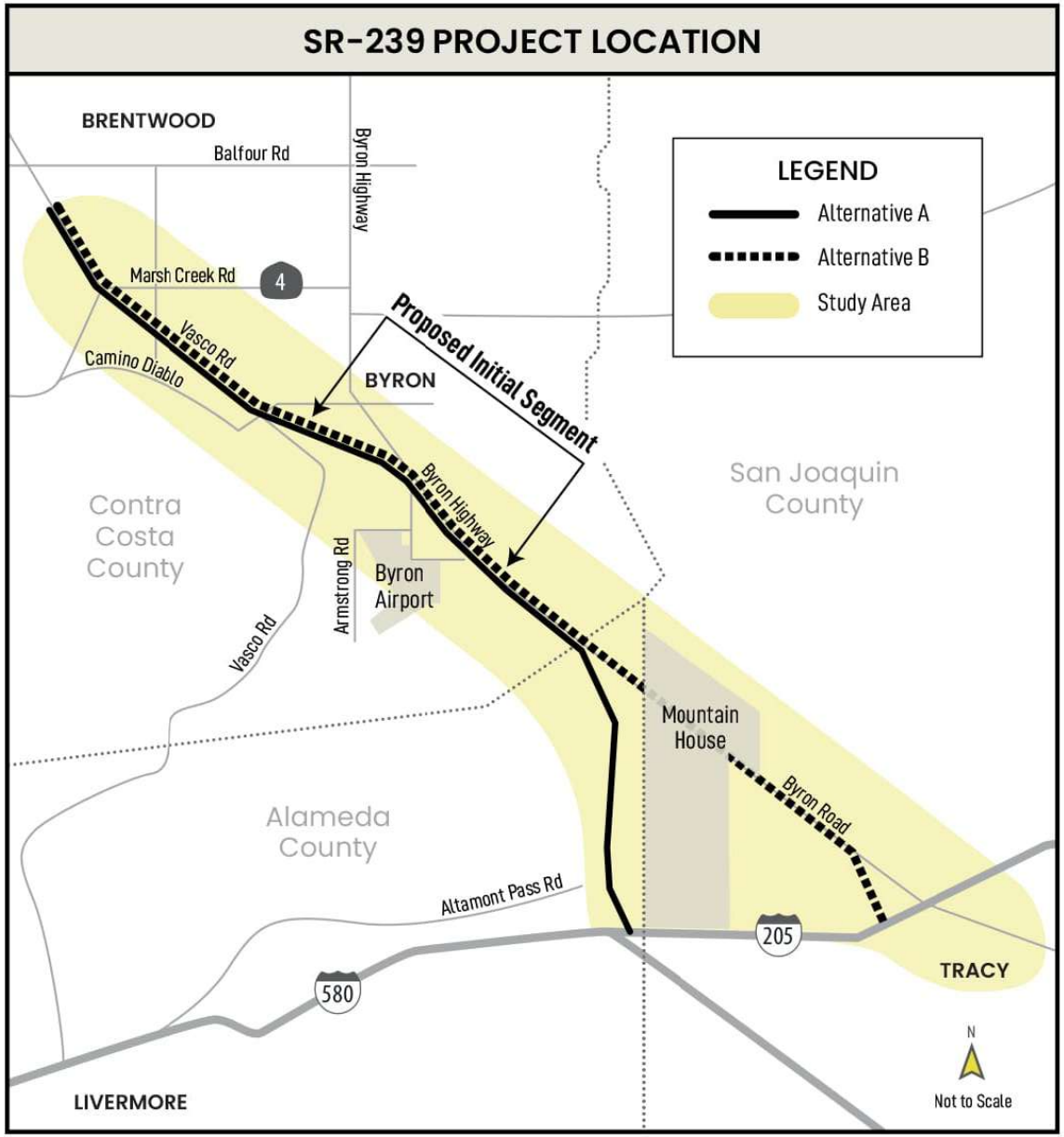
State Route

Project Location

Connecting Three Counties

This new state route will improve mobility between eastern Contra Costa County and the Central Valley by creating a new, four-lane highway. The new north-south roadway will connect State Route 4 at Marsh Creek Road in Contra Costa County to Interstate 580 in Alameda County or Interstate 205 in San Joaquin County. The project area covers an approximately 17-mile stretch between Brentwood and Tracy.

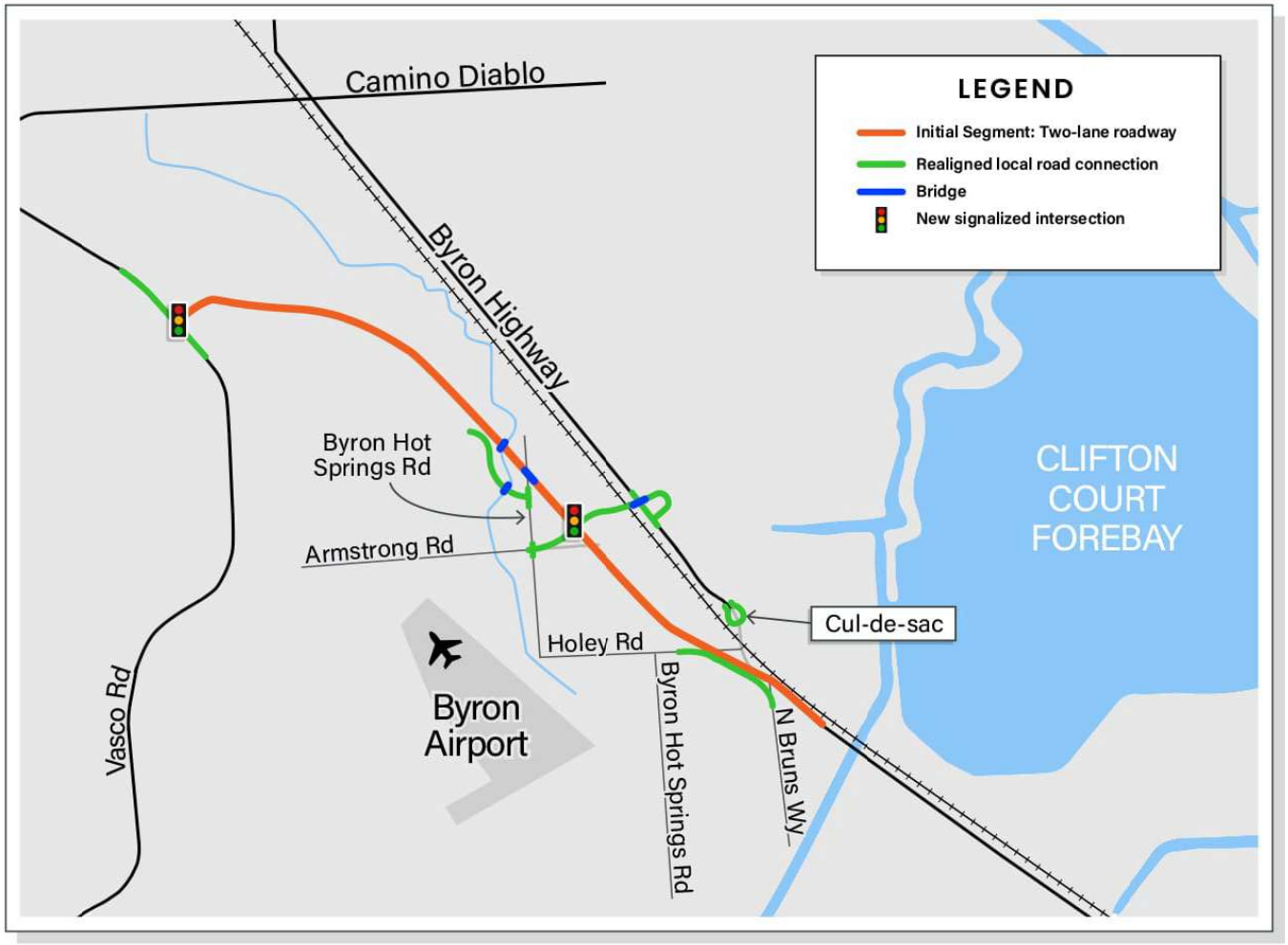


Caltrans
CONTRA COSTA transportation authority

Proposed Initial Segment

Approximately 4 miles

This exhibit shows the proposed initial segment of SR 239 that would be built during the first phase of the project. This segment is common to both Alternatives A and B. It is designed as a two-lane road that would connect Byron Highway to Vasco Road to reduce the level of through-traffic in the town of Byron.



From: Karl Hempfling
To: Will Nelson
Subject: 1150 and 1170 Briones Road Martinez Calif
Date: Wednesday, March 5, 2025 4:15:46 PM

Per our discussion today I would like the county to include my two parcels in the drafting of new urban limit line both parcels are are surrounded by Briones's park on 3 sides they are fully developed I've owned both for over 30 years apnumbers are 365-120-003 and 365-120-004 I can be reached at 9257871788 thank you Karl Hempfling please keep me posted on any meeting s or discussions Karl
Sent from my iPhone

From: Carol Jensen
To: Dominique Vogelpohl
Cc: Will Nelson
Subject: Urban limit line - Will Nelson Envision 2040
Date: Thursday, March 13, 2025 9:04:57 AM

Dear Dominique,

Can you please forward to me what ever email has just come out from Will Nelson regarding the Urban Limit line, please. I must have missed it. It has something to do with an election or movement of the Urban limit line or the like, or the General Plan.

My concern is to get the Urban limit line presently located west of the Byron Hot Springs moved east. Put the Byron Hot Springs IN the urban area so something can be done to restore it. Having the Resort in the Agricultural core makes NO sense at all. The property was zoned FR at one time and specifically identified as unique in the old General Plan. The alkaline soil is not conductive to agriculture. You cannot grow Almonds or Grapes in salt.
Thank you in advance for passing this email or public input announcement or what ever it is on to me. I wish to put in a public comment.

Yours truly,

Carol Jensen

V/R

Carol A. Jensen

From:	mathiashorses
To:	Alicia Nuchols; Supervisor_Burgis; Will Nelson; DCD Advance Planning; Supervisor Candace Andersen
Subject:	Urban limit line concerns
Date:	Friday, March 14, 2025 7:46:44 PM

Hello

I am a rancher in contra costa county.
My addresses are:
5900 Sellers Ave Oakley
7090 Camino Tassajara Rd Danville/Pleasanton

Our property is designated rural unincorporated county and zoned agriculture.

I do not want to be within the urban limit line.
It will effect my ability for qualifying for any USDA rural funding or loans.

I also do not want to be within the city limits.

We are actively raising livestock and farming our properties and intend to do so for the long term. We are generational family ranchers and our agricultural use of our property will continue indefinitely.
We do not want to be within the urban limit line.

Most of our neighbors are the same as us, farming their parcels and have generational ranches where that will continue on in perpetuity.

You should send out a letter to everyone this effects so the people that will be effected by the proposed changes have a say in what becomes of their property.

Please stop squeezing us rural folks out of the areas we have called home for generations. Stop marginalizing our rural agriculture communities and neighborhoods. Our kids need to be able to continue on with the way of life they are accustomed to.

Our family planted a pistachio farm in the 80's and in the early 2000's it was brought into the urban limit line and it ultimately caused the farm to be shut down because in time we became surrounded by tract housing and couldn't get our equipment to and from the ranch and processor during harvests without problems. We also had issues with trespassing and fires from the city people who did not respect the land or farmers.

Please protect the smaller ranchers and farmers from the harm of urban sprawl.

Erin Clancy Mathias
925-570-3929

Sent from my Verizon, Samsung Galaxy smartphone

Moita & Moita LLP

Attorneys at Law

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(925) 783-9688
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PO Box 40
Danville, CA 64526
www.MoitaLaw.com

Joseph D. Moita
(925) 783-6260
Joe@moitalaw.com

May 2, 2025

Supervisor Ken Carlson
District IV, Contra Costa County
2255 Contra Costa Blvd., Suite 202
Pleasant Hill, CA 94523

Re: Draft Potential Adjustments – February 25, 2025, County Urban Limit Line

Dear Supervisor Carlson,

We write to formally request that Contra Costa County (the "**County**") include the property – comprising 164 acres across assessor parcel numbers 075-200-021, 075-200-022, 075-200-025, 075-200-026, 075-200-027, 075-200-028, 075-200-029, and 075-200-030 (the "**Moita Property**") – within the Urban Limit Line (the "**ULL**") instead of exclude it therefrom, as proposed under the Draft Potential Adjustments submitted on February 25, 2025, by the County's Department of Conservation and Development (the "**Draft Adjustments**"). We note that the new line, as currently proposed, may violate the Housing Crisis Act of 2019 (SB 330), as it would reduce the intensity of allowed land use for at least 12 acres of the Moita Property below what was allowed by land use controls in effect on January 1, 2018. We request that when the County re-draws the line to comply with SB 330, it locates all of the Moita Property within the ULL.

If the County staff does not incorporate this request into a revised Draft Adjustments, we respectfully request that you directly propose and advocate for a friendly amendment to the proposed ULL to include all the Moita Property, as contemplated by Section 82-1.018(b) of the County Ordinance Code. This letter provides evidence that the requested expansion of the ULL is necessary to comply with state or federal law and to avoid an unconstitutional taking of private property.

As described in detail below, continuing to exclude the Moita Property from the ULL would violate fundamental procedural fairness, raise serious concerns regarding investment-backed expectations, amount to an unconstitutional taking under the Fifth Amendment of the United States Constitution, and is not only arbitrary and capricious but also wholly lacking evidentiary support. Further, the decisionmaker recommending the Moita Property's exclusion from the ULL, has an inherent conflict of interest.

It is not lost on us that this law firm bears the same name as the property owner in question; indeed, it is the reason why we became attorneys—to seek justice for our family. We submit the following analysis of the last 37 years of housing planning history for your records and review. In light of this history, we strongly urge you to advocate for the Moita Property's inclusion in the ULL.

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VIII. CONCLUSION 16

I. BACKGROUND AND PLANNING HISTORY

Since 1988, various owners of the Moita Property have sought to develop the property with residential housing units to help meet the region's critical housing needs. In 1988, Jim Moita sought a minor subdivision approval for one of the parcels (then identified as APN: 75-200-007) comprised of 32 acres. The minor subdivision was denied by the County Planning Commission, leading to an appeal before the County Board of Supervisors. On May 8, 1990, at that appeal hearing, the Board directed Mr. Moita "to work with the city of Clayton and with the staff in the planning process in the area…; and REQUEST[ED] the applicant/owner to work with the City of Clayton on planning processes in the area". The appeal was denied without prejudice, with Supervisors specifically recommending that the application "could be re-filed and considered for approval when an environmental impact report covers it." See Exhibit A, BOS Denial Request Work with City.

As the Board directed, between 1990 and 1995, Mr. Moita and other stakeholders invested over $550,000 to prepare the City of Clayton's Marsh Creek Road Specific Plan (the "**MCRSP**") and analyze the MCRSP for purposes of the California Environmental Quality Act ("**CEQA**") in an environmental impact report. Additionally, in 1990, the stakeholders paid the Contra Costa Water District (CCWD) $182,000 for critical infrastructure to enlarge the CCWD's Oakhurst Irish Canyon Reservoir and Clubhouse Pump Station to service the upper elevations of the Moita Property. See Exhibit B, Moita Specific Plan Reliance & Exhibit C, Heartland Investment in Reliance. In total, more than $730,000 was invested based on the County's direction to plan the area, which exceeds $1.762 million in today's inflation-adjusted dollars. The City of Clayton formally adopted the MCRSP in 1995, after 5 years of planning and 42 public meetings, designating the Moita Property for 103 net new residential units. See Exhibit D, 1995 MCRSP. Select relevant portions of the MCRSP are provided in Exhibit E.

The MCRSP explicitly requested Contra Costa County to adopt the MCRSP and apply it in unincorporated areas (Policy Implementation Element IM-12):

> The City of Clayton recommends that the policies of this Specific Plan be applied by Contra Costa County in the unincorporated portions of the study area and in areas beyond the study area but within Clayton's area of development comment, which extends three miles from the City Limits. The City shall formally request that the County adopt this Plan and use it for policy application in the area, and the City shall use the Specific Plan as the basis for comments on projects within the study area and the comment area. (*MCRSP*, Implementation Element, IM-12, at pg. 34 & pg. 121)

The MCRSP was later amended in 2005 and remains a part of the City of Clayton's General Plan today.[1] See Exhibit F, Current 2017 Adopted General Plan City of Clayton.

Accordingly, in accordance with the County's express direction, and following an extensive planning process that included full CEQA review, the City of Clayton designated the Moita Property for future housing development and explicitly asked the County to respect and implement that designation.

II. UNJUST EXCLUSIONS FROM THE ULL

Despite the County's May 1990 direction to Mr. Moita to participate in long-term regional planning and Mr. Moita's contribution, through his predecessor in interest, towards improving a nearby CCWD Reservoir to serve new homes in the area, the Moita Property was largely excluded from the original ULL when County staff modified the final alignment just before the November 1990 election. The ULL excluded 144 acres of the total 164 acres being planned simultaneously by the City of Clayton for housing, including the 32-acre parcel that the County BOS directed Mr. Moita to work with Clayton to plan and analyze under CEQA. Additionally, while the original ULL guidelines discouraged bifurcation of lots, and staff was advised against having the ULL bifurcate any lots, the ULL as adopted did nevertheless bifurcate a parcel in the Moita Property, leaving only the steepest portions within the ULL. At the time, staff justified the exclusion by citing a need for future flexibility to incorporate additional MCRSP-designated land into the ULL as development needs evolved. See Exhibit G, 1990 ULL Map re: Moita Property.

1. 2006 ULL Adjustment – County Recommendation Improper

In 2006, the original ULL was scheduled for a renewed vote for continued adoption. At that time, the County was tasked with providing evidence-based recommendations for proposed ULL adjustments. The Moita Property was considered for inclusion, which was consistent with its designation in the MCRSP. However, the County was concurrently pursuing the adoption of the East Contra Costa County Habitat Conservancy Plan & Natural Community Conservation Plan (the "**HCP/NCCP**"), which was drafted and presented to the public in 2005.

Despite the legal framework provided under California Government Code Section 56425,[2] which requires counties to consider city-adopted land-use plans and policies and to consult with cities

[1] The MCRSP, as amended, maintains the original residential density allocated to the Moita Property.

[2] Government Code section 56425, a section of the Cortese-Knox-Hertzberg Local government Reorganization Act of 2000, provides: "(a) In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies subject to the jurisdiction of the commission to advantageously provide for the present and future needs of the county and its communities, the commission shall develop and determine the sphere of influence of each city and each special district, as defined by Section 56036,

regarding territory within their spheres of influence, the County's updated ULL and the HCP/NCCP entirely failed to acknowledge or incorporate the MCRSP's extensively detailed land use controls that designate the Moita Property for housing. In its suggested ULL adjustment, the County prioritized the draft HCP/NCCP at the expense of the housing production controls in the City of Clayton's MCRSP. Again, the MCRSP was prepared at the direction of the County, and the City of Clayton repeatedly urged the County to include the MCRSP area in the 2006 ULL adjustment. See Exhibit H1, Clayton Request Inclusion ULL and Exhibit H2, Letter to Landowners on Clayton Amendment. The City of Clayton's stance on this issue was further confirmed when then-Mayor Julie Pierce and Jim Moita attended the County's ULL workshop to advocate for including the MCRSP area within the ULL. At that time, the Amy Worth amendment, which allows 30-acre movements of the ULL, was written, in part to address the Moita Property's reduction from 164 developable acres to just 20 developable acres and the bifurcated lot, namely APN 075-200-21.

However, at odds with Government Code section 56425, the City of Clayton's recommendations, and private landowner representatives, the County's proposed ULL update excluded ***more*** of the Moita Property from the ULL, reducing the acreage included in the ULL from 20 acres to a mere 12 acres – without any compensation or clear justification. See Exhibit I, 2006 Adopted ULL re: Moita Property.

David Shuey, then-Mayor of the City of Clayton, submitted a letter to the Board of Supervisors requesting a shift of the ULL boundary in the Marsh Creek Road area, a request echoed at the public hearing by Julie Pierce, then-Councilmember of the City of Clayton. Ultimately the ULL was drawn to exclude the vast majority of the Moita Property. See Exhibit J, BOS Minutes March 7, 2006.

2. The Draft Adjustments Continue to Conflict with MCRSP and are Inconsistent with Contra Costa County General Plan Goal LU-6, Policy LU-P6.4

The Draft Adjustments would entirely exclude the Moita Property from the ULL. See Exhibit K, Proposed 2025 ULL re: Moita Property. This action is fundamentally unfair and legally problematic. The Moita Property was designated by the City of Clayton for residential development at the County's direction, the property owner invested significant financial resources based on the County's direction, and yet the County continues to ignore the MCRSP, despite the severe and ongoing housing crisis. First in 1990 when 144 of the 164 acres were excluded, then in 2006 when 8 additional acres were excluded, and now as all 164 acres are being recommended for removal, despite the state- and county-wide housing crises. To now entirely exclude the Moita Property amounts to an arbitrary and capricious denial of the property owner's investment-backed expectations made in

within the county and enact policies designed to promote the logical and orderly development of areas within the sphere."

reliance on the County's direction. It raises serious legal concerns regarding regulatory takings, inverse condemnation, and lacks evidence-based regional housing planning support for exclusion.

III. A SHIFTED BOUNDARY WOULD MAINTAIN THE 65/35 STANDARD

Locating the Moita Property within the ULL would not disrupt the County's 65/35 Land Preservation Standard (the "**65/35 Standard**"), which requires that no more than 35 percent of land in the county be designated for urban uses. The Draft Adjustments would result in a net reduction of 9,153 developable acres within the ULL, as 10,787 acres would be newly excluded from the ULL and only 1,634 acres would be newly added. Locating the Moita Property within the ULL would minimally adjust these totals and comport with the 65/35 Standard.

IV. NO PRECEDENT CREATED FOR OTHER ULL ADJUSTMENTS

Locating the Moita Property within the ULL would not cause a cascade of similar requests. The Moita Property is uniquely situated due to:

1. Decades of on-the-record County-directed planning, including the County's explicit direction in 1990 to engage in collaborative planning efforts with the City of Clayton;
2. Its formal inclusion in the MCRSP; and
3. Significant private party investment in reliance on County directive, including preparation of a full, certified EIR analyzing residential uses.

No other excluded property has this level of prior County involvement.[3] Inclusion of the Moita Property within the ULL, would therefore not create a precedent for other developers to demand similar treatment. Plain and simple, **there is no risk of copycat developers seeking the same remedy.**

V. COUNTY'S JUSTIFICATIONS TO EXCLUDE ARE WITHOUT MERIT

The Draft Proposal provides three justifications for the removal of the Moita Property from the ULL: (i) contraction steep, (ii) very high fire hazard severity zone, and (ii) unlikely to develop, each of which will be addressed in turn below. See Exhibit K, Proposed 2025 ULL re: Moita Property

[3] The Moita Property is unlike other property at issue in recent legal challenges such as Lafayette Bollinger Development LLC v. Town of Moraga (2023) 93 Cal.App.5th 752, where that property was never designated for housing uses. Here, the Moita Property was included in a Specific Plan, and by the consistency principles, the City of Clayton's General Plan.

1. "Contraction Steep"

While portions of the Moita Property contain slopes, the MCRSP specifically addresses topographic constraints, and a significant portion of the property remains developable for housing. The County's current assertion that the entirety of the Moita Property is precluded from development based on a cursory review should not supplant the MCRSP EIR's well-founded topographical analysis and the MCRSP's well-informed development standards, each of which provide for residential uses based on the existing topography.

Many areas within the current ULL contain steeper terrain and yet remain eligible for development. Excluding the Moita Property while allowing similar sites within the ULL is an inconsistent and unfair application of County planning principles.

2. "Very High Fire Hazard Severity Zone"

As set forth in the County's Ordinance Code, Title 8. Zoning, Division 82 General Regulations, § 82-1.010. Urban Limit Line provides:

> "The criteria and factors for determining whether land should be considered for location outside the urban limit line should include:
>
> (a) land which qualifies for rating as Class I and Class II in the Soil Conservation Service Land Use Capability Classification,
> (b) open space, parks and other recreation areas,
> (c) lands with slopes in excess of twenty-six percent,
> (d) wetlands, and
> (e) other areas not appropriate for urban growth because of physical unsuitability for development, unstable geological conditions, inadequate water availability, the lack of appropriate infrastructure, distance from existing development, likelihood of substantial environmental damage or substantial injury to fish or wildlife or their habitat, and other similar factors."

The specific language of the voter-adopted ULL, codified in the Contra Costa County Code of Ordinances, does not list fire hazards as a criterion for exclusion. Therefore, it is inappropriate to identify fire risk as a basis for exclusion, particularly on a site that was already analyzed for housing uses in a certified full EIR.

The Moita Property is no more fire-prone than surrounding properties that remain within the ULL. Look no further than the Peacock Creek Drive and Eagle Peak Avenue subdivisions immediately adjacent to the Moita Property in the City of Clayton. Further, there are numerous

communities within the ULL that are in the same fire designation, including Moraga, Orinda, Lafayette, Richmond, San Pablo, Pinole, Martinez, Diablo (Danville), and Pleasant Hill, each with significant segments of developed residential land within the Very High Fire Hazard Severity Zone. Building permits are regularly issued for residential uses in these areas.

The inclusion of the Moita Property in the most recent Cal Fire Very High Fire Hazard Severity Zone does not preclude development but requires that any development must meet the strictest of fire-safety building codes, evacuation planning, and infrastructure improvements to mitigate risk, as is similarly being done throughout Contra Costa County.

Fire hazard concerns should be addressed through site-specific mitigation measures and best practices rather than a wholesale exclusion from the ULL, for which there is no textual basis.

3. "Unlikely to Develop"

The Moita Property is not already developed only because it is located outside the ULL—a decision by staff that the County now offers as evidence that the property is unlikely to develop. This circular logic should be afforded zero weight. The Moita Property owners have repeatedly indicated their intention to develop the property for housing, as codified in the MCRSP and analyzed in the related EIR. Please accept this letter as further evidence of the property owner's sincere desire and intention to develop the Moita Property.

The property remains viable for development and is crucial to meeting the County's housing needs, particularly given California's housing crisis and state-mandated housing production goals. But for the County's prior planning failures that located the Moita Property outside the ULL, the land would have long ago been developed for housing.

If the property is included within the ULL, the Moita Property will be developed in accordance with the MCRSP, bringing much-needed housing to help fulfill the County's RHNA allocation.

VI. IMPROPER MOTIVATION: EASEMENT LIABILITY AND INSTITUIONAL CONFLICTS DRIVING EXCLUSION OF MOITA PROPERTY

1. Easement History

In the 1970s and 1980s, during a period of rapid land speculation and growth in Contra Costa County, which ultimately resulted in the implementation of the ULL, the Bettencourt Ranch property (now referred as the "**Ang Property**")—consisting of 462 acres split among assessor parcel numbers 075-200-007, 075-200-009, and 075-200-002, and which is adjacent to the Moita Property—was

acquired by a speculative developer for planned residential development. However, the Ang Property lacked critical access to Marsh Creek Road.

In 1988, the Ang Property owner and the Bettencourt Family, a predecessor owner of the Moita Property, executed and recorded a 60-foot-wide access easement (the "**Easement**"). See Exhibit L, Ang Easement. The critical Easement terms provide for construction of a roadway at the expense of either the Moita Property or Ang Property owner, whichever was first to develop homes, with a clear reimbursement structure.

Provision 3(g) of the Easement addresses scenarios where either the dominant tenement (Ang Property) or the servient tenement (Moita Property) serves as the developer of the road improvements. If the dominant tenement is the developer, the dominant tenement must pay 100% of all costs associated with the road improvements. If the servient tenement is the developer, the servient tenement is entitled to reimbursement for 55% of all the reasonable costs and expenses arising out of the construction of the road improvements.

In 1987, the engineering firm Stedman & Associates, Inc. estimated the cost of the Moita Property's road improvements, subject to reimbursement, to be **$9,937,000**. See Exhibit N, Steadman Estimate. Accounting for inflation to 2025, the Moita Property's road improvements are now estimated at over $27,900,000 and the **dominant tenement's obligation at 55% could be over $15,300,000**.

a. The Ang Property Not Included in MCRSP

Despite initial County direction to include properties surrounding the Moita Property in the long-range planning analysis and documents, the Ang Property was ultimately excluded from the 1995 MCRSP. This exclusion rendered the Ang Property unsuitable for residential development, yet the recorded easement remains in place and legally enforceable.

b. EBRPD Purchases Ang Property with Funding from East Contra Costa County Habitat Conservancy

In 2007, shortly after the 2006 ULL modification that excluded 8 additional acres of the Moita Property, the East Bay Regional Park District ("**EBRPD**") identified the Ang Property for acquisition and inclusion in the Black Diamond Mines Regional Preserve, which contains 8,000 to 10,000 acres of parkland. Devoid of economic development potential, the Ang Property was sold for $2.76 million. To fund this acquisition, EBRPD used Measure WW Park District bonds to finance 55% of the purchase price and a grant from Eastern Contra Costa County Habitat Conservancy ("**ECCCHC**") for the remaining 45%. In addition to the recorded constructive notice of the Easement, an appraisal prepared by Paul A. Rowan on April 21, 2008, specifically flagged the Easement as a potential legal

and financial encumbrance and recommended that EBRPD retain legal and engineering experts to fully assess the impact of the Easement. The appraiser also explicitly stated that the buyer did not appear to have legal access rights through the Moita Property to Marsh Creek Road. See Exhibit O, Rowan Appraisal. Despite this warning about the recorded Easement, EBRPD proceeded with the acquisition and closed the purchase in 2010 with $1,243,725 financed via a grant from the ECCCHC Department. See Exhibit P, Property Acquisition Checklist and Grant Funding.

Immediately after acquiring the Ang Property, EBRPD asserted that they had a right to use the Easement through the Moita Property without building or paying for an access road to Marsh Creek Road, all in direct conflict with the 2008 appraisal and the explicit terms of the written Easement. This assertion was opposed by Mr. Moita. See Exhibit Q, EBRPD letter 2010 & Exhibit R Moita Opposition Letter 2011.

c. Easement Validity Confirmed Through Binding Arbitration

Following subsequent disputes between the owner of the Moita Property and EBRPD regarding the Easement, more fully described below, the matter proceeded to arbitration. The final arbitration ruling confirmed the Easement's validity and enforceability, affirming that EBRPD, the successor-in-interest to the Ang Property, remains obligated to reimburse road construction costs under the Easement terms. A copy of the arbitration award is attached as Exhibit S, Final Arbitration Award. The arbitration cost of $200,000 was paid for by the Moita family.

2. Concern Over Institutional Bias and Improper Motives

We raise serious concerns that the staff decisionmaker's desire to protect EBRPD and its funding partners from potentially significant reimbursement obligations under the Easement may be influencing the current proposal to exclude the Moita Property from the ULL, the third of three separate boundary adjustments that have negatively impacted the Moita Property.

The prior and continued involvement of certain individuals, combined with the financial exposure associated with the Easement and the absence of any rational planning justification for excluding the Moita Property, raises the troubling appearance of institutional bias and improper influence. The County's decision-making process should be grounded solely in legitimate land use, environmental, and planning considerations—*all of which were heavily scrutinized and addressed in the five-year planning process and 42 public meetings culminating in the adoption of the MCRSP*—not in efforts to insulate related agencies from their contractual financial obligations. If the Moita Property builds the Easement road in connection with residential development, EBRPD is contractually obligated to pay 55% of the final construction costs, estimated to be over $15.3 million, an amount over 5 times what EBRPD and the ECCCHC paid for the Ang Property.

This fact pattern alone is enough to question County staff's motives in now seeking to exclude 100% of the Moita Property from within the ULL; however such circumstances are compounded substantially when viewed in light of other land use decisions regarding the Moita Property. Certain details of this history are described below and we wish to discus others with you in person so that you have a full picture.

d. Improper Delay of Emergency Access Road Relocation Permit

The original access road to Jim Moita's personal residence (the "**Old Ranch Road**") was a centuries-old ranch road that also served as fire trail #11 and was situated on the southwest quarter of the Moita Property, next to an ephemeral creek with steep ravines and dying, weak trees leaning over it. A thousand-foot stretch of the Old Ranch Road began showing access problems during Mr. Moita's residency at the Moita Property beginning in 1993; by 2012 it posed a significant health and safety hazard with trees falling, mudslides, and structural degradation. See Exhibit T, Arborist Report. See also, Exhibit U, Geotechnical Report; Exhibit V, Geotechnical Report Photos; Exhibit W, Pictures of Road Condition Blocked by Mudslide; Exhibit X, Failed Trees on Road. Most pertinent, the May 17, 2012, Contra Costa County Fire Protection District Fire Inspector Letter states:

> "I would support the proposed access road due to the unreliable nature it poses from the surrounding trees that would cause a delay for response both to the private home(s) on your property and the access point for the fire trail and would conclude that a **"Hazardous Situation" exists relative to the safety of the existing road**" (**emphasis** Added) May 17, 2012, Contra Costa County Fire Protection District, Fire Inspector Letter, Exhibit Y.

This prompted Mr. Moita to seek emergency approval to relocate the Old Ranch Road away from the ephemeral creek for access to his personal residence in order to preserve human life. On June 14, 2012, Mr. Moita submitted replacement access road plans to the County. See Exhibit Z, Stamped Plans Received from the County. Emergency projects are allowed significant deference under CEQA creating a path for expedited environmental review and permitting.

Specifically, CEQA, as codified in the California Public Resource Code section 21060.3, defines emergencies as:

> "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

Further, the CEQA Guidelines section 15269 provides exemptions from the requirements of CEQA:

> (b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare. Emergency repairs include those that require a reasonable amount of planning to address an anticipated emergency.
>
> (c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility.

Here, the access road's documented failure and hazardous conditions and need to relocate under guidance of the Fire Inspector created a clear path for the County to push project permitting under a valid emergency-based CEQA exemption. Yet, the County opted to not file a notice of exemption and instead required project-specific environmental review, delaying the implementation of a safe driveway to the residence.

In 2015, two-and-a-half years after the Fire Marshal's letter and while Mr. Moita was seeking state and federal permits, EBRPD wrote a letter to the County in opposition to Mr. Moita's access road requesting the County condition the access road permits upon Mr. Moita and EBRPD renegotiating the Easement. See Exhibit AA, EBRDP 2015 Letter. Twenty-one days later Jim Moita received a telephone call from County Planner Sean Tully advising Jim that he would not receive a permit unless he agreed to make a new deal with EBRPD. See Exhibit AB, 4-30-2015 Telephone Notes. This was further confirmed in writing when EBRPD revised their letter to the County stating they would withdraw their opposition if Mr. Moita agreed to dedicate in perpetuity a 250-foot-wide scenic easement (amounting to approximately 15 acres), record an 850-foot-long public trail easement, and extinguish the potential funding liability that EBRPD would face if the Moita Property owner ever built the planned Easement road in conjunction with the requisite housing. See Exhibit AC - EBRPD 2015 Second Letter.

In essence, EBRPD was requesting the County to force Mr. Moita to give up his legal right to 55% of future road funding and convey significant land rights in exchange for EBRPD to withdraw their opposition to build his driveway, which was a matter not of convenience but one of demonstrated and documented concerns for human health and safety. The County, knowing it had no nexus for exactions in the conditions of the permit as they pertain to private easement agreements, decided to delay issuing building permits by raising superfluous issues without issuing any written finding on the matter. This course of action subjected Mr. Moita to hazardous road conditions that threatened life and limb and created unreasonable tort liability for any invitees, including friends, family, and the

public due to the condition of the severely degraded Old Ranch Road. The unsafe road conditions were again affirmed when the Fire Chief for the East Contra Costa Fire Protection District, Hugh Henderson visited the property on August 27, 2015, and confirmed, in his follow-up letter on August 28, 2015, the following:

> "As the Fire Chief having jurisdiction over this property, I believe this [road condition] constitutes a potentially serious public safety hazard during wildland fires season and/or wet and stormy inclement weather. I request that Contra Costa County act immediately to permit and allow you to build a new alternate driveway without hesitation prior to anticipated El Nino hitting this winter." August 28, 2015, East Contra Costa County Fire Protection District, Fire Chief Hugh Henderson Letter. Exhibit AD.

The continued delay on the basis of EBRPD's opposition resulted in Mr. Moita being forced into arbitration with EBRPD over the Easement, the result of which ultimately confirmed the Easement's enforceability and that the Easement precluded EBRPD from objecting to the access road permits. The arbitration award was granted November 23, 2016. Despite the arbitration award rendering EBRPD's opposition to the access road meritless, the County continued to delay granting construction permits to build a safer road to the Moita residence.

By 2017, Mr. Moita had paid $170,000 in fees and received the following state and federal permits to relocate the driveway to his home:

1. California Department of Fish and Wildlife (1600 LSAA)
2. US Army Corps of Engineers (RGP 1)
3. Regional Water Quality Control Board (Section 401)
4. US Army Corps of Engineering (JD verification letter)
5. US Fish and Wildlife, Section 7 Consultation (Biological Opinion)
6. California SWPPP
7. California Water Boards NOL

As recently as 2020, the hazardous Old Ranch Road continued concern the East Contra Costa County Fire Protection district:

> "To date, your private access road and fire trail #11 poses a hazardous condition and needs to be addressed immediately" August 5, 2020, East Contra Costa County Fire Protection District, Fire Marshal Letter. See Exhibit AE.

e. County Staff Failed Duty to Protect Public Safety

In 2020, after 8 years, Mr. Moita started construction without a grading permit from the County but consistent with federal and state permits that were set to expire within a year, four years after issuance. The County reacted by red-tagging the construction site. This prompted Mr. Moita to provide a letter to the County in December 2020, outlining the unreasonable delay and continued necessity to issue permits to relocate the hazardous Old Ranch Road. See Exhibit AF, 2020 Moita Letter. Ultimately, the County did issue the needed grading permit in 2022 to allow for the completion of the access road, 10 years after the initial meeting with County staff. Today Mr. Moita is still working with the County to finalize the permit, 13 years after the initial meeting. In the context of the necessary replacement of a hazardous existing road, this time frame is shocking and manifests a lack of due process. See Exhibit AG, Biological Consultant Letter; see also Exhibit AH Geotechnical Engineering Letter.

What should have been a simple administrative building permit to move a hazardous private driveway and fire road away from a dilapidated creek took nearly a decade. We believe the delay in issuing building permits for a safer access road was intended to cause Mr. Moita to acquiesce in forfeiting the 55% Easement funding and dedicating land rights to EBRPD. The six-year delay after the binding arbitration award, absent any stated planning rationale, raises serious concerns about improper motivation and administrative obstruction. Additionally, the prolonged uncertainty and procedural delays caused significant personal stress to Mr. Moita, resulting in a medically documented nervous system emergency in 2020.

We respectfully urge you to carefully evaluate whether normal planning procedures or personal and institutional biases, namely to relieve EBRPD and the ECCCHC from the financial consequences of the Easement, motivate the proposed exclusion of the Moita Property from the ULL. If that is the case, then such motivation would render the County's planning decisions that continue to strip the Moita Property of development potential completely arbitrary, capricious, and legally indefensible under well-established Constitutional and California Law.

VII. YOU HAVE THE AUTHORITY TO RECOMMEND INCLUSION

As the duly elected Supervisor for District IV, within which the Moita Property sits, you have the ultimate authority to make recommendations pertaining to land use decisions affecting the Moita Property. We have heard from other County Supervisors that they will ultimately look to you for guidance on how to vote with respect to your district. We believe that if you support locating the Moita Property within the ULL for residential development, the other Supervisors will agree.

We sincerely hope that you agree that the lengthy planning history of the Moita Property for residential development should not be in vain, particularly in light of the statewide housing crisis, and that any site-specific mediation measures can be addressed upon the formal application for residential

use at a future time. Inclusion in the ULL will create the possibility of development with guidelines similar to those envisioned by the Clayton MCRSP 30 years ago, subject to all appropriate review, analysis, and protections to be duly conducted and approved at a later time.

VIII. CONCLUSION

Excluding the Moita Property from the ULL contradicts decades of County-directed planning, disregards significant investment-backed expectations, and raises constitutional legal concerns. More importantly, it undermines the County's stated commitment to balance growth and sustainable housing development. We respectfully request that you recommend the inclusion of the Moita Property in the ULL, subject to all future site-specific review and mitigation measures. Alternatively, if the County is unwilling to incorporate such recommendation, we will ask for you to make a motion for a friendly amendment to the Draft 2025 ULL Plan that includes the Moita Property and aid us in securing the 4/5 votes necessary from the Board of Supervisors to bring all the Moita Property into the ULL. The County is suggesting the ULL become perpetual or at least remain in place for the next 25 years—so the time is now. Please help us in righting this wrong and avoiding continued or escalating legal disputes, which benefit no one and do nothing but to further delay the development of much-needed housing.

Thank you for your time and consideration. Please do not hesitate to contact me should you need any additional information.

Respectfully Submitted,

Vincent A. Moita

CC: Jim & Julie Moita
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May 23, 2025

VIA EMAIL

Will Nelson
Principal Planner, Advance Planning
Department of Conservation and Development
Contra Costa County
30 Muir Road
Martinez, CA 94553
Email: advanceplanning@dcd.cccounty.us

Re: Urban Limit Line Renewal

Dear Mr. Nelson:

This firm represents Jim Moita and his family (the "Moitas"), owners of 164 acres comprising several parcels[1] (the "Moita Property") located along Marsh Creek Road in unincorporated Contra Costa County ("County"), just east of the City of Clayton (the "City"). We are aware of the Board of Supervisors' direction for County staff to prepare an adjusted urban limit line ("ULL") for consideration of County voters in 2026. We write to advise you that the adjusted line, as shown in the Draft Potential Adjustments presented to the Board of Supervisors on February 25, 2025 (the "Draft Adjustments"), may violate the Housing Crisis Act of 2019 (SB 330), as it would reduce the intensity of allowed land use for at least 12 acres of the Moita Property below what was allowed by land use controls in effect on January 1, 2018. Cal. Gov. Code § 66300(b)(1)(A). We strongly urge you to redraw the line to comply with state law. At the same time, as detailed below, we respectfully request that you include the entire Moita Property within the ULL because:

- the site is appropriate for urban uses;
- thoughtful development of the site would provide Central Contra Costa County access benefits to the 8,500-acre Black Diamond Mines Regional Preserve of East Bay Regional Park District ("EBRPD");

[1] The Moita Property consists of assessor parcel numbers: 075-200-021, 075-200-022, 075-200-025, 075-200-026, 075-200-027, 075-200-028, 075-200-029, and 075-200-030.

- we disagree with the rationale presented to justify the site's exclusion; and
- the site has long been contemplated for residential development.

As you know, the State and County are experiencing a severe housing shortage. As described below, the Moitas have been seeking to develop housing on the Moita Property for nearly 40 years and have made significant investments in infrastructure improvements, environmental review documentation, and design guidelines that would facilitate the development of up to 103 large-lot homes on the Moita Property after annexation by the City.

While locating the Moita Property within the ULL would be the first step to allowing housing on the site, the project would continue to face intense scrutiny and several levels of discretionary review by different approval bodies, including the City and the Contra Costa Local Agency Formation Commission (LAFCo) before it would proceed. We understand that the Moitas would also need to work closely with the community and other stakeholders, including the EBRPD to identify a workable project for the site, and the Moitas are committed to a collaborative and coordinated process. But again, we implore you to take this first important step towards unlocking these potential new housing units.

I. THE MOITA PROPERTY IS APPROPRIATE FOR INCLUSION WITHIN THE ULL

A. Including the Moita Property would Maintain the 65/35 Standard

Locating the Moita Property within the ULL would not disrupt the County's 65/35 Land Preservation Standard (the "65/35 Standard"), which requires that no more than 35 percent of land in the County be designated for urban uses. The Draft Adjustments would result in a net reduction of 9,153 developable acres within the ULL compared to the existing boundary, as 10,787 acres would be newly excluded from the ULL and only 1,634 acres would be newly added. Locating the Moita Property within the ULL would thus uphold the 65/35 Standard and would have a negligible impact on the overall total developable acres in the County.

B. Developing the Moita Property Could Benefit the EBRPD

The Moita Property is adjacent to the Black Diamond Mines Regional Preserve, including a 462-acre piece of land colloquially referred to as the "Ang Property."[2] The Ang Property was purchased in 2010 by the EBRPD. In 1988, the Ang Property owner and the Bettencourt Family, a predecessor owner of the Moita Property, executed and recorded a 60-foot-wide access easement (the "Easement") across the Moita

[2] The Ang Property, formerly known as the Bettencourt Ranch property, consists of assessor parcel numbers 075-200-007, 075-200-009, and 075-200-002.

Property to Marsh Creek Road. See Exhibit A, Ang Easement. We believe that the EBRPD would benefit greatly from an access road in this location.

The critical Easement terms provide for construction of a roadway at the expense of either the Moita Property or Ang Property owner, whichever was first to develop homes. If the dominant tenement (Ang Property) is the developer, the dominant tenement must pay 100% of all costs associated with the road improvements. If the servient tenement (Moita Property) is the developer, the servient tenement is entitled to reimbursement for 55% of all the reasonable costs and expenses arising out of the construction of the road improvements. Provision 3(g) of the Easement.

In 1987, the engineering firm Stedman & Associates, Inc. estimated the cost of the Moita Property's road improvements, subject to reimbursement, to be $9,937,000. See Exhibit B, Steadman Estimate. Accounting for inflation to 2025, the Moita Property's road improvements are now estimated at over $27,900,000 and the dominant tenement's obligation at 55% could be over $15,300,000. The Moita family is interested in collaborating with EBRPD to identify a solution to develop homes on the Moita Property and provide access to the Ang Property without triggering such a massive expense for EBRPD.

C. The County Erred in its Justifications for Excluding the Moita Property

The Draft Adjustments provide three justifications for the removal of the Moita Property from the ULL: (i) contraction steep, (ii) very high fire hazard severity zone, and (ii) unlikely to develop. For the reasons described below, we disagree with each of the three justifications.

1. "Contraction Steep"

As detailed below, the Moita Property and its topography was closely studied in the 1990s, when the City prepared and adopted the Marsh Creek Road Specific Plan (the "MCRSP") and certified an environmental impact report (EIR) for the MCRSP.[3] The MCRSP established land use controls for an approximately 475-acre area, including the Moita Property. The MCRSP acknowledged that steep terrain exists in portions of the plan area and established "requirements that are more restrictive than those for development in flatter areas" to minimize grading and geological disruption.[4] (MCRSP Policy LU-5a and Policy LU-5b.)

[3] The MCRSP is available at: https://claytonca.gov/fc/community-development/planning/long-range-planning/marshcreekroadspecificplan.pdf.

[4] Policy LU-5a generally limits development to areas with slopes less than 26 percent and prohibits building footprints on slopes greater than 40 percent. Policy LU-5b includes a mechanism for "site-specific review by the City," with specific findings to confirm whether development is appropriate in certain sloped areas.

Under the MCRSP standards, a significant portion of the Moita Property is developable for housing. The County's dismissal of the entire site based on a cursory review should not supplant the MCRSP and related EIR's detailed and specific analysis.

Many areas within the current ULL contain steeper terrain and yet remain eligible for development. Excluding the Moita Property while allowing similar sites within the ULL is an inconsistent and unfair application of County planning principles.

2. "Very High Fire Hazard Severity Zone"

The specific language of the voter-adopted ULL, codified in the Contra Costa County Code of Ordinances, does not identify fire hazards as a criterion for exclusion. Indeed, this would likely be an inappropriate criterion, given that much of the County – and much of the state – is at risk of wildfire.

The Moita Property is no more fire-prone than surrounding properties that remain within the ULL, including the Peacock Creek Drive and Eagle Peak Avenue subdivisions immediately adjacent to the Moita Property in the City of Clayton. Further, there are numerous communities within the ULL with the same fire hazard severity, including Moraga, Orinda, Lafayette, Richmond, San Pablo, Pinole, Martinez, Diablo (Danville), and Pleasant Hill, each with significant segments of developed residential land within the Very High Fire Hazard Severity Zone. Building permits are regularly issued for residential uses in these areas.

The inclusion of the Moita Property in the most recent Cal Fire Very High Fire Hazard Severity Zone does not preclude development but would require that any development must meet the strictest of fire-safety building codes, evacuation planning, and infrastructure improvements to mitigate risk, as is similarly being done throughout Contra Costa County. It is also increasingly understood that locating modern, well-constructed buildings at key locations can reduce fire risk for the rest of the community by serving as a "firebreak." Fire hazard concerns should be addressed through site-specific mitigation measures and best practices rather than a wholesale exclusion from the ULL, for which there is no textual basis.

3. "Unlikely to Develop"

The only reason the Moita Property is not currently developed with dozens of homes is that it was located outside the original ULL in 1990. The Moita Property owners have repeatedly indicated their intention to develop the property for housing, as contemplated by the MCRSP and analyzed in the related EIR.

Please accept this letter as further evidence of the property owner's sincere desire and intention to develop the Moita Property. The property remains viable for development and is crucial to meeting the County's housing needs, particularly given California's housing crisis and state-mandated housing production goals.

D. No Precedent for Future ULL Adjustments

The inclusion of the Moita Property within the ULL would not establish a precedent for other similar boundary adjustment requests. As more fully discussed in the Background and Planning History Section immediately below, the Moita Property is uniquely situated due to the following exceptional circumstances:

- the site has been subject to decades of on-the-record County-directed planning efforts, including explicit direction from the County in 1990 to engage in coordinated planning with the City of Clayton;
- the site was formally designated for development in a specific plan, the MCRSP; and
- significant private investment was made in reliance on the County's direction, including the preparation of a full, certified EIR evaluating residential development on the site.

No other property currently outside the ULL shares this level of historical engagement or prior County involvement. As such, including the Moita Property within the ULL would be a singular action based on its unique planning history and would not open the door to similar requests from other landowners or developers.

II. BACKGROUND AND PLANNING HISTORY

A. Investments in Infrastructure and Analysis

In 1988, two years before the ULL was adopted, Mr. Moita sought a minor subdivision approval for one of the parcels (then identified as APN: 75-200-007) comprising 32 acres. The minor subdivision was denied by the County Planning Commission, leading to an appeal before the County Board of Supervisors. At that appeal hearing, the Board directed Mr. Moita "to work with the city of Clayton and with the staff in the planning process in the area". The appeal was denied without prejudice, with Supervisors specifically recommending that the application "could be re-filed and considered for approval when an environmental impact report covers it." See Exhibit C, BOS Denial Request Work with City.

As the Board directed, between 1990 and 1995, Mr. Moita and other stakeholders invested over $550,000 to prepare the MCRSP for compliance with the California Environmental Quality Act (CEQA). Additionally, in 1990, the stakeholders paid the Contra Costa Water District (CCWD) $182,000 for critical infrastructure to improve the CCWD's Oakhurst Irish Canyon Reservoir and Clubhouse Pump Station to service the upper elevations of the Moita Property. See Exhibit D, Heartland Investment in Reliance & Moita Specific Plan Reliance. In total, more than $730,000 was invested based on the County's direction to plan the area, which exceeds $1.762 million in today's inflation-adjusted dollars. The City of Clayton formally adopted the

MCRSP in 1995, after 5 years of planning and 42 public meetings, designating the Moita Property for 103 net new residential units.[5] See Exhibit E, 1995 MCRSP. Select relevant portions of the MCRSP are provided in Exhibit F.

The MCRSP included an explicit request for Contra Costa County to adopt the MCRSP and apply it in unincorporated areas (Policy Implementation Element IM-12):

> The City of Clayton recommends that the policies of this Specific Plan be applied by Contra Costa County in the unincorporated portions of the study area and in areas beyond the study area but within Clayton's area of development comment, which extends three miles from the City Limits. The City shall formally request that the County adopt this Plan and use it for policy application in the area, and the City shall use the Specific Plan as the basis for comments on projects within the study area and the comment area. (*MCRSP*, Implementation Element, IM-12, at pg. 34 & pg. 121)

In summary, in accordance with the County's express direction, and following an extensive planning process that included certification of a full EIR, the City of Clayton designated the Moita Property for future housing development and explicitly asked the County to respect and implement that designation.

B. Exclusion from the ULL

1. 1990 Original ULL

Despite this clear and documented history of the City and County both identifying the Moita Property as an appropriate location for new housing, the site was largely excluded from the final alignment of the original ULL drawn by the County and approved in the November 1990 election. The ULL excluded 144 acres of the total 164 acres, even as the City was preparing the MCRSP, including the 32-acre parcel that the Board of Supervisors had six months earlier said could be "considered for approval [of a subdivision] when an environmental impact report covers it." Making matters worse, though the original ULL guidelines discouraged bifurcation of lots, the 1990 ULL bifurcated a parcel in the Moita Property, leaving only the steepest portions within the ULL. At the time, staff justified the exclusion by citing a need for future flexibility to incorporate additional MCRSP-designated land into the ULL as development needs evolved. See Exhibit G, 1990 ULL Map re: Moita Property.

2. 2006 ULL Renewal

In 2006, voters had the opportunity to renew and adjust the original ULL. At that time, the County was tasked with providing evidence-based recommendations for proposed ULL adjustments. The Moita Property was considered for inclusion, consistent with its designation in the MCRSP. However, the County was concurrently

[5] The MCRSP was later amended in 2005 but maintains the same residential density at the Moita Property and remains a part of the City of Clayton's General Plan today.

pursuing the adoption of the East Contra Costa County Habitat Conservancy Plan & Natural Community Conservation Plan (the "HCP/NCCP"), which was drafted and presented to the public in 2005.

California planning and zoning laws encourage counties to consider city-adopted land use plans and policies when making planning or zoning decisions for unincorporated areas within a city's sphere of influence. See Government Code Section 65352 (and related provisions). The laws are intended to facilitate coordination and consistency between county and city plans to reduce conflict and to support orderly growth and efficient service delivery. Nevertheless, the County's 2006 ULL update and the HCP/NCCP ignored the MCRSP's detailed land use controls that designate the Moita Property for housing and instead emphasized the draft HCP/NCCP. At the time, City officials, including then-Councilmember Julie Pierce and then-Mayor David Shuey, repeatedly urged the County to include the MCRSP area within the 2006 ULL. See Exhibit H, Clayton Request Inclusion ULL & Letter on Clayton Amendment and Exhibit I, BOS Minutes March 7, 2006. Instead, the 2006 ULL update excluded more of the Moita Property from the ULL, reducing the theoretically developable area from 20 acres to a mere 12 acres – without any compensation or clear justification. See Exhibit J, 2006 Adopted ULL re: Moita Property.

III. CONCLUSION

For the reasons detailed above, we respectfully request that you consider including the entirety of the Moita Property within the ULL. The site is uniquely situated to provide a meaningful increment of new housing and offer benefits to the EBRPD. The environmental impacts of a project on the Moita Property have already been analyzed and disclosed in a certified EIR. This is a unique set of facts that warrants your consideration. Please do not hesitate to contact me with any questions.

Very truly yours,

MILLER STARR REGALIA

Dana Kennedy

Attachments: Exhibits A-J

cc: Client
John Kopchik, Director, Conservation & Development, County of Contra Costa
Edward Sortwell Clement, Jr., Executive Director, Save Mt. Diablo
Sabrina Landreth, General Manager, East Bay Regional Park District
Matthew C. Henderson, Miller Starr Regalia

EXHIBIT A

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RECORDED AT REQUEST OF
NORTH AMERICAN TITLE CO.

APR 11 1988
CONTRA COSTA COUNTY RECORDS
J.R. OLSSON
COUNTY RECORDER

FEE $ 51.00

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Recording requested by
and when recorded mail to:

McCutchen, Doyle, Brown & Enersen
1855 Olympic Boulevard, Third Floor
Walnut Creek, California 94596
Attention: John L. Adams

GRANT OF EASEMENT AND DECLARATION OF COVENANTS

THIS GRANT OF EASEMENT AND DECLARATION OF COVENANTS (this "Grant and Declaration") dated as of March 4, 1988, is made between FRANK AND JEANNINE BETTENCOURT TRUST ("Grantor") and A & P PARTNERS, a California general partnership ("Grantee").

PRELIMINARY STATEMENT

A. Grantor is the owner of that certain real property located in Contra Costa County, California, commonly known as Assessor's Parcel Nos. 075-200-005 and 075-200-007, and more particularly described in Exhibit A (the "Servient Tenement").

B. Grantee is the owner of that certain real property located in Contra Costa County, California, commonly known as Assessor's Parcel Nos. 075-200-002, 075-200-009 and 075-080-007, and more particularly described in Exhibit B (the "Dominant Tenement").

C. Grantor desires to grant to Grantee a nonexclusive, perpetual easement over, across, under and

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through a portion of the Servient Tenement and Grantee desires to acquire such easement from Grantor upon the terms of this Grant and Declaration.

D. Grantor and Grantee also mutually desire to provide for the improvement and maintenance of the easement granted to Grantee hereunder.

NOW, THEREFORE, for good and valuable consideration receipt of which is acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor grants to Grantee a nonexclusive, perpetual sixty (60) foot wide easement over, across, upon, under and through that portion of the Servient Tenement described in Exhibit C (the "Easement"), which Easement shall be appurtenant to the Dominant Tenement.

2. Purpose of Easement. The Easement shall be for the purpose of (a) providing vehicular access for the Dominant Tenement to and from Marsh Creek Road, (b) constructing a roadway over and upon the Easement and (c) installing a storm drainage system, sanitary sewers, water service, utility poles, conduits, lines and pipes of all kinds over, across, upon, under and through the Easement.

3. Construction of Improvements.

(a) Either the owner of the Servient Tenement or the owner of the Dominant Tenement, shall have the right, in connection with its development and construction of residential units upon the Servient Tenement or the Dominant Tenement, respectively, to construct a roadway over all or a portion of

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the Easement and construct and install the utilities described in Paragraph 2 (the "Road Improvements"). A copy of the preliminary plans for the proposed Road Improvements prepared by Stedman & Associates dated January 1988 are attached hereto as Exhibit D (the "Plans"). The Road Improvements shall include the construction of a culvert under the Road Improvements sufficient to permit cattle to cross under the Road Improvements. The culvert shall be located within the area indicated on the Plans. The Road Improvements shall be constructed to a standard of quality and in sizes and capacities sufficient for acceptance for dedication for public use and maintenance.

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(b) The owner who intends to construct the Road Improvements (the "Developer") shall notify the other owner in writing at least sixty (60) days prior to submitting plans and specifications to the governmental entity which has jurisdiction over the Road Improvements. The owner who is not the Developer, at no cost to such owner, shall cooperate with the Developer in obtaining governmental approval of the Road Improvements.

(c) Grantor's residence is located within the Easement. Grantor agrees that if the owner of the Dominant Tenement is the Developer and has commenced construction of the Road Improvements, Grantor shall vacate such residence within twelve (12) months of receipt of written notice from the owner of Dominant Tenement requesting Grantor to vacate the

residence; provided, however, that if Grantor is not using such building as its principal residence, it shall vacate such building within six (6) months of written notice from the owner of the Dominant Tenement. Once Grantor vacates the residence, the owner of the Dominant Tenement shall be entitled to demolish the residence in connection with its construction of the Road Improvements.

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(d) If the owner of the Dominant Tenement is the Developer, it shall, at its sole cost, construct a fence along each side of that portion of the Road Improvements which are located within that portion of the Servient Tenement commonly described as Assessor's Parcel No. 075-200-007 The fence shall be constructed in such a manner so as to prevent cattle from crossing from one side of the Road Improvements to the other side.

(e) If the owner of the Servient Tenement is the Developer of all or a portion of the Road Improvements, it shall cause that portion of the Road Improvements which it constructs to be constructed in a size and capacity sufficient for the future development of the Dominant Tenement; provided, however, that the owner of the Servient Tenement shall have no obligation to construct a roadway wider than sixty (60) feet unless required to do so by the governmental authority with jurisdiction over the Road Improvements. If the owner of the Servient Tenement is required to construct a roadway wider than sixty (60) feet, the owner of the Dominant Tenement shall

purchase such additional width at the price set forth in Paragraph 5 below.

(f) The Developer shall execute any subdivision improvement agreement and obtain and keep in full force and effect during construction of the Road Improvements such payment and performance bonds as are required by the governmental entity which has jurisdiction over the Road Improvements. Unless prohibited by the governmental entity with jurisdiction over the Road Improvements, Developer shall name the road constructed over the Easement either "Bettencourt Road" or "Bettencourt Lane," and if such names are not permitted by such governmental agency, Developer shall name the road either "Serpa Road" or "Serpa Lane," unless such names are also prohibited by such governmental agency.

(g) If the owner of the Dominant Tenement is the Developer, the construction of the Road Improvements shall be at the sole cost and expense of such owner. If the owner of the Servient Tenement is the Developer, it shall be entitled to a reimbursement from the owner of the Dominant Tenement of fifty-five percent (55%) of all of the reasonable costs and expenses arising out of the construction of the Road Improvements. Such costs and expenses shall include, but not be limited to, insurance and bond premiums, permits, costs of labor and materials, construction costs, cost of grading, fill, excavation and transport, engineer's fees arising out of the preparation of plans, specifications, studies and reports and

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the supervision of the construction of the Road Improvements, the cost of signalization and processing and plan check fees

(h) If the owner of the Servient Tenement is the Developer, the owner of the Dominant Tenement shall reimburse the owner of the Servient Tenement in full for the Road Improvements once the following two conditions have been satisfied: (i) thirty (30) days after the recordation of a final subdivision map for any portion of the Dominant Tenement which creates more than ten (10) new parcels and (ii) receipt from the owner of the Servient Tenement of a detailed statement of all of the costs incurred in constructing the Road Improvements. If the owner of the Dominant Tenement fails to reimburse the owner of the Servient Tenement on the date such payment is due, then commencing on the date immediately following the date on which such payment is due and continuing thereafter until paid, the delinquent payment shall bear interest at the highest contract interest rate permitted by law.

(i) Pursuant to Section 2884 of the California Civil Code, the owner of the Servient Tenement, if it is the Developer, shall have a lien against the Dominant Tenement to secure the reimbursement obligations of the owner of the Dominant Tenement. The owner of the Servient Tenement shall be entitled to perfect such lien by recording a notice of delinquency which may be recorded at any time on or after the date on which the payment required under Paragraph 3(h) becomes delinquent. For purposes of establishing the rights and duties

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of the parties with respect to such lien, the parties hereby adopt and agree to be bound by the provisions of Section 1367(d) of the California Civil Code. Such adoption is solely for the purposes of establishing the contractual agreements of the parties by reference rather than setting them forth at length in this Grant and Declaration.

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4. Relocation of Easement. Prior to commencement of construction of the Road Improvements, the owner of the Servient Tenement shall have the right to relocate the Easement, at its sole cost and expense, provided that such relocation (a) permits substantially equivalent access to the Dominant Tenement from Marsh Creek Road and (b) does not materially alter the elevation of the Road Improvements as shown on the Plans. After construction of the Road Improvements, the owner of the Servient Tenement shall have the right to relocate the Easement, at its sole cost and expense, provided that (i) access to the Dominant Tenement from Marsh Creek Road is not materially interrupted during such relocation, (ii) such relocation provides substantially equivalent access to the Dominant Tenement from Marsh Creek Road and (iii) does not materially alter the elevation of the Road Improvements as shown on the Plans Any relocation of the Easement shall be set forth in a duly recorded amendment of this Grant and Declaration.

5. Width of Easement. If the owner of the Dominant Tenement is the Developer and the governmental entity which has

jurisdiction over the construction of the Road Improvements requires that the right-of-way be of a width wider than the width of the Easement, as established in Exhibit C, the owner of the Servient Tenement and the owner of the Dominant Tenement shall execute an amendment to this Grant and Declaration widening the Easement to the width required by such governmental entity but in no event shall the owner of the Servient Tenement be required to grant an Easement to the owner of the Dominant Tenement wider than eighty-four (84) feet. The owner of Dominant Tenement shall purchase from the owner of the Servient Tenement such additional width for a purchase price of Two Thousand Eighty-three Dollars ($2,083.00) per additional foot of width. The purchase price for such additional width shall be increased at the rate of eight percent (8%) per annum

6. Indemnity. Grantee for itself, its successors and/or assigns hereby agrees to indemnify and hold harmless Grantor and its successors and/or assigns from any liabilities, claims, damages, demands and costs, including, but not limited to, reasonable attorney's fees, arising out of the construction of the Road Improvement if Grantee or its successors or assigns is the Developer.

7. Maintenance of Road Improvements.

(a) The Developer shall offer to dedicate the Road Improvements to the governmental entity which has jurisdiction over the Road Improvements in connection with the recordation of its final subdivision map; provided, however, if

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the owner of the Dominant Tenement is the Developer, the owner of the Servient Tenement shall have the right to postpone the offer to dedicate until such time as it has recorded the final subdivision map for all or a portion of the Servient Tenement unless the owner of the Dominant Tenement is required to offer the Road Improvements for dedication pursuant to Government Code Section 66462.5. The following provisions concerning the maintenance of the Road Improvements shall only be in affect until such time as the governmental entity with jurisdiction over the Road Improvements accepts the dedication of such improvements for public use and maintenance.

(b) If the owner of the Dominant Tenement is the Developer, it shall, at its sole cost and expense, (i) maintain in continuous force and effect the insurance described in Paragraph 7(f) and (ii) maintain in good order and repair the Road Improvements until such time as a final subdivision map for all or a portion of the Servient Tenement is recorded. If the owner of the Servient Tenement is the Developer, it shall, at its sole cost and expense, (i) maintain in continuous force and effect the insurance described in Paragraph 7(f) and (ii) maintain in good order and repair the Road Improvements until such time as a final subdivision map for all or a portion of the Dominant Tenement is recorded and shall be responsible for such maintenance thereafter, as provided in subparagraph 7(c).

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(c) After such time as (i) the Road Improvements have been constructed and (ii) the owner which is not the Developer records a final subdivision map for all or a portion of its property which creates more than ten (10) new parcels, the owner of the Servient Tenement shall (i) maintain in continuous force and effect the insurance described in Paragraph 7(f) and (ii) maintain in good order and repair the Road Improvements. The Maintenance Costs (as defined below) incurred by the owner of the Servient Tenement shall be apportioned fifty-five percent (55%) to the owner of the Dominant Tenement and forty-five (45%) to the owner of the Servient Tenement. For purposes of this Grant and Declaration, "Maintenance Costs" shall mean the costs arising from maintenance, repair, replacement and reconstruction of the Road Improvements. Maintenance Costs shall also include the premium costs of casualty insurance maintained by the owner of the Servient Tenement in accordance with Paragraph 7(f).

(d) The owner of the Dominant Tenement shall pay its proportionate share of the Maintenance Costs within thirty (30) days after receipt of a statement from the owner of the Servient Tenement setting forth the amount due from the owner of the Dominant Tenement. Such statement shall be accompanied by a copy of the original invoice which shall describe, in detail, the maintenance work performed, or shall make reference to the original contract therefor, in which event, the invoice shall be accompanied by a copy of such contract. Statements to

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the owner of the Dominant Tenement for its proportionate share of the Maintenance Costs shall be rendered no more frequently than once per month. If the owner of the Dominant Tenement fails to reimburse the owner of the Servient Tenement on the date such payment is due, then commencing on the day immediately following the day on which such payment is due and continuing thereafter until paid, the delinquent payment shall bear interest at the highest contract interest rate permitted by law.

(e) If, after thirty (30) days' notice from the owner of the Dominant Tenement, the owner of the Servient Tenement fails to maintain the Road Improvements as required hereunder, the owner of the Dominant Tenement shall have the right, but not the duty, to perform such maintenance duties and to recover from the owner of the Servient Tenement forty-five percent (45%) of the Maintenance Costs. The owner of the Servient Tenement shall pay its proportionate share of the Maintenance Costs and be subject to such interest charges for late payment as set forth in subparagraph 7(d) above.

(f) The insurance required to be maintained hereunder, whether by the owner of the Dominant Tenement or the owner of the Servient Tenement pursuant to Paragraph 7(b) and (c), shall be a policy of public liability and property damage insurance covering occurrences on the Easement with a single limit of liability of not less than One Million Dollars ($1,000,000) for injury or death to persons, and a single limit

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of liability of not less than Five Hundred Thousand Dollars ($500,000) per occurrence for damage to property.

(g) If all or any portion of the Servient Tenement or the Dominant Tenement shall hereafter be owned in undivided interests pursuant to the establishment of estates in condominium, then each owner of a condominium unit located within the Dominant Tenement shall have the rights and duties of the owner of the Dominant Tenement and each owner of a Condominium unit located within the Servient Tenement shall have the rights and duties of the owner of the Servient Tenement, provided that the person or entity recording the declaration of covenants, conditions and restrictions for such condominiums shall provide therein (or be deemed to have provided therein, if no express provision is made) that the condominium owners association shall be responsible for the performance of the maintenance obligations set forth herein and shall include in the assessments levied against the condominium units all sums necessary to discharge the proportionate share of the Maintenance Costs attributable to the Dominant Tenement or Servient Tenement, as applicable and collect and pay the same, on behalf of the condominium owners.

(h) If all or any portion of the Dominant Tenement or Servient Tenement shall hereafter be subdivided pursuant to the California Subdivision Map Act other than in connection with the establishment of a condominium regime, then this Grant and Declaration shall apply to the same extent as if

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such subdivision had existed at the date on which this Grant and Declaration was first recorded. After any subdivision of the Dominant Tenement or Servient Tenement, the proportionate share of the Maintenance Costs attributable to such property, shall be allocated evenly between all of the new subdivided lots. Thus, for example, if the Servient Tenement is divided into thirty (30) lots, 1/30th of the Maintenance Cost attributable to the Servient Tenement would be attributed to each lot. If the subdivision of the Dominant Tenement or Servient Tenement results in the creation of a planned development within the meaning of Section 1351(k) of the Civil Code, the owners association formed in connection with the planned development shall have the same rights, duties and responsibilities as provided for condominium associations in subparagraph 7(g) above.

(i) Pursuant to Section 2884 of the California Civil Code, the owner of the Servient Tenement shall have a lien on the Dominant Tenement to secure the owner of the Dominant Tenement's obligation to pay its proportionate share of the Maintenance Costs and the owner of the Dominant Tenement shall have a lien on the Servient Tenement to secure the owner of the Servient Tenement's obligation to pay for its proportionate share of the Maintenance Costs in the event the owner of the Dominant Tenement is performing such maintenance. Each party shall be entitled to perfect the liens granted hereunder by recording a Notice of Delinquency which may be

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recorded at any time on or after the date on which a payment becomes delinquent. For purposes of establishing the rights and duties of the parties with respect to such lien, the parties hereby adopt and agree to be bound by the provisions of Section 1367(d) of the California Civil Code. Such adoption is solely for the purposes of establishing the contractual agreements of the parties by reference rather than setting them forth at length in this Grant and Declaration.

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8. Arbitration. If any dispute shall arise with respect to the interpretation or enforcement of any provision of this Grant and Declaration, including without limitation, any determination relating to Maintenance Costs, such dispute shall be submitted to binding arbitration by a single neutral arbitrator pursuant to Sections 1280 et seq. of the California Code of Civil Procedure. If the parties hereto are unable to agree upon the arbitrator within ten (10) working days after either party has notified the other in writing that it wishes to submit the dispute to arbitration, then any party may apply to the presiding judge of the Superior Court of Contra Costa County with a request that such judge name the arbitrator. The party initiating the arbitration shall advance the costs necessary for its commencement. However, the costs of such arbitration such be ultimately be borne by the party against whom the award is made.

9. Attorneys' Fees. The prevailing party in arbitration or in any court proceeding pursuant hereto shall be

entitled to recover its costs of prosecuting the arbitration or its cost of suit, including its reasonable attorneys' fees, as determined by the arbitrator or the court.

10. Covenants to Run with the Land. The covenants contained herein shall bind the Grantor, Grantee and their successors and assigns, reciprocally benefit and burden the Dominant Tenement and Servient Tenement and run therewith.

11. Costs as Personal Obligations; Mortgagee Protection.

(a) Maintenance Costs shall be the personal obligation of the owner which owns the Dominant Tenement or Servient Tenement at the time such costs were incurred and shall remain the personal obligation of such owner notwithstanding any sale or transfer of such property. An owner selling or transferring the Dominant Tenement or Servient Tenement, or portion thereof, shall not be liable for Maintenance Costs which are first incurred after such sale or transfer. A successor owner shall not be responsible for Maintenance Costs incurred before it acquired its estate or interest in the Dominant Tenement or Servient Tenement unless, by a writing, it expressly assumes the obligation thereof or it takes title subject to a duly recorded notice of delinquency.

(b) Any lien created or claimed under the provisions of this Grant and Declaration is expressly made subject and subordinate to the rights of any first deed of trust that encumbers all or a portion of the Servient Tenement

BOOK 14264 PAGE 363

or Dominant Tenement, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such first deed of trust unless the beneficiary thereunder expressly subordinates its interest, in writing, to such lien. The foreclosure of any lien created by anything set forth in this Grant and Declaration shall not operate to affect or impair the lien of a first deed of trust and the judicial foreclosure of the lien of a first deed of trust, or sale under a power of sale included in the first deed of trust (such events being hereinafter referred to as "events of foreclosure"), shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the events of foreclosure shall take title free of the lien hereof for all such charges as shall have accrued up to the time of any of the events of foreclosure, but subject to the lien hereof for all of said charges that shall accrue subsequent to the events of foreclosure. No breach of any provision of this Grant and Declaration shall invalidate the lien of any first deed of trust made in good faith and for value but all of the covenants, conditions and restrictions shall be binding on any owner whose title is derived through foreclosure sale, trustee sale or otherwise. Any beneficiary under a first deed of trust who acquires title to all or any portion of the Servient Tenement or Dominant Tenement by judicial foreclosure or exercise of the power of sale shall not be obligated to cure any breach of this Grant and Declaration

BOOK 14264 PG 364

that is noncurable or of a type that is not practical or feasible to cure.

12. Use of Soil. If the owner of the Dominant Tenement is the Developer, it shall have the right to excavate soil on the Servient Tenement for use as fill and construction material for construction of the Road Improvements in accordance with the Plans. The owner of the Dominant Tenement shall reseed the excavated and filled areas of the Servient Tenement which are not located within the boundaries of the Easement unless such reseeding is prohibited by the governmental authority with jurisdiction over the Road Improvements.

13. Miscellaneous.

(a) Entire Agreement. This Grant and Declaration contains the entire agreement between the parties hereto. This Grant and Declaration may not be changed orally, but only by an agreement in writing signed by the parties.

(b) Cooperation. Each party hereto shall, upon the reasonable request of the other party, execute, acknowledge and deliver such further instruments and documents as reasonably necessary in order to fulfill the intent and purpose of this Grant and Declaration.

(c) Severability. In the event that any provision of this Grant and Declaration shall be held to be or become invalid or unenforceable in certain circumstances, the

BK 14234 PG 365

validity and enforceability of the remaining provisions shall not in any way be affected or impaired.

(d) Governing Law. This Grant and Declaration is made in the State of California and its validity, construction and all rights under it shall be governed by California law.

IN WITNESS WHEREOF, the parties have executed this Grant and Declaration as of the date first above written.

BOOK 14264 PG 369

GRANTOR
Frank and Jeannine
Bettencourt Trust

By Frank Bettencourt
Frank Bettencourt, Trustee

By Jeannine Bettencourt Trustee
Jeannine Bettencourt, Trustee

GRANTEE
A & P Partners, a California general partnership

By AMAJA CAL CORPORATION, a California corporation, General Partner

By
Arthur Ang, President

JLA:ks/8
1851A/03.04.8
15451.001

STATE OF CALIFORNIA,
City & County of SAN FRANCISCO } ss
On this 04.11 day of April in the year one thousand nine hundred and Eighty Eight before me Edward Lee, a Notary Public, State of California, duly commissioned and sworn, personally appeared Arthur Ang known to me to be the President of the corporation described in and that executed the within instrument and also known to me to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the City and County of SAN FRANCISCO the day and year in this certificate first above written.

OFFICIAL SEAL
EDWARD LEE
NOTARY PUBLIC - CALIFORNIA
CITY & COUNTY OF
SAN FRANCISCO
MY COMM. EXP. OCT 11 1989

Notary Public, State of California
My Commission Expires Oct 11, 1989

STATE OF CALIFORNIA)
) SS
COUNTY OF CONTRA COSTA)

On this 11th day of March, in the year 1988, before me a notary public in and for said county and state, personally appeared Frank Bettencourt, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as Trustee of the Frank and Jeannine Betencourt Trust, and acknowledged to me that the Trust executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year above written.

OFFICIAL SEAL
CAROL A PERRY
Notary Public-California
CONTRA COSTA COUNTY
My Comm Exp Feb 24 1990

Carol A Perry
Notary Public

STATE OF CALIFORNIA)
) SS
COUNTY OF CONTRA COSTA)

On this 4th day of March, in the year 1988, before me a notary public in and for said county and state, personally appeared Jeannine Bettencourt, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as Trustee of the Frank and Jeaninne Bettencourt Trust and acknowledged to me that the Trust executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year above written.

Carol A Perry
Notary Public

OFFICIAL SEAL
CAROL A PERRY
Notary Public-California
CONTRA COSTA COUNTY
My Comm Exp Feb 24 1990

EXHIBIT A

All of that certain real property located in Contra Costa County, State of California, and more particularly described as follows:

LOTS NUMBERED THREE (3) AND FOUR (4) AND THE EAST ONE-HALF (1/2) OF THE SOUTHWEST ONE QUARTER (1/4) OF SECTION EIGHTEEN (18) IN TOWNSHIP ONE (1) NORTH, RANGE ONE (1) EAST, M.D.M.

JLA:nws3/0
EXHIBITA/02.18.8
15451.001

BOOK 14264 368

EXHIBIT B

Those parcels of land in the County of Contra Costa, State of California, described as follows:

PARCEL ONE

Beginning at the center of Section 7, Township 1, North Range 1 East, Mount Diablo Base and Meridian, thence north to the southern boundary line of the Clayton and Nortonville Road thence southwesterly along the southern boundary line of said road to its intersection with dividing line between the northwest and southwest quarters of said section Seven (7); thence east to the point of beginning. Containing Fifteen (15) acres, and being the same tract of land as described in a deed dated September 6, 1890, recorded in Book 56, deeds page 57, records of Contra Costa County, State of California, and to which reference is herein made for more particulars.

(FOR 10388 PAGE 528)

PARCEL TWO

Lots numbered One (1) and Two (2) of the Southwest quarter of Section Seven (7) in Township One (1) north of Range One (1) East, Mount Diablo Meridian, containing One hundred forty-four and 29/100 (144.29) acres of land, more or less.

EXCEPTING FROM PARCEL TWO: All that portion thereof lying northwest of the County Road leading from Clayton to Nortonville and which was heretofore conveyed to John Ganochio, et al, recorded May 10, 1909, Book 143, Deeds, page 334.

PARCEL THREE

Lots numbered One (1) and Two (2) of the Northwest quarter of Section Number Eighteen (18) in Township One (1) North, Range One (1) East, Mount Diablo Base and Meridian.

PARCEL FOUR

Southeast quarter (SE1/4) of Section Seven (7) in Township One (1) North of Range One (1) East, of the Mount Diablo Base and Meridian.

EXCEPTING FROM PARCEL FOUR: "All oil, gas and minerals existing on said premises, with the Rights-of-way and other easements necessary to the commercial exploitation of any or of all said oil, gas, or minerals, to exhaustion, second party to be reimbursed for actual damages suffered through operations," as reserved in the deed from May Ives Crocker, recorded May 14, 1915, Book 247, Deeds, page 191.

 END OF DOCUMENT

EXHIBIT C

JANUARY 12, 1988
JOB NO. 8042-87-01

DOC. 142548 370

LEGAL DESCRIPTION
64 FOOT WIDE ACCESS EASEMENT

REAL PROPERTY SITUATE IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOTS NUMBER 3 AND 4 AND THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 18 IN TOWNSHIP ONE NORTH RANGE ONE EAST MT. DIABLO MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 4; THENCE, FROM SAID POINT OF COMMENCEMENT EASTERLY ALONG SAID SOUTH LINE, 80 FEET TO THE POINT OF BEGINNING OF THE CENTER LINE OF A 64 FOOT WIDE STRIP OF LAND; THENCE, ALONG SAID CENTERLINE NORTH 01° 10' 09" EAST, 250.12 FEET; THENCE, ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 400 FEET, THROUGH A CENTRAL ANGLE OF 61° 55' 22" AN ARC LENGTH OF 432.30 FEET; THENCE, NORTH 63° 05' 31" EAST, 1,126.52 FEET TO A POINT HERFINAFTER REFERRED TO AS POINT "A"; THENCE, FROM SAID POINT "A" ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 350 FEET, THROUGH A CENTRAL ANGLE OF 110° 05' 10" AN ARC LENGTH OF 672.48 FEET; THENCE, NORTH 46° 59' 40" WEST, 1,174.21 FEET; THENCE, ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 500 FEET THROUGH A CENTRAL ANGLE OF 42° 30' 06" AN ARC LENGTH OF 370.90 FEET; THENCE, NORTH 04° 29' 33" WEST, 226.85 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 3, SAID POINT BEING EASTERLY ALONG THE NORTHERLY LINE OF SAID LOT 3, 355 FEET FROM THE NORTHWEST CORNER OF SAID LOT 3.

LICENSED LAND SURVEYOR
MICHAEL P. BARBEE
5077
STATE OF CALIFORNIA

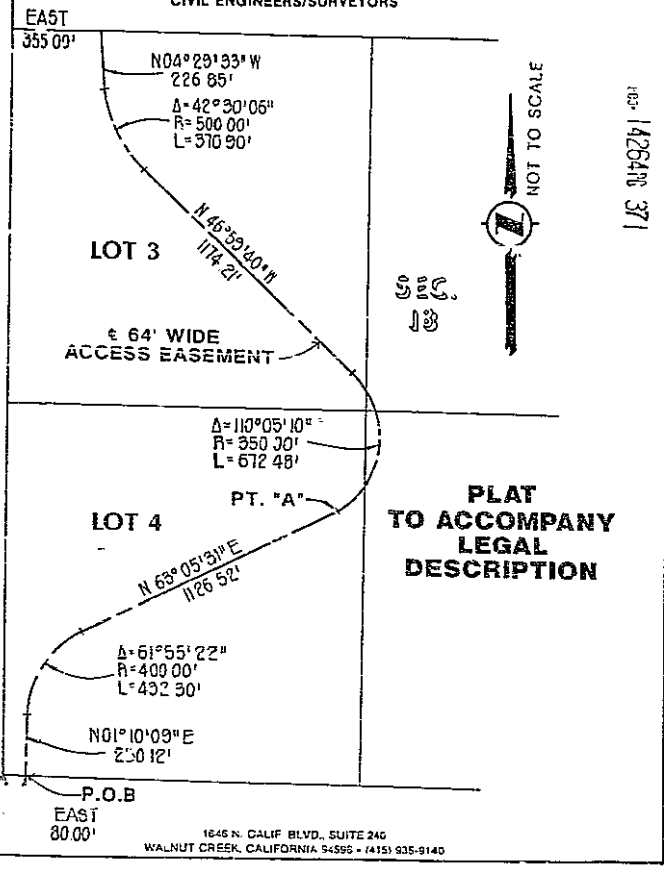
PREPARED BY: MICHAEL P. BARBEE
L.S. 5077

EXPIRATION DATE: 06/30/91

4/41/2

PROJECT A & P PARTNERS	JOB NO: 8042-87-01
SUBDIVISION:	DRAWN BY: LDH
LOCATION: CLAYTON CALIFORNIA	CHK. BY: RJS
DATE: JANUARY 12 1988	PROJ. MGR: MPB

STEDMAN & ASSOCIATES, INC.
CIVIL ENGINEERS/SURVEYORS

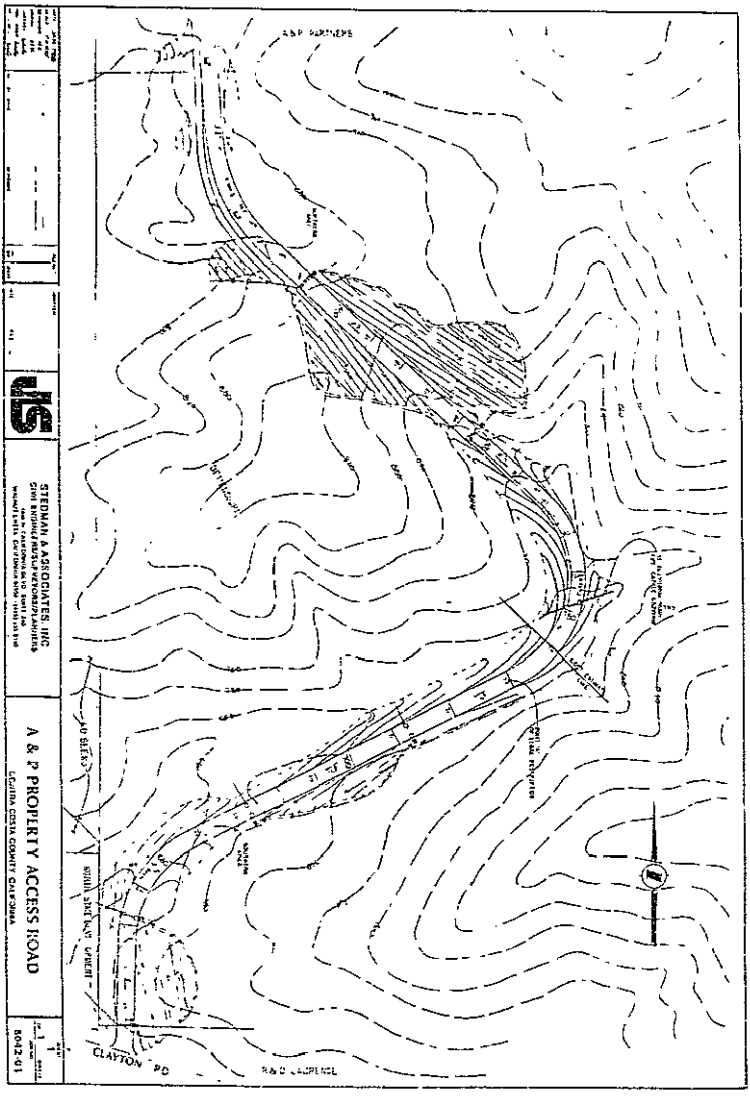


PLAT TO ACCOMPANY LEGAL DESCRIPTION

1646 N. CALIF. BLVD., SUITE 240
WALNUT CREEK, CALIFORNIA 94596 • (415) 935-9140

BK- 14264PG 371

EXHIBIT D



Cattle crossing culvert shall be located within AP No. 075-200-007.

END OF DOCUMENT

EXHIBIT B

Stedman & Associates, Inc.
1646 N. California Blvd.
Suite 240, Walnut Creek
California 94596
415-935-9140

Civil Engineering
Land Planning
Land Surveying

December 15, 1987
Job No. 8042-87-01
GGG

A. & P. PROPERTY ACCESS ROAD
PRELIMINARY CONSTRUCTION COST ESTIMATE

Item	Description	Quantity	Unit	Unit Price	Amount
Grading					
1.	Earthwork	1,631,500	c.y.	5.00	$ 8,157,500.00
		Sub-Total			$ 8,157,500.00
Street Work					
2.	Street Paving	168,100	s.f.	2.50	$ 420,250.00
3.	Monolithic Curb, Gutter & Sidewalk	8,200	l.f.	12.00	$ 98,400.00
4.	Concrete Lined "V" Ditch	26,125	l.f.	5.00	$ 130,625.00
5.	Street Monuments	6	each	200.00	$ 1,200.00
6.	Traffic Striping/Signing		L.S.		$ 8,000.00
		Sub-Total			$ 658,475.00
Storm Drain					
7.	Catch Basins	13	each	1500.00	$ 19,500.00
8.	Concrete Headwall	5	each	2000.00	$ 10,000.00
9.	18" RCP Storm Drain Pipe	1,724	l.f.	25.00	$ 43,100.00
10.	15" RCP Storm Drain Pipe	1,380	l.f.	22.00	$ 30,360.00
11.	72" Culvert	200	l.f.	100.00	$ 20,000.00
12.	Field Inlets	20	each	1100.00	$ 22,000.00
		Sub-Total			$ 144,960.00

Stedman & Associates, Inc.
1646 N. California Blvd.
Suite 240, Walnut Creek
California 94596
415 935 9140

A. & P. Property Access
Preliminary Construction Cost Estimate
Page 2

December 15, 1987
Job No. 8042-87-01

Item	Description	Quantity	Unit	Unit Price	Amount
Electrical					
13.	Electroliers	21	each	1500.00 $	31,500.00
14.	Underground Electric	4,100	l.f.	10.00 $	41,000.00
	Sub-Total				$ 72,500.00
	Sub-Total Construction Cost				$ 9,033,435.00
	10% Contingency				$ 903,344.00
	TOTAL CONSTRUCTION COST				$ 9,936,779.00
	SAY				$ 9,937,000

$25,000/Unit
using 400 Units

This estimate is based upon information available at this time and this office assumes no liability for changes in prices due to unforeseen conditions or changes required by governing agencies.

This estimate does not include any sanitary sewer, water, etc., that may by required for the development of the Bettencourt Property.

EXHIBIT C

BOARD OF SUPERVISORS, COUNTY OF CONTRA COSTA

Adopted this Order on May 8, 1990 by the following vote:

AYES: Supervisors Schroder, Torlakson and Fahden

NOES: None

ABSENT: Supervisors Powers and McPeak

ABSTAIN: None

==========

SUBJECT: Hearing On Appeals Of Jim J. Moita And Save Mt. Diablo From The Planning Commission Decision On MS 116-88 In The Clayton/Marsh Creek Area.

This is the time heretofore noticed by the Clerk of the Board of Supervisors for hearing on the appeals of Jim J. Moita and Save Mt. Diablo from the decision of the Contra Costa County Planning Commission as the Board of Appeals on the application of Jim J. Moita (applicant and owner) for approval of a tentative map for Minor Subdivision 116-88 to divide 32 acres of land into four parcels in a General Agricultural District (A-2) in the Clayton/Marsh Creek area.

Mary Fleming, Community Development Department, presented the staff report on the history of the proposed minor subdivision and the reasons for the appeals before the Board today. She commented on the staff recommendation to uphold the decision of the County Planning Commission, the options presented to the Board and requested that the Board find the Negative Declaration appropriate.

The hearing was opened and the following persons appeared to speak:

Jim J. Moita, 69 Hamilton Place, Oakland, appellant/applicant and owner, presented a brief history of the proposed project, commenting on material he presented to the Board and on issues including the limitation of time on a scenic easement and visual impacts.

W.G. Morgan, 6040 Morgan Territory Road, Clayton, expressed concerns including the dedication of development rights with the scenic easement, and he spoke in favor of the proposed subdivision.

Christopher P. Valle-Riestra, 257 Vernon Street #321, Oakland, representing Save Mt. Diablo, presented a history of the application, commenting on the difference between the original application and the application today, and he requested denial of the application before the Board today.

Roy Hawes, P.O. Box 369, Clayton, Mayor of the City of Clayton, presented a letter from the City of Clayton in opposition to the proposed minor subdivision and the appeal by Mr. Moita and he commented on issues including visual impacts, access, and conditions desired by the City of Clayton. He invited the applicant to work with the City of Clayton in developing a Specific Plan for this area.

Supervisor Torlakson requested comment from Mayor Hawes on the possibility of a proposed moratorium in the Morgan Territory area.

Mayor Hawes responded to Supervisor Torlakson's request.

Mr. Moita spoke in rebuttal.

Supervisor Torlakson moved to closed the public hearing. The motion was seconded by Supervisor Fahden.

Victor Westman, County Counsel, suggested that if the Board were thinking of not making a decision on this application until after or concurrent with the moratorium proposal, that the Board not close the public hearing and continue the hearing until the date of the moratorium or a week or two after that.

Supervisor Torlakson advised that he could not support this project in its configuration and that he did not feel comfortable going ahead with the project at this time. He indicated strong support for the moratorium for a period of time to get a handle on the planning issues in the area. He also indicated a leaning in the direction of denying in some form the project and directing the applicant to work in a different planning context.

Mayor Hawes, in response to a request from Supervisor Torlakson, requested the Board take the action to deny the appeal and direct the applicant to go back and work with the City of Clayton to come up with something consistent with the City's Specific Plan.

Supervisor Torlakson requested clarification from Mr. Westman on the possible actions today.

Mr. Westman responded to Supervisor Torlakson's request.

Supervisor Fahden expressed agreement with comments made today by Mr. Hawes and expressed a desire to deny the project today and send the applicant back to work with the City of Clayton and she requested that Supervisor Torlakson work with the City of Clayton before the moratorium is to be discussed before the Board.

Mr. Westman suggested with the conclusion of the hearing that if the Board were to consider a motion to deny the application that the Board's motion indicate intent to deny and give staff an opportunity to prepare findings for denial and return them to the Board for consideration.

Supervisor Torlakson commented on the issues before the Board and moved to deny the appeal of Mr. Moita, grant the appeal of Save Mt. Diablo and direct staff to prepare the findings and necessary documentation to indicate the concerns of the Board and agreement with the comments that have been expressed today by Save Mt. Diablo and the City of Clayton regarding the CEQA process that a negative declaration is not adequate and an environmental impact report is required to address possible cumulative impacts and the negative impacts on the applicable County's General Plan because of this subdivision's inconsistency with the plan and its elements (scenic corridor, open space, etc.).

Supervisor Torlakson clarified that the motion was to declare intent on the actions in the motion and to request the property owner to work with the City of Clayton and with the staff in the planning processes in the area.

Mr. Bragdon recommended that that be a denial without prejudice, in part, so this application could be re-filed and considered for approval when an environmental impact report covers it.

Supervisor Torlakson indicated that that was acceptable.

On recommendation of Supervisor Torlakson, IT IS BY THE BOARD ORDERED that the Board of Supervisors DECLARES ITS INTENT to deny the appeal of Jim J. Moita and grant the appeal of Save Mt. Diablo, and deny without prejudice the Minor Subdivision 116-88; and DIRECTS Community Development Department to prepare appropriate proposed findings for Board consideration so that it may declare and adopt its findings and make its intended final decision; and REQUESTS the applicant/owner to work with the City of Clayton on planning processes in the area.

cc: Community Development
County Counsel
Save Mt. Diablo
Jim Moita

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: May 8, 1990

PHIL BATCHELOR, Clerk of the Board of Supervisors and County Administrator

EXHIBIT D

H E A R T L A N D

4650 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WA 98104
(206) 682-2500
FAX (206) 467-1429

August 25, 1999

- URGENT -

Mark DeSaulnier, Supervisor, District IV
CONTRA COSTA COUNTY BOARD OF SUPERVISORS
2425 Bisso Lane, Suite 110
Concord, California 94520-4808

Re: Amendments to Urban Limit Line –
Marsh Creek Specific Plan Area

Dear Supervisor DeSaulnier:

In 1990, we acquired what is known as the Heartland Property which is located within the Marsh Creek Specific Plan area. We are no longer the titleholder to the property, but we do continue to have an economic interest in it.

During the years of 1990 through 1995, we worked with the County, City of Clayton, State agencies, surrounding property owners, and environmental groups to prepare and process the Marsh Creek Specific Plan area. This was an intense and costly process. As you may not be aware, the original area considered to be included in the Marsh Creek Specific Plan was substantially larger and during the planning process, the area was significantly reduced.

The public, elected officials and staff participated in over a hundred public and staff meetings and thousands of hours were devoted to creating a very thorough and thoughtful plan. We expended approximately $550,000 toward the preparing of the specific plan and EIR. Other property owners within the plan area spent additional funds. During this process, our understanding of the County's position was that the County would support adjusting the Urban Limit Line to correspond to the boundaries of the Marsh Creek Specific Plan once it was adopted and annexation of the area was pursued to be in accordance with the plan.

In addition, we paid $181,644 to the Contra Costa Water District to build additional capacity at the Oakhurst Irish Canyon Reservoir and Clubhouse Pump Station with the full understanding between the County, the City and the water district that this water was to provide water service to our property in conformance with the specific plan.

Given the significant expenditure of time and money by public and private entities in preparing the Marsh Creek Specific Plan, we were very surprised to received notice that the County is now hesitant to relocate the

Urban Limit Line to coincide with this approved plan, thereby obliterating all of the work and money expended in creating it.

The Marsh Creek Specific Plan is a very carefully thought out and environmentally sensitive plan which received support from a wide range of differing constituents. It is the type of plan that should be supported. We strongly urge your support to modify the Urban Limit Line to correspond to the boundaries of the Marsh Creek Specific Plan area.

If there is any additional history or questions that I can assist on, please do not hesitate to call.

Sincerely,

HEARTLAND

Stephen P. Walker, III
Managing Director

SPW/dm

cc: Peter A. Laurence, Mayor, City of Clayton
Julie Pierce, City Councilperson, City of Clayton
Jeremy Graves, Community Development Director, City of Clayton
Jim Moita, JMI Properties Corporation

EXHIBIT E

MARSH CREEK ROAD SPECIFIC PLAN

■ ■ ■

Prepared for the
City of Clayton

Adopted
June 28, 1995

Amended
April 2005

BRADY AND ASSOCIATES PLANNERS AND LANDSCAPE ARCHITECTS

CITY COUNCIL
Julie Pierce, Mayor
Robert Kendall
Peter Laurence
Rich Littorno
Gregory Manning

PLANNING COMMISSION
Gary Hules, Chair
Diane Errington
Robert Staehle
Deborah Tom
Jerry Zimmerman

CITY STAFF
Tom Steele, City Manager
Frances Douglas, City Clerk
Randall Hatch, Community Development Director
Lynn Cupit, Community Development Secretary

CONSULTANTS
Brady and Associates
Planners and Landscape Architects
(see List of Preparers, Appendix C)

Marsh Creek Road Specific Plan
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Chapter I
INTRODUCTION

■ ■ ■

A. Background and Purpose

The Marsh Creek Road Specific Plan area consists of roughly 475 acres to the south and east of the City of Clayton in central Contra Costa County. Most of the area is undeveloped, is located at the edge of existing urban development in Clayton and the County, and lies north of the border of Mount Diablo State Park. This area is the subject of several residential development proposals, but it is also viewed as an important natural and visual resource by the City of Clayton and local residents.

The overall goal of the *Marsh Creek Road Specific Plan* is to recognize the unique rural character of the study area, to designate appropriate areas in the study area for residential development, and to guide and regulate development in a manner which both protects and enhances the area's natural amenities and features and affords recreational opportunities and public access. The Specific Plan, once adopted, will be used by the City to guide and regulate development and conservation activities in the study area.

B. Statutory Authority

Under California Law (Government Code Section 65450 et seq.), cities and counties may use specific plans to develop policies, programs, and regulations to implement the jurisdiction's adopted General Plan. The specific plan frequently serves as a bridge between the General Plan and individual development master plans.

This Specific Plan has been prepared in a manner consistent with the requirements of State Planning and Zoning Law, Article 8. *Specific Plans.* As prescribed by law, the plan includes text and diagrams which specify the following:

1) The distribution, location and extent of the land uses, including open space, within the area covered by the plan.

2) *The proposed distribution, location, extent and intensity of major components of public and private transportation, sewage, water drainage, solid waste disposal, energy and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.*

3) *Standards and criteria by which development will proceed, and standards for the conservation, development and utilization of natural resources, where applicable.*

4) *A program of implementation measures including regulations, programs, public works projects and financing measures necessary to carry out the plan.*

5) *A statement of the relationship of the Specific Plan to the General Plan.*

C. Specific Plan Contents

This Specific Plan details land use and circulation policies, standards, and regulations, capital improvement requirements, and design guidelines to guide development and conservation in the plan area.

1. Chapters

The Specific Plan includes the following chapters:

- Chapter I is this introduction.
- Chapter II contains a description of the planning area.
- Chapter III lists the plan's goals and objectives for the planning area, which contain the basic policy direction for the Specific Plan.
- Chapter IV is a summary of all the Plan policies.
- Chapter V is the Land Use and Conservation Element, which includes land use policies and designations for the study area.
- Chapter VI, the Resources Element, identifies programs to be included in the Specific Plan to preserve open space and agriculture, enhance wildlife corridors and creeks, and provide trails.
- Chapter VII contains the Design and Development Standards for the planning area, which are guidelines for residential and commercial development within the study area.
- Chapter VIII is the Plan's Circulation Element, which includes maps of major roadways to serve development in the study area, and sets standards and policies for roadways and pathways.

- Chapter IX contains the Infrastructure Element, which outlines ways to provide water, sewer service and storm drainage within development areas.
- Chapter X is the Implementation Element, which outlines potential approaches to phasing and financing of plan improvements, based on existing conditions and on the City's desire to require that improvements be funded by the developments that benefit from them.

2. Policy Interpretation

Each plan policy generally contains the word "shall" or "should", which indicates whether the policy is mandatory or advisory. Policies that contain the word "shall" must be followed by the City and by all land owners and developers in the study area. Policies that contain the word "should" are advisory. Land owners and developers are strongly encouraged to follow these policies, but they may deviate from these policies if extenuating circumstances prohibit following them and such circumstances are presented to and accepted by the City.

The required environmental impact documentation allowing adoption of this plan is contained in a separate document, the *Marsh Creek Road Specific Plan and General Plan Amendment Environmental Impact Report*. The EIR includes recommended mitigation measures for the General Plan Amendment and the Specific Plan, as well as an analysis of plan alternatives. It also assesses the environmental impacts of three residential development projects that have been proposed by land owners in the study area for development under the plan. These three projects will be reviewed and acted on separately by the City after the Specific Plan is adopted.

D. Planning Process

1. Steps in the Process

The City of Clayton Planning Commission has overseen the planning process for the Marsh Creek Road Study Area, which began in January, 1991. As the first steps in the planning process, the land use and environmental conditions present in the study area were documented in the *Baseline Data Reports Number 1, 2 and 3*. Opportunities and constraints to development, conservation and public access were identified. These findings were presented to the Planning Commission and the public at public meetings in March and April, 1991.

As a next step in plan development, the Planning Commission then set goals and policies for development and conservation in the study area. A revised and amplified version of these goals is included in Chapter III of this Specific Plan. These goals and

objectives provided the framework for formulation of four land use alternatives, which included land use, design, circulation and natural resource enhancement recommendations. The Planning Commission reviewed these alternatives and recommended that one be further developed as the Specific Plan.

Once the preferred alternative was selected, the Implementation Packet for the Specific Plan was prepared, which included preliminary design guidelines and specifics for infrastructure improvements in the study area. This document was reviewed by the Planning Commission and the public in July, 1992, and served as the basis for design guidelines and infrastructure discussion in this Specific Plan.

A Draft Specific Plan was reviewed in public meetings by the Planning Commission and City Council in Summer 1993. The *Marsh Creek Road Specific Plan Environmental Impact Report* was also reviewed in public meetings before these decision-making bodies. In response to comments on the Draft Plan and EIR, a Revised Draft Specific Plan was prepared with revisions to the Draft Plan. After subsequent hearings and review, the Final Specific Plan was prepared by winter 1994.

During spring and summer 1994, the Final Specific Plan was again extensively revised. Concerns were expressed regarding development potential and standards. In October 1994, the Clayton City Council ordered the preparation of a specific plan for a reduced planning area in response to these concerns. This document fulfills that directive.

Once the Specific Plan is adopted, appropriate amendments and revisions to the City Sphere of Influence and zoning ordinances will be made. These changes are described in Chapter X of this Specific Plan.

2. Public Participation

As part of the planning process, the City of Clayton Planning Commission and City Council had held a total of 42 public meetings during the Specific Plan preparation process, each of which was attended by 20 to 50 land owners, agency representatives and members of the public. The public was generally notified of each meeting through notices that were mailed to all property owners in the area and to other interested people and organizations. A list of meetings held is included in Appendix A.

E. Relationship to the Clayton General Plan

The Specific Plan is both a policy and regulatory document which implements the General Plan goals and policies as they relate to the Specific Plan area. California

law requires that a Specific Plan be consistent with a jurisdiction's General Plan, and that findings regarding consistency be included in the Specific Plan itself.

The policies and objectives of the Specific Plan are consistent with the broad goals of the *Clayton 2000 General Plan*, which were described in detail in *Baseline Data Report Number 1*, and which are also reviewed in the EIR on the Specific Plan and General Plan Amendment. In general, the policies of the City's General Plan call for controlled residential growth in the City, with careful concern for the preservation of natural resources and amenities. Commercial development is to be concentrated in the town center, with only limited commercial uses outside it. These policies are continued in this Specific Plan.

The General Plan states that the City should review its Sphere of Influence every five years. Upon review, the City may elect to extend its urban development boundaries. In the case of the Marsh Creek Road Specific Plan, amendments to the City's General Plan are necessary to allow development in the Specific Plan area under the City's jurisdiction. A General Plan Amendment has been prepared concurrently with this Specific Plan under separate cover.

The General Plan does not include land use density designations that are as fine-grained as those in this Specific Plan. However, all "urban" residential densities of development specified in this Specific Plan fall in the range of 1.11 to 3.0 units per acre, which is consistent with the "Low Density" residential designation contained in the General Plan.

Chapter II
STUDY AREA DESCRIPTION

■ ■ ■

This chapter describes the Marsh Creek Road Specific Plan study area, which is the subject of this plan.

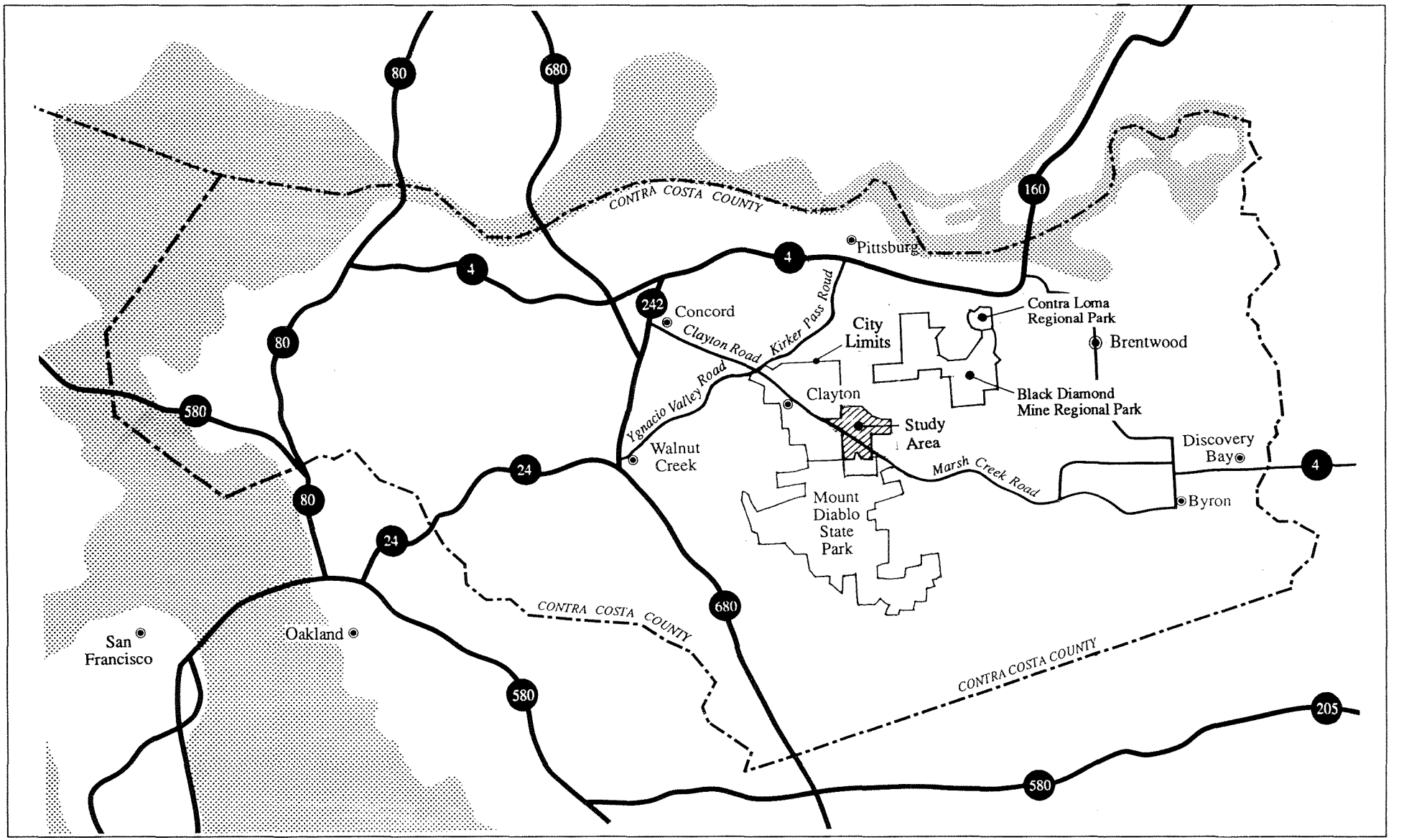
A. Study Area Location and Setting

As shown in Figure 1, the study area is located just east of the City of Clayton along Marsh Creek Road in central Contra Costa County. Clayton lies to the southeast of Concord on Clayton Road. The study area is approximately two miles from downtown Clayton, seven miles from downtown Concord, and 45 miles from San Francisco. The study area is just north of the northern flanks of Mount Diablo and the border of Mount Diablo State Park.

The study area represents the eastern-most edge of the urbanizing portions of central Contra Costa County. Beyond the eastern border of the study area, Marsh Creek Road continues as a rural roadway through large agricultural and open space parcels, and there is little development for about 20 miles to the east, where the communities of Byron, Discovery Bay and Brentwood are located.

As shown in Figure 2, a small portion of the study area is within Clayton's city limits, a somewhat larger portion is within the City's Sphere of Influence, and all of it is within the City's General Plan-designated Planning Area.

As shown in Figure 3, the study area contains roughly 475 acres along Marsh Creek Road, and is generally bounded by the City limits on the west, the crest of a row of hills south of Mt. Diablo Creek and north of Mt. Diablo State Park on the south, Keller Ridge on the north, and the end of rural development and the start of open range land on the east.



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MARSH CREEK ROAD SPECIFIC PLAN

CITY OF CLAYTON CALIFORNIA

BRADY AND ASSOCIATES, INC. PLANNERS AND LANDSCAPE ARCHITECTS

FIGURE 1

Regional Setting

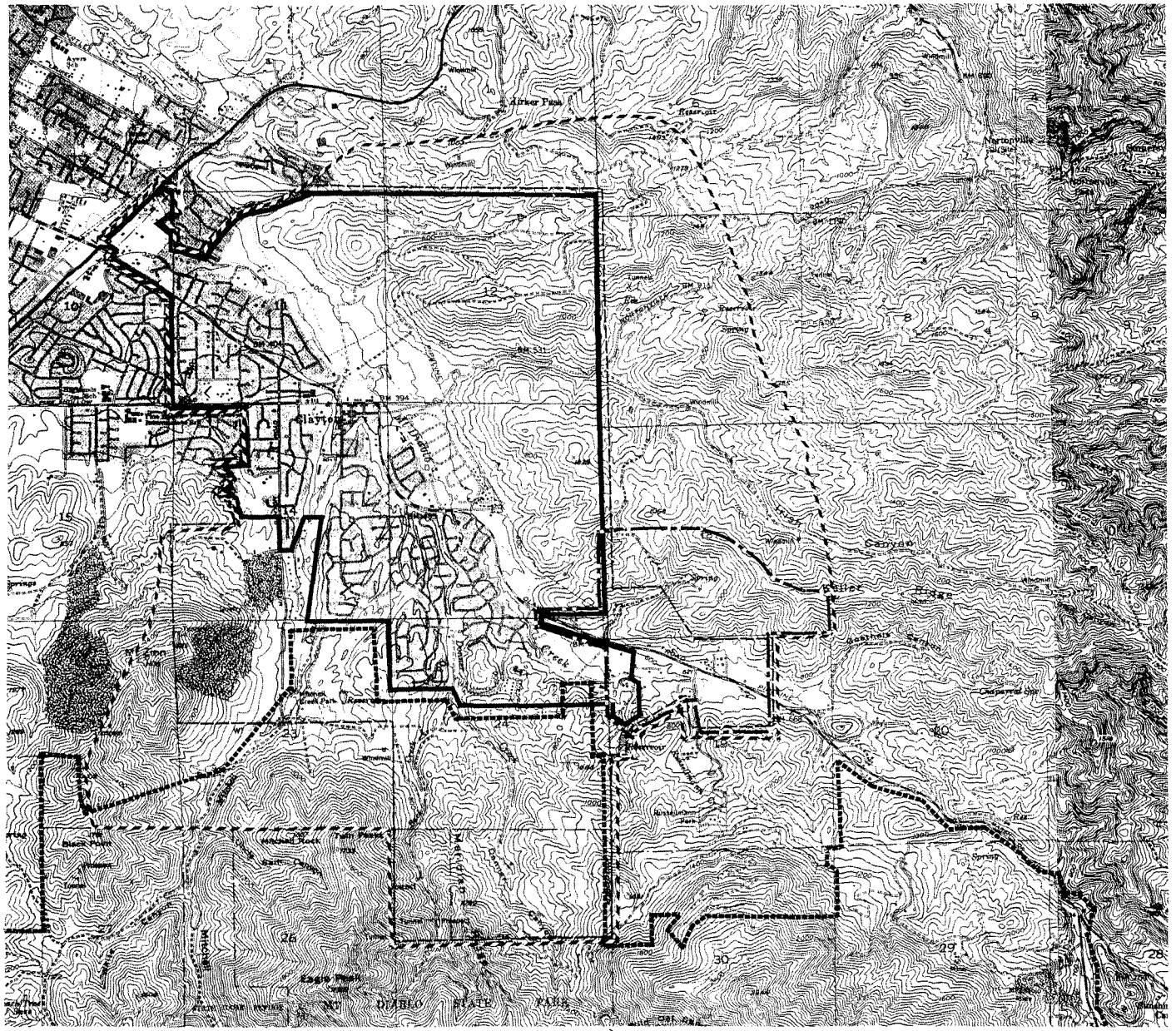

FIGURE 2

Clayton City Limits, Sphere of Influence and Planning Area

City Limits

Sphere of Influence

Plannning Area

Specific Plan Area

State Park Boundary

N

MARSH CREEK ROAD SPECIFIC PLAN

CLAYTON
CALIFORNIA

BRADY AND ASSOCIATES, INC. PLANNERS AND LANDSCAPE ARCHITECTS

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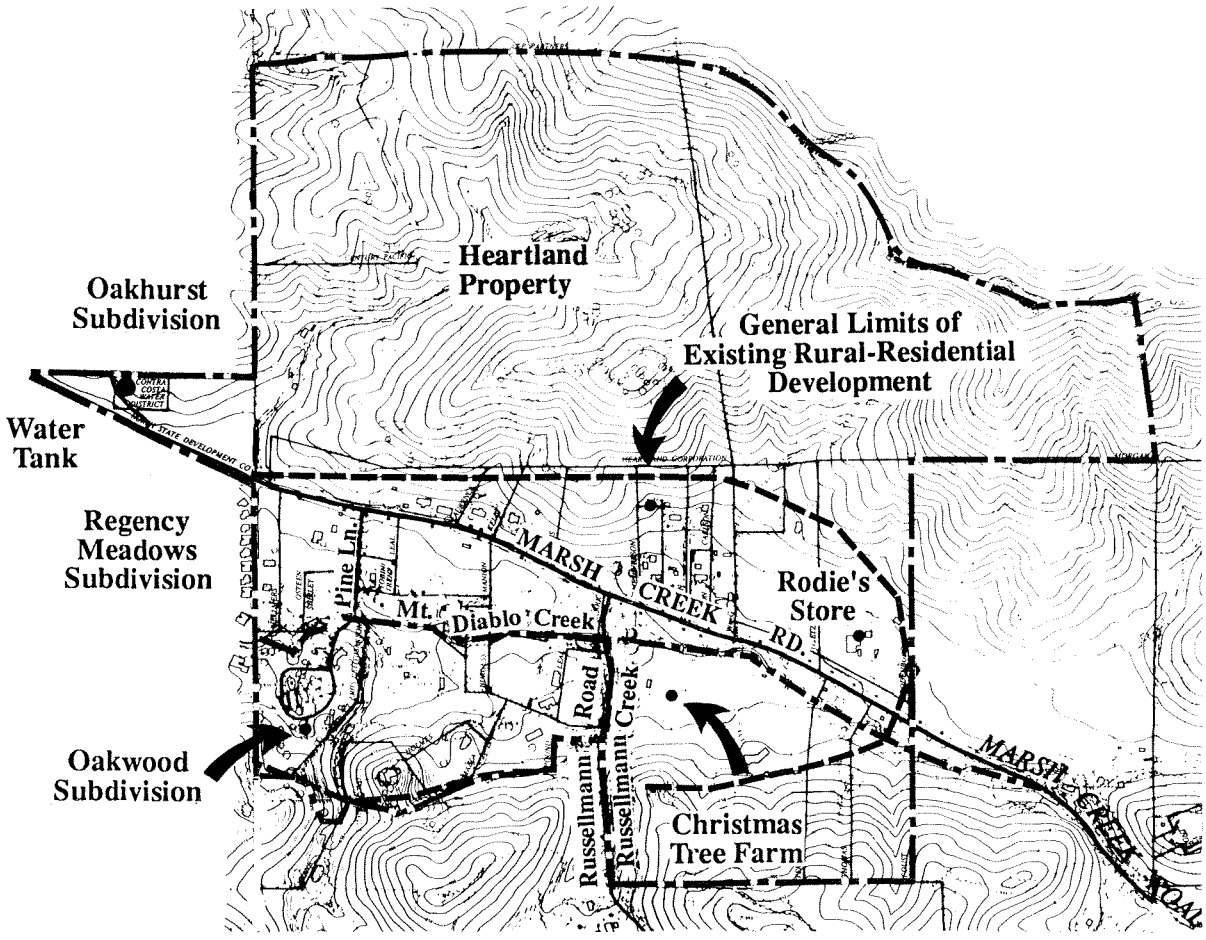


NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 3

Study Area Features

B. Study Area Characteristics

The study area generally comprises a contained valley that makes up the upper watershed of Mount Diablo Creek. Most of the area is comprised of small ranches, with grazing land and open space on relatively steep slopes. Generally speaking, slopes to the north of Marsh Creek Road tend to be covered in annual grasses with some dispersed oaks, while the north-facing slopes south of Marsh Creek Road display a much denser covering of scrub and native vegetation in some areas. These vegetative communities provide habitat for a variety of plants and animals. The valley floor of Mount Diablo Creek, which accommodates Marsh Creek Road, is somewhat flatter, and this area holds some existing rural residential development. There are also several other flatter valleys, including a bowl on the Heartland property.

The Oakwood single-family subdivision is currently under construction at the western edge of the study area, and several landowners in the study area have also expressed interest in further development.

1. Access and Circulation

The major circulation spine in the area is Marsh Creek Road, which extends from Clayton through the study area to Byron in eastern Contra Costa County. Marsh Creek Road is designated by the City and County as a scenic highway, and serves as a secondary transportation route for trips originating in Byron, Brentwood and Discovery Bay, and it could be placed under additional demands if development in eastern Contra Costa County continues or accelerates. Increased traffic flows from eastern Contra Costa County through Clayton and the study area are of concern to the City of Clayton.

The only other roadways in the study area are local and rural roads serving individual parcels, including Pine Lane, which extends to the Oakwood Subdivision, and Russellmann Road, which serves the Easton Christmas tree farm and the Concord Mount Diablo Trail Ride Association south of the Specific Plan area.

Most circulation to and from the area is oriented toward urbanized areas such as Clayton and Concord to the west. Marsh Creek Road carries traffic from both the study area and points further east to central Clayton and the intersection with Clayton Road. Clayton Road runs from Clayton to Concord. Ygnacio Valley Road connects Clayton and eastern Concord with Walnut Creek, while Kirker Pass Road runs from the Clayton/Concord boundary to Pittsburg and Highway 4. Freeways do not exist in close proximity to the study area, but Interstate 680 does provide access between Concord, Walnut Creek and San Jose, while Highway 24 runs from Walnut Creek to Oakland and the central San Francisco Bay Area.

2. Land Use

Land uses in the study area are predominantly rural in nature, with a mixture of agricultural and rural-residential land uses, and with a greater density of development and intensity of use along Marsh Creek Road. Development and land use intensity is also greatest in the western portion of the study area, near the incorporated area of the City of Clayton, and land use becomes less intensive as one moves east along Marsh Creek Road.

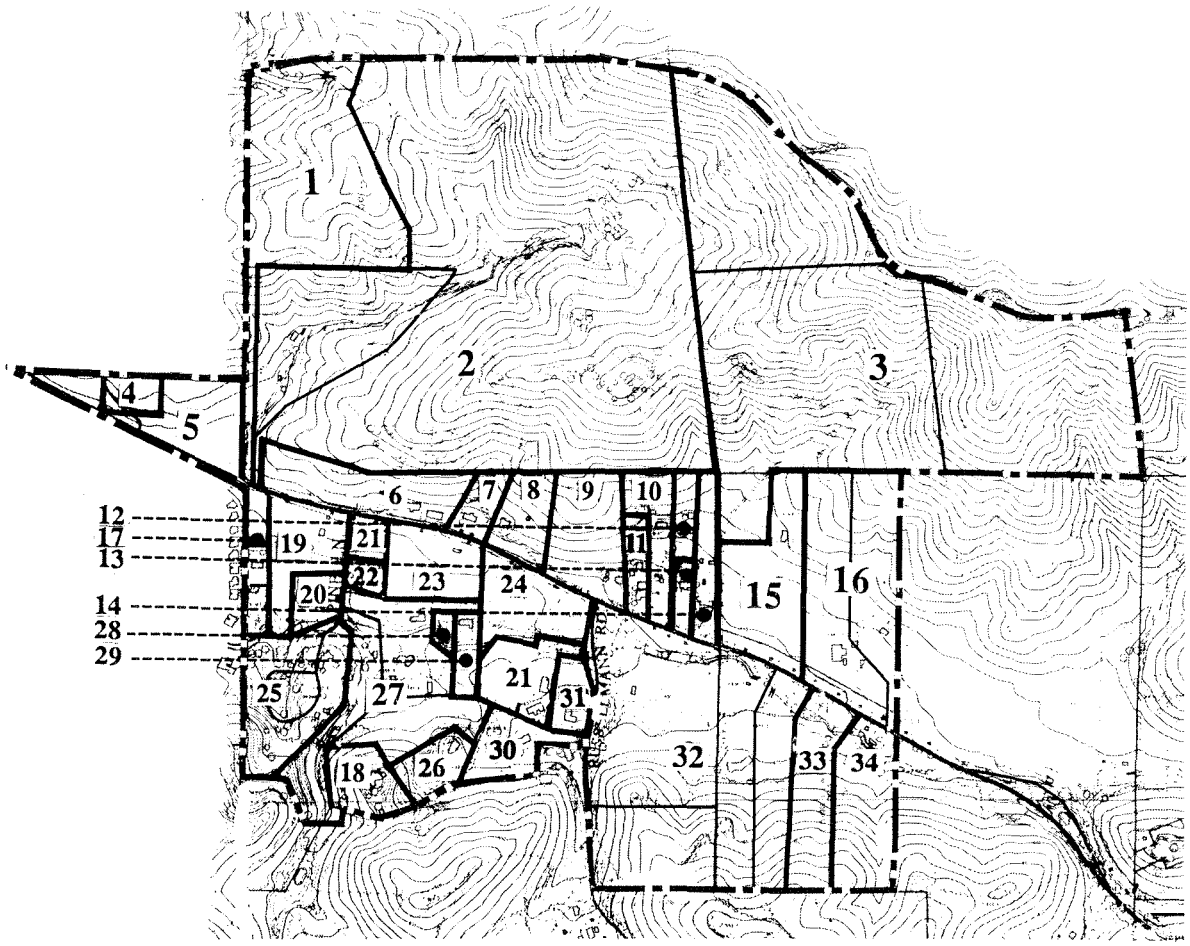
The portion of the study area within the City's Sphere of Influence is generally developed with rural-residential single-family houses on lots sized from two to ten acres. Many of the residences in this area have horse pastures and barns on their sites, and the area is generally served by roads without curbs and gutters and rural types of municipal services. This portion of the area also includes the Oakwood subdivision, which is a 16 unit subdivision on roughly 11½ acres, with an average lot size of about 31,000 square feet.

Most of the remainder of the area, which is currently outside the City's Sphere of Influence, is used for grazing and as undeveloped open space. There are also several single-family homes in this area. Other minor uses in the study area include the Rodie's store, located on Marsh Creek Road, and one Contra Costa Water District water tank.

3. Parcelization and Ownership

Parcelization of the Marsh Creek Road area is shown in Figure 4 and Table 1. There are a total of 45 parcels, ranging in size from under one to over 100 acres. This total does not include the Oakwood Subdivision, which is shown as parcel 25 in Figure 4 and adds 15 parcels (for a total of 16 lots) to the study area.

Generally speaking, the smaller parcels are on flat lands along Mt. Diablo Creek and Marsh Creek Road, while larger parcels are on steeper terrain farther from the creek and road. The Morgan parcel is split by the study area boundaries, so that one portion is inside the study area, while another portion is outside it.



Legend

Ownership Boundary

Parcel Boundary

Specific Plan Boundary

Numbers on this figure are keyed to Table 1, indicating property ownership.

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 4

Study Area Parcelization and Land Ownership

Table 1
LAND OWNERSHIP IN THE STUDY AREA

Number on Figure 4	Owner	Ownership Area (Acres)
1	Moita	25.0
2	Heartland Corporation	138.7
3	Morgan	93.4
4	Contra Costa Water District	1.6
5	North State Development Company	8.2
6	Laurence	8.1
7	Kelly	2.2
8	Soares	4.6
9	James/Iverson	8.4
10	Torson	4.2
11	P. Clark	2.0
12	Carlson	2.2
13	Nielson	1.4
14	Wing	3.6
15	Lietz	12.5
16	Rodenburg	18.5
17	Hellmers	3.1
18	Bergum	4.6
19	Osteen	6.2
20	Shirley	2.3
21	Leal	6.5
22	Tobin/Trent	1.2
23	Manion	5.9
24	M. Clark	5.9
25	Friis - Petit/Isakson	11.6
26	Mazza	4.5
27	Holmes	15.7
28	Sanders	0.9
29	Burgess	2.9
30	Pound	4.4
31	Cooper	3.0
32	Temps	42.8
33	Thomas	8.0
34	Foust	10.3
Total		Approximately 475 Acres

Source: Brady and Associates, Inc. and Contra Costa Assessor.

A total of 34 families and corporations own or control land in the area. Several different individuals own land within several of the families, and banks and investment corporations hold title to some land that is generally controlled by families or developers.

4. Proposed Projects in the Study Area

In addition to the Oakwood subdivision already under construction, several land owners have expressed an interest in developing residential projects in the study area:

- The Heartland California Clayton Limited Partnership is pursuing a 91-unit single-family development on roughly 139 acres in the northwest corner of the study area. The Marsh Creek Road Specific Plan is being funded through the City of Clayton primarily with funds from Heartland.
- Mr. Richard (Mike) Temps has proposed a 41-unit single-family residential project on his 43-acre property along Marsh Creek Road.
- Mr. James Moita has proposed an 11-unit single-family residential subdivision on roughly 25 acres adjacent to the Heartland property.

The development proposals for these three projects are assessed with this Specific Plan in a single Environmental Impact Report.

Osteen, Rodenburg, Morgan, Cooper and the North State Development Company have also shown an interest in developing on their parcels. However, these owners have not presented any definite development proposals to the City at this time.

C. Jurisdictions

Approximately ten percent of the study area is within the Clayton City limits, but the entire study area is within the City's General Plan-designated "Planning Area." Legally, 90 percent of the study area is currently under the jurisdiction of Contra Costa County, which sets land use and development policy in the area.

The City of Clayton has prepared this plan to set policy direction for the area. The City intends that development occurring within the Specific Plan boundaries would occur under the jurisdiction of the City. More information on these issues is contained in Chapter X of this Specific Plan.

Chapter III
PLAN GOALS AND OBJECTIVES

■ ■ ■

The following list of planning goals and policies for the Marsh Creek Road Specific Plan provides a framework for the specific land use, circulation, conservation, capital improvement and implementation policies presented in this plan. The list is based primarily on the findings of the Baseline Data Analysis, and on public and City Council and Planning Commission review of these findings.

The Plan's overall approach to development in the study area is three-pronged, as described below:

- First, the Plan seeks to avoid impacts of development on natural systems by siting development in the least sensitive areas. Regulations limiting development areas are found in these goals and policies, and in the Land Use Element.
- Second, the Plan minimizes impacts of development where it occurs through the Design and Development Standards.
- Third, the Plan allows for mitigation of impacts in development areas that cannot be otherwise avoided through the EIR process that will be incorporated into the final Plan.

This chapter, together with Chapter IV, summarizes all goals, objectives and policies of the Specific Plan, and may be used as a quick reference guide to the plan.

A. Plan Goals

1. Maintain the rural character of the study area.

2. Preserve and enhance the natural amenities and features of the study area, including the hillsides and large expanses of open space.

3. Encourage only development that respects and is in character with the special features and natural amenities of the study area.

4. Encourage upscale custom and semi-custom homes in a range of housing types that are currently unavailable or in limited supply in this area of Clayton and the County.

5. Provide a plan framework under which individual landowners can develop their lands independently, but in an orderly manner which is harmonious with a comprehensive land use plan for the area.

6. Provide for recreational uses and public access to open spaces.

7. Minimize traffic impacts and encourage alternative modes of transportation, such as walking, horse riding and bicycling.

8. Provide for a Specific Plan which is easily understandable to the public and implementable by City staff.

B. Land Use Objectives

1. Provide for a transition between the urbanized portions of Clayton to the west and undeveloped agricultural lands to the east, with emphasis on low development densities.

2. Plan for land uses that respond to the natural, visual and slope constraints of the study area.

3. Continue agriculture and grazing uses within and to the east of the Specific Plan area, and regulate new residential development in the area to make it as compatible with continual agricultural use as possible.

4. Provide for development that is consistent with existing deed restrictions.

5. Minimize conflicts between land use and utility easements which exist in the study area.

6. Cluster development as appropriate as a means to preserve open space.

7. Preserve identified historic structures in the study area with uses such as community facilities, bed- and-breakfast facilities or large single-family homes.

8. Provide for decreased development densities in areas with steep slopes.

C. Housing Objectives

1. In areas to be developed, encourage a balance of housing types and densities consistent with the rural character of Clayton. It is expected that most houses in the area will be custom or semi-custom.

2. Require housing development in the area to contribute its fair share toward addressing affordable housing needs in Clayton as required by the Housing Element.

D. Community Design Objectives

1. Maintain the rural and transitional character of the study area in all development and conservation areas.

2. Adopt policies consistent with the City and County scenic highways policies to protect the scenic corridor of Marsh Creek Road.

3. Preserve the natural beauty and the feeling of openness in the study area by preserving ridgelines and limiting development in visible areas, especially on the northern and southern edges of the area.

4. Maintain landscape and natural vegetation as a means to provide greenery, open space, development buffer and rural atmosphere.

5. Protect visually significant features in the study area, including rock outcroppings, landmark trees, riparian corridors, and historic homes and structures.

6. Design grading for development so as to preserve the overall character of the hillsides and ridgelines of the study area.

7. Minimize the intrusion of unsightly forms of urbanization and municipal service provision in the study area.

    a. Provide for streets of a minimal width consistent with traffic safety to maintain the rural character of the area.

    b. Allow streets to be built with alternative edge treatments rather than full sidewalks, curbs and gutters.

c. Require undergrounding of utilities within new subdivisions in the study area.

d. Promote alternative measures for needed sound attenuation in order to prevent unsightly or endless walls.

8. Include design criteria for development areas within the study area, so as to promote high quality rural residential design.

E. Parks and Open Space Objectives

1. Maintain the existing open space character of the study area, and provide recreational facilities and areas of open space for public use.

2. Provide a comprehensive, integrated greenbelt system that incorporates bicycle, equestrian, and walking paths, and that provides connections to regional open space systems.

3. Encourage the State of California to acquire land to the south of the study area for extension of Mount Diablo State Park.

4. Plan for acquisition and development of neighborhood parks in the study area to meet City standards within the Growth Management Element of the City General Plan.

5. Provide for development of small open space areas, pocket parks or equestrian facilities within the study area.

F. Natural Resources Objectives

1. Preserve the natural features, ecology and scenic vistas of the study area.

2. Avoid degradation of habitat used by rare and endangered species within the study area by avoiding development in habitat areas known to harbor such species.

3. Require studies to determine the existence of sensitive species on a site-specific basis, and limit development where these species are found.

4. Provide for retention of archaeological and cultural resources and historic structures through research on a site-specific basis. Limit development where archaeological resources exist, and plan for appropriate adaptive reuse of historic structures.

G. Circulation and Public Access Objectives

1. Encourage pedestrian-oriented development in the study area that gives equal priority to circulation on foot, horses, bicycles and in cars. Provide for landscaped roadways, pedestrian paths and bikeways in the study area.

2. Provide a road system in the study area which will operate at acceptable levels of service. Identify roadways within the study area to adequately serve development as it occurs, with sufficient capacity to accommodate build-out permitted under the Specific Plan.

3. In planning improvements to study area roadways, give consideration to cumulative traffic impacts from projected development in other parts of Clayton.

4. Discourage traffic through residential areas, but facilitate circulation within the study area.

5. Limit direct connections between arterial routes through residential areas to avoid impacts of through traffic in local neighborhoods.

6. Consider impacts of development on regional roadways outside of the City of Clayton. Attempt to mitigate any significant impacts on these roadways resulting from development in the study area.

7. Maintain circulation through the study area to serve existing eastern Contra Costa County needs, but avoid roadway expansion in the area designed to serve additional East County growth.

H. Public Services Objectives

1. Accommodate growth in the study area in accordance with the ability of police, fire district and other public agencies to provide adequate services.

2. Plan for development that takes into account available and planned water supply and sewer service.

3. Provide for water conservation in the study area.

4. Consolidate water, sewer, cable TV, electrical and gas utilities in common utility corridors wherever practical ideally within the public right-of-way.

I. Public Safety Objectives

1. Provide for geotechnical safety by avoiding development in areas with extreme landslide danger or other adverse geological conditions, or by remediating geotechnical conditions by requiring subsurface geotechnical investigations and implementing the resulting recommendations.

2. Provide for fire safety in the study area by requiring construction with fire resistant Class A roofing materials, controlling brush growth in the area of residences, ensuring adequate response time for firefighters, and other appropriate measures.

3. Plan for development that takes into account the needs for flood and sedimentation control both on- and off-site.

J. Implementation Objectives

1. Require land owners to contribute a pro-rated fair share towards the cost of common study area improvements necessitated by the Specific Plan.

2. Condition development within the study area on developer provision of adequate road improvements, sewage collection, sewage treatment, water supply, storm drainage and other capital improvements.

3. Provide for funding of administrative costs required for review and permit processing through application and development fees.

4. Provide Specific Plan policies which can be translated into clear and efficient zoning codes, administrative procedures and review requirements.

Chapter IV
SUMMARY OF PLAN POLICIES

■ ■ ■

This chapter summarizes the policies of the Marsh Creek Road Specific Plan, which are explained in detail in Chapters V through X of this document. Each policy included in this chapter is also included in its corresponding chapter in the Plan, where more background information is also included.

Each plan policy generally contains the word "shall" or "should," which indicates whether the policy is mandatory or advisory. Policies that contain the word "shall" must be followed by the city and by all landowners and developers in the study area. Policies that contain the word "should" are advisory. Landowners and developers are strongly encouraged to follow these policies, but they may deviate from these policies if extenuating circumstances prohibit following them and such circumstances are presented to and accepted by the City.

This chapter, together with Chapter III, may be used as a quick reference guide to the plan.

A. Land Use and Conservation

LU-1. Chaparral plant communities, areas underlain by serpentine, and areas known to be used by any rare or endangered plant or animal species shall be preserved without development.

LU-2. Appropriate conservation and flood control buffers shall be retained along USGS blue line creeks in the study area. The minimum setback should be 75 feet from the top of the bank on either side of the creek, unless creek enhancement programs included in a project serve as mitigations to allow narrowing of the creek setback.

LU-3. Woodlands in the study area should be preserved wherever possible, since these areas are important biotic resources and create visual interest in the study area.

LU-4. Existing deed restrictions on development that are already in place in the study area shall be respected.

LU-5a. In order to minimize grading and geological disruption, development should generally be limited to those areas where building footprints will occur on slopes of less than 26 percent. No building footprints shall occur on slopes in excess of 40 percent. In areas where building footprints would occur on slopes between 26 and 40 percent, development may occur only if it is found appropriate through site-specific review by the City. For the purposes of this policy, slope steepness shall be calculated for natural conditions or for conditions after minimal necessary landslide repair as defined by the City Engineer on a case-by-case basis.

LU-5b. In order for the City to approve development with building footprints on slopes between 26 and 40 percent, the City must make the following findings regarding such development:

- The development is in substantial conformity with this Specific Plan.
- The development substantially follows all Design and Development Standards for grading in Policy DD-4 of this Specific Plan, including those which are advisory and use the word "should".
- The development is not visible when viewed from Marsh Creek Road or developed portions of Clayton outside the study area.
- The development does not intrude on the visual integrity of Mount Diablo.
- The development does not displace any sensitive plant or animal species, riparian corridors or wetlands.

It is recognized that these requirements are more restrictive than those for development in flatter areas. This is because development in steep areas requires more sensitive planning than that in flat areas.

LU-6. The natural sense of enclosure in the study area shall be preserved by locating development so as not to be silhouetted against the sky along ridgelines.

LU-7. The visual integrity of the entire study area shall be preserved for viewers within the study area, in developed portions of Clayton outside the study area, and for travellers along Marsh Creek Road by carefully siting and screening any development.

LU-8. Development should be clustered within designated development areas where appropriate.

LU-9. Homes, roadways and other development in the study area shall generally be designed to conform with the existing topography.

LU-10. City sewer services should be extended only to those areas targeted for development of one unit or more per acre, and to rural residential areas surrounded by higher density development.

LU-11. All development shall conform with the land use designations shown in Figure 6 subject to meeting the goals, objectives, policies and standards contained within this Specific Plan.

LU-12. Those land areas defined as unbuildable by the goals, objectives and policies of this Plan, such as ridgelines, deed restricted areas, slopes over 40 percent and creek corridors, do not accrue development rights that could be transferred to other locations.

LU-13. Parcels in the study area which contain less acreage than the designated allowable minimum parcel size are allowed one unit.

LU-14. All development in the study area shall contribute its fair share toward addressing affordable housing needs in Clayton, as specified in the Housing Element of the General Plan.

LU-15. Neighborhood parks shall be developed on some or all of the potential park sites designated in Figure 6.

LU-16. All developments in the Specific Plan area should include some form of local park, pocket park, greenbelt area, open space, common equestrian facility, or similar amenity.

B. Resources

RE-1. No lands outside the limit of urban development identified in Figure 7 shall be developed for urban uses under this Plan. Urban development is defined as any development which exceeds a density of 1.1 units per acre.

RE-2. When any parcel is subdivided for development under the Specific Plan, the title or development rights to those portions of the parcel designated as Open Space in this plan shall be offered to the City, East Bay Regional Park District, the State of California, or another appropriate public agency or non-profit land trust. If development rights are vested with one of the organizations listed above, then the title to and maintenance responsibility for the undeveloped areas may be transferred to a Homeowners Association.

RE-3. No single loaded public or private streets shall be built where they would face on to land designated for Agriculture. A "single loaded street" is a street with houses on only one side of it.

RE-4. Development along the major creeks in the study area shall include creek preservation and enhancement programs. Any creek preservation and enhancement programs may occur only if found appropriate through site-specific review by the City.

RE-5. A trail network shall be constructed in the study area along the Mt. Diablo Creek corridor, and it shall be encouraged in other locations to connect to parks, Mount Diablo, Black Diamond Mine Regional Preserve and Contra Loma Regional Park.

C. Design and Development

DD-1. Each development plan shall indicate building envelopes for each lot within the Ranchette Residential, Rural Residential, Low Density and Medium Density designations.

DD-2. All buildings in the Specific Plan area shall conform to the building setbacks shown under Policy DD-2 in the Design and Development Standards chapter.

DD-3. Development clustering shall be encouraged in Low, Medium and Suburban Density development, provided that the Planning Commission finds that clustering does not result in a site plan that is overly dense or that impedes the conservation of natural or visual resources.

DD-4. The visual impacts of grading shall be minimized in the study area, both by limiting the amount of grading and by properly contouring areas where grading occurs.

DD-5. No development shall occur along the tops of ridgelines and knolls identified in Figure 7.

DD-6. Existing trees should be retained wherever possible.

DD-7. Detention basins shall be of sufficient size to contain storm water runoff during the rainy season, but should also be flat enough to be used as an open space or recreational amenity while dry.

DD-8. Creek corridors in the planning area shall be preserved and enhanced.

DD-9. In order to protect the scenic quality of Marsh Creek Road, the streetscape should reflect the rural character of the planning area.

DD-10. Each development area in the planning area should have a defined rural neighborhood character.

DD-11. Primary entry features should be constructed at junctions of neighborhood entry roads with Marsh Creek Road, Oak Creek Canyon Drive, Pine Lane and Russellmann Road. They should be designed with sensitivity to the setting, and should reflect the rural character of the area.

DD-12. In residential neighborhoods, street lighting should be considered an integral part of roadway design, and should not be added as an afterthought.

DD-13. Fences and screening should be minimized and reflect the area's rural quality.

DD-14. Retaining walls should be avoided whenever possible in the planning area, for both building and road construction, and should be designed to be architecturally cohesive with development. Low stepped walls, angled or landscaped walls, or screened walls are preferable to a single retaining wall of hard materials.

DD-15. Landscaping should be consistent with the palette of plants naturally occurring in the planning area.

DD-16. All buildings shall conform to the maximum building heights in the planning area. These heights vary depending on topography, and are generally intended to require buildings to conform to their underlying topography.

DD-17. Architectural style should reflect traditional rural architecture and the study area's rural character and mild climate, and emphasize the idea of a cohesive community.

DD-18. The potential visual impact of repeated garages with doors on the street should be avoided in study area development.

DD-19. Because of the planning area's high visibility, roof design should be varied and articulated.

DD-20. Buildings in the planning area should be oriented where possible to attain maximum solar benefit for both heating and cooling.

DD-21. Study area development shall incorporate water conservation measures such as low-flow plumbing fixtures and drought-tolerant landscaping.

DD-22. Commercial development shall be designed to reflect the low-intensity, rural character of the study area.

DD-23. Parking to serve commercial development shall be visually unobtrusive, with adequate landscaping and setbacks from the street.

DD-24. Signage for the commercial development shall be limited, and should be designed to conform with the rural residential qualities of the study area.

D. Circulation

CI-1. Roadways serving development areas shall generally conform to the pattern shown in Figure 10. Where Figure 10 shows that a roadway is required to serve development on several different parcels, roadway planning and construction for each parcel shall include provisions for access to adjacent parcels.

CI-2. All roadways developed under the Specific Plan shall be built to follow the standards of one of four types of streets: arterials, collectors, local roadways and minor cul-de-sacs.

CI-3. Intersections built to accommodate Specific Plan buildout should be designed in accordance with the diagrams of intersection alignments shown in Figure 13.

CI-4. The City shall coordinate preparation of a plan line study for Marsh Creek Road to identify the detailed routing for the road and specifications for its construction and any necessary environmental review, using the general description of the road in Policy CI-2a. No development in the study area will be allowed until this study is completed. Alternatively, individual developers may complete plan line studies for Marsh Creek Road for all segments of Marsh Creek Road west of their site access, and for appropriate transitional zones to the east of their site access.

CI-5. Access to Marsh Creek Road shall be limited to existing driveways and those roadways indicated on Figures 10 and 13. No new driveways or additional roadway intersections on Marsh Creek Road may be constructed.

CI-6. As existing parcels develop, they should rely on access from streets that follow the general layout shown in Figure 10.

CI-7. Internal circulation within subdivisions shall be designed at the discretion of the property owner, subject to approval by the City, provided that it allows for through access to adjacent parcels as indicated on Figure 10.

CI-8. Sidewalks required for collector and local roadways need not be installed if they would run parallel and immediately adjacent to a pathway along a creek.

CI-9. Where required roadway widths would necessitate extensive grading, split roadway sections that accommodate the slope are encouraged. The travel lanes on roadways may be separated, and sidewalks, where required, may also be separated from the roadway level.

CI-10 Roadways through sloped areas greater than 26% may occur only to provide necessary access to development permitted by this Specific Plan after the roadway is found appropriate through site-specific review by the City.

CI-11 Public pathways within the study area will be located along the top of creek banks and run adjacent to Mt. Diablo Creek, Russellmann Creek and the creek on the Holmes property, in the locations indicated in Figure 7.

CI-12 Trails outside of development areas shall be constructed where possible in the general alignments shown in Figure 7.

E. Infrastructure

IN-1. Water service for new development under the Specific Plan shall be provided by the Contra Costa Water District (CCWD) through existing and future water pressure zones.

IN-2. Water supply facility studies based on the adopted Specific Plan shall be completed for each project or phase of development.

IN-3. Wastewater produced in urban development areas within the study area shall be collected in the City of Clayton sewer system, which feeds wastewater through the City of Concord to the Central Contra Costa Sanitary District.

IN-4. The City shall coordinate preparation of an area-wide sewer study to identify the feasible routes for a trunk sewer line in the study area and to calculate the resulting main sizes. This study shall also provide any necessary environmental review and a basis for allocating the costs of sewer line construction, based on the number of contributing homes set forth in this Specific Plan.

IN-5. Wastewater collection system improvements under the Specific Plan shall include downstream improvements to the collection line running from the study area boundary to Donner Creek. Specifications for these improvements shall be detailed in the sewer study required by Policy IN-4.

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

F. Implementation

IM-1. No subdivision, use permit, design review application, or other entitlement for use, and no public improvement, shall be authorized in the study area until a finding has been made that the proposed project is consistent with this Specific Plan.

IM-2. City staff shall review all construction projects requiring a building permit to ensure that they comply with the Design Guidelines and all other plan provisions.

IM-3. The City Planning Commission shall review all subdivisions and development projects of five units or more at a public hearing.

IM-4. The City shall, by reference, incorporate into its zoning code the relevant land use, resource conservation and design specifications found in Chapters V, VI and VII, respectively.

IM-5. The City shall encourage that all development occurring within the Specific Plan area be accomplished via development agreements between the City and individual developers/property owners.

IM-6. Development should generally begin in the western part of the study area, to be followed by development farther east. Development Areas A and C will be the first to develop, followed by area D. Development Areas B and E will probably be the last to be developed.

IM-7. Within individual development areas, parcels that are closest to collector streets, including Pine Lane and Russellmann Road, should be developed first. This may mean that some parcels that are adjacent to Marsh Creek Road, but which are not planned to have direct access from Marsh Creek Road after development, will have to wait to develop until adjacent parcels have developed.

IM-8. The City shall petition LAFCO to amend its Sphere of Influence to include the Specific Plan area as shown in Figure 6.

IM-9. All development under this Specific Plan shall occur under the jurisdiction of the City of Clayton.

IM-10. Annexation should occur on an orderly, phased basis, moving east from the existing City limits on the west. Annexation will normally occur when development is proposed in an area, but annexation of some areas not proposed for development may be necessary to accommodate development proposals in an area. In the process of annexing from west to east, the City shall exercise flexibility in determining the amount of contiguity necessary to permit annexation.

IM-11. Areas to be annexed to the City shall be simultaneously annexed to the Contra Costa County Fire District to allow for urban levels of fire suppression service.

IM-12. The City of Clayton recommends that the policies of this Specific Plan be applied by Contra Costa County in the unincorporated portions of the study area and in areas beyond the study area but within Clayton's area of development comment, which extends three miles from the City limit. The City shall formally request that the County adopt this Plan and use it for policy application in the area, and the City shall use the Specific Plan as the basis for comments on projects within the study area and the comment area.

IM-13. Improvements on individual properties required under this Specific Plan shall be financed by individual property owners or developers.

IM-14. Improvements that will require coordinated implementation on or along several parcels, such as widening of Marsh Creek Road and installation of traffic signals, water tanks, water mains, trunk sewers, storm drainage facilities, and downstream sewer improvements, shall be overseen by the City and should be financed with a mechanism that attempts to ensure ultimate fair-share repayment of all costs to those who pay for them by the landowners or developers who will benefit from them. Examples of appropriate funding mechanisms are included in Chapter X, Section D.3.

Chapter V
LAND USE AND CONSERVATION ELEMENT

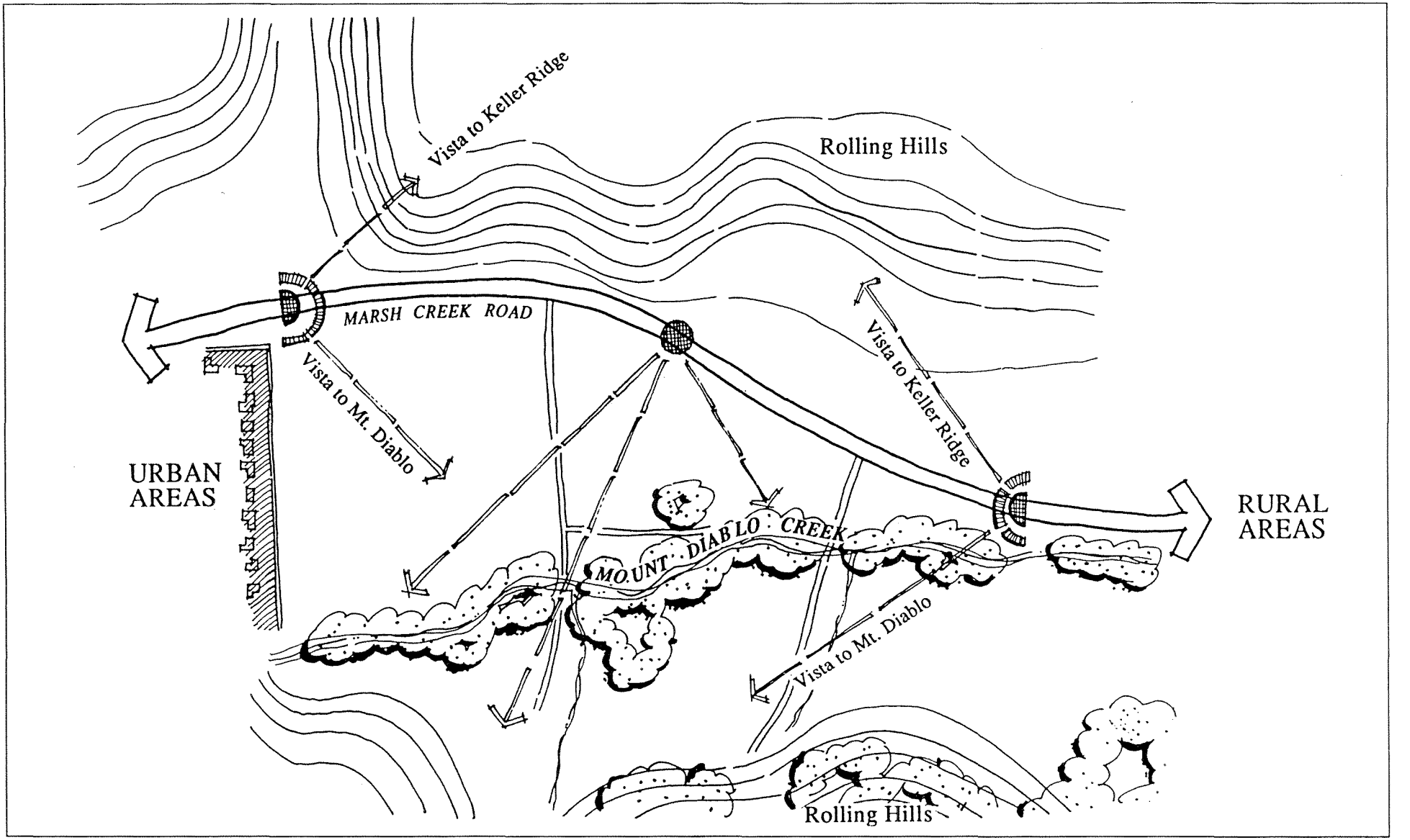
■ ■ ■

This chapter includes five components that set the general framework for development in the study area. They are:

- Land Use and Conservation Concept, which shows the fundamental concepts for land use and conservation in the area, as illustrated in Figure 5.
- General Land Use, Conservation and Development Policies, which set the general framework for conservation and development in the area.
- Land Use Designations, which define specific development parameters for individual parcels in the area. These designations are mapped in Figure 6.
- Park Development Policies, which set standards for parks in the Specific Plan area.
- Study Area Development Potential, which outlines the potential for development in the study area. The calculated development potential serves as the basis for assessing circulation and infrastructure needs for the plan, and for determining the plan's environmental impacts.

A. Land Use and Conservation Concept

Figure 5 illustrates the Land Use and Design Concept that underlies the Marsh Creek Road Specific Plan. As shown in this diagram, the study area functions as a transitional area separating the urban areas in the west from more rural areas to the east. Between these areas, the study area will maintain a semi-rural character composed of pastures, ranchettes and dispersed suburban development. Marsh Creek Road and Mt. Diablo Creek will serve as spines for development in the area, with rolling grassy and tree covered hills to the north and south. Vistas of Mt. Diablo and Keller Ridge will serve as the overall backdrop to the setting.



N

MARSH CREEK ROAD SPECIFIC PLAN

CITY OF CLAYTON CALIFORNIA

BRADY AND ASSOCIATES, INC. PLANNERS AND LANDSCAPE ARCHITECTS

FIGURE 5

Land Use, Development and Conservation Concept

B. Land Use, Conservation and Development Policies

To implement the Land Use and Design Concept outlined above, the City has adopted ten Land Use, Conservation and Development Policies for the Marsh Creek Road Specific Plan, which are defined below. The land use designations and design and development standards in this document represent policy formulations that encapsulate this overall strategy.

Policy LU-1. Chaparral plant communities, areas underlain by serpentine, and areas known to be used by any rare or endangered plant or animal species shall be preserved without development.

Chaparral plant communities and serpentine formations are important natural resources that serve as habitat for mammals, waterfowl, the threatened Alameda whipsnake and rare plants. The whipsnake, along with most of the rare plants with a potential to exist in the area, would be found in chaparral, and many rare plants require serpentine for growth. Any other areas used by rare or endangered species should also be retained.

Policy LU-2. Appropriate conservation and flood control buffers shall be retained along USGS blue line creeks in the study area. The minimum setback should be 75 feet from the top of the bank on either side of the creek, unless creek enhancement programs included in a project serve as mitigations to allow narrowing of the creek setback.

Creeks mapped as "blue lines" by the USGS are significant for several reasons. They may be subject to flooding, and the County Flood Control District requests setbacks of 30 feet on either side of the top of bank for flood safety reasons.[1] The riparian corridors support many types of plants and wildlife, and they serve as wildlife movement corridors. Finally, development in these corridors is restricted by State and federal agencies, which have permitting authority in them. The California Department of Fish and Game usually requests a 100-foot development setback from the top of bank for habitat preservation reasons. The 75-foot minimum setback has been set with all these criteria in mind.

Policy LU-3. Woodlands in the study area should be preserved wherever possible, since these areas are important biotic resources and create visual interest in the study area.

[1] County Subdivision Ordinance Section 9.14.

Woodlands outside of creek corridors in the study area include Blue Oak Woodland which is particularly valuable, since the dominant Blue Oaks in it grow and reproduce slowly. All woodlands provide visual interest in the study area, creating variety against the grass covered slopes. For these reasons, the City seeks to preserve woodlands wherever possible.

Policy LU-4. Existing deed restrictions on development that are already in place in the study area shall be respected.

Five parcels within the study area have permanent restrictions on development placed on them as part of their deeds, as a result of a subdivision in 1982. For this subdivision, the County required the exclusion of development potential above certain elevations on a total of seven parcels. The Lietz and Rodenburg properties north of Marsh Creek Road may not be developed above the 720-foot contour line, and the eastern portion of the Temps, Thomas and Foust properties south of Marsh Creek Road may not be developed above the 680-foot contour line. The western portion of the Temps property is not subject to this restriction since it was not part of the 1982 subdivision.

Policy LU-5a. In order to minimize grading and geological disruption, development should generally be limited to those areas where building footprints will occur on natural slopes of less than 26 percent. No building footprints shall occur on slopes in excess of 40 percent. In areas where building footprints would occur on slopes between 26 and 40 percent, development may occur only if it is found appropriate through site-specific review by the City. For the purposes of this policy, slope steepness shall be calculated for natural conditions or for conditions after minimal necessary landslide repair as defined by the City Engineer on a case-by-case basis.

Policy LU-5b. In order for the City to approve development with building footprints on slopes between 26 and 40 percent, the City must make the following findings regarding such development:

- **The development is in substantial conformity with this Specific Plan.**
- **The development substantially follows all Design and Development Standards for grading in Policy DD-4 of this Specific Plan, including those which are advisory and use the word "should".**
- **The development is not visible when viewed from Marsh Creek Road or developed portions of Clayton outside the study area.**

- **The development does not intrude on the visual integrity of Mount Diablo.**
- **The development does not displace any sensitive plant or animal species, riparian corridors or wetlands.**

It is recognized that these requirements are more restrictive than those for development in flatter areas. This is because development in steep areas requires more sensitive planning than that in flat areas.

Current County policies prevent or restrict development on slopes in excess of 26 percent, since such slopes are often unstable, create wildfire hazards, and generally require significant grading to accommodate any type of building or roadway construction.

Given the fact that there are many areas with slopes in excess of 26 percent in the study area, development on slopes up to 40 percent may be appropriate in some places after site-specific review by the City. However, such development should meet all other criteria listed in this document.

Policy LU-6. **The natural sense of enclosure in the study area shall be preserved by locating development so as not to be silhouetted against the sky along ridgelines.**

Development that extends above the natural line of a ridge appears much more obtrusive than development placed below a ridgeline. Prohibiting development on the tops of ridges will help retain the natural quality and visual boundary of the study area.

Policy LU-7. **The visual integrity of the entire study area shall be preserved for viewers within the study area, in developed portions of Clayton outside the study area, and for travellers along Marsh Creek Road by carefully siting and screening any development.**

Since the study area, and the slopes that surround the valley of Mt. Diablo Creek in particular, are important visual resources, development shall be sited so that it preserves the visual integrity of the area as much as possible.

Policy LU-8. **Development should be clustered within designated development areas where appropriate.**

Areas shown in Figure 6 represent the generalized maximum limits of development that should occur under the Specific Plan. Developers are encouraged to cluster development within the mapped areas, in order to further preserve surrounding open space and natural resources. If clustering occurs, the areas indicated in Figure 6 will serve as the basis for calculating maximum unit counts, but the allowed units will be concentrated in smaller areas at higher net densities than would otherwise occur.

Policy LU-9. Homes, roadways and other development in the study area shall generally be designed to conform with the existing topography.

Since slopes in the study area are relatively steep, flat-pad buildings that are typical of suburban subdivisions may require extensive grading. The City seeks to preserve the overall character of the slopes in the area, and therefore requires that any grading avoid or minimize areas of visible cut and fill. Streets, individual houses, and other buildings shall be designed to generally conform to the specific terrain on their sites. Structures' design shall be encouraged to feature stepped footings and floor elevations that follow existing topography. Areas of flat pad grading should only occur in existing flat areas, or on lands that are not visible from Marsh Creek Road or existing parts of Clayton. Any graded slopes that occur shall result in natural-appearing contours.

Policy LU-10. City sewer services should be extended only to those areas targeted for development of one unit or more per acre, and to rural residential areas surrounded by higher density development.

Extension of municipal services, particularly sewer and water service, can induce urban growth at a later date. Since the City desires to maintain the existing agricultural and open space character outside of identified development areas, the City will not extend sewer services beyond these areas.

Legend

- Specific Plan Boundary
- Ranchette Residential 1 unit/5 acres
- Rural Residential 0.21 - 1.1 units/acre
- Low Density Residential 1.11 - 1.5 units/acre
- Medium Density Residential 1.51 - 2.2 units/acre
- Suburban Density Residential 2.21 - 3.0 units/acre
- Convenience Commercial
- Open Space
- Conceptual Location of Potential Park Site
- Historic Building and Potential Park Sites
- B1 Development Area Designation

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 6

Land Use Designations

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

C. Land Use Designations

1. Land Use Designations

Policy LU-11. All development shall conform with the land use designations shown in Figure 6 and described below subject to meeting the goals, objectives, policies and standards contained within this Specific Plan.

Figure 6 shows land use designations in the Marsh Creek Road study area. These areas have been identified by the City based on the Land Use, Conservation and Development Policies, and on the existing conditions in the study area. The nature of the individual designations is described below.

Figure 6 includes letter and number designations for individual development areas with densities of one unit per acre or more. These designations are shown in Table 2, and are used for reference throughout the document.

Definition of Gross Acreage. All development densities are described using gross acreages, which means that lands used for roads, open space or other uses are included in the density calculations.

Unless otherwise noted, the following uses are allowed in each of the Specific Plan residential categories:

- A detached single-family dwelling in each lot and the accessory structures and uses normally auxiliary to it.
- Crop and tree farming and horticulture, not including the raising or keeping of any animals other than ordinary household pets.
- Publicly-owned parks and playgrounds.

Ranchette Residential: Maximum 0.2 units per acre.

This designation is applied in areas where very limited development is allowable, and where care must be taken to maintain the existing natural characteristics of the area. For example, this designation applies to properties adjacent to the eastern Specific Plan boundary, which has been identified as a gateway to the study area.

The Ranchette Residential designation in Figure 6 delineates potential buildable areas. The City requires developed portions of Ranchette Residential properties to be within this area. Individual lots may include areas designated for Open Space for other uses such as stables and corrals, provided that at least half of each parcel is within the mapped areas.

Table 2
SPECIFIC PLAN BUILDOUT POTENTIAL

Development Area	Major Property Owners	Approximate Acreage[a]	Designation	Anticipated Units[b]	Existing or Approved Units	Net New Units
A1	Heartland	19.6	Low	29	0	29
	Moita	7.2	Low	11	1	10
A2	Heartland	15.9	Medium	35	0	35
	Morgan	2.8	Medium	6	1	5
A3	Heartland	19.5	Low	29	0	29
	North State Development	4.4	Low	6	0	6
B1	Laurence	8.1	Rural	9	2	7
	Kelly	2.2	Rural	2	1	1
	Soares	4.6	Rural	5	1	4
	James/Iverson	8.4	Rural	9	1	8
	Torson	4.2	Rural	4	1	3
	P. Clark	2.0	Rural	2	1	1
	Carlson	2.2	Rural	2	1	1
	Nielson	1.4	Rural	1	1	0
	Wing	3.6	Rural	4	1	3
B2	Lietz	12.5	Rural	14	1	13
	Rodenburg	8.4	Rural	9	1	8
C1	Hellmers	2.8	Suburban	8	3	5
	Osteen	5.8	Suburban	17	1	16
	Shirley	1.9	Suburban	5	1	4
C2	Tobin/Trent	1.2	Low	2	0	2
	Leal	1.6	Low	2	0	2
	Manion	5.9	Low	9	0	9
	Holmes	1.8	Low	2	0	2

Development Area	Major Property Owners	Approximate Acreage[a]	Designation	Anticipated Units[b]	Existing or Approved Units	Net New Units
C3	M. Clark	5.9	Low	9	0	9
D1	Holmes	8.5	Medium	18	2	16
	Burgess	1.6	Medium	3	1	2
	Sanders	0.6	Medium	1	1	0
D2	Cooper	3.0	Medium	6	1	5
	Leal	4.9	Medium	11	2	9
	Pound	4.4	Medium	9	1	8
E1	Temps	10.8	Medium	24	0	24
E2	Temps	3.4	Low	5	0	5
E3	Temps	1.6	Rural	2	1	1
Subtotal				310	28	282
Ranchette	Bergum	3.8	Ranchette	1	0	1
	Mazza	3.1	Ranchette	1	0	1
	Temps	6.7	Ranchette	2	0	2
	Thomas	2.6	Ranchette	1	0	1
	Foust	2.4	Ranchette	1	0	1
	Morgan	6.8	Ranchette	2	0	2
Oakwood Subdivision				16	16	0
TOTAL				**334**	**44**	**290**

[a] Acreages are approximate only. Refinements that may lower the number of anticipated units for an individual property are expected when site specific plans are prepared.

[b] Anticipated units are rounded down, unless the multiplied value has a remainder of 0.75 or more, in which case they are rounded up.

Rural Residential: 0.21 to 1.1 units per acre.

This designation requires lots of a minimum size of 40,000 square feet and is intended to allow for the keeping of horses and other rural activities in a residential setting. It applies to the development areas north of Marsh Creek Road and east of the mouth of Oak Creek Canyon.

Low Density Residential: 1.11 to 1.5 units per acre.

This designation applies in areas that are appropriate for relatively low densities of urban development, with lots between about 30,000 and 40,000 square feet. However, smaller lots are acceptable when clustering occurs per the standards of this Specific Plan. Portions of the Heartland and Moita properties and most of the Mt. Diablo Creek valley floor are designated for this type of development.

Medium Density Residential: 1.51 to 2.2 units per acre.

This designation applies in areas that are appropriate for development with some suburban characteristics. Identified areas for this type of development are generally flatter than surrounding areas, and are generally not visible from Marsh Creek Road. The flattest bowl on the Heartland and Morgan properties and portions of the Mt. Diablo Creek valley floor south of the creek itself are designated for this type of development.

Suburban Residential: 2.21 to 3.0 units per acre.

This designation applies in areas that are appropriate for densities of development that approach suburban densities found in other parts of Clayton. The designation is similar to the "Low Density Residential" designation in the City's existing General Plan. The Hellmers, Osteen and Shirley properties, which are designated for 1.1 to 3 units per acre in the City's General Plan, bear this designation.

Convenience Commercial

This designation applies to a portion of the Rodenburg property that currently accommodates the "Rodie's" store. Under this designation, the store may continue to operate, and may take on some neighborhood serving/ convenience store characteristics. However, the store should maintain its existing rural character. The maximum store size is limited to 3,000 square feet of new construction over and above the existing Rodie's store, which is approximately 6,000 square feet.

Open Space

This designation would apply to all areas that are not designated for residential, or commercial uses in the Specific Plan. When any parcel is subdivided for development under the Specific Plan, the title or development rights to those portions of the parcel designated as Open Space in this plan, shall be offered to the City, East Bay Regional Park District, the State of California, or another appropriate public agency, or non-profit land trust. If development rights are vested with one of the organizations listed above, then the title to and maintenance responsibility for the undeveloped areas may be transferred to a Homeowners Association.

This will ensure that open space immediately adjacent to developed areas is maintained. A similar, alternative method of open space preservation may be considered by the City if it is proposed by a developer.

2. Other Facilities

Potential Park Sites

Figure 6 designates three sites that would be appropriate to accommodate some developed parks in the study area. The three sites include:

- A portion of the Cooper property around the historic Llewellyn House.
- A portion of the Temps property on both sides of Russellmann Creek.
- A portion of the Holmes property in the drainageway of the creek on the site.

Further policies regarding park development are shown in Section E, below.

Historic House Sites

One historic house (the Llewellyn house) has been identified within the development areas in the study area. If development occurs on the site of this house, then the house should be preserved and integrated into the development or its public amenities. Appropriate uses for the historic house would include a bed-and-breakfast inn, community center, recreation building, or a restored single-family residence. This approach is consistent with General Plan Land Use Objective 1d.

3. Land Use Designation Interpretation

Policy LU-12. **Those land areas defined as unbuildable by the goals, objectives and policies of this Plan, such as ridge lines, deed restricted areas, slopes over 40 percent and creek corridors, do not accrue development rights that could be transferred to other locations.**

Policy LU-13. **Parcels in the study area which contain less acreage than the designated allowable minimum parcel size are allowed one unit. For example, if three acres of property is in a 5-acre minimum designation, the three acres can be developed with one unit.**

D. Affordable Housing Provision

The City's main emphasis on development of affordable housing is outside the study area in the Town Center, where commercial services and transit are more available and higher residential densities are appropriate. However, all development in the study area is to contribute its fair share toward addressing affordable housing needs in Clayton. Therefore, the following policy is included.

Policy LU-14. **All development in the study area shall contribute its fair share toward addressing affordable housing needs in Clayton, as specified in the Housing Element of the General Plan.**

E. Park Development Policies

The City will provide for park development in the study area according to this set of policies, with the objectives of providing neighborhood parks as required by the Growth Management Element of the Clayton General Plan, and providing local or pocket parks or open space amenities in most development areas.

The City's Growth Management Element requires the development of parkland at a rate of 3 acres per 1,000 residents. This will result in a need for approximately 3 acres of parks under Specific Plan buildout.

Policy LU-15. **Neighborhood parks shall be developed on some or all of the potential park sites designated in Figure 6.**

When any of the sites shown on Figure 6 is proposed for development, the City will consider in detail whether a neighborhood park should be constructed on it. If a neighborhood park is appropriate, the City will require this dedication of land as a condition of approval for the proposed development project (instead of requiring payment of Parkland Dedication Fees), or it will purchase the park site at fair market value using funds collected as Parkland Dedication Fees. Once acquired, the land will be developed by the City for active recreation including playing fields, play equipment and tot lots, as appropriate.

Policy LU-16. **All developments in the Specific Plan area should include some form of local park, pocket park, greenbelt area, open space, common equestrian facility or similar amenity.**

Site plans for all projects should include parks or open space amenities, which shall be reviewed by the City for adequacy. Credit for these amenities toward the Parkland Dedication fees may be considered by the City depending on the size of and the local or regional significance of the amenity being offered.

F. Study Area Development Potential

At this time, only three site plans have been developed for individual parcels within the study area, so there is no way to say with certainty exactly how many units may be developed under the Specific Plan.

However, the gross acreages within each indicated development area give some indication of probable Specific Plan buildout. As shown in Table 2, the areas delineated for development could probably accommodate a total of 290 new units. When added to 44 units that exist or are approved in the study area, this will create a total of 334 units in the area.

Among the 334 units in the area, 326 would be in development areas with densities of one unit per acre or greater. Under the Specific Plan, these will generally be the only homes in the area that receive new urban services such as sewers. The remaining 8 units will generally be served with septic systems.

The Specific Plan also includes a total of 1.8 acres for new neighborhood-serving commercial uses on the Rodenburg property. This commercial property will be connected to sewer and water service when development occurs around it.

Chapter VI
RESOURCES ELEMENT

■ ■ ■

This chapter outlines the resource conservation programs and measures that are to be included in the Specific Plan. The locations of these features of the plan are illustrated in Figure 7.

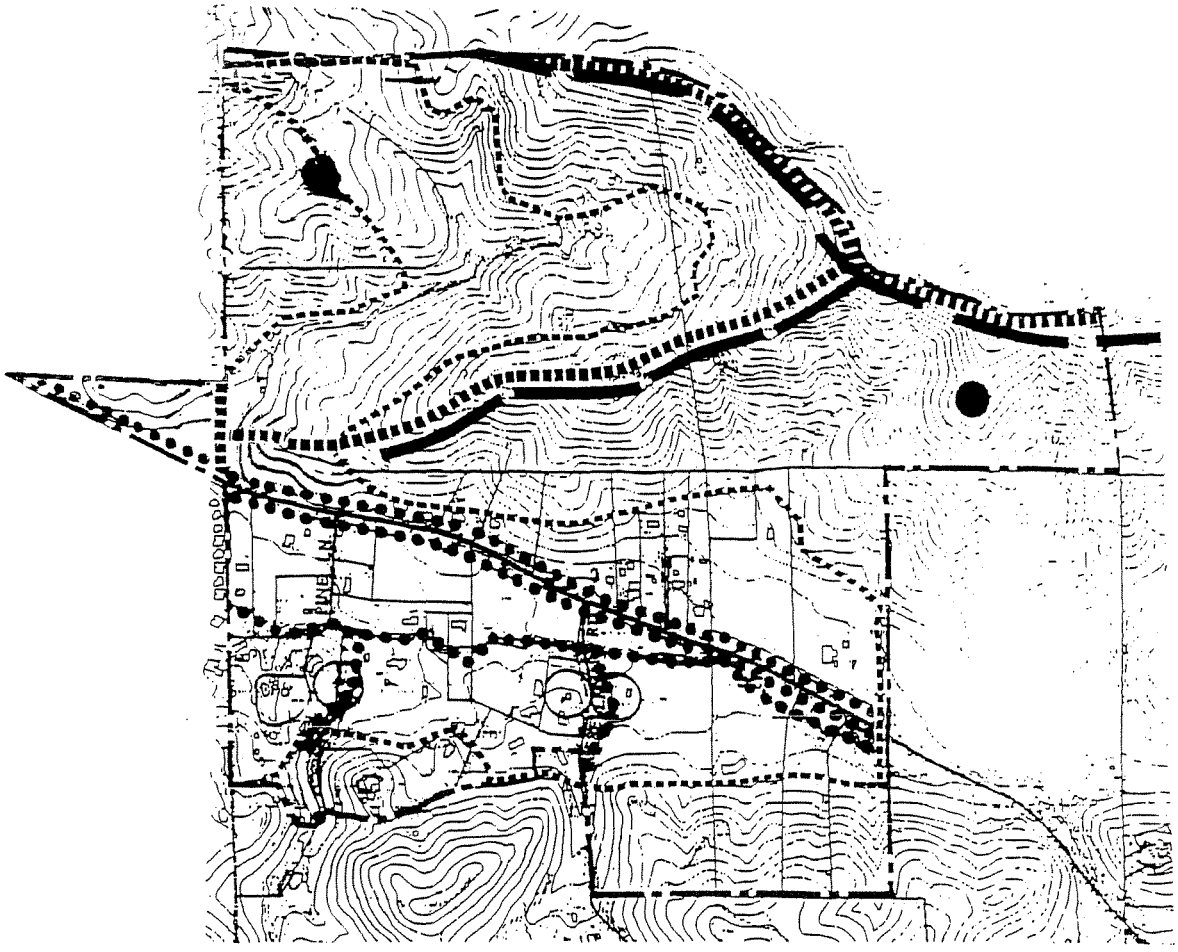
A. Agriculture and Open Space Preservation

Existing agricultural and open space uses are encouraged in areas within the study area where development does not occur. The following policies are intended to preserve these agricultural and open space uses.

Policy RE-1. **No lands outside the limit of urban development identified in Figure 7 shall be developed for urban uses under this Plan. Urban development is defined as any development which exceeds a density of 1.1 units per acre.**

Most areas within the proposed limit line are already targeted for development under this Specific Plan. The limits of development have been set based on topography and natural features. Urban development is generally limited to the relatively flat valley of Mount Diablo Creek, which terminates at the end of existing rural development and the start of open range land. Additional urban development is allowed in valleys where it will not be highly visible from Marsh Creek Road or existing portions of Clayton, which will ensure that the existing rural qualities of the hill slopes along Marsh Creek Road are preserved.

Policy RE-2. **When any parcel is subdivided for development under the Specific Plan, the title or development rights to those portions of the parcel designated as Open Space in this plan, shall be offered in perpetuity to the City, East Bay Regional Park District, the State of California, or another appropriate public agency, or non-profit land trust. If development rights are vested with one of the organizations listed above, it shall be so noted on the deed. The title to and maintenance responsibility for the undeveloped areas may be transferred to a Homeowners Association.**



Legend

- Specific Plan Boundary
- Limit of Urbanized Development Areas
- Creek Corridors and Pathways
- Potential Public Trails
- Conceptual Location of Potential Park Sites
- Major Ridgelines to be Preserved
- Knolls to be Preserved

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 7

Plan Conservation Features

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

This will ensure that open space immediately adjacent to developed areas is maintained. A similar, alternative method of open space preservation may be considered by the City if it is proposed by a developer.

Policy RE-3. **No single loaded public or private streets shall be built where they would face on to land designated for Agriculture within the General Plan. A "single loaded street" is a street with houses on only one side of it.**

Single loaded streets (public or private) tend to encourage growth and development on the undeveloped side of the street. This policy discourages such growth inducement. This policy does not, however, apply to private driveways that have granted the City an easement (minimum 5 feet wide) along the undeveloped side of the driveway. This City easement would prevent access across it without City consent.

B. Creek Preservation and Enhancement

Policy RE-4. **Development along the major creeks in the study area shall include creek preservation and enhancement programs. Any creek preservation and enhancement programs may occur only if found appropriate through site-specific review by the City.**

Targeted creeks include Mount Diablo Creek, Russellmann Creek, and two others without common names, which have been designated as "Oak Creek" and "Holmes Creek" in this plan. No development other than trails shall be allowed within specified buffer zones along any of these creeks. An exception shall be permitted to allow infrastructure (e.g., water, sewer, gas, electric, telephone, cable) to be undergrounded within roads or fire lanes currently existing within specified buffer zones. Landowners shall be encouraged to enhance these creeks by recreating natural channels, planting native vegetation and using naturalistic flood and erosion control techniques. Where enhancement projects are undertaken, creek setbacks will be reduced incrementally, creating an impetus for landowners to include enhancement projects in developments. Creek enhancement guidelines are included in Policy DD-8 and its sub-sections. Creek banks will also be locations for trails in the study area, as described below.

"Oak" and "Holmes" creek are recognized as separate from Mt. Diablo and Russellmann creeks due to their substantially different physical and hydrological characteristics. Roads and infrastructure may be located within specified buffer zones along "Oak" and "Holmes" creeks if creek enhancement projects are performed. All creek enhancement projects will be reviewed by the Planning Commission.

C. Sensitive Zones

Figure 8 shows sensitive zones in the study area as identified in this Specific Plan. Sensitive zones include riparian corridors, ridgelines, chaparral, serpentine, existing easements, and slopes of 40 percent and above.

As stated in the various policies of this plan, these sensitive zones are generally not appropriate for urban levels of development (above one unit per acre), and should be studied closely before rural or ranchette development occurs in them.

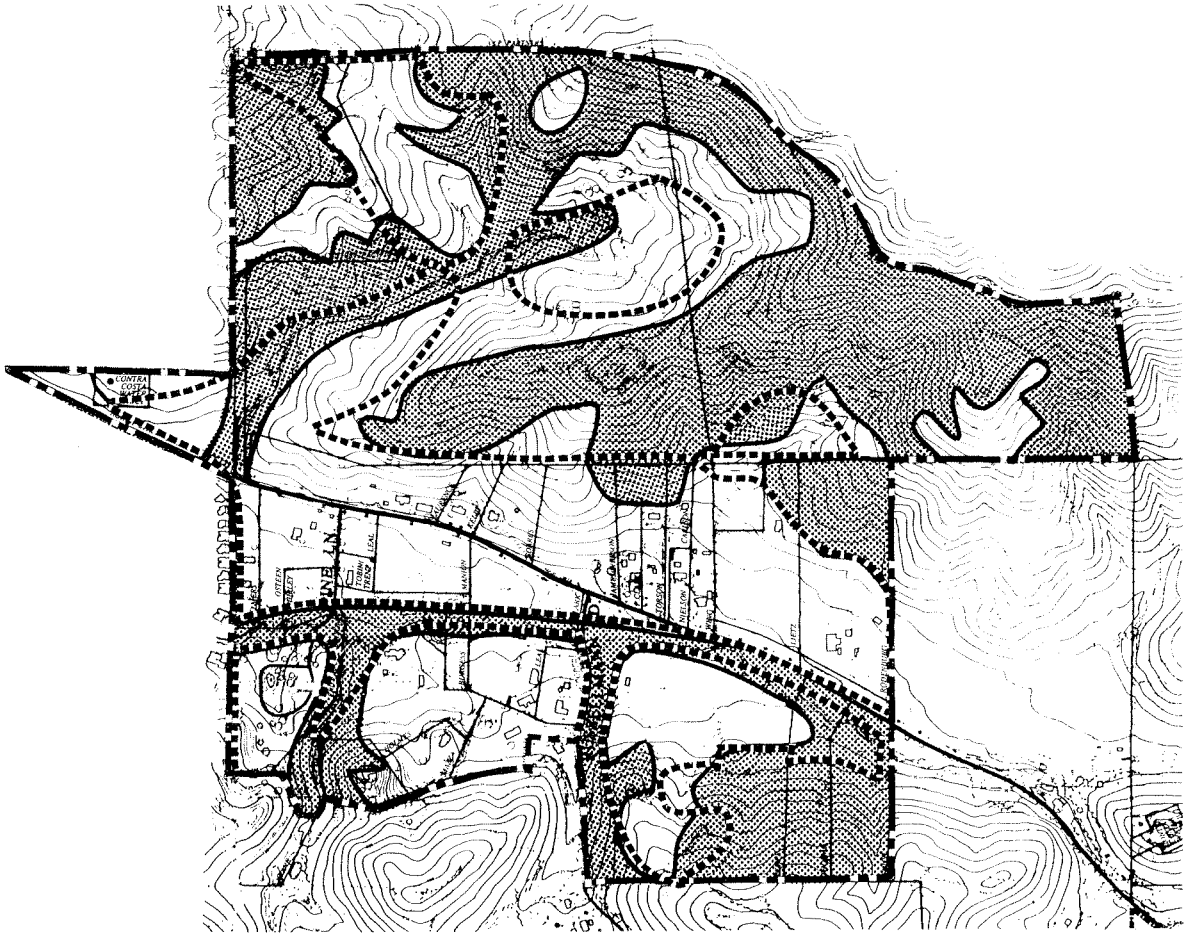
The boundaries shown on Figure 8 for both sensitive zones and development areas are only approximate, and will require confirmation when site-specific projects are proposed. Particular care will be required where development areas are shown as overlapping with sensitive zones.

D. Trail Network

Policy RE-5. **A trail network shall be constructed in the study area along the Mt. Diablo Creek corridor, and it shall be encouraged in other locations to connect to parks, Mount Diablo, Black Diamond Mine Regional Preserve and Contra Loma Regional Park.**

On parcels to be developed, trails will be built to the specifications shown in the Design and Development Standards, provided that they are not redundant with planned sidewalks and would not require inordinate amounts of grading. Trail construction by a developer shall generally be a condition of approval for an individual development project unless an exception is made by the City. Trails are used heavily by Clayton residents, and new residents will demand trails as well. Thus the construction of trails will be a benefit to the individual projects involved.

In other locations, trails will be built to connect the study area with surrounding open space areas, provided that arrangements can be made with individual property owners for their construction and maintenance. Since most of these potential trails would run through private property that is subject to only limited development under the Specific Plan, the City may have difficulty in completing this trail system. However, inclusion of these potential alignments in the Specific Plan will ensure an appropriate direction for future trail planning.



Legend

Sensitive Zones:
- Riparian Corridors
- Chaparral
- Serpentine
- Easements
- Slopes 40% and over
- Knolls
- Portions of the West Face of Keller Ridge with Slopes over 26%

General Limits of Specific Plan Development

Areas where development is projected in sensitive zones will require further study before development proceeds.

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 8

Sensitive Zones in the Study Area

Chapter VII
DESIGN AND DEVELOPMENT STANDARDS

■ ■ ■

These Design and Development Guidelines offer a tool to designers and builders to retain and enhance the character of the planning area as it develops. They will be used by the City to evaluate development proposals. The Guidelines will direct future development to reflect the planning area's rural nature.

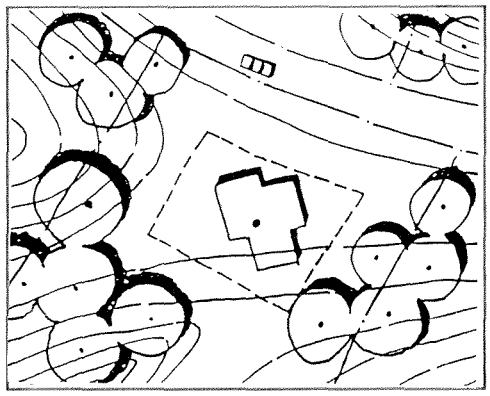
These Design Guidelines apply to all portions of the planning area subject to development under the specific plan. They address six primary topics:

- Site Planning
- Creek Corridors
- Streetscape and Landscape Architecture
- Residential Architecture
- Energy and Resource Conservation
- Commercial Development

A. Residential Site Planning

Policy DD-1: Each development plan shall indicate building envelopes for each lot within the Ranchette Residential, Rural Residential, Low Density and Medium Density designations.

DD-1a. Definition. Building envelopes are areas shown in plan that define the portion of a parcel that may be developed with residences, paving, parking or ancillary structures. Areas outside of building envelopes are to be part of private parcels, but are to remain in open space, gardening, grazing, or agricultural use. Areas outside of building envelopes may also be used for driveways, swimming pools, or spas. A diagram of a building envelope is shown in Figure A on the next page.



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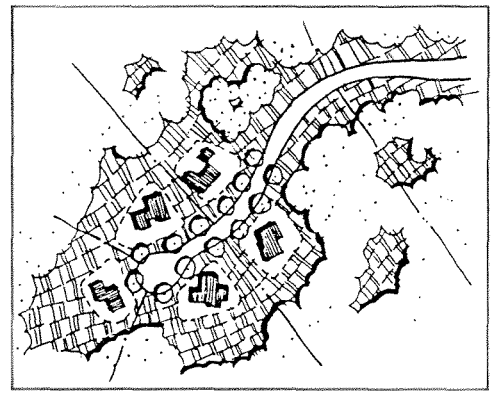

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DD-1b. Goals. The use of building envelopes for planning purposes will protect the visual and physical quality of the Marsh Creek Road scenic corridor, riparian areas and hillsides. Envelopes shall also respond to long range vistas, site-specific topography and vegetation.

DD-1c. Envelope sizes. Maximum building envelope areas by density are:

- 12,000 square feet for Ranchette Residential.
- 8,000 square feet for Rural Residential, Low and Medium Density Residential.

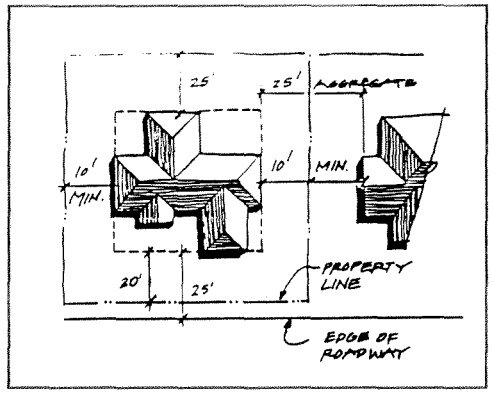
These envelope sizes may be expanded by 20% on any lot where all construction is only one story tall and when such an allowance would not conflict with General Plan lot coverage standards.

Since lots in the Suburban Density Residential area would be relatively small, no building envelopes are required, but the setbacks described below must be followed.

DD-1d. Envelope delineation. Proposed building envelopes shall be delineated by a project proponent in any application for development. The natural features, slopes, vegetation and views that the envelopes preserve are to be indicated clearly.

DD-1e. Envelope orientation. Building envelopes should be oriented parallel to a site's slope so that grading is minimized.

DD-1f. Envelope siting. In Ranchette Residential areas, building envelopes should be arranged together near roadways and cul-de-sacs, as shown in Figure B. This will minimize grading, the length of access road and disturbance of open space.



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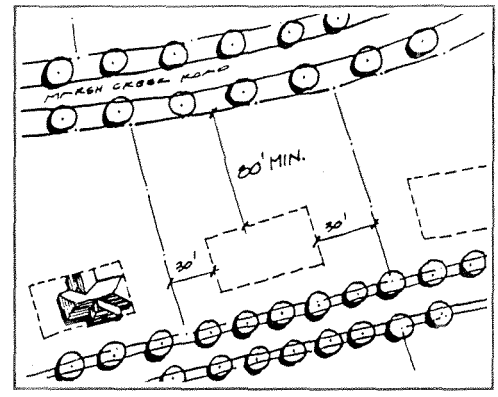

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Policy DD-2: All buildings in the Specific Plan area shall conform to the following building setbacks:

DD-2a. Standard setbacks. All buildings must conform to the following minimum setbacks, as shown in Figure A:

- Front property line: 25 feet to the edge of the paved street and 20 feet to the property line. The setback may be reduced to 15 feet to the property line for side-loaded garages only where the slope of the lot is 15 percent or greater.
- Rear property line: 25 feet.
- Side property line: 25 feet aggregate between two houses, with a ten foot minimum for each lot.

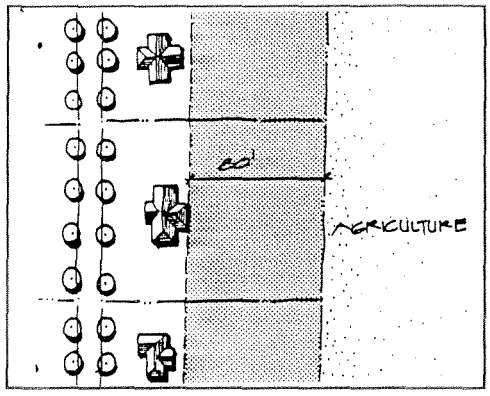
DD-2b. Front yard variation: Front yard setbacks shall be varied along each street.

DD-2c. Corner lots. Street side yards on corner lots shall have the same setbacks as front yards.

DD-2d. Marsh Creek Road. In order to preserve the rural character along Marsh Creek Road, a house on any parcel bordering the road's right-of-way shall have the following minimum setbacks, as shown in Figure B:

- Marsh Creek Road property line: 80 feet.
- Side property line: 30 feet.

All buildings in development areas along Marsh Creek Road will generally be oriented away from the road through appropriate siting and screening of buildings.



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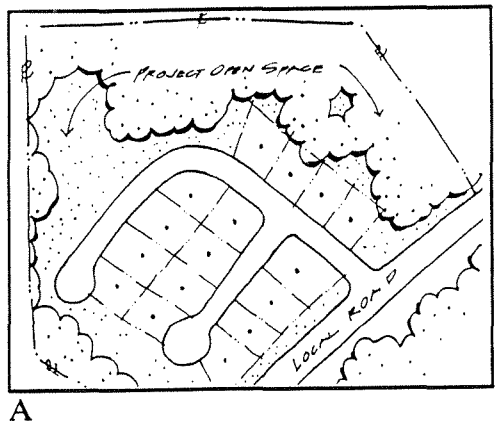
DD-2e. Urban/agricultural interfaces. In order to create a separation between properties that will be developed at or above densities of one unit per acre and those properties that will be retained in active agricultural use, residences must be built with their backs to the active agricultural properties and must have rear yard setbacks of 80 feet. This is illustrated in Figure A.

DD-2f. Creek setbacks. Creek setbacks under this Specific Plan are described in Policies DD-8b through DD-8e.



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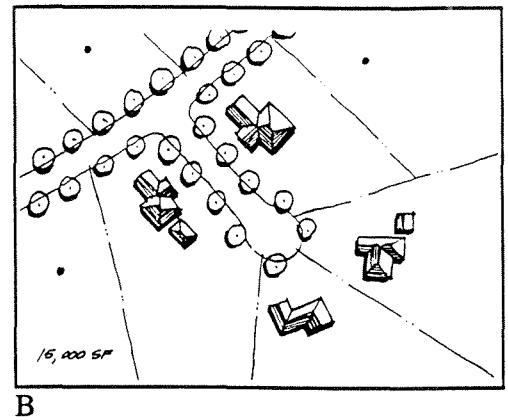

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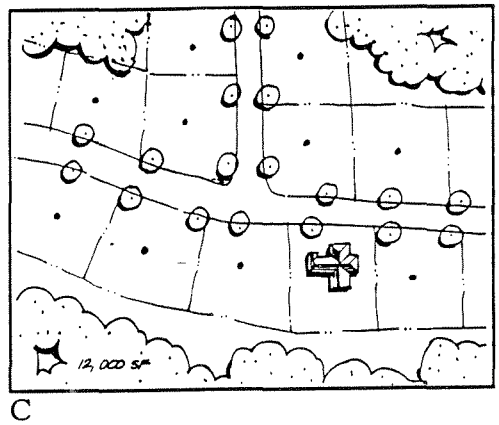

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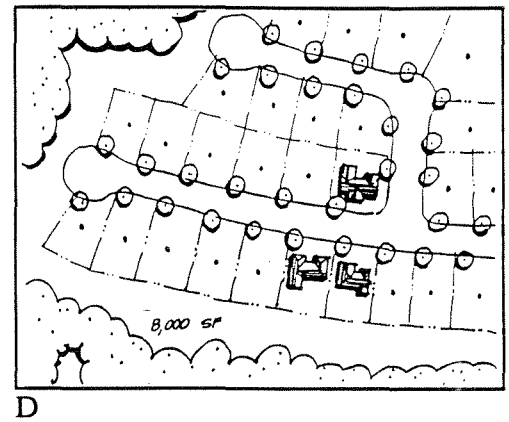

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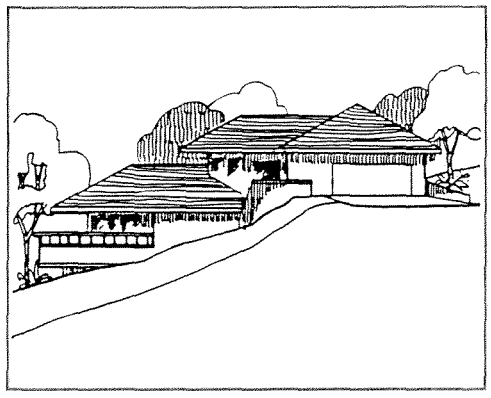
DD-2g. Exceptions. Setbacks may be changed based on site specific considerations such as trees, steep topography, road/trail crossings, or appropriate clustering.

Policy DD-3: Development clustering shall be encouraged in Low, Medium and Suburban Density development, provided that the Planning Commission finds that clustering does not result in a site plan that is overly dense or that impedes the conservation of natural or visual resources.

Development clustering places units on smaller lots than would be normally allowed by the development densities in an area, and preserves the remaining land as open space. This concept is illustrated in Figure A.

DD-3a. Minimum lot sizes. If development clustering occurs, minimum lot sizes must be maintained as follows:

- Low Density: 15,000 square feet (Figure B).
- Medium Density: 12,000 square feet (Figure C).
- Suburban Density: 8,000 square feet (Figure D).



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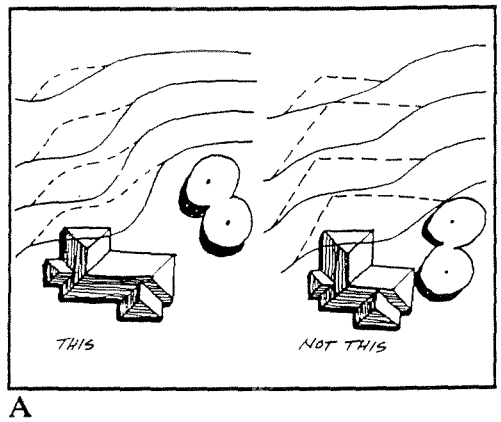
DD-3b. Ranchette and Rural Residential. Development clustering resulting in smaller lot sizes is not allowed within the Ranchette and Rural Residential land use designations, since these designations' intent is to create large lots with residences separated by rural lands.

Policy DD-4: The visual impacts of grading shall be minimized in the study area, both by limiting the amount of grading and by properly contouring areas where grading occurs.

DD-4a. Grading limitations. Site grading shall generally be limited to areas within the building footprint, under access roads and driveways, and where necessary to create modest yards or to correct unusual site conditions such as landslides.

DD-4b. Building forms. Buildings and roads should generally conform to the topography consistent with geotechnical recommendations. On sloping sites, buildings should have multiple levels, and be dug into and stepping down the hill, as shown in Figure A. No terracing flat pads shall occur in areas with natural slopes above 20 percent. For the purposes of this policy, "natural slopes" shall include those slopes that have been graded to make necessary landslide repairs.

DD-4c. Localized grading. More extensive grading may occur on a limited basis, if absolutely necessary, where it will improve the visual quality of a site. However, any grading shall be accomplished with sensitive contouring, varying slopes and gently rounding tops and toes of slopes into the natural grade.



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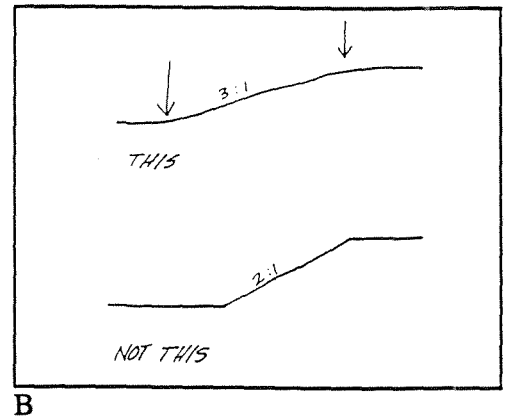

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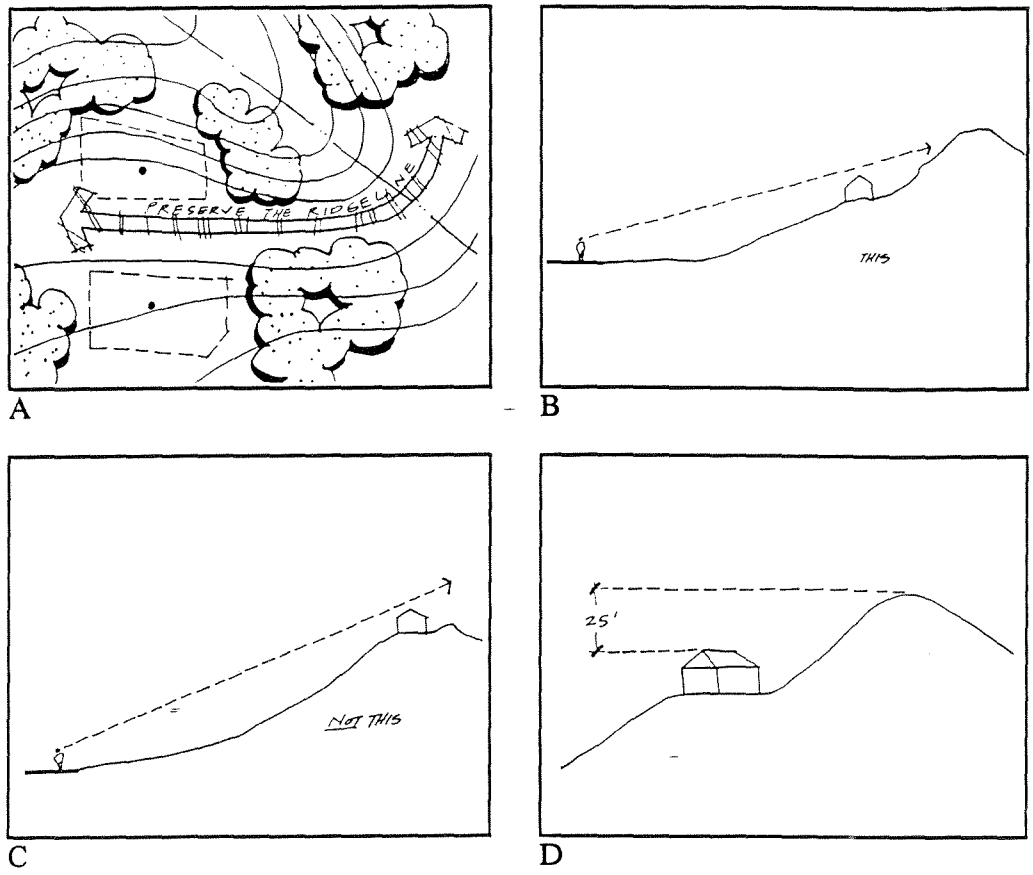
DD-4d. Visual quality. Where grading occurs, new slopes must be configured to retain the natural character of the site, as shown in Figure A. In plan view, new contour lines should be rounded to mimic natural contours. Graded slopes should undulate and should not result in relatively flat planes.

DD-4e. Slope steepness. No artificial slope should exceed the naturally occurring slopes in its immediate vicinity, and graded slopes greater than 3:1 are prohibited without special mitigation or circumstance. See Figure B.

DD-4f. Feathering. Graded areas should be "feathered" so that there are no abrupt transitions between flat areas and graded slopes, or between graded and ungraded areas, as shown in Figure B.

DD-4g. Grading plan. To aid in the evaluation of development proposals, all applicants shall submit grading plans at a minimum scale of 1" = 40' that clearly show the limits of areas to be graded, existing and proposed contour lines at 2-foot intervals, and the steepness of slopes that would be created through grading.

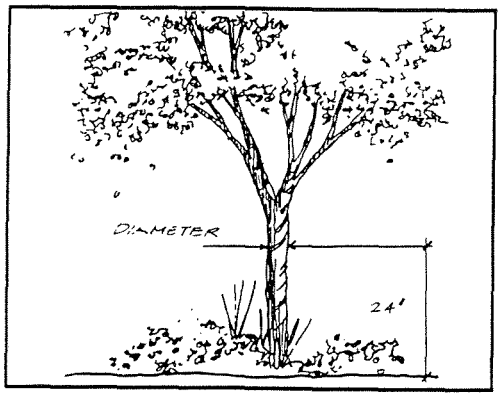


Policy DD-5: No development shall occur along the tops of ridgelines and knolls identified in Figure 7, as shown in Figure A.

DD-5a. Silhouetting. No development will be permitted where a structure would appear to be silhouetted against the sky when viewed from any point along Marsh Creek Road, or from any publicly owned open space, as illustrated in Figures B and C.

DD-5b. Distance from ridgeline. The minimum height difference between the top of a building and the top of ridge lines and knolls shall be 25 feet in areas which can be viewed from below along Marsh Creek Road or any publicly owned open space, as shown in Figure D, to ensure visual space between the rooftop and the ridgeline or knoll.

DD-5c. Grading. Grading is strongly discouraged within 25 vertical feet of the top of a ridge or knoll.



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Policy DD-6: Existing trees should be retained wherever possible.

DD-6a. Tree identification. Each site plan shall include the outlines of the tree canopy on the entire site, and the trunk and canopy locations of all existing trees of 6" in diameter or greater, measured at 24 inches above grade, which are within 50 feet of the proposed limits of grading or construction. Measurement is illustrated in Figure A.

DD-6b. Large trees. Trees with a trunk diameter of 6" or greater at 24 inches above grade shall not be removed without specific review and approval by the City.

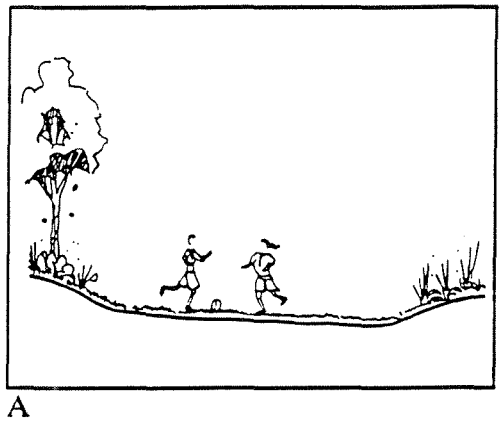
DD-6c. Trees outside building envelopes. Trees outside building envelopes or setbacks may not be removed unless removal is consistent with the Tree Preservation Ordinance.

DD-6d. Protection of oak trees. No development project under this Specific Plan shall result in the removal or damage of more than 25% of the oaks with a diameter of 6" or greater at 24 inches above grade within the area delineated after removal of all applicable setbacks.

DD-6e. Tree replacement. Any trees that are removed for a project shall be replaced with trees of a similar species, at a 2:1 ratio for trees in 24" boxes, or at a 3:1 ratio for trees in 15 gallon containers.

DD-6f. Arborist review. If a proposal calls for removal of any oak trees, or for the removal of more than five other trees, then an arborist shall be consulted, and his or her report submitted to the City, to verify the need for tree removal and to oversee the replacement of trees.

DD-6g. Christmas tree farm. Trees planted for harvest as part of the Christmas tree farm on the Temps property is exempt from the above provisions.



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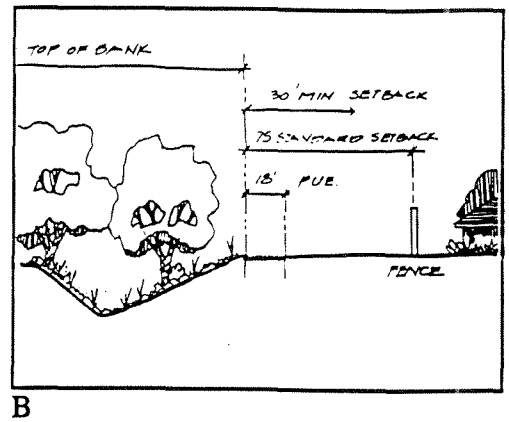

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Policy DD-7: **Detention basins shall be of sufficient size to contain storm water runoff during the rainy season, but should also be flat enough to be used as an open space or recreational amenity while dry. This is illustrated in Figure A.**

B. Creek Corridor Preservation and Enhancement

Policy DD-8: **Creek corridors in the planning area shall be preserved and enhanced.**

DD-8a. Top of bank. Setbacks from creeks are defined by the "top of bank". In this Specific Plan, "top of bank" means the point where the banks of a creek change in slope from relatively vertical to the relatively flat areas next to the creek. Where no such bank exists, applicants shall create banks through the creek enhancement measures described below. The location of the "top of bank" shall be proposed by each individual project applicant and approved by the City Engineer on a case-by-case basis.

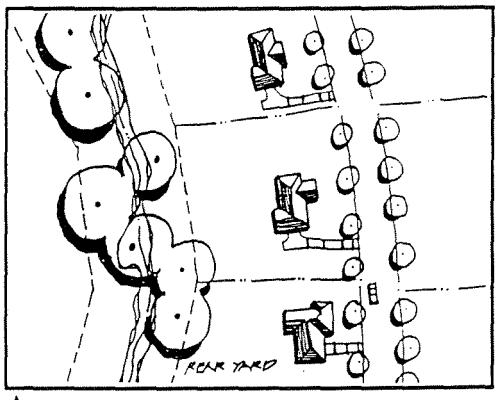
DD-8b. Minimum creek setbacks. In most cases, no building development, roadway construction or non-native or permanently irrigated landscaping shall occur within 75 feet of the top of bank of either side of a creek, as shown in Figure B. This setback may be reduced if creek enhancement projects are included in a development, as described below, but creek corridors shall not be less than 100 feet wide, including the creek channel, under any circumstances.

DD-8c. Uses in creek setbacks. Creek setbacks shall generally not be developed or landscaped for urban or suburban uses, including structures, roadways, yards, lawns or swimming pools, and shall be left in a natural state with riparian vegetation and trails. Creek setbacks may be crossed by bridges and roadways, provided that crossings run perpendicular to the creek and follow the guidelines in DD-8h. Exceptions to these use restrictions may be granted by the City upon findings of

hardship or unique circumstances while insuring that the flood, drainage, habitat, etc. values of the setback are maintained.

DD-8d. Setback ownership. Creek setbacks may be included in private lots and when they are, shall be counted in the overall site area for calculating density. Creek setback ownership is, however, encouraged to be vested in the City, another public agency, a non-profit preservation organization, a homeowners association or other appropriate entity to provide pathway and linear greenbelt access, maintenance and liability, and also to mitigate the environmental impacts resulting from development adjacent to creeks. These encouraged ownership options may be part of a creek enhancement project, as described below.

DD-8e. Creek enhancement. Naturally occurring creek channels in the planning area have been degraded and culverted in many areas. Development proposals in these areas should include enhancement of the creek channels to provide adequate flood conveyance and create natural looking creek corridors, including retention of existing native vegetation, planting of new native vegetation, naturalistic erosion control measures, biotechnical slope stabilization and prohibition of grazing. Where significant creek enhancement is completed as a part of a project, the required creek setback may be reduced by the City to help to off-set the costs of enhancement, down to a minimum of 30 feet from top of bank, provided that the total creek corridor shall not be less than 100 feet. Specific standards for creek enhancement shall be included in individual development plans.



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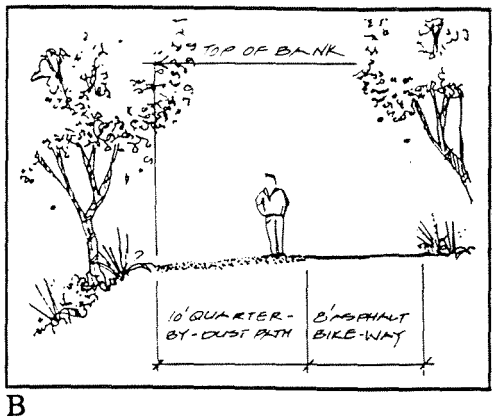

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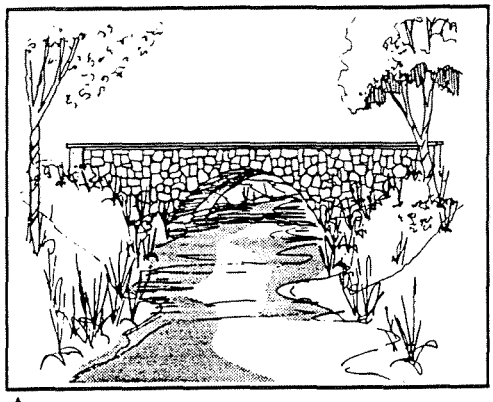
DD-8f. Lot orientation. As illustrated in Figure A, private lots should generally back up to creeks and drainage channels, in order to limit public access to the creek to a limited number of designated locations.

DD-8g. Creekside trails. In addition to creek enhancement, multi-use paths offering pedestrian, bicycle and equestrian access shall be developed along one side of the tops of the banks of Mt. Diablo Creek, Russellmann Creek, and the creek on the Holmes property, in the areas shown in Figure 7, unless such a path would be redundant with a sidewalk adjacent to it. These paths are intended to meet the needs of residents whose lots are adjacent to the creek corridors. Where possible, a path with a typical cross-section shown in Figure B should be constructed, but narrower paths may be necessary to preserve habitat or to reduce potentially damaging grading in some areas. The City will ensure coordination of creekside trails between developments in its review of applicant's plans for individual projects. Access to paths will be gained at street crossings over creeks and from open-ended cul-de-sacs.



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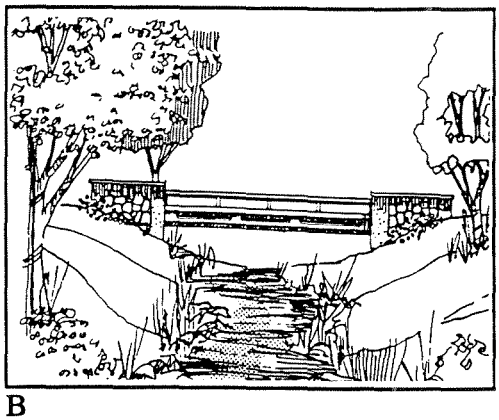

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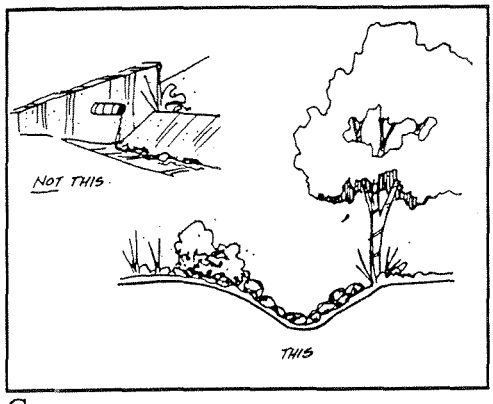

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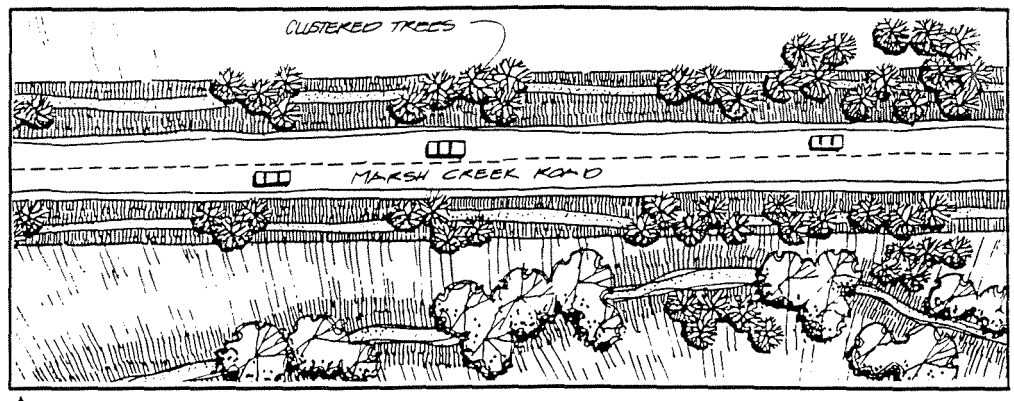
DD-8h. Creek crossings. Creek crossings should be constructed of non-flammable materials and designed as aesthetic and practical bridges or arched culverts, with solid, facia-covered footings and a rural character. Bridge rails should be low and semi-transparent so as to not obstruct views. Bridges should be designed to span the creek without reducing the effective flow of the stream, and should generally have footings that avoid the limits of flow of the one hundred-year storm. Acceptable examples are shown in Figures A and B.

DD-8i. Drainage channels. Underground creek culverts and pipes should be avoided. Drainage channels should only be developed where absolutely necessary to convey storm flows to existing creek channels, and should have the visual character of naturally occurring creeks. Drainage channels should follow meandering courses, be planted with native vegetation, and be stabilized with rock linings or similar materials rather than smooth concrete. Examples are shown in Figure C.

DD-8j. Outfalls. Pipe outfalls from development areas into creeks shall be designed to blend into the banks of the creek and should be directed downstream, rather than perpendicular to the creek channel. Rock aprons at the outfall should be designed to appear as natural rock outcrops, not aprons of loose stone. Headwalls should be faced with natural-appearing stone, or textured to resemble stone, rather than smooth finished. Biotechnical slope protection should be used where possible around discharge points.



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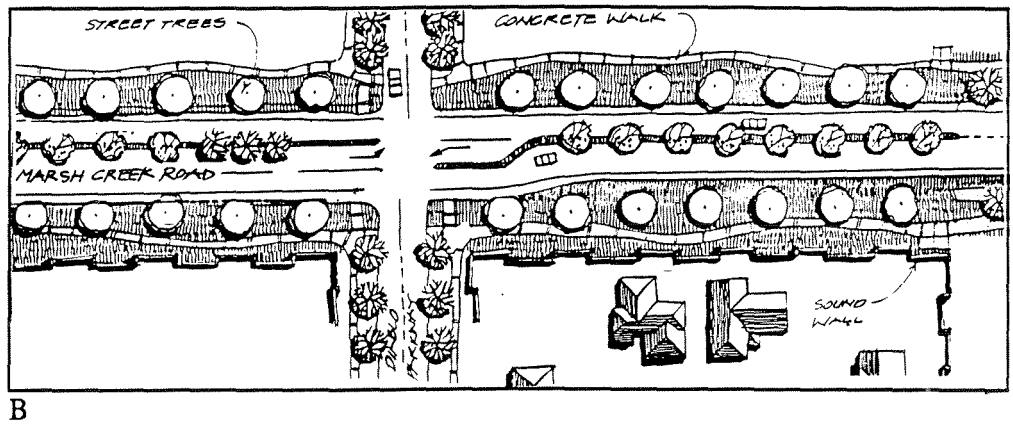

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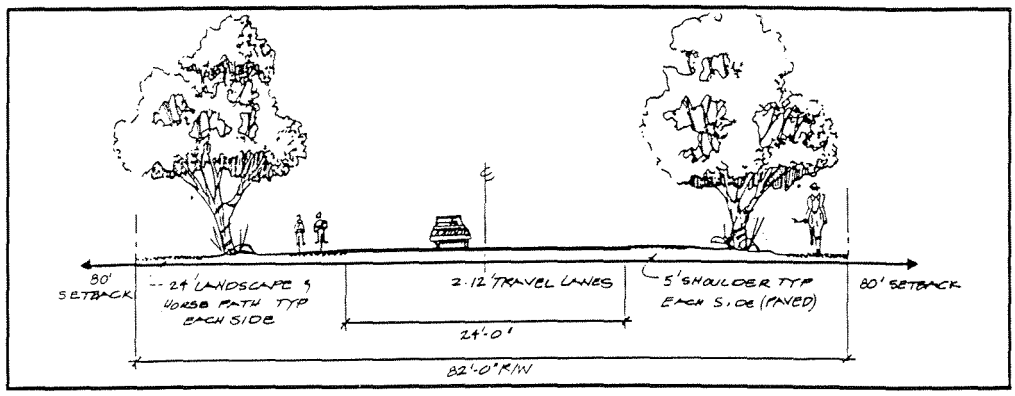
C. Streetscape and Landscape Architecture

Policy DD-9: In order to protect the scenic quality of Marsh Creek Road, the streetscape should reflect the rural character of the planning area.

Streetscape features proposed for Marsh Creek Road are shown in Figure 9, and policies for the detailed design of Marsh Creek Road are included in Policy CI-3.

DD-9a. Gateways. The transitional nature of urban development within the study area along Marsh Creek Road will be defined with two different gateways in the study area, both of which will make use of existing street trees.

- The "Rural Gateway", shown in Figure A, will mark the transition from rural eastern Contra Costa County to the rural-residential portion of the study area. Located where Mt. Diablo Creek is closest to Marsh Creek Road, the plantings in this gateway will consist of oaks, madrones, alders and other types of native, riparian trees, planted on both sides of the road.



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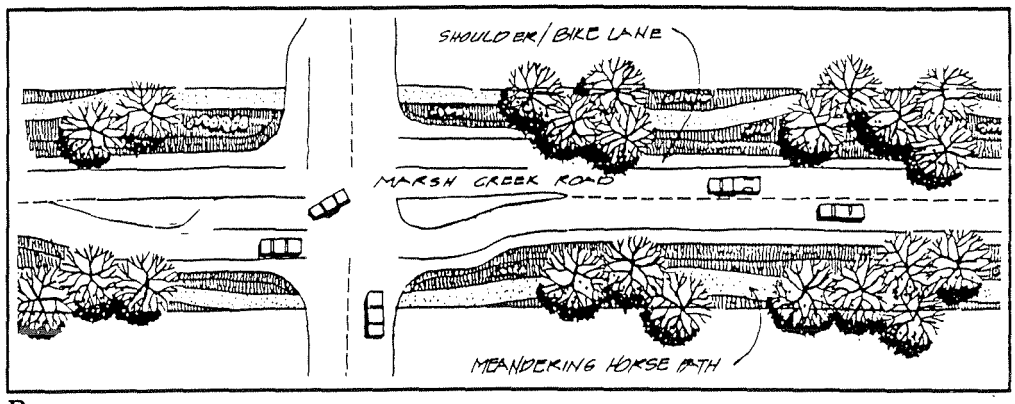
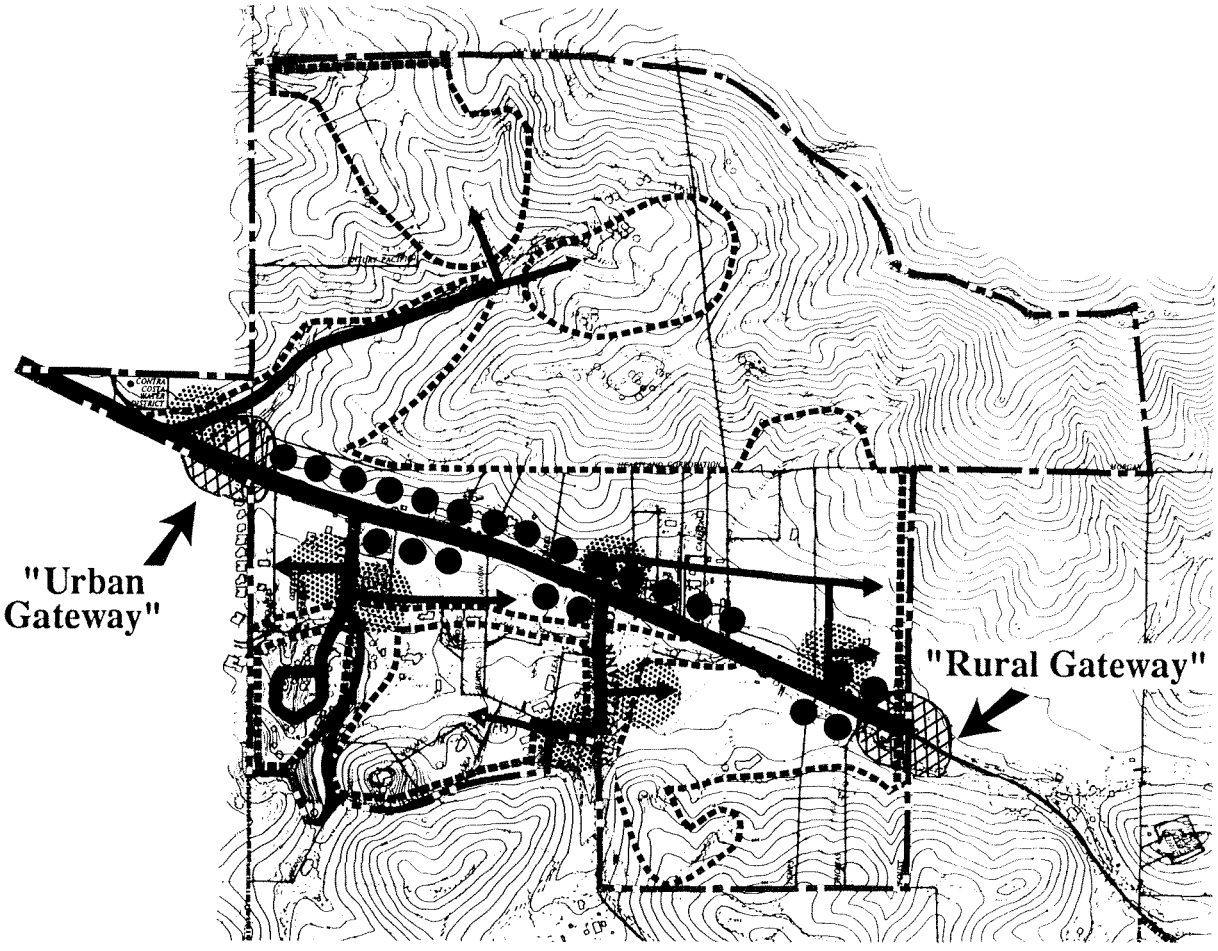


B

- The "Urban Gateway", shown in Figure B (on the preceding page), will create the transition from the study area into more urbanized portions of Clayton. It will incorporate and complement the regular planting of street trees already present along the northern edge of Regency Meadows, and include a similar regular planting on the north side of the street.

DD-9b. Streetscape. Along Marsh Creek Road between the two gateways, both of the road's edges will have 24 foot landscape corridors accommodating a meandering pedestrian/equestrian path and clustered plantings of Valley Oaks, as illustrated in Figures A and B. Oaks will be planted in groups of three to five, with irregular spacings of 50 to 100 feet, but without any trees in the view corridor areas shown without trees in Figure 9. In areas between oaks, a low understory planting of native plants, grasses and wildflowers will be planted, including manzanita, monkeyflower, and California golden poppy.



Legend

Gateways

Potential Entry Feature Locations

Roadway Segments with Oak Clusters

(Open View Corridors along Marsh Creek Road are those areas without Oak Clusters.)

Specific Plan Boundary

NORTH

5 Acres

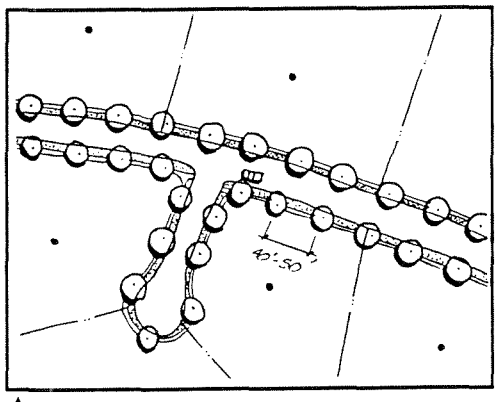
0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 9

Streetscape Concepts



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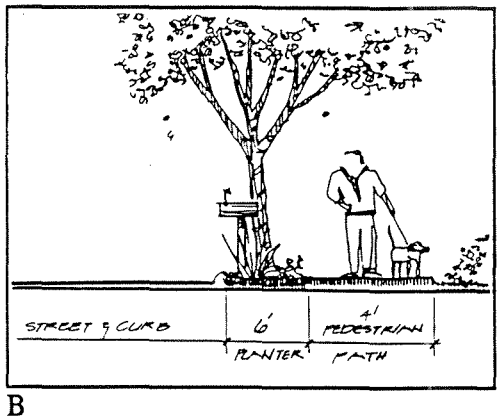
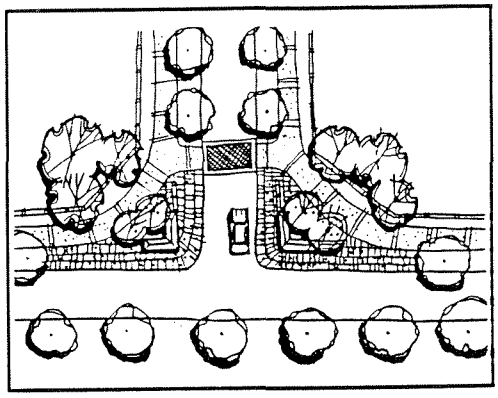


B

Policy DD-10: Each development area in the planning area should have a defined rural neighborhood character.

DD-10a. Street trees. Each collector or local road should be planted with trees. In flat areas, trees should be planted 40 to 50 feet apart, as shown in Figure A. In hillside areas, trees may be planted at regular intervals or in informal groups of two to five. With time, these trees will become very large, and will reinforce the rural-residential quality of the area.

DD-10b. Pathways. Local roads should not have monolithic curbs, gutters and sidewalks. Instead, where sidewalks are required they should be constructed of asphalt, decomposed granite or quarter-by dust in a polymer base, or another universally accessible material with a rural character. These walkways should be separated from the roadway by a minimum 6-foot planting strip to accommodate street trees and mail boxes, as illustrated in Figure B.



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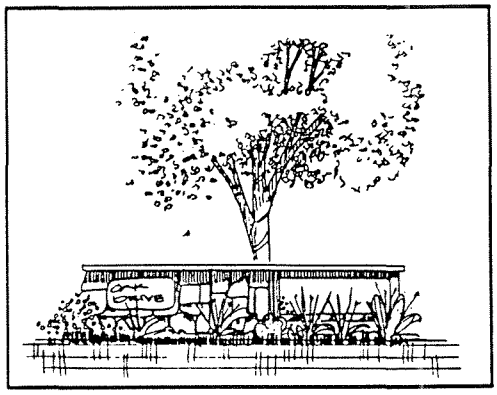


B

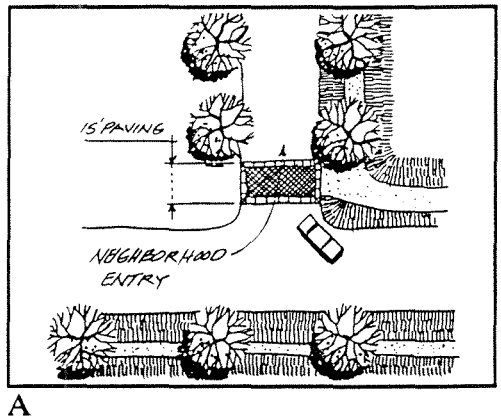
DD-10c. Curbs. Curbs on study area streets may be rolled or squared, or may be omitted entirely if adequate provisions for street storm drainage are included in street design. However, no rolled cubrs may be used in lieu of a formal curb cut. Omission of curbs is encouraged since roadside drainage through swales allows for infiltration and decreases runoff and water pollution.

Policy DD-11: Primary entry features should be constructed at junctions of neighborhood entry roads with Marsh Creek Road, Oak Creek Canyon Drive, Pine Lane and Russellmann Road. They should be designed with sensitivity to the setting, and should reflect the rural character of the area.

DD-11a. Entry feature locations. Entry features should be located only at the points shown on Figure 9.

DD-11b. Materials and treatment. Entry features should include traditional, rural materials such as windrow planting, field stone walls, columns or rail fences. Highly reflective or machined materials are discouraged. An elevation and plan of an acceptable entry are shown in Figures A and B.

DD-11c. Entry feature height. Entry feature height should be appropriate to the specific setting, in the range of 3½ feet to 8 feet tall.



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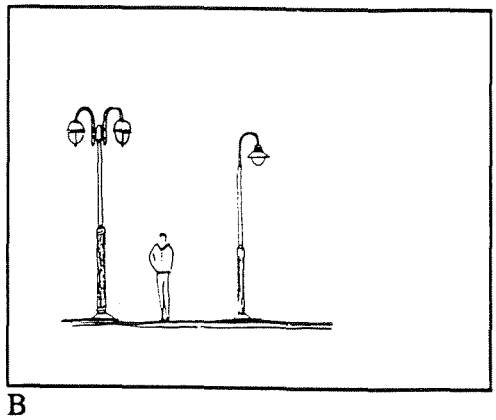

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DD-11d. Entry feature lighting. Entry feature lighting should be ground mounted and directed inward to illuminate entry features, and should be minimized so as not to produce glare and safety hazards.

DD-11e. Decorative paving. Decorative paving materials should be used to establish a definite transition between rural roads and individual neighborhoods, and should have widths of approximately 15 feet, as shown in Figure A.

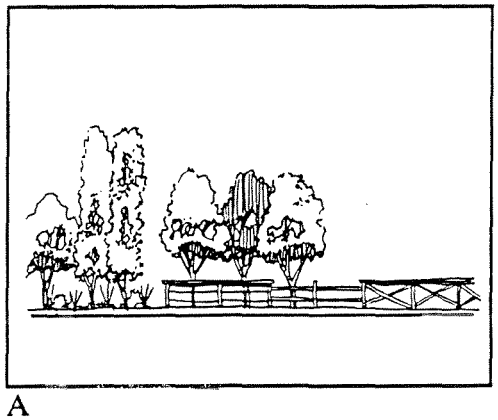
Policy DD-12: In residential neighborhoods, street lighting should be considered an integral part of roadway design, and should not be added as an afterthought.

DD-12a. Lighting locations. Roadway intersections in residential neighborhoods should be sufficiently lit with appropriate streetlights. Few streetlights, if any, should be provided along continuous stretches of local roadways or in ranchette areas. Lighting should be located in a manner that minimizes the impact of lighting upon adjacent buildings and properties.

DD-12b. Lighting directions. Street lighting should be oriented downward with no splay of light off-site.

DD-12c. Lamp design. Streetlamps should be designed or selected to match the rural residential character of the area, as shown in Figure B.

DD-12d. Lamp height. Streetlights should not exceed 18 feet in height.



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Policy DD-13: Fences and screening should be minimized and reflect the area's rural quality.

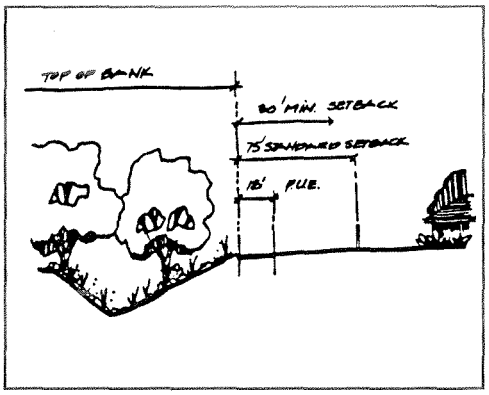
DD-13a. Fence types. Some appropriate fence types for the area include low split rails or peeler posts, architectural wire and fences with vines or shrubs, as shown in Figure A. Windrow or orchard tree planting can also create screening within the rural spirit of the area. The overall fencing scheme in a development should be cohesive. It should include variety, but should not be random.

DD-13b. Allowed fences. Fences should be visually permeable and no more than four feet tall where they are outside of building envelopes defined in this Specific Plan. Within building envelopes, fences may be up to six feet tall and/or solid, but only if necessary for reasons such as safety, noise insulation or to pen pets. A desire for privacy will generally not be considered an adequate reason for a solid fence. Conformance with this policy shall be required in the Ranchette and Rural Residential designations. In denser areas, conformance is encouraged but not required.

DD-13c. Sound walls. No concrete or masonry sound walls should be constructed for noise mitigation in the study area. All exterior noise mitigation should occur through site design, berms or wooden fences built within building envelopes.

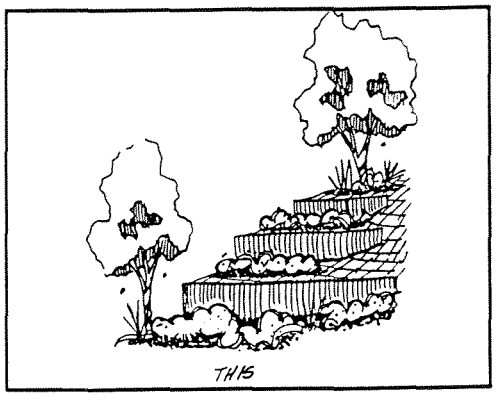
DD-13d. Neighborhood continuity. Specific standards for fence design should be determined within each neighborhood in order to retain neighborhood continuity.

DD-13e. Marsh Creek Road. A low fence should be installed along all property lines along Marsh Creek Road to create visual continuity along the road.



A

DD-13f. Creeks. Low fences that meet the requirements listed in DD-13a should be installed along property lines or easements that adjoin creek corridors to keep residents from mistakenly encroaching into the creek setback. An illustration is shown in Figure A.



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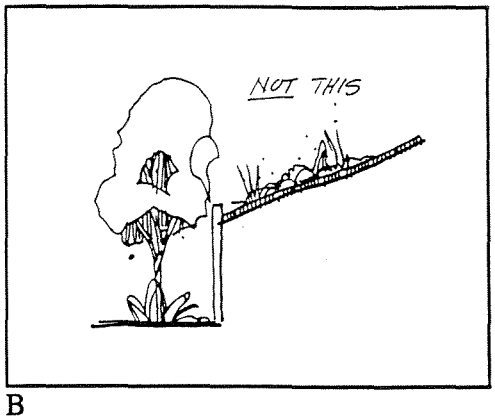


B

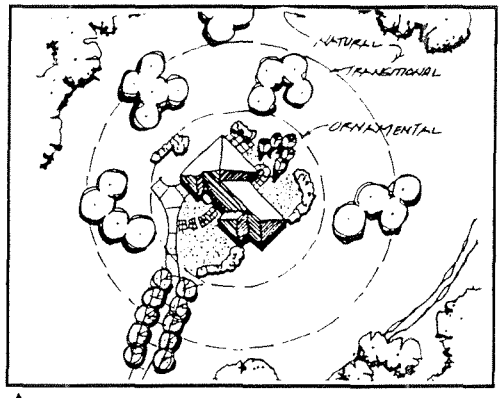
Policy DD-14: Retaining walls should be avoided whenever possible in the planning area, for both building and road construction, and should be designed to be architecturally cohesive with development. Low stepped walls, angled or landscaped walls, or screened walls are preferable to a single retaining wall of hard materials.

DD-14a. Retaining wall materials. Where absolutely necessary, retaining walls for buildings, yards, roads or other construction should be made of chipped face cinder block, interlocking concrete masonry unit (CMU) systems, treated concrete surfaces (such as colored, blasted or textured), applied fascias such as field stone, or wood walls. Glossy or untreated masonry materials and materials such as Crib-Lock shall not be allowed.

DD-14b. Treatment. Retaining walls on private lots should be of the same material and design as the lot's house to appear as an integral extension of it.

DD-14c. Stepping. As shown in Figures A and B, retaining walls should be stepped down a slope, rather than designed as a single vertical wall.

DD-14d. Retaining wall review. Retaining walls requiring a building permit shall be subject to site plan review by the Planning Commission.



A

Policy DD-15: Landscaping should be consistent with the palette of plants naturally occurring in the planning area.

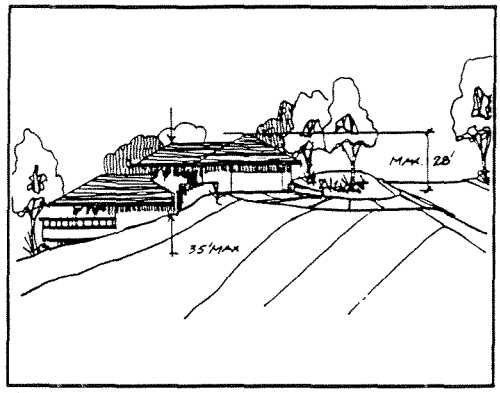
DD-15a. Landscape transition. As shown in Figure A, landscaping around a house should fall into three concentric areas around the structure:

- Ornamental landscaping, which most closely surrounds the house and may include exotic species, lawns, and other plant types that are not typical of the area. Ornamental landscaping should be completely within the building envelope.
- Transitional landscaping, which forms a second ring around the house, may include some exotic species, but should be relatively drought tolerant and should have the general appearance of native vegetation in the area.
- Native landscaping, which forms the outermost ring, should include only native species typical of the area, planted to resemble the natural vegetation pattern. Wild, untended landscapes are preferred in this area.

This landscape scheme should be followed most closely in the Ranchette, Rural and Low Density areas, where lots will be relatively large, but may be applied with some modification in denser development areas as well.

DD-15b. Turf. As a means to conserve water and maintain landscaping consistent with the natural surroundings, areas of turf or lawn should be limited to the minimum necessary for recreation and active use.

DD-15c. Drought tolerant landscaping. All streetscape and on-site landscaping in the study area should be drought tolerant, in accordance with the City's Water Conserving Landscape Ordinance.



A

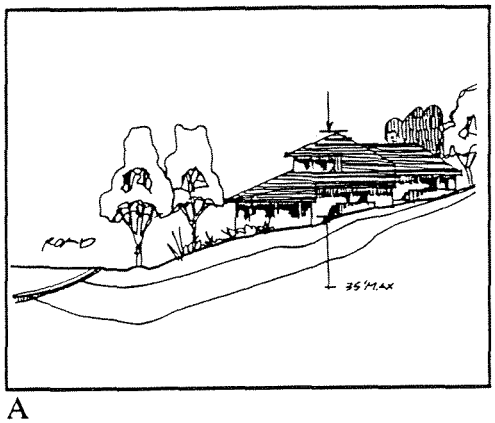
DD-15d. Drainage needs. Landscaping and spot grading should accommodate increased runoff that results from site development by directing runoff into vegetated areas.

D. Residential Architecture and Building Design

Policy DD-16: All buildings shall conform to the maximum building heights in the planning area. These heights vary depending on topography, and are generally intended to require buildings to conform to their underlying topography.

DD-16a. Flatland and low slope development. Flat and low slope (0-20% slope) construction shall not exceed 35 feet in height.

DD-16b. Downslope development. Downslope sites are those with slopes over 20% where the roadway is at the top of the slope. On these sites, houses should appear to have one story front elevations with a maximum height of 28 feet above grade at the front of the house. These homes should terrace down the slope, and shall follow a low profile no more than 35 feet above finished grade at any point of construction. This is illustrated in Figure A.



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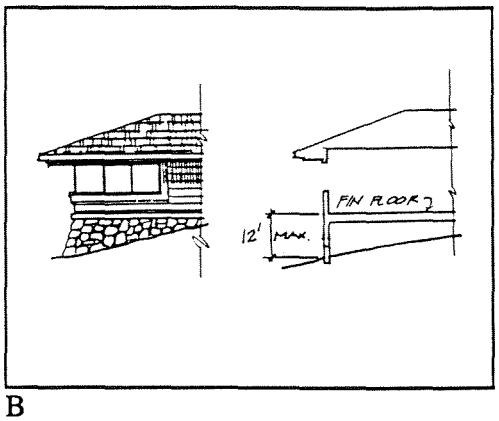

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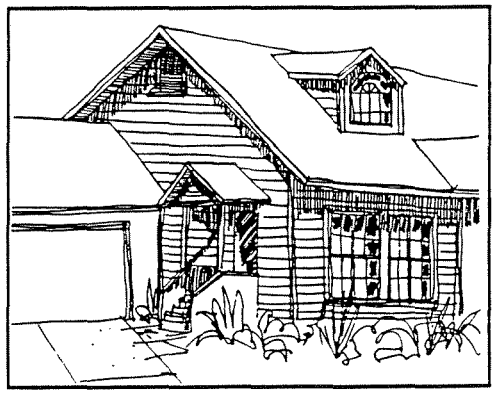
DD-16c. Upslope development. Upslope sites are those with slopes over 20% where the roadway is at the bottom of the slope. As shown in Figure A, houses on these sites should be terraced to follow the slope, and may not exceed more than 35 feet above the finished grade at any point of construction.

DD-16d. Street level entry. Where practical, the main entry to a house should be located at or near street level to create a presence for the building on the street.

DD-16e. Under-building screening. As shown in Figure B, the distance between the lowest floor of a structure and finished grade where it meets that floor shall not exceed six feet without articulation, or twelve feet total. Such areas must be covered with finished walls, and may not be left open.



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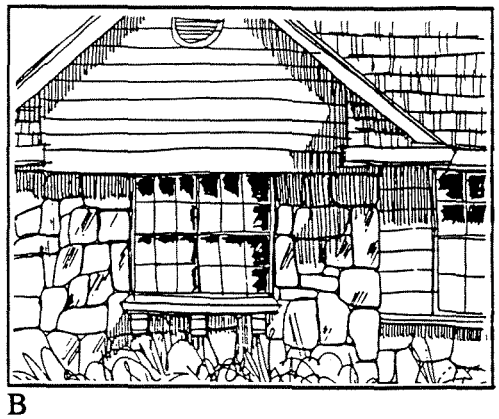

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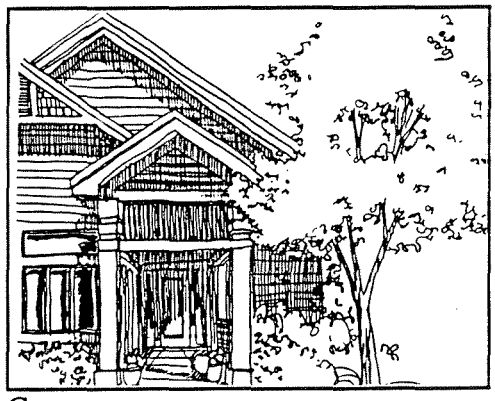

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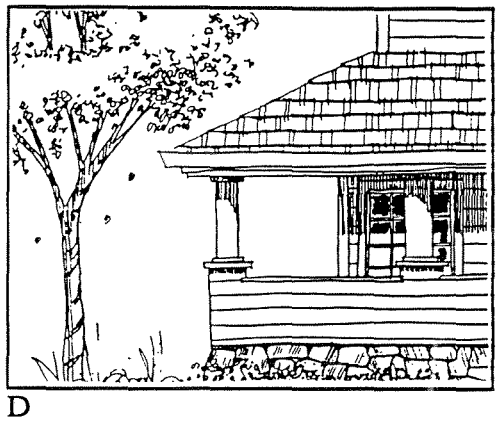
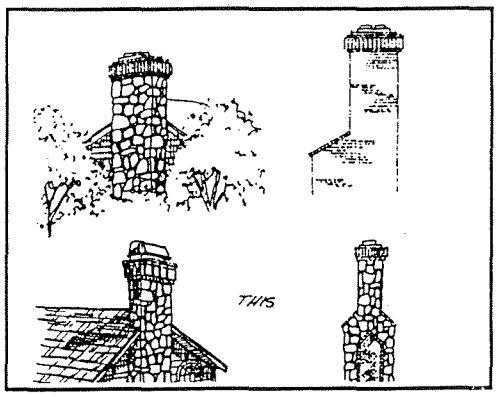


D

Policy DD-17: Architectural style should reflect traditional rural architecture and the study area's rural character and mild climate, and emphasize the idea of a cohesive community.

DD-17a. Architectural style. Simple detailing is preferred. Architecture in the study area should not copy an imported style such as Tudor or Spanish, and should not visually compete with surrounding buildings. Acceptable examples are shown in Figures A through D.

DD-17b. Building articulation. All sides of residences constructed in the study area should be detailed and articulated with relief elements and changes in plane. No wall should extend more than 24 linear feet without a change in plane or other form of articulation such as a bay window, chimney, trellis or change in materials. These features will create depth and interest on building facades.



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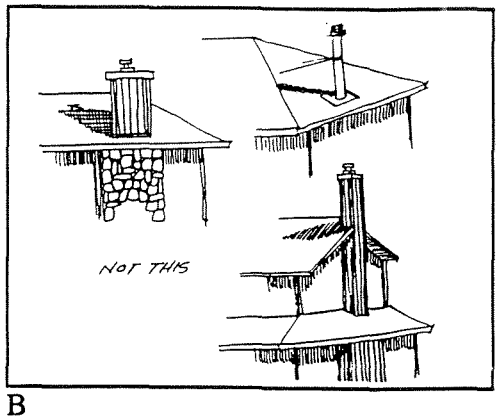

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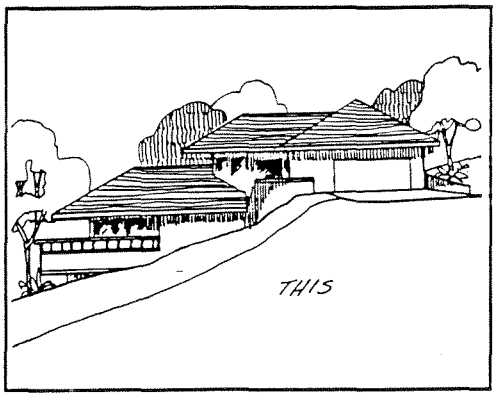

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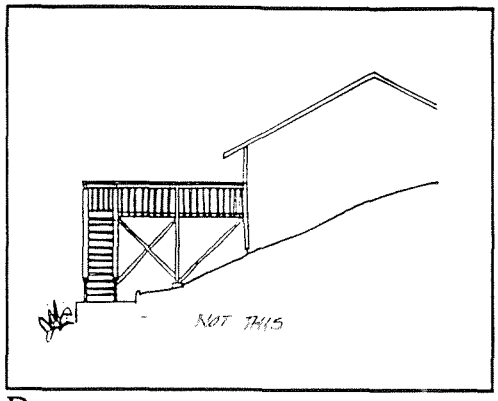

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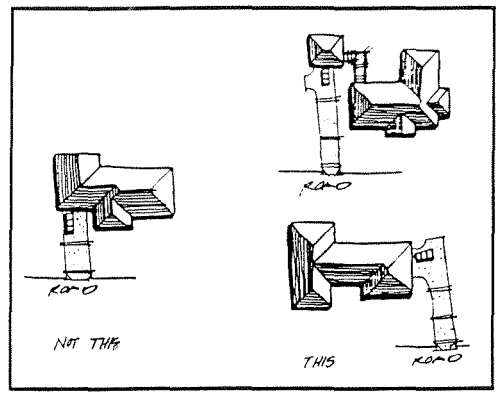
DD-17c. Finishes. Materials traditionally used in rural areas of northern California are preferred, particularly horizontal wood siding, shingles, and fieldstone bases. Plywood and other sheet siding materials should be avoided.

DD-17d. Exterior colors. Finish colors should emphasize earth tones, and avoid reflective colors.

DD-17e. Windows. Glass may be clear or tinted, but not reflective.

DD-17f. Chimneys. Chimneys should complement the style of the home in height, width and materials. Chimneys should be sheathed in materials that have an exterior appearance of being fire resistant, such as brick or stone, as shown in Figure A. Materials that appear to be flammable or temporary, such as wood siding and sheet metal, should be avoided, as shown in Figure B.

DD-17g. Balconies, Decks and Exterior Stairs. Balconies, decks and exterior stairs should be designed as integral components of the structure. They should reflect the style of the home and not appear to be "tacked-on", as shown in Figures C and D.



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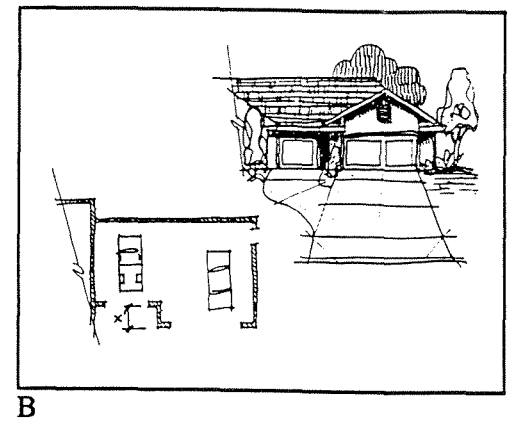

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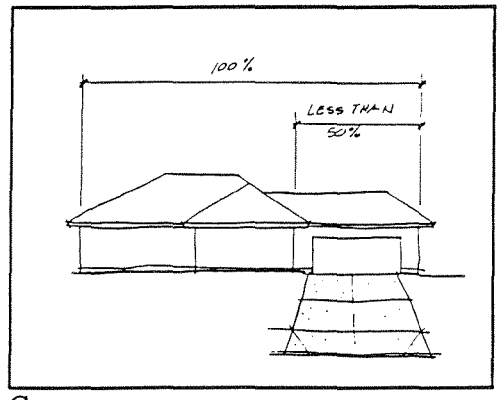

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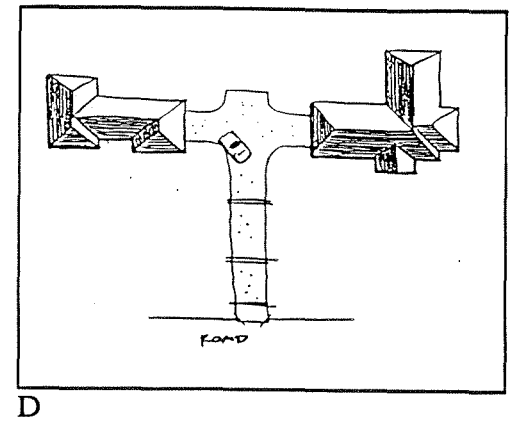


D

Policy DD-18: The potential visual impact of repeated garages with doors on the street should be avoided in study area development.

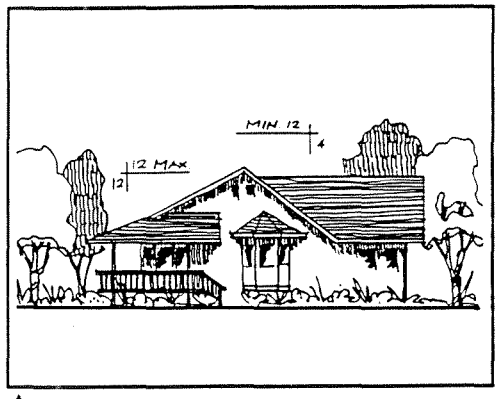
In many residential areas, large garages facing the street create an unappealing street facade. These guidelines are intended to reduce this impact.

DD-18a. Garage siting. As shown in Figure A, garages should be pulled back from the front of the house, turned perpendicular to the street or placed behind the house wherever possible.

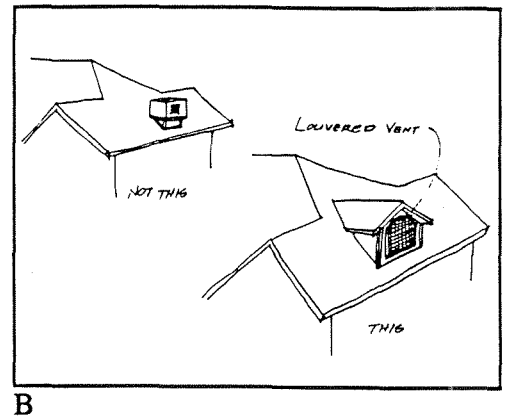
DD-18b. Large garages. The apparent width and mass of garages for three or more cars should be reduced by dividing the garage into sections. For example the two car section may be pulled slightly forward, as shown in Figure B.

DD-18c. Restriction on overall size. A house's street facade should not be composed of more than 50% garage door, as illustrated in Figure C.

DD-18d. Driveways. The apparent size of driveways should be minimized through the use of single-lane driveways that flare near the garage, and shared driveways for more than one house.



A



B

Policy DD-19: Because of the planning area's high visibility, roof design should be varied and articulated.

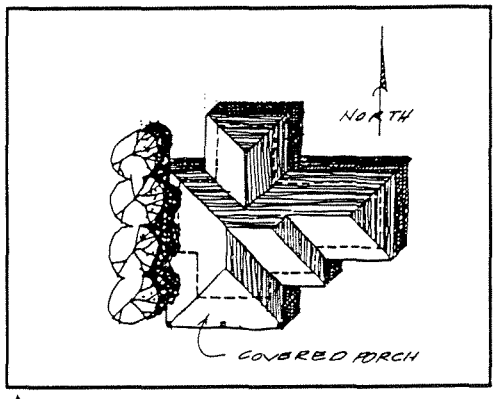
DD-19a. Pitch. Roof pitch should not exceed 12:12. Multiple pitches are discouraged, aside from the case of sheds. Flat roofs with a pitch less than 4:12 are prohibited. Acceptable roof pitches are illustrated in Figure A.

DD-19b. Irregular shapes. Irregularly shaped roofs such as mansards and domes are prohibited. The use of dormers, bays and shed-type roofs is acceptable.

DD-19c. Roof orientation. Roofs should generally be oriented parallel to the contours on a site, rather than perpendicular to the contours.

DD-19d. Materials. Roofing materials shall be non-reflective, and must be fire rated at Class A. Dark roof colors are encouraged to blend with the relatively dark colors of the surrounding hills.

DD-19e. Mechanical equipment. No mechanical equipment should be visible on roofs, as illustrated in Figure B.



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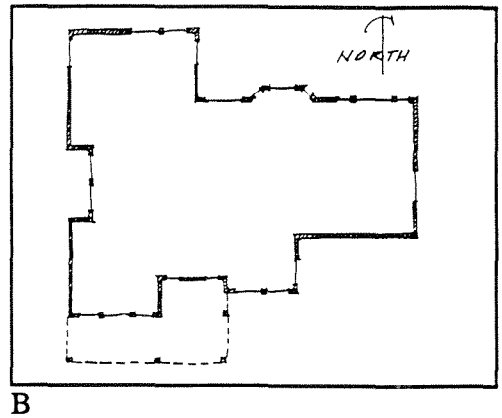


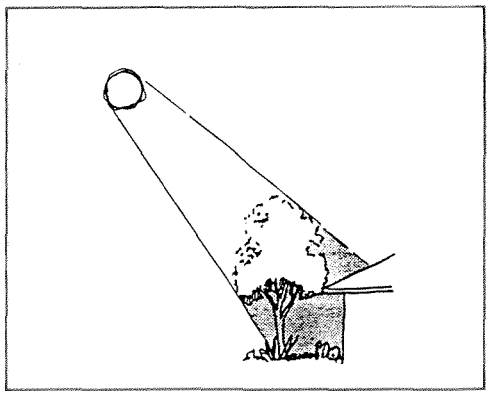
B

E. Energy and Resource Conservation

Policy DD-20: Buildings in the planning area should be oriented where possible to attain maximum solar benefit for both heating and cooling.

DD-20a. Solar orientation. To allow for solar gain in winter, most glazing should face south. The winter sun is primarily in the southern sky. To avoid summer solar gain, minimal glazing should face east or west. The sun is low in the sky on the east and west on summer mornings and afternoons. These concepts are illustrated in Figure A.

DD-20b. Overhangs. To shade summer sun, overhangs on the south, east and west of a building should be at least two feet deep, with covered porches and deeper overhangs where possible on the south elevation, as shown in Figure B.



A

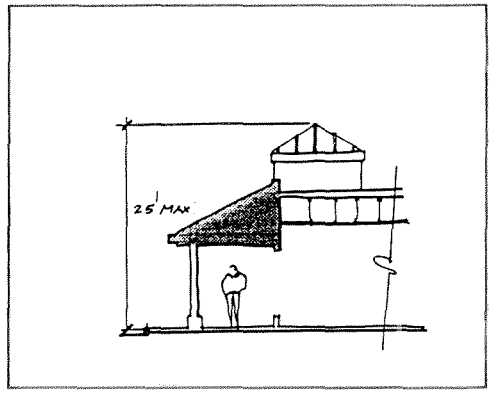
DD-20c. Landscaping. As shown in Figure A, deciduous trees that create shade in summer but allow light to pass through in winter should be planted along building edges, particularly on the east and west where summer sun is lowest in the sky.

DD-20d. Title 24. As per State law, all buildings in the planning area must be designed to comply with Title 24, which ensures energy conservation.

Policy DD-21: Study area development shall incorporate water conservation measures such as low-flow plumbing fixtures and drought-tolerant landscaping.

DD-21a. Plumbing fixtures. In conformance with the Uniform Plumbing Code, all residences in the planning area should include water conserving plumbing fixtures such as low-flow shower heads and toilets.

DD-21b. Drought-tolerant landscaping. In keeping with the City's Water Conserving Landscape Ordinance, all landscaping on public and private lands should be drought-tolerant. Only limited amounts of turf should be included in private yards.



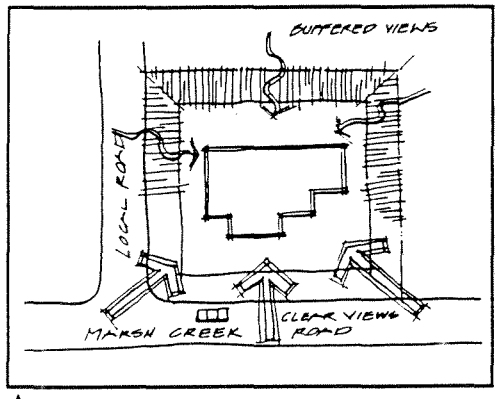
A

F. Commercial Development

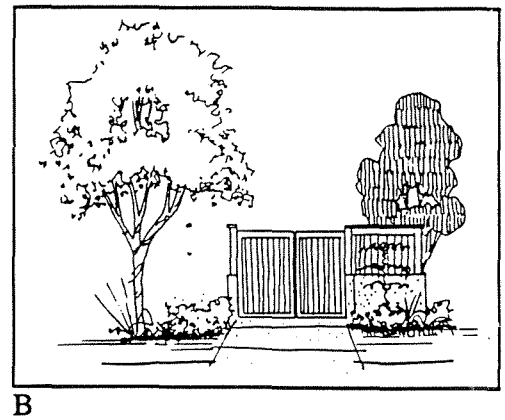
The only commercial use in the planning area will continue to be on the site of the existing Rodie's store, which may expand to play the part of a neighborhood commercial market. The following design guidelines would be followed for any expansion or reconstruction of the store.

Policy DD-22: Commercial development shall be designed to reflect the low-intensity, rural character of the study area.

DD-22a. Building height. Any new commercial construction may not exceed 25 feet in height, as shown in Figure A.



A

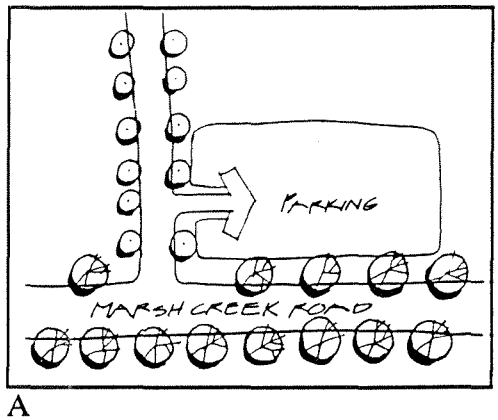


B

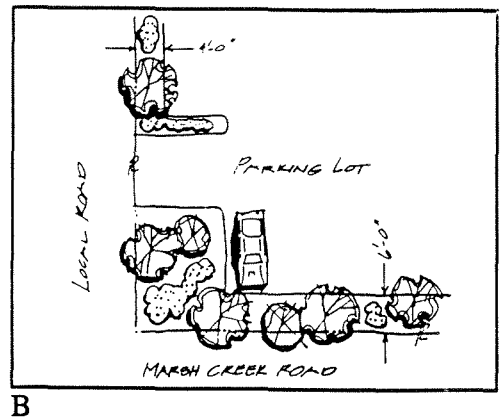
DD-22b. Style. Any new commercial construction should follow the rural style of the existing Rodie's market, existing commercial development in central Clayton, and the study area as a whole. Simple massing and detailing, and simple materials such as wood siding, are preferred.

DD-22c. Side and rear facades. Any side or rear facade of a commercial structure that will be visible from surrounding roadways, houses or open space, as diagrammed in Figure A, should be treated architecturally in the same manner and with the same level of detailing as the main building facade.

DD-22d. Service areas. Service areas for commercial uses should be screened from surrounding roadways, houses and open space with vegetation and fencing, as illustrated in Figure B.



A



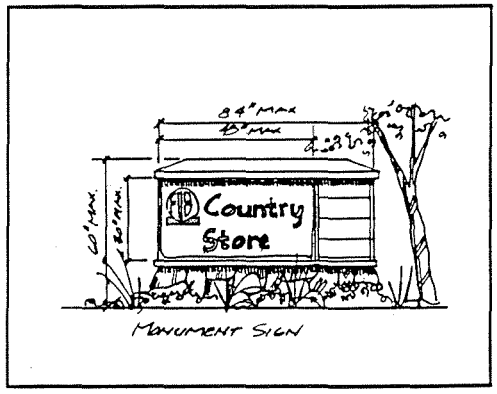
B

Policy DD-23: Parking to serve commercial development shall be visually unobtrusive, with adequate landscaping and setbacks from the street.

DD-23a. Access. As shown in Figure A, the entry to the parking lot for the store should be located on the collector street adjacent to the site, and not on Marsh Creek Road. This will help to avoid safety and congestion problems on Marsh Creek Road.

DD-23b. Paving. The current gravel parking lot serving the Rodie's store should be maintained, since it is in keeping with the rural character of the area.

DD-23c. Perimeter landscaping. As shown in Figure B, the parking lot's edges along public streets should be bounded by landscaping areas with a minimum width of six feet on Marsh Creek Road and four feet on the adjacent local or collector street. These areas should be planted with trees and shrubs.



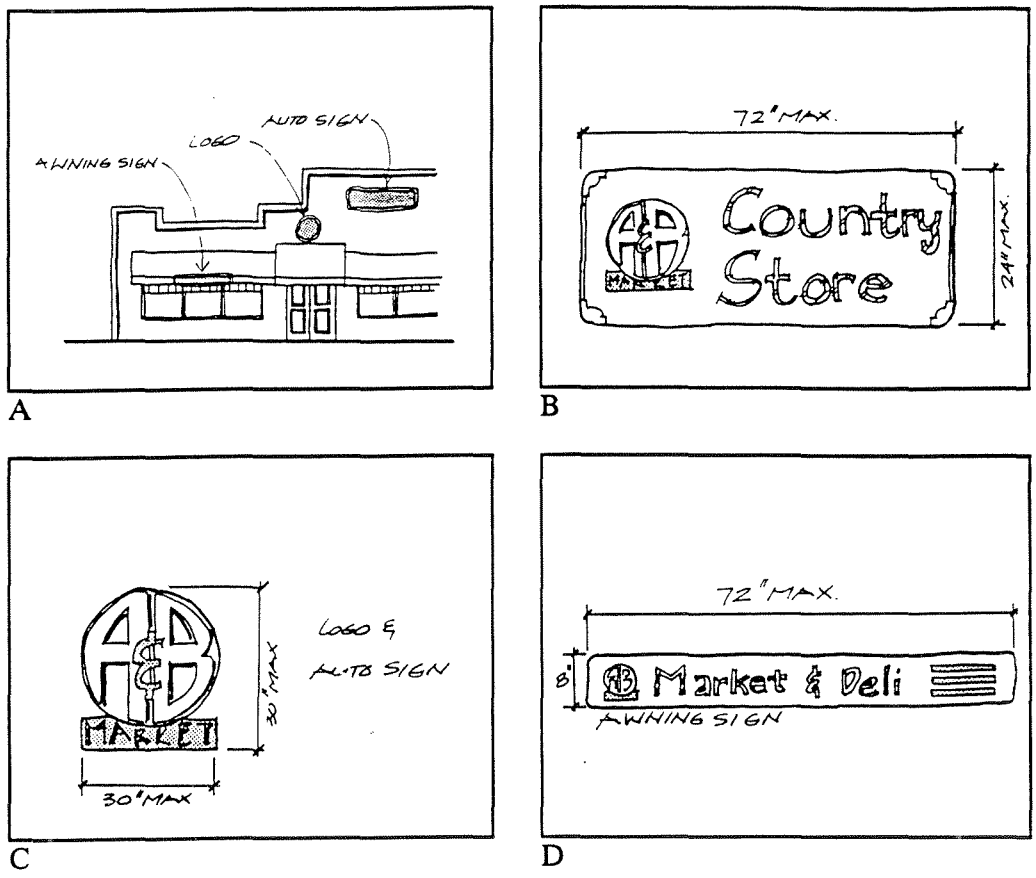
A

Policy DD-24: Signage for the commercial development shall be limited, and should be designed to conform with the rural residential qualities of the study area.

DD-24a. Monument sign. As shown in Figure A, the commercial development may have a maximum of one monument sign along Marsh Creek Road, with the following dimensions:

- Overall width: 84 inches maximum.
- Image width: 48 inches maximum.
- Overall height: 60 inches maximum.
- Image height: 30 inches maximum.

The monument sign should be designed with materials and finishes such as wood and stone to blend with the rural character of the area.



DD-24b. Building mounted signage. Each store within the commercial development may have one of the following types of building mounted signs, whose locations are shown in Figure A.

- Auto sign. Maximum of one per business, with maximum dimensions 72 inches wide by 24 inches tall, as shown in Figure B.
- Logo sign. Maximum of one per entry, with maximum dimensions of 30 inches by 30 inches, as shown in Figure C.
- Awning sign. Mounted or painted on an awning, with a maximum coverage of 50 percent of the awning length. Maximum image width of 72 inches, as shown in Figure D.

DD-24c. Sign illumination. Signs should be externally illuminated; they should not have neon or internal lights that makes them "glow" at night.

Chapter VIII
CIRCULATION ELEMENT

■ ■ ■

This section identifies the framework for vehicular, pedestrian, bicycle and equestrian circulation within the planning area. It establishes standards and conceptual configurations for roadways and paths, and it sets policies for access and roadway design.

A. Roadways

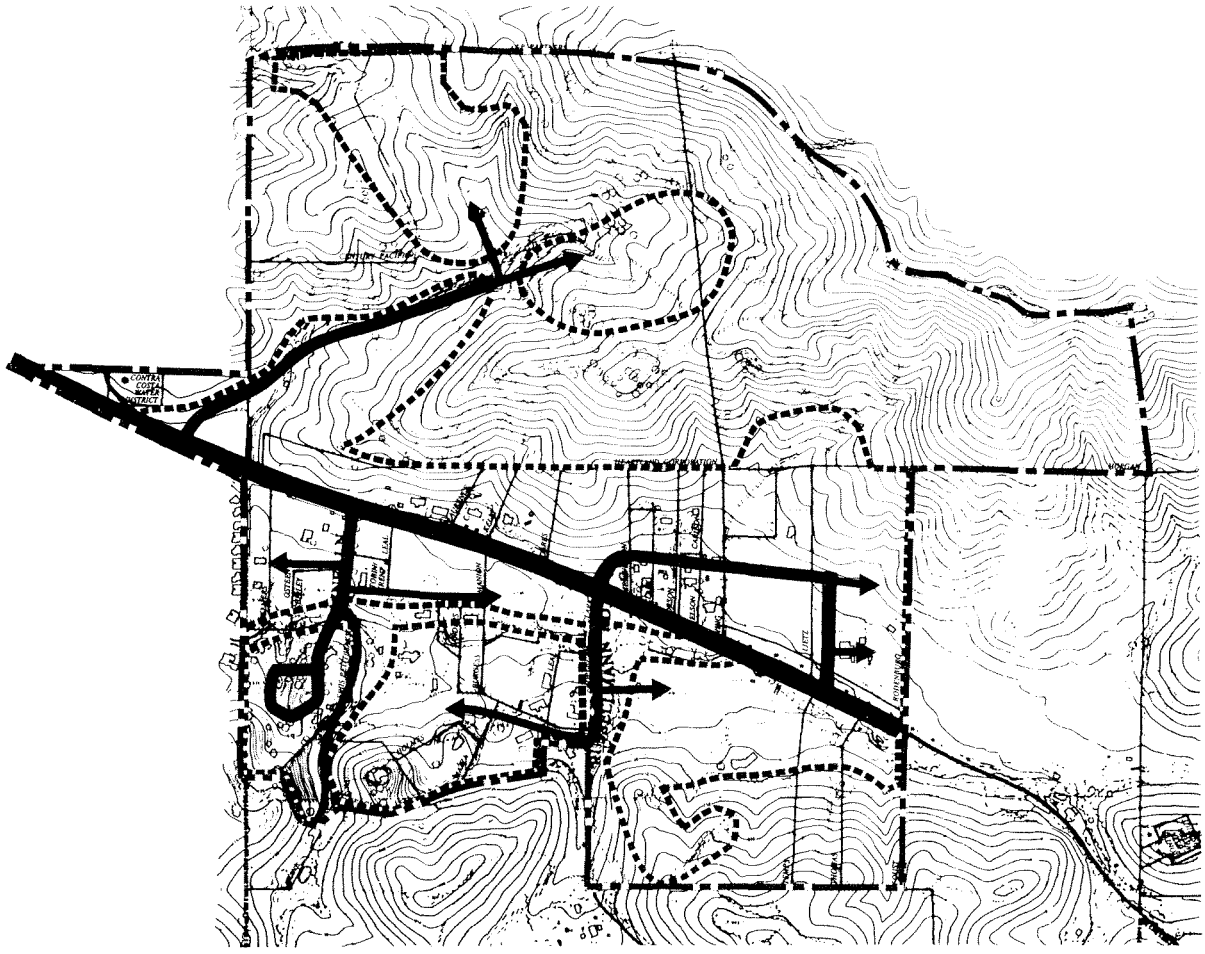
Policy CI-1. Roadways serving development areas shall generally conform to the pattern shown in Figure 10. Where Figure 10 shows that a roadway is required to serve development on several different parcels, roadway planning and construction for each parcel shall include provisions for access to adjacent parcels.

The roadway circulation system proposed for the Specific Plan is shown in Figure 10, and typical sections of the proposed roadways are shown in Figure 11. As outlined in the policies below, development in the study area should generally include the roadways and access points that are described below.

1. Roadway Types

Policy CI-2: All roadways developed under the Specific Plan shall be built to follow the standards of one of four types of streets: arterials, collectors, local roadways and minor cul-de-sacs.

The following roadway standards will be applied by the City to all new development in the study area. These roadway standards are different from and take precedence over those in the City's Development Standards, which will continue to apply elsewhere in Clayton. These roadway standards generally allow for narrower roads than are found elsewhere in Clayton, as a means to respond to topography and preserve the low-density, semi-rural feeling of the study area.



Legend

- Arterial Street (Marsh Creek Road) 82' ROW, 34' pavement
- Collector Street 48' ROW, 32' pavement
- Local Street 44' ROW, 28' pavement
- Development Area Boundaries
- Specific Plan Boundary

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 10

Circulation Plan

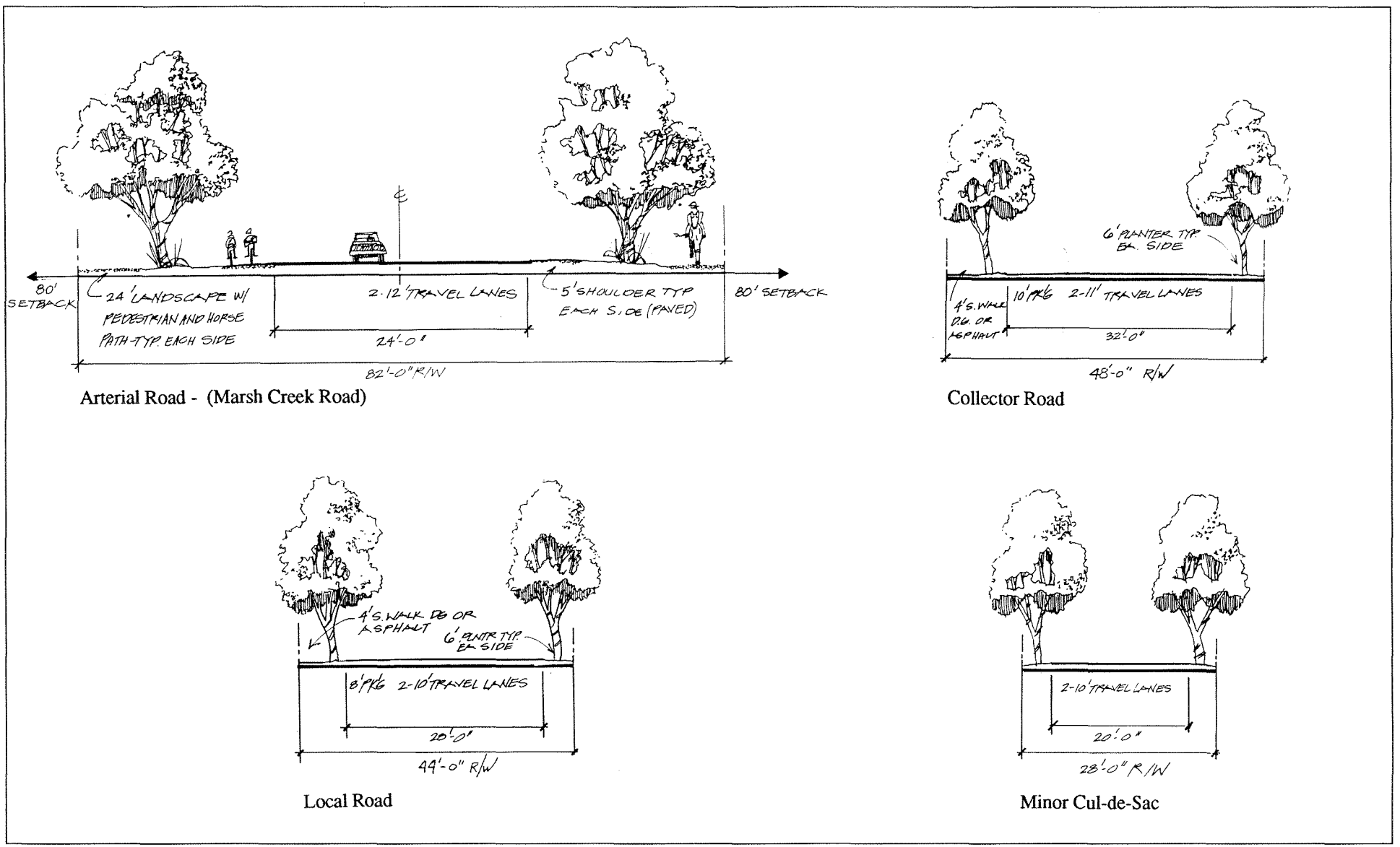


FIGURE 11

Street Sections

N

MARSH CREEK ROAD SPECIFIC PLAN

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The roadway standards do not include necessary public utility easements (PUEs). In many cases, PUEs will extend beyond the edges of roadways or walkways onto private lots and open space areas.

CI-2a. Arterial roadways. Marsh Creek Road will be the only arterial road in the study area. The road will maintain its current east-west alignment and will serve as the major route through the area. Marsh Creek Road will be the only access way to all development within the study area. The roadway will have an overall right-of-way width of 82 feet, which will generally accommodate two 12-foot wide travel lanes, paved five-foot shoulders that will serve as bike lanes, and 24-foot wide planter strips accommodating street trees and quarter-by-dust pedestrian and equestrian paths. At some intersections, the paved area will be expanded to accommodate one or two turn lanes.

CI-2b. Collector roadways. Four collector roads connecting to Marsh Creek Road will serve the residential developments in the study area. These roads will include the following:

- The access road to the Heartland, Moita and Morgan sites, which is referred to as Oak Creek Canyon Drive in this Plan.
- Pine Lane from Marsh Creek Road to the Oakwood subdivision.
- Russellmann Road from Marsh Creek Road to subdivision streets.
- The loop road through the Development Area B, connecting to Marsh Creek Road on the James/Iverson and Rodenburg properties.

The collector roadways will have pavement widths of 32 feet within a 48-foot right-of-way. The streets will have two 11-foot travel lanes and one ten-foot parking and bike lane. On one side of the road there will be a 6-foot planter strip, while a 6-foot planter strip and a 4-foot decomposed granite, quarter-by-dust or asphalt sidewalk on the other side of the road will complete the right-of-way.

CI-2c. Local roadways. Local roadways will provide circulation within the residential areas and access to recreation and open space areas. These roads are purposely designed to be narrower than standard roads in suburban subdivisions in order to maintain the rural character of the study area. Local streets will be 28 feet wide, with two 10-foot travel lanes and one 8-foot parking lane. On one side of the road there will be a 6-foot planter strip, while a 6-foot wide planting strip and 4-foot wide decomposed granite, quarter-by-dust or asphalt sidewalk on the other side of the road will complete the 44-foot wide right-of-way. The City may consider narrower local roadway designs in areas where roadway width is limited by topography, but such narrower roadways must receive the approval of the City Engineer, the Planning Commission and the Fire District.

CI-2d. Minor cul-de-sacs. Minor cul-de-sacs may be used to create narrow paved roads while providing access to up to ten homes within residential areas. Minor cul-de-sacs will have 20-foot paved widths accommodating two 10-foot travel lanes and no on-street parking, with a 4-foot wide planter strip on each side serving as a utility easement, for a total right-of-way width of 28 feet. Minor cul-de-sacs may only be

constructed where on-street parking will be provided on local or collector roadways within 500 feet of every unit, or where adequate resident and visitor parking can be provided on-site.

CI-2e. Roadway ends. Roads that terminate within the study area should generally be designed with cul-de-sac bulbs with a minimum radius of 35 feet. Hammer head road ends are generally acceptable only in areas with development densities under 1 unit per acre.

2. Intersections

Policy CI-3: Intersections built to accommodate Specific Plan buildout should be designed in accordance with the diagrams of intersection alignments shown in Figure 13.

Each of the diagrams in Figure 13 shows required turn lanes in each direction at intersections with Marsh Creek Road. The intersections will have the following characteristics:

CI-3a. Diablo Parkway/Marsh Creek Road. This will become a four-legged intersection providing access to Development Area A, and will include an eastbound left-turn pocket for cars entering the Heartland site. This intersection shall be signalized (when warranted) for traffic safety and to meter traffic entering the urbanized portion of Clayton.

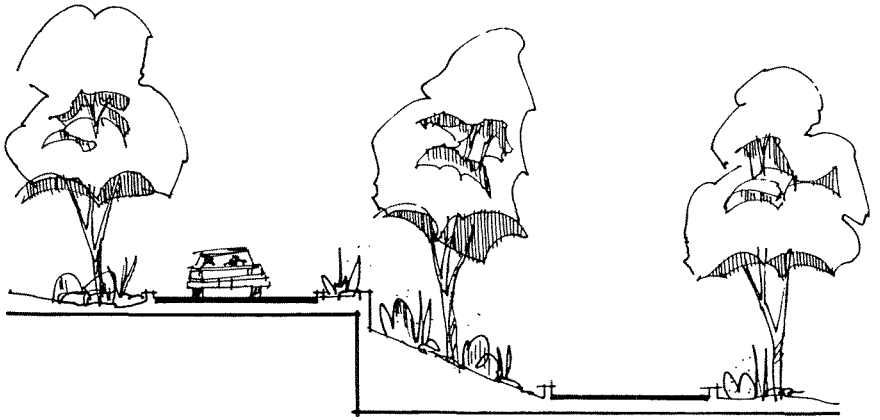
CI-3b. Pine Lane/Marsh Creek Road. This intersection will include an eastbound right-turn pocket for cars entering Pine Lane, and an eastbound acceleration lane on Marsh Creek Road. These improvements have been approved and funded as part of the Oakwood project.

CI-3c. Russellmann Road/Marsh Creek Road This four-legged intersection will include a westbound left-turn pocket and an eastbound right-turn pocket for cars entering Russellmann Road south from Marsh Creek Road, and a dedicated westbound left-turn pocket for cars entering Marsh Creek Road from the south leg of Russellmann Road.

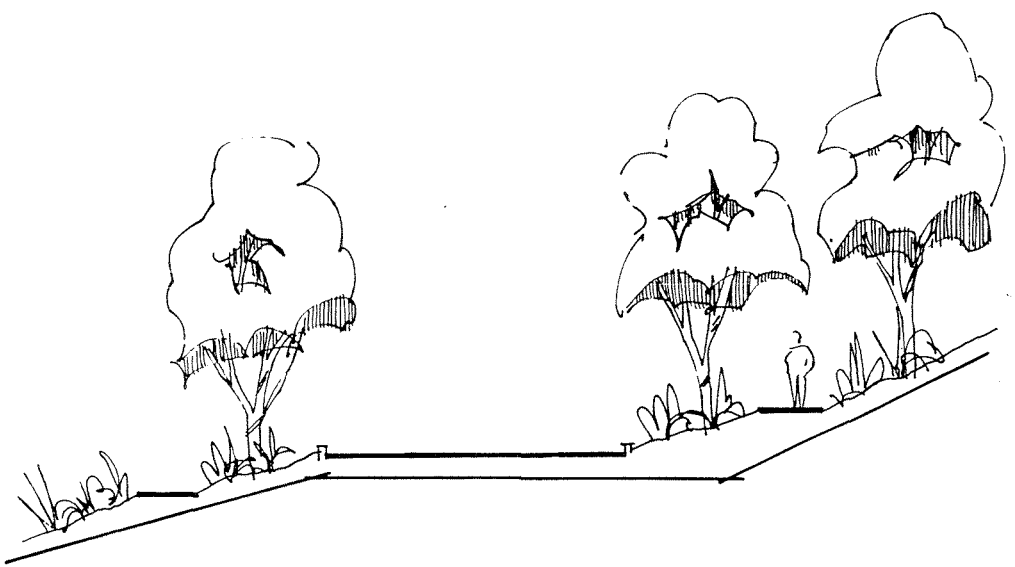
CI-3d. Rodenburg Property/Marsh Creek Road. Will include an eastbound left-turn pocket for cars entering the Rodenburg property.

All of these intersection designs can be accommodated entirely within the standard rights-of-way outlined above.

All intersections not located on Marsh Creek Road will be standard intersections of two lane roads, without turn pockets.



Split Street Section



Split Sidewalk Section

FIGURE 12

Split Street Sections

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MARSH CREEK ROAD SPECIFIC PLAN

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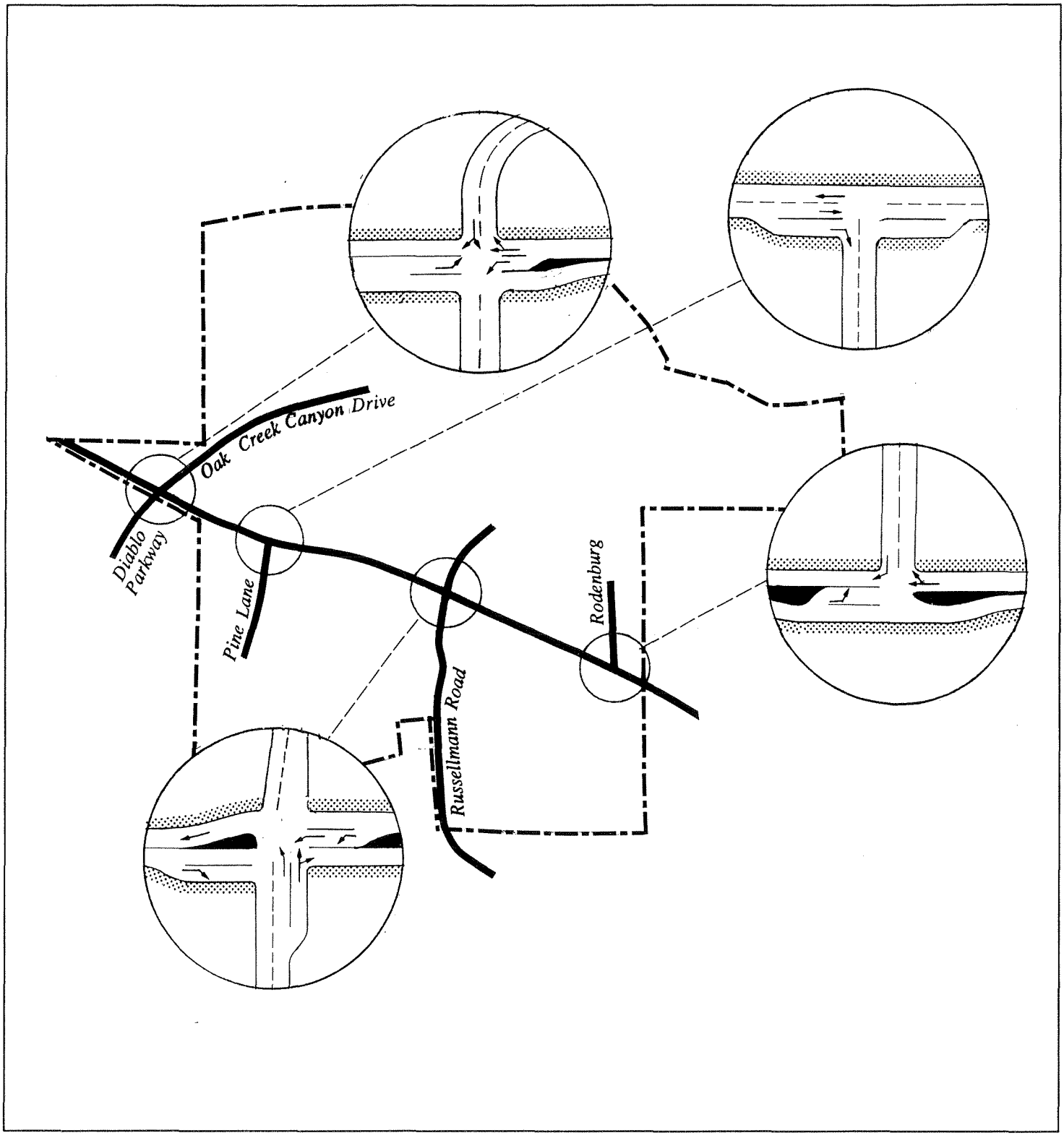

FIGURE 13

Intersection Configurations

Intersection configurations are illustrative only. Actual design will conform to accepted engineering standards that account for traffic speed and sight distance.

MARSH CREEK ROAD SPECIFIC PLAN

N

CLAYTON CALIFORNIA

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PLANNERS AND LANDSCAPE ARCHITECTS

3. Additional Policies

Policy CI-4: **The City shall coordinate preparation of a plan line study for Marsh Creek Road to identify the detailed routing for the road, specifications for its construction and any necessary environmental review, using the general description of the road in Policy CI-2a. No development in the study area will be allowed until this study is completed. Alternatively, individual developers may complete plan line studies for Marsh Creek Road for all segments of Marsh Creek Road west of their site access, and for appropriate transitional zones to the east of their site access.**

Policy CI-5: **Access to Marsh Creek Road shall be limited to existing driveways and those roadways indicated on Figures 10 and 13. No new driveways or additional roadway intersections on Marsh Creek Road may be constructed.**

Policy CI-6: **As existing parcels develop, they should rely on access from streets that follow the general layout shown in Figure 10.**

Policy CI-7: **Internal circulation within subdivisions shall be designed at the discretion of the property owner, subject to approval by the City, provided that it allows for through access to adjacent parcels as indicated on Figure 10.**

Policy CI-8: **Sidewalks required for collector and local roadways need not be installed if they would run parallel and immediately adjacent to a pathway along a creek, as specified in Section B, below.**

Policy CI-9: **Where required roadway widths would necessitate extensive grading, split roadway sections that accommodate the slope are encouraged. The travel lanes on roadways may be separated, and sidewalks, where required, may also be separated from the roadway level. Examples are shown in Figure 12.**

Policy CI-10: **Roadways through sloped areas greater than 26% may occur only to provide necessary access to development permitted by this Specific Plan after the roadway is found appropriate through site-specific review by the City.**

B. Pathways

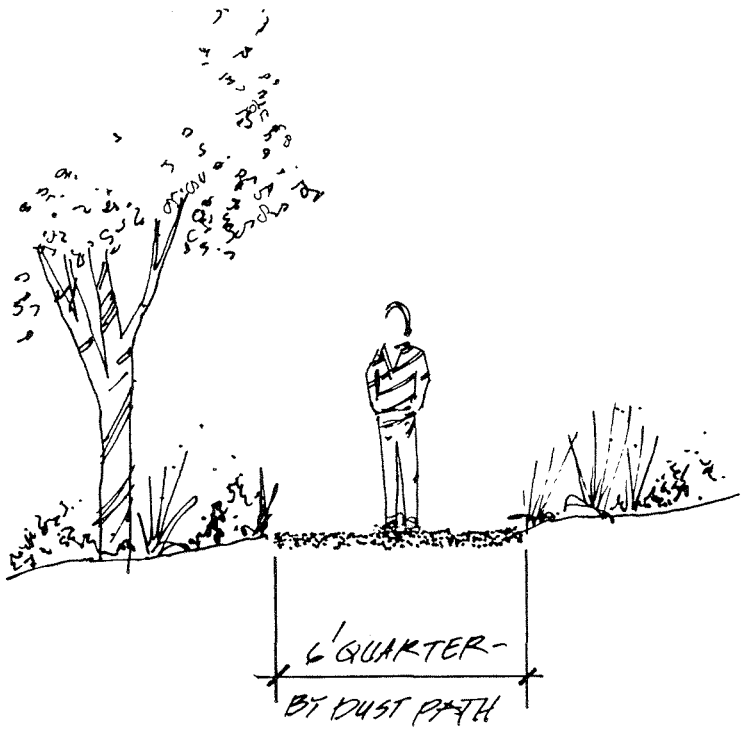
Policy CI-11: Public pathways within the study area should be located along the top of creek banks and run adjacent to Mt. Diablo Creek, Russellmann Creek and the creek on the Holmes property, in the locations indicated in Figure 7.

As shown in Figure 14, pathways should generally accommodate pedestrian, bicycle and equestrian users on adjacent paved and quarter-by-dust sections. The pathways are proposed to be 18 feet wide, consisting of a quarter-by-dust 10-foot equestrian way and a paved 8-foot bikeway. Narrower or split pathways may be allowed in some areas upon approval of the Planning Commission if local topography would require extensive grading to accommodate an 18-foot section.

Access to the paths will be gained at creek crossings and open ended cul-de-sacs.

Policy CI-12: Trails outside of development areas should be constructed where possible in the general alignments shown in Figure 7.

Trails will be approximately six feet wide, graded minimally to achieve gentle slopes, and covered with decomposed granite or quarter-by-dust. An example is shown in Figure 14.



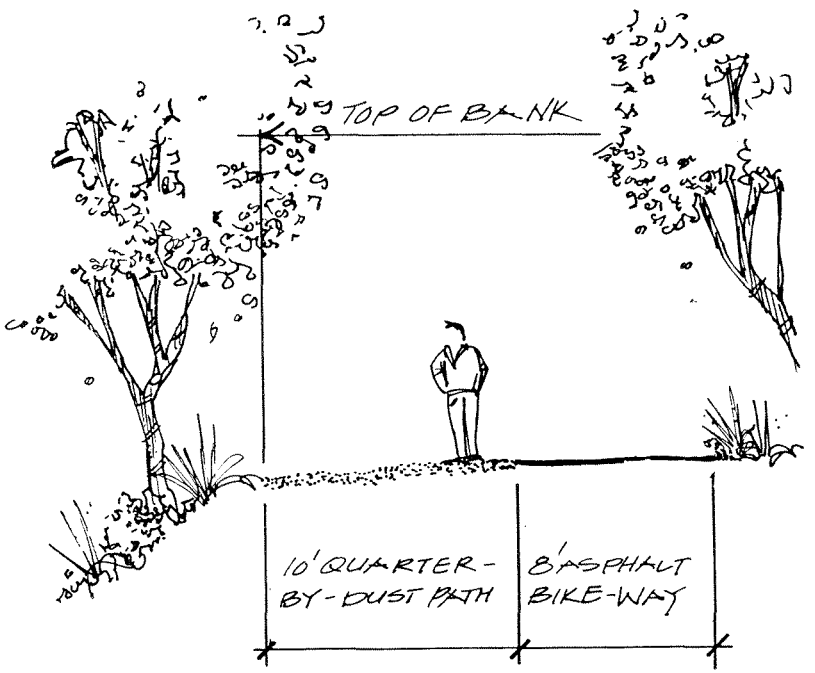


FIGURE 14

Trail Sections

N

MARSH CREEK ROAD SPECIFIC PLAN

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Chapter IX
INFRASTRUCTURE ELEMENT

■ ■ ■

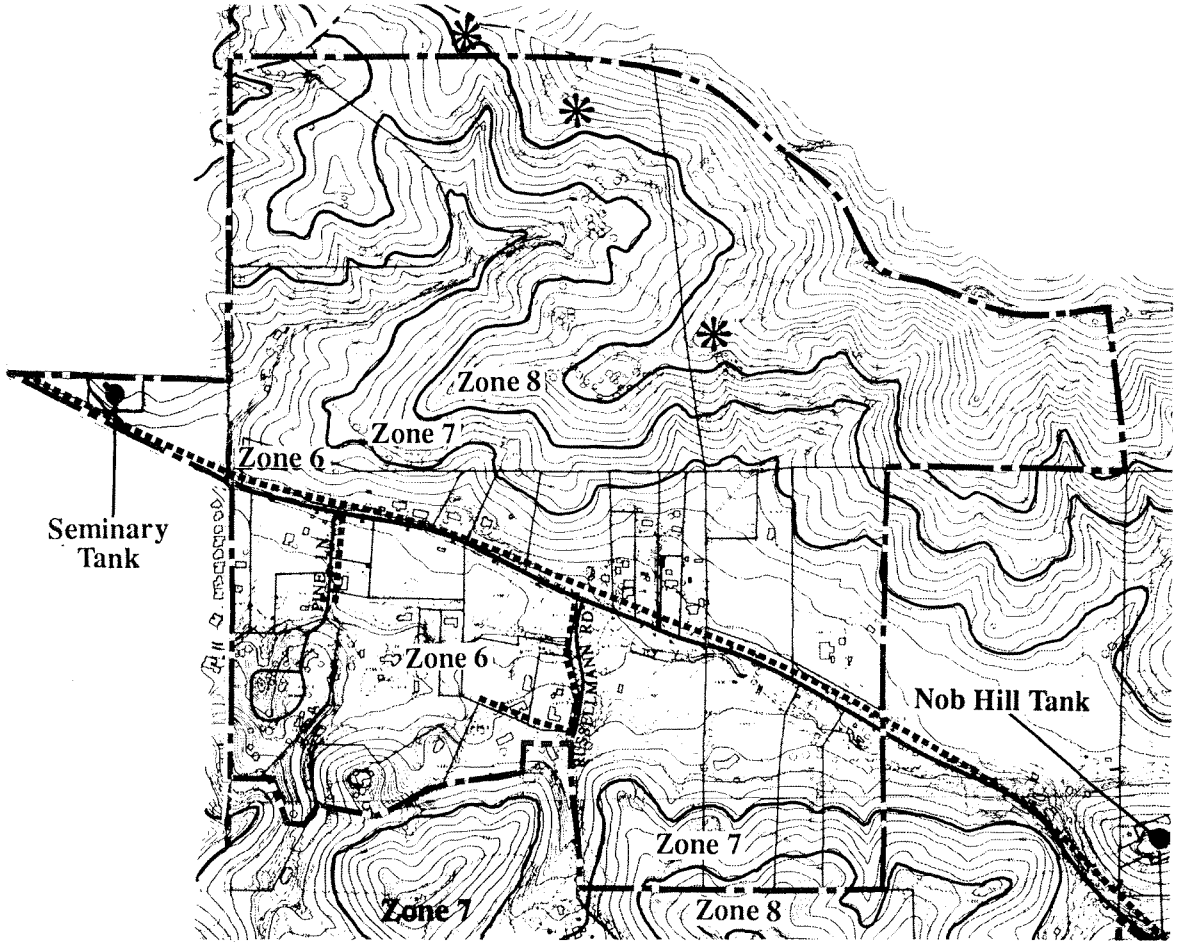
This section defines how water and sewer service will be provided to the urbanized development to occur under the Specific Plan, and it also describes planned storm drainage facilities to accommodate planned development. New sewer service provisions are described only for rural residential, low, medium and suburban density residential areas and the area's commercial development; all other land use designations would be served with septic systems. This Specific Plan assumes water service will be provided to all residences within the Specific Plan area.

A. Water Service

Policy IN-1: Water service for new development under the Specific Plan shall be provided by the Contra Costa Water District (CCWD) through existing and future water pressure zones.

Water pressure zones are shown in Figure 15. More than half of the new development will be located within Zone 6, on the lower parts of the valley floor along Marsh Creek Road. The remainder will be within Zone 7, except for two areas, with about 39 homes extending into Zone 8 in Development Area A.

Development Area A will obtain its water from a recently completed water tank in the Oakhurst development, leaving approximately 191 units in the Specific Plan area that will utilize some portion of CCWD's existing storage and distribution facilities along Marsh Creek Road. Table 3 shows proposed development within the Specific Plan area, broken down by pressure zone and supply facility to illustrate the expected impacts of development.



Legend

Conceptual Pressure Zone Boundary (Water service currently exists only in zone 6).

Existing Water Main

Existing Water Tank

Conceptual location of potential future water tanks

Specific Plan Boundary

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 15

Existing Water Pressure Zones, Tanks and Lines

Table 3
WATER SERVICE REQUIREMENTS

Pressure Zone	Maximum Number of New Homes	Storage[a] (gallons)	Flow[b] (gpm)
Development Area A			
6	30	42,000	88
7	45	63,000	131
8	39	174,600	114
Subtotals	114	279,600	333
Fire Flow[c]			1,000
Total Flow Requirement			**1,333**
Development Areas B - F (includes Ranchettes)			
6[c]	198	277,200	578
7	2	2,800	6
Subtotals	200	280,000	584
Fire Flow[d]			1,000
Total Flow Requirement			**1,584**

[a] Storage is calculated at 1,400 gallons per home, which includes 25 percent of maximum day demand which is assumed to be 1,400 gallons per home, plus 150 percent of an average day demand of 700 gallons per home [(1,400 x .25) + (700 x 1.5) = 1,400]. It is assumed that the additional fire storage requirement of 120,000 gallons is already included in existing CCWD tanks and in the new tank on the Oakhurst project. Fire storage would also be provided in any new tanks.

[b] Flow is used for the design of distribution mains, and it is based on a peak hour requirement of 2.92 gpm/home.

[c] Includes nine equivalent water services for commercial development on the Rodenburg property.

[d] Fire flow requirements add 1,000 gpm to the maximum day flow.

1. Development Area A

Approximately 114 homes will be constructed within Development Area A on the North State Development, Heartland, Moita, and Morgan properties. It is estimated that 30 homes will be constructed in Zone 6, 45 in Zone 7, and 39 in Zone 8.

Storage capacity for 100 homes has been paid for and reserved by Heartland at the Zone 7 Irish Canyon reservoir in the neighboring Oakhurst subdivision. The water distribution system will begin at Irish Canyon and run south into the study area, most likely following the future local road network. The Irish Canyon reservoir can only serve homes located in Zones 6 and 7, so a new reservoir and separate distribution system will have to be installed to provide storage and distribution pressure for the 39 Zone 8 homes.

It appears that the highest service outlet within the new Zone 8 will be on the Morgan property, at an approximate elevation of 960 feet. The storage reservoir for this area should be situated about 100 feet above this point. As shown in Figure 15, there are only two nearby ridgelines that meet this criteria; one is about 150 feet east of the Heartland/Morgan property line, southeast of development area A2; the other is in the northeast corner of the Heartland property, about 300 feet northeast of development area A1. Road access to the first site could probably follow the ridgeline up from Marsh Creek Road, but it appears that the second could only be reached from the north, across the A&P Partners property. The precise location of the storage reservoir(s) is to be determined following a geotechnical investigation and when the final engineering of the water system is designed and approved. Tanks will also be subject to Design Standards in this Specific Plan.

To serve a total of 39 homes, a Zone 8 reservoir will have to provide 54,600 gallons of maximum day and emergency storage capacity as well as 120,000 gallons of fire storage, which equals a minimum tank size of about 174,600 gallons. A new pumping station with a firm pumping capacity of at least 90 gpm will also have to be installed, to lift water from Zone 7 up to the storage elevation of Zone 8. The station will have to be located within Zone 7, probably as close as possible to the final reservoir site.

The Zone 8 homes in this part of the study area will be divided into two groups. It is estimated that 27 will be at the east end of area A2, and 12 will be in Area A1 on the Heartland and Moita Properties. The groups will be separated by an intervening wedge of Zone 7 that is approximately 1200 feet wide, as measured along proposed roadways. No matter where the Zone 8 reservoir is located, the distribution system will have to dip through Zone 7 to reach the homes at both the east and west ends of the service area.

A Zone 8 interconnection across Zone 7 would not conform with CCWD policies. However, the Zone 8 portions of areas A1 and A2 are quite close together, and it appears that there are relatively few suitable reservoir sites in the area. As a result, a single storage reservoir serving both halves of the Zone 8 distribution system is recommended. According to CCWD staff, additional storage may become necessary to serve Zone 8 to meet firefighting and storage needs. [1]

2. Other Development Areas

This discussion looks at water service to development areas B, C, D, and E in the two pressure zones in which development will occur. Development in these areas will be entirely within Zones 6 and 7; Zone 8 development will only occur in Development Area A.

Zone 6. It appears that a total of 228 homes will be constructed within CCWD pressure Zone 6, and that 198 of these homes will be served by the existing Zone 6 Nob Hill reservoir.[2] Approximately 30 homes will be on the North State Development and Heartland sites, where storage capacity has been reserved in the new Irish Canyon reservoir on the Oakhurst property. CCWD's storage requirement is 1,400 gallons of storage per home, which equals 277,200 gallons for the 189 Zone 6 homes. According to CCWD, there is currently 150,000 gallons of uncommitted storage in the Nob Hill reservoir. Thus, there will be a capacity shortfall in Zone 6 of approximately 127,200 gallons, which is the storage requirement for 91 homes.

Several solutions are available to remedy this shortfall. One option would be to build a second tank on Nob Hill, east of the study area. It appears that there is sufficient room on Nob Hill for installation of a new reservoir, but this cannot be confirmed until CCWD inspects the site to verify the location of existing facilities and to evaluate geologic stability. The exact method of providing additional capacity in Zone 6 will be determined by CCWD as development in the area progresses. The existing supply shortfall noted for Zone 6 is considered by CCWD staff as relatively minor for existing levels of development. However, the shortfall becomes an issue when planning for future development since any new development in Zone 6 would require additional new storage. [3]

The existing Zone 6 distribution system will be extended into each development area from the existing water mains on Marsh Creek Road and Russellmann Road.

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[1] Letter communication from Arthur Jensen, Director of Planning, CCWD, January 11, 1994.

[2] There are actually only 189 homes proposed for development within Zone 6, outside the Heartland site. The additional nine homes (198-189) represent equivalent water services, based on estimated demand within the commercial area.

[3] Craig Scott, CCWD, personal communication, April 20, 1994.

Preliminary studies performed by CCWD indicate that additional flow capacity will be needed along Marsh Creek Road to support new water services within the study area. The District has estimated this will require the installation of either a parallel 12-inch diameter water main or a replacement 16-inch diameter main, running west from the Nob Hill reservoir through the project area.

Depending on the pace of project area development and the capacity of the existing Marsh Creek Road water main, it is possible that some of this additional capacity could be provided by distribution systems located inside individual subdivisions. Construction of these new systems would create a grid around the existing main on Marsh Creek Road, providing a parallel route for water transmission between Nob Hill and the west end of the reservoir's Zone 6 service area.

Zone 7. Two new homes are proposed for development at Zone 7 storage elevations on the Temps property south of Marsh Creek Road.

At this time it is assumed that the project sponsor will provide a new pumping station with sufficient capacity to lift water up to the Zone 7 elevation. It is also assumed a dedicated reservoir will not be provided for these two homes. This would conflict with current CCWD policy and would therefore, require a waiver. This pumping station will probably be located at the upper end of the Zone 6 distribution system on Russellmann Road. In the alternative, the homes may be served by individual wells.

3. General Design Considerations

Final layout and design of all water systems will be performed by project engineers. The sizing of individual mains should be determined by maximum fire flow velocities and by allowable friction losses. Until street layouts and housing sites are identified, it is not possible to accurately define these future systems.

Neighborhood water lines should be looped, where possible, in accordance with CCWD design guidelines. In looped systems, water can approach a fire hydrant from two directions, so that 6-inch or 8-inch lines are generally large enough to accommodate the required total flow of 1,000 gpm for firefighting plus maximum day demand.

The provision of additional Zone 6 flow capacity to supplement the existing main on Marsh Creek Road depends on the future interconnection of separate water distribution systems that are to be constructed under the Specific Plan. If individual subdivisions containing portions of this area-wide system are among the last properties developed, there could be insufficient capacity to support build-out of other parcels. As a result, the required scheduling for new water main construction

throughout the Planning Area should be determined by the City and CCWD before significant development occurs and increases the demand for water service.

Policy IN-2: Water supply facility studies based on the adopted Specific Plan shall be completed for each project or phase of development.

The water supply facility study will confirm projections for future water demand within the study area, identify the location of needed additions to the area's backbone water system, and calculate pipe sizes, storage capacities, and pumping requirements for the various pressure zones. In addition, the study will define pressure zone boundaries so that water service can be efficiently provided to all development areas using a minimum number of individual storage reservoirs.

B. Wastewater

Policy IN-3: Wastewater produced in urban development areas within the study area shall be collected in the City of Clayton sewer system, which feeds wastewater through the City of Concord to the Central Contra Costa Sanitary District.

Policy IN-4: The City shall coordinate preparation of an area-wide sewer study to identify the feasible routes for a trunk sewer line in the study area and to calculate the resulting main sizes. This study shall also provide any necessary environmental review and a basis for allocating the costs of sewer line construction, based on the number of contributing homes set forth in this Specific Plan.

1. New Wastewater Lines

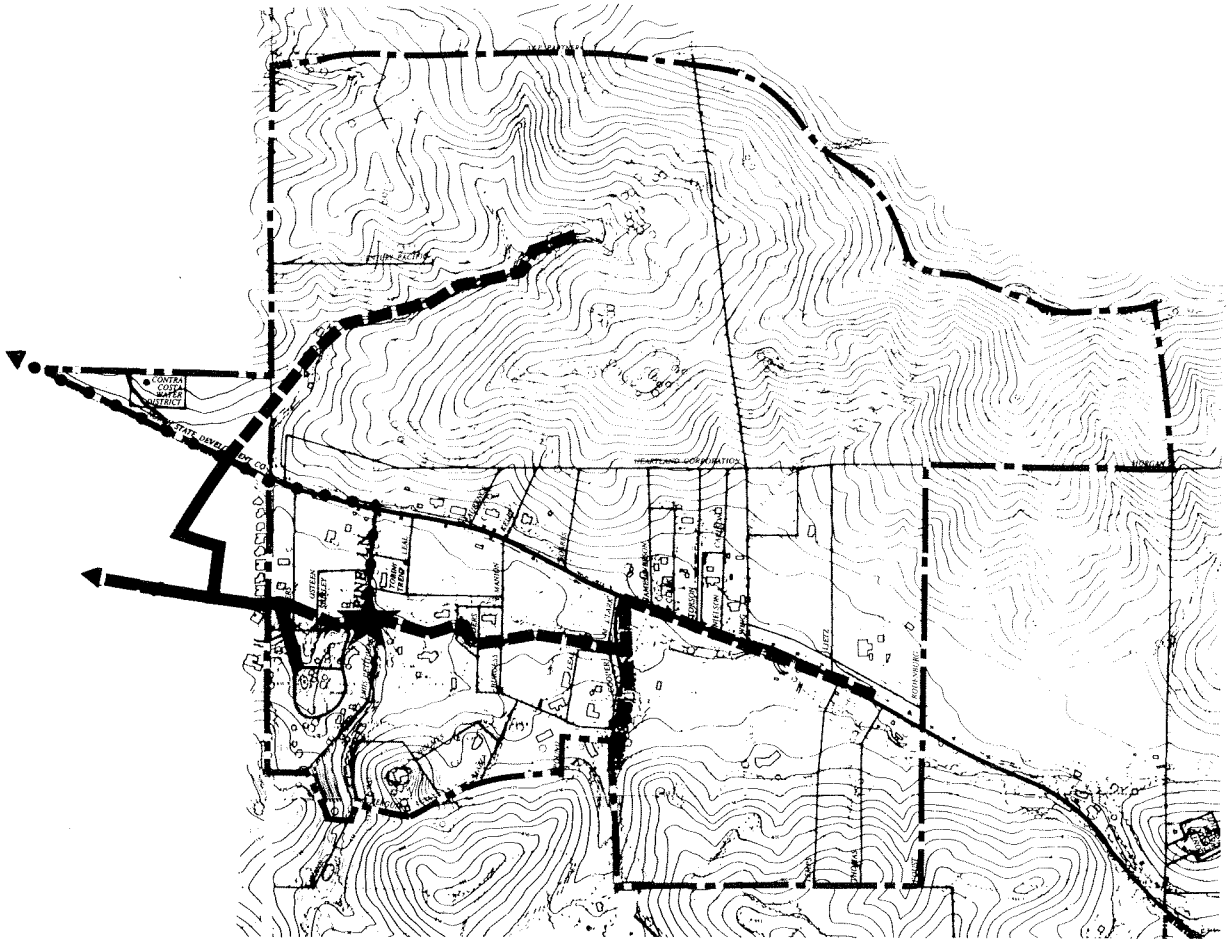
Existing collection lines now end on the Hellmers property in the study area, where they turn south towards the Oakwood Subdivision, and at the intersection of Diablo Parkway and Marsh Creek Road. New wastewater lines will be extended from both of these locations to serve two topographically separate portions of the study area, as shown in Figure 16.

a. Development Area A. A single sewer line will convey wastewater from this area's three development pockets to Marsh Creek Road, where it will intersect the end of the existing Diablo Parkway sewer line. Wastewater would then flow down Diablo Parkway to the City's main collector sewer on El Portal Drive.

b. Other Development Areas. Since the study area drains to Mount Diablo Creek, the creek corridor is the most logical alignment for extension of the existing gravity collection sewer to serve the remainder of the planning area. A new sewer

trunk will be extended from the current end of the sewer on the Hellmers property upstream along Mount Diablo Creek, within the trail corridor foreseen in this Specific Plan. This trunk sewer will run as far as Russellmann Road, where it will turn north to Marsh Creek Road, and will then run inside of the Marsh Creek Road right-of-way as far as necessary to serve development on the Rodenburg, Temps, Thomas and Foust properties.
Major tributary sewer lines will also cross Mount Diablo Creek and intersect the trunk sewer at Pine Lane and Russellmann Road to provide service to the proposed development on the south side of Mount Diablo Creek. Additional lines would also branch off to the north to provide service to parcels on the north side of the creek. The location of these lines, and the design of the internal sewer systems needed to serve all development areas, would be based on the existing topography and proposed road layout within each subdivision.

Only areas with densities of at least one unit per acre will be sewered; ranchette development will utilize septic tanks and leachfields. The maximum buildout of the planning area with 297 newly sewered homes would produce a peak wastewater flow of approximately 300 gpm, which would be divided between the two collector lines described above. In keeping with City of Clayton criteria, these lines and all other tributary sewers should be at least 6 inches in diameter. This diameter may have to be increased to 8-inch in sections where the volume of flow and pipeline slope require a larger diameter.



Legend

- Existing Lines
- Proposed Lines
- Alternative Lines (Require pump station)
- Potential Pump Station Location
- Specific Plan Boundary

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 16

Planning Area Sewer Lines

2. Downstream Sewer Improvements

Policy IN-5: Wastewater collection system improvements under the Specific Plan shall include downstream improvements to the collection line running from the study area boundary to Donner Creek. Specifications for these improvements shall be detailed in the sewer study required by Policy IN-4.

Downstream of the Specific Plan area, many existing segments of the main collector sewer are only six inches in diameter, and in many locations the pipe slope is nearly flat. These conditions reduce the sewer's capacity, and can prevent the existing line from accommodating significant volumes of new flow. When peak flows exceed a sewer's capacity, wastewater is forced to back up into manholes and house service lines. Preliminary calculations indicate that this would occur in several sections of the El Molino collector system upon build-out of the Specific Plan. Table 4 shows an analysis of existing and proposed peak flow conditions on the El Molino line, and it calculates the severity of back-ups that might occur.

As can be seen in Table 4, development of the Specific Plan would increase wastewater flows beyond the capacity of the existing sewer line in ten individual segments. In nine of these segments, this capacity shortfall would be substantial (greater than 100 gallons per minute (gpm)), and it could result in significant back-ups within the system.

Replacement of existing lines or installation of parallel sewer lines would be necessary to provide adequate capacity and prevent future surcharging within existing lines.

Installation of new sewer lines along the El Molino Drive collector alignment will entail a great deal of construction on existing residential streets, through backyards, and alongside confined creek corridors. To avoid these problems, engineers for the Heartland site have considered an alternate sewer line route running west along Marsh Creek Road to an existing sewer main at Bigelow Street, or all the way to Donner Creek if the Bigelow line lacks sufficient excess capacity. This alternative would have advantages and disadvantages. It would damage the new pavement on Marsh Creek Road, and it would not provide gravity sewer service for portions of the planning area outside the Heartland site. Thus an alternative alignment might not avoid impacts to the existing Regency Woods neighborhood when the rest of the planning area is developed. However, this alternative would avoid possible service disruptions to existing customers in Regency Meadows and Regency Woods, and sewage could be pumped from lower areas in the study area to Marsh Creek Road for service using the new Marsh Creek Road line. The City prefers gravity lines over a pump station, since a pump station would require additional maintenance, which would place a burden on the City. Therefore, this Plan assumes that the study area would be served through the El Molino/El Portal corridor.

Table 4
CAPACITY REQUIREMENTS FOR DOWNSTREAM SEWER LINES

Segment No.	Location	Pipe Size (inches)	Length (feet)	Slope (pct)	Flow Capacity[a] (gpm)	Existing Homes[b]	Peak Factor[c]	Peak Flow[d] (gpm)	Homes at Buildout[e]	Peak Factor[c]	Peak Flow[d]	Excess Capacity[f] (gpm)	Req'd Head[g] (feet)
1	Mt. Diablo Creek: 40' Stub Out east of Oakwood	8	40	0.77	477	0	--	0	114	5.0	122	355	0
2	Mt. Diablo Creek: Oakwood to El Portal Drive	8	310	3.75	1,053	16	5.0	17	130	5.0	139	914	0
3	El Portal Drive: Mt. Diablo Creek west toward Diablo Pkwy.	6	200	1.0	252	45	5.0	48	159	5.0	171	81	0
4	El Portal Drive: Segment 3 to Diablo Pkwy.	8	300	0.77	477	45	5.0	48	159	5.0	171	306	0
5	El Portal Drive: Diablo Pkwy. west toward El Pueblo Place	8	400	1.3	620	51	5.0	55	348	4.7	351	269	0
6	El Portal Drive: Segment 5 to El Pueblo Place	6	400	2.78	421	51	5.0	55	348	4.7	351	70	0
7	El Portal Drive: El Pueblo Place to El Portal Court	6	500	2.79	422	111	5.00	119	408	4.5	394	28	0
8	El Portal Drive: El Portal Court to Mirango Court	6	300	1.20	277	120	5.00	129	417	4.5	402	-125	4.0
9	El Portal Drive: Mirango Court to Malibu Court	6	350	0.60	196	131	5.00	141	428	4.45	408	-212	7.1
10	El Portal Drive: Malibu Court to Regency Drive	6	300	0.60	196	140	5.00	150	437	4.45	417	-221	6.4
11	Regency Drive: El Portal Drive to Weatherly Drive	6	350	4.33	525	148	5.00	159	445	4.4	420	105	0
12	Weatherly Drive: Regency Drive to Barcelona Way	6	400	1.20	277	230	5.00	247	527	4.3	486	-209	10.0
13	Barcelona Way: Weatherly Drive to Capistrano Court	8	200	0.60	421	244	5.00	262	541	4.25	493	-72	.5

Segment No.	Location	Pipe Size (inches)	Length (feet)	Slope (pct)	Flow Capacity[a] (gpm)	Existing Homes[b]	Peak Factor[c]	Peak Flow[d] (gpm)	Homes at Buildout[e]	Peak Factor[c]	Peak Flow[d]	Excess Capacity[f] (gpm)	Req'd Head[g] (feet)
14	Rear Yards: Capistrano Court to El Molino Drive	8	300	0.40	344	260	5.00	279	557	4.25	508	-164	1.4
15	Rear Yards: El Molino Drive to Donner Creek	8	1,000	0.40	344	300	5.00	322	597	4.2	538	-194	5.8
16	Donner Creek: Rear Yards to Bloching Circle	6	500	1.68	327	313	5.00	336	610	4.2	549	-222	15.2
17	Donner Creek: Bloching Circle to near Wright Court	6	690	1.56	315	323	4.95	343	620	4.15	552	-237	22.2
18	Donner Creek: near Wright Court to Clifford Court	6	525	1.60	319	379	4.6	374	676	4.1	594	-275	20.7
19	Donner Creek: Clifford Court to Marsh Creek Road	8	1,100	2.10	788	389	4.55	380	686	4.1	603	185	0

[a] Flow Capacity is based on Manning's formula, as per Sanitary Sewer System Investigation by Govers Engineers, 1/91.
[b] Cumulative number of homes that now contribute to each segment of the main sewer line.
[c] Peak Factor is multiplied times the average daily flow to obtain peak flow, as per Govers Engineers, 1/91. Peak Factor declines as the cumulative number of homes goes up.
[d] Based on 95 gal/capita/day, 3.25 persons/home, and the peak factor, as per Govers Engineers, 1/91.
[e] Cumulative number of contributing homes (existing + future) upon build-out of the February, 1993 Specific Plan. The number of homes has changed marginally since the February, 1993 Public Review Draft Plan, but not enough to significantly alter the results of this preliminary analysis.
[f] Amount by which segment capacity exceeds planned peak flow. Negative values indicate insufficient capacity to accommodate these flows.
[g] Depth to which wastewater must rise in a segment's upstream manhole to accommodate the projected peak flow. The head requirement is added from manhole to manhole within the collection system service using the new Marsh Creek Road line. The City prefers gravity lines over a pump station, since a pump station would require additional maintenance, which would place a burden on the City. Therefore, this Plan assumes that the study area would be served through the El Molino/El Portal corridor.

C. Storm Drainage

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

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

1. Drainage Requirements

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

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

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

2. Detention Sizing

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

3. Drainage Improvements

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

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

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

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

Table 5
RUNOFF DETENTION REQUIREMENTS

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

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

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

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

Detention basins should be located as follows:

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

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

b. Development Areas with Multiple Developers. Under this Specific Plan, Development Areas B, C and D will each accommodate development on lands owned by several owners. Drainage improvements for each of these subbasins could occur in one of two ways, as described below.

(1) Underground Storage. Individual property owners may develop their parcels with underground detention of increased runoff. Detained runoff must drain through underground facilities from the site directly into Mount Diablo Creek.

(2) Surface Detention. Property owners in each subbasin may work together to identify a single site for a surface detention basin in their areas. Such a basin must be designed to accommodate increased runoff from all developable parcels in the area. Property owners in the area would be responsible for defraying the costs of detention basin construction and land acquisition to serve the area.

Chapter X
IMPLEMENTATION ELEMENT

■ ■ ■

This section outlines steps that will be necessary to implement the Specific Plan, including changes in City codes, project review, project phasing, annexation and financing.

A. Project Review and Zoning Code Changes

All construction in the study area will be required to conform to the provisions of the Specific Plan. The following policies will seek to ensure conformance:

Policy IM-1: **No subdivision, use permit, design review application, or other entitlement for use, and no public improvement, shall be authorized in the study area until a finding has been made that the proposed project is consistent with this Specific Plan.**

Policy IM-2: **City staff shall review all construction projects requiring a building permit to ensure that they comply with the Design Guidelines and all other plan provisions.**

Policy IM-3: **The City Planning Commission shall review all subdivisions and development projects of five units or more at a public hearing.**

Policy IM-4: **The City shall, by reference, incorporate into its zoning code the relevant land use, resource conservation and design specifications found in Chapters V, VI and VII, respectively.**

Policy IM-5: **The City shall encourage that all development occurring within the Specific Plan area be accomplished via development agreements between the City and individual developers/property owners.**

B. Project Phasing

Appropriate phasing of development under the Specific Plan will be very important for two reasons:

- First, the study area is currently largely undeveloped, and its development should proceed in an orderly manner from west to east, thereby avoiding "leapfrog" development. Development of the eastern portion of the study area before the western portion would lead to visual inconsistencies in the study area until development is completed, and it would result in high initial costs for the provision of infrastructure to eastern areas.
- Second, access from Marsh Creek Road to some parcels in the study area will be through roads or easements on other parcels. Development on these "interior" parcels must be carried out in a way that coordinates with development on the parcels through which they will take access.

For this reason, development phasing under the Specific Plan should generally follow these two policies:

Policy IM-6: **Development should generally begin in the western part of the study area, to be followed by development farther east. Development Areas A and C will be the first to develop, followed by area D. Development Areas B and E will probably be the last to be developed.**

Policy IM-7: **Within individual development areas, parcels that are closest to collector streets, including Pine Lane and Russellmann Road, should be developed first. This may mean that some parcels that are adjacent to Marsh Creek Road, but which are not planned to have direct access from Marsh Creek Road after development, will have to wait to develop until adjacent parcels have developed.**

C. City Annexation

The entire Specific Plan area would be annexed to the City. The following policies will govern annexation:

Policy IM-8: **The City shall petition LAFCO to amend its Sphere of Influence to include the Specific Plan area as shown in Figure 6.**

Policy IM-9: **All development under this Specific Plan shall occur under the jurisdiction of the City of Clayton.**

Policy IM-10: **Annexation should occur on an orderly, phased basis, moving east from the existing City limits on the west. Annexation shall normally occur when development is proposed in an area, but annexation of some areas not proposed for development may be necessary to accommodate development proposals in an area. In the process of annexing from west to east, the City shall exercise flexibility in determining the amount of contiguity necessary to permit annexation.**

Policy IM-11: **Areas to be annexed to the City shall be simultaneously annexed to the Contra Costa County Fire District to allow for urban levels of fire suppression service.**

Policy IM-12: **The City of Clayton recommends that the policies of this Specific Plan be applied by Contra Costa County in the unincorporated portions of the study area and in areas beyond the study area but within Clayton's area of development comment, which extends three miles from the City limit. The City shall formally request that the County adopt this Plan and use it for policy application in the area, and the City shall use the Specific Plan as the basis for comments on projects within the study area and the comment area.**

D. Project Financing

A number of improvements are proposed under this Specific Plan, including new roadways and pathways, street tree plantings, water lines and tanks, sewer lines and storm drainage facilities. This section examines the costs, allocation of costs, and financing methods for these improvements.

The following policies will govern financing of improvements:

Policy IM-13: **Improvements on individual properties required under this Specific Plan shall be financed by individual property owners or developers.**

Policy IM-14: **Improvements that will require coordinated implementation on or along several parcels, such as widening of Marsh Creek Road and installation of new water mains, traffic signals, water tanks, trunk sewers, storm drainage facilities and downstream sewer improvements, shall be overseen by the City and should be financed with a mechanism that attempts to ensure ultimate fair-share repayment of all costs to those who pay them by the landowners or developers who will benefit from them. Examples of appropriate funding mechanisms are included in Section D.3 of this chapter.**

1. Estimated Individual Improvement Costs

The improvements that would be shared by most landowners in the study area are described below, with an analysis of the total costs to be shared. These costs are summarized in Table 6. The costs shown are approximations only, and are likely to change as more exact information on improvements in the area is developed through more precise engineering studies.

a. Marsh Creek Road improvements. Total costs for improving Marsh Creek Road, including removal of existing paving, and new paving, storm drainage and street trees, are summarized in Table 7. As shown in this table, roadway improvements would cost approximately $250 per linear foot, for a total cost of approximately $788,130. This estimate does not include right-of-way acquisition costs, which could be significant.

b. Water lines. Aside from the water main extensions described in Chapter IX, virtually all of the new water mains needed to serve Specific Plan development areas will be internal to individual subdivisions, so their cost cannot be reasonably estimated at this time.

The 6,500 feet of parallel Marsh Creek Road/Mount Diablo Creek water main would cost approximately $487,500, assuming a cost of $75 per foot. The cost of these mains would be shared equally by all parts of the Planning Area, excluding Development Area A, since all homes would benefit from them equally. The cost per home would equal about $2,800. There would be some additional costs to oversize mains within individual development areas, but these would be relatively insignificant, and probably not raise the per home cost by more than 10 percent.

Table 6
JOINT IMPROVEMENT COSTS

Improvement	Cost
Marsh Creek Road	$788,000
Water Main	488,000
Mt. Diablo Creek Trunk Sewer	289,000
Russellmann Road Trunk Sewer (within Area D only)	45,000
Downstream Sewer Main Replacement	391,000
TOTAL	**$2,001,000**

A main of undetermined length will be needed to connect Development Area A with the Oakhurst storage tank. The total length of this main is not known because its route has not been identified, so its cost cannot be determined. Developers of the Moita and Morgan properties will negotiate directly with Heartland for water service since Heartland has already made arrangements for water service and will create the vast majority of need in Development Area A.

c. Water Storage Tanks. A water storage tank has already been provided at a cost in excess of $250,000 for the Zone 7 portion of Development Area A, so no additional storage is needed. A 190,000 gallon tank will be needed for Zone 8 development in development Area A, and will probably be installed by Heartland. This tank will cost about $300,000, including allowances for land, site preparation and additional water main. The developers of the Moita and Morgan properties will be expected to repay Heartland their pro-rated shares of the cost of this tank in order to arrange for service.

Methods to provide water services to the two residential units within Zone 7 on the Temps property have not been finalized. The costs for these water service provisions will be borne by the project sponsor.

At this time, it appears that additional storage may not need to be provided for the other parts of the Planning Area located within Zone 6. An additional tank may be constructed on Nob Hill, but its costs are not included in the projections for this Specific Plan since its ultimate size and configuration are not known.

Table 7
MARSH CREEK ROAD
ROADWAY CONSTRUCTION COSTS

Component	Approx. Cost (per linear foot)
Remove Existing Pavement 3" Asphalt Concrete (estimated) x 30' wide x $1.85 per cubic foot for removal & disposal	$13.89
Remove & Replace Existing Aggregate Base 8" Aggregate Base (est.) x 30' wide x $0.55 per cubic foot (8" A.B. x 30' wide = 20 cubic feet per line a r foot)	$11.11
Aggregate Base - Roadway [(18" A.B. x 24' wide) - 20 cf/lf] x 140#/cf. x 1 ton/2000# x $25/ton	$28.00
Aggregate Base - Shoulders 12" A.B. x (2 x 5' wide) x 140#/cf x 1 ton/2000# x $25/ton	$17.50
Asphalt Concrete Pavement 4" A.C. x 34' wide x 150#/cf x 1 ton/2000# x $45/ton	$38.25
Roadway Excavation (outside existing Roadway) (16' deep x 38' wide) + 2 x (6" deep x 8' wide) - (11' deep x 30' wide existing roadway) = 31.2 cf. 31.2 cf x $0.55 per cubic foot	$17.33
Grading & Compacting (92' wide x $0.25/sf)	$23.00
Storm Drainage Assume (6) approx. 24" cross drains from north to south side Riprap endwall protection @ both ends Average length = 100' Length of road = 3,150' 6 [(100' x $55/l.f.) + (2 endwalls @ $500/)] = $34,000	$10.79
Sidewalks (2 sides @ $7.50 per linear foot)	$15.00
Street Trees (Both sides @ approx. 30' o.c. @ $150/tree)	$10.00
Subtotal	**$184.87**
Miscellaneous/Unanticipated Construction @ 15% of Subtotal	$27.73
Engineering, Survey & Inspections @ 20% of Subtotal	$37.57
Total Unit Cost	**$250.20**
TOTAL COST OVER 3,150 FT.	**$788,130**

d. Sewers. Connection of the Heartland site into the existing Diablo Parkway sewer at Marsh Creek Road will require an off-site extension of only about 500 feet across the North State Development or Heartland properties to Marsh Creek Road. Using an estimated total cost of $60 per foot (excluding easement acquisition), this extension would cost approximately $30,000. This cost would be borne by the Heartland development, since it would generally serve that development. The developers of the Moita and Morgan properties will be expected to repay a prorated share of the cost of this line to Heartland as a condition for connection to it.

The Mount Diablo Creek collector sewer will run for a total distance of approximately 3,850 feet from the planning area's western boundary to the east end of the proposed development areas on Marsh Creek Road. At $75 per foot, this collector will cost approximately $288,750. The only major tributary to this line will run south on Russellmann Road, serving all or part of three development areas proposed for the south side of the creek. All three areas will contribute to this 600 foot line, which will cost approximately $45,000.

It cannot be determined how construction costs for the Mount Diablo Creek and Russellmann Road collector sewers will ultimately be shared by properties in the Specific Plan area. It is expected that these shares will be at least partially based on each development area's contribution to the total flow within each collector segment. This means that the collector sewer cost per home will be lower within those areas located closest to the existing City system. At the upstream ends of both the Mount Diablo Creek and Russellmann Road collectors, there would be fewer homes contributing to the total wastewater flow and sharing in the cost of off-site sewer mains.

As described in Chapter IX, almost 4,600 feet of the existing El Molino/El Portal collector would require replacement to prevent surcharging upon build-out of the Specific Plan. At an estimated total cost of $85 per foot, which includes an allowance for surface restoration and constrained working conditions, this capacity upgrade would cost almost $391,000. All parts of the Specific Plan area would contribute wastewater to the existing trunk sewer, so upgrading costs would be split equally.

As stated in Chapter IX, an alternative to replacement of the El Molino/El Portal collector would be construction of a line in Marsh Creek Road to either Bigelow Street or Donner Creek, along with construction of a pump station to serve portions of the study area that are lower then Marsh Creek Road. This alternative is not preferred by the City, since it would require maintenance of the pump station. Costs for this alternative could be marginally lower than those for the replacement of the El Molino/El Portal collector. A pump station is estimated to cost $120,000, while the new Marsh Creek Road line would cost approximately $150,000 to extend approximately 2,500 feet to Bigelow Street or about $210,000 to extend about

3,500 feet to Donner Creek. Thus, costs for this alternative would range from $270,000 to $330,000.

2. Allocation of Improvement Costs

Joint improvement costs will be allocated on a per unit basis as development areas are developed, with costs based on the actual benefit received by an individual property. The total costs and areas of benefit for individual improvements are outlined above.

At this time, a preliminary estimate of the joint development costs under the plan show that costs are likely to range from $1,800 to $23,000 per unit. The calculation of these costs is shown in Table 8, and additional information regarding allocation of road and sewer costs is shown in Appendix B of this report. As stated above, the costs shown are approximations only, and are likely to change as more exact information on improvements in the area is developed. More precise engineering studies will be necessary to calculate exact per unit costs, and the timing for payment of fees. It is also important to remember that these costs are for joint benefit improvements only; on-site improvements and improvements that benefit only one development parcel will be paid for entirely by a single developer as additional costs.

3. Financing Methods

This financing could occur through any of several mechanisms, including pre-payment by an individual developer with reimbursement by subsequent developers, or establishment of a Mello-Roos Community Service District or similar funding district. The exact funding mechanism will be determined after consultation with individual property owners, and after the scope of the improvements to be funded is more completely understood. This section gives a brief evaluation of potential funding mechanisms:

a. Developer pre-payment. Under this type of scheme, individual developers would be required to pay for and install improvements that are necessary to serve their projects. The City would then oversee the collection of fees from subsequent developers who benefit from the improvements, and these fees would be returned to developers who paid for improvements to offset the costs they incurred. This type of financing approach is the easiest to set up and requires the least risk or effort on the part of the City, but it can be very expensive for developers who provide improvements at the outset of the project.

Table 8
ALLOCATION OF JOINT IMPROVEMENT COSTS

	Approximate Cost per Unit in Each Development Area[a]									
Improvement	**A**	**B1**	**B2**	**C1**	**C2**	**C3**	**D1**	**D2**	**E1**	**E2**
ROADS										
Marsh Creek Road[b]	$0	$4500	$12,600	$900	$900	$900	$4,500	$4,500	$4,500	$4,500
Signal at Marsh Creek Road/Diablo Parkway[c]	$500	500	500	500	500	500	500	500	500	500
WATER SERVICE										
Marsh Creek Rd. Parallel Main	0	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800
SANITARY SEWER										
Mt. Diablo Creek Trunk Sewer	0	2,500	5,800	200	300	900	300	1,400	1,400	1,400
Russellmann Rd. Trunk Sewer (within Area D only)	0	0	0	0	0	0	0	1,600	400	1,600
Downstream Sewer Main Replacement	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300
TOTAL	$1,800	$11,600	$23,000	$5,700	$5,800	$6,400	$9,400	$12,100	$10,900	$12,100

[a] Preliminary estimate only, rounded to the nearest $100.
[b] New ranchette units that benefit from improvements to Marsh Creek Road will also be responsible for benefit payments between $4,500 and $12,600.
[c] Assumes an overall cost of $138,000, including design and installation, to be split equally among all units. All new ranchette units will also be responsible for payment of about $400 per unit.

b. Mello-Roos Community Service District or similar mechanism. A community service district would be formed to pay for improvements in the area, with funding for the district coming from the landowners who would benefit from improvements. Once established, such a district would provide a straight-forward method of funding needed improvements. However, such districts can be difficult to establish, since they require a two-thirds vote of people living in the district. One way to ensure establishment of the District would be to require joining the district as a condition for annexation into the City.

c. Bonds. In some cases, a City can issue bonds to pay for the construction of improvements, which are then paid back with income generated by the project. Bonding is not likely in the case of this project since there would be no income stream to support the bonds' repayment.

d. Improvement Fund. Under this alternative, developers would deposit their pro-rated share to the City for specific off-site improvements benefitting more than one developer. The City would hold and invest the funds in a specified improvement fund until it had accumulated sufficient funds to install the specific improvement. When sufficient funds became available, the improvement would be constructed. This funding mechanism would work only for improvements that are not essential, such as streetscaping. Essential improvements such as sewer and water service must be installed before a project becomes operational, so their funding must be arranged using one of the methods outlined above.

Appendix A
PUBLIC MEETINGS HELD

■ ■ ■

1.	January 10, 1991	Property Owners' Orientation Meeting
2.	January 31, 1991	Public Orientation Meeting
3.	March 26, 1991	Baseline Data Report #1
4.	April 9, 1991	Baseline Data Report #2
5.	April 23, 1991	Baseline Data Report #3
6.	July 23, 1991	Development Goals & Policy Statement
7.	October 8, 1991	Introduction of Plan Alternatives
8.	October 29, 1991	Comments on Alternatives
9.	November 26, 1991	Revised Alternatives
10.	December 10, 1991	Discussion of Alternatives
11.	December 17, 1991	Discussion of Alternatives
12.	January 28, 1992	Discussion of Alternative Addendum #2
13.	February 25, 1992	Planning Commission Selection of Alternative
14.	March 10, 1992	Planning Commission Confirmation of Preferred Alternative
15.	June 9, 1992	Discussion of Implementation Packet
16.	June 23, 1992	Discuss Design Guidelines Portion of Implementation Packet
17.	June 30, 1992	Joint Field Trip with City Council on Design Guidelines
18.	July 7, 1992	Discussion and Revision of Implementation Packet
19.	September 8, 1992	Property Owner Alternative Conceptual Plan
20.	March 23, 1993	Comment Hearing on Draft EIR
21.	April 13, 1993	Review Heartland Proposal
22.	April 20, 1993	Review Moita Proposal
23.	April 27, 1993	Review Temps Proposal
24.	June 21, 1993	Review Finalization of Draft Plan and EIR
25.	June 22, 1993	Continuation of Finalization of Draft Plan and EIR
26.	June 29, 1993	Discuss Overlay Zone
27.	August 4, 1993	Finalize Overlay Zone
28.	October 26, 1993	Discuss Revised Draft Specific Plan
29.	December 14, 1993	Planning Commission Hearing #1 on Plan and EIR
30.	January 11, 1994	Planning Commission Hearing #2 on Plan and EIR
31.	February 15, 1994	City Council Hearing #1 on Plan and EIR
32.	March 2, 1994	City Council Hearing #2 on Plan and EIR
33.	March 15, 1994	City Council Hearing #3 on Plan and EIR

34.	May 16, 1994	City Council Hearing #4 on Plan and EIR
35.	July 25, 1994	City Council Hearing #5 on Plan and EIR
36.	August 22, 1994	City Council Review of Reduced Planning Area
37.	October 18, 1994	City Council Direction to Prepare General Plan Amendment and Specific Plan for Reduced Specific Plan and EIR
38.	March 14, 1995	Planning Commission Hearing on DEIR, General Plan Amendment (GPA) and Specific Plan
39.	April 11, 1995	Planning Commission Review to give direction for revisions to GPA and Specific Plan
40.	April 25, 1995	Planning Commission Review to give direction for revisions to GPA and Specific Plan
41.	May 30, 1995	Planning Commission recommendation to the City Council for certification of the EIR; recommendation for approval of the GPA and Specific Plan
42.	June 28, 1995	City Council certification of the EIR; approval of the General Plan Amendment and Specific Plan

Appendix B
COST ALLOCATION DATA

■ ■ ■

This appendix includes three tables showing the basis for calculation of the allocation of improvement costs to individual development areas within the study area. These tables provide the basis for the allocation of projected costs for roadway improvements and sewer lines under the Specific Plan.

Each table divides the improvement in question into individual segments, each with a specific length. This length is then multiplied by the unit cost for the improvement. The next columns identify the development areas that would benefit from the segment, the numbers of units in these development areas, and the cumulative number of units that would benefit from the segment. Based on this cumulative number of units, the segment cost per unit is calculated. These costs are then summed with the costs for other segments that would also benefit the area, to arrive at the cumulative cost per unit.

Since development areas that are "upstream" in the study area would receive the benefit from the longest portion of an improvement, these areas show the highest cumulative allocated costs. Similarly, those development areas that are farthest "downstream" have the lowest allocated costs, since they would not benefit from those portions of improvements that are farther "upstream."

Table B-1
RUSSELLMANN ROAD TRUNK SEWER
COST ALLOCATION

Segment	Approximate Length (feet)	Approximate Construction Cost	New Contributing Areas	New Contributing Units	Cumulative Units	Segment Cost per Unit	Cumulative Cost per Unit
Cooper property to M. Clark property	400	$30,000	D2, E2	27	27	$1,111	$1,552
M. Clark property to Mt. Diablo Creek	300	$22,500	E1	24	51	$441	$441

Table B-2
MT. DIABLO CREEK TRUNK SEWER
COST ALLOCATION

Segment	Approximate Length (feet)	Approximate Construction Cost	New Contributing Areas	New Contributing Units	Cumulative Units	Segment Cost per Unit	Cumulative Cost per Unit
End of line to Wing/Lietz property line	925	$69,375	B2	21	21	$3,304	$5,780
Wing/Lietz property line to Russellmann Road	475	$35,625	B1	28	49	$727	$2,476
Marsh Creek Road to Mt. Diablo Creek	200	$15,000	None	0	49	$306	$1,749
Russellmann Road to Manion/M. Clark property line	775	$58,125	D2, E	52	101	$575	$1,443
Manion/M. Clark property line to Pine Lane	775	$58,125	C3	9	110	$528	$868
Pine Lane to center of Osteen property	350	$26,250	C2, D1	33	143	$184	$340
Center of Osteen property to end of Oakwood extension	350	$26,250	C1	25	168	$156	$156

Table B-3
MARSH CREEK ROAD CONSTRUCTION COST ALLOCATION

Segment	Approximate Length (feet)	Approximate Construction Cost	New Contributing Areas	New Contributing Units	Cumulative Units	Segment Cost per Unit	Cumulative Cost per Unit
Eastern End of improvements to Russellmann Road	750	$187,650	B2 2 ranchette units	23	23	$8,159	$12,625
Russellmann Road to Pine Lane	1,800	$450,360	B1, D, E. 4 ranchette units	102	125	$3,603	$4,466
Pine Lane to Study Area Boundary	600	$150,120	C	49	174	$863	$863

Appendix C
LIST OF PREPARERS

■ ■ ■

Brady and Associates, Project Management

Project Planning, Policy, Municipal Services, Noise, Air Quality, and Visual Assessment, Alternatives Formulation and Evaluation
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Alice Hall, Field Archaeologist
Nelson Baker, Field Archaeologist

Crane Transportation Group, Traffic and Circulation

Mark Crane, Principal-in-Charge
Carolyn Cole, Principal
David Reed, Engineering Analyst

RESOLUTION NO. 44-95

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON ADOPTING THE MARSH CREEK ROAD SPECIFIC PLAN.

WHEREAS, following a duly noticed public hearing on May 30, 1995, the Clayton Planning Commission recommended to the City Council the adoption of the Marsh Creek Road Specific Plan; and

WHEREAS, the City Council held a duly noticed public hearing on June 28, 1995, and gave due consideration to all testimony, public comment, and documents received; and

WHEREAS, the preparation of a Specific Plan is expressly authorized under State law (Government Code Section 65450) for the systematic implementation of the General Plan; and

WHEREAS, the Marsh Creek Road Specific Plan has been prepared in conformance with the provisions of State law; and

WHEREAS, the Marsh Creek Road Specific Plan is consistent with the goals and policies of the General Plan and is consistent with the General Plan Diagram designations; and

WHEREAS, the Marsh Creek Road Specific Plan is the result of an extensive body of study and analysis, much of which is detailed in Baseline Data Report Numbers 1, 2 and 3 which served as the foundation for the development of the Specific Plan itself; and

WHEREAS, following the preparation and review of the Baseline Data Reports, various additional reports and studies were prepared and reviewed, as listed below:

- Vision Worksheet, November 13, 1991
- Goals and Policy Statements, July 16, 1991
- Land Use Alternatives, October 8, 1991
- Alternatives Addendum No. 1, October 29, 1991
- Preliminary Development Areas and Policies, December 10, 1991
- Alternatives Addendum No. 2, January 14, 1992
- Preliminary Development Areas and Policies (revised), March 10, 1992
- Implementation Packet, June 1992
- Draft Marsh Creek Road Specific Plan, October 1993
- Draft Marsh Creek Road Specific Plan FEIR, April 1994
- Draft Marsh Creek Road Specific Plan FEIR Addendum, May 1994

These reports and studies materially affected the formulation of the Marsh Creek Road Specific Plan; and

RESOLUTION NO. 44-95

WHEREAS, the Marsh Creek Road Specific Plan has undergone significant public disclosure and comment through a total of forty-two (42) study sessions/public meetings and/or public hearings, all of which were open to the public after providing diligent public notification and which comment further refined the Specific Plan; and

WHEREAS, the Marsh Creek Road Specific Plan, through its goals, policies, standards, and plan designations, comprises a balanced, comprehensive and internally consistent guide to development and conservation activities in the study area; and

WHEREAS, the development and conservation activities, as defined in the Marsh Creek Road Specific Plan, are compatible with each other and with the surrounding City and unincorporated area; and

WHEREAS, the existing City and County zoning for the entire study area (as presently applied) allows for the probable development of approximately forty-six (46) new dwelling units and the Marsh Creek Road Specific Plan allows for the development of approximately two hundred and ninety (290) new dwelling units. This increase in the number of potential dwelling units is a direct result of the comprehensive planning process undertaken by the Marsh Creek Road Specific Plan which concentrates development potential within those portions of the study area physically, environmentally, aesthetically, and practically suitable for this increase development potential. Taken as a whole, this increased development potential in the suitable portions of the study area compensates for the reduced development potential in the unsuitable areas of the study area; and

WHEREAS, the environmental review of the Marsh Creek Road Specific Plan included the preparation of a Final Environmental Impact Report (EIR), which has been recommended for Certification by the Planning Commission on May 30, 1995, and which has significantly influenced the development of the Plan itself to take into account environmental features and values; and

WHEREAS, the City Council on June 28, 1995 has reviewed and considered the Final EIR and has adopted Resolution No. 39-95 Certifying the EIR, Resolution No. 40-95 responding to impacts of the Specific Plan as identified in the EIR, Resolution No. 41-95 adopting

a Statement of Overriding Considerations for the unavoidable significant impacts of the Specific Plan, and Resolution No. 42-95 adopting the Specific Plan Mitigation Monitoring Program, and Resolution No. 43-95 adopting the Marsh Creek Road General Plan Amendment, all adopted prior to approving the Specific Plan or related projects.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Clayton that the Marsh Creek Road Specific Plan (File #564-92) is hereby adopted.

BE IT FURTHER RESOLVED by the City Council of the City of Clayton that the Marsh Creek Road Specific Plan Baseline Data Report numbers 1, 2, and 3 are adopted as an integral part of the Marsh Creek Road Specific Plan.

BE IT FURTHER RESOLVED by the City Council of the City of Clayton that the Final EIR for the Marsh Creek Road General Plan Amendment and Specific Plan is adopted by reference as part of the Marsh Creek Road Specific Plan.

Adopted by the City Council of the City of Clayton at an adjourned regular meeting of said Council held on June 28, 1995, by the following vote:

AYES: Council Members Laurence, Manning, Vice Mayor Kendall, Mayor Pierce

NOES: Council Member Littorno
ABSENT: None

Julie K. Pierce, Mayor

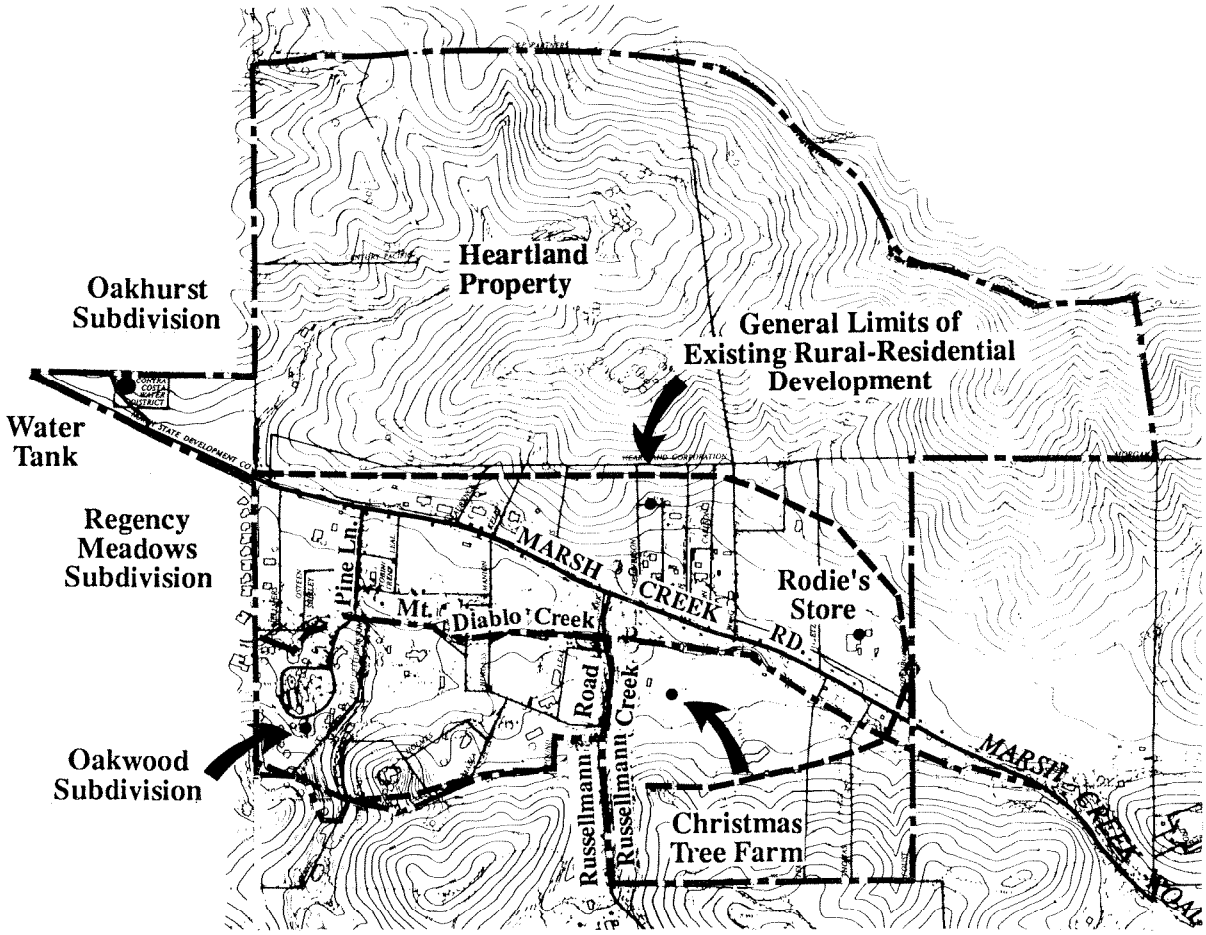
ATTEST:

Frances Douglas, City Clerk

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton at an adjourned regular meeting held on June 28, 1995.

Frances Douglas, City Clerk

EXHIBIT F



NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 3

Study Area Features

Table 1
LAND OWNERSHIP IN THE STUDY AREA

Number on Figure 4	Owner	Ownership Area (Acres)
1	Moita	25.0
2	Heartland Corporation	138.7
3	Morgan	93.4
4	Contra Costa Water District	1.6
5	North State Development Company	8.2
6	Laurence	8.1
7	Kelly	2.2
8	Soares	4.6
9	James/Iverson	8.4
10	Torson	4.2
11	P. Clark	2.0
12	Carlson	2.2
13	Nielson	1.4
14	Wing	3.6
15	Lietz	12.5
16	Rodenburg	18.5
17	Hellmers	3.1
18	Bergum	4.6
19	Osteen	6.2
20	Shirley	2.3
21	Leal	6.5
22	Tobin/Trent	1.2
23	Manion	5.9
24	M. Clark	5.9
25	Friis - Petit/Isakson	11.6
26	Mazza	4.5
27	Holmes	15.7
28	Sanders	0.9
29	Burgess	2.9
30	Pound	4.4
31	Cooper	3.0
32	Temps	42.8
33	Thomas	8.0
34	Foust	10.3
Total		Approximately 475 Acres

Source: Brady and Associates, Inc. and Contra Costa Assessor.

Legend

- Specific Plan Boundary
- Ranchette Residential 1 unit/5 acres
- Rural Residential 0.21 - 1.1 units/acre
- Low Density Residential 1.11 - 1.5 units/acre
- Medium Density Residential 1.51 - 2.2 units/acre
- Suburban Density Residential 2.21 - 3.0 units/acre
- Convenience Commercial
- Open Space
- Conceptual Location of Potential Park Site
- Historic Building and Potential Park Sites
- B1 Development Area Designation

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

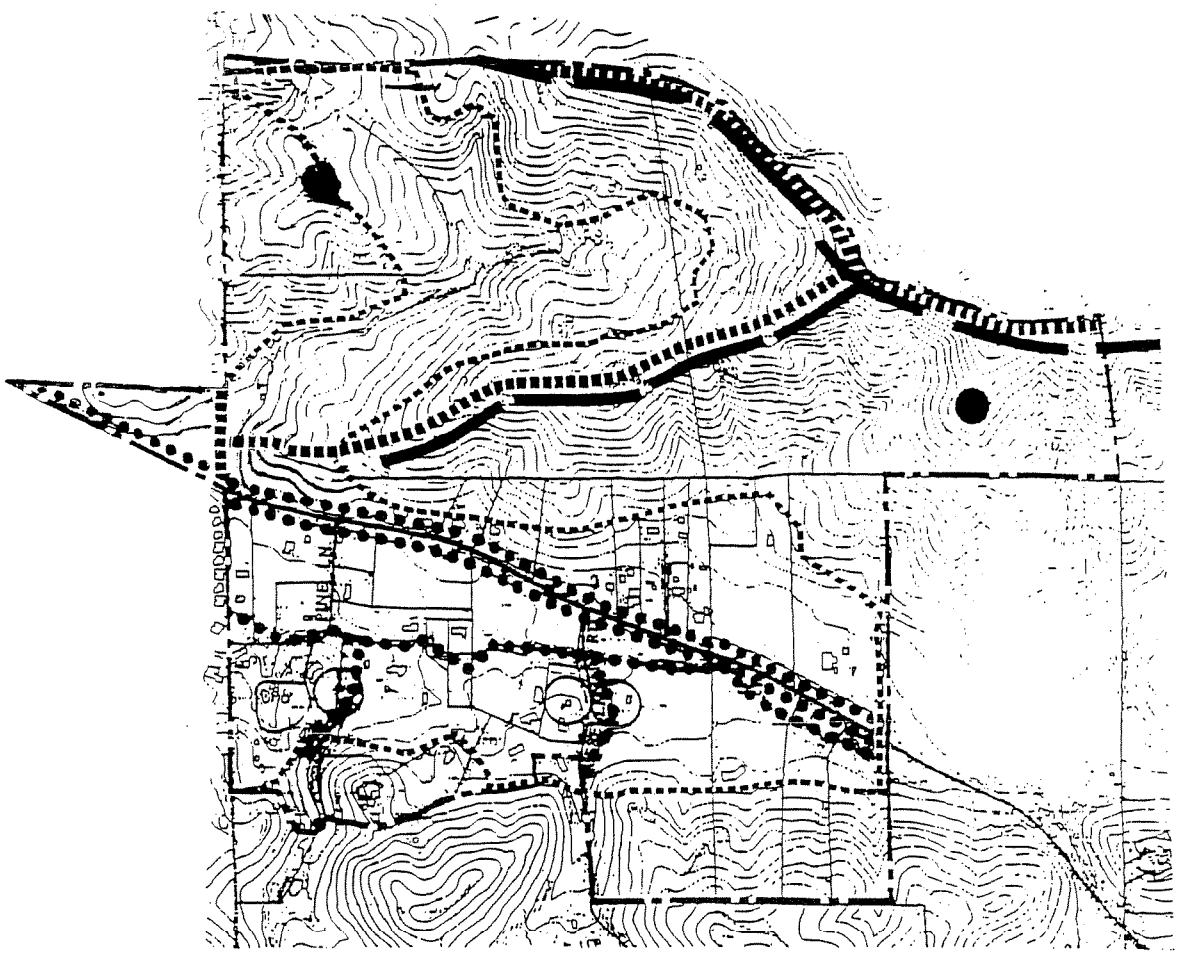
FIGURE 6

Land Use Designations

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

Table 2
SPECIFIC PLAN BUILDOUT POTENTIAL

Development Area	Major Property Owners	Approximate Acreage[a]	Designation	Anticipated Units[b]	Existing or Approved Units	Net New Units
A1	Heartland	19.6	Low	29	0	29
	Moita	7.2	Low	11	1	10
A2	Heartland	15.9	Medium	35	0	35
	Morgan	2.8	Medium	6	1	5
A3	Heartland	19.5	Low	29	0	29
	North State Development	4.4	Low	6	0	6
B1	Laurence	8.1	Rural	9	2	7
	Kelly	2.2	Rural	2	1	1
	Soares	4.6	Rural	5	1	4
	James/Iverson	8.4	Rural	9	1	8
	Torson	4.2	Rural	4	1	3
	P. Clark	2.0	Rural	2	1	1
	Carlson	2.2	Rural	2	1	1
	Nielson	1.4	Rural	1	1	0
	Wing	3.6	Rural	4	1	3
B2	Lietz	12.5	Rural	14	1	13
	Rodenburg	8.4	Rural	9	1	8
C1	Hellmers	2.8	Suburban	8	3	5
	Osteen	5.8	Suburban	17	1	16
	Shirley	1.9	Suburban	5	1	4
C2	Tobin/Trent	1.2	Low	2	0	2
	Leal	1.6	Low	2	0	2
	Manion	5.9	Low	9	0	9
	Holmes	1.8	Low	2	0	2



Legend

- Specific Plan Boundary
- Limit of Urbanized Development Areas
- Creek Corridors and Pathways
- Potential Public Trails
- Conceptual Location of Potential Park Sites
- Major Ridgelines to be Preserved
- Knolls to be Preserved

NORTH

5 Acres

0 300 600 1200

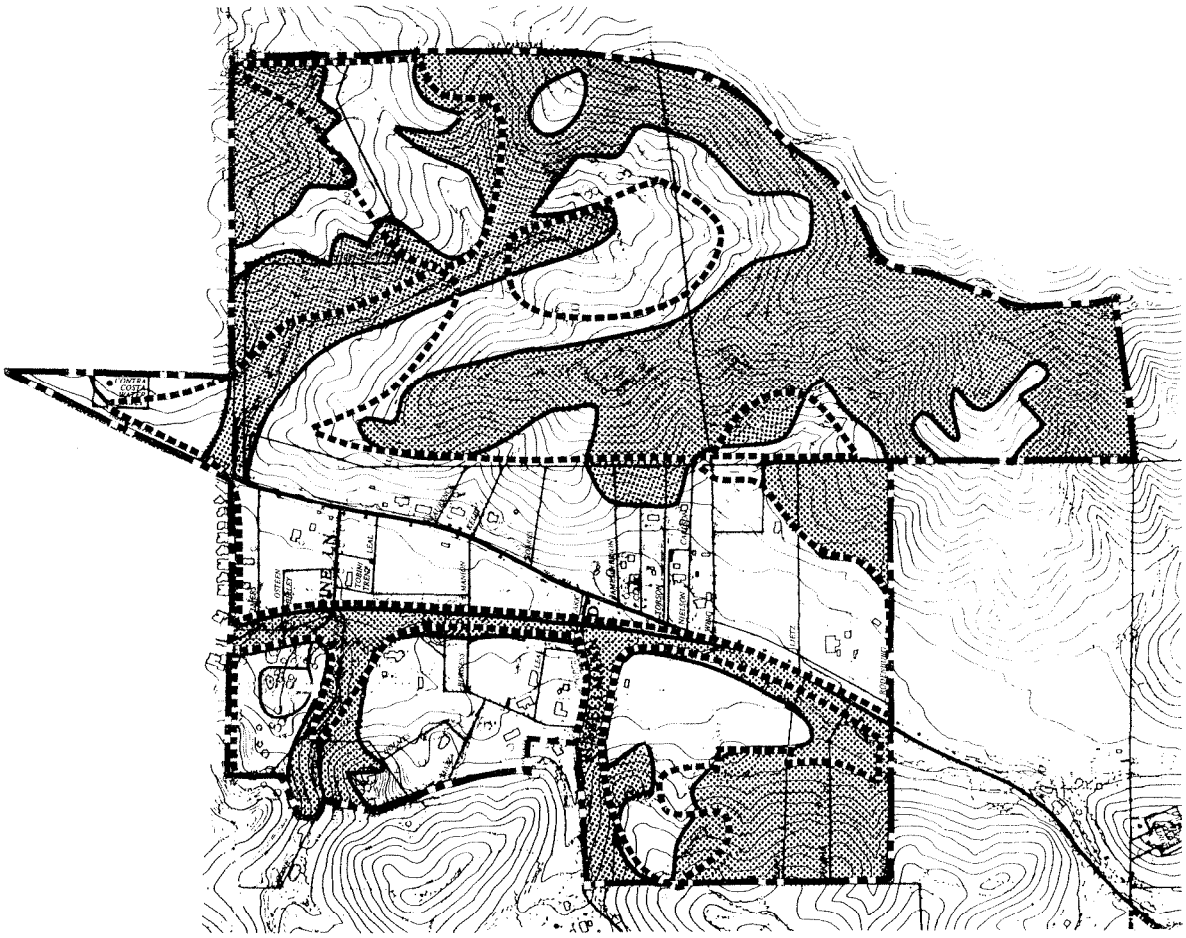
Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 7

Plan Conservation Features

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



Legend

Sensitive Zones:
- Riparian Corridors
- Chaparral
- Serpentine
- Easements
- Slopes 40% and over
- Knolls
- Portions of the West Face of Keller Ridge with Slopes over 26%

General Limits of Specific Plan Development

Areas where development is projected in sensitive zones will require further study before development proceeds.

NORTH

5 Acres

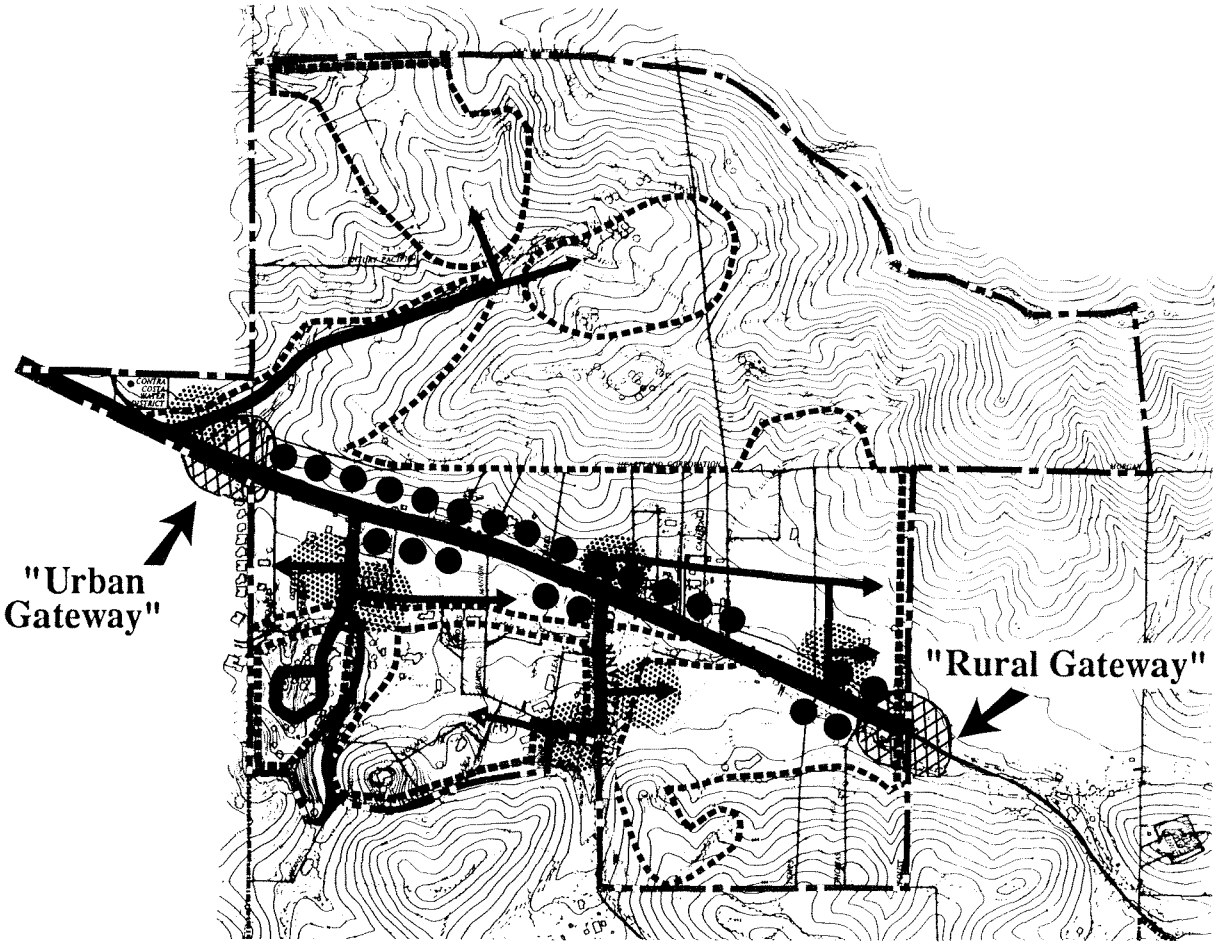
0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 8

Sensitive Zones in the Study Area



Legend

Gateways

Potential Entry Feature Locations

Roadway Segments with Oak Clusters

(Open View Corridors along Marsh Creek Road are those areas without Oak Clusters.)

Specific Plan Boundary

NORTH

5 Acres

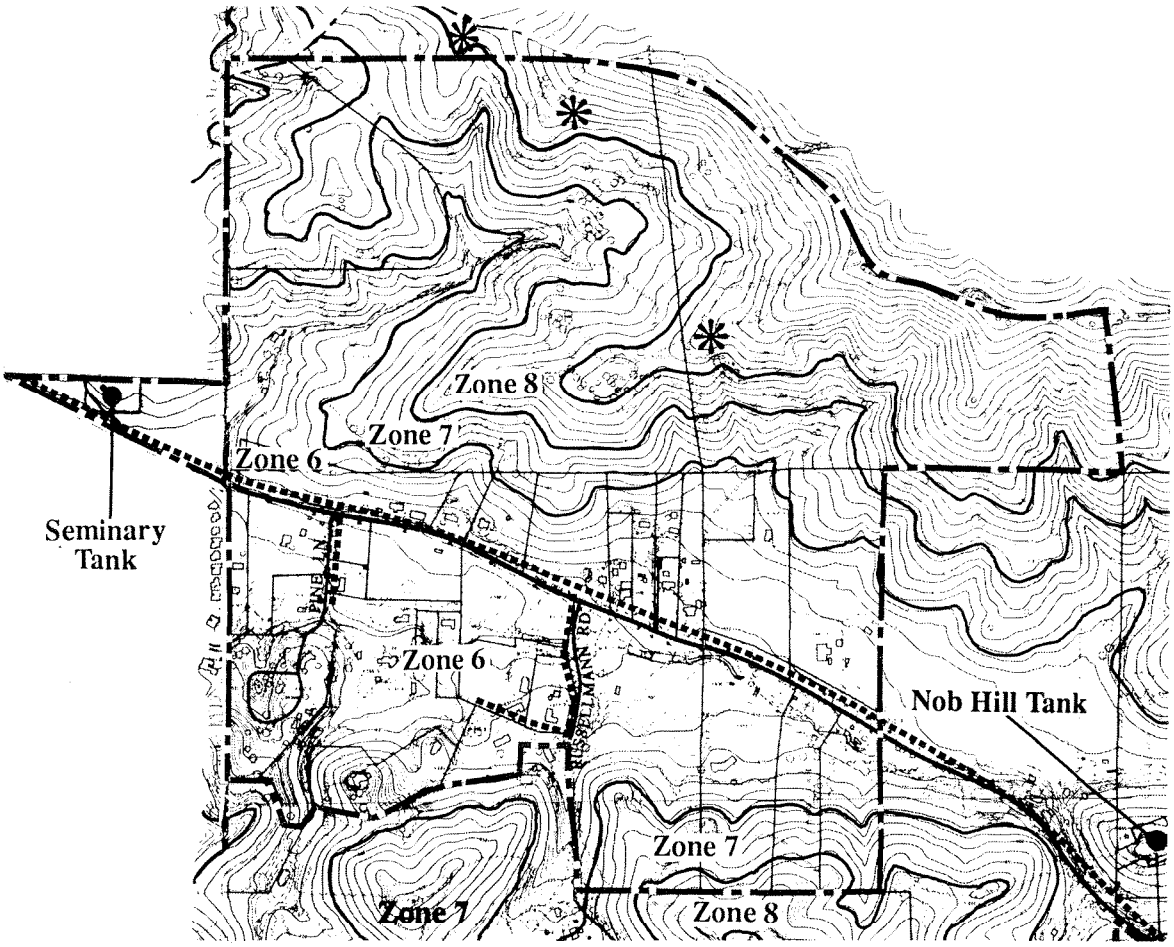
0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 9

Streetscape Concepts



Legend

Conceptual Pressure Zone Boundary (Water service currently exists only in zone 6).

Existing Water Main

Existing Water Tank

Conceptual location of potential future water tanks

Specific Plan Boundary

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 15

Existing Water Pressure Zones, Tanks and Lines

1. Development Area A

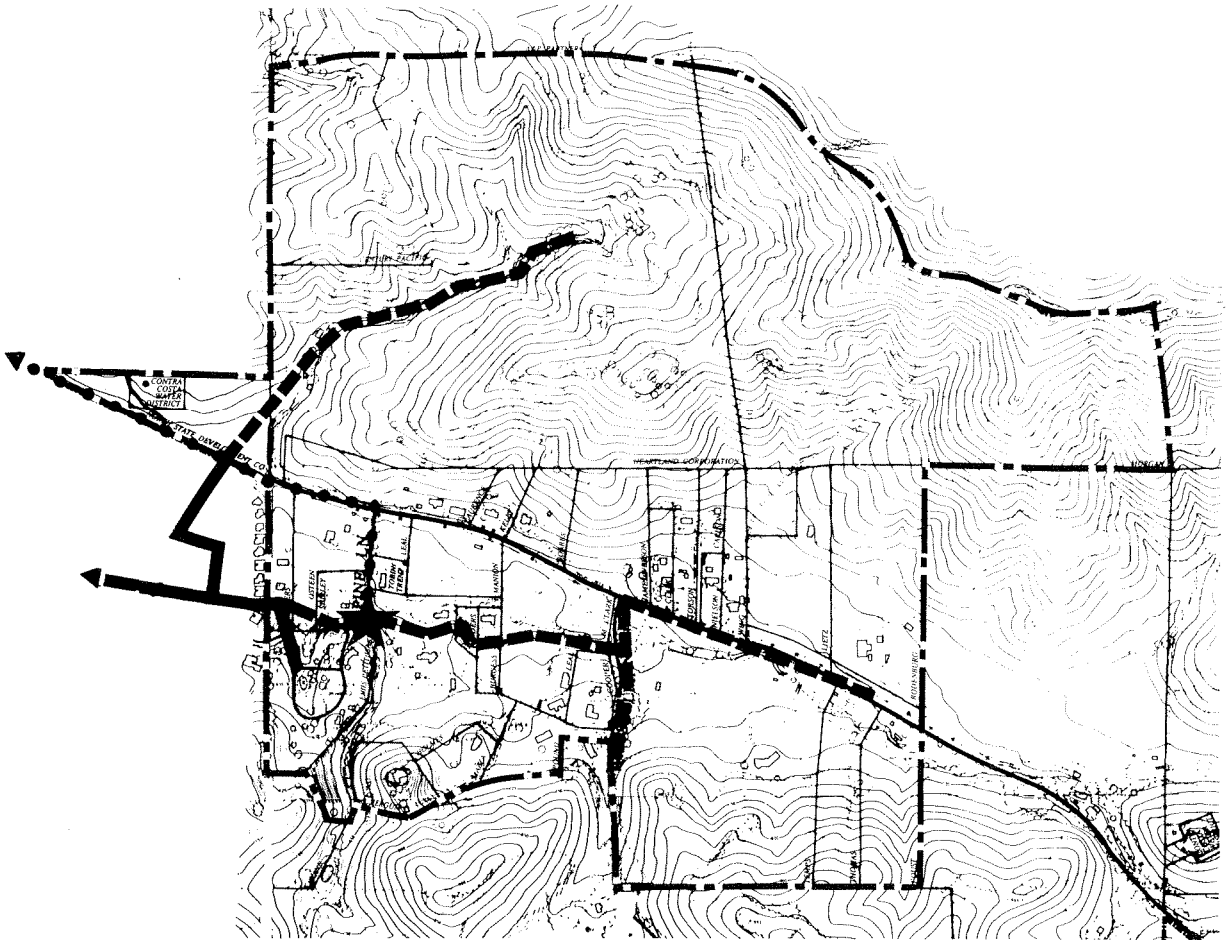
Approximately 114 homes will be constructed within Development Area A on the North State Development, Heartland, Moita, and Morgan properties. It is estimated that 30 homes will be constructed in Zone 6, 45 in Zone 7, and 39 in Zone 8.

Storage capacity for 100 homes has been paid for and reserved by Heartland at the Zone 7 Irish Canyon reservoir in the neighboring Oakhurst subdivision. The water distribution system will begin at Irish Canyon and run south into the study area, most likely following the future local road network. The Irish Canyon reservoir can only serve homes located in Zones 6 and 7, so a new reservoir and separate distribution system will have to be installed to provide storage and distribution pressure for the 39 Zone 8 homes.

It appears that the highest service outlet within the new Zone 8 will be on the Morgan property, at an approximate elevation of 960 feet. The storage reservoir for this area should be situated about 100 feet above this point. As shown in Figure 15, there are only two nearby ridgelines that meet this criteria; one is about 150 feet east of the Heartland/Morgan property line, southeast of development area A2; the other is in the northeast corner of the Heartland property, about 300 feet northeast of development area A1. Road access to the first site could probably follow the ridgeline up from Marsh Creek Road, but it appears that the second could only be reached from the north, across the A&P Partners property. The precise location of the storage reservoir(s) is to be determined following a geotechnical investigation and when the final engineering of the water system is designed and approved. Tanks will also be subject to Design Standards in this Specific Plan.

To serve a total of 39 homes, a Zone 8 reservoir will have to provide 54,600 gallons of maximum day and emergency storage capacity as well as 120,000 gallons of fire storage, which equals a minimum tank size of about 174,600 gallons. A new pumping station with a firm pumping capacity of at least 90 gpm will also have to be installed, to lift water from Zone 7 up to the storage elevation of Zone 8. The station will have to be located within Zone 7, probably as close as possible to the final reservoir site.

The Zone 8 homes in this part of the study area will be divided into two groups. It is estimated that 27 will be at the east end of area A2, and 12 will be in Area A1 on the Heartland and Moita Properties. The groups will be separated by an intervening wedge of Zone 7 that is approximately 1200 feet wide, as measured along proposed roadways. No matter where the Zone 8 reservoir is located, the distribution system will have to dip through Zone 7 to reach the homes at both the east and west ends of the service area.



Legend

- Existing Lines
- Proposed Lines
- Alternative Lines (Require pump station)
- Potential Pump Station Location
- Specific Plan Boundary

NORTH

5 Acres

0 300 600 1200

Scale in Feet

MARSH CREEK ROAD SPECIFIC PLAN

FIGURE 16

Planning Area Sewer Lines

Appendix A
PUBLIC MEETINGS HELD

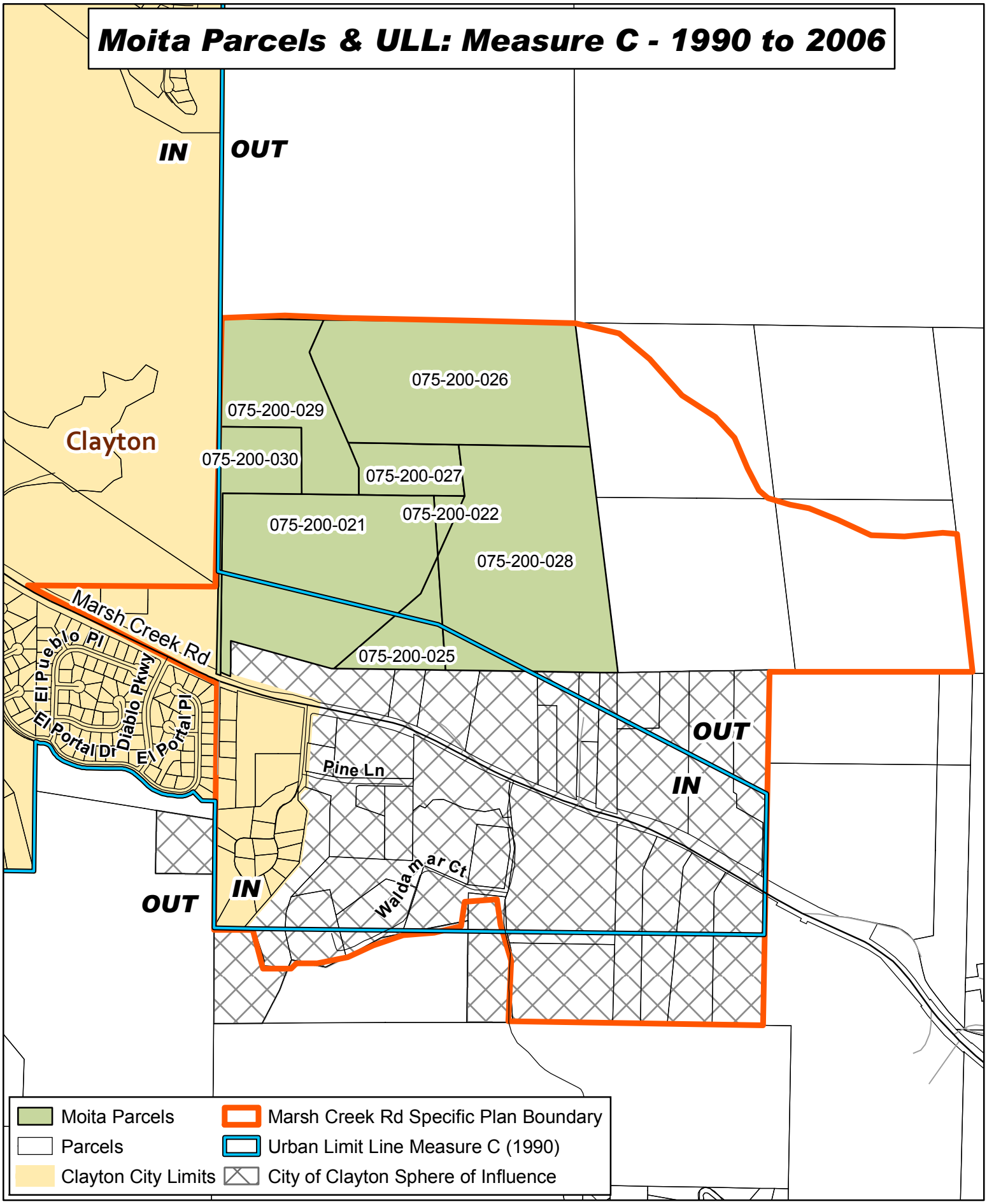
■ ■ ■

1.	January 10, 1991	Property Owners' Orientation Meeting
2.	January 31, 1991	Public Orientation Meeting
3.	March 26, 1991	Baseline Data Report #1
4.	April 9, 1991	Baseline Data Report #2
5.	April 23, 1991	Baseline Data Report #3
6.	July 23, 1991	Development Goals & Policy Statement
7.	October 8, 1991	Introduction of Plan Alternatives
8.	October 29, 1991	Comments on Alternatives
9.	November 26, 1991	Revised Alternatives
10.	December 10, 1991	Discussion of Alternatives
11.	December 17, 1991	Discussion of Alternatives
12.	January 28, 1992	Discussion of Alternative Addendum #2
13.	February 25, 1992	Planning Commission Selection of Alternative
14.	March 10, 1992	Planning Commission Confirmation of Preferred Alternative
15.	June 9, 1992	Discussion of Implementation Packet
16.	June 23, 1992	Discuss Design Guidelines Portion of Implementation Packet
17.	June 30, 1992	Joint Field Trip with City Council on Design Guidelines
18.	July 7, 1992	Discussion and Revision of Implementation Packet
19.	September 8, 1992	Property Owner Alternative Conceptual Plan
20.	March 23, 1993	Comment Hearing on Draft EIR
21.	April 13, 1993	Review Heartland Proposal
22.	April 20, 1993	Review Moita Proposal
23.	April 27, 1993	Review Temps Proposal
24.	June 21, 1993	Review Finalization of Draft Plan and EIR
25.	June 22, 1993	Continuation of Finalization of Draft Plan and EIR
26.	June 29, 1993	Discuss Overlay Zone
27.	August 4, 1993	Finalize Overlay Zone
28.	October 26, 1993	Discuss Revised Draft Specific Plan
29.	December 14, 1993	Planning Commission Hearing #1 on Plan and EIR
30.	January 11, 1994	Planning Commission Hearing #2 on Plan and EIR
31.	February 15, 1994	City Council Hearing #1 on Plan and EIR
32.	March 2, 1994	City Council Hearing #2 on Plan and EIR
33.	March 15, 1994	City Council Hearing #3 on Plan and EIR

34.	May 16, 1994	City Council Hearing #4 on Plan and EIR
35.	July 25, 1994	City Council Hearing #5 on Plan and EIR
36.	August 22, 1994	City Council Review of Reduced Planning Area
37.	October 18, 1994	City Council Direction to Prepare General Plan Amendment and Specific Plan for Reduced Specific Plan and EIR
38.	March 14, 1995	Planning Commission Hearing on DEIR, General Plan Amendment (GPA) and Specific Plan
39.	April 11, 1995	Planning Commission Review to give direction for revisions to GPA and Specific Plan
40.	April 25, 1995	Planning Commission Review to give direction for revisions to GPA and Specific Plan
41.	May 30, 1995	Planning Commission recommendation to the City Council for certification of the EIR; recommendation for approval of the GPA and Specific Plan
42.	June 28, 1995	City Council certification of the EIR; approval of the General Plan Amendment and Specific Plan

EXHIBIT G

Moita Parcels & ULL: Measure C - 1990 to 2006



Feet
0 350 700 1,400

Map Created 10/15/2013
by Contra Costa County Department of
Conservation and Development, GIS Group
30 Muir Road, Martinez, CA 94553
37:59:41.791N 122:07:03.756W

This map was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.

EXHIBIT H

CITY OF CLAYTON
Founded 1857 Incorporated 1964

COMMUNITY DEVELOPMENT (925) 672-6690
ENGINEERING (925) 672-9700

6000 HERITAGE TRAIL • CLAYTON, CALIFORNIA 94517-1250
TELEPHONE (925) 672-3622 FAX (925) 672-4917

City Council
PETER A. LAURENCE, *MAYOR*
PHYLLIS L. PETERSON, *VICE MAYOR*
RICHARD A. LITTORNO
GREGORY J. MANNING
JULIE K. PIERCE

August 5, 1999

Mark DeSaulnier
Supervisor, District IV
Contra Costa County Board of Supervisors
2425 Bisso Lane, Suite 110
Concord, CA 94520-4808

Re: Amendments to Urban Limit Line

Dear Supervisor DeSaulnier:

In response to the County's invitation for suggestions on amendments of the County's urban limit line (ULL), the City of Clayton requests that the following amendments be made in the vicinity of Clayton. The enclosed map shows the location of the affected areas. For your reference, we have also enclosed a map recently forwarded to the Local Agency Formation Commission (LAFCO) showing suggestions by the City for additions and deletions to the sphere of influence.

- Marsh Creek Road Specific Plan Area. The *Marsh Creek Road Specific Plan*, which was adopted by the City in 1995, designated a range of single family (3.0 units/acre) and rural residential (1.1 units/acre) uses on the southeastern edge of the city. The ULL currently includes the southern portion of the *Specific Plan* area. The City requests that the ULL be amended to include the northern portion of the *Specific Plan* area (approximately 250 acres) in order to allow full development of the *Specific Plan* area.

- Irish Canyon Area. This area, which is located directly north of the *Specific Plan* area, involves approximately 800 acres. The majority of the area would be retained as open space for protection of ridge lines and agricultural grazing. A small portion of the area, located on the south side of Black Diamond Way (a.k.a. Nortonville Road), would be designated for residential development. Density transfers would take place from the open space area to the development area. This process would permanently protect the open space values and would compensate landowners for density transfers. The open space area would be connected with grazing land located east of the City.

- Mitchell Canyon Area. This 340 acre area, located on the southwestern corner of the city, is in the vicinity of the existing quarry. As shown on the enclosed sphere of influence map, the existing sphere encompasses the majority of this area. The City has notified LAFCO that the City is interested in a minor amendment of the sphere in order to achieve consistency with this amendment of the ULL. The City is also interested in deleting approximately 875 acres within Mount Diablo State Park from the City's sphere directly east of the Mitchell Canyon Area.

These amendments are necessary since Clayton has an extremely limited supply of vacant buildable land to meet the housing demands of the community. It is anticipated that virtually all of the 1,484 dwelling units within the Oakhurst project will be constructed prior to year's end. Additionally, the only recently approved housing development, Diablo Village, is anticipated to build out in 2000. It should be noted that the 86-unit multi-family housing component of Diablo Village will fulfill the City's current ABAG requirements for low- and moderate-income housing. However, without expansion of the ULL, the City will fail to provide adequate housing for the population projections established by ABAG for the next five-, ten- and twenty-year time frames.

The above ULL amendments also represent a logical expansion in that no other urban jurisdiction is physically situated to provide access and services. These amendments would result in a more appropriate and logical ULL, as well as consistency with the *Specific Plan* and amended sphere boundaries.

We appreciate the opportunity to offer suggestions on amendment of the ULL. Please contact me if you have any questions.

Sincerely,

Jeremy Graves, AICP
Community Development Director

Enclosures
Proposed Urban Limit Line Amendments (figure)
Sphere of Influence Study Areas (figure)

c: Mayor and Councilmembers
Richard Hill, City Manager

CITY OF CLAYTON
Founded 1857 Incorporated 1964

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City Council
PETER A. LAURENCE, *MAYOR*
PHYLLIS L. PETERSON, *VICE MAYOR*
RICHARD A. LITTORNO
GREGORY J. MANNING
JULIE K. PIERCE

August 18, 1999

Jim Moita
5205 Railroad Avenue
Pittsburg, CA 94565

Willard & Naomi Morgan
6040 Morgan Territory
Clayton, CA 94517

Adam Goldblatt
Heartland
701 Fifth Avenue, Suite 4650
Seattle, WA 98104

SUBJECT: Amendment of Contra Costa County Urban Limit Line

Dear Messrs. Moita and Goldblatt, and Mr. and Mrs. Morgan:

As you are aware, the City has requested Contra Costa County to amend the County's urban limit line (ULL) in several areas including the *Marsh Creek Specific Plan* area (see enclosed letter). County decision makers and County staff have expressed hesitation about moving the ULL northward to include the Heartland property and other rcels located in the northern portion of the *Specific Plan*. The County also plans to prepare an environmental ıpact report (EIR) on the amendments to the ULL. In discussions between City and County, the County staff have indicated that the following conditions would need to be met in order to include amendment of the ULL for the Heartland property and other parcels in the EIR:

- The City would pay for any additional environmental review costs associated with the proposed Heartland ULL amendment, and
- The City would indemnify the County for any costs associated with any litigation on the proposed Heartland ULL amendment.

As we discussed, in order for the City to agree to the above conditions, the affected property owners would need to deposit funds to cover the environmental review costs and to provide a written agreement to indemnify the City for any litigation costs.

If you and the affected property owners are interested in pursuing this matter, an affirmative written response on the above issues is needed by August 25, 1999. This matter is scheduled for discussion by the City Council on August 31, 1999 at 7:00 p.m. If you have any questions or need additional information, please call me at 925/ 672-6690.

Sincerely,

Jeremy Graves, AICP
Community Development Director

nclosure: Letter to Supervisor DeSaulnier, dated 8/5/99

FILE COPY

EXHIBIT I

D.4

Contra Costa County

TO: BOARD OF SUPERVISORS

FROM: DENNIS M. BARRY, AICP
COMMUNITY DEVELOPMENT DIRECTOR

06 APR 24 AM 10:46

DATE: MARCH 7, 2006

SUBJECT: **PROPOSED 2006 VOTER-APPROVED CONTRA COSTA COUNTY URBAN LIMIT LINE BALLOT MEASURE (COUNTYWIDE) (COUNTY FILE: GP#06-0001 AND ZT#06-0001)**

SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

RECOMMENDATIONS

1. ACCEPT a report from the Community Development Director on the proposed 2006 Voter-Approved Contra Costa County Urban Limit Line ballot measure.

CONTINUED ON ATTACHMENT: X YES **SIGNATURE** Dennis M. Barry

✓ **RECOMMENDATION OF COUNTY ADMINISTRATOR** ____ **RECOMMENDATION OF BOARD COMMITTEE**
✓ **APPROVE** ____ **OTHER**

SIGNATURE(S): Julie Enea

ACTION OF BOARD ON March 7 2006 **APPROVED AS RECOMMENDED** ____ **OTHER** X

SEE ATTACHED ADDENDUM

VOTE OF SUPERVISORS
X **UNANIMOUS (ABSENT** IV **)**
AYES:_____ **NOES:**_____
ABSENT:_____ **ABSTAIN:**_____

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MINUTES OF THE BOARD OF SUPERVISORS ON THE DATE SHOWN

ATTESTED March 7 2006
JOHN CULLEN, CLERK OF THE BOARD OF SUPERVISORS AND COUNTY ADMINISTRATOR

BY_____, **DEPUTY**

Contact: P. Roche, CDD-Adv. Plng. (Ph #925-335-1242)

cc: CAO
Clerk of the Board
County Counsel
County Clerk (Elections Dept.)
Mayor/City Mgr.- (each of 19 cities in CCC)
Chair, CCTA

Background Material (Voluminous) can be e-mailed to you upon request.
Direct your request to Jane Pennington at:
jpenn@cob.cccounty.us

RECOMMENDATIONS –continued

2. RECEIVE public comment on the proposed 2006 Voter-Approved Contra Costa County Urban Limit Line ballot measure.

3. ADOPT a Negative Declaration of Environmental Significance that the proposed 2006 Voter-Approved Contra Costa County Urban Limit Line ballot measure would not result in any significant impacts on the environment by finding that the environmental review prepared for the proposed ballot measure is adequate pursuant to the California Environmental Quality Act (CEQA) and DIRECT staff to file the CEQA Notice of Determination with the County Clerk.

4. ADOPT Resolution No. 2006/80 calling for an election on the 2006 Voter-Approved Contra Costa County Urban Limit Line for the June 6, 2006 Primary Election (see Resolution No. 2006/80, under Attachment "A").

5. DIRECT the County Clerk to conduct the election pursuant to the California Elections Code. This election shall be held at the time of the primary election on June 6, 2006.

FISCAL IMPACT

Should the Board adopt the Resolution authorizing an election the County will be responsible for bearing the cost for this election. Elections Code section 13001 provides that all expenses authorized and incurred in the preparation and conduct of elections shall be paid by the County. The County Elections Officer has provided an estimate of at least $110,000.00 to place this measure on the 2006 Primary Election, which covers the costs for preparing and printing ballot pamphlets.

BACKGROUND / REASONS FOR RECOMMENDATION

On July 12, 2005 the Board of Supervisors authorized staff from Community Development and County Counsel to draft an Urban Limit Line ballot measure for the June 2006 Primary Election and to initiate the CEQA review process on the proposed ballot measure. The Board directed that the ballot measure should ask voters to approve amendments and updates to both the County Ordinance Code and the General Plan that would:

- Extend the term of the Urban Limit Line to the Year 2026;

- Require voter approval, in addition to 4/5 approval by the Board, to expand the Urban Limit Line boundary by more than 30 acres;

- Retain procedures for changes to the Urban Limit Line under 30 acres based on a 4/5 vote of the Board after holding a public hearing and making one of the seven findings currently enumerated in the County Ordinance Code;

BACKGROUND / REASONS FOR RECOMMENDATION -continued

- Incorporate procedures to review the Urban Limit Line based on a 5-year cycle, beginning after voter adoption, and require a review of the Urban Limit Line boundary 10 years from voter approval (Year 2016) based on a land supply review to determine whether there is sufficient capacity to meet 20-year housing and jobs needs for Contra Costa County;

- Provide for the automatic commencement of a review of the Urban Limit Line in the vicinity of the tideland portion of the Concord Naval Weapons Station if the United States Department of Defense determines to surplus this land area, allowing this review to occur outside the 5-year and 10-year review cycles;

- Retain the 65/35 land preservation standard and retain protections for the County's prime agricultural land by maintaining the 40-acre minimum parcel size for prime soils and limiting uses to agricultural production or uses incidental to agricultural production;

- Adopt a new Urban Limit Line Map that reflects four specific changes (items 1,2,4, and 6 from the amendments to the "Mutually Agreeable Urban Limit Line", as proposed by Councilwoman Amy Worth, City of Orinda):

    1. Incorporate the City of San Ramon's voter approved General Plan Land Use and Urban Growth Boundary Map;
    2. Locate 27 acres for a proposed public playfield as part of the Gateway development in Orinda on the inside of the Urban Limit Line;
    3. Locate the 38 acres of the Pine Creek Detention Basin parcels owned by the Contra Costa County Water Conservation and Flood Control District in the North Gate area on the outside of the Urban Limit Line;
    4. Locate the approved and built Alhambra Valley Ranch residential subdivision (Subdivision Map #6443) on the inside of the Urban Limit Line and make corresponding adjustments placing portions of waterfront area in the City of Martinez outside the Urban Limit Line, as recommended by the Martinez City Council.

Subsequent to the Board's direction in July 2005, Urban Limit Line ballot measures for the cities of Antioch, Brentwood, and Pittsburg were placed on the ballot for the Special Election held on November 5, 2005. The Urban Limit Line ballot measures were passed by the voters in the cities of Antioch and Pittsburg. Staff has prepared the County's proposed 2006 Voter-Approved Urban Limit Line Map to reflect the Urban Limit Line boundary in the cities of Antioch and Pittsburg based on the outcome of the November 2005 elections conducted in those two cities.

Attached for the Board's consideration is Resolution No. 2006/80 which approves a ballot measure for the June 6, 2006 Primary Election (see Attachment "A"). It includes the complete ordinance language for the ballot measure and the new Urban Limit Line map as they would appear in the voter pamphlet.

BACKGROUND / REASONS FOR RECOMMENDATION -continued

Also attached for the Board's consideration is the CEQA review document prepared for the 2006 Voter-Approved Urban Limit Line ballot measure in the form of the Notice of Negative Declaration and Initial Study/Checklist (See Attachment "B").

As a final matter, written public comments received to date on the proposed 2006 Voter-Approved Urban Limit Line ballot measure and/or the CEQA review are provided for the Board's consideration (See Attachment "C"). Comment letters received to date include:

- David Shuey, Mayor, City of Clayton (2/27/2008) - This letter requests the Board modify the proposed Urban Limit Line map in the ballot measure to include the City of Clayton's previous request to shift the ULL boundary in the Marsh Creek Road area.

  Staff Analysis: *The comment letter asks for a change in the ULL boundary in the vicinity of Marsh Creek Road. It does not raise concerns relating to potential environmental impacts with the proposed ballot measure.*

- Bob Doran, President, Board of Directors, Town of Discovery Bay Community Services District (2/28/2006) – This letter comments on the County's need to plan more comprehensively for the Discovery Bay community and Far East County.

  Staff Analysis: *The comment letter does not raise concerns relating to potential environmental impacts with the proposed ballot measure.*

- Lydia DuBorg, City Manager, City of Concord (2/28/2006) – The letter from the Concord City Manager makes two comments: 1) the City is requesting removal of the ballot measure's provision on the automatic review of the ULL boundary in the vicinity of the tideland portion of the Concord Naval Weapons Station because it is a remainder from earlier ULL discussions and is no longer relevant to the City; and, 2) the City is calling into question the adequacy of the Initial Study's analysis to support a "No Impact" associated with the change in the ULL boundary in the hills separating Concord and Pittsburg, and the City is requesting that the Initial Study be revised and re-circulated to incorporate mitigation measures that would apply to new visible ridgeline development in the area in question.

  Staff Analysis: *The comment letter from the City of Concord provides no substantial evidence that the ballot measure (the project) will have a significant environmental impact to support their claim the Initial Study is inadequate. In making its claim, the City's comment letter incorrectly interprets the County General Plan and County Zoning Code by assuming that because land is on the inside of the County's ULL it will inevitably be developed to an urban use. At page 3 of the Concord letter it is claimed that "since by allowing the ULL boundary adjustment, anticipated urban development would be facilitated in an area that currently does not allow it". Staff points out that the County General Plan makes it very clear that the fact a property is located inside the Urban Limit Line "provides no guarantee or implication that it may be developed during the lifetime of the General Plan".*

BACKGROUND / REASONS FOR RECOMMENDATION -continued

The County General Plan expounds further on this policy at page 3-9 by explaining that "Development of property within the ULL would be restricted by the limitations imposed by the County's Growth Management Program, as well as by other General Plan limitations. In addition, those properties within the ULL that do not currently have land use designations that would permit urban development would have to apply for and obtain a General Plan Amendment re-designating the property with a land use designation permitting development." The action before the voters would not in any way change the County's General Plan land use designations or policies for the hills that separate Concord and Pittsburg.

Instead, the action voters are being asked to recognize in the County's Urban Limit Line map the decision by Pittsburg voters from the November 5, 2005 Special Election to establish a voter-approved Urban Limit Line for the City of Pittsburg. The voter-approved Urban Limit Line for the City of Pittsburg is consistent with the Principles of Agreement for establishing the Urban Limit Line as incorporated into the extension of the ½ cent transportation sales tax under Measure J, approved by voters countywide in November 2004, and asking the voters to approve a Contra Costa County Urban Limit Line map that reflects the vote in Pittsburg is also consistent with these principles.

Staff would not dispute that the action in the November 2005 Special Election by the voters in Pittsburg to approve an Urban Limit Line may result in an indirect significant impact on the environment, as discussed in the City of Concord's letter, but the subsequent action by the County to ask voters countywide to approve a new and revised County Urban Limit Line, which would recognize the November 2005 Pittsburg voter-approved Urban Limit Line, could not and does not cause an impact on the environment. The voters under the proposed ballot measure are being asked to incorporate into the County's Urban Limit Line map something that has already occurred - a ULL boundary approved by Pittsburg voters.

Concord's letter has not substantiated a causal relationship or link in terms of impact on the environment with the County's proposed action. The fact that the City of Pittsburg in February 2005 had circulated a subdivision map for a proposed residential development on a hillside site in the unincorporated area is immaterial. This area will remain designated as Agricultural Land (AL) under the General Plan and zoned for agricultural use under the County's jurisdiction until such time as it is annexed to the city.

Staff suggests that the City of Concord's understandable and valid concerns with the potential for visible ridgeline development on the hills that separate the two city boundaries would be more appropriately addressed to the City of Pittsburg, rather than the County, when Pittsburg pursues annexation of this land area.

BACKGROUND / REASONS FOR RECOMMENDATION -continued

- Donna Landeros, City Manager, City of Brentwood (2/28/2006) – The letter from the Brentwood City Manager requests that the proposed ballot measure's Urban Limit Line map reflect the original Measure C-1990 ULL map in the location of the City's Special Planning Areas (SPA) G, H, and R. The letter suggests that the original Measure C-1990 Urban Limit Line map is the City's equivalent of a voter-approved Urban Limit Line.

  Staff Analysis: *The comment letter from the Brentwood City Manager does not raise substantive concerns relating to potential environmental impacts with the proposed ballot measure. Instead, the City asserts that the Urban Limit Line map that was originally included in the Measure C-1990 is still in effect. This position does not recognize that the County's Urban Limit Line west of the city limits was lawfully modified in the Yr. 2000 by the Board of Supervisors as authorized by the voters under Measure C-1990. It should be noted that the City of Brentwood had joined in litigation against the County Board of Supervisors in an attempt to convince the courts to overturn this Yr. 2000 decision. The Board's Yr. 2000 decision to modify the boundaries of the County Urban Limit Line was upheld both in the Superior Court and in the California Appellate Court.*

CONSEQUENCES OF NEGATIVE ACTION

The County Elections Official has previously informed the County that sufficient time is needed by that office to prepare, print, and distribute the ballot and voter pamphlets, particularly for those requesting absentee ballots. Eighty-eight (88) days is the minimum amount of time for the timely completion of these tasks. Adoption of a resolution on March 7, 2006 would provide the time for the County Clerk - Elections Department to complete these tasks. Failure to take action in approving the resolution on March 7, 2006 would mean that the 2006 Voter-Approved Urban Limit Line ballot measure could not be submitted to voters for the June 6, 2006 Primary Election.

Attachments (3 items)

1. Attachment "A": Board Resolution No. 2006/80 – Resolution Calling For An Election On June 6, 2006 On Voter-Approved Urban Limit Line
2. Attachment "B": Notice of Public Review and Intent To Adopt Negative Declaration and Initial Study/Checklist
3. Attachment "C": Written Comments Received To Date

ADDENDUM TO ITEM D.4
March 7, 2006

On this day, the Board of Supervisors considered adopting Resolution No. 2006/105 calling for an election on June 6, 2006 for a voter-approved Contra Costa urban limit line.

Patrick Roche of the Community Development Department presented the staff report, noting that the language in the agenda packet materials incorporates those changes suggested by the Board in July of 2005. He said the Urban Limit Line the Board is being asked to submit to the voters incorporates the actions taken by voters or Antioch and Pittsburg who have approved their own urban limit lines for their cities.

Supervisor Piepho asked what the cost difference would be between placing the issue on the ballot as part of the June Primary or as part of the November General Election.

Steve Weir, County Clerk-Recorder, responded that because there will be a countywide June election, but because there is not normally a November primary, the June election would have the lowest cost impact on the County.

Supervisor Uilkema asked what would happen if the measure does not pass; particularly, which cities would still be in compliance, and what would the cities that were not in compliance then have to do?

Mr. Roche responded that at least four jurisdictions currently have voter-approved Urban Limit Lines bringing them into compliance with Measure J, and that perhaps the other cities in the County without Urban Limit Lines would have to go to their voters to approve a City-sponsored Urban Limit Line. The other possibility is that a cities could adopt the Urban Limit Line approved countywide.

Supervisor Uilkema asked what would happen if the line passed by a majority vote in some cities but not overall; would those cities where it passed by a majority then have a qualifying line?

Martin Englemann of Contra Costa Transportation Authority (CCTA) staff said that CCTA does not have a clear-cut answer. CCTA's legal counsel has advised that the one thing that *is* clear is that if the ballot passes countywide, and if it passed by the majority in a jurisdiction, that jurisdiction would then be in compliance. He said that if the measure fails countywide, the issue becomes less clear and could be problematic.

Supervisor Gioia noted there is an important distinction to be made. Passage by voters countywide of the measure sponsored by the Board would not make the Urban Limit Line *legally* binding for the cities. It would only be binding as it pertains to the determination of compliance with the Growth Management component to Measure J to remain eligible for return-to-source funds. He noted there have been discussions at the CCTA proposing that each city council pass a resolution stating their intention to comply with the Urban Limit Line, and that as long as they are in compliance with that resolution, they would then eligible for their return-to-source funds.

Supervisor Gioia asked for public comment. The following people addressed the Board:

- Julie Pierce, Councilmember of the City of Clayton, referred the Board to Clayton's February 22, 2006 letter. She summarized the City's request for a modification of the County's proposed urban limit line to incorporate number three of the "Worth Amendments" as presented at the February 26, 2005 Urban Limit Line (ULL) Conference. She said that since all nineteen cites agreed with Worth Amendment number three, she would think it would be appropriate for the County to honor it as well. She further noted that correspondence with LAFCO has indicated that if the County's Urban Limit Line is approved by voters as proposed without this amendment, LAFCO could be expected to hold

Clayton to that Urban Limit Line and would frown on a proposal from the City to annex the land in question.

- Jim Forsberg, Director of Planning and Economic Development, City of Concord, referenced a letter submitted by the Concord City Manager commenting on the proposed voter-approved Urban Limit Line ballot measure and environmental review prepared for the ballot measure. He reiterated the City of Concord's written comments requesting that Provision V. in the measure relating to the automatic review of the Urban Limit Line boundary in the vicinity of the tideland portion of the Concord Naval Weapons Station be removed because it is no longer relevant to the City. He also reviewed another City issue relating to the CEQA (California Environmental Quality Act) review prepared for the ballot measure. He stated the City's view that revising and recirculating the Negative Declaration/Initial Study prepared by the County for the proposed June 6, 2006 measure is necessary, because the Urban Limit Line proposed for voter approval countywide measure to be sponsored by the Board of Supervisors would reflect the boundary of the Pittsburg voter-approved Urban Limit Line. It is the view of the City of Concord that the environmental review prepared for the Board's proposed ballot measure did not fully evaluate the visual impacts associated with potential development in the vicinity of the hills separating Concord and Pittsburg city limits adjacent to the Concord Naval Weapons Station. He suggested that while revision and recirculation of environmental review to include such visual impacts would delay the election, it is the right thing to do.
- Seth Adams, Save Mount Diablo, noted the November 2005 election results of the Urban Limit Line ballot measures in Brentwood and Antioch He stated that large amounts of money were spent in these campaigns to confuse the voters. He requested that the Board postpone until the General Election in November the countywide voter-approve Urban Limit Line ballot measure.
- Michael Sarabia, Bay Point resident, noted the ULL would be more likely to pass if the changes being proposed to the Board today are incorporated. and
- David Reid, Green Bay Alliance, suggested more work be done to make the Urban Limit Line more effective in controlling growth and traffic. He requested the Board delay the election until November to allow time for stakeholders to work with the County to develop the best possible line.

The following person provided written comment to the Board:

- Michael Sarabia, Bay Point resident, submitted additional comments via e-mail.

Chair Gioia returned the matter to the Board.

Supervisor Uilkema commented that the proposed Urban Limit Line ballot measure might not be ready for the June 2006 Primary Election, and urged the Board to postpone the item until the November 2006 election to allow time to answer the questions surrounding what the outcome of the vote will mean to the cities and the County in terms of Measure J compliance. She also said it will be important to look at the issues raised by the City of Clayton, and at whether the same issue also exists elsewhere in the County.

Supervisor Piepho agreed with Supervisor Uilkema, adding there are still many issues to be addressed and dialogue that still needs to occur in far East County, particularly with regard to infrastructure issues to serve Discovery Bay.

Supervisor DeSaulnier said he would like to find out from staff which services are precluded from the lots placed in question by the City of Clayton. He also cautioned against reading into this discussion that the Board intends to come back with major changes to the line, if any.

Dennis Barry, Community Development Director, noted for the Board that August 8, 2006 would be the very last date the Board could take an action and still make the deadline for the November 2006 election. He added that any modifications to the proposal will need to be done fairly quickly to enable determination of California Environmental Quality Act (CEQA)requirements. He cautioned that if an Environmental Impact Report (EIR) is needed, this would mean a delay in holding the election item until June of 2008 or beyond.

Supervisor Uilkema asked if the issues raised by Clayton were addressed in the CEQA review prepared by the County for this proposed ballot measure.

Mr. Barry responded that they were not.

Chair Gioia outlined four issues that he proposed the Board address:

1. How to incorporate what happened at the ballots in Antioch and Pittsburg;
2. The legal issues around what it will mean to have a CCTA-approved line;
3. The City of Clayton's request; and
4. Discovery Bay's infrastructure issues as referenced by Supervisor Piepho.

He said it seems the Board needs to address each of these issues separately, and that if there are any other issues, that they be brought to the table quickly.

Supervisor DeSaulnier suggested finding out as soon as possible whether or not an EIR will be required if the Board opts to grant the request of the City of Clayton.

Chair Gioia noted that the City of Clayton could also choose to go to the ballot on its own, as a line approved by the voters of the City of Clayton would fulfill Measure J compliance requirements.

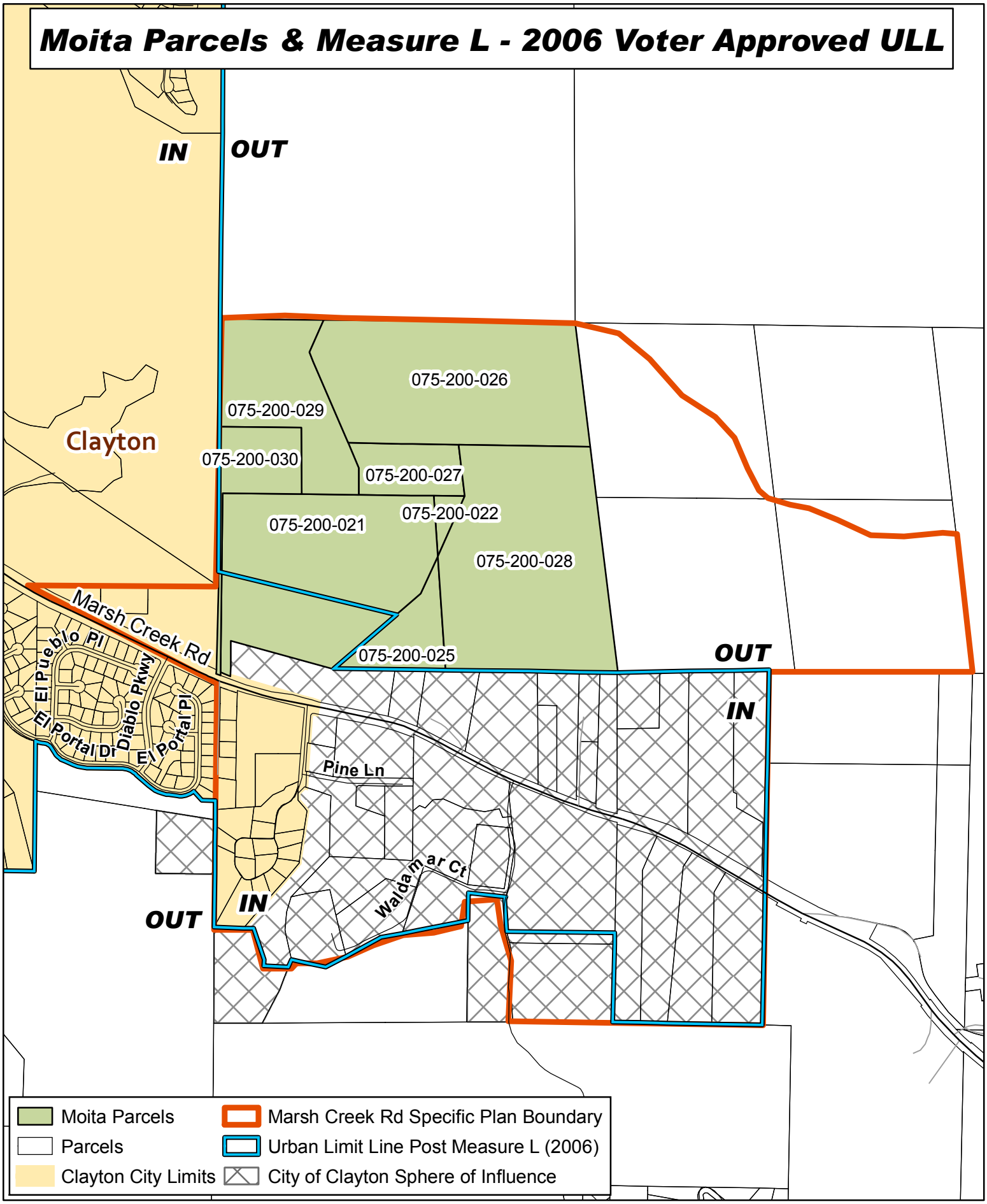
Supervisor Uilkema made a motion that was seconded by Supervisor Piepho. The Board of Supervisors took the following action by a 4-0 vote, with Supervisor Glover absent:

DETERMINED not to submit to the County Elections Officer the proposed voter-approved Urban Limit Line ballot measure for June 6, 2006 Primary Election; and DIRECTED staff to return to the Board with a report on whether issues raised today can be addressed in time to meet the deadline for the November 2006 General Election.

# # #

EXHIBIT J

Moita Parcels & Measure L - 2006 Voter Approved ULL



Feet
0 345 690 1,380

Map Created 10/15/2013
by Contra Costa County Department of
Conservation and Development, GIS Group
30 Muir Road, Martinez, CA 94553
37:59:41.791N 122:07:03.756W

This map was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.

From:	JASBIR NIJJAR
To:	Will Nelson; Alyson Greenlee
Cc:	Jcoburn2007@gmail.com; Supervisor_Burgis; John Kopchik; Alicia Nuchols; Stephen Griswold; Peter Myers; Joanne Chiu
Subject:	Discovery Bay Hills Job Center
Date:	Monday, May 19, 2025 1:18:59 PM
Attachments:	Discovery Bay Hills - Job Center.pptx DEVELOPMENT AGREEMENT.docx

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Hi Will, Alyson,
It was truly a great pleasure meeting with you and team to discuss the proposed "Discovery Bay Hills Job Center".
With this proposed Agreement, I believe we have demonstrated an extraordinary willingness to incorporate feedback to create win-win solutions. Obviously more can be done with the proposal to make it better. To that end, please feel free to modify, add, or subtract as you and team feel fit . . . we'll make every effort to accommodate. Please also forward to the legal team and others for review. From reading the Agreement, I hope it is evident that there are many ways for the County to exit the Agreement without penalty. Hopefully as the team and others review the Agreement, one walks away with the sense that it was written in a fair way to cover concerns from all sides. A great deal of effort was put in to make it clear that Environmental Organizations feedback/concerns will be weighted heavily to bring balance to the Project . . . as an avid environmentalist, that personally is important to me. John Coburn and I plan to meet on a regular basis with the leadership/teams of these Organizations to better understand how we can execute better.
The last 7 years I was in the corporate world, I did turn arounds of failing business units. I got the worst of the worst, especially the last 4-5 years. Just about everywhere, I ran into people that shared my passion for making things better. Together we made things happen that were deemed impossible and at speeds that were deemed impossible. Although there are still many steps and hurdles, I am confident as more and more stake holders get involved, we as a team can make this project move forward and make it a great success.
John and I will follow up to discuss further.
Warm Regards & Sincerely,
Jasbir Singh Nijjar
Cell: 408-425-0640

--- DISCOVERY BAY HILLS JOB CENTER AGREEMENT ---

Between County of Contra Costa and **Jasbir Singh Nijjar, Paramjot Kaur Nijjar**

Regarding Potential Inclusion of Jasbir Singh Nijjar, Paramjot Kaur Nijjar's Property within the Urban Limit Line and Potential Job Center Development of the Property

This Job Center Agreement ("Agreement") is made and entered into this ___ day of _____, 2025, by and between the Contra Costa County, a political subdivision of the State of California (the "County"), and Jasbir Singh Nijjar, Paramjot Kaur Nijjar, ("Landowner"). The County and Landowner are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Recitals & Key Conditions

WHEREAS, Contra Costa County ("County") is a California general law county with land use authority over the unincorporated area of the County, and it has adopted policies and maps that designate an Urban Limit Line ("ULL");

WHEREAS, Landowner owns approximately 353.72 acres of real property in the unincorporated area of County, described as "Discovery Bay Hills Job Center" or "Discovery Bay Job Center" (Assessor's Parcel Numbers 008-340-031-7, 008-340-032-5) (the "Property"), which is located outside the current boundary of the County's ULL; "Discovery Bay Hills Job Center" and "Discovery Bay Job Center" both describe the Property and are interchangeable;

WHEREAS, Landowner desires to develop the Property as primarily an Industrial Job Center that Landowner contends will provide needed localized employment and other public benefits, but which requires that the Property be included within the ULL and given an urban land use designation to proceed;

WHEREAS, the County acknowledges potential public benefits from the future development of the Property, such as Local Jobs, economic development, tax revenue, infrastructure improvements. County stipulates potential public benefits from future development of the Property to be weighed against other public needs. Therefore, no commitment is made by County regarding any future approval of change from current use of Property even if Property is included within ULL.

WHEREAS, to enable the implementation of this Agreement, the County modify the Urban Limit Line to include the Property within the ULL with the following conditions:

a. A minimum four-fifths vote of the Contra Costa County Board of Supervisors approve changes to ULL to include the Property within the ULL.

b. If a minimum four-fifths vote of the Contra Costa County Board of Supervisors approve changes to ULL to include the Property within the ULL, County will place a measure on the ballot before 11-15-2026 to ratify the revised ULL with the Property included within the ULL.
c. This Agreement shall terminate if either or both items (a) (b) written directly above are not implemented by County. The Landowner agrees to hold harmless the County from any and all claims, lawsuits, or liabilities arising from the County not implementing either or both items (a) (b).
d. If voters do not approve ballot measure that result in the Property being Included in ULL by July 30, 2027 , this Agreement shall terminate and both Parties agree to hold each other harmless.
e. If inclusion of Property within ULL is approved by Voters via ballot measure, the inclusion period of the Property within the ULL shall start before August 14, 2027 and extend to August 14, 2042 with the possibility of permanent inclusion of Property within ULL covered in Recitals & Key Conditions item (f) below.
f. If inclusion of Property within ULL is approved by Voters via ballot measure and a separate subsequent Development Agreement of "Discovery Bay Hills Job Center" is approved by Contra Costa County with terms and conditions mutually agreeable to County and Landowner before August 14, 2042, then the inclusion of the Property within the ULL shall become permanent subject to sections 5.1 and 8.2.
g. If inclusion of Property within ULL is approved by Voters via ballon measure, and a separate subsequent Development Agreement of "Discovery Bay Hills Job Center" is not approved by Contra Costa County with terms and conditions mutually agreeable to County and Landowner before August 14, 2042, the Property shall revert back to being outside of ULL effective August 15, 2042 and the Agreement shall terminate.

WHEREAS, the Parties acknowledge that this Agreement was processed, reviewed, and approved in accordance with California law governing development agreements (Gov. Code § 65864 *et seq.*) and general plan amendments. The Agreement is entered into freely and voluntarily, with all Parties having participated or having full opportunity to participate in its drafting. The obligations hereunder are agreed to be fair, just, and reasonable, and within the authority of the County to make in exchange for the public benefits secured by the County herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and the benefits to be derived by each Party, the Parties agree as follows:

1. Effective Date and Term

1.1 Effective Date: This Agreement shall become effective when the Parties have signed the Agreement. The Parties shall not be bound by the substantive provisions of this Agreement until the Effective Date.

1.2 Term: The term of this Agreement ("Term") shall commence on the Effective Date and extend for a period of 18 years thereafter, unless earlier terminated or extended as provided in this Agreement. Certain items such as permanent inclusion of Property within ULL as provisioned in item (f) of Recitals & Key Conditions will survive beyond the Term if actions outlined in item (f) of Recitals & Key Conditions are executed. The Parties may mutually agree in writing to extend the Term, subject to all necessary public hearings and approvals required by law for such extension (Gov. Code § 65868). During the Term, this Agreement shall be binding on the Parties and their successors, and the Property shall be subject to the provisions herein.

2. Inclusion of Property in Urban Limit Line and Land Use Designation

2.1 Urban Limit Line: If Property is included within ULL by Voter ballot measure, By this Agreement, the County obligates itself, to the maximum extent permitted by law not disregard the provisions in items (e) (f) (g) in Recitals & Key Conditions, except as provided in Section 8.2 (Uncontrollable Events) or through an amendment to this Agreement agreed to by Landowner. The inclusion of the Property in the ULL allows the County to designate urban land uses for the Property and consider development applications consistent with urban development standards, as further addressed below.

3. Intended Uses and Development of the Property

3.1 Intended Project; Subsequent Approvals: *Landowner intends to seek approval of the Project "Discovery Bay Hills Job Center".* ***Nothing in this Agreement itself constitutes an approval of a specific development project or entitlement;*** *Landowner must apply for and obtain all necessary subsequent development permits (such as tentative subdivision maps, conditional use permits, site development plans, grading permits, building permits, etc.) in accordance with the County's normal procedures.* ***Nothing in this Agreement itself Obligates County of Contra Costa or Any Other Agency/Entity to Approve Development on Property.***

3.2 Compliance with Plans and Laws: All development of the Property shall comply with the County's zoning, subdivision, building, and other ordinances and regulations governing development, except as vested or modified by this Agreement, and any conditions of approval or mitigation measures imposed through the subdivision or project approval process. Landowner shall also comply with all federal and state laws and regulations

applicable to the development. Nothing in this Agreement exempts Landowner from those generally applicable legal requirements.

3.3 Changes in Laws: If any future law is applied to the Property and Landowner believes it negates the benefits under this Agreement, Landowner may invoke the dispute resolution provisions (Section 9.7) and/or seek amendment of this Agreement. The County shall not enact targeted rules intended to discriminate against or frustrate the specific development contemplated herein; any new laws must be of general applicability or necessary for overriding public welfare concerns.

4. Consideration and Obligations of Landowner (Public Benefits)

If County and Landowner execute items (e), (f) in Recitals & Key Conditions, Landowner shall provide or cause to be provided the following consideration and public benefits:

4.1 Benefits in sections 4.2-4.6 are conditional on Landowner/Assignee/Successor securing funding to build out Project.

4.2 Infrastructure and Impact Fees: Landowner shall either construct or fund its fair share of on-site and pre-agreed off-site infrastructure required for the Project. This includes but is not limited to: internal streets, water supply and sewage facilities, storm drainage systems, and park and recreational amenities. Major pre-agreed infrastructure improvements that benefit the broader community, such as road widening, signalization, extension of a sewer trunk line, etc., shall be completed by Landowner or through financing mechanisms such as impact fee or Community Facilities District as specified in subsequent approvals. Landowner will pay all standard development impact fees in effect as of the time of building permit issuance. The County reserves the right to adjust fees per adopted ordinances, and Landowner shall pay any such increases except to the extent a fee is expressly fixed by a potential subsequent mutually agreed upon Development Agreement as provisioned by item (f) in Recitals & Key Conditions.

4.3 Open Space Dedication: To offset the conversion of land to urban use and maintain consistency with County conservation goals, Landowner shall permanently conserve no less than 50 acres of Property as public recreation/nature/open space area as further detailed in section 4.4. This provision furthers the ULL's purpose by creating a buffer and preserving some land even as the ULL is expanded. In addition, at start of construction, per County regulations, Landowner will pay County mitigation fee in the amount of approximately $8M to enable County to permanently preserve approximately 800-1100 acres of open space within Contra Costa County. This mitigation fee is in addition to monetary considerations in section 4.5

4.4 Community Facilities: As mentioned in section 4.3, Landowner shall donate to the County at least 50 acres natural scenic recreation area. The location of this nature/recreation area to be along edge of Hwy 4 to stretch along a significant portion of the length of property. Landowner acknowledges this is premier road frontage property on a major thorough way with multiple existing/planned traffic lights. These locations are normally coveted by developers. Assuming it was developed, the land value is approximately $20M-$40M. To be donated including the underlying land to East Bay Regional Park District. Construction to start at approximately 50% construction completion of Project or sooner if mutually agreed upon by Landowner and County. Landowner intends to work with local/local chapters of environmental organizations to solicit feedback on design of the natural scenic recreation area. After building out of natural scenic recreation area, County will have complete ownership and assume full physical and financial responsibility for ongoing operations of area. If the County does not accept nature/recreation area by end of the project build-out, the land may revert to the Landowner's private development use, subject to any necessary approvals.

4.5 Monetary Consideration: In addition to the benefits above, Landowner shall donate 50% of Landowner's land sale proceeds beyond the first $10M proceeds (approximate purchase price plus carrying cost) from the sale of land of the Discovery Bay Hills Job Center Project.

a.) First $10M proceeds of land sale shall go to Landowner.
b.) Land Sale Proceeds $10M-$26M. 50% of land sales proceeds $10M-$26M go to Landowner, 50% of land sale proceeds $10M-$26M goes into charitable trust setup to build out nature/recreation area on Property. As an example, if land sale proceeds are $26M or higher, the charitable trust setup to buildout nature/recreation area shall have $8M (($26M-$10M) x 0.50 = $8M).
c.) $26M-$42M Land Sale Proceeds. Jasbir Singh Nijjar and Paramjot Kaur Nijjar (Landowner) acknowledge they are avid environmentalists. Therefore, regarding $26M-$42M land sale proceeds, 50% of land sales proceeds $26M-$42M go to Landowner, 50% of land sale proceeds $26M-$42M to go towards environmental causes within Contra Costa County and Greater Bay Area. As an example, if land sale proceeds are $42M or higher, the charitable trust setup for environmental causes shall have $8M (($42M-$26M) x 0.50 = $8M). Landowner intends to work with local/local chapters of environmental organizations to create agreements with mutually agreed upon terms and conditions to administer new projects and/or augment existing projects for benefit of the public. Any remaining funds will be used for other charitable causes within Contra Costa County.

d.) $42M-$46M Land Sale Proceeds. Jasbir Singh Nijjar and Paramjot Kaur Nijjar (Landowner) acknowledge they strongly believe in the importance of investing in the next generation. Therefore, regarding $42M-$46M land sale proceeds, 50% of land sales proceeds go to Landowner, 50% of land sale proceeds goes to charitable trust set up for Little League Groups that are based in Contra Costa County. Landowner shall have sole discretion as to the amount and which Contra Costa County based Little League organizations receive funding. Additionally, the Little League Group must have existed prior to January 1, 2025. As an example, if land sale proceeds are $46M or higher, the charitable trust setup for Contra Costa County Based Little Leage Organizations shall have $2M (($46M-$42M) x 0.50 = $2M). If an agreement cannot be worked out between Landowner and Contra Costa Little League Organizations, Landowner will choose other charitable causes within Contra Costa County.

e.) $46M-$50M Land Sale Proceeds. Regarding $46-$50M land sale proceeds, 50% of land sales proceeds go to Landowner, 50% of land sale proceeds goes to charitable trust set up for schools in Discovery Bay, CA & Byron, CA. As an example, if land sale proceeds are $50M, the charitable trust setup for Discovery Bay & Byron schools shall have $2M (($50M-$46M) x 0.50 = $2M). Landowner intends to work with schools to identify projects needing funding. If there are any funds not distributed, Landowner will choose other charitable causes within Contra Costa County.

f.) Land Sale Proceeds Beyond $50M. Regarding land sale proceeds beyond $50M, 50% of land sales proceeds go to Landowner, 50% of land sale proceeds goes to charitable trust(s) set up for charitable causes within Contra Costa County with some funds going to increase funding for items 4.5(b) through 4.5(e) listed directly above.

These donations are independent of any development impact fees or exactions required by law. If property is included within ULL and County approves development of "Discovery Bay Hills Job Center" with terms and conditions mutually agreeable to County and Landowner, the estimated Land Sale Proceeds are $60M to $120M. The Landowner unequivocally states the $60M-$120M Land Sale Proceeds is an estimate and unequivocally makes no guarantee of actual Land Sale Proceeds, if any. County and Landowner unequivocally assume no liability for execution, lack of execution, or enforcement of execution for items 4.5(a)-4.5(f), however, County and Landowner can at their own discretion hold each other accountable for items listed in 4.5(a) – 4.5(b) using relief instruments outlined in Agreement in section 7. See also section 9.9. If Agreement is terminated, the

commitments in Section 4 become void and all of Landowner's pre-Agreement rights associated with Property are reverted back to Landowner.

4.6 Timing of Obligations: Many of Landowner's obligations above will be tied to future project phases; generally, unless otherwise specified, the public benefits shall be provided in rough proportionality to the development as it progresses unless otherwise stated; the County and Landowner will negotiate specific phasing in to ensure that public benefits are delivered timely; all such timing requirements will be enforceable through normal permit processes in addition to this Agreement.

5. Obligations of the County

In addition to the commitments stated elsewhere in this Agreement, if County and Landowner execute items (e), (f) in Recitals & Key Conditions, the County shall:

5.1 Maintain Inclusion in ULL: Acknowledge and covenant that if the Property is included in the ULL and that the County will not take any legislative action to remove the Property from within the ULL except as allowed by this Agreement.

5.2 Process Future Approvals in Good Faith: Process diligently any and all applications by Landowner for subsequent approvals needed for the Project, including zoning, subdivision maps, grading and building permits, utility connections, etc. The County shall provide reasonable assistance and cooperation to Landowner (consistent with the role of a public agency) such as promptly reviewing submitted plans, responding to inquiries, and coordinating with other agencies. While this Agreement does not guarantee approval of every permit (as each must meet applicable requirements), the County agrees it will not impose extraneous or discriminatory conditions or delays. Any discretionary decisions will be made based on substantial evidence and the applicable law, and the County will not arbitrarily prevent the vesting of Landowner's development rights as contemplated. If disputes arise, the County will meet and confer with Landowner per Section 9.7 to resolve issues.

5.3 Use of Fees: Utilize any special fees or contributions paid by Landowner (such as the Mitigation Fee in Section 4.5) for their intended purposes to benefit the public. Misuse of those funds contrary to the stated purpose would undermine the public benefit of the Agreement.

5.4 No Conflicting Enactments: Refrain from enacting any moratorium, initiative, or ordinance that targets the Property or Project specifically in a way that is inconsistent with this Agreement or that prevents compliance with this Agreement. (This does not limit county-wide or area-wide measures of general applicability, such as building code updates or temporary moratoria responding to urgent hazards) Should any such general measure be

passed that impacts the Property, the County will, to the maximum extent allowed by law, exempt the Property or otherwise act to honor the vested rights granted herein.

5.5 Cooperation with Other Agencies: The County will support necessary actions before other governmental bodies to effectuate the development. If the Property will seek annexation to a City (should Discovery Bay choose to incorporate) or extension of city utilities, the County will cooperate with the City and LAFCo in accordance with any adopted tax-sharing agreement or memorandum of understanding. The County's inclusion of the Property in the ULL signals that the area is intended for urbanization, which LAFCo will typically respect in considering sphere of influence adjustment. If any regional or state approvals are required (such as Caltrans approval of a road access), the County will, at Landowner's request, provide letters of support or resolutions consistent with the County's commitments in this Agreement.

6. Annual Review and Compliance Reporting

Pursuant to Government Code § 65865.1, the County shall review this Agreement at least once every twelve (12) months during the Term. On or before each anniversary of the Effective Date, Landowner shall submit a written report to the County detailing the extent of its good-faith substantial compliance with the terms of this Agreement over the preceding year (e.g., status of development, public benefit contributions made, etc.). County staff shall review the report and may request additional information. A public hearing shall be conducted by the Planning Commission or Board of Supervisors for the annual review. If the County finds, on the basis of substantial evidence, that Landowner has complied in good faith with all terms of the Agreement, the review will be documented as satisfactory in the record. If the County determines Landowner has not demonstrated good-faith compliance, the County shall give written notice to Landowner of any default (Section 7.1) and allow time to cure as provided in Section 7.2. Failure to meet an interim deadline or obligation by Landowner (such as timing of a payment or construction of an improvement) that is not cured can constitute lack of good faith compliance. The annual review is a means to ensure both Parties remain accountable. The annual review requirement is in addition to, not in lieu of, any other monitoring of project conditions or mitigation measures required under CEQA or other laws.

7. Default and Remedies

7.1 Events of Default: A Party's failure to perform any material obligation or breach of any material term of this Agreement shall constitute an "Event of Default." Material obligations include, but are not limited to: for Landowner, the timely provision of consideration and public benefits in Section 4, adherence to applicable laws; for the County, the

maintenance of the Property within the ULL (subject to section 8.2), processing of approvals, and avoidance of conflicting legislative actions per Section 5. If any Party believes the other is in default, it shall provide written **Notice of Default**, specifying the nature of the breach and the actions required to cure.

7.2 Opportunity to Cure: Upon Notice of Default, the alleged defaulting Party shall have a reasonable opportunity to cure the default. The cure period shall be **ninety (90) days** from receipt of the notice, or such longer period as is reasonably necessary to cure if the default cannot be cured within 90 days and the defaulting Party commences cure within that period and diligently pursues completion. For example, if Landowner failed to make a required payment, a 90-day cure period applies; if the County missed an approval deadline, it should act within 90 days to correct it. If the breach is of a nature that is not curable (e.g., a prohibited transfer contrary to Section 9.3 without consent), the Parties shall meet promptly to discuss potential remedies or waivers.

7.3 Remedies for Uncured Default: If, after notice and expiration of the cure period, the default is not cured, the non-defaulting Party may pursue any remedies available at law or in equity, subject to the following: (a) **Termination:** The non-defaulting Party may terminate this Agreement by delivering a written notice of termination to the defaulting Party. Uncured default termination by the County shall require a noticed public hearing before the Board of Supervisors. Upon termination, the Parties are released from further obligations (except those that expressly survive), and the County may, in its discretion, initiate a general plan amendment to restore pre-agreement land use designations or take other reasonable actions with respect to the Property's planning status. If the County terminates due to Landowner's default, Landowner retains any underlying rights it had minus the benefits of this Agreement (e.g., the ULL amendment could be rescinded, reverting the planning status, though any such legislative change would follow normal procedures). If Landowner terminates due to County's default, Landowner may pursue damages as noted below. (b) **Legal Action for Damages or Specific Relief:** The Parties acknowledge that monetary damages may be an appropriate remedy for certain breaches. In particular, if the County breaches by failing to honor the vested rights (for example, by excluding the Property from the ULL in violation of this Agreement), Landowner may claim expectation damages (such as lost profits or costs incurred) subject to proof in court. The County acknowledges that it does not have immunity for breach of agreement, and an award of damages can be entered against it. However, the Parties agree to waive any claim for **consequential or punitive damages**. Specific performance or injunctive relief may be available to compel ministerial actions (for instance, compelling the execution of already-approved documents, or enjoining enforcement of newly enacted rules contrary to the Agreement). The Parties agree that a court cannot and should not order the County's legislative body to enact a law

(such as a rezoning) as a remedy, given constitutional constraints; thus specific performance is not an agreed remedy for any obligation that is legislative in nature and not yet fulfilled (but if the County has already legislatively approved something and fails to implement it ministerially, a court order might issue an injunction). (c) **Non-Binding Mediation:** Before either Party files a lawsuit for an alleged breach, they shall in good faith participate in mediation if both consent or as may be required by any County mediation ordinance or policy. This is to attempt resolution without litigation.

7.4 County Default – No Personal Liability: In the event of a County default, no official, member, employee, or agent of the County shall be personally liable for any damages or breach, and Landowner's recourse is solely against the County as a governmental entity (and any applicable insurance or bonds). This provision does not shield the County from liability but clarifies the individuals are not personally at risk.

7.5 Landowner Default – Specific Performance: If Landowner fails to perform a dedication, make a payment, or deliver a public benefit as promised, the County may seek specific performance of that obligation (since it is often the agreed equivalent of monetary consideration). For example, the County could sue to compel Landowner to record an open space easement or pay a fee, as damages might not adequately substitute for these public benefits. Alternatively, the County may suspend further project permits until compliance is achieved (using its rights under permits or under this Agreement). These remedies are cumulative to termination.

7.6 Waiver: Failure by either Party to promptly enforce any default or to exercise any right under this Agreement shall not be deemed a waiver of that default or right, unless an express written waiver is provided. One or more waivers of any covenant or breach shall not be construed as a continuing waiver of any other provision or any subsequent breach. For instance, if the County allows Landowner to miss a deadline once without consequence, it does not preclude the County from enforcing future deadlines.

8. Amendment, Termination or Suspension

8.1 Amendment by Mutual Consent: This Agreement may be amended in whole or in part only by mutual written consent of the Parties, in compliance with Government Code § 65868. Any amendment shall be approved by the County by ordinance or resolution after a noticed public hearing, and by the Landowner (or successor in interest) in writing. Minor administrative amendments (e.g., correcting errors, updating legal descriptions, extending timeframes by a small amount) that do not materially affect vested rights or obligations may be processed with Planning Commission review and Board consent by resolution. Major amendments (e.g., changes to Term, allowed land uses, or public benefit

commitments) require the full process as a new development agreement would. During any amendment process, the existing Agreement remains in effect unless otherwise agreed.

8.2 Uncontrollable Events; Suspension: A Party shall not be deemed in default, and performance of obligations shall be excused or may be suspended, where delays or failures are caused by **Uncontrollable Events**. Uncontrollable Events mean any cause beyond the reasonable control of the obligated Party, including but not limited to: acts of God; natural disasters (earthquake, flood, wildfire) that substantially affect the Property; war or terrorism; labor strikes; pandemics or public health emergencies; litigation by third parties (not induced by the Party) challenging Property Inclusion within ULL, or this Agreement; or invalidation of necessary permits by court order. If an Uncontrollable Event occurs, the affected Party shall notify the other Party in writing with details. The Parties shall confer on how to adjust timelines or obligations. For example, if a court were to invalidate the ULL amendment despite the County's and Landowner's defense, the County's obligation to keep the Property in the ULL would be suspended pending appeal or compliance with the court's decision. Likewise, if a wildfire destroys infrastructure, Landowner's construction deadlines would toll during recovery. In extreme cases, if the fundamental purpose of the Agreement is frustrated by an Uncontrollable Event (e.g., a court or new law makes it illegal to develop the Property as intended), the Parties shall negotiate in good faith to modify the Agreement to resolve the issue. If resolution is not possible, either Party may terminate the Agreement upon 90 days' notice, without fault. Before termination due to such frustration, any consideration that can be restored or any partial performance due should be addressed.

8.3 Termination on Completion: If Landowner completes the Project and all obligations prior to the full Term, and no further development is anticipated, the Parties may record a notice of termination by mutual agreement. Otherwise, at the natural expiration of the Term, this Agreement shall cease to be operative, except for specified surviving sections. The termination or expiration shall not affect any land use entitlements (like the General Plan designation, zoning, or vested subdivision maps) already granted; those run with the land per law.

8.4 Effect of Termination/Expiration: Upon termination (whether by default or expiration or mutual agreement), neither Party shall have further obligations under this Agreement, except those provisions that by their nature should survive such as indemnity for actions taken during the term, permanent inclusion of Property as described in greater detail in item (f) of Recitals & Key Conditions. However, if termination is due to a default by Landowner, the County may initiate proceedings to revert the ULL status if it deems that in

the public interest, following all required procedures (acknowledging that including the property in the ULL was contingent on promised benefits that didn't materialize). Landowner (or successor) would have opportunities to participate in any such hearings.

9. General Provisions

9.1 Entire Agreement: This Agreement, and any documents incorporated by reference, constitutes the entire understanding and agreement of the Parties with respect to the subject matter (potential ULL inclusion and potential development of the Property). It supersedes all prior negotiations, discussions, power point presentations, term sheets, or draft agreements. No oral or written representation by any Party shall be binding unless expressly included in this Agreement. Notably, the Parties confirm that there are no side agreements or conditions other than those set forth herein.

9.2 Relationship of Parties: The Agreement does not constitute the formation of a joint venture or partnership between the County and Landowner. The relationship is that of a contracting governmental entity and a property owner/developer. Landowner is not an agent of the County, nor is the County an agent of Landowner. Each Party shall be solely responsible for its own acts or omissions and the acts of its contractors, employees, or agents.

9.3 Transfers and Assignment: This Agreement is **appurtenant to the Property** and runs with the land. Landowner may transfer or sell all or part of the Property to other developers or persons ("Transferee or Assignee"). Upon transfer of an ownership interest in all or a portion of the Property, the benefits and burdens of this Agreement shall thereafter bind and inure to the successor-in-interest of such portion, and Landowner (transferor) shall be released from obligations as to that portion arising after the transfer, provided that: (a) the Transferee has agreed in writing to assume the obligations of Agreement except those obligations in Section 4.5 (via an assignment and assumption agreement delivered to the County); and (b) Landowner was not in default of this Agreement at the time of transfer or any default has been cured or assumed by the Transferee. The County shall have the right to approve the form of assignment to ensure it provides for assumption of duties. County approval of the assignment itself (to a particular Transferee) shall not be unreasonably withheld, delayed, or conditioned, but the County may withhold approval if the proposed Assignee is incapable of performing the obligations. If Landowner retains any part of the Property, the Agreement remains in full force as to the portion retained. The Landowner obligations, rights, and discretion in section 4.5 remain with current Landowner (Jasbir Singh Nijjar, Paramjot Kaur Nijjar) or their successor organization after current Landowner transfers or sells all or part of the Property to other developers or persons ("Transferee"). Current Landowner or their successor organization plan to use the funds received from

transferring or selling all or part of the Property to fund obligations in section 4.5 via escrow transfer into charitable trusts. Nothing herein prevents Landowner from entering into contracts of sale, options, financing agreements, or other typical arrangements, so long as Landowner remains responsible for the Agreement until a transfer is completed and approved as above. A mortgagee or deed of trust holder who forecloses and takes title would likewise be bound, but this Agreement shall not be construed to obligate a lender itself to perform development unless it chooses to succeed to the interests of Landowner.

9.4 Notices: Formal notices between the Parties shall be in writing and delivered either (a) by personal service (including reputable overnight courier) or (b) by certified U.S. mail, postage prepaid, return receipt requested. Notices shall be addressed to addresses Parties may designate by notice:

- **To County:** Contra Costa County, Director of Conservation & Development – Martinez, CA; Contra Costa County Counsel – Martinez, CA
- **To Landowner:** Jasbir Singh Nijjar/Paramjot Kaur Nijjar – San Ramon, CA

Notice is deemed given on the date of actual delivery (if personally served or couriered) or on the date of receipt or refusal indicated on the return receipt (if mailed). Routine communications (like requests for meeting) may be made by email or regular mail, but anything asserting a default, modifying the Agreement, or exercising a legal right under the Agreement must be a formal notice as above.

9.5 Recordation: Within ten (10) days after the Effective Date, the County shall cause an executed copy of this Agreement (or a memorandum of agreement) to be recorded in the Official Records of Contra Costa County, pursuant to Gov. Code § 65868.5. The recordation shall provide constructive notice of the terms herein to all successors in interest. If this Agreement is amended, or if it is terminated, those documents shall also be recorded by the party initiating the amendment/termination (for termination by default, a County notice of termination will be recorded). Landowner shall pay any recording costs.

9.6 Severability: If any provision of this Agreement, or its application to any person or circumstance, is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement, or the application of such provision to other persons or circumstances, shall not be affected thereby, and the Parties shall in good faith negotiate an amendment to replace the stricken provision with a valid provision that comes closest to the original intent. However, if the invalidated provision is so fundamental to the Parties' exchange (for example, if a court ruled that the County legally cannot commit to keep the Property in the ULL at all), then either Party may elect to terminate the Agreement (after meeting and conferring to attempt to salvage it) because the essential consideration may

have failed. In that event, the effects of termination in Section 8.4 apply. The Parties declare that each of the promises and obligations herein were, whether or not expressed as independent sections, a material part of the consideration for each other, and this severability clause shall not be used to uphold an Agreement that fails of its essential purpose.

9.7 Governing Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties acknowledge that this Agreement relates to real property in Contra Costa County and to the actions of a County within California; accordingly, any legal action or proceeding arising out of or relating to this Agreement shall be filed in the Superior Court of California in Contra Costa County, or if appropriate, in the federal courts located in California. The Parties hereby waive any objection to venue or jurisdiction within the stated forums.

9.8 Attorney's Fees: In any legal action or proceeding (including alternative dispute resolution) brought to interpret or enforce any term of this Agreement or arising from the subject matter of the Agreement, each Party shall bear its own attorneys' fees and costs. This provision is a deliberate allocation of risk: the Parties agree that they will not seek recovery of attorneys' fees from the other in the event of litigation concerning this Agreement.

9.9 No Third-Party Beneficiaries: *This Agreement is made and entered for the sole protection and benefit of the County, Landowner, and their successors and assigns. No other person, entity, or organization shall have any right of action based on any provision of this Agreement. For example, members of the public shall not have the right to sue to enforce this contract (though they may have rights under general law to challenge the legislative decisions). The Parties do not intend to create any third-party beneficiary status to any person, entity, organization, neighboring landowner, community group, or other government agency by virtue of this Agreement*.

9.10 Survival: Any provisions which by their terms or substantive effect are intended to survive expiration or termination of this Agreement shall so survive. Additionally, if the Agreement terminates after the Property has been included in the ULL and developed, any conditions or restrictions recorded (like open space easement) remain effective according to their terms.

9.11 Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile or electronic signatures shall be treated as originals for all purposes.

9.12 Authority: Each person signing this Agreement represents and warrants that they have the full right, power, legal capacity, and authority to enter into and perform this Agreement on behalf of the Party for which they sign.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

Contra Costa County – a political subdivision of the State of California
Signature: _____
Print Name, Title: _____

Attest: _____ [Clerk of the Board]
Print Name, Title: _____

Approved as to Form: _____ [County Counsel]

Print Name, Title: _____

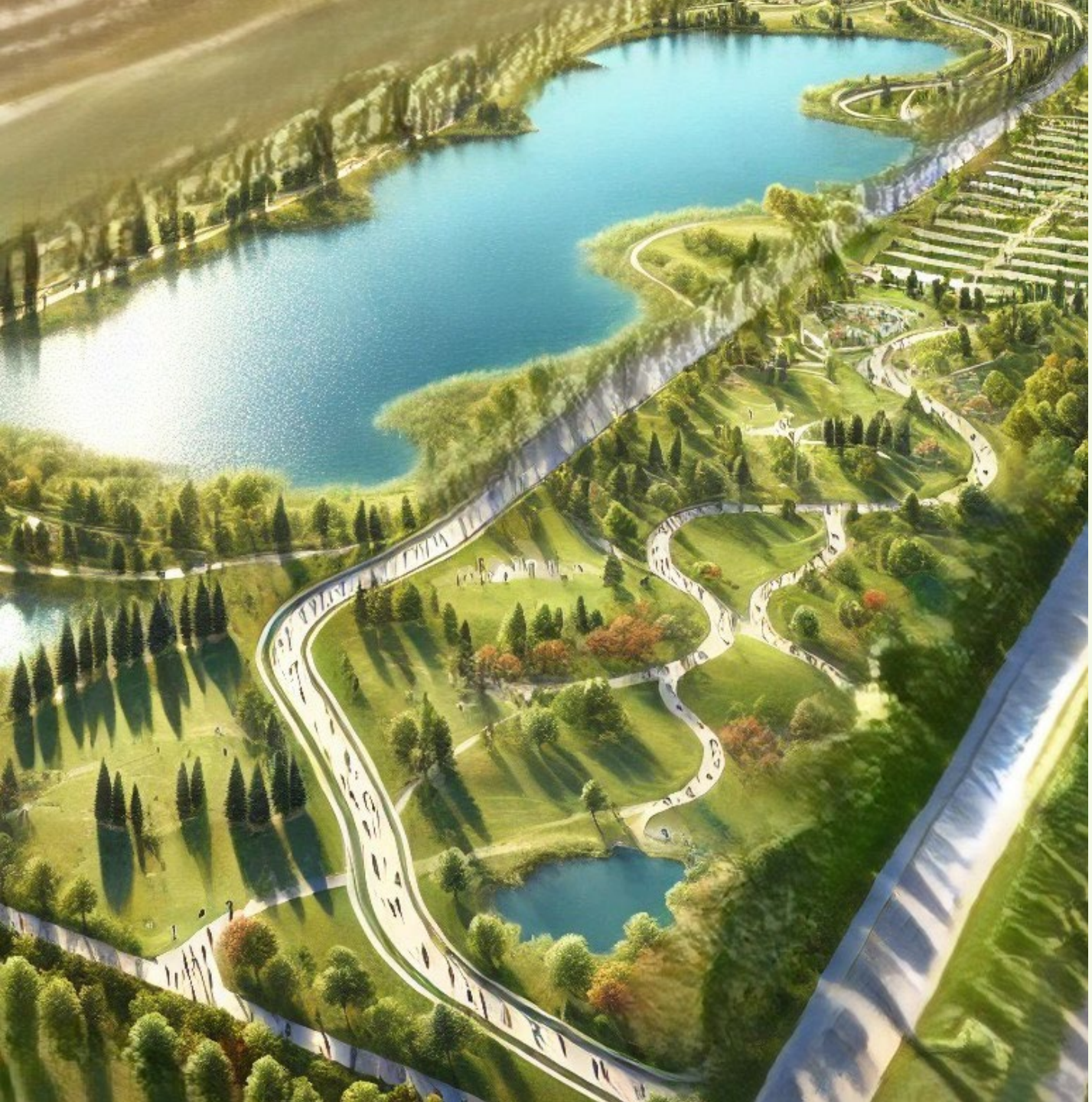
LANDOWNER –
Signature: _____
Print Name, Title: ___Jasbir Singh Nijjar, Landowner_____

Signature: _____
Print Name, Title: __Paramjot Kaur Nijjar, Landowner_____

End of Agreement.

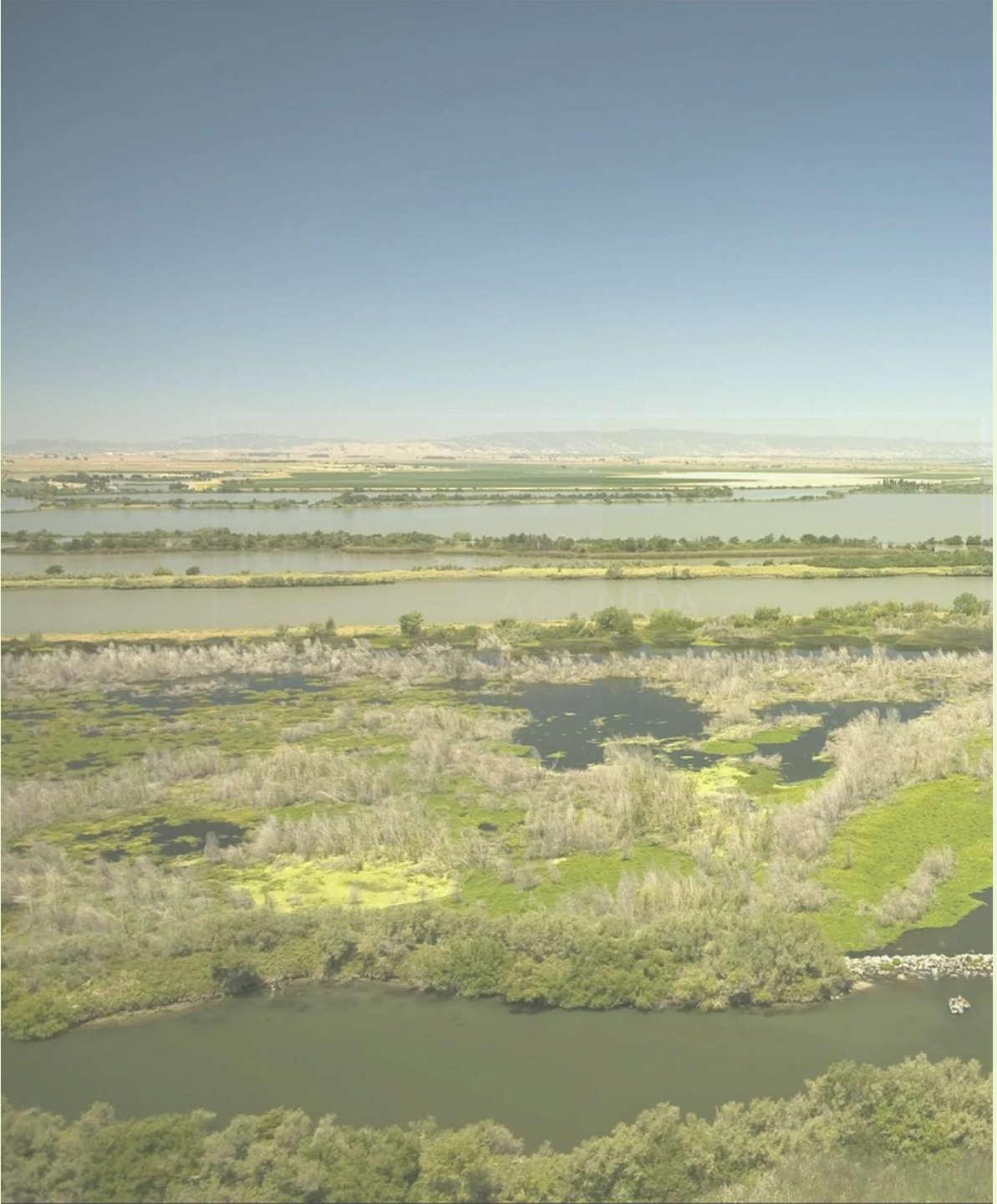
DISCOVERY BAY HILLS JOB CENTER

19-MAY-2025



Large Nature Area Between Job Center & Current Residences

- *At least 50 Acre Natural Scenic Recreational Area with Lake. To be Along Edge of Hwy 4 to Stretch Along a Significant Length of Property*
- *This is Premier Road Frontage Property on a Major Thorough Way With Multiple Existing/Planned Traffic Lights. These Locations are Normally Coveted By Developers. Assuming it Was Developed, the Land Value is Approximately $20-$40M*
- *To Be Donated Including the Underlying Land to East Bay Regional Park District*
- *Beautifully Landscaped, Tree's Planted to Cover/Soften View of Built-up Areas. Local/Local Chapters of Environmental Organizations to be Consulted for Design Inputs*
- *12 ft Wide Winding Paved Trail with Earth Toned Color Borders*
- *Gently Sloping Topography to Further Extenuate the Nature Experience*



Discovery Bay Hills – Uniquely Environmentally Balanced

- *Reduce Water Use by 80% vs. Current Alfalfa Usage.*
- *An Additional 525 Million Gallons Freed Up Annually to Directly Support the Delta's Eco System*
- *Alfalfa is Fed to Cattle. The Cattle Generate Around 154K Pounds of Methane Annually, Equivalent to 4.3 Million Pounds of CO_2*
- *Direct CO_2 Emissions From Cattle are an Additional 1.5 Billion Liters*
- *No Significant Neighboring Sensitive Habitat*
- *Approximately $8M Mitigation Fee to Enable County to Permanently Preserve Approximately 800-1100 Acres of Open Space Within Contra Costa County*
- *Roof Top Solar Requirement, More Environmental Considerations With Input From Environmental Groups*

Discovery Bay Hills – Uniquely Environmentally Balanced

- *Approximately 20 Miles Less Travel Distance to Discovery Bay Hills for Trucks From Port of Oakland versus Stockton*
- *Return Trip of Value-Add Material to Brentwood, Antioch, Concord, etc. also Shorter*
- *Local Jobs Resulting in Net Reduction in Commuter Traffic*
- *Reverse Commute Resulting in a More Optimized Utilization of Existing Infrastructure*
- *Supports Assembly Bill 1279 Climate Goals*

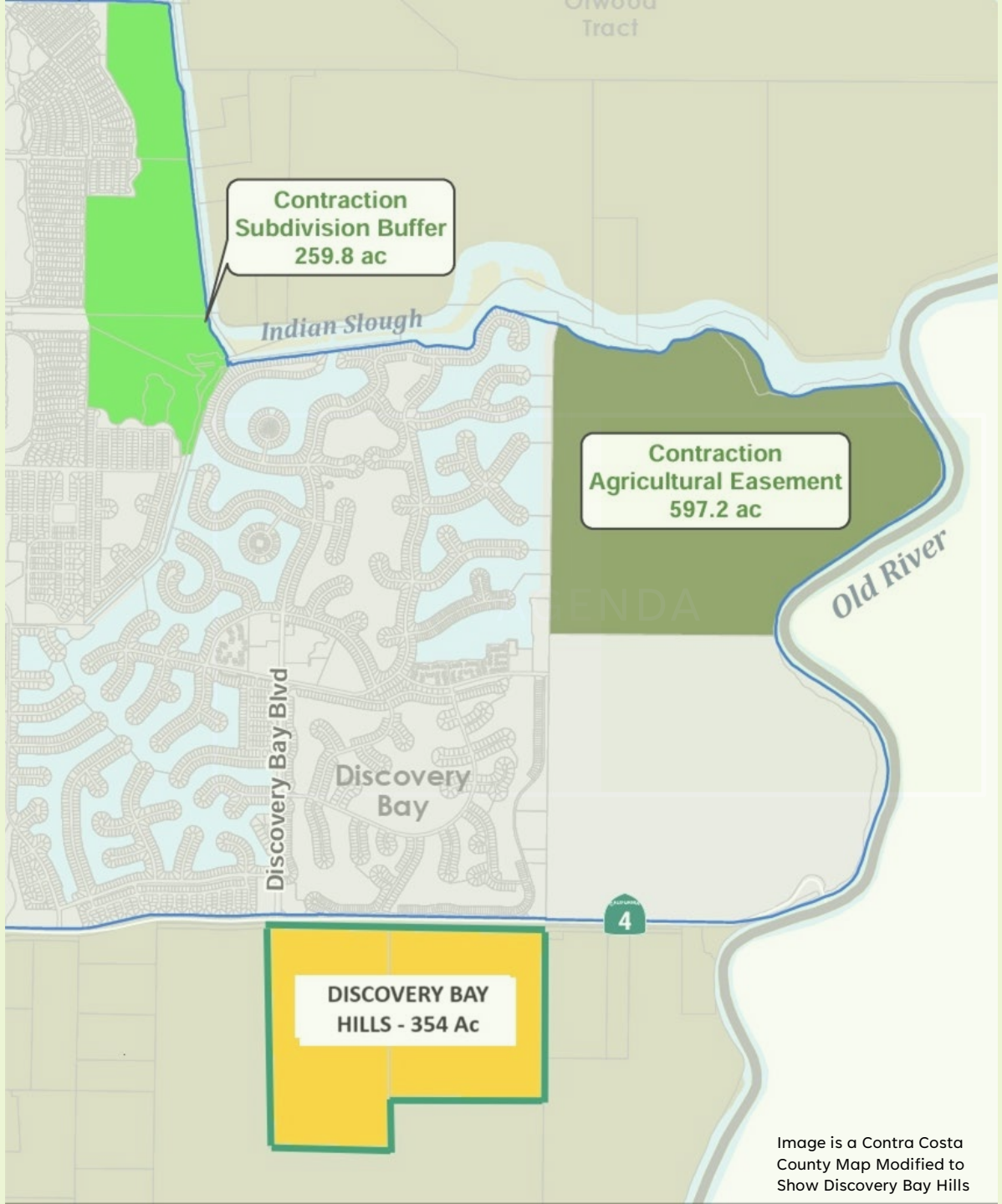


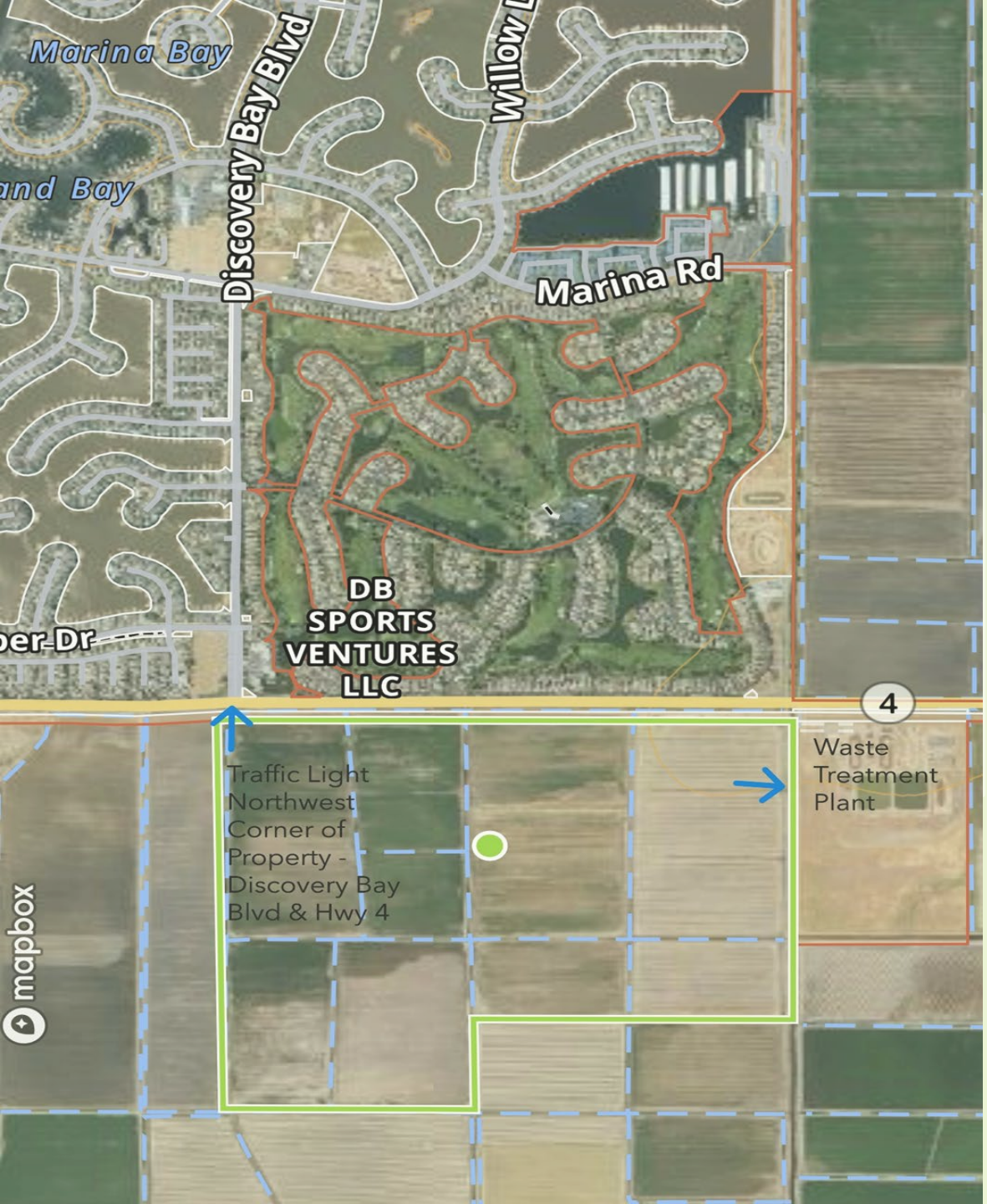
Image is a Contra Costa County Map Modified to Show Discovery Bay Hills

Discovery Bay Hills – Urban Limit Line

- *With Creation of Discovery Bay Hills Job Center - There is Still a <u>Net 547.6 Acre Contraction in the ULL in Discovery Bay</u>*
- *There is a 597.2 Acre Contraction of ULL in Discovery Bay Due to Easement that Permanently Conserves the 597.2 Acres of Land for Agriculture*
- *This 597.2 Acre Property is Across the Street Northwest From the Job Center*
- *An Additional Net 254.4 Acres ULL Contraction Elsewhere in Discovery Bay*
- *More Than Maintains the 65/35 Land Preservation Standards, Where 65% of Contra Costa County Land is Designated for Open Space (Non-Urban Use)*

Charitable Trusts

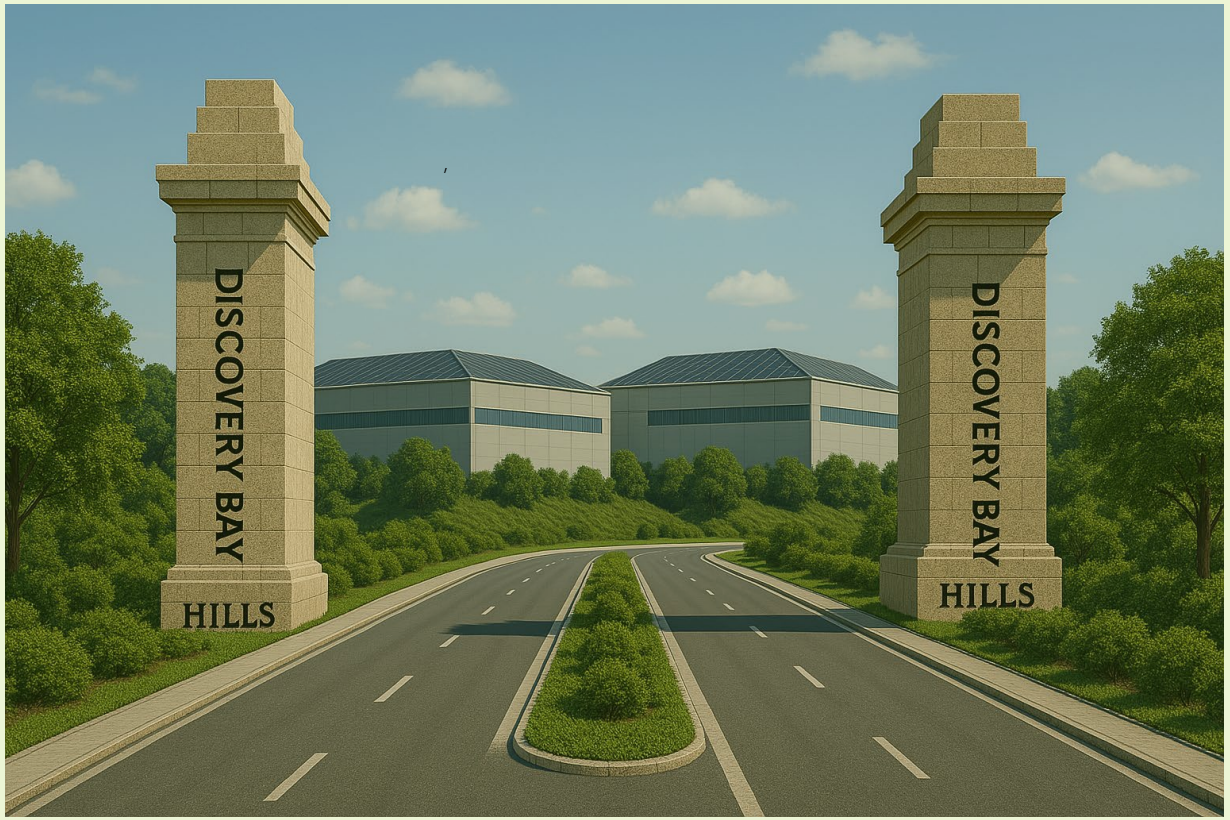
- *Job Center Agreement with Contra Costa County Requires Half of Proceeds Received by Jasbir S. Nijjar/Paramjot K. Nijjar Beyond $10M (Approximate Purchase Price Plus Carrying Cost) to be Donated via Charitable Trusts and Distributed Mostly in Contra Costa County. See Agreement For Terms & Conditions*
- *Estimate for Size of Donation $25M - $55M. This is in Addition to Land Donation for Nature Area Along Highway 4 Worth an Estimated $20M-$40M*
- *Portion of the Estimated $25M-$55M to be Used for Construction of Nature Area. Remaining on Priorities Such Environmental Causes, Little League, Discovery Bay/Byron School Projects, etc.*
- *<u>Job Center Agreement Does Not</u> Obligate Contra Costa County or Any Other Agency/Entity to Approve Development on Property*
- *To Remain Valid, Agreement Will Stipulate the ULL to be Modified Before August 14, 2027 for Inclusion of* the *Property Within the ULL Until August 14, 2042*
- *If Construction of "Discovery Bay Hills Job Center" is Not Approved by Contra Costa County With Terms & Conditions Mutually Agreeable to County and Landowner Before August 14, 2042, the Property Shall Revert Back to Being Outside of ULL Effective August 15, 2042*



Property Features

- *Approximately 354 Acre Site – APN's 008-340-031-7 & 008-340-032-5*
- *Discovery Bay Waste Treatment Plant Flanks Eastern Edge of Property*
- *Electricity and Water Also at Property Edge – Capacity Review of Utilities In-Process*
- *Hwy 4-Discovery Bay Blvd. Traffic Light at Northwest Corner of Site.*
- *Discovery Bay Blvd. Can Continue Straight Ahead South of Hwy 4 and Still Remain Within the Property.*

A Bold Entrance



- *Grand Main Entrance*
- *More Designs Available*
- *Earthtone Colors*
- *Wide Median in the Center*
- *Possible Bike Lane to be Added*
- *Possible Landscaped Separation of Sidewalk from Road*

Construction on Elevated Build Pads Nestled in Gently Sloping Topography

- *Elevate Property Base by to Establish Baseline for Roads*
- *Use Parking Lot to Gently Slope Up to Height of Build Pad*
- *Curving Treelined Streets*
- *Gently Sloping Topography for Extra Beautification*

Discovery Bay Hills – Job Center

- *Improves Income Balance Between Western/Eastern Contra Costa County*
- *Create a Large Blue-Collar Job Center in Eastern Part of the County During Construction Phase and a Regional Anchor Mixed Job Center Going Forward.*
- *Upon Completion, Estimated 3,500 Ongoing Direct Jobs, Additional 6,000 Ongoing Indirect Jobs,*
- *Over $1Billion Investment for Build Out*
- *Nicely Compliments and Provides Significant Justification to Expedite State Route 239 Around Byron*
- *Excellent Long Term Synergetic Fit With Byron Airport Expansion Along with Plan to Use State Route 239 to Keep Traffic Out of Byron*

THANK YOU

PLEASE REFER TO --- DISCOVERY BAY HILLS JOB CENTER AGREEMENT--- FOR MORE DETAILS AND ADDITIONAL INFORMATION AS IT SUPERSEDES THIS POWER POINT PRESENTATION

CONTACTS

JOHN COBURN --- 209-404-3457

JASBIR S. NIJJAR --- 408-425-0640

Contra Costa County
Planning Commission
Department of Conservation and Development
30 Muir Road Martinez, CA 94553

RE: Comments Regarding Urban Limit Line Boundaries in Tassajara Valley and Byron Airport

Dear Contra Costa Board of Supervisors, Members of the Contra Costa County Planning Commission, John Kopchik, and Will Nelson,

Thank you for prioritizing the renewal of the Contra Costa Urban Limit Line (ULL) and for your commitment to protecting our county's valuable open space, agricultural lands, and natural resources.

The ULL is one of the most effective land use tools Contra Costa County has to **prevent sprawl, safeguard agricultural and natural lands,** and focus development in areas already served by infrastructure. Voters and communities across the county have consistently supported the ULL as a reflection of our shared values—resilient growth, climate protection, and the preservation of the county's rural and ecological heritage. We are looking forward to hopefully working closely together to ensure that this ULL renewal is swiftly approved by voters like in previous years and appreciate the openness and willingness to hear feedback on current draft lines.

For the most part, we support the County's plan to align the ULL with existing city ULL boundaries and move restricted development areas, protected open spaces, and areas with major development constraints outside the line. We did have a couple of concerns regarding the Tassajara Valley and Byron Airport that we hope can be addressed prior to the finalization of the ULL.

In line with the General Plan and Climate Action Plan
We recommend that the County clearly demonstrate that any proposed **ULL changes are consistent with the new General Plan and Climate Action Plan**. This includes quantifiable environmental metrics, community input, and a commitment to resilience over expansion. There must not be any pre-approval or presumed "green light" for economic expansion zones around the Byron Airport area or elsewhere unless it's fully vetted in line with the ULL, the County General Plan, the Climate Action Plan, and our commitments to protect farmland, species, water quality, and reduce sprawl-induced VMT.

Byron Airport and Leapfrog Development
We're already seeing traffic pressure mounting from East County cities and Oakley's access push toward Byron Highway. We are concerned if phrased incorrectly, we leave room for future interpretations that could undermine everything the ULL is meant to protect. We understand the value of long-term economic development but want to ensure that there is no way the Byron Airport area could trigger sprawl. The region surrounding the Byron Airport, especially with discussions around economic zones, poses a major risk of sprawl. Any infrastructure or policy changes in this area must explicitly rule out housing, distribution centers and tourism under the guise of "economic opportunity." **We implore the county to be extremely specific around what is defined by "airport use" so as to avoid cargo distribution centers and the like.**

Economic development surrounding Byron Airport must demonstrate genuine benefit to existing communities, particularly through **living-wage jobs** that reduce the need for long-distance commutes. This avoids the pattern of speculative housing that strains infrastructure and undermines regional climate goals.

Wildlife and Habitat Protections in Knightsen and Beyond
This region holds some of the last intact Delta-edge habitat. The ULL must **respect existing wildlife corridors** and environmental constraints. With sewer expansion pressures rising, we want to make sure the ULL prevents the conversions of farmland and open space into subdivisions.

Tassajara Parks
For Tassajara Parks, we believe that the line has been mistakenly drawn to indicate that this project is moving forward, however since the court determined that the movement of the line is conditional on the full approval of the Tassajara Parks Project, the Preservation Agreement, and the dedication of certain acreage on the protected side of the line, to East Bay Parks – none of which has occurred. The County has yet to legally establish all these necessary criteria for line movement, therefore **the ULL should remain in its original position**. Please see the letter in attachment A for more information.

Thank you for your attention to this matter and for your service to the people and places of Contra Costa County.

Sincerely,

Zoe Siegel, **Greenbelt Alliance**
Gretchen Logue, **Tassajara Valley Preservation Association**
Norman LaForce, **SPRAWLDEF**
Jim Blickenstaff
Paul Seger, Oakley Resident
William Smith
Mark W. Linde

John A Gonzles, **Knightsen Resident, Historian & Community Advocate**
Sue Bock, **San Ramon Valley Climate Coalition**
Lisa Jackson, **350 Contra Costa Action**
Mark Van Landuyt, **Generation Green, Contra Costa Climate Leaders**
Donna Gerber, former Contra Costa County Supervisor representing Walnut Creek, Alamo, Danville, San Ramon including Tassajara Valley

GREENFIRE LAW, PC

JESSICA L. BLOME
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Berkeley, CA 94703
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Email: jblome@greenfirelaw.com
www.greenfirelaw.com

May 12, 2025

Ms. Donna Gerber
662 39th Street
Sacramento, CA 95816

Mr. Jim Blickenstaff
2410 Talavera Dr.
San Ramon, CA 94583

RE: Effect of Court Decision on Status of ULL in Contra Costa County
Sierra Club, et al. v. Contra Costa County, et al. Case No. Case No. N21-1509

Dear Donna and Jim:

Two years ago, the Sierra Club, Greenbelt Alliance, and you prevailed in litigation against the Contra Costa County Board of Supervisors over its unlawful approval of the Tassajara Park housing project in unincorporated Contra Costa County. I understand that the Contra Costa Planning Commission will hold a study session related to the County's anticipated 2026 ballot measure to renew the Urban Limit Line (ULL) for the County on May 14, 2025. During this study session, the Planning Commission will review maps illustrating proposed contractions and expansions of the ULL across the County and accept public comments. In advance of this meeting, County staff has been meeting with stakeholders in Contra Costa County about its proposal. During those conversations, staff has revealed its belief that the court's August 22, 2023, final order resulted in a permanent expansion of the ULL where the Tassajara Parks project would have been had the County succeeded in the litigation. I write to advise that I do not interpret the court's order as permanently expanding the ULL; rather the court's final order conditioned the expansion of the ULL on approval of the Tassajara Parks Project and Tassara Agreement. (*See* Judgment, p. 2, ¶ 2(b), attached hereto as **Exhibit 1**.) A more detailed analysis follows.

As you know, Contra Costa County voters approved the "65/35 Land Preservation Plan Ordinance" in 1990. (Contra Costa County Code, § 82-1.018(a) [hereinafter CCC Code]).) This Ordinance, or "Measure C," limited urban development to no more than thirty-five percent of the land in the County and required that at least sixty-five percent be preserved as agriculture, open space, wetlands, parks, or other non-urban uses. (*Id.*) Measure C also established the County's Urban Line Limit (ULL) policy, a delineated urban growth boundary to enforce the 65/35 standard. (*Id.*) To protect the ULL from political pressure, Measure C contained provisions

ensuring that it could not be modified easily in the future. First, the measure allowed the County to change the ULL boundary only upon a 4/5 vote of the Board of Supervisors, and only upon making at least one of seven enumerated findings based on substantial evidence in the record. (*Id.*) Key among these findings, the Board of Supervisors could expand the ULL only if it determined that: "[A] majority of the cities that are party to a preservation agreement and the County have approved a change to the Urban Limit Line affecting all or any portion of the land covered by the preservation agreement." (CCC Code, § 82.018(a)(3).)

Over the next three decades, Contra Costa County voters repeatedly reconsidered and endorsed the ULL as set forth in Measure C. In 2004, voters approved Measure J, which required that the County and all municipalities develop and maintain their urban limit lines in accordance with the County's growth management policies, including the 65/35 standard, before they could receive certain sales tax proceeds. (CCC Code, § 82-1.012 (citing General Plan § 4-1).) In 2006, County voters approved Measure L, which extended the term of Measure C to December 31, 2026, and imposed a new voter approval requirement for any proposed expansion of the ULL by more than 30 acres. (CCC Code, § 82.018(a)(3).)

At issue in the Tassajara Parks litigation was whether the County's decision to expand the ULL to accommodate the 35-acre Tassajara Parks Project required a "vote of the people," or whether a preservation agreement conditioned on approval of an urban land use project—like Tassajara Parks—could qualify as a preservation agreement for the purposes of Measures C and L. The trial concluded that such an agreement could qualify, but it vacated the project for violating the California Environmental Quality Act.

In its final judgment, the trial court ordered the County to void the certification of the Final Environmental Impact Report for the Tassajara Parks Project **<u>and</u>**:

> Set aside and vacate all other Project-related approvals challenged in the Petition with the exception of (a) the expansion of the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3), to the extent that approval of the expansion of the ULL merely extends the ULL by 30 acres not limited by or to the Project's residential development of 125 homes under the Development Agreement, and (b) the approval of the Tassajara Agreement related to the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3).

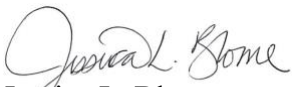
(Judgment, p. 2, ¶ 2(b).)

In other words, the court's final judgment conditioned court approval of Project-related documents related to the expansion of the ULL "to the extent that approval of the expansion of the ULL merely extends the ULL by 30 acres not limited by or to the Project's residential development of 125 homes under the Development Agreement." (*Id.*) This conditional language is crucial because the Tassajara Agreement, which serves as the predicate preservation agreement for the purposes of ULL expansion, is itself conditioned on approval of the Tassajara Parks Project. County staff know that the Tassajara Agreement has not resulted in the dedication of any land to the East Bay Regional Parks District because the County has not legally approved the Tassajara Parks Project.

The court's final judgment did not expand the ULL. Staff's desire to now expand the ULL to accommodate the acreage desired for the Tassajara Parks Project during the 2026 voter-approval process must be understood for what it is—an effort to expand the ULL by voter-approval so that the developer may build Tassajara Parks. But the Tassajara Parks Project may not move forward; indeed, the developer may elect not to proceed with the Project, the Board of Supervisors may vote it down for a variety of reasons, and the East Bay Municipal Utility District may hold-fast to its prior decision to decline water service to the Project. Voters must demand that the County transparently tell the public that the impact of its 2026 ULL maps includes preemptive, unnecessary expansion of the ULL to accommodate the conversion of cherished open space into a residential subdivision. The public deserves this critical information, so they can make informed decisions about whether to support staff's 2026 maps. Moreover, greenspace advocates must demand that the County require the Tassajara Agreement in exchange for Tassajara Parks Project approval, even if voters approve the 2026 maps with the Tassajara Parks acreage expansion. If voters approve the expansion as a part of the 2026 ULL vote without this commitment, the County could approve the Tassajara Parks Project without the Tassajara Agreement.

Please let me know if you have any questions.

Sincerely,



Jessica L. Blome
Greenfire Law, PC

C: Sierra Club, Greenbelt Alliance

Exhibit 1

Electronically Filed Superior Court of CA County of Contra Costa 8/22/2023 3:31 PM By: S. Gonzalez, Deputy

Jessica L. Blome (CBN 314898)
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Email: jblome@greenfirelaw.com

Mark R. Wolfe (CBN 176753)
M. R. WOLFE & ASSOCIATES, P.C.
580 California Street, Suite 1200
San Francisco, CA 94104
Telephone: (415) 369-9400
Fax: (415) 369-9405
Email: mrw@mrwolfeassociates.com

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

SIERRA CLUB, a non-profit organization, GREENBELT ALLIANCE, a non-profit organization, JIM BLICKENSTAFF, and DONNA GERBER, Petitioners, v. CONTRA COSTA COUNTY, Respondent, FT LAND LLC, MEACH LLC, TH LAND LLC, the CITY OF SAN RAMON, and the EAST BAY REGIONAL PARK DISTRICT, Real Parties in Interest.	Case No. N21-1509 [Partially Consolidated with N21-1274, N21-1525] **NOTICE OF ENTRY OF JUDGMENT** ASSIGNED FOR ALL PURPOSES TO: Hon. Danielle K. Douglas | Dept. 18 Hearing on Merits: May 5, 2023 Date: 1:30 p.m. Filing date of action: August 12, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 22, 2023 the above court entered final judgment on the merits of the petition for writ of mandate in the above-captioned matter. A true and correct copy of the judgment as entered is attached hereto as **Exhibit A1**.

Dated: August 22, 2023

GREENFIRE LAW, PC

By: _____

Attorneys for Petitioners SIERRA CLUB. GREENBELT ALLIANCE, JIM BLICKENSTAFF, and DONNA GERBER

EXHIBIT A1

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FILED
AUG 22 2023
K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

SIERRA CLUB, a non-profit organization, GREENBELT ALLIANCE, a non-profit organization, JIM BLICKENSTAFF, and DONNA GERBER, Petitioners, v. CONTRA COSTA COUNTY, Respondent, FT LAND LLC, MEACH LLC, TH LAND LLC, the CITY OF SAN RAMON, and the EAST BAY REGIONAL PARK DISTRICT, Real Parties in Interest.	Case No. N21-1509 [Partially Consolidated with N21-1274, N21-1525] **PETITIONER SIERRA CLUB, ET AL.'s [PROPOSED] JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE** ASSIGNED FOR ALL PURPOSES TO: Hon. Danielle K. Douglas | Dept. 18 Hearing on Merits: May 5, 2023 Date: 1:30 p.m. Filing date of action: August 12, 2021

This matter came on regularly for hearing on May 5, 2023, in Department 18 of this Court. Attorneys Jessica Blome and Mark Wolfe appeared on behalf of Petitioners Sierra Club, Greenbelt Alliance, Jim Blickenstaff, and Donna Gerber ("Petitioners"). Attorney Kurtis Keller of Contra Costa County Counsel's Office appeared on behalf of Respondents Contra Costa County and Contra Costa County Board Of Supervisors ("Respondents"). Attorneys Arthur Coon and Matthew Henderson of Miller Starr Regalia appeared on behalf of FT LAND, LLC; MEACH, LLC; BI LAND, LLC; TH LAND, LLC ("Real Parties").

Having reviewed the certified record of proceedings in this matter, the briefs submitted by counsel, judicially noticed documents, and the arguments of counsel, and the matter having been submitted for decision, and having issued on June 29, 2023, Order After Hearing, a copy of which is attached as **Exhibit A**, a judgment and a peremptory writ of mandate shall now be issued in this proceeding.

IT IS HEREBY ADJUDGED, ORDERED, and DECREED that:

1. Judgment shall be entered in favor of Petitioners in this proceeding as provided for in Exhibit A;
2. A peremptory writ of mandate directed to Respondents be issued under seal of this Court, ordering Respondents to:
    a. Void the certification of the Final Environmental Impact Report for the Tassajara Development ("Project"); and
    b. Set aside and vacate all other Project-related approvals challenged in the Petition with the exception of (a) the expansion of the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3), to the extent that approval of the expansion of the ULL merely extends the ULL by 30 acres not limited by or to the Project's residential development of 125 homes under the Development Agreement, and (b) the approval of the Tassajara Agreement related to the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3).

With such writ further providing that:

a. This Court does not direct Respondents to exercise their lawful discretion in any particular way; and

b. This Court will retain jurisdiction over Respondents' proceedings by way of a return to this peremptory writ of mandate until the Court has determined that Respondents have fully complied with the provisions of the writ; and

c. Respondents must file an initial return to the writ no later than 60 days after issuance of the writ. Any objections to the initial or subsequent Return shall be filed not later than the sixtieth day after the service of the Return.

3. Respondents and Real Parties in Interest and any and all of their assigns, agents, contractors, employees, owners, directors, partners, or any other person on their behalf, are hereby enjoined from taking any action to implement the Project and from taking an action to construct the Project, until such time as Respondents have conformed to all legal requirements as ordered by the Court.

4. As the prevailing party, Petitioners shall recover costs, including the costs spent for the administrative record, pursuant to a timely filed memorandum of costs.

5. This court shall retain jurisdiction in this matter to determine compliance with the writ and entitlement to recoverable costs and attorneys' fees under Code of Civil Procedure sections 1021.5 and 1032. Pursuant to California Rule of Court, Rule 3.1702, Petitioner shall notice any motion for attorneys' fees within 60 days of the date of the mailing of the notice of entry of judgment.

Dated: 8/21/2023

By: Danielle Douglas
Hon. Danielle K. Douglas
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA
Department 18

Sierra Club, etc., *et al.*, *Petitioners**

v.

Contra Costa County; Contra Costa County Board of Supervisors, *Respondents.*

FT Land, LLC; Meach, LLC; BI Land, LLC; TH Land, LLC; and Does 1-20, *Real Parties in Interest.***

FILED
JUN 29 2023
K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By
Angela Cassity, Deputy Clerk

* Case is partially consolidated for administrative record, briefing, and hearing only.

** City of San Ramon and East Bay Regional Parks District named as additional real parties in interest have been dismissed.

Case No. N21-1509

ORDER AFTER HEARING

I. Case Background

On July 13, 2021, the County of Contra Costa and its Board of Supervisors (collectively, "the County" or "Respondents") took a series of actions related to the approval of the development of 125 single-family residences in the Tassajara Valley near the Town of Danville and the City of San Ramon (referred to herein as the "Tassajara Development" or the "Residential Development") on 30 acres of land ("Residential Development Area") that is part of the 771-acres in the Tassajara Valley defined as the "Project." These actions taken by Respondents include, among others: (1) certifying a Final Environmental Impact Report ("FEIR") related to the Tassajara Development, and adopting a Mitigation Monitoring and Reporting Program ("Mitigation Program") and a statement of overriding conditions; (2) adopting a resolution approving the Development Agreement for the Tassajara Development and 125 conditions for approval of the Project ("COAs"); (3) amending the Urban Limit Line ("ULL") to incorporate the 30 acres on which the 125 residences comprising the Tassajara Development are located; (4) approving the County entering into the Agreement Regarding Preservation and Agricultural

Enhancement in the Tassajara Valley ("Tassajara Agreement") by which approximately 727 acres outside the ULL will be offered for dedication to the East Bay Regional Park District; (5) amending the General Plan by re-zoning the land comprising the Project from AL (agricultural land) to designate the 30 acres of the Residential Development single-family residential, high density, parks and recreation, and Public/Semi-Public; and (6) vesting a tentative subdivision map to subdivide the 125 single family residences (collectively "Project Approvals"). (Administrative Record ("AR") 1-5 [Notice of Determination re FEIR, Mitigation Program, statement of overriding conditions], 6-8 [Ord. No. 2021-23 -Development Agreement], 34-35 [Ord. No. 2021-24 - rezoning], 36-41 [Res. No. 2021-216 – General Plan Amendment, change in ULL, Tassajara Agreement]; AR 39-40 [tentative map approval]; AR 12268-12306 [COAs].)

EBMUD filed a petition for writ of mandate and subsequently a first amended petition for writ of mandate challenging these actions, initiating Case No. MSN21-1274 ("EBMUD Case"). The Sierra Club and others joined together (collectively the "Sierra Club Parties" or sometimes "Sierra Club" for convenience) in a separate petition for writ of mandate and complaint for declaratory and injunctive relief, initiating Case No. MSN21-1509 ("Sierra Club Case"). Sierra Club Parties also filed a First Amended Petition for Writ of Mandate on August 13, 2021. Town of Danville filed a separate petition for writ of mandate, initiating Case No. MSN21-1525 ("Danville Case").

Real Party FT Land LLC is listed as the Project applicant, and Real Parties Meach LLC, BI Land LLC, and TH Land LLC are the owners of the land subject to the Project and are included as Real Parties in each of the cases. City of San Ramon and the East Bay Regional Park District ("EBRPD") were named as additional real parties in interest in this case and in the Sierra Club Parties' case. They have been dismissed without prejudice pursuant to a Stipulation and Order filed November 2, 2021, in the EBMUD Case. A similar stipulation, without an order, was filed October 26, 2021, in the Sierra Club Case. A request for dismissal without prejudice of the City of San Ramon and EBRPD was filed and entered in the Danville Case.

These cases are partially consolidated to allow preparation of a single administrative record, and for briefing and hearing, pursuant to the Stipulation Regarding Administrative Record Preparation and Certification, Partial Consolidation of Related Cases, and Briefing and Hearing Schedule and Page Limits filed January 18, 2022 ("Partial Consolidation Order"). A similar stipulation was filed in the Danville Case, without an order, and no stipulation or order was filed in the Sierra Club Case. The parties have clearly treated the Partial Consolidation Order as applying in all three cases. The Court has requested the parties take steps to file the documents necessary in the Sierra Club and Danville Cases to ensure the

terms of the parties' stipulation and Partial Consolidation Order appear in these cases. EBMUD, Sierra Club Parties and Town of Danville are collectively sometimes referred to herein as "Petitioners."

A. General Factual Background

The Project includes a 155-acre Northern Site and 616-acre Southern Site. In addition to the 30-acre Residential Development Area with the 125 single-family residences on the Northern Site, the Project will include a pedestrian staging area that will be developed with a parking lot, restrooms and a water fountain on the Northern Site (collectively sometimes referred to herein as the "Expanded Water Supply Project Area"). (AR 3310, AR 3367, AR 3389.) Other portions of the Project Site will be improved with a stormwater detention basin, grading and drainage, and a portion of the Site will be offered to the San Ramon Valley Fire Protection District ("SRVFPD") for a fire station. (AR 3311, 3367.)

B. Timeline of County Action

Steps related to the initiation and approval of the proposed Project began in at least 2014. (*See, e.g.,* AR 25066-25070 [Danville 9/2014 letter on proposed Tassajara Parks Project].) In May and June 2016, the County prepared a draft environmental impact report ("DEIR") and gave notice to the public of the opportunity to make comments. (AR 3355, AR 32760-32765.) The DEIR included a recycled water option for supplying water to the Project, which EBMUD indicated was not feasible, resulting in the preparation of a revised draft environmental impact report substituting offsite conservation for the recycled water option and with other revisions to the analysis of environmental impacts of the Project. The County determined the elimination of recycled water option was "significant new information" and the County's Recirculated Draft Environmental Impact Report ("RDEIR") was resubmitted to the public for comment on September 29, 2016. (AR 3294-3979, AR 32766-33503, AR 33504-33513.)

A public hearing was held in November 2016 before the Zoning Administrator. The County prepared responses to the extensive comments the County received on the RDEIR, and the County published the Final Environmental Impact Report ("FEIR"), comprised of the RDEIR, comments, and County responses, on September 14, 2020. (AR 6790-8174, AR 33514-33617.)

The approval of the proposed Project came before the County Planning Commission for public hearing on June 9, 2021. (AR 40.) The Planning Commission recommended that the County Board disapprove the Project at its June 9, 2021, hearing, based on, among other reasons, concerns regarding the water supply for the Project. (AR 40, AR 13444-13446.)

The Project applicant continued to pursue approval of the Project before the County Board of Supervisors ("Board"), which held a public hearing on the Project on July 13, 2021. (AR 1-5 [Notice of

Determination].) The Board approved the Project with the Project Approvals described above on that date. The Project Approvals include extensive findings by the Board as well as an extensive list of 125 conditions on the approval of the Project which must be met by Real Parties. (AR 55-196, AR 12268-12306.)

II. Procedural Issues

A. Sierra Club Petition

Sierra Club Parties filed their Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunctive Relief on August 12, 2021, and a Verified First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunctive Relief on August 13, 2021. The Amended Petition alleges a first claim for relief for multiple violations of CEQA, specifically violation of the information disclosure provisions of CEQA with a long and non-exclusive list of inadequate disclosures and analysis of the Project's significant direct, indirect, and cumulative impacts (Am. Pet. ¶ 43) resulting in a prejudicial abuse of discretion in the County certifying the EIR and adopting findings not supported by substantial evidence (Am. Pet. ¶ 44); failure to describe all feasible mitigation measures for Project's impacts (Am. Pet. ¶ 46) resulting in a prejudicial abuse of discretion in certifying the EIR and adopting findings not supported by substantial evidence (Am. Pet. ¶ 47); failure to adequately respond with a good faith, reasoned response to comments on the draft and Recirculated EIR, resulting in a prejudicial abuse of discretion by the County under CEQA (Am. Pet. ¶¶ 49, 50); and improper approval of the EIR for the Project with a statement of overriding conditions for the significant unavoidable impacts of the Project not supported by substantial evidence in the record, and without supporting findings (Am. Pet. 51-53), resulting in a prejudicial abuse of discretion by the County in certifying the EIR and adopting findings not supported by substantial evidence (Am. Pet. ¶ 54). They ask the Court to set aside and void the EIR and related Project Approvals (defined below).

The Sierra Club's second claim for relief is for violation of the County General Plan and Zoning Code, citing specifically Contra Costa County Code ("CCC Code") sections 82-1.006, 82-1.008, and 82-1.018. (Am. Pet. ¶¶ 57-60.) They allege the County violated the Zoning Code by voting to expand the Urban Limit Line ("ULL") and agreeing to the Tassajara Agreement (as defined below). (Am. Pet. ¶¶ 61, 62.) They further allege the County prejudicially abused its discretion in adopting the finding that the Tassajara Agreement satisfied the requirements of CCC Code section 82-1.018(a)(3) as the finding is not supported by substantial evidence. (Am. Pet. ¶ 63.) They seek declaratory and injunctive relief in

connection with their second cause of action to compel the County's compliance with the Zoning Code before implementing the Project Approvals and the Tassajara Agreement. (Am. Pet. ¶ 64.)

The Amended Petition originally named the City of San Ramon and the East Bay Regional Parks District as additional Real Parties in Interest. They have been dismissed from this case by stipulation, but without an order on the dismissal stipulation. (Stip. Filed 10/26/2021.)

The County and Real Parties answered the Amended Petition.

Sierra Club's petition seeks declaratory and injunctive relief as remedies for the violations alleged in its Petition, as well as issuance of a peremptory writ of mandate. (Am. Pet. Prayer for Relief ¶¶ 1-3.)

B. Briefing

Issues noted by the Court at the initial January 30, 2023, hearing on the filing of the Sierra Club Parties' Opening Brief and the Town of Danville Opening Brief have been corrected. Since all parties have fully briefed the Action, the Court finds no prejudice from any minor procedural "glitches" in the initial filing of those briefs.

As the Petitioners were permitted to do in the Partial Consolidation Order, Sierra Club Parties' Opening and Reply Briefs "incorporate and adopt the facts, legal analysis and arguments" of the other Petitioners' briefs and state their briefs are filed in support of all three Petitions. (Sierra Club Op. Brief p. 1, ll. 13-17; Sierra Club Reply p. 1, ll. 13-17.) The other Petitioners' briefs contain similar statements, as indicated in the separate tentative rulings for those actions. The Court considers the claims and arguments addressed in the Opening and Reply Briefs filed by all Petitioners as made by each of the Petitioners as a result, except to the extent that any of the claims or issues raised in any Petitioner's brief are outside the scope of the claims and issues alleged in the Petition filed by that Petitioner. Further, the Court notes where claims or issues alleged in a Petition filed by a particular Petitioner are not addressed in any of the Petitioners' Opening Briefs and are therefore waived.

The Sierra Club Amended Petition broadly alleges various violations of CEQA. The Court addresses below in the issues and analysis section of the tentative ruling all issues briefed by Sierra Club, Danville and EBMUD which the Court finds are within the scope of the Sierra Club Amended Petition. None of the parties have briefed several grounds for violation of CEQA alleged in the Sierra Club Amended Petition, including informational, analytical, and mitigation inadequacies related to (1) aesthetics, (2) air quality, (3) human health, (4) global climate change, (5) geology and soils, (6) hazards and hazardous material, (7) mineral resources, (8) noise, (9) population and housing, (10) public

services, (11) recreation, (12) transportation and traffic, and (13) urban decay. (Am. Pet. ¶¶ 43 and 46.) Those grounds are therefore waived.

Real Parties filed a Respondents' Brief in the Sierra Club Action. The County filed a "joinder and Opposition to Petition for Writ of Mandate," joining in the Real Parties' three briefs in opposition to the three Petitions. The Joinder/Opposition also addresses why the Tassajara Agreement is a valid preservation agreement that allowed the County to expand the ULL under the Zoning Code, specifically CCC Code section 82-1.018(a)(3).

III. Standard of Review

A. Review of General Plan Consistency Determination

The County's determination of whether the Project is consistent with the City's General Plan is reviewed under ordinary mandamus. (*The Highway 68 Coalition v. County of Monterey* (2017) 14 Cal.App.5th 883, 894 ("*Highway 68*").) The County's determination that the Project is consistent with its General Plan is subject to great deference and will only be reversed "if it is based on evidence from which no reasonable person could have reached the same conclusion." (*Stop Syar Expansion v. County of Napa* (2021) 63 Cal.App.5th 444, 460 ("*Stop Syar*") [internal quotation marks omitted, quoting *Highway 68, supra,* 14 Cal.App.5th at 896].) "The party challenging a city's determination of general plan consistency has the burden to show why, based on all the evidence in the record, the determination was unreasonable. [Citations omitted.]" (*Highway 68, supra,* 14 Cal.App.5th at 896.)

B. Review of County's Interpretation of CCC Code

The Court applies the same rules for interpreting statutes generally to the interpretation of an ordinance. (*Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 890, 896 ("*Berkeley Hills*"). Words in a statute are to be given their ordinary, commonsense meaning. (*Id.* at 890.) The Court is to give meaning to every word or phrase to give effect to all parts of the provision. (*Id.*) The Court's goal is to determine the intent of the legislature or governing body that enacted the statute, but the Court only resorts to extrinsic aids outside the language of the statute when the intent cannot be determined from the language alone. (*Id.* at 890-891.)

The Court exercises its own independent judgment in interpreting the CCC Code. (*Berkeley Hills, supra,* 31 Cal.App.5th at 896.) The California Supreme Court in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1 ("*Yamaha*") set the standard for when the Court should give weight and judicial deference to a city's interpretation of its own ordinances or regulations. (*Id.* at 12.) Judicial deference in this regard is "fundamentally *situational.*" (*Id.* [italics in original].)

The two broad categories of circumstances that warrant judicial deference are (1) where the agency has "expertise and technical knowledge" and the "legal text to be interpreted is . . . entwined with issues of fact, policy and discretion"; and (2) factors showing the agency's decision is likely to be correct based on "indications of careful consideration by senior agency officials," that the agency has been consistent in its interpretation, especially over the long term, and where the agency's interpretation was contemporaneous with the enactment of the statute in issue. (*Id.* at 12-13.) In *Berkeley Hills,* the Court gave the City of Berkeley's interpretation of its ordinance "substantial deference" because it was intertwined with "issues of 'fact, policy, and discretion' regarding zoning requirements and impacts to neighborhoods and the local community" and because Berkeley is "familiar with the rationale for the ordinance, is responsible for its implementation, and has special knowledge about the 'practical implications' of possible interpretations." (*Berkeley Hills, supra,* 31 Cal.App.5th at 896.)

C. <u>Review of FEIR and Findings under CEQA</u>

Different standards of review apply to the County's certification of the FEIR. The Court determines whether the Respondents abused their discretion under CEQA in certifying the FEIR either "by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. ([Pub. Res. Code] § 21168.5.)" (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935 ("*Banning Ranch*") [internal quotation marks omitted, quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435].) Whether the FEIR omits essential information is "a procedural question subject to *de novo* review." (*Id.*) (*See also King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 837-838 ("*King & Gardiner*") [abuse of discretion by public agency's failure " 'to proceed in a manner required by CEQA is a procedural (i.e., legal) error.' "].)

An agency fails to proceed in the manner required by CEQA when the agency fails to require the project applicant to provide information mandated by CEQA or the agency fails to include mandated information in its CEQA analysis. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 ("*Vineyard*").) The Respondents' factual determinations are generally reviewed under the substantial evidence standard, pursuant to which the Court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 [internal quotation marks omitted, quoting *Vineyard, supra,* 40 Cal.4th at 435].) Whether the FEIR includes an adequate discussion of the environmental or other impacts of a project "presents a mixed question of law and fact." (*Sierra*

Club v. County of Fresno, supra, 6 Cal.5th at 516.) "Thus, to the extent a mixed question requires a determination whether statutory criteria were satisfied, *de novo* review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted. [Citation omitted.]" (*Id.*)

" 'Substantial evidence' is defined as 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' (Cal. Code Regs. tit. 14, § 15384, subd. (a).) 'The agency is the finder of fact and we must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision.' [Citation omitted.]" (*City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 839-840 [quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 117].)

IV. Issues Subject to Review and Analysis

A. Issue 1: Project Is Inconsistent with General Plan, and Its Approval Violated Contra Costa County Code and Other Statutes

In 1990, the County adopted a new General Plan which incorporates Measure C, an initiative approved by the voters in the November 1990 election, which was enacted as Chapter 82-1 of the Contra Costa County Code ("CCC Code"). Measure C, among other things, established a 65/35 land preservation standard. Under this standard, "[u]rban development in the county shall be limited to no more than thirty-five percent of the land in the county. At least sixty-five percent of all land in the county shall be preserved for agriculture, open space, wetlands, parks, and other nonurban uses." (CCC Code § 82-1.006.) In 2006, the County voters approved Measure L, which extended the duration of Measure C to 2026, adopted an urban limit line as generally reflected in the Contra Costa County Urban Limit Line Map approved by the voters by that initiative on November 7, 2006, and added a requirement for voter approval of any expansion of the ULL of more than 30 acres. (CCC Code §§ 82-1.010, 82-1.018(b).)

The CCC Code prohibits any change in the ULL that would violate the 65/35 standard. However, "as long as there is no violation of the 65/35 standard," the County Board of Supervisors may change the ULL after a public hearing if (a) at least four of the five members of the Board vote to approve the change, and (b) the Board makes at least one of the several alternative findings set forth in CCC Code section 82-1.018(a), supported by substantial evidence. (CCC Code § 82-1.018(a).) One of those findings, which was made by the County in this case and relied on to support the extension of the ULL to

encompass the Tassajara Parks Development, is that "A majority of the cities that are party to a preservation agreement and the county have approved a change to the urban line limit affecting all or any portion of the land covered by the preservation agreement." (CCC Code § 82-1.018(a)(3); AR6802-03 [FEIR response to comments on the RDEIR, citing this provision as the basis for the County to make a finding approving the extension].) The provisions of CCC Code section 82-1.018(a) regarding the ULL and modifications to the ULL are incorporated into the Land Use Element of the General Plan essentially verbatim, particularly the provision in dispute here, section 82-1.018(a)(3). (AR29066.) If the proposed General Plan amendment would expand the ULL by more than 30 acres, the expansion also requires voter approval, in addition to meeting the requirements of section 82-1.018(a). (CCC Code § 82-1.018(b) [making explicit that "Proposed expansions of thirty acres or less do not require voter approval."].)

The County relied on its finding under CCC Code section 82-1.018(a) that the ULL could be extended based on the Tassajara Agreement. Petitioners contend the County's interpretation of CCC Code section 82-1.018(a) and the General Plan Land Use Element is erroneous and that no reasonable person could have made the findings supporting the County's approval of the Project as consistent with the General Plan and CCC Code. (Sierra Club Op. Brief pp. 6-17; Danville Op. Brief pp. 14-21 [misdescription of Project urban development area and nonurban uses, though argued as CEQA violation].) Petitioners argue the County's actions in approving the Project were arbitrary, capricious, and contrary to law. (Sierra Club Op. Brief p. 17, ll. 3-7.)

1. Standard of Review Applied

Consistency with the County General Plan is not a CEQA issue. It is reviewed under ordinary mandamus under Code of Civil Procedure section 1085. (*Stop Syar, supra,* 63 Cal.App.5th at 460-461; Highway 68 [cited above].) "An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (*Highway 68, supra,* 14 Cal.App.5th at 896.) Courts recognize that consistency does not mean " 'perfect conformity' " but rather compatibility with " 'the objectives, policies, general land uses and programs specified in the applicable plan.' [Citations, internal quotation marks omitted.]" (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 496, 514 ("*San Francisco Tomorrow*"); *Highway 68, supra,* 14 Cal.App.4th at 896.)]

Sierra Club argues that the County's interpretation of the ordinance is entitled to no deference because Measure C was an initiative enacted by a vote of the electors in the County. Rather, Sierra Club argues the intent of the voters governs. (Sierra Club Reply p. 7.) The cases cited by Sierra Club do not

address an initiative drafted and presented to voters by the County itself as a land use statute intended to be incorporated into the General Plan, nor do they address the County's subsequent interpretation of its General Plan and the land use ordinance, which is generally subject to a deferential standard of judicial review. (*San Francisco Tomorrow, supra,* 229 Cal.App.4th at 514-516 [concluding that deferential standard of review applied to City's interpretation of General Plan Priorities Policies enacted through a voter initiative and its determination a project was consistent with those policies, a decision relied on by Real Parties and not addressed in Sierra Club's Reply].)

The County ordinances and similar General Plan Land Use Element provisions at issue here have been in effect for roughly 30 years, though the parties have not cited to evidence that the County has previously interpreted or applied CCC Code section 82-1.018 or the term "preservation agreement" in the same manner applied in this case since the ordinance was enacted, a factor to be considered in the extent of the judicial deference to the County's interpretation. There is no dispute that unlike the General Plan Priority Policies in *San Francisco Tomorrow*, it was the County itself which drafted the language of the ordinances enacted by Measure C and Measure L, though they were voted on by the electorate, a factor which further supports judicial deference to the County's interpretation. (*San Francisco Tomorrow, supra,* 229 Cal.App.4th at 516, fn. 2 [rejecting the position that the County's interpretation of the General Plan Priority Policies was not entitled to deference based on the *Yamaha* Court's statement that deference is "fundamentally *situational*," explaining that "[t]he *situation* here does not change based on the author of the relevant part of the general plan any more than changing membership in the agency that adopts a general plan would result in a changing standard of review." (Italics in original.)].)

The grounds for judicial deference discussed in *Berkeley Hills* apply here. Unless the County's interpretation of CCC Code section 82-1.018(a)(3) is clearly erroneous, the County's interpretation is entitled to be given weight as the County has both technical knowledge in its development of the 65/35 land preservation plan and the ULL provisions. The circumstances under which the ULL could be changed and expanded in connection with a preservation agreement are matters involving both expertise and technical knowledge of the County's General Plan and Land Use ordinances and policies, and determinations are clearly intertwined with issues of fact, policy and discretion and practical implications for the implementation of the General Plan and land use ordinances in the County. (*Berkeley Hills, supra,* 31 Cal.App.5th at 896; *Yamaha, supra,* 19 Cal.4th at 12–13.) Further, even if the County's interpretation is not entitled to deference, for the reasons set forth, Petitioners have not demonstrated the County's interpretation of the unambiguous language of the ordinance is wrong.

2. Tassajara Agreement Not A "Preservation Agreement"

Sierra Club Parties contend the Tassajara Agreement is not actually a "preservation agreement" within the meaning of the General Plan Land Use Element and CCC Code section 82-1.018(a)(3). They argue it is not a preservation agreement because (a) it does not preserve land that was under threat of development, which is the proper interpretation of the term "preservation agreement" used in the ordinance, and (b) its provisions are illusory as there are no binding and enforceable protections for the property subject to the agreement.

The term "preservation agreement" is not defined in the CCC Code or the General Plan. While not defining the term, CCC Code section 82-1.024 also refers to the County's authority to enter into "preservation agreements" "designed to preserve certain land in the county for agricultural and open space, wetlands or parks." (CCC Code § 82-1.024.)

In interpreting the General Plan and CCC Code ordinance, the Court looks first to the plain meaning of the language. The dictionary definition of "preservation" is generally the act of keeping something the same or intact or preventing something from being damaged. (*See* https://dictionary.cambridge.org/us/dictionary/english/preservation accessed 1/4/2023 ["the act of keeping something the same or of preventing it from being damaged"]; https://www.merriam-webster.com/dictionary/preservation accessed 1/4/2023 ["the activity or process of keeping something valued alive, intact, or free from damage or decay"].) It is not clear that the term "preservation agreement" is ambiguous in light of these definitions of "preservation." Sierra Club Parties concede that the Court may only look to other evidence of the meaning of the statute if it is ambiguous. (Sierra Club Parties Reply p. 2, ll. 23-24, citing *People v. Rizo* (2000) 22 Cal.4th 681, 685.)

Based on these definitions of "preservation," the fact that the Project site was already in some sense "preserved" based on its zoning for agricultural uses does not mean that an agreement ensuring the land is protected or not damaged permanently is not a "preservation" agreement. Nothing in the plain meaning of the term "preservation" indicates that the agreement must change the designation of the land or that an agreement which preserves most of a property while allowing some land to be developed cannot qualify as a preservation agreement. Indeed, the "65/35 Land Preservation Plan" specifically provides for urban development of up to 35% of County land as part of its "preservation" plan.

In the absence of a definition, Petitioners cite other sources to determine the meaning of the term, including similar terms used in different statutory schemes, such as the Mills Act (historic property preservation agreement). They contend the Tassajara Agreement is not a "preservation agreement"

because it converts a portion of the 771-acre agricultural property to urban use for a residential development and because the Project site was not land "under threat of development." (Sierra Club Parties Op. Brief p. 8, ll. 21-23.)

The Sierra Club Parties and Real Parties both address certain portions of the legislative history of Measure C and cite the Briones Hills Agreement, which the Sierra Club Parties argue reflects the type of "preservation agreement" contemplated by Measure C. The May 14, 1990 memorandum cited by Sierra Club from the Internal Operations Committee of the County Board of Supervisors includes recommendations for drafting what ultimately became Measure C, the initiative approved by voters in the November 1990 election which included the initial voter-approved version of CCC Code section 82-1.018(a). Paragraph 3 of the memorandum requests the staff of the Community Development Department "include in the concept of Urban Limit Lines criteria for changing the Lines." In the only reference to the concept of a preservation agreement, that paragraph of the memorandum also states the boundaries "could be further supported through 'preserve' agreements, MOU's among jurisdictions and LAFCO rules." (SAR 263.) As Real Parties point out, the memorandum the Sierra Club Parties cite reflects a general outline of provisions that led to the final language of Measure C placed on the ballot for voter approval months later, not final terms or definitive verbiage for the ordinance.

The May 14, 1990 memorandum also indicates that the Board had received an attached letter from a Board member (Torlakson) to Brentwood Mayor Paimer dated April 4, 1990 in which that supervisor indicates "a Briones Hills type preserve" agreement was "appealing" to him by which a " ' Non-Urban Preserve' could be established by agreement and binding unless a popular vote in the involved jurisdictions passes favoring change." (SAR 263, 268, cited at Sierra Club Op. Brief p. 9, ll. 7-10.) The parties also cite to the Board resolution approving the Briones Hills Agreement, which the County points out was a "voluntary 'compact' " among the County and cities reflected in a joint resolution, and not actually an agreement subject to any enforcement mechanism. (SAR18-19; County Jdr. p. 6, l. 28 – p. 7, l. 1 and AR 29124 [County General Plan, Land Use Element p. 3-70].) The joint resolution states that the land subject to the Briones Hills Agreement was "generally designated as Open Space, Agricultural Lands, Parks and Recreation, Watershed or other compatible open space categories on the adopted County and city open space plans." (SAR 18.) The resolution states that the Board and "affected cities" "declare that the lands described below are worthy of <u>retention</u> in agricultural and other open space uses." (SAR 18 (emphasis added).) The resolution then adopts an agreement by the County and cities "to a policy of non-annexation to urban service districts and cities" for the land described. (SAR 18.)

Petitioners ask the Court to conclude that only an agreement that models the terms of the Briones Hills Agreement is a "preservation agreement." The Briones Hills Agreement did not address development of any land subject to the Briones Hills Agreement. While Sierra Club Parties contend the land subject to the Briones Hills Agreement (SAR18-19) was threatened with development, the land was zoned for agricultural and other similar uses at the time of the agreement, and the resolution expressly states the purpose of the agreement as being the "retention" of the land for agricultural and other open space uses, similar to the land subject to the Tassajara Agreement. (SAR 18.)

The Court cannot infer from this background information that an agreement that will allow any development of some agricultural land while concurrently preserving other agricultural land permanently or an agreement to permanently preserve land that is currently zoned for agriculture (as the Briones Hills property was) by dedication to the regional parks district cannot qualify as a "preservation agreement." Further, the Board resolution approving the amendment to the General Plan and the Tassajara Agreement includes an express finding by the Board that "The Tassajara Valley has been the subject of intense development pressure for decades, in part because the ULL presently ends at Tassajara Hills Elementary School with privately-owned land immediately adjacent to and outside the ULL." (AR 37 (emphasis added).)

The Briones Hills Agreement was made before the County created the 65/35 land use ratio, the ULL limiting the location of urban development, and the ordinance allowing for extension of the ULL under the criteria of section 82-1.018(a). The language of section 82-1.018(a)(3) supports a contrary conclusion to Petitioners' position. Section 82-1.018(a)(3) by its terms contemplates a change in the ULL "affecting all or any portion of the land covered by a preservation agreement," a change to extend the ULL by up to 30 acres to allow urban development on land outside the existing ULL by expansion of the ULL where the land is covered by a preservation agreement.

Petitioners argue the Tassajara Agreement, unlike the Briones Hills Agreement, has no binding commitments or a provision for a party to take legal action to enforce it, and that the agreement does not require "any party to do anything." (Sierra Op. p.10, ll. 12-14.) The Tassajara Agreement, among other things, includes an agreement by EBRPD that, upon certification of the FEIR and approval of the Project by the County, EBRPD "will accept fee title to the Dedication Area." (AR10398 [Tassajara Agreement para. 4].) The City of San Ramon agrees not to annex any of the land in either the "Preservation and Enhancement Area" (approximately 17,000 acres of agricultural land in the Tassajara Valley) or in the Dedication Area (the approximate 727 acres preserved under the agreement). (AR10398 [Tassajara Agreement para. 4]; County RJN Exh. 3 [final agreement].) It authorizes the County to

determine that the Tassajara Agreement meets the requirements of section 82-1.018(a)(3) on the condition that the County certifies the FEIR for the Residential Development in which the Project must permanently preserve the Dedication Area and provide a $4 million irrevocable contribution to the County's agricultural enhancement fund. (AR10401 [Tassajara Agreement para. 11, and County RJN Exh. 3 [final agreement].) It obligates the County to maintain the agricultural contribution separate from other County monies and includes provisions addressing the use of the agricultural enhancement fund. (AR10401 [Tassajara Agreement paras. 12-14]; County RJN Exh. 3 [final agreement].) Petitioners do not address these provisions and why these contractual provisions do not impose enforceable obligations under the Tassajara Agreement that are equally or more enforceable than the compact under the joint resolution constituting the Briones Hills Agreement.

3. Tassajara Agreement Not Signed by "Majority of Cities" Under CCC Code Section 82-1.018(a)(3)

Sierra Club argues that the Tassajara Agreement also does not meet the criteria of CCC Code section 82-1.018(a)(3) because the "majority of cities" did not sign it. The only city that approved the change in the ULL is the City of San Ramon, which is the only city that is a party to the agreement. The ordinance requires "a majority of cities that are party to the preservation agreement" to approve the change in the ULL affecting land subject to the preservation agreement.

Real Parties point out that the land covering the Project Site abuts only the City of San Ramon. (AR 31612, 31616-31617.) The Project Site does not abut the Town of Danville or its sphere of influence. (AR 31612, 31616-31617.) The Project Site in this regard is unlike the preservation area subject to the Briones Hills Agreement, in that the cities which agreed to the compact by the joint resolution had spheres of influence that extended into the Briones Hills property being preserved. (SAR 18.)

Sierra Club asks the Court in effect to insert additional language into the ordinance which does not appear in the text, in part based on a statement in the May 14, 1990 memorandum that "the adoption of Urban Limit Lines and the approval of any changes in such Lines should require both the approval of the County Board of Supervisors and a majority of the city councils of the cities in the affected subregion." (SAR 263 (emphasis added).) The ordinance does not specify that a majority of cities in the affected subregion or adjacent to or near the land to be preserved must approve the change. It does not establish criteria for the cities that must be part of a preservation agreement. It provides only that "a majority of cities that are party to the preservation agreement" must approve the

change in the ULL affecting "all or any portion of the land covered by the preservation agreement." (CCC Code § 82-1.018(a)(3) (emphasis added).)

Other than requiring a "majority of cities that are party to the preservation agreement" approve the change to the ULL, the statute sets forth no other requirements or standards regarding the number or location of cities that must approve the change in the ULL or enter into the preservation agreement. Sierra Club in effect asks the Court to find that the phrase a "majority of cities" means that the ordinance mandates that at least two or more cities must be made a party to the preservation agreement and the majority of them must approve the change in the ULL, rather than simply that if there is more than one city that is a party to the agreement, the majority must approve a change in the ULL. The language of section 82-1.018(a)(3) does not clearly negate the possibility of a single city being a party to the preservation agreement and approving the change in the ULL, in which case the approval by the single city would mean there was unanimous approval by the only city that is "party" to the preservation agreement. (*See also* CCC Code § 82-1.024 allowing County to enter into preservation agreements with cities.) Further, since there was a statement in the May 14, 1990 memorandum cited by Sierra Club Parties referring to "a majority of the city councils of the cities in the affected subregion," the fact that language was not included in the final version of the ordinance language but rather was limited to a "majority of cities that are party to the preservation agreement" can be interpreted as an intent by the Board drafting the Measure to not adopt a requirement that depends on a certain group of cities or a delineation of a "subregion" that has to be party to the preservation agreement.

As the California Supreme Court has explained with respect to voter initiatives generally, such initiatives are subject to the ordinary rules of statutory construction which rely on the plain meaning of the language of the statute. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571.) The Court "may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language." (*Id.* [also stating, "If the language is ambiguous, courts may consider ballot summaries and arguments in determining the voters' intent and understanding of a ballot measure. [Citation omitted.]"].)

The Court cannot rewrite the language of the ordinance to add assumed language and criteria to specify that multiple cities must be made parties to the preservation agreement, or that the majority of all cities in the "affected subregion" (Sierra Club Op. Brief p. 11, l. 24 – p. 12, l. 1 citing SAR 263) must be parties to the preservation agreement and approve the change in the ULL, or that a majority of cities "with authority to 'change the urban limit line' " affecting the land covered by the preservation

agreement (Sierra Club Reply p. 10, ll. 19-20) must be parties to the preservation agreement and approve the change in the ULL. The ordinance as drafted by the County and approved by the voters does not impose such terms or standards. (*See also* Brome Decl. ISO Pets. RJN Exh. B p. 61 [language for ballot initiative drafted by County staff and approved by County].)

4. <u>The Tassajara Agreement Does Not Meet the Requirements for Approval Under CCC Code Section 82-1.018(a)(3) Because the Change to the ULL Does Not "Affect[] All or Any Portion of the Land Covered by the Preservation Agreement"</u>

Petitioners argue that the conditions for approval of the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3) are not met because the acreage that is subject to the change to the ULL does not affect any portion of the land covered by the Tassajara Agreement, the preservation agreement the County relies on to meet these approval standards. Sierra Club Parties expand on this argument in their Reply.

Sierra Club Parties argue the land subject to the expansion of the ULL is both outside the current ULL and outside the land covered by the Tassajara Agreement. They point to the Dedication Area and Agricultural Preservation and Enhancement Area as the land "covered by" or subject to preservation under the Tassajara Agreement, all of which is outside the ULL. Because the Tassajara Agreement does not address any change to the ULL "affecting . . . any portion of the land covered by the preservation agreement," they argue the provisions of CCC Code section 82-10.018(a)(3) are not met. (Sierra Club Reply pp. 5-7.)

The Project involving the Residential Development Area and extension of the ULL is generally referred to in paragraphs 4 and 11 of the Tassajara Agreement, but the 44 acres outside the Dedication Area, as defined in the Tassajara Agreement, is not "covered by" or the "subject of" or "subject to" the Tassajara Agreement. Petitioners point to the FEIR which states that the Tassajara Agreement is not part of the Project and is independent from the Project. (AR 6802-6804 [FEIR stating, "[T]he Board of Supervisors may approve the [Tassajara Agreement] separate and apart from the Project. Thus, the [Tassajara Agreement] is not part of the Tassajara Parks Project and may exist separate and apart from, and irrespective of, the Project."].) The FEIR states that if the Board approves the Tassajara Agreement and "also elects to change the ULL and approve the Project, then the Project applicant would be required to convey the 727-acre Dedication Area and make an irrevocable payment of $4 million to an agricultural enhancement and preservation fund." (AR 6803.)

The conditions of CCC Code section 82-1.018(a)(3) require the change in the ULL to "affect" all or a portion of the land subject to the preservation agreement. In this case, the change in the ULL will "affect" all or a portion of the land subject to the Tassajara Agreement because the change in the ULL, along with approval of the Project, will result in the preservation and dedication of the Dedication Area "covered by" the Tassajara Agreement. The ordinance only requires that the change in the ULL "affect " the property subject to the preservation agreement, not that the property subject to the adjustment of the ULL be covered by the preservation agreement. Petitioners have not demonstrated that "no reasonable person" would interpret this provision of the ordinance in the manner the County did by concluding the change in the ULL affects property covered by the preservation agreement.

5. Expansion of ULL Violates General Plan Land Use Element and Growth Management Program and Encourages "Urban Sprawl" in Violation of the General Plan

Petitioners do not contend that the County violated the General Plan 65/35 Land Preservation Standard of the General Plan and CCC Code by approving the Project and extending the ULL; they do not challenge the County's finding to the contrary and the evidence that supports it. (AR 83; AR 524, 3729.) Petitioners argue that under the General Plan, "a General Plan Amendment to change the land use designation from non-urban to urban may be considered" for a property located within the ULL during the term of the General Plan, but "no such application would be considered for property located outside the ULL." (AR 29066 [General Plan Land Use Element at p. 3-12]; Sierra Club Parties Op. Brief p. 15, ll. 5-20.) Yet, on the very same page in the next section, the General Plan addresses "Changes to the Urban Line Limit" which prohibits (a) change to the ULL that would violate the 65/35 Land Preservation Standard, and (b) change to the ULL "except in the manner specified herein." (AR 29066 [General Plan at p. 3-12] (emphasis added).) The manner specified is the same manner specified in CCC Code section 82-1.018(a).

To support their position, in addition to the provisions of the Land Use Element, Petitioners cite the Growth Management Program, Chapter 4 of the General Plan enacted in 2004 as part of Measure J, with an updated Growth Management Element approved by voters as part of Measure L in November 2006 in which the ULL was also adopted. (AR7923-7924; AR 7904-7919 [General Plan Growth Management Program].) Among other things, in the context of the "Performance Standards and Infrastructure Constraints Analysis section of the Growth Management Program, Sierra Club Parties point to a statement that, "To ensure high density 'leapfrog' growth does not occur, as a matter of policy, this growth management program mandates that new urban and central business district levels

of development shall not be approved unless the development is within the ULL and near existing or committed urban or central business district levels of development." (AR 7917, cited at Sierra Club Op. Brief p. 16, ll. 10-14.) The Growth Management Element "works closely in conjunction with the Land Use Element to ensure that development proceeds in a manner which will not negatively affect facility and traffic service standards for existing land uses. . . . The Urban Limit Line (ULL) and the 65/35 Land Preservation Standard also work together with the Growth Management Program to ensure that growth occurs in a responsible manner and strikes appropriate balances between many competing values and interests." (AR 7905.) Petitioners argue that the approval of the Project also violates the General Plan's policy against developments that will result in or contribute to "urban sprawl." (Sierra Club Op. Brief p. 16, lines 15-17.) Petitioners do not cite or argue in their arguments regarding the non-CEQA legal ramifications of the Project briefed by Sierra Club Parties (Danville Op. Brief p. 20, ll. 14-15) any General Plan Growth Management provisions limiting growth based on availability of water for the development. (Sierra Club Op. Brief pp. 15-17 [arguing General Plan Growth Management violated without reference to provisions requiring water supply to the development]; Danville Op. Brief pp. 21-23 [arguing CEQA ramifications of EBMUD position it will not supply water to the Project without reference to the General Plan Growth Management provisions].)

The General Plan by its explicit provisions did not make the ULL fixed and immutable during the term of the General Plan. It made express provision for the ULL to be modified either based on a vote of the Board if the change affected 30 acres or less or by a vote of the electorate if more than 30 acres was involved. The findings by the County that the change in the ULL is consistent with the General Plan, including its Land Use Element, reflect the competing policies the County must balance in its land use decisions, such as preserving the 65/35 land use ratio and in this case permanently preserving the Dedication Area through a preservation agreement while allowing a "minor" adjustment of the ULL of 30 acres or less for urban development of high density, single family housing. (AR 29066 [General Plan p. 3-12 "Changes to Urban Limit Line" subparts (a)-(g)]; CCC Code § 82-1.018(a)(1)-(7).) The discussion of Measure J cited by Sierra Club Parties incorporates Attachment A – "Principles of Agreement for Establishing the Urban Limit Line" which refers to making "minor" adjustments to the ULL of less than 30 acres if the Mutually Agreed-Upon Countywide ULL (MAC-ULL) is adopted, as it was when Measure L passed in November 2006. (AR7953 [para. 6 [the MAC-ULL "will include . . . provisions for minor (less than 30 acres) nonconsecutive adjustments"].)

The Sierra Club Parties' position regarding the inconsistency with the General Plan, and in particular the Land Use and Growth Management Elements, is essentially that the General Plan forbids

any urban development outside the ULL adopted by voters in 2006 through Measure L. But while the policies highlighted by the Sierra Club in the Land Use and Growth Management Elements generally require urban development to be within the ULL, the General Plan also makes provision for the ULL to be adjusted and changed during the General Plan term. If the ULL is changed, urban development within the adjusted ULL would be consistent with the Land Use and Growth Management Elements because the urban development would be within the (adjusted) ULL. Further, CCC Code section 82-1.012 recognizes the possibility of development on land outside the ULL and a change in its land use designation. (CCC Code § 82-1.012 ["[T]he county shall manage growth by allowing new development only when infrastructure and service standards are met for traffic levels of service, water, sanitary sewer, fire protection, public protection, parks and recreation, flood control and drainage and other such services. Land located outside the urban limit line may be considered for changes in designated land uses, subject to county growth management policies and any other applicable requirements." (Emphasis added.)].)

Adopting the Petitioners' position would mean either that (a) the ULL is fixed and immutable during the General Plan period, or (b) the ULL could be changed and extended to add property outside the ULL (and therefore by definition land not designated for urban uses) into the ULL, but the added land could not be redesignated to urban uses. Authorizing the County to change the ULL to include land outside the ULL without allowing the County to redesignate the use of that land to urban uses would defeat the apparent purpose of the provisions authorizing the ULL extension, including allowing for the expansion to meet housing and other needs specifically recognized as grounds for changing the ULL. (*See, e.g.*, 29066 [General Plan p. 3-12 "Changes to Urban Limit Line" subparts (a), (b)]; CCC Code § 82-1.018(a)(1), (2).) The position is also inconsistent with CCC Code section 82-1.012 which recognizes redesignation of land uses outside the ULL is allowed subject to the conditions set forth. Allowing changes to the ULL as the Land Use Element of the General Plan and the CCC Code permit would serve no purpose if the newly incorporated land in the ULL could not be used for urban uses and could only retain its prior designation if it otherwise is found to be suitable for urban development in connection with a specific project approval. The position implicitly advocated by the Petitioners that the ULL cannot be amended during the term of the General Plan or that land outside the ULL established in 2006 cannot be redesignated for urban use or development if the ULL is modified is directly contrary to the General Plan and CCC Code. (AR 29066 [General Plan Land Use Element p. 3-12]; CCC Code § 82-1.018(a) and (b).)

Since the General Plan contemplated additions or expansions of the ULL within the provisions of the General Plan "Changes to the Urban Line Limit" and CCC Code section 82-1.018, the approval of the change in land use designation as part of the Project is not inconsistent with the General Plan so long as the requirements of section 82-1.018(a) have been met. Petitioners have not shown that "no reasonable person" could conclude the change in the ULL approved by the County was consistent with the General Plan on the grounds discussed in this section, subject to the discussion in Section III.A.6 below regarding the County's "nonurban uses" designation of property to be developed outside the extended ULL related to the Residential Development. Nor has Sierra Club demonstrated the Board's findings of consistency with the General Plan with respect to the issues addressed in this section are arbitrary, capricious, or contrary to law. As a result, the County's vesting of a tentative subdivision map also is not a violation of the Subdivision Map Act and specifically Government Code section 66473.5 which requires disapproval of the tentative subdivision map for a project that is inconsistent with the County General Plan.

6. Approval of ULL Amendment Required Voter Approval Under CCC Code Section 82-1.018 Because the "Urban" Development Exceeds 30 Acres

The ULL cannot be extended more than 30 acres without obtaining voter approval, in addition to meeting the requirements of a 4/5 vote of the County Board of Supervisors and the Board making at least one of the seven required findings to support the extension under CCC Code section 82-1.,018(a). (CCC Code § 82.1.018(b) [enacted in Measure L in 2006].) Petitioners contend the County violated CCC Code section 82-1.018 when it approved the extension of the ULL without obtaining voter approval. Their claim hinges on their position that the County improperly designated the detention basin, drainage, and grading on the land outside the extended, 30-acre ULL as "nonurban uses" that can exist outside the ULL.

Petitioners argue that the detention basin, drainage facilities and grading are urban uses that are part of the urban development for the Tassajara Parks Development, that they will exist "solely" to support that urban development, and that they involve urban uses that are only proper within the ULL. Therefore, the Tassajara Parks Development "really" consists of more than 40 acres of urban development for which the ULL had to be extended, an amount of acreage that exceeds the acreage subject to the ULL expansion which the County Board alone can approve without a vote of the electorate under CCC Code section 82-1.018(a) and (b). (Sierra Club Op. Brief pp. 12-14.) Danville similarly disputes the County's determination that the acreage that is not part of the 727 acres of Dedication Area and not strictly the Residential Development Area are slated for "nonurban uses"

allowable outside the ULL. (Danville Op. Brief p. 15, ll. 4-6.) Danville contends the County's interpretation of nonurban uses is wrong and unreasonable. (Danville Op. Brief p. 15, ll. 7-8.)

This issue also concerns the County's interpretation of its land use ordinances, and specifically the term "nonurban uses" versus an "urban" development or "urban use" as applied to the Project to which the Court accords deferential review. CCC Code section 82-1.010 prohibits "the county from designating any land located outside the urban line limit for an urban land use." (CCC Code § 82-1.010.) The CCC Code includes factors to be considered in determining whether land should be located outside the ULL (and therefore not for urban uses), including land that meets certain criteria for soil conservation, open space, parks and recreation, wetlands, land with a more than 26% slope and "other areas not appropriate for urban growth," for, among other reasons, geological conditions or inadequate water availability, "lack of appropriate infrastructure," or "distance from existing development." (CCC Code § 82-1.010.)

Unlike the term preservation agreement, "nonurban uses" is defined in chapter 82 of the CCC Code. CCC Code section 82-1.032(b) states, "As used in this chapter, the term 'nonurban uses' shall mean rural residential and agricultural structures allowed by applicable zoning and facilities for public purposes, whether privately or publicly funded or operated, which are necessary or desirable for public health, safety or welfare or by state or federal law." In addition, the General Plan addresses the meaning of "urban" for purposes of the Land Use Element and in contrast to its meaning in the Growth Management Element of the General Plan: "In the following [Land Use Element] goals, policies, and implementation measures, note that when the word 'urban' is employed (as in the phrases 'urban development' and 'urban uses'), the broad definition of the word is intended. This broad definition is the definition in Measure C – 1990 used to distinguish between the maximum of 35 percent of the county land that can be used for urban development and the 65 percent minimum of land in the county that must be preserved for agriculture, open space, wetlands, parks, and other non-urban purposes. [¶] This broad definition of 'urban' is in contrast to the more restrictive use of 'urban' in the Grown Management Program, which is included in Chapter 4." (AR29094.) In contrast, the Growth Management Program includes the following definition: "**Urban**. Urban areas are defined as generally those parts of the County that are designated in the General Plan primarily for multiple family housing, with smaller areas designated for high density single family homes; low to moderate density commercial/industrial uses; and many other accompanying uses." (AR7919.)

The Residential Development Area itself clearly fits within the narrower definition of "urban" used in the Growth Management Program, which specifically includes "smaller areas designated for

high-density single-family" residential development. The question is whether the approximate 11-acres (or more) designated for necessary grading, drainage facilities, and the stormwater detention basin that are necessary to support the Residential Development also constitute an "urban use" within the meaning of the "broad" definition of urban utilized in the Land Use Element of the General Plan, or whether the County properly designated that land use as "nonurban uses" not within the ULL, as consistent with the definition of "nonurban" in CCC Code section 82-1.032(b).

Petitioners acknowledge the determination is a factual finding made by the County that is subject to the "substantial evidence" standard of review. (Sierra Club Op. Brief p. 13, ll. 6-10.) (*See also California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638 [" 'Once a general plan is in place, it is the province of elected [agency] officials to examine the specifics of a proposed project to determine whether it would be "in harmony" with the policies stated in the plan. [Citation.] It is, emphatically, not the role of the courts to micromanage these development decisions.' [Citation.] Thus, as long as the [local agency] reasonably could have made a determination of consistency, [its] decision must be upheld, regardless of whether we would have made that determination in the first instance."]; *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563 ["[T]he party challenging a [local agency]'s determination of general plan consistency has the burden to show why, based on all of the evidence in the record, the determination was unreasonable. [Citation.]"].)

Sierra Club Parties argue the grading, drainage facilities, and stormwater detention basin infrastructure should be designated by the same land use as the development that infrastructure supports because it is part of that development project. There is some superficial appeal to the position that land developed with infrastructure essential to support an urban development is also urban, but Sierra Club Parties cite no authority that compels a land use designation to be applied based on the land uses of a related property development because the property supports that development, rather than based on the specific uses to which the property itself is being put.

In *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, superceded in part by statute on other grounds ("*Friends of Mammoth*"), in the context of redevelopment of blighted areas under Health & Safety Code section 33320.1, the Court addressed the meaning of "urban" land use. The Court stated, "The term 'urban' is 'not fixed, objective, or easily ascertainable.' [Citation omitted.] At a minimum, however, the mere fact that property is not vacant or is developed in accordance with its zoning does not by itself render the property developed for urban uses. Lands that are not vacant may be developed for uses that are not urban uses. [Citation omitted.]"

(*Id.* at 541 [quoting *County of Riverside v. City of Murrieta* (1998) 65 Cal. App. 4th 616, 623, 62, in which the Court declined "to render a judicial definition of urban"].) The Court in *Friends of Mammoth* concluded that property developed as a golf course was not an "urban use" simply because it was a golf course, where the course was in the mountains and developed with natural watercourses and natural and preserved forest. (*Id.* at 544-545.) The Court in *Friends of Mammoth* also found the airport site, which was not surrounded by urban uses, also did not qualify as "urbanized land." (*Id.* at 547.) Based on the statutes involved in that case, the Court looked at what the area in question was surrounded by. Even if the Court considered the area surrounding the grading and stormwater detention basin in this case as the Court did in *Friends of Mammoth* under a different statutory scheme, three sides surrounding the stormwater basin and grading are agricultural or open space land preserved under the Tassajara Agreement, not urban uses. (*Id.* at 546.)

While the Sierra Club points generally to the fact the grading, drainage, and detention basin are related to, and adjacent to, the Residential Development Area, Danville cites more specific descriptions of the Project and the relationship of the grading and other infrastructure to the Residential Development. (AR 3379-80 [RDEIR, Table 2-2 fn. 2 regarding 9 acres of grading outside the ULL designated as "nonurban uses," stating "Grading consists of the necessary grading operations required to design the proposed street layout and set the proposed pad elevations including conforming to the existing topography beyond the proposed lots. However, grading as listed (roughly 9.0 acres) does not include any grading within the 30 acre Residential Development Area." and Table 2-2 fn. 3 regarding additional 10.3 acres also outside the ULL designated as nonurban uses, stating "Landslide grading area is in addition to the site grading operations and incorporates recommended measures into the Project design to address geotechnical issues as recommended by the geotechnical engineer"].) (*See also* AR 3400, AR 3402, AR 3666, AR 7732, AR 7734, AR 7736, AR 7738 [maps showing grading and improvements adjacent to Residential Development, but outside the ULL].) The RDEIR explains, "a concrete v-ditch would be located at the toe of the northern-most graded slopes, along the rear yards of the outermost residential lots to collect stormwater from the surrounding hillsides. The v-ditch would direct stormwater and any erosion to the <u>on-site</u> detention basin." (AR 3662 [RDEIR p. 3.6-15 (emphasis added)].) The 2.95-acre detention basin though characterized as "on-site" in this passage is apparently located outside the extended ULL. (AR 3379 Table 2-2 and maps cited above at AR 3400, 3402, 3666, 7732, 7734, 7736, 7738.)

Danville also addresses the definition of "nonurban uses" in the CCC Code. Under CCC Code section 82-1.032(b), nonurban uses include (a) "rural residential . . . structures allowed by applicable

zoning"; (b) "agricultural structures allowed by applicable zoning"; and (c) "facilities for public purposes, whether privately or publicly funded or operated, which are necessary or desirable for the public health, safety or welfare or [required] by state or federal law." (CCC Code § 82-1.032(b); AR29058-29059 [General Plan "General Inventory of Land Uses by Subarea"].) Though Danville's brief amply demonstrates why the first two categories of nonurban uses do not apply to the grading, drainage facilities, and stormwater detention basin, a point not disputed by Real Parties, it is the third category – facilities for public purposes . . . necessary or desirable for public health, safety or welfare" or required by state or federal law that Real Parties contend aptly describe these facilities.

Real Parties point to the provisions of the County General Plan and Measure C's reliance on the General Plan's definitions, policies, and designations of land uses. (*See* Real Parties' Resp. to Danville p. 20, fn. 12, and Pet. RJN and Brome Decl. Exhs. at pp. 33, 49, 63, and 409 [County Staff Report prepared with Measure C stating the measure "does not propose to amend or change the existing definition of urban and non-urban land uses in the General Plan as incorporated into the Land Use Element"].) Nonurban use designations in the General Plan include Agricultural, Public/Semi-Public, Landfill, Watershed, Open Space, Parks and Recreation, and Water uses, and the General Plan includes a similar definition of nonurban uses as that set forth in CCC Code section 82-1.032(b). (AR 29058-29059, AR 29087-29088, AR 29092-29094.) Under the General Plan, "[t]hese land use designations generally comprise <u>non-urban uses</u> under the 65/35 Land Preservation Standard." (AR29087 (emphasis added).) These non-urban uses include, among other things, "major flood control rights of way," "properties owned by public governmental agencies" such as libraries, fire stations, and schools, and within the open space land use, areas within planned unit developments or " 'safety zones' around identified geologic hazards." (AR 29087-88, AR 29092.) Public and Semi-Public uses also include privately owned "utility corridors" such as PG&E lines and pipelines. Nonurban uses under the General Plan and the definition in CCC Code section 82-1.032(b) encompass various types of infrastructure that may support a residential or urban development, indicating the land use for infrastructure does not necessarily assume the character of the development or other land uses it supports.

Like Sierra Club Parties' argument, Danville's conclusion that the grading, drainage facilities, and stormwater detention basin are "urban uses" not allowed outside the ULL is founded on the premise that land outside the residential development used for infrastructure which supports or is necessary to the related urban development must necessarily be designated with the same "urban" land use as the underlying development. Danville cites no authority which compels or supports that conclusion. Nor has the Court located authority to support that proposition.

Neither Sierra Club Parties or Danville cite any historical interpretation or application of land use designations by the County in that manner, or the County's prior designation of similar offsite infrastructure supporting a residential, urban development as an "urban" land use rather than "nonurban." The Court, however, notes that the July 12, 2005 "Report on Ballot Measure for Extension of Urban Line Limit" directed to the Board (Brome Decl. ISO Pets. RJN Exh. D, pp. 269-284) addresses proposed changes in the ULL in the proposed Measure L ballot initiative, including locating "the 38 acres of the Pine Creek Detention Basin parcels owned by Contra Costa Water Conservation and Flood Control District in the North Gate area on the outside of the Urban Limit Line," indicating that the County has previously considered a detention basin a "nonurban use" properly located outside the ULL. (Brome Decl. Exh. D p. 272.)

In their supplemental briefing, Real Parties direct the Court to cite *Graber v. City of Upland* (2002) 99 Cal.App.4th 424 ("*Graber*"). *Graber* deals with Community Redevelopment Act which requires projects to be "predominantly urbanized" meaning 80 percent of land developed for urban uses. (*Id.* at 435.) *Graber* cites *Friends of Mammoth, supra,* 82 Cal.App.4th 511, that urban "refers more to the location and 'varying characteristics' of a use than to the type of use" such that a residential dwelling could be urban or rural because "it is the location and characteristics of the dwelling and its environs that may make the use an urban use." (*Graber, supra,* 99 Cal.App.4th at 436 [quoting *Friends of Mammoth, supra,* 82 Cal.App.4th at 544-545].)

In *Graber*, the issue was whether the 80 percent threshold under the Community Redevelopment Act was met. The city found that vacant land that was the former site of a rock mine, a dump, and certain flood control areas (apparently a silt basin) were urbanized as they were currently surrounded by urban development. The Court of Appeal agreed with the trial court's conclusion that the city's conclusion that the area was previously developed for urban uses was <u>not supported by substantial evidence</u>. "A rock mine and a dump can be located anywhere, and such uses are <u>not necessarily urban uses</u>. <u>Nor are properties developed for</u> mining, dump, and <u>flood control uses necessarily developed for urban uses</u>. As the County points out, a mine and a dump site are more likely to be associated with rural or nonurban areas than with urban areas. Flood control uses can be urban or rural." (*Id.* at 438 [emphasis added].) The rock mine and dump were not part of a predominantly urbanized area when they were in use, which is the time frame the trial court concluded had to be considered. Further, at least one Court has expressly declined to create a judicial definition of urban, recognizing the determination may vary from location to location and is best left to the cities and

counties to decide as a land use matter. (*County of Riverside v. City of Murietta* (1998) 65 Cal.App.4th 616, 623.)

Notably, the sewer pump station has been located within the Residential Development Area and therefore within the extended ULL. (AR 47, cited at Real Parties' Resp. Brief to Danville p. 22, fn. 14; *see also* AR 7672 [FEIR stating "County corrected Exhibit 2-6 to reflect that the sewer pumping station, Parcel D, and Parcel K, would be within the Urban Limit Line"].) The Court raised an issue for supplemental briefing regarding a reference in the County Staff Recommendation to "Other (e.g. detention basin): 7 acres" in the Project description. (AR 40-42 and in particular AR 42.) In their supplemental brief, Real Parties adequately explain what the other 7 acres consist of and that they are outside the expanded ULL. (RP Suppl. Brief p. 20 – the 7 acres consists of Parcel F [Camino Tassajara Dedication – 3 acres], Parcel G [Finley Road Dedication - .18 acres], Parcel H [detention basin – 2.95 acres], and Parcel N [neighborhood park and trail -.66 acres].) They also persuasively argue that ownership of one or more of the parcels may be with the HOA but their use is nonurban development, a use that is not dependent on who owns the land.

To set aside the County's determination regarding the land use designation of the acreage outside the Residential Development Area and the approval of the extension of the ULL by the Board without seeking voter approval, Petitioners have the burden of demonstrating that "no reasonable person" would have construed the meaning of "nonurban uses" to apply to the grading, drainage facilities, and stormwater retention basin located outside the footprint of the Residential Development Area based on the use and meaning of those terms in the General Plan and CCC Code. Petitioners have not met that burden.

B. Issue 2: CEQA Violations Based on Lack of Water Supply to the Project from EBMUD or Any Other Source

Petitioners challenge the County's certification of the FEIR based on the lack of a reliable water service to the Residential Development Area from the only source of water identified in the FEIR, EBMUD.

1. CEQA Requirements for Water Supply Information in an EIR

The EIR is fundamentally an informational document; its purpose is to allow informed decision-making by the public agency, and informed participation in the decision-making process by the public. (*King & Gardiner, supra,* 45 Cal.App.5th at 848; *California Oak Foundation v. City of Santa Clarita* (2005)

133 Cal.App.4th 1219, 1225-26.) *Vineyard* sets forth the CEQA requirements for an EIR to adequately address water supply issues for a project. Among the rules set out by the Court are (1) "CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project," and the EIR must give decisionmakers "sufficient facts to 'evaluate the pros and cons of supplying the amount of water that the [project] will need.' [Citation omitted.]"; (2) "the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decisionmaking under CEQA. [Citation omitted.] An EIR for a land use project must address the impacts of likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability. [Citation omitted.]"; and (3) "where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. [Citation omitted.] <u>The law's informational demands may not be met, in this context, simply by providing that future development will not proceed if the anticipated water supply fails to materialize</u>." (*Vineyard, supra*, 40 Cal.4th at 430-31 [emphasis added].)

Under *Vineyard*, the EIR must analyze water supplies 'to the extent reasonably possible.' [Citation omitted.]" (*King & Gardiner, supra,* 45 Cal.App.5th at 843 [quoting *Vineyard, supra,* 40 Cal.4th at 431.) Whether the FEIR analyzed the water supply issues "to the extent reasonably possible" is a mixed question of fact and law; the appropriate standard of review depends on whether issues of fact predominate, in which case the standard of review is substantial evidence, or issues of law, in which case the Court exercises independent review. (*Id.* at 843-844 and fn. 14.)

Vineyard also explains that the CEQA issue is not whether a water supply is established but whether the EIR (a) "adequately addresses the reasonably foreseeable *impacts* of supplying water to the project," and (b) if there are uncertainties regarding water supply, the EIR "<u>acknowledges the degree of uncertainty involved</u>, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—<u>and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact</u>. (§ 21100, subd. (b).)" (*Id.* at 434 [italics in original, underscoring added].)

Vineyard also recognized the EIR does not need to "reinvent the water planning wheel." (*Id.*) An EIR can rely on an urban water management plan that the water supplier is required to prepare, and

"analysis in an individual project's CEQA evaluation may incorporate previous overall water planning projections, assuming the individual project's demand was included in the overall water plan." (*Id.* at 434-35.) Nevertheless, CEQA requires that the EIR include more than just " a 'reference to water supply management practice as water supply analysis.' " (*Id.* at 440.) Though the Court recognized that the EIR did not need to demonstrate with certainty that the water supply was adequate, the Court held that discrepancies in water demand estimates cited in the EIR, a lack of coherent explanation or quantitative analysis of long-term water supplies, including what water supplies from surface and groundwater sources were expected to meet the demand, particularly in dry years, and the County's reliance on information not incorporated, referenced, or described in the FEIR when it certified the FEIR as complete meant the County failed to proceed in a manner required by CEQA when it certified the FEIR. (*Id.* at 438, 439-440, 442.)

A number of decisions cited by the parties address the adequacy of an EIR in describing the likely water supply for a project and the environmental impact of supplying water to the project through that source. In *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, the Court held the EIR failed to meet CEQA's requirements addressed in *Vineyard* of adequately discussing "known contingencies to a reliable water supply, including the successful implementation of planned water development, water delivery, and water conservation projects" and presenting " ' a reasoned analysis of the circumstances affecting the likelihood of the water's availability.' [Citation omitted.]" (*Id.* at 285 [quoting *Vineyard, supra,* 40 Cal.4th at 432.) In *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, the Court found a CEQA violation where the EIR identified the source of water supply for the project but failed to set forth "facts and analysis" to support the agency's bare conclusion the water district could supply the project, particularly when the district had sent a letter to the board president prior to approval of the EIR stating the district could not at that time determine if it could supply water to the project and under what conditions. (*Id.* at 831.) In *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, the EIR a residential and commercial project required water supplies which it stated would be obtained from State Water Project supplies. The EIR used calculations for water volumes based on what the State Water Project was intended to deliver, but the State Water Project had not been completed, and the Court found the EIR inadequate under CEQA as it failed to address the gap between the actual water supplies available and the hoped-for source of supply from the incomplete State Water Project. (*Id.* at 717–718.) (*See also California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1237-1241-1242 [EIR failed to analyze alternative water supply sources in the face of legal uncertainties in a pending case

regarding availability of transfer of water entitlements on which project was relying in part for water supply]; *King & Gardiner, supra,* 45 Cal.App.5th at 869 [holding EIR failed to meet the information disclosure requirements of CEQA constituting a prejudicial violation based on EIR's failure to provide information regarding technologies and techniques for water use in connection with mitigation measure relied on by the EIR for mitigation of project's significant water supply impacts].)

2. General Plan Land Use and Growth Management Program Policies Related to Water Supply

As recited in the RDEIR, the County's land use policies in its General Plan include, among others, Policy 3-6 that "Development of all urban uses shall be coordinated with provision of essential Community services or facilities including . . . water . . . ." (AR 3714.) The General Plan encourages "[i]nfilling of already developed areas" and states that "[p]roposals that would prematurely extend development into developed areas shall be opposed." (AR 3714 [General Plan Land Use Policy 3-9.) Further, "extension of urban services into agricultural areas outside the Urban Limit Line, especially growth-inducing infrastructure, shall be generally discouraged." (AR 3714 [General Plan Land Use Policy 3-10].) CCC Code section 82-1.012 addressing growth management requires the County to allow new development only "when infrastructure and service standards are met for traffic levels of service, water, sanitary sewer, fire protection, public protection, parks and recreation, flood control and drainage and other such services." (AR 3731 [RDEIR p. 3.9-34 9; CCC Code § 82-1.012 (emphasis added)].) The County concluded that "sufficient infrastructure and services are available to serve the proposed residential uses in the Residential Development Area." (AR 3731 [RDEIR p. 3.9-34].)

The Court's role in reviewing a public agency's determination of General Plan consistency and related findings of fact is addressed in detail in preceding portions of this ruling. That authority applies to the County's determination that the Project does not violate the General Plan and its Land Use or Growth Management provisions in a final EIR certified by the public agency. (*Stop Syar, supra,* 63 Cal.App.5th at 463 [relying in part on *Highway 68, supra,* 14 Cal.App.5th at 896 and *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 482, 486 ("*Golden Door II*"), holding that review of the agency's determination of general plan consistency in an EIR is not treated as a "CEQA 'informational'" issue but rather is reviewed under ordinary mandamus and the deferential standard of review].)

3. The FEIR and EBMUD as Sole Water Supplier

The DEIR relied in part on recycled water options as a source of water supply for the Project. (AR 3355.) When the County obtained information demonstrating the recycled water was not a viable source, the County revised the DEIR to include instead an Off-Site Water Conservation option, which it acknowledged was significant new information under CEQA Guidelines section 15088.5 that required the EIR to be recirculated as the RDEIR. (AR 3355.)

a. Characterization of Role of EBMUD and Its Authority Regarding Water Supply

The Project is admittedly outside the Ultimate Service Boundary ("USB") for EBMUD water service. (AR 3689 [RDEIR stating "A public water system does not currently serve the project site"]; AR 3404 [acknowledging Project Site is outside EBMUD's ultimate service boundary]; AR 6727 [RDEIR App. J – Water Supply Evaluation ("WSE") prepared by water experts Tully & Young ["Project is not located within the service area of any existing public water system"]; AR 6901.) According to EBMUD's Water Supply Management Plan 2040 ("WSMP 2040"), the USB defines EBMUD's limit of future annexation for extension of water service." (AR 29970.)

The RDEIR identified two sources of water service for the Project: Calaveras Public Utility District (Calaveras) and EBMUD. (AR 3404.) Calaveras proved not to be a viable option to provide water service, in part because it would have to obtain water from EBMUD to supply the Project and because alternative methods of delivering water to the Project were not likely. (AR 6909-6912, 6923-6926 [EBMUD Comment Letter on RDEIR].) The County eliminated Calaveras as a source of water supply in the FEIR. The FEIR instead now provides that the Project will rely entirely on EBMUD for water service which it contends will have sufficient water available to add the Expanded Water Supply Project Area to its service "through the availability of water created by the facilitation, acceleration and implementation of EBMUD conservation efforts." (AR 7672, AR 7690.)

The RDEIR states that the "[t]he Project applicant is expected to request annexation of the Residential Development Area (as well as the adjacent Pedestrian Staging Area) into the service area of EBMUD. Any such annexation and related sphere of influence amendment <u>would require approval from EBMUD</u> and applicable Local Agency Formation Commission (LAFCO)." (AR 3404 [RDEIR] (emphasis added).) The FEIR reiterates that the availability of water through the acceleration of EBMUD conservation efforts is "<u>subject to the EBMUD Board of Director's approval</u>." (AR 7690 [FEIR] (emphasis added).) (*See also* AR 3916 [RDEIR, stating among other things, "[T]he provision of water to the Project is

dependent upon the involvement of EBMUD and—subject to the EBMUD's Board's discretion—would most likely be based on a service territory annexation," and noting LAFCO approval is also required].)

With respect to water from EBMUD, the WSE also reiterates the discretion EBMUD has in deciding whether to supply water to the Project. (AR 6690-6691 ["[A]pplicant has considered several potential sources of water supply as part of a flexible strategy that would meet, or offset, the maximum estimated water demands of the Proposed Project while addressing the operational needs of the entities that would deliver the water. Because the Project Site is adjacent to the existing service area of the East Bay Municipal Utility District ("EBMUD"), the Proposed Project would seek to have EBMUD play a role (subject to the EBMUD Board's discretion) in implementing this flexible water strategy. This WSE provides information to allow EBMUD's Board to consider whether to deliverwater [sic] for the Proposed Project." (Emphasis added)].) (*See also* AR 6723 [addressing off-site conservation measures to serve the Project "[i]n consultation with EBMUD"]; AR 6727 [referring to Project water strategy of having EBMUD deliver water to the Project "subject to the EBMUD Board's discretion"].) The FEIR affirms that "it is EBMUD's Board of Directors that must ultimately determine whether the Project is consistent with the priorities and objectives underlying the EMBUD Board's own policies when a request for approval to supply water to the Project goes before them." (AR 6989 [FEIR County Resp. to EBMUD Comment 33 (emphasis added)].)

The RDEIR assumes that the Real Parties would reach a mutual agreement with EBMUD regarding the water supply. (AR 3916 [RDEIR].)

> EBMUD would have the authority to evaluate and decide which source of water supply and which transaction structure best meet the performance standard of meeting the Project's water demand in normal years, single-dry years, and multiple-dry years without reducing water supply availability for existing or future customers in EBMUD's existing service area—all over the 20-year planning horizon specified by the state's water-and-land-use-planning laws (SB 610, Urban Water Management Planning Act). . . . . Without the appropriate EBMUD, LAFCo, and/or CPUD approvals (as necessary for the selected water source and transaction structure), water may not be able to reach the Project Site. As such, mitigation is provided, requiring all necessary water supply approvals to be obtained prior to the recordation of the

> final map. With the implementation of this mitigation, impacts with respect to water supply availability would be less than significant.

(AR 3916.)

The County reiterated in the FEIR, through its response to the EBMUD comments on the RDEIR, that EBMUD has the authority to set the demand levels it estimates for the Expanded Water Supply Project Area, as well as the conservation levels required to achieve the additional supply to provide water to the Project. (AR 6984, AR 6989-6990 [FEIR [County Resp. to EBMUD Comment Nos.14, 15, 39].) The County also affirms in the FEIR that EBMUD can set required conservation levels at "some multiple" of the anticipated water demand for the Expanded Water Supply Project Area, and that the County will impose a condition on the Project of the Project applicant reaching a binding agreement with EBMUD regarding the demand and conservation necessary to meet these water supply needs. (AR 6989-6990 [FEIR - County Resp. to EBMUD Comment Nos. 39, 40].) (*See also* AR 6796 [FEIR Master Response 2 - stating, any agreement to provide water service by EBMUD "would include a ratio of savings above and beyond the actual projected demand that is ultimately determined acceptable to EBMUD, such that a reasonable buffer of water would be assured to more than offset the anticipated demand."].) As the County states, "While implementation of such [conservation] measures for conservation offset would need to be addressed and agreed upon by the EBMUD Board of Directors and the Project applicant in a binding agreement, the information and data in EBMUD's WSMP 2040 Final Plan provides a sufficient basis to evaluate this approach for purposes of CEQA." (AR 6990 [FEIR -County Resp. to EBMUD Comment 40].)

A number of commenters on the RDEIR, including EBMUD, questioned the feasibility of conservation measures producing sufficient water supply for the Expanded Water Supply Project Area. The County included a "Master Response" to those comments which in part addresses EBMUD's authority regarding supplying water to the Project: "<u>Should EBMUD Board of Directors vote to authorize its staff to negotiate an agreement for the Project</u> and associated water conservation funding, said agreement would include a ratio of savings above and beyond the actual projected demand <u>that is ultimately determined acceptable to EBMUD</u>, such that a reasonable buffer of water would be assured to more than offset the anticipated demand." (AR 6796 [FEIR Master Response 2] (emphasis added).)

b. <u>Evidence Regarding Likely Water Demand and Water Supply for Project</u>

The RDEIR and FEIR rely on EBMUD's 2015 Urban Water Management Plan (UWMP") and Water Supply Management Plan 2020 ("WSMP") as the source for information on the availability of water for

the Project. (AR3890 [RDEIR].) Neither the UWMP nor the WSMP accounted for the Project in evaluating water demand and supply since the Project is outside EBMUD's USB.

The DEIR estimated water demand for the Project of 47 acre-feet per year ("AFY"). (AR 675-676 [DEIR}.) EBMUD submitted comments on the DEIR and disputed the water demand estimates for the Project. EBMUD estimated the water demand to be "almost twice" the amount of water demand stated in the DEIR. (AR 6922-6923.)

The RDEIR assesses the likely water demands of the Project at approximately 42 AFY, and up to 48 AFY in dry years, and relies on the 48 AFY figure for its assessment of the sufficiency of the water supply. (AR 3908, AR 3909.) EBMUD's comments on the RDEIR reiterated its dispute over the water demand estimate for the Project, stating it estimated average annual water demand for the Expanded Water Supply Project Area to be 75,000 gallons per day, which it states is "almost twice the demand estimated" in the RDEIR. (AR 6906-6907.)

In connection with the FEIR, the County included as Appendix N a higher water demand estimate prepared by other outside experts, Schaaf & Wheeler, calculated using four different methodologies. The four methodologies produced higher demand estimates than those stated in the RDEIR, and the new report ultimately recommended the County use a demand estimate of 56.3 AFY, an amount roughly 17% higher than the demand estimate in the RDEIR. (*Compare* AR 3908-3909 to AR 7715, AR 8161-8173.) The Schaaf & Wheeler methodologies produced demand estimates ranging from 47.9 AFY at the low end to 91.7 AFY at the high end, based on residential water demand in Alamo and Danville, where the residential lot sizes are considerably larger than those planned for the Residential Development Area. (AR 7715, AR 8163-8165.) The Schaaf & Wheeler study only estimated water demand and did not address water supply or the sufficiency of the Level D and Level E conservation measures not yet implemented under the WSMP 2040 to meet the water demand estimate. (AR 8163-8165 [FEIR App. N].) The FEIR discloses but does not adopt the 56.3 AFY figure from Appendix N and relies on the lower, 48 AFY estimate in the WSE. (AR 7721, AR 7722-7723, AR 7727.)

As to the supply of water to meet these demands, the WSE, Appendix J to the RDEIR, relies on the acceleration, expansion, and implementation of additional conservation measures in EBMUD's USB that were outlined in, but not expected to be implemented in, the WSMP 2040 Final Plan. The conclusions in the WSE regarding sufficiency of the water supply from the conservation efforts within the current EBMUD service boundary are restated and incorporated into the RDEIR. (AR 3890-3891, AR 3911, AR 3913 [RDEIR Table 3.13-7]; AR 6727 [RDEIR App. J]; AR 7722-23 [changes to RDEIR in FEIR].) Because the WSMP 2040 estimates 2 million gallons per day ("MGD") would be saved by the Level E

conservation measures, the WSE and RDEIR conclude that the implementation of the remainder of the unimplemented conservation measures in Level D and implementation of the four additional Level E conservation measures under the WSMP 2040 will conserve more than 48 AFY, which is sufficient additional water to supply the amount of the estimated water demand for the Project, allowing EBMUD to supply the water demands of the Expanded Water Supply Project Area. (AR 3911, AR 3913 [RDEIR Table 3.13-7]; AR 6727 [RDEIR App. J].)

EBMUD tested the conservation measures in proposing its WSMP 2040 and included Level E in the potential available conservation measures. (AR 29947, AR 29948, AR 30019-30022.) EBMUD, however, characterizes its WSMP 2040 as "a high-level planning document that 'estimates [EBMUD's] water supply needs to the year 2040, and proposes a program of policy and project initiatives to meet those needs' in dry years," that did not contain any analysis of the "possible efficacy of the four Level E conservation measures" other than as the " 'maximum theoretical level of water savings' " and the " 'very highest level of conservation.' " (EBMUD Reply p. 3, ll. 4-12 [citing AR 29945, AR 7697-7701, AR 30020, AR 30047, AR 30054].) The FEIR also concludes the water savings through implementation of additional conservation measures will be sufficient to serve the Project even if the higher, 56.3 AFY figure from the third party evaluation in Appendix N to FEIR is used. (AR 7721, AR 7727.) The WSMP 2040, however, states that it takes three to ten years from the time the conservation measures are implemented before the conservation targets are achieved. (AR 30020 [WSMP 2040].) The implementation period is not discussed in the RDEIR, the WSE, or the FEIR.

The Court notes that water savings through conservation measures described in Appendix J, drawn from the WSMP 2040, are stated in "MGD" (million gallons per day), while demand is stated in "AFY" (acre-feet per year). Neither the WSE nor the RDEIR explains the relationship or equivalency between the "AFY" water demand estimates and the "MGD" water conservation figures/water supply estimated to be generated by conservation measures Level D and E in the WSMP 2040. The RDEIR only refers to the estimated demand in "MGD" in connection with the section on "Water Treatment Facilities" (AR 3917), indicating the estimated demand of 48 AFY is approximately .04 MGD. (AR 3917.) It is not clear to the Court whether the higher 56.3 AFY water demand estimated in Appendix N to the FEIR is stated in MGD in the FEIR to allow for an "apples to apples" comparison of that figure.

EBMUD's comment letter indicates that its WSMP 2040 plan already anticipated Level D conservation measures to be fully implemented by 2040 to serve its existing and future estimated water supply requirements for its existing service area, so reliance on Level D conservation measures as a source for water savings that could be used to supply the Expanded Water Supply Project Area is

improper, as the Level D savings are already accounted for and to be used under the plan. (AR 6912 [FEIR EBMUD Comment 39].) The County responded to the EBMUD comment that the Level D conservation measures would be accelerated, and "accelerating implementation of Level D measures means that water supplies are developed through conservation earlier than they would have been under the [WSMP], resulting in new water." (AR 6989-6990.) The County's "Master Response" No. 2 in the FEIR, however, in response to comments regarding the feasibility of water savings focuses only the Level E conservation measures projected to achieve another 2 MGD in water savings above the Level D measures, perhaps in implicit recognition or admission that the Level D conservation measures are already accounted for and to be used by EBMUD to provide water supply through 2040 for its customers in the existing service area. (AR 6796-6797 [FEIR Master Resp. No. 2]; AR 6722-23.) In their Respondents' Brief in the EBMUD Action, Real Parties do not rely on the acceleration of Level D measures but argue that the Level E measures alone are more than sufficient to offset the Project's water demand. (Real Parties' Resp. Brief to EBMUD p. 20, ll. 12-16.)

The RDEIR and the WSE do not explicitly quantify the amount of new water that would be saved annually by "accelerating" the Level D conservation measures and when the new water savings would become available through the "acceleration" of the Level D measures. The Level E conservation measures are identified in the RDEIR only by generic categories in the text (financial incentives for irrigation upgrades, cisterns, graywater retrofit-existing single family, and graywater-new single family). (AR 3891, AR 7698.) This generic description of the four types of Level E conservation measures is the only reference to or explanation of the offsite conservation measures the FEIR relies on to meet water supply for the Project.

The County's Response to EBMUD Comment 39 in the FEIR includes a reference to a table in the Appendix to the WSMP 2040 (Table 6 of Appendix D TM-5), but neither that Table 6 nor any portion of WSMP 2040 Appendix D TM-5 is included in the RDEIR or the FEIR, as noted by EBMUD. (EBMUD Reply p. 3, fn. 4.) There is no analysis of the conservation measures or further description of what those measures consist of factually and practically, their likely effectiveness, when or how the additional measures would generally be employed or implemented, when the conservation savings would occur at levels sufficient to provide the conservation offsets to supply water to the Project, and any feasibility issues or risk factors as to whether the Level E conservation measures would actually result in the water savings necessary to supply the Expanded Water Supply Project Area. (AR 3891 [RDEIR]; AR 7698, AR 30020, 30047, 30054 [WSMP 2040].) Real Parties cite information regarding "Portfolio E" from the

WSMP 2040, but that section addresses "Recycled Water and Water Transfers," not the Level E conservation measures. (Real Parties' Resp. Brief p. 21, ll. 4-5, citing AR 30068-30070.)

After the FEIR was prepared, EBMUD and the County's water experts who prepared the WSE had additional communications regarding the water supply and offsite conservation measures. Real Parties cite to a memorandum dated May 4, 2021, from Tully & Young titled "Tassajara Parks Water Demand Offset Updated Preliminary Feasibility Analysis." (AR 23361-23380.) The memorandum explains the water conservation measures identified in Level E, describing the target market of EBMUD customers and market potential for the additional conservation programs and the components of the water savings programs, including installation of toilets, a graywater rebate program, onsite water reuse program, and leak repair assistance program. (AR 23361-23380.) These programs are not mentioned or analyzed in the FEIR.

The RDEIR and WSE include a chart showing 48 AFY in offsite water conservation savings every year from "current" (presumably 2016 when the RDEIR was prepared) through 2040, without specifying the time frame needed for the accelerated and new conservation measures to actually be implemented and the amount of offsite water savings available as the measures are implemented. (AR 3913, AR 6926; AR 7722-23.) The RDEIR and WSE do not explain the basis for the conclusion in the charts that 48 AFY in offsite water conservation savings would exist from the "current" period prior to any "acceleration" of Level D measures or implementation of new Level E measures. (AR 3913; AR 6726; AR 7722-23.) The only "phasing" addressed in the WSE is the phasing of the construction of the Project, not the implementation of the conservation measures. (AR 6694.)

Real Parties contend EBMUD failed to exhaust its administrative remedies on the issue of the timing of the conservation measures to produce the savings necessary to supply water to the Project. (Real Parties' Resp. Brief to EBMUD p. 22, ll. 9-19.) EBMUD, however, points to its comments on the RDEIR regarding the uncertainty as to the market for the conservation programs included in Level E and the question if "there are enough interested customers to ensure successful implementation" as sufficient to apprise the County of the issue for exhaustion purposes. (AR 6912.) (*See also* AR 6912-6913 [indicating the expanded conservation programs requires evaluation of "the remaining conservation potential of the new programs" based on many factors also including the feasibility of the technology and "the estimated water savings for the program," and stating "the water supply alternatives identified in the RDEIR and revised WSE are so conceptual, [and] inadequately analyzed . . . that the County cannot reasonably conclude the Recirculated DEIR adequately addresses the water supply impacts"].) Further, in its Master Response No. 2, the County specifically refers to the timing of implementation of the

conservation measures, indicating its understanding that the questions of feasibility of the conservation measures necessarily include the question of the timing of their implementation. (*See* AR 6796 ["While EBMUD has identified these specific conservation measures [i.e., Level E], along with the assumed amount of water that would be conserved upon implementation, the WSMP 2040 did not identify a timetable for implementation of Level E measures since this would be heavily dependent upon the availability of funding, among other considerations . . . ." (Emphasis added)].) The Court concludes that EBMUD's comments, in the context of the entirety of EBMUD's comments and issues raised on the water demand and water conservation issues, and the County's Response in the FEIR cited above, indicates the issue was raised sufficiently in the administrative proceedings for purposes of the exhaustion requirement. (*Save the Hill Group v. City of Livermore* (2022) 76 Cal.App.5th 1092, 1105.)

The parties also disagree regarding the implications of EBMUD's including but not implementing the Level E conservation measures in its WSMP 2040. EBMUD concluded that Level D conservation measures would likely provide sufficient water supplies to serve its customers within its USB through 2040, based on its 2015 Urban Water Management Plan. (AR 3890.) EBMUD views the Level E conservation measures as only "theoretical" as they require evaluation of the actual water conservation those measures are likely to achieve and contends that annexing the proposed Expanded Water Supply Project Area would potentially impact its ability to supply water to its existing and future customers within the USB to whom EBMUD is already committed. (EBMUD Op. Brief pp. 14-18.)

4. EBMUD Annexation Policies, No Service Resolution and Other Water Supply Contingencies

EBMUD submitted a lengthy comment letter and materials in response to the RDEIR in which EBMUD stated it does not plan to provide water service to the Project and has concluded it does not have the necessary water supplies to serve the Project. (AR 6901-6980.) On June 8, 2021, the day before the County Planning Commission meeting to approve the Project, the Board of Directors of EBMUD passed a resolution (the "EBMUD No Service Resolution") that EBMUD (1) does not have adequate water supplies to support" annexation of the Project to its service area; (2) must reserve all its water supplies to address water supply deficiencies during droughts and constraints on water supply; (3) providing water service to the Project through conservation measures is not feasible and would take away a source of water supply within its existing service area, particularly in droughts, and (4) providing water service to the Project through its annexation is inconsistent with its Policies 3.01 and 3.05 and does not comply with Policy 3.08. (AR 29040-29046.) The County Board of Supervisors received the

EBMUD No Service Resolution but approved the Project a month later despite EBMUD's position on water service to the Project. (AR 29040, AR 1-5.)

The RDEIR acknowledges that EMBUD Policy 3.01 requires EBMUD to oppose annexation that is outside its USB "unless the requested annexation is a small boundary adjustment found by EBMUD to be in its best interests based on specified conditions." (AR 3734.) (*See also* AR 6917 [EBMUD Policy 3.01].) EBMUD Policy 3.01 includes two alternatives for EBMUD to make the "best interests" finding. (AR 6917 [EBMUD Policy 3.01(a) and (b)].) The RDEIR includes a table identifying the conditions upon which EBMUD's "best interests" finding must be based, and which the County is relying on for its consistency determination drawn from the text of the conditions inthe alternative Policy 3.01(a). (AR 3734-3735 [Table 3.9-7]; AR 6917 [EBMUD Policy 3.01(a)].) Policy 3.01(a) lists six "conditions," <u>all</u> of which are required to be met to meet that "best interests" finding. (AR 6917 (EBMUD Policy 3.01(a)(1)-(6) [with "and" between 3.01(a)(5) and (6)].) Table 3.9-7 in the FEIR recognizes that one of the conditions is that "the property and dwelling units are the smaller part of a larger development project located primarily within the Ultimate Service Boundary." (AR 6917 (EBMUD Policy 3.01(a)(1)]; AR 3734].) The RDEIR cites that condition and states directly that the 30 acres and the dwelling units "are <u>not</u> part of a 'larger development located primarily within the USB.' " (AR 3734 [Table 3.9-7] (Emphasis added)].) As a result, condition (a)(1) of EBMUD Policy 3.01 is not met for this Project according to the RDEIR, but the RDEIR nevertheless declares the annexation of the Project to be "consistent" with Policy 3.01 without further explanation or analysis. (AR 3736.)

EBMUD'S Policy 3.08 provides that if EBMUD is designated by a local agency to provide water service for a residential development of less than 200 units outside the ULL and that is "not covered by the provisions of Policy 3.01" then EBMUD is required to oppose annexation, and the EBMUD Board "shall determine . . . whether to call an advisory election on the question of whether such territory should be annexed to EBMUD." (AR 3737 [RDEIR quoting Policy 3.08].) The RDEIR concludes that Policy 3.08 does not require EBMUD to oppose the Project and consider an advisory election as "the Project is covered by and consistent with Policy 3.01," another consistency finding that is cast into doubt by the RDEIR acknowledgement that the property and residential units are not part of larger development that is primarily in the EBMUD service boundary for the reasons stated above. (AR 3737 [RDEIR].)

Real Parties contend that LAFCO will ultimately make the annexation determination and decide whether EBMUD must provide service to the Expanded Water Supply Project Area through proceedings under Government Code section 56857. Those proceedings could include EBMUD passing a resolution to terminate the annexation application proceedings once the application is complete, and judicial review

of any such resolution, which must be supported by substantial evidence of a financial or service concern within the meaning of that statute. (*See* Govt. Code § 56857(b), (d)(1) and (2).) The EBMUD No Service Resolution does not refer to termination of any annexation proceedings before LAFCO since the annexation application was incomplete at the time EBMUD issued its resolution, but the resolution clearly states the EBMUD Board determined to oppose annexation of the Expanded Water Supply Project Area to its service area and that annexation violates EBMUD Policies 3.01 and 3.05 and is not in compliance with Policy 3.08. (AR 29040-29046.)

The County also affirms in the FEIR that the water conservation offsets approach to providing the necessary water supply to the Expanded Water Supply Project Area "would trigger the need for a petition to the California State Water Resources Control Board to change the place of use of EBMUD's water rights." (AR 6991.) The County points out the agency is listed as a "responsible agency" in the RDEIR and that the RDEIR was "amended to clarify that State Water Board approval of EBMUD's change petition would be required." (AR 6991.)

5. Violation of CEQA Regarding Water Supply Information

Petitioners contend the County's certification of the FEIR is a prejudicial abuse of discretion because the FEIR does not comply with the procedural requirements of CEQA in its analysis the water supply impacts of the Project, including issues regarding the amount of likely demand, the offsite conservation measures relied on to supply that demand, the feasibility and timing of the mitigation measures on water supply, the adequacy of the water treatment facilities to process the demand, and the County's unsupported finding of "no significant impact" on Land Use despite the conflict with EBMUB's Policies.

The FEIR sets forth a conclusion regarding the sufficiency of offsite water conservation measures derived only from the estimate in the WSMP 2040 that Level E conservation measures could result in 2 MGD of water savings. The FEIR contains no facts or analysis regarding the offsite conservation measures but only relies on the WSMP 2040 estimated water savings as the basis for the water supply being sufficient to supply the Project. Real Parties do not address the informational deficiencies in the FEIR raised by EBMUD regarding the failure to provide any meaningful disclosure of the offsite conservation measures and water savings that would be achieved, other than the conclusion from the WSMP 2040; they focus solely on whether substantial evidence supports the County's position that offsite conservation can provide the water supplies based on the conclusion in the WSMP 2040. (Real Parties' Resp. Brief to EBMUD, pp. 15-24.)

These are different issues under CEQA. As the Court explained in *Sierra Club v. County of Fresno, supra*, "The determination whether a discussion [of potential significant environmental impacts] is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency's factual conclusions. [¶] The ultimate inquiry, as the case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.' [Citations omitted.]" (*Sierra Club v. County of Fresno, supra,* 6 Cal.5th at 515.) "Whether an EIR has omitted essential information is a procedural question subject to *de novo* review. [Citations omitted.]" (*Banning Ranch, supra,* 2 Cal.5th at 935.) " 'Noncompliance with substantive requirements of CEQA or *noncompliance with information disclosure provisions "which precludes relevant information from being presented to the public agency* . . . may constitute prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions." (§ 21005, subd. (a).)' " (*Sierra Club v. County of Fresno, supra,* 6 Cal.5th at 515 [quoting *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 945–94 and stating failure to comply with CEQA in omitting necessary material to informed decision-making and public participation is prejudicial error (italics in original)].)

From an informational standpoint, the RDEIR, WSE, and FEIR cite the conservation measures but do not explain what the conservation measures are that the County would be relying on to achieve the water savings to supply the Project except by a single reference to four generic category titles from the WSMP 2040. (*Compare, e.g.,* Real Parties' Resp. Brief in EBMUD Action, pp. 15-17 quoting from RDEIR to AR 3891 [RDEIR citing financial Incentives for irrigation upgrades, cisterns, graywater retrofit-existing single family, and graywater-new single family].) There are no other facts or explanation of what the offsite conservation measures are, what the conservation measures entail in terms of obtaining customer participation to achieve the estimated water savings, how much each of the four different categories of conservation measures would be expected to conserve, and the feasibility and likelihood of voluntary participation in the programs on which the FEIR relies to achieve the water savings and supply the Project. The County's Master Response No. 2 to questions about feasibility of water conservation to allow service to the Project states the WSMP 2040 "identified these specific additional conservation measures, along with the <u>assumed amount</u> of water that would be conserved upon implementation . . . " with no identification of the actual measures or further analysis of the savings, other than reliance on the "assumed" water savings stated in that document. (AR 6796 [FEIR Master Resp. 2] (emphasis added).)

The facts and analysis regarding the conservation measures upon with the water supply for the Project hinges do not appear in the RDEIR or the FEIR, but in a memorandum prepared several months after the FEIR was completed and that is not included in the FEIR. (AR 23361-23380.) This "updated feasibility analysis," not included in the FEIR, explains certain the Level E conservation measures and what they would entail and also adopts a 2:1 offset ratio and EBMUD's estimated water demand, indicating water savings of 170 AFY of needed water conservation. (Real Parties' Resp. Brief pp. 21-22.) The FEIR, and WSE instead rely entirely on the conclusion in the WSMP that Level E conservation measures, only vaguely described in the FEIR, will produce 2 MGD in water savings. Real Parties contend the only impediment to implementing Level E conservation measures was economic, not technical feasibility, since the measures passed EBMUD's technical screening criteria that eliminated all but 53 conservation measures and left the Level E measures in the plan. (Real Parties' Resp. Brief p. 20, citing AR 29947, AR 30020-30021 [which states that "Additional resources <u>and customer contacts</u> are required to reach higher levels of potential water savings" (emphasis added)], AR 30047.) Economic feasibility is addressed by the requirement that the Project applicant fund the costs. (Real Parties Resp. Brief p. 21, citing AR 97-98.)

These arguments address whether there is substantial evidence to support the County's factual finding that the offsite conservation measures would provide an adequate source of offsetting water savings to allow the Project to obtain water service from EBMUD without adversely affecting water supplies, but they do not address the sufficiency of the FEIR as an informational document sufficient for decisionmakers and the public to analyze the water impacts of the Project. Further, on the feasibility issue, in its Master Response No. 2 to the comments that raised questions regarding the feasibility of conservation measures sufficient to provide the water savings to allow water to be supplied to the Project, the County states that the Level E conservation measures had no timetable for implementation, "since this would be heavily dependent upon the availability of funding, <u>among other considerations.</u>" (AR 6796 (Emphasis added)].) The statement indicates funding for the Level E measures was not the only constraint on the implementation Level E measures under the WSMP 2040, but none of the "other considerations" are explained in the FEIR.

The FEIR does not disclose that EBMUD's conclusion regarding the water supply needed for the Project is approximately 84.6 AFY, significantly more than the 56.3 AFY determined by the County's expert relied on in the FEIR. While the County may be able to reach a conclusion different from EBMUD based on the conflicting expert opinions available, from an informational standpoint, EBMUD's water demand estimate is important information that is omitted from the RDEIR circulated for public

comment, in light of the requirement highlighted by Real Parties in their Respondent's Brief that the County determined to condition the Project on the developer "entering into a binding agreement with EBMUD that provides for the Project ***to fully accommodate its identified demand at a minimum of 56.3 AFY or the amount ultimately confirmed by EBMUD, whichever is greater.***" (Real Parties' Resp. Brief to EBMUD p. 17, ll. 21-22 [citing AR 7721 (emphasis in original)] and p. 18, ll. 13-15 [citing AR 7727-28.) This condition stated in the FEIR makes the EBMUD estimated water demand and resulting necessary water conservation amount necessary to serve the Project material information, if nothing else with respect to the likelihood of a consensual, negotiated agreement for the conservation measures between the Project applicant and EBMUD, even if the County ultimately concludes implementing specified conservation measures will produce the necessary water supply without impacting water service in EBMUD's existing USB.

There is no explanation, analysis or factual basis for the implicit conclusion in the water supply charts in the RDEIR and WSE that the offsite conservation measures would immediately result in offsite water savings of 48 AFY from the "current" year even though the new conservation measures would somehow have to be implemented. (AR 3913, AR 6726.) Though the WSE and RDEIR generally rely on the WSMP 2040 for the water conservation and supplies, the WSMP 2040 indicates water savings are not realized for three to ten years from the time measures are implemented, but the FEIR does not explain the implementation time or why, given the information in the WSMP 2040, the offsite water savings is shown as available immediately. (AR 30020.) The water demand and conservation estimates are not even stated in the same type of measurement (AFY vs. MGD) to allow a straightforward "apples to apples" analysis. (*See also* AR 6906 [EBMUD stating its estimated demand figure as 75,500 gallons per day].)

These are informational deficiencies in the FEIR, regardless of whether ultimately the County would reach the same factual conclusions by adopting a finding that the offsite conservation measures the Project applicant will develop will result in sufficient water savings to provide a water supply to the Project that will not impair water supplies for customers within the EBMUD USB and that will support annexation of the Expanded Water Supply Project Area to EBMUD's service area. (*See* Real Parties' Resp. Brief in EBMUD Action pp. 18-20 [addressing "substantial evidence" to support County's finding of sufficiency of water conservation for demand contrary to EBMUD's determination].) While the County may have discretion to make findings among different, conflicting expert opinions that are different from EBMUD's conclusions, it must do so based on an EIR that contains adequate information.

Real Parties point to the May 4, 2021, Tully & Young memorandum analyzing specific offsite conservation measures and their potential water savings and costs as additional substantial evidence in support of the feasibility of the Level E offsite water conservation measures. (Real Parties' Resp. Brief pp. 21-21.) The May 4, 2021, Tully & Young memorandum provides details regarding the nature of the actual conservation programs that might be involved in the Level E conservation measures the Project applicant would have to fund and the savings anticipated from each measure. The memorandum may have been available to the County Board before it certified the FEIR, but the information regarding these specific, identified conservation measures on which the Project would rely is not in the FEIR. The County is required to determine whether to certify an EIR based on the contents of the FEIR, not material outside the EIR that has not been subject to public notice and comment. (*Save Our Peninsula v. County of Monterey* (2001) 87 Cal.App.4th 99, 130-31 ("*Save Our Peninsula*").)

The FEIR also fails as an informational document in not adequately disclosing the potential risks and implications to the water supply for the Project based on EBMUD's position that annexation of the Expanded Water Supply Project Area violates its annexation policies. The County explains in the FEIR the reasons it contends EBMUD's policies will not be violated, despite EBMUD's contrary conclusions, and the EBMUD staff interpretation of those policies in the comment letters is not definitive. The FEIR states "A definitive interpretation of the Project's consistency [with the EBMUD annexation policies] must be made by the EBMUD Board of Directors" which would be made "via a procedure that is deemed appropriate by their staff." (AR 6981.) That "definitive" interpretation was made by the EBMUD Board in its resolution in June 2021 after the FEIR was published and before the County certified it, and the "definitive" EBMUD interpretation is that its annexation policies are violated. (AR 29040-46.) By implication, the FEIR admits the significance of the EBMUD Board making a "definitive" interpretation of its annexation policies and concluding those policies are violated.

The FEIR, however, relies on the assumption that EBMUD will reach a negotiated agreement with the Project applicant to supply water to the Project based on estimated water demands and conservation levels acceptable to EBMUD in its discretion. While the FEIR indicates involvement of EBMUD is required as described above and that EBMUD and LAFCO approvals are required as Real Parties note (Real Parties' Resp. Brief in EBMUD Action pp. 17-18), the FEIR does not address the significant risks and likelihood that a consensual agreement will not be reached given EBMUD's position. The FEIR repeatedly addresses the discretion EBMUD has regarding providing water service to the Project, as summarized above, but does not explain that if EBMUD opposes, then LAFCO can override EBMUD's opposition through the annexation process, which could include a process of judicial review of

any resolution by EBMUD to terminate the annexation proceedings before LAFCO, addressed exhaustively in the Real Parties' Respondents' Brief. (Real Parties' Resp. Brief to EBMUD pp. 7-11, 23-24.) Real Parties contend the LAFCO annexation process may require EBMUD to annex the Expanded Water Supply Project Area, despite its opposition, including through the "judicial review" of EBMUD's position that could be required if EBMUD seeks to terminate the annexation proceeding, but that information is not included in the FEIR as a known potential risk that the water supply will not be available or could be delayed through the annexation process before LAFCO based on EBMUD's opposition to extension of its service area to provide water to the Project.

The FEIR does not address alternative water supplies for the Project if the Project applicant does not reach an agreement with EBMUD to provide water to the Project, a known risk based on the information in the FEIR even without the EBMUD Board's determination annexation violates its policies. (AR 3917 [MM USS-1].) The FEIR does not satisfy the informational requirements of CEQA not only because it does not include a full discussion of the water supply issues as cited above, but also because these circumstances indicate the availability of the sole source of water for the Project through EBMUD cannot be "confidently" determined, and a discussion of any alternative sources and their environmental consequences, or lack of alternative sources, is required. (*Vineyard, supra,* 40 Cal.4th at 432

6. Violation of CEQA Based on Inconsistency with EBMUD Annexation Policies

The FEIR also violates CEQA in its analysis of the consistency of the annexation of the Project with EBMUD Policies 3.01, 3.05, and 3.08, at least because it is not adequate from an informational standpoint. In its response to EBMUD's comments on the RDEIR regarding its annexation policies, in addition to indicating EBMUD's Board would have to make the "definitive" interpretation, the County cited RDEIR 3.9-37-40 as explaining the basis for its consistency determinations, including its determination that "the Project would be consistent with EBMUD Policy 3.01 providing for the annexation of lands outside the USB." (AR 3736.)

Real Parties argue that the EBMUD annexation policies are not land use regulations and therefore do not raise a CEQA issue as to the Project's consistency with land use regulations. In their supplemental briefing, they point to a concession by EBMUD in the briefing that the EBMUD Annexation Policies are not land use policies. They argue the fact that the County included the discussion of the EBMUD policies in the "Land Use" section of the RDEIR cannot change the legal character of the policies. (Real Parties' Suppl. Brief p. 1, ll. 19-20, citing EBMUD Reply p. 12, fn. 8.)

Nevertheless, the EBMUD Annexation Policies and the consistency or inconsistency of the proposal for EBMUD to supply water to the Project is clearly relevant, even if not determinative, of whether the Project will be annexed under the LAFCO annexation procedures pursuant to which EBMUD would be required to supply water to the Project. (AR 3732-3734 [Impact LU-4].) The discussion regarding the EBMUD Annexation Policies is addressed in conjunction with the LAFCO Policy consistency discussion, under which Real Parties contend the EBMUD Policy determination and annexation will ultimately be tested, and the LAFCO Policy clearly involves land use regulation. (AR 3732-3734.)

Real Parties argue the list of six "conditions" in Policy 3.01(a) are just factors for EBMUD to weigh, and that satisfying five of the six is sufficient. That position is inconsistent with the text of the RDEIR, which specifically characterizes the six items as "conditions" not factors and which recognizes that "Policy 3.01 indicates that annexation shall be opposed unless requested annexation is found by EBMUD to be in its best interests based on several conditions." (AR 3734 [RDEIR] (emphasis added)].)

One of the six required conditions under Policy 3.01(a), specifically 3.01(a)(1) is not met, as Table 3.9-7 acknowledges, but the RDEIR includes no analysis or explanation of why the requirement that the property and dwelling units subject to annexation be part of "a larger development located within" EBMUD's USG is either satisfied (when the RDEIR states that is not the case) or does not need to be satisfied in order for annexation to be consistent with Policy 3.01, as the RDEIR concludes and Real Parties seem to concede.

Real Parties state in their Respondents' Brief the Project "substantially" meets all of Policy 3.01(a)'s requirements (Real Parties' Resp. Brief to EBMUD, p. 26, l. 19), but the FEIR does not state the Project is "substantially" consistent with the policy or explain why "substantial" consistency with Policy 3.01(a)(1) is sufficient. By its terms, Policy 3.01(a) requires all six criteria to be met. The RDEIR unequivocally and inaccurately states "the Project meets the conditions outlined under Policy 3.01." (AR 3734.) (*See also* AR 6916 [EBMUD 11/21/2016 comment letter with Annexation Policies attached].)

The FEIR finding of consistency with Policy 3.08 is derived from the conclusion that the annexation is consistent with Policy 3.01, but the RDEIR contains a finding and admission that the Project does not actually meet the terms of Policy 3.01(a)(1). Real Parties note that Policy 3.08 refers to the ULL adopted by the County in 2000, but there was no ULL adopted by the County in that year, making the policy inapplicable by its terms. Real Parties contend that Policy 3.08 does not apply because in conjunction with the approval of the Project, the County extended the ULL to cover the Expanded Water Supply Project Area so it is not outside the ULL which is one of the two conditions for 3.08 to

apply. They cite *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 521, 353, which supports their position that the fact the ULL was to be expanded as part of the Project approvals could allow for a consistency finding in the FEIR, if the FEIR explains that expansion of the ULL is one of the issues the County has considered as part of the Project approval and which will result in consistency with this policy. The problem is that the FEIR does not contain that explanation. The RDEIR was prepared in September 2016, and the FEIR in September 2020 before the ULL was extended. From an informational standpoint, the FEIR is at best misleading in its consistency disclosures as to EBMUD Polices 3.01 and 3.08. The FEIR fails to include a "good faith, reasoned analysis" in response to EBMUD's comments regarding the violation of these Policies and explaining why the Project is consistent when the County has concluded that Policy 3.01(a) is not satisfied. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367 [internal quotations and italics omitted].)

EBMUD Policy 3.05 addresses the availability of adequate water supplies for EBMUD to provide water service to the Expanded Water Supply Project Area and provides that EBMUD will not extend its service outside the USB if its existing customers would be adversely affected. EBMUD provided comments on the RDEIR reiterating its position that this Policy would be violated by serving the Expanded Water Supply Project Areas as it would impair its ability to meet its existing service obligations to the current and future customers within its USB. The RDEIR relies on the conclusion that the offsite conservation measures will offset the additional demands of new service to the Project and therefore, despite EBMUD's view to the contrary, Policy 3.05 would not be violated by annexation. (AR 3736) The County's response to EBMUD's comment on the RDEIR contesting this conclusion was to refer back to this conclusion. (AR 6981 [FEIR County Resp. to EBMUD Comment 2}.) The County relies on its conclusions regarding the water conservation measures that are not adequately analyzed with facts, for the reasons set forth above, making the analysis of consistency with Policy 3.05 similarly inadequate under CEQA.

As the Court in *Banning Ranch* explained, "In order to serve the important purpose of providing other agencies and the public with an informed discussion of impacts, mitigation measures, and alternatives, an EIR must lay out any competing views put forward by the lead agency and other interested agencies. [Citations omitted.] The Guidelines state that an EIR should identify '[a]reas of controversy known to the lead agency including issues raised by [other] agencies.' (Guidelines, § 15123, subd. (b)(2).) 'Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts.' (Guidelines, § 15151.) '[M]ajor

environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail.' (Guidelines, § 15088, subd. (c).)" (*Banning Ranch, supra,* 2 Cal.5th at 940.)

The FEIR does not adequately inform the decisionmakers and the public of the significant disagreements among experts, including in particular EBMUD which the FEIR repeatedly acknowledges will be the entity that ultimately determines the estimated water demands and whether any conservation measures can be implemented to allow water service to the Expanded Water Supply Project Area. More important, EBMUD has now made that determination through its resolution that it cannot serve the Project without risk to its existing and anticipated future customers. These disagreements are not adequately disclosed.

As to the conflict with EBMUD's annexation policies, the FEIR fails to adequately disclose the present conflict with those policies, even if the conflict with Policy Nos. 3.01(a)(1) and 3.08 can be resolved by expansion of the ULL to cover the Expanded Water Supply Project Area, and the FEIR could explain to decision-makers and the public reviewing the FEIR that the expansion of the ULL that is one of the Project-related approvals will resolve the conflict with those policies. As to Policy No. 3.05, the Court concurs that the consistency with that policy and EBMUD's position as to whether it has the ability to supply the necessary water to the Project, and whether EBMUD may be compelled to supply water based on the LAFCO annexation process, may mean that whether EBMUD considers that policy to be violated or not, EBMUD's view may not ultimately determine whether water will nevertheless be made available to the Project. The FEIR, however, is inadequate as an informational document, as it does not clearly explain the basis for the conclusion the annexation policies are not violated because of the future anticipated expansion of the ULL and future anticipated approval of annexation of the Project area pursuant to the LAFCO processes, and because it does not adequately address EBMUD's contrary views, as discussed more fully in the water supply section of this ruling.

Further, the FEIR does not sufficiently address the implications of the EBMUD Annexation Policies and the No Service Resolution on the LAFCO process for annexing the expanded ULL into EBMUD's USB, the potential litigation process that could ensue assuming EBMUD continues to object to providing service based on its position that its Annexation Policies are violated, and the resulting uncertainty as to the water supply for the Project. Real Parties' position that the County did not need to address the Project's consistency with the EBMUD Annexation Policies because they are not land use laws, regulations, or policies ignores the relationship between those policies, the LAFCO annexation

process which is a land use law or regulation, and the water supply required for the Project, which is a CEQA issue.

7. Violation of CEQA as to Mitigation Measure MM USS-1

EBMUD argues that the FEIR violates CEQA because the sole mitigation measure for the adverse environmental effects of the Project as to the water supply is unlikely to occur, and the FEIR impermissibly defers mitigation of the adverse environmental effects on water supply. The FEIR identifies this potentially significant impact on the water supply (USS-1): "The Project may result in the need for additional water supplies, additional treatment capacity, or additional distribution facilities beyond what has been planned for." (AR 7714.) The mitigation measure for this adverse environmental effect is MM USS-1. (AR 3917, AR 7728.) Mitigation Measure MM USS-1 states that before a final subdivision map may can be recorded, "Project applicant must demonstrate to the DCD that all required approvals are obtained to implement provision of water to the Project Site via the selected water supply," specifically, by EBMUD. (AR 3917, AR 7728.)

The feasibility of a mitigation measure relied on in an EIR and the improper deferral of mitigation are distinct CEQA issues. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 622-623.) "A mitigation measure is feasible if it is 'capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.' (CEQA, § 21061.1.)" (*Id.* at 622.) (*See also* Cal. Code Regs. tit. 14 §§ 15151 [standards for adequacy of an EIR, stating "the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible"] and 15364 [defining feasible as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (Emphasis added)]; Pub. Res. Code §§ 21002, 21002.1, 21061.1.)

Real Parties argue the conditions to approval of the Project including the requirement of a binding agreement with EBMUD to accommodate the water demand for the Project as ultimately confirmed by EBMUD, and for the developer to fund conservation offset measures of at least a 2:1 ratio for demand versus conservation makes the mitigation measure feasible within the meaning of these authorities. (Real Parties' Resp. Brief pp. 28-30, and citing AR 45, AR 98, AR 1297-99.) Real Parties in effect argue that EBMUD's opposition to annexation does not mean the mitigation measure is not feasible. EBMUD contends MM USS-1 is not feasible both because the necessary approvals to providing water to the site are not likely to be obtained from EBMUD and LAFCO, particularly within a "reasonable time" under the Public Resources Code and CEQA Guidelines, and because the offsite conservation

measures the Project relies on are not likely to achieve conservation in excess of the water supply needs of customers in EBMUD's existing USG.

For the reasons stated above, the FEIR fails to comply with CEQA as it does not adequately inform decisionmakers and the public by adequately addressing the offsite conservation measures on which the availability of water supplies for the Project depend, as well as the inconsistency with EBMUD's annexation policies that at a minimum raise questions regarding the feasibility of the Project obtaining EBMUD approvals to supply the water necessary for the Project to be developed. At a minimum, additional information is required to be disclosed regarding MM USS-1 to address the feasibility of the adopted mitigation measure relied on for the reasons indicated, and if the adverse environmental effects on water supplies identified by the FEIR cannot be mitigated in light of those additional disclosures and analysis, the FEIR must so indicate.

In *Vineyard,* one of the grounds on which the Court found a violation of CEQA in the water supply analysis was that the EIR relied on a provision for curtailing development if the necessary water supplies did not materialize in the future "without disclosing, or proposing mitigation for, the environmental effects of such truncation." (*Vineyard, supra*, 40 Cal.4th at 447.) The FEIR in this case imposes a similar form of mitigation by termination of the Project by not allowing the final subdivision map to be recorded if the Project applicant cannot demonstrate it has obtained all necessary approvals to supply water to the Project. (AR 3917, AR 7728.) The FEIR does not address what development is expected to have occurred up to the point at which the Project must present the proof of approvals to the DCD as stated in MM USS-1, whether there would be any significant environmental effects from proceeding with development up to that point and then terminating the Project, and any mitigation measures needed to address those effects. This is an informational deficiency in the FEIR. For the reasons stated in *Vineyard* in this regard, the FEIR violates CEQA for failure to disclose any environmental effects from truncating the Project and proposing mitigation for any such effects that are likely to be significant.

As to whether the FEIR improperly defers the mitigation measure, EBMUD cites *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70. The Court held the mitigation measure in that case for greenhouse gas emissions which included only a general goal of no increased emissions without calculations regarding the reductions in the emissions expected from future mitigation measures and the general identification of possible mitigation measures without objective standards and with unknown effectiveness did not satisfy CEQA. (*Id.* at 92-93.) In so holding, the Court noted that other cases have held "reliance on tentative plans for future mitigation after completion of

the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." (*Id.* at 92.)

The mitigation measure in this case has been formulated and states an objective standard for measuring success of the mitigation measure, in the sense that all necessary approvals for EBMUD to supply water to the Project must be obtained by the Project applicant before a final map will be recorded. Obtaining those approvals, however, is dependent on a negotiated agreement with EBMUD for the Project applicant to fund vaguely described offsite conservation measures which have not been formulated and agreed to, and much of which the FEIR acknowledges is left to the discretion of EBMUD and potentially LAFCO through annexation proceedings. (*See, e.g.*, AR 6797, AR 6990.) The Court in *Preserve Wild Santee v. City of Santee, supra,* 210 Cal.App.4th 260 held the EIR in that case was inadequate in part based on its improper deferral of mitigation measures for habitat loss for an endangered butterfly species. (*Id.* at 281.) The Court stated that, among other things, "the timing and specific details for implementing other Quino management activities discussed in the draft habitat plan are subject to the discretion of the preserve manager based on prevailing environmental conditions. Consequently, these activities are not guaranteed to occur at any particular time or in any particular manner. [¶] It, therefore, appears the success or failure of mitigating the project's impacts to the Quino largely depends on what actions the approved habitat plan will require to actively manage the Quino within the preserve. 'An EIR is inadequate if "[t]he success or failure of mitigation efforts . . . may largely depend upon management plans that have not yet been formulated and have not been subject to analysis and review within the EIR." ' [Citation omitted.]" (*Id.* [quoting *Communities for a Better Environment v. City of Richmond, supra,* 184 Cal.App.4th at 92].)

Real Parties, however, argue that there is no CEQA violation in approving the FEIR and the Project where another responsible agency, in this case EBMUD, has to exercise discretionary authority to approve or disapprove a portion of the Project, impose its own conditions, or impose its own mitigation measures to address aspects of the Project within the responsible agency's jurisdiction. (*See* Pub. Res. Code ¶ 21069 [defining responsible agency]; Pub. Res. Code §§ 21153(c), 21081.6(c); Cal. Code Regs. tit. 14 §§ 15050(b) and 15096(f)(-(h)].) Under these authorities, the fact that EBMUD must perform its own discretionary review and approval of the Project within the scope of its jurisdiction does not mean mitigation is improperly deferred, but the Guidelines cited also recognize an alternative path where the responsible agency challenges the EIR as insufficient for the responsible agency to rely on it

to perform its discretionary analysis and approval, as EBMUD did here. (Cal. Code Regs. tit. 14 §§ 15096(e)(1) and 15050(c).)

EBMUD also relies on *Banning Ranch, supra,* 2 Cal.5th 918, which Real Parties do not address in their Respondents' Brief. The Court in that case held certification of the EIR violated CEQA based in part on its deferral of analysis of protected species habitat potentially affected by the Project to the Coastal Commission when the Project came up for permit approval before that agency, even though the Coastal Commission objected to the adequacy of the EIR because it did not evaluate alternatives to mitigate impacts to the habitat and delineate protected habitat boundaries. (*Id.* at 931-32, 937-42.) EBMUD's challenges raise deficiency issues similar to *Banning Ranch* and *Preserve Wild Santee* that are not adequately addressed in the FEIR or by Real Parties' arguments that the FEIR has met the requirements of CEQA in regard to the mitigation issue.

8. CEQA Issues Regarding Substantial Evidence Test Addressing Water Supply

The Board may exercise discretion to approve the Project and the proposed water supply and mitigation for the water supply issues in the EIR, but "it must do so on the basis of information collected and presented in the EIR and subjected to the test of public scrutiny." (*Save Our Peninsula, supra,* 87 Cal.App.4th at 131.) This requires an adequate EIR that meets the informational requirements of CEQA.

The Court has concluded for the reasons stated that the FEIR fails to comply with CEQA because it does not provide facts and analysis regarding water supply issues noted above from which the County and the public participating in the administrative process of addressing the issues in the RDEIR could make informed decisions. Even if the same outcome would result if the County had complied with CEQA, violation of CEQA's procedures, including its informational requirements for an EIR on matters of key significance to the approval of the Project such as water supply, is a prejudicial error. (*Sierra Club v. County of Fresno, supra,* 6 Cal.5th at 515.) The Court therefore does not address at this time whether substantial evidence exists to support the County's findings regarding the water supply issues and consistency with EBMUD's Policies. The FEIR must be decertified at least partially based on the CEQA violations stated above.

C. Issue 3: CEQA Violation Related to Water Treatment Facilities

EBMUD also raises the sufficiency of the FEIR's analysis of the water treatment facilities to address the Expanded Water Supply Project Area. EBMUD argues the County dismissed its concerns regarding sizing infrastructure and improperly relied on a "lower maximum day demand rate based on unspecified 'conservation measures' " in the WSE, which in turn provides that an appropriate maximum

daily demand factor would be developed with EBMUD. (EBMUD Op. Brief p. 21, citing AR 6987, AR 6708-6709.)

The FEIR discusses the sufficiency of the water treatment facilities based on the estimated average gallons per day attributed to the Project (.04 MGD, the equivalent of 48 AFY), the average gallons per day of treatment capacity anticipated to be available when the new Walnut Creek water treatment facility is completed (115 MGD), and the estimated demand on water treatment facilities estimated by EBMUD (96 MGD) without considering the Project (AR 7728.) Real Parties point to the small fraction of the total water treatment capacity as supporting the determination in the FEIR that no infrastructure capacity improvements would be required to accommodate the Project. (AR 7728.) In addition, the County's response to EBMUD's comments explains that EBMUD's comments on capacity were based on 1995-2006 data, data the County found was outdated and overstated the demand on the water treatment infrastructure. (AR 6987.) EBMUD does not pursue the argument in its Reply. The Court finds no CEQA violation regarding the discussion of the infrastructure for water treatment both as informationally sufficient and supported by substantial evidence.

D. Issue 4: CEQA Violation for Failure to Recirculate EIR After EBMUD's Resolution Declining Service for the Project Based on "Significant New Information"

"Recirculation of an EIR is required when 'significant new information' is added to an EIR after the draft EIR has been circulated for public review. [Citation omitted.]" (*King & Gardiner, supra,* 45 Cal.App.5th at 850 (emphasis added).) (*See also* Pub. Res. Code § 21092.1 ["When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report." (Emphasis added)]; Cal. Code Regs. tit. 14 § 15088.5(a).) "Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." (Cal. Code Regs. tit. 14 § 15088.5(b)

The FEIR did not include the EBMUD No Service Resolution though the resolution was submitted to the County approximately one month before the County held its July 13, 2021, hearing, certified the FEIR and approved the Project. The arguments as to whether the RDEIR should have been recirculated raise the question first, whether the EBMUD No Service Resolution was significant new information, and

second, if it was, the legal effect of failing to include the information in an EIR circulated for public comment before the FEIR that was certified.

The County contends the EBMUD No Service Resolution was not significant new information, but merely "clarified" or "amplified" positions taken by EBMUD already disclosed in the RDEIR. Therefore, they argue there is no CEQA violation for failure to revise and recirculate the EIR on this ground. (*King & Gardiner, supra,* 45 Cal.App.5th at 580.) In terms of the significance of the EBMUD No Service Resolution, the Resolution was more than just a reiteration of EBMUD's position regarding the inconsistency of annexation of the Project under its policies and its concerns regarding the impact on the customers in its USB of providing water service to the Expanded Water Supply Project Area. In the FEIR, the County recognized the significance of an EBMUD Board resolution addressing those issues in its response to EBMUD's comments on the RDEIR. (AR 6981 [FEIR explaining EBMUD's staff determination EBMUD Policies are violated does not mean the position is correct, because EBMUD's Board would be responsible for making "[a] definitive interpretation" of the Project's consistency" with those policies "via a procedure that is deemed appropriate by their staff."]; *see also* AR 6989.)

With EBMUD as the sole water supplier for the Project, and with the FEIR's repeated reliance on EBMUD reaching a negotiated agreement with the Project applicant to supply water to the Project, including setting demand estimates, and establishing the level of water savings with an appropriate buffer through the implementation of Level E measures acceptable to EBMUD, the determination by EBMUD's Board that it will oppose annexing the Project to its service area and supplying water to the Project is more than just a reiteration of EBMUD's comments. EBMUD's Board, not just staff, has made a formal statement of the EBMUD Board's position that supplying water to the Project would violate EBMUD's Annexation Policies. (*See* AR 6981, AR 6989.)

Real Parties argue that LAFCO, not EBMUD, has the ultimate, exclusive authority to determine whether annexation and extension of water service by EBMUD to the Project should occur pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code sections 5600-57550 ("LAFCO Act"), including Government Code sections 56036(a), 56021(d), and 56100(b). Real Parties contend EBMUD's determination that it cannot and will not annex the portion of the Project Site can be overridden by LAFCO. They cite Government Code section 56857 which addresses the grounds upon which EBMUD could seek termination of an application process, which requires a resolution "based upon written findings supported by substantial evidence in the record that the request is justified by a financial or service related concern," as those terms are defined in Government Code sections 56857(d)(1) and (2). (Govt. Code § 56857(b).) The statute further provides that before

termination of the proceedings, "the resolution is subject to judicial review." (*Id.*) The Court agrees with Real Parties that the standards for terminating the LAFCO annexation of the Expanded Water Supply Area into EBMUD's USB are different from the EBMUD Annexation Policies, and the No Service Resolution does not address the termination of annexation standards under the LAFCO Act, only the EBMUD Board's determination that it must oppose annexation because annexation would violate EBMUD's Annexation Policies.

The EBMUD No Service Resolution does not state that it is seeking termination of the application for annexation pending before LAFCO but there is no complete annexation application pending before LAFCO at this time, as the application is not complete without the necessary Project approvals and Board resolutions by the County related to the Project. (AR 29040-46; see Henderson Decl. and Real Party RJN Exs. 14-20 [LAFCO annexation application]; Real Parties' Resp. Brief to Sierra Club p. 13, ll. 3-10.) Nevertheless, EBMUD's unequivocal opposition to annexation of the Project into its service boundary is clearly set forth in the EBMUD No Service Resolution, and LAFCO's stated requirement of a "will serve" letter from EBMUD based on the record seems unlikely to materialize. (AR 7369 [LAFCO letter], AR 13393 [LAFCO oral comment].)

The County did not add the EBMUD No Service Resolution to the EIR in this case; it did not address it in the FEIR. In *Save Our Peninsula, supra,* 87 Cal.App.4th 99,-the Court held that presenting information to the county board identifying the location for the offsetting groundwater pumping location proposed as the mitigation for water supply impacts in the EIR in connection with the agency's approval of the project without including that information in the EIR was insufficient and violated CEQA, as the agency's decision whether to certify the EIR must be made based on "information collected and presented in the EIR and subject to the test of public scrutiny." (*Id.* at 130-31.) With the Court's determination below that the FEIR must be decertified based on the inadequate water supply information and reasoned analysis for the availability of water supplies for the Project to be provided by EBMUD, the Court expects the No Service Resolution will be addressed in the revised EIR prepared and circulated by the County.

E. <u>Issue 5: CEQA Violation for Failure to Consider Adequate Alternatives to the Project</u>

Section 15126.6 of the CEQA Guidelines addresses the information regarding alternatives to the proposed project that should be included in the EIR. First, the Guidelines require the EIR to address a "range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the

significant effects of the project." (Cal. Code Regs. tit. 14 § 15126.6(a).) One of the alternatives that should be included is a "no project" alternative, which the FEIR undisputedly contained in this case. (Cal. Code Regs. tit. 14 § 15126.6(e).)

The purpose of identifying the range of alternatives is to address ways the significant environmental impacts of the Project may be lessened. (Cal. Code Regs. tit. 14, § 15126.6(b) ["Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly."].) (See also *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1456-1457.) The consideration of project alternatives and the sufficiency of the analysis of the alternatives is reviewed based on a "rule of reason" and the facts of each case, evaluated in light of the statutory purpose. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 980; Cal. Code Regs. § 15126.6(a) ["There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason."].) " 'If the agency finds certain alternatives to be infeasible, its analysis must explain in meaningful detail the reasons and facts supporting that conclusion. The analysis must be sufficiently specific to permit informed decision-making and public participation, but the requirement should not be construed unreasonably to defeat projects easily.' [Citation omitted.] The infeasibility findings must be supported by substantial evidence. (§ 21081.5; Guidelines, § 15091, subd. (b).)" (*California Native Plant Society v. City of Santa Cruz, supra,* 177 Cal.App.4th at 982.)

The burden is on Petitioners to show that the County's failure to address alternative locations for the Project in the FEIR was unreasonable. (*California Native Plant Society v. City of Santa Cruz, supra,* 177 Cal.App.4th at 987, 988 ["The selection [of alternatives] will be upheld, unless the challenger demonstrates 'that the alternatives are manifestly unreasonable and that they do not contribute to a reasonable range of alternatives.' [Citation omitted.]," quoting *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1265].) Offsite alternatives are not required to be considered in every case. (*Id.* at 993.) Nor does CEQA impose a minimum number of alternatives that the County must include in the EIR, as multiple courts have concluded that an EIR that addresses only the no project alternative can be sufficient if the statutory purpose of allowing the decision makers and the public to make a reasoned choice is served by the alternatives presented. (*Save Our Access etc. v. Watershed Conservation Authority* (2021) 68 Cal.App.5th 8, 31 *San Franciscans for*

Livable Neighborhoods v. City and County of San Francisco (2018) 26 Cal.App.5th 596, 633; *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 199 ("*Mount Shasta*").)

The Court in *Mount Shasta* explained that "an EIR's alternatives analysis must begin with the project's objectives, for it is these objectives that a proposed alternative must be designed to meet." (*Mount Shasta, supra,* 210 Cal.App.4th at 196-197.) (*See also In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1163 [addressing a program EIR, stating "The process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency."].) While the agency cannot identify "an artificially narrow definition" of the purposes and objectives of the project, the agency "may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal." (*Id.* at 1166.)

Petitioners contend the FEIR is procedurally defective because the County unreasonably narrowed the alternatives to project sites it considered to those in or near the Danville, San Ramon, or Blackhawk areas within or adjacent to the ULL that are presently designated for agricultural uses. They argue the County should have considered alternatives within the ULL which would fulfill the feasibility factors under the Guidelines even though they were not presently designated for agriculture. (Sierra Club Op. Brief pp. 18-19.) Petitioners also argue the County should have considered an alternative that has an existing water supply, which would necessarily mean a site within the ULL or at least within the EBMUD USB. (Danville Op. Brief p. 33.) Whether the FEIR analyzes a reasonable range of project alternatives is predominantly a factual question, subject to review under the substantial evidence test. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 435 [citing *Vineyard, supra,* 40 Cal.4th at 435].)

The RDEIR lists a number of objectives of the Project, including creating a buffer between urban and non-urban uses, creating permanent constraints on development of the Tassajara Valley, permanently preserving most of the Project Site, providing permanently protected public open space, preserving agricultural uses on the Southern Site, adding housing close to existing transportation and utility infrastructure, improving parking and circulation at Tassajara Hills Elementary School, using a compact 30-acre development area at the Project Site consistent with surrounding residential uses and its topography, and minimizing grading at the Project Site. (AR 3942 [RDEIR Section 5.2 – Project Objectives].) Petitioners do not address these stated objectives in their briefs other than the housing objective, which Danville characterizes as the "primary" objective of the Project, a characterization which ignores the first five stated objectives of the Project which focus on permanent preservation of open space and preservation of the Tassajara Valley as a buffer to urban uses and a "green line"

constraining development. (*See* Danville Op. Brief pp. 33-36 and p. 35, ll. 9-12; Sierra Club Op. Brief pp. 17-20; AR 3311; AR 3942.) The fact that the Project objectives focus on the permanent preservation of open space and agricultural land from future urban development in particular in the Tassajara Valley as major purposes of the Project does not mean that the Project objectives were artificially narrow. (*In re Bay-Delta etc., supra,* 43 Cal.4th at 1166 [EIR can reasonably define the project purpose and "need not study alternatives that cannot achieve that basic goal," citing as examples a project purpose to build an oceanfront hotel or a waterfront aquarium, which would not require consideration of inland locations].)

Petitioners cite the statements in Brome Declaration Ex. B (August 7, 1990 Order of Board adopting proposed 65/35 Land Preservation Initiative – Measure C) stating that the impact of the Land Use Initiative and Preservation plan during the 15-year period (ending 2005) would be moderated because "there will be a more than adequate supply of development capacity" based on growth projections at the time. (Brome Decl. Ex. B p. 26.) They contend the conclusion is irreconcilable with the County's determination in the FEIR that there are no suitable alternative project sites within the ULL. The argument is founded on the flawed premise that the primary or sole objective of the Project is the development of 125 single family residences, but the County's objectives focus on different purposes of the Project in addition to providing this additional housing, repeatedly citing permanent preservation of open space and creating a permanent buffer and "green zone" in the Tassajara Valley.

The RDEIR addresses the issues that impact potential alternative locations for the Project and the County's concern regarding the availability of large enough acreage for dedication and permanent preservation, whether the site is within or outside the ULL. (AR 3949-50.) The RDEIR addresses two alternative sites, Norris Canyon and Chapparal Court. Contrary to Danville's position, as to the Norris Canyon alternative, the residential development area would be entirely within the ULL, and therefore would have water supply available through EBMUD. (AR 3950-51; *but see* Danville Op. Brief p. 34, ll. 15-18 [arguing EIR "offers zero alternatives in which houses get water"].) Most of the land for the residential development area in the Chapparal Court alternative is inside the ULL and that site could be eligible for EBMUD water service because it could meet Policy 3.01(a)(1) (involving a small portion outside the EBMUD USG that is part of a larger development inside the USG. (AR 3951.)

In both instances, the County ultimately rejected these alternatives for more in-depth consideration as "speculative" because the Project applicant does not own the sites, and therefore they are not feasible alternatives. (AR 3950-3951; *Save Found Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1457, 1465 [court expressed no opinion on feasibility of BLM alternative land location for project but EIR inadequate as it did not include independent analysis by the agency of the feasibility

of alternative location].) Real Parties also point to several other grounds cited by the County for rejecting these alternatives, including that the potential dedication or preservation area is vastly smaller than the area preserved under the Tassajara Agreement and that the alternative sites were likely to involve environmental impacts necessitating mitigation measures similar to the Project Site, or potentially greater impacts in some respects, such as traffic, air quality, and greenhouse gases. (AR 3650-3651.) As in *Mount Shasta, supra,* Petitioners do not identify alternative locations and show how the alternatives "would have met most of the goals of the Project, would have been potentially feasible under the circumstances, or would have reduced overall environmental impacts of the Project." (*Mount Shasta, supra,* 210 Cal.App.4th at 199.)

The discussion in *Vineyard* cited by Danville does not address the adequacy of project alternatives in the EIR in that case, but rather the adequacy of the discussion of alternative water supplies for the project subject to the EIR. (*See* Danville Op. Brief p. 35, ll. 2-6, *Vineyard, supra,* 40 Cal.4th at 432.) *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277 is also distinguishable; the Court held the final EIR failed to comply with CEQA as it "failed to discuss *any* feasible alternative, such as a limited-water alternative, that could avoid or lessen the significant environmental impact of the project on the City's water supply." (*Id.* at 1305.) In that case, the Court rejected "the conclusory argument" by the respondents "that there was no need to mention, discuss, or analyze a limited-water alternative because it would not avoid the significant impact on water supply," because the final EIR included no discussion or analysis at all regarding that alternative such that "the decision makers were not provided with any information about the effect that such an alternative might have on water supply impacts or other impacts." (*Id.* at 1304.)

At oral argument, Sierra Club Parties raised an argument that the Tassajara Dedication Area and the Tassajara Agreement are part of the "Project" considered in the FEIR. Real Parties objected to this argument because the argument was not raised in Sierra Club Parties' Opening Brief. Real Parties are correct; Sierra Club Parties argued in their opening brief that the Tassajara Agreement should have been included as a mitigation measure in the FEIR, not that the Tassajara Agreement or the land to be preserved under that agreement were part of the Project under the FEIR. (Sierra Club Op. Brief pp. 20-23.) The Court has addressed the argument raised in the Sierra Club Parties' opening brief, but will not address the new argument raised for the first time in oral argument or possibly in Sierra Club Parties' reply brief (*see* Sierra Club Reply p. 14).

The Court finds the discussion of alternative locations for the Project in the FEIR to be adequate under CEQA.

F. **Issue 6: CEQA Violation by Excluding Tassajara Agreement from Mitigation Program**

Petitioners argue that mitigation measures under CEQA must be subject to "legally binding instruments" (Cal. Code Regs. tit. 14 § 15126.4(a)(2)), must be within the lead agency and responsible agencies' power to enforce (Cal. Code Regs. tit. 14 § 15040(b)), and must be included in an EIR's mitigation monitoring and reporting program. "If the agency finds that mitigation measures have been incorporated into the project to mitigate or avoid a project's significant effects, a 'public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation.' (Pub. Resources Code, § 21081.6, subd. (a)(1).)" (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1165.) Petitioners contend the County is relying on the Tassajara Agreement as a mitigation measure to mitigate significant land use impacts of the Project, and impacts on wetlands, notwithstanding the contrary analysis in the FEIR.

The County determined in the FEIR that there are no significant impacts on Land Use as a result of the Project without mitigation, and that the Project is consistent with the County's General Plan land use regulations. The FEIR specifically states with respect to "Land Use Policy 3-14" which is to "[p]rotect prime productive agricultural land from inappropriate subdivisions" that the Project is consistent. The FEIR explains, "As indicated in Section 3.2, Agricultural Resources, of this Draft EIR, the Project Site is not designated Prime Farmland, Unique Farmland, or Farmland of Statewide Importance as indicated by the California Department of Conservation's Important Farmland Inventory System and Farmland Mapping and Monitoring Program (California Department of Conservation 2012). The Project Site also does not qualify as Prime Farmland under LAFCO law. In summary, the Project would be consistent with the proposed land use designations and General Plan land use policies regarding growth management, the 65/35 land preservation standard, and the ULL. Impact would be less than significant." (AR 3727.) In the Agricultural Resources analysis, the County also concluded that the impacts on agricultural resources without mitigation would be less than significant, since the Project will not convert any Prime Farmland, Unique Farmland, or Farmland of Statewide Importance under CEQA and the California Resources Agency definitions to non-agricultural use. (AR 3458 [Thresholds of Significance]; AR 3459 [Impact AG-1], AR 3462 [Impact AG-3].)

Petitioners cite *King & Gardiner, supra,* to support their contention that the Tassajara Agreement's preservation of approximately 727 acres of agricultural land or a conservation easement

over that acreage does not make up for the loss of approximately 44 acres of agricultural land, as the Tassajara Agreement does not provide replacement or substitute agricultural land for the acreage lost to development in the Project. *King & Gardiner*, however, involved the loss of "agricultural land" that qualified as Prime Farmland, Unique Farmland or Farmland of Statewide Significance which was considered a significant impact of the project and required mitigation; the requirement that mitigation measures be "additive" addressed in that case does not apply here because there was no finding of a significant impact on agricultural resources or land use that required mitigation measures. (*King & Gardiner, supra,* 45 Cal.App.5th at 870 and fn. 30; Sierra Club Reply p. 15, ll. 6-7 [mitigation measures must be "additive"].) The EIR in that case specifically found the loss of agricultural land, as defined in CEQA and the EIR, was significant and proposed mitigation measures to address the annual loss of farmland anticipated in the Project, unlike the FEIR in this case. (*Id.* at 871.)

The need for mitigation measures under CEQA arises when the agency determines there is a significant impact, not when there is a less than significant impact. (*See, e.g.,* Cal. Code Regs. tit. 14 § 15091, particularly subd. (d) [requiring adoption of mitigation monitoring and reporting program made "to avoid or substantially lessen significant environmental effects"].) Petitioners argue that the Tassajara Agreement is an integral part of the Project and critical to its success and the justification for its approval. (Sierra Club Reply p. 16, ll. 7-15.) The County imposed numerous conditions on the approval of the Project, including the Project applicant's dedication of the acreage in the Northern and Southern Sites addressed in the Tassajara Agreement. (AR 12268-12306 [COAs]; AR 6-33 [Resolution Approving Developer Agmt.; Developer Agreement sections 2.010 and Article III].) The preservation agreement is also essential to the County's extension of the ULL under CCC Code section 82-1.018(a)(3).

There is substantial evidence to support the County's finding that compliance with this ordinance by the Project including the Tassajara Agreement is consistent with CCC Code section 82-1.018(a)(3) and the General Plan, and that the consistency with those land use laws means the Project has a less than significant land use impact at least with respect to the General Plan and Code. Petitioners have not cited authority that such a preservation agreement with the Project applicant means that the agreement must be imposed as a "mitigation measure" in the FEIR in order to comply with CEQA where there is no finding of significant environmental effects which the Tassajara Agreement is intended to mitigate. (Cal. Code Regs. tit. 14 §§ 15091(d), 15097(a) [agency shall create mitigation monitoring and reporting program when it has made findings under section 15091].)

Petitioners also contend that the Tassajara Agreement should have been included in the mitigation monitoring and reporting program because it provides mitigation for the Project's impacts on wetlands. The FEIR imposes Mitigation Measure MM BIO-3 by which the Project applicant must mitigate the loss of wetlands on the Northern Site for the U.S. and State wetlands anticipated to be lost and provides for a "detailed Wetland Mitigation Plan" to be prepared but makes no reference to the Tassajara Agreement. (AR 3617-18.) The FEIR also provides that "[i]n lieu of creating waters of the U.S. and State on the Project Site, the applicant may also choose to purchase mitigation credits from a qualified mitigation bank. (AR 3618.) Petitioners have not demonstrated the County's implicit determination that the Tassajara Agreement is not a mitigation measure for the loss of wetlands is not supported by substantial evidence.

G. Issue 7: CEQA Violation Adopting Statement of Overriding Considerations Without Consideration of Alternatives that Would Lessen Unavoidable Adverse Impacts

Petitioners' argument that the County failed to consider mitigation measures for the Project's significant unavoidable impacts on freeways, highway congestion, and greenhouse gas emissions before making its statement of overriding conditions is based on Petitioners' arguments that the County failed to properly evaluate feasible alternative locations for the Project within the ULL. (Sierra Club Op. Brief p. 24, ll. 21-27, citing to Section IV.D. of its brief addressing Project alternatives.) Petitioners also argue, based on their arguments the Tassajara Agreement should have been included as a mitigation measure for land use impacts or loss of wetlands, the County failed to evaluate the Tassajara Agreement as a mitigation measure that would lessen those unavoidable impacts. (Sierra Club Op. Brief p. 24, l. 27 – p. 25, l. 2, citing to Section IV.E. of its brief addressing the Tassajara Project as a mitigation measure for land use, loss of agricultural resources, and wetlands.) For the reasons stated above, the arguments are not persuasive. (*See also* AR 3947 [RDEIR Section 5.4.2 rejecting for the reasons stated a reduced intensity alternative to the Project evaluated in the RDEIR].)

The County's determination in the statement of overriding conditions that the benefits of the Project outweigh its unavoidable significant environmental effects is reviewed for abuse of discretion, and Petitioners have not demonstrated the County's conclusions regarding the infeasibility of alternative project locations within the ULL are not supported. (*See City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 967.) Petitioners have not demonstrated the County failed to comply with the requirements of CEQA Guidelines section 15093 governing statements of overriding conditions, or that the County's finding that the benefits of the Project are sufficient to

warrant its approval despite its unavoidable significant consequences is not supported by substantial evidence. (Cal. Code Regs. tit. 14 §§ 15092(b)(2), 15093(a).)

H. Issue 8: CEQA Violation by Failure to Respond to Public Comments

Petitioners contend the County violated CEQA by failing to adequately respond to comments made by the Town of Danville on the DEIR and RDEIR. The County was not required to respond to general comments by Danville regarding the development in its September 2014 letter sent 18 months before the DEIR was prepared, as the County was only required to respond to comments made after the DEIR was prepared and circulated for review in May 2016. (*Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35, 48-49.)

Petitioners assert the County failed to respond to Danville's comments in its July 18, 2016, letter commenting on the DEIR and cite a page from the FEIR responding to Danville's November 30, 2016 comment letter on the RDEIR. (Sierra Club Op. Brief p. 26, ll. 5-8, citing AR 6890.) The County, however, prepared and included in the FEIR separate, detailed responses to both the November 30, 2016, letter and the July 18, 2018 letter. (AR 6851-6870 [Danville 11/30/3016 letter]; AR 6871- 6890 [County Resp. in FEIR]; AR 7383-7422 [Danville 7/18/2016 letter]; AR 7423-7438 [County Resp. in FEIR].) Petitioners do not cite to or address at all the County's detailed response to Danville's July 18. 2016 letter. They have not met their burden of demonstrating the County committed a violation of CEQA by not responding to Danville's comments in light of the County's 16-page, item-by-item response. (AR 7423-7438.)

I. Issue 9: CEQA Violation Regarding Conflicting Acreages Subject to Preservation Area

Danville asserts a violation of CEQA because of discrepancies in the amount of acreage subject to dedication under the Tassajara Agreement, as the acreage to be dedicated is in some instances stated as 710 acres and in others 727 acres. (Danville Op. Brief pp. 23-26.) Danville states it only became aware of this discrepancy in preparing its Opening Brief. (Danville Op. Brief p. 24, ll. 27-28.) Real Parties try to explain the discrepancy, not altogether effectively, based on the offer of seven acres to SRVFPD and the initial uncertainty as to whether EBRPD would take title to the entire 24 acres designated for "nonurban" uses. (Real Parties' Resp. Brief to Danville p.5, ll. 9-21.)

Nevertheless, Real Parties argue that Danville's CEQA violation claim on this ground cannot be considered by the Court because Danville failed to exhaust its administrative remedies regarding this issue. Public Resources Code section 21177 codifies the exhaustion of administrative remedies rules for CEQA. (*Defend Our Waterfront v. State Lands Com.* (2015) 240 Cal.App.4th 570, 581.) Under the statute, the petitioner must generally have "objected to the approval of the project orally or in writing" before

the notice of determination, and "the alleged grounds for noncompliance" with CEQA must have been "presented to the public agency orally or in writing by any person during the public comment period provided by this division or before the close of the public hearing on the project before the issuance of the notice of determination." (Pub. Res. Code § 21177 subd. (a) and (b).)

The petitioner itself does not have to have raised the issue; if the petitioner participated in the administrative proceedings, the petitioner can raise grounds for noncompliance raised by other commenters during the public comment period or before the close of the public hearing. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199 ["The petitioner may allege as a ground of noncompliance any objection that was presented by any person or entity during the administrative proceedings. [Citation omitted.]" quoting *Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal. App. 3d 886, 894]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1118-1119.) "Although it is true the plaintiff need not have personally raised the issue [citation omitted], the exact issue raised in the lawsuit must have been presented to the administrative agency so that it will have had an opportunity to act and render the litigation unnecessary. [Citation omitted.]" (*Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 894, disapproved on other grounds in *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 529.)

"To satisfy the exhaustion doctrine, an issue must be 'fairly presented' to the agency. [Citation omitted.] Evidence must be presented in a manner that gives the agency the opportunity to respond with countervailing evidence. [Citation omitted.]" (*Citizens for Responsible Equitable Environmental Development v. City of San Diego, supra,* 196 Cal.App.4th at 527-528.) "Generalized objections are not sufficient to preserve specific legal and factual issues for judicial review. [Citations omitted.]" (*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 440-441 [in non-CEQA case, holding petitioner failed to exhaust administrative remedies that changes to the property triggered accessible parking requirements under the Building Code by generally disputing the City's determination that accessible parking was not required].) (*See also Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 446-447 [holding petitioner failed to exhaust administrative remedies regarding impacts to small farms].)

Danville's comments on the RDEIR which it cites to demonstrate it raised the acreage discrepancy of 710 or 727 acres for preservation do not address that issue; they are directed toward the alleged instability or inaccuracy of the Project description regarding the "urban" uses, the "true" acreage comprising the urban development for the residential project, versus the portion of the Project

designated as "nonurban" uses for purposes of CCC Code section 82-1.018(a)(3) to extend the ULL. (AR 7384; AR 7392 [explaining why the EIR did not provide an accurate and stable project description, arguing the EIR mischaracterized the development portion of the land to bring the extension of the ULL within the 30-acre limit of CCC Code section 82-1.018(a)(3); citing a "misleading description of the residential development area" with "all 'urban development' " to occur with the "30-acre Residential Development Area" when Danville argued the "nonurban uses" such as the stormwater detention basin and grading areas are not nonurban uses].)

Danville also cites a statement by Kevin Lew during the hearing before the Board. (AR 13573-74.) Mr. Lew's statement does not raise any discrepancy regarding the Project description as to the amount of acreage subject to preservation or dedication. (AR 13573-74 ["[T]o quote Hillesheim, quote, if I strike this down and in a couple of years if the Urban Limit Line is extended, what's preventing the developer from saying, quote, forget it, I'll go for 600 acres. [¶] I would offer then let the developer pursue developing 600 acres."].) Danville does not point to any other information in the record that suggests the acreage discrepancy it raises in its briefing was raised in the administrative proceedings below to provide the Board and the County the opportunity to address this concern.

Though not cited by the parties in the context of the exhaustion of this issue, one of the citations to the record in the briefing indicates that the County was in fact actually aware of questions raised concerning the amount of land subject to preservation and dedication in relation to the Project and the Tassajara Agreement. The Court considers the following information in the FEIR in determining whether the issue of the acreage discrepancy was exhausted. (*Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 680 [the "court independently reviews the administrative record to determine whether the exhaustion of administrative remedies doctrine applies."].)

In the FEIR, the County addressed the relationship between the Project and the Tassajara Agreement, stating "<u>Some commenters requested clarification of what lands are proposed to be preserved under the Project</u>." (AR 6802 (emphasis added).) This section of the FEIR then addresses in a full paragraph the acreage to be dedicated. This Response in the FEIR shows that the County was aware of questions regarding the acreage that would be dedicated. The Court will therefore consider the issue.

The County's Response in the FEIR reiterates that 101 acres of the Northern Site would be conveyed to EBRPD or the Regional Parks Foundation as would 609 acres of the Southern Site, which totals <u>710 acres</u>. (AR 6802.) The FEIR then continues, "In other words, the [Tassajara Agreement] would require the parties to support the dedication and permanent preservation of land at two locations <u>comprising a total of approximately [727] acres</u> of the Project Site (collectively the "Dedication Area").

(AR 6802.) The FEIR states 7 acres may be dedicated to SRVFPD, if not accepted by SRVFPD, then that acreage would also be dedicated to EBRPD, a total of 717 acres based on the acreage identified by the County in this response. (AR 6802.)

This Response in the FEIR confirms that the Dedication Area will be comprised of 727 acres, but it does not provide an explanation of the gap between 710 (or 717 acres) to be dedicated, adding the 101 and 609 acres (and the 7 acres potentially for SRVFPD) and the 727 acres defined as the Dedication Area under the Tassajara Agreement.

Real Parties argue that the discrepancy between the references to 710 and 727 acres in the FEIR as the "Dedication Area" exist because of questions as to what land within the 24 acres of nonurban uses EBRPD would take title to and whether SRVFPD would take title to the 7 acres offered to the fire service as part of the dedication and the Tassajara Agreement. (Real Parties' Resp. Brief p. 27, l. 19 -p. 28, l. 6 [citing AR 200, AR 3367 and explaining questions as to whether GHAD would annex and "own" graded property, or HOA for the Residential Development Area, or EBRPD.) More important, they argue that the difference between 710 (the minimum undisputed acreage to be transferred to EBRPD), 717 (with the 7 -acre SRVFPD portion), or 727 acres (per the Tassajara Agreement) address only title and ownership issues, not environmental issues, the physical components of the Project, or the uses of the Project Site. (Real Parties' Resp. Brief p. 28, ll. 7-22.) The question then is whether the discrepancy is a CEQA violation and whether any violation is prejudicial error. (*Stop Syar, supra,* 63 Cal.App.5th at 452 [no presumption error is prejudicial].)

Danville does not argue the Project description is "'unstable" because the description of any portions or dimensions of the Residential Development Area, nonurban uses, pedestrian staging areas, grading, and other similar and related components of the 771 acres changed, whether the "Dedication Area" is 710 or 727 acres. Danville does not respond to Real Parties' arguments and citations that the Dedication Area acreage variance between 710 to 727 relates to title issues, not any of the land uses or environmental issues associated with the portion of the Project Site that will be developed in some fashion. Under *Stop Syar*, the Court concludes any error in the County's failure to include the "errata" to the RDEIR changes to the acreage identified as "Dedication Area" is not prejudicial under the circumstances.

J. **Issue 10: CEQA Violation Based on Inadequate Evaluation of Cumulative Impacts on Biological Resources, Unsupported by Facts, Reasoned Analysis or Substantial Evidence**

Petitioners bear the burden of establishing the inadequacy of the FEIR's analysis of the cumulative impacts of the Project. (*Center for Biological Diversity v. California Department of Conservation* (2019) 36 Cal.App.5th 210, 243 ("*Center for Biological Diversity*").) The CEQA Guidelines define cumulative impact, including "the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (Cal. Code Regs., tit. 14, § 15355.) On the other hand, the CEQA Guidelines also provide that "A project's contribution [to cumulative impacts] is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact." (Cal. Code Regs. tit. 14 § 15130, subd. (a)(3).)

The CEQA Guidelines also provide guidance on the nature and depth of the discussion of cumulative impacts required in an EIR. "The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact." (Cal. Code Regs., tit. 14 § 15130(b).) If the lead agency examines a project with "an incremental effect that is not 'cumulatively considerable,' " the agency has to "briefly describe its basis for concluding the incremental effect is not cumulatively considerable." (Cal. Code Regs. tit. 14 § 15130(a).) The agency's discussion of the lack of cumulative impact should "identify facts and analysis supporting" its conclusion. (Cal. Code Regs. tit. 14 § 15130(a)(2).) (*See also Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1403.)

The RDEIR's discussion and analysis of the plant and wildlife species potentially impacted by the Project and mitigation measures to address its impacts is lengthy and detailed, and supported by extensive additional documentation in Appendix C. (AR 3542-3615 [RDEIR]; AR 4431-5072 [App. C].) Danville's argument suggests that whether the cumulative impacts analysis on biological resources is sufficient is somehow confined only to the pages of the cumulative impacts section of the RDEIR (AR 3924-3925, AR 3928-3929). The cumulative impacts analysis and the County's conclusions that the Project's contribution to cumulative impacts is not cumulatively considerable are clearly founded in

large part on the detailed biological resources analysis in other portions of the RDEIR and Appendix C. (AR 3928-3929.)

The cumulative impact discussion indicates that development and growth in the area have already resulted in cumulatively significant impact on biological resources. (AR 3928 ["Recent development patterns and growth in the area that are due to the loss of potential habitat for rare species have resulted in an existing cumulatively significant impact to biological resources."].) The discussion of cumulative impacts on biological resources summarizes the Project impacts and the mitigation measures that the RDEIR concludes will reduce the impacts on the special -status plant and wildlife to less than significant, which addresses the reasons why the Project will implement measures to alleviate the Project's contribution to cumulative impacts. (AR 3928-3929.) The RDEIR states that the projects identified in the vicinity must also "mitigate for impacts on special-status plant and wildlife species in a manner similar to the Project" as they would similarly be bound by the conservation laws. (AR 3929.) "Therefore, the Project, in conjunction with other existing, planned, and probable future projects, would not have a cumulatively significant impact related to biological resources." (AR 3929.)

Petitioners have the burden of demonstrating the County's abuse of discretion under CEQA as to the cumulative impacts analysis, the sufficiency of which is guided by "practicality and reasonableness" and only needs to "briefly" describe why the cumulative impact is not considerable. (Cal. Code Regs. tit. 14 § 15130 subd. (a) and (b).) Petitioners have not challenged the sufficiency of the biological resources analysis and the conclusions that the Project's impacts will be reduced to less than significant. Since this Project after mitigation will not have a significant impact on biological resources, and others in the vicinity subject to the same conservation requirements for biological resources must meet similar conservation and mitigation requirements, which Petitioners do not contest, Petitioners have not met their burden to demonstrate that the facts and analysis stated above do not provide adequate information and sufficient evidence to support the cumulative impact determination on biological resources, particularly in light of the totality of the RDEIR's materials and discussion of biological resources.

Petitioners cite *Preserve Wild Santee, supra,* 210 Cal.App.4th 260. (Danville Op. Brief p. 32, ll. 11-13.) That case held the cumulative impacts analysis on biological resources was sufficient based on (1) the EIR's assumption subsequent developments, which were in the early planning stages at the time the EIR was certified, would comply with previously approved land use documents that were subject to the same conservation goals, and (2) the biological resources technical report which evaluated the project's

own impacts, which would be mitigated below significant levels, and the requirement that the other projects in the early planning stages would also be required to meet or exceed the land use and conservation plan requirements. (*Id.* at 277-278.) That case supports that the cumulative impacts analysis of the EIR is not to be reviewed in a vacuum without reference to the totality of the extensive biological resources analysis and mitigation measures analyzed in other portions of the FEIR. Danville has not pointed to any evidence in the record that the County's analysis that the Project will not have cumulatively considerable impact on biological resources in light of the mitigation measures which have reduced the impact to less than significant is unsound or unsupported. (*See Save the El Dorado Canal v. El Dorado Irrigation District* (2022) 75 Cal.App.5th 239, 263 [substantial evidence challenge not considered where petitioner failed to demonstrate with citations to the record EIR's analysis was insufficient].)

K. Issue 11: CEQA Violation Based on Failure to Provide Information Regarding the Project's Inconsistencies with the General Plan

CEQA requires an EIR to describe inconsistencies of the Project with the General Plan. (Cal. Code Regs., tit. 14, § 15125, subd. (d); *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 632 ["Because EIRs are required only to evaluate 'any inconsistencies' with plans, no analysis should be required if the project is consistent with the relevant plans.' [Citations omitted.]"].) CEQA does not require the EIR to address "potential" inconsistencies, only actual inconsistencies. (*Stop Syar, supra*, 63 Cal.App.5th at 463.)

RDEIR includes several pages addressing the consistency of the Project with the General Plan. (AR 3723-3732.) To the extent this claim raises a CEQA violation, the Court has evaluated the grounds cited in Section IV.A.1.-6. above raised by Petitioners as to why the Project is inconsistent with the General Plan and CCC Code and has found no inconsistency on those grounds that was required to be disclosed in the FEIR. (*Stop Syar, supra*, 63 Cal.App.5th at 463.)

V. Evidentiary Issues

A. Requests for Judicial Notice

Petitioners jointly request the Court take judicial notice of a series of documents, including (1) official records of the County related to the enactment of Measure C as a ballot measure (Pets. RJN ¶¶ 1-3 and Brome Decl. Exhs. A-C); (2) official records of the County related to the enactment of Measure L (Pets. RJN ¶¶ 4-8 and Brome Decl. Exhs. D-H); (3) County 2016 Mid-Term Review of the ULL (Pets. RJN ¶

9 and Brome Decl. Exh. I); and (4) the Urban Water Management Plan 2020 adopted by EBMUD dated June 2021 (Pets. RJN ¶ 10 and Kline Decl. Exh. J.).

In the Sierra Club Case, the County Respondents filed a request for judicial notice, asking the Court take judicial notice of provisions of the Contra Costa County Code, specifically CCC Code Chapter 82-1 and CCC Code section 16-4.020 as well as the final Tassajara Agreement executed by the County. (County RJN Exhs. 1-3.)

Real Parties have requested the Court take judicial notice of over 20 documents, including (1) documents related to the City of San Ramon's notice, public hearing, and resolution authorizing the Tassajara Agreement (RP RJN ¶¶ 1-6, Henderson Decl. ¶¶ 2-7, and Compendium of Documents ("COD") (Exhs. 1-6); (2) East Bay Regional Park District's notice, public hearing, and resolution authorizing the Tassajara Agreement (RP RJN ¶¶ 7-10, Henderson Decl. ¶¶ 7-11, and COD Exhs. 7-10); (3) final Tassajara Agreement executed by County, City of San Ramon, and East Bay Regional Park District (RP RJN ¶ 11, Henderson Decl. ¶ 12 and COD Exh. 11); (4) May 2016 proposals for amendment of Sphere of Influence and annexations to cover Tassajara Parks (collectively "Annexation Proposals") (RP RJN ¶¶ 12-14, Henderson Decl. ¶¶ 13-15 and COD Exhs. 12-14); (5) Alameda and Contra Costa County LAFCO agendas, reports, and meeting minutes concerning Annexation Proposals and transfer to Contra Costa County LAFCO (RP RJN ¶¶ 15-20, Henderson Decl. ¶¶ 16-21 and COD Exhs. 15-20); (6) EBMUD Comment letter on Alamo Creek Project dated July 5, 2001 (RP RJN ¶ 21; Henderson Decl. ¶ 22 and COD Exh. 21.),

No party has objected to the Court taking judicial notice of the documents subject to these requests.

The Court grants the unopposed requests, taking a broad view of the meaning of "relevance" under the Evidence Code, and in that in certain instances both sides rely on some of the documents for which the parties request judicial notice. Pursuant to Evidence Code sections 452(b) and (c), the Court takes judicial notice of the existence of these documents, almost all of which are legislative enactments or other government records, but subject to the usual rules and limitations on judicial notice. (*StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457 fn. 9 [judicial notice of a document "includes the existence of a document" but does not extend to "the truthfulness and proper interpretation of the document" if they are disputable]; *Apple Inc. v. Superior Court* (2017) 18 Cal.App.5th 222, 241 ["judicial notice of a document does not extend to the truthfulness of its contents or the interpretation of statements contained therein, if those matters are reasonably disputable," citing *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1103–1104 and *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113.) (*Cf. Scott v. JPMorgan Chase Bank, N.A.* (2013) 214

Cal.App.4th 743, 752, 754 [in connection with judicial notice of a government document, stating, "Where, as here, judicial notice is requested of a legally operative document—like a contract—the court may take notice not only of the fact of the document and its recording or publication, but also facts that clearly derive from its legal effect" and "whether the fact derives from the legal effect of a document or from a statement within the document, the fact may be judicially noticed where, as here, the fact is not reasonably subject to dispute."].) The Court also notes that the relevance of some of the documents seems more tenuous than others, in particular Henderson/COD Exh. 21 (2001 comment letter on Alamo development) and Kline Exh. J (June 2021 EBMUD Urban Water Management Plan).

In addition, the Court is cognizant of the limitations on its consideration of legislative history in interpreting a statute. These limitations are discussed in detail in *Koufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26. For example, the legislative history "as a general rule in order to be cognizable . . . must shed light on the collegial view of the Legislature as a whole. [Citation omitted.]" (*Id.* at 30 [statements of individual legislator or author of the bill generally are not considered because the Court must ascertain the "intent of the Legislature as a whole"].)(*See also Hesperia Citizens for Responsible Development v. City of Hesperia* (2007) 151 Cal.App.4th 653, 659.) Further, as set forth in the tentative ruling, resorting to legislative history to aid in the interpretation of the statute is appropriate only if the Court cannot discern the meaning from the plain language of its terms.

B. <u>SSAR</u>

The County filed the SSAR concurrently with the Respondents' Briefs and the County's Joinder/Opposition without first conferring with the Petitioners and without obtaining Petitioners' consent or an order for augmentation of the record. Sierra Club Parties have objected to the Court's consideration of the SSAR. At the initial hearing on January 30, 2023, however, they withdrew their objection.

V. Remedies Available for CEQA Violation

A. <u>Legal Standards</u>

Public Resources Code section 21168.9 governs remedies for a violation of CEQA and provides:

> (a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that <u>any determination, finding, or decision of a public agency has been made without compliance with this division</u>, the court shall enter an order that includes one or more of the following:

(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

(2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division. The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.

(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly

provided in this section, nothing in this section is intended to limit the equitable powers of the court.

(Pub. Res. Code § 21168.9 (emphasis added).)

"The phrases 'in whole or in part' and 'any or all' allow some parts of the approvals and the project to be severed from other parts with only the severed parts being invalidated or suspended. [Citation omitted.] Courts must consider severance." (*King & Gardiner Farms, LLC v. County of Kern, supra,* 45 Cal.App.5th at 896.)

The Courts are divided as to whether partial decertification of an EIR is allowed. (*Compare Sierra Club v. County of Fresno* (2020) 57 Cal.App.5th 979 and *Landvalue 77, LLC v. Bd. of Trustees of the Calif. State Univ.* (2011) 193 Cal.App.4th 675 [CEQA statute do not allow partial decertification of an EIR] to *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2017) 17 Cal.App.5th 1245 and *Preserve Wild Santee v. City of Santee, supra,* 210 Cal.App.4th 260 [partial decertification of an EIR is allowed under Public Resources Code section 21168.9 if the Court is able to make the required severability findings].) Petitioners, however, direct the Court to *Save Our Peninsula, supra,* 87 Cal.App.4th 99 and *California Oak Foundation, supra,* 133 Cal.App.4th 1219, cases in which the Courts found the EIR to be deficient in its analysis of the water supply and in which the Courts decertified the EIR in its entirety. (*Save Our Peninsula, supra,* 87 Cal.App.4th at 143; *California Oak Foundation, supra,* 133 Cal.App.4th at 1244.) Partial decertification of the FEIR is not appropriate, because the County's approval of the Project, including the

B. Application

In the *California Oak Foundation* decision, the Court directed that a writ of mandate issue decertifying an EIR that failed to comply with CEQA only because it did not have an adequate discussion of the water supply for the project. (*Id.* at 1244.) As in this case, the Court found the EIR failed to present a reasoned analysis of the availability of a water supply and the uncertainties regarding the city's reliance on the source of water it anticipated to supply the project. The *Vineyard, King & Gardiner, Save Our Peninsula,* and *California Oak Foundation* discussed at length above demonstrate the significance of the analysis of water supply in an EIR. Indeed, Mitigation Measure MM USS-1 highlights the particular significance of EBMUD supplying water to the Project because if that water source fails, the Project will not move forward.

The Court has concluded above that the FEIR violates CEQA because it does not contain adequate information and a reasoned analysis to support that sufficient water will be available for the Project through conservation measures, the timing of when those measures will produce the water needed, and based on the uncertainties regarding whether EBMUD can or will supply water, with the likelihood based on current evidence that a contested LAFCO annexation process may be required before EBMUD is required to supply water. The water analysis is based on the specific parameters of the Project, including the number of housing units and anticipated number of residents in the Residential Development Area. When the County decision-makers and the public are provided with accurate and more complete information about the water supply issues and a reasoned analysis addressing the water supply issues, the County could potentially reach a different conclusion regarding the approval of the Project, including that the Project should potentially be modified or reduced to lower the potential water supply needs, or that other mitigation requirements should be imposed for conservation and water supply. (*See Center for Biological Diversity v. Dept. of Fish & Wildlife, supra,* 17 Cal.App.5th at 1256-1259.)

The Court finds partial decertification of the FEIR is inappropriate. (*California Oak Foundation, supra,* 133 Cal.App.4th at 1244.) A CEQA-compliant EIR with a fulsome discussion of water supply issues that are essential to the Project proceeding is the foundation for the approval of the entire Project. The Court does not find there are discrete or severable portions of the Project that could proceed if, based on a complete discussion and reasoned analysis of the water supply issues and uncertainties, the County were to determine it is unlikely the Project as presented could be supplied with the water necessary to support the residential development. This case is distinguishable from, for example, *Save Our Capital! v. Dept. of General Services* (2023) 87 Cal.App.5th 655, where portions of an EIR addressing exterior design of a state building could be severed from activities related to the portions of the EIR that complied with CEQA. (*Id.* at 710-11.)In addition to the certification of the FEIR, the County's actions related to the approval of the Project included a number of different components, some of which the Court finds are severable under Public Resources Code section 21168.9. Aside from the decertification of the FEIR, the County urges the Court to leave in place all Project approvals but concedes the writ of mandate should direct the County to set aside the Vesting Tentative Map approval (County File #SD10-9280) and should "suspend Project activities to physically develop the site." (County Suppl. Brief p. 13, ll. 25-27.) The Court finds such limited relief is inadequate under the circumstances and the severance standards of Public Resources Code section 21168.9.

The Court may limit its order to the noncompliant decision or project activity "**only if**" it finds "the portion or specific project activity or activities are severable" and that "severance will not prejudice complete and full compliance with this division." (Pub. Res. Code § 21168.9(b).) The Court finds that the only approvals and actions by the County that are severable and that will not prejudice the County's full compliance with CEQA are (1) the expansion of the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3), to the extent that approval of the expansion of the ULL merely extends the ULL by 30 acres not limited by or to the Project's residential development of 125 homes under the Development Agreement, and (2) the approval of the Tassajara Agreement, which is essential to the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3).

The remainder of the approvals, including (1) the approval of the Development Agreement which is specific regarding the development of a 125-unit high density residential development, (2) approval of amendments to zoning and the General Plan related to the Project, including in particular the re-zoning of the expanded ULL with the Residential Development Area as "single family high density" and the P-1 rezoning of the Project site; and (3) the Vesting Tentative Map. These approvals are implicitly and explicitly based on the analysis of the Project under a fundamentally inadequate FEIR that violates CEQA. The Development Agreement, rezoning, and Vesting Tentative Map are all integrally related to a 125-unit single-family high density residential development that can only proceed if there are adequate water supplies and as to which the FEIR failed to provide a reasoned analysis and information on which the County decisionmakers and the public could assess the availability of water. Allowing the other approvals directly tied to a 125-unit high density development improperly prejudices the County's ability to freshly analyze the water supply issues with an informationally sufficient EIR.

VI. Peremptory Writ of Mandate to Issue

Sierra Club Parties' Petition for Writ of Mandate is **granted in part** as to the first cause of action of the Petition. As to that cause of action, the Court finds that Respondents violated CEQA because the FEIR fails as an informational document based on its inadequate information and lack of reasoned analysis regarding water supply issues, the EBMUD Annexation Policies, and mitigation measure MM USS-1 explained above. On that ground, a peremptory writ of mandate shall issue: (a) compelling Respondents to void the certification of the FEIR (Pub. Res. Code § 21168.9(a)(1)); (b) compelling Respondents to set aside and vacate all other Project-related approvals challenged in the Petition with the exception of (a) the expansion of the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3), to the extent that approval of the expansion of the ULL merely extends the ULL by 30 acres

not limited by or to the Project's residential development of 125 homes under the Development Agreement, and (b) the approval of the Tassajara Agreement related to the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3).

Sierra Club Parties' petition for writ of mandate as to the second cause of action is **denied.**

Counsel for Petitioners is directed to prepare a peremptory writ of mandate consistent with this order.

IT IS SO ORDERED.

Dated: June 27, 2023

Hon. Danielle K. Douglas
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE

I hereby declare that I am employed in the City of Berkeley, County of Alameda, California. I am over the age of eighteen years and not a party to this action. My business address is 2748 Adeline Street, Suite A, Berkeley, California 94703.

- **Notice of Entry of Judgment**

On August 22, 2023, I served the foregoing document(s) on the parties in this action, located on the attached service list as designated below:

( )	By First Class Mail:	Deposited the above documents in a sealed envelope with the United States Postal Service, with the postage fully paid.
( )	By Personal Service:	I personally delivered each in a sealed envelope to the office of the address on the date last written below.
( )	By Overnight Mail:	I caused each to be placed in a sealed envelope and placed the same in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
(X)	By Electronic Transmission:	Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Berkeley, California on August 22, 2023.

Jessica L. Blome

Jessica L. Blome

SERVICE LIST

Thomas Geiger Kurtis Keller Contra Costa County Counsel's Office 1025 Escobar St Fl 3 Martinez, CA 94553-1223 Phone: 925-655-2200 Fax: 925-655-2263 Email: Thomas.Geiger@cc.cccounty.us Stephen.Siptroth@cc.cccounty.us Kurtis.Keller@cc.cccounty.us	Respondent CONTRA COSTA COUNTY and CONTRA COSTA COUNTY BOARD OF SUPERVISORS
ARTHUR F. COON MATTHEW HENDERSON Miller Starr Regalia 1331 N California Blvd, 5th FL Walnut Creek, CA 94596 Phone: 925-935-9400 Fax: 925-933-4126 Email: arthur.coon@msrlegal.com matthew.henderson@msrlegal.com	Real Parties in Interest FT LAND, LLC; MEACH, LLC; BI LAND, LLC; TH LAND, LLC
Derek McDonald, SBN 238477 Fred S. Etheridge, SBN 125095 Tim Kline, SBN 319227 375 Eleventh Street (MS 904) P.O. Box 24055 Oakland, CA 94623 Telephone: (510) 287-0174 Facsimile: (510) 287-0162 Email: derek.mcdonald@ebmud.com fred.etheridge@ebmud.com tim.kline@ebmud.com	Attorneys for Petitioner EAST BAY MUNICIPAL UTILITY DISTRICT (Case No. N21-1274)
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Email: steller@rmmenvirolaw.com cshorrock@rmmenvirolaw.com TOWN OF DANVILLE ROBERT B. EWING, SBN 121444 510 La Gonda Way Danville, CA 94526 Telephone: (925) 314-3383 Facsimile: (925) 838-0548 Email: rewing@danville.ca.gov	

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June 2nd, 2025

Will Nelson, Principal Planner
Contra Costa County Department of Conservation and Development
30 Muir Rd.
Martinez, CA, 94553

Save Mount Diablo Letter of Support to Renew the County Urban Limit Line

Dear Mr. Nelson,

Save Mount Diablo (SMD) is a nationally accredited land trust founded in 1971 with a mission to preserve Mount Diablo's peaks, surrounding foothills, watersheds, and its sustaining 200-mile Diablo Range. We accomplish this through land conservation and management strategies designed to protect the mountain's natural beauty, biological diversity, and historic and agricultural heritage; enhance our area's quality of life; and provide educational and recreational opportunities consistent with protection of natural resources.

We acquire land, or interests in land, for conservation purposes and often for addition to parks on and around Mount Diablo. We are involved in land use planning, policy and advocacy which might affect protected lands. We build trails, restore habitat, and are conduct environmental education. In 1971, there was just one park on Mount Diablo totaling 6,778 acres; today there are almost 50 parks and preserves around Mount Diablo totaling 120,000 acres north of Altamont Pass. In 2025 we reached a milestone of protection of over 1 million acres in the 3.5-million-acre Diablo Range. We include more than 11,000 donors and supporters.

Save Mount Diablo has been one of the strongest supporters of the creation and defense of Urban Limit Lines (ULL) in Contra Costa. We are writing to support the renewal of the Contra Costa County (County) ULL, and, more specifically, the adjustments reflected in Figure 1 (that constitute the current potential draft ULL). The county has made thoughtful changes to the current ULL based on current planning and changed circumstances.

Contracting the ULL to exclude areas already restricted from development, lying within buffers, and subject to development constraints like steep slopes and very high fire hazard severity zones (as indicated by CAL FIRE's most recent maps, see Figure 2), makes sense. Expanding the ULL to align with city limits and existing development also makes sense and does not compromise the protection of open space in any practical way.

We are cautiously optimistic we can support the current proposed ULL location as drawn up by staff (see Fig. 1) if that location does not change between now and the ULL renewal going to the ballot (excepting a change in the San Ramon area that staff have described as aligning with city limits). The current proposed ULL should not be modified between now and adoption by the Board to accommodate potential future development.

Ever since conversations to renew the ULL began, we have engaged with County staff, leadership, and other stakeholders, including environmental, agriculture and open space advocates in the region. Two locations of special interest have repeatedly come up during these conversations: the land around Byron Airport and the Tassajara Valley.

Save Mount Diablo Satisfied With Byron Airport Proposal, Given Proposed Restrictions

The current County staff proposal to allow the Board of Supervisors to approve development in this specific area with findings (i.e., restricted to exclude the possibility of residential development) and a 4/5ths vote of the Board, is satisfactory. The 500-acres of low-quality agricultural land that might be affected in the future are not of significant habitat or scenic value.

The synergies of this proposal with the potential future SR-239 project make sense. SMD advocacy related to SR-239 has always focused on avoiding impacts to the sensitive open space habitat around Byron Airport. Our long-standing advocacy policy is fine with an SR-239 focused on improvements and modification of existing roadways. Current proposed SR-239 alignments avoid sensitive habitats and would improve the existing Byron Highway. We are satisfied with this.

As long as the possibility of residential development is excluded, and care is taken that development in this area is consistent with the County General Plan and Climate Action Plan, the County staff proposal for the area east of Byron Airport is reasonable.

We are obviously supportive of adjusting the ULL to exclude sensitive open space lands to the north, west and south of the airport.

Save Mount Diablo Supports Staff's Interpretation of the ULL in the Tassajara Valley

Save Mount Diablo remains unequivocally supportive of the conservation benefits of the 30-acre, 125-unit Tassajara Parks project, including the 17,600+ acre Tassajara Agricultural Preserve, and the protection via dedication of 727 acres of open space that would be achieved once the project is approved.

The County Board of Supervisors fulfilled all requirements, including the creation of the Tassajara Valley Agricultural Preserve, to adjust the ULL by 30-acres to accommodate the development footprint of the project. While the Board also separately approved the Tassajara Parks project itself in the summer of 2021, a lawsuit was filed against the project approval, and a subsequent ruling in 2023 vacated that approval pending further analysis of water supply issues.

In so much as these actions are relevant to the current County ULL renewal, we agree with County staff that the 30-acre adjustment made several years ago stands and the current County ULL includes what was the planned Tassajara Parks development footprint within it. We are pleased that the Tassajara Valley now and in the future has a double layer of protection: the ULL (assuming it is renewed) and the Agricultural Preserve.

Save Mount Diablo's History of Defending Tassajara Valley

Save Mount Diablo has defended the Tassajara Valley and surrounding hills for over two decades.

The public's first major victory here was stopping the massive "Tassajara Valley Owners Property Association" project in the late 1990s. Under the leadership of former County Supervisors Donna Gerber and Joe Canciamilla, Save Mount Diablo, the Sierra Club, Greenbelt Alliance, and hundreds of residents helped stop thousands of units proposed in the 4,900-acre project.

Then in 2000, we worked together to tighten the County ULL to place the Tassajara Valley and other places outside the line.

In 2004, when Contra Costa County's transportation sales tax, Measure C, came up for renewal as Measure J, activists including Save Mount Diablo successfully included a provision that the county and all cities adopt voter-approved ULLs. In 2006, county voters and every city including San Ramon once again approved a ULL, with the Tassajara Valley outside the line.

In 2007, the "New Farm" project proposed to build 186 houses and a cemetery over 771 acres of the Tassajara Valley. Developers proposed to do this by changing the definition of what "urban" development is. If people accepted that development beyond the ULL wasn't "urban," then it wouldn't matter if it was on one side of the line or the other. That was a ridiculous proposed end run around the Urban Limit Line and was rightly rejected.

Thanks to the work of Save Mount Diablo, concerned officials, and valley and nearby city residents, no one was fooled. So much resistance was generated that the developer would later table "New Farm."

In 2010, we achieved a great victory in San Ramon against Measure W, which would have greatly expanded San Ramon's ULL to include the Tassajara Valley and allow housing subdivisions over the whole area. With the help of San Ramon residents, we crushed it, with 72 percent of voters saying "no" to developing 1,600 acres of the Tassajara Valley.

Besides massive housing projects, there was also a cemetery proposed on 220 acres of the valley. The local community was so concerned that when Save Mount Diablo led a hike in the summer of 2014 against this project, about 500 people, including local ranchers, showed up to signal their opposition! The cemetery project has gone quiet for several years, and efforts are ongoing to protect the land it would have been built on through fee-title conservation purchase or easement.

In 2013, "New Farm" was tabled and the developer began meeting with Save Mount Diablo, cities, and other stakeholders to see if a compromise could be reached: he would get a return on his investment, and we could greatly benefit the public by dramatically reducing project impacts and threats to the ULL.

If and when the Tassajara Parks project is proposed again and approved, it would greatly contribute to the conservation of this region for wildlife, the public, and future generations.

We Look Forward to Helping Get the ULL Renewed

The County ULL has been an important tool in protecting the agriculture and open space of Contra Costa and incentivizing development in appropriate areas since it was created. Given the intensifying impacts of climate change and the disastrous results of sprawl, land use policies that encourage compact and efficient infill development, such as the ULL, are more essential than ever.

If Contra Costa is to protect its natural resources, improve development and increase resilience in the face of a more extreme climate, it is vital that the ULL is renewed.

We look forward to working to ensure the renewal of the County ULL next year.

Thank you for the opportunity to provide comments.

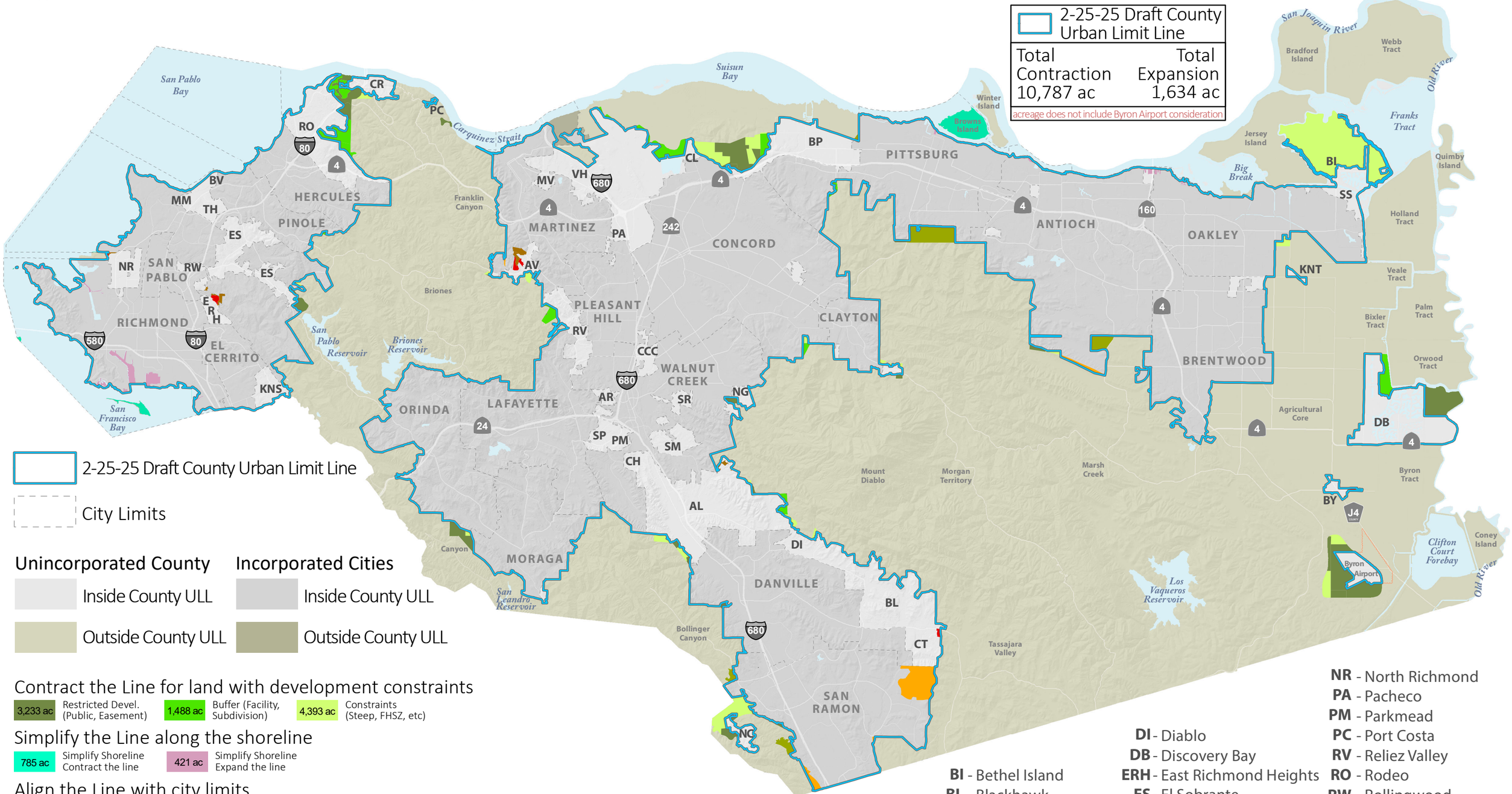
Regards,

Juan Pablo Galván Martínez
Senior Land Use Manager

Cc:

Supervisor John Gioia
Supervisor Candace Andersen
Supervisor Diane Burgis
Supervisor Ken Carlson
Supervisor Shanelle Scales-Preston

Figure 7: Summary of potential adjustments to the County ULL: 2-25-25 Draft County Urban Limit Line

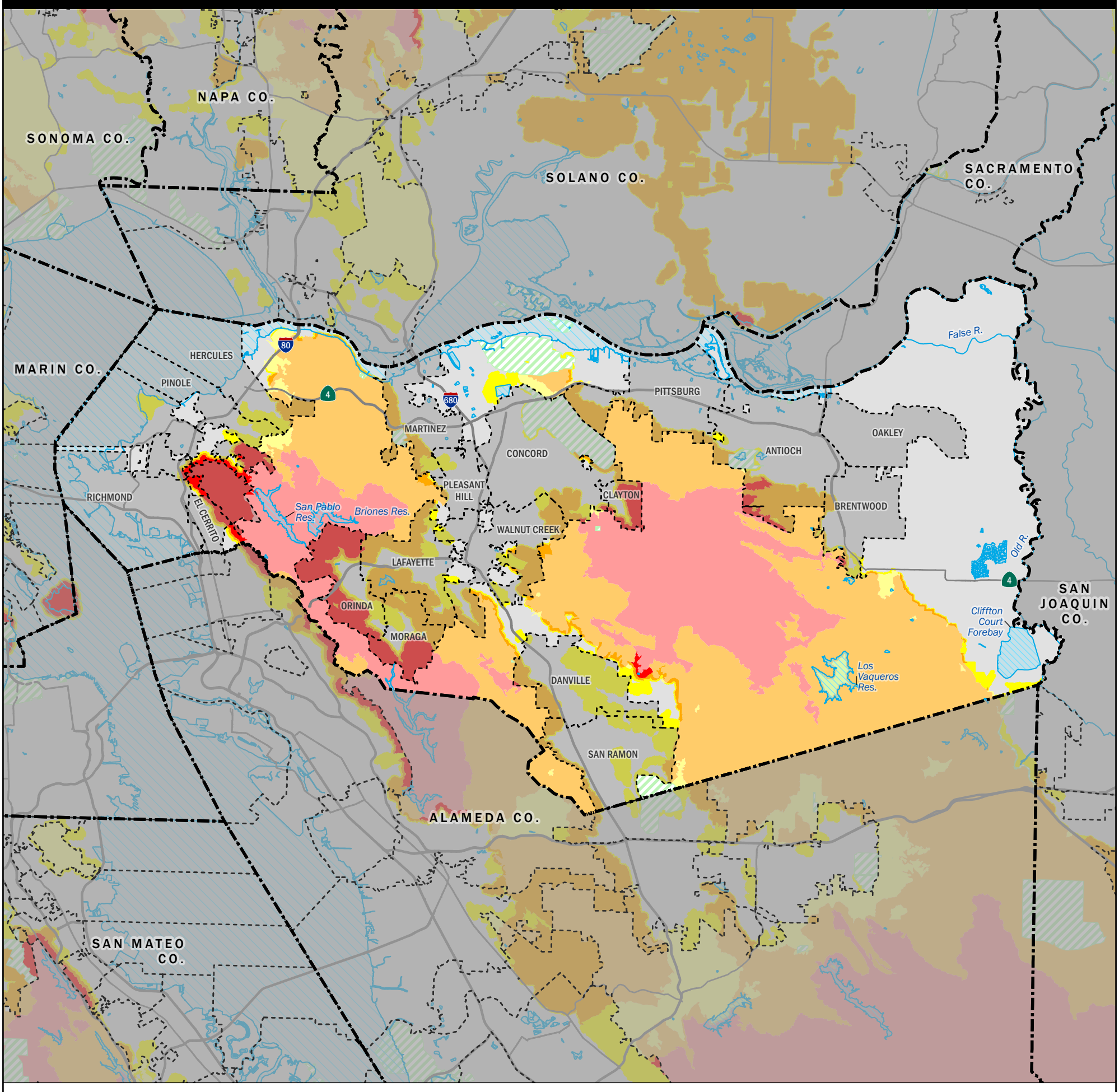


CONTRA COSTA COUNTY – UNINCORPORATED LRA

Local Responsibility Area Fire Hazard Severity Zones

As Identified by the State Fire Marshal

February 24, 2025



Fire Hazard Severity Zones (FHSZ) in Local Responsibility Area (LRA), as Identified by the State Fire Marshal

Very High | High | Moderate

Fire Hazard Severity Zones in State Responsibility Area (SRA), Effective April 1, 2024

Very High | High | Moderate

Mi 0 10
Km 0 10 20

Projection: NAD 83 California Teale Albers
Scale: 1:333,000 at 11" x 17"

Incorporated City | Waterbody | Unzoned LRA | Federal Responsibility Area (FRA)

Government Code section 51178 requires the State Fire Marshal to identify areas in the state as moderate, high, and very high fire hazard severity zones based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. Moderate, high, and very high fire hazard severity zones shall be based on fuel loading, slope, fire weather, and other relevant factors including areas where winds have been identified by the Office of the State Fire Marshal as a major cause of wildfire spread.

The State of California and the Department of Forestry and Fire Protection make no representations or warranties regarding the accuracy of data or maps. Neither the State nor the Department shall be liable under any circumstances for any direct, special, incidental, or consequential damages with respect to any claim by any user or third party on account of, or arising from, the use of data or maps.

Gavin Newsom, Governor, State of California

Wade Crowfoot, Secretary for Natural Resources, CA Natural Resources Agency

Joe Tyler, Director/Fire Chief, CA Department of Forestry and Fire Protection

Daniel Berlant, State Fire Marshal, CA Department of Forestry and Fire Protection

Data Sources:

CAL FIRE Fire Hazard Severity Zones (FHSZSRA23_3, FHSZLRA_25_1)

CAL FIRE State Responsibility Areas (SRA25_1)

City and County boundaries as of 10/22/24 (CA Board of Equalization)