



PLANNING COMMISSION AGENDA

Regular Meeting

7:00 P.M. on Tuesday, July 11, 2017

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

1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

2. ADMINISTRATIVE

- 2.a. Selection of Planning Commission Chair and Vice Chair.
- 2.b. Review of agenda items.
- 2.c. Declaration of Conflict of Interest.
- 2.d. Confirmation that Commissioner Peter Cloven will report at the City Council meeting of July 18, 2017 (alternate Commissioner Bassam Altwal).

3. PUBLIC COMMENT

4. MINUTES

- 4.a. Approval of the minutes for the June 27, 2017 Planning Commission meeting.

5. PUBLIC HEARINGS

- 5.a. **ZOA-03-17, City of Clayton.** The Clayton Planning Commission will be making a recommendation to the City Council regarding an Ordinance for the purposes of determining residential density calculations for residential parcels with sensitive land areas.

Staff Recommendation: Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 03-17 recommending the City Council approve the revised Ordinance adding Chapter 17.22 to Title 17 "Zoning" determining the methodology of residential density calculations for residential parcels with sensitive land areas.

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. COMMUNICATIONS

8.a. Staff.

8.b. Commission.

9. ADJOURNMENT

9.a. The next regular meeting of the Planning Commission is scheduled for **Tuesday, July 25, 2017.**

Most Planning Commission decisions are appealable to the City Council within ten (10) calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340. An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present.

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

Minutes
Clayton Planning Commission Meeting
Tuesday, June 27, 2017

1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

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

Present: Chair Dan Richardson
 Vice Chair Carl Wolfe
 Commissioner Bassam Altwal
 Commissioner Peter Cloven
 Commissioner William Gall

Absent: None

Staff: Community Development Director Mindy Gentry
 Assistant Planner Milan Sikela, Jr.

2. ADMINISTRATIVE

2.a. Review of agenda items.

2.b. Declaration of Conflict of Interest.

 None.

2.c. Commissioner Peter Cloven to report at the City Council meeting of July 18, 2017.

3. PUBLIC COMMENT

None.

4. MINUTES

4.a. Approval of the minutes for the April 25, 2017 Planning Commission meeting.

Commissioner Cloven moved and Commissioner Gall seconded a motion to approve the minutes, as amended. The motion passed 5-0.

5. PUBLIC HEARINGS

5.a. **VAR-01-17, SPR-02-17; Variance, Site Plan Review Permit; Castle Companies; Verna Way at Lydia Lane; (APNs: 120-043-037 and 120-043-038).** Review and consideration of a request from Castle Companies for the approval of the Verna Way Residential Subdivision Variance (VAR-01-17) and Site Plan Review Permit (SPR-02-17). The Variance request involves consideration of a reduction in the side setbacks from the edge of the shared vehicular shared access easement off of Pine Hollow Road for the residences on Lot 5 and Lot 6. The Site Plan Review Permit request involves

consideration of the architecture, front yard landscaping, lighting, and fencing proposed for the construction of six detached single-story single-family residences. One single-story residence is proposed on each of the six lots that were created by the previously-approved six-lot tentative subdivision map for the Verna Way Residential Subdivision.

The staff report was presented by Assistant Planner Sikela.

Commissioner Altwal had the following questions:

- What was the initial Variance approval (VAR-02-14) granted by the Planning Commission and approved on August 9, 2016? *Assistant Planner Sikela indicated that the Variance entitlement (VAR-02-14) that was conditionally approved by the Planning Commission on August 9, 2016 along with the Tentative Map (MAP-01-14) allowed all six lots within the Verna Way Residential Subdivision to have smaller lots widths than the required 100-foot minimum lot width requirement for properties located within the R-15 District.*
- Was the requirement for a shared vehicular access easement for Lots 5 and 6 a condition of approval? *Assistant Planner Sikela indicated that, yes, the shared vehicular access easement was a condition of the Tentative Map approval.*
- Why are the setbacks for the residences measured from the edge of the vehicular access easement, where applicable, rather than the property line? *Assistant Planner Sikela indicated that is a regulation required by the Clayton Municipal Code and the rationale for establishing this in the Code would be, in part, to ensure that residences are not constructed inside of or dangerously close to vehicular access easements.*
- Is there adequate room in the shared vehicular access easement on Lots 5 and 6 for other vehicles to park near each residence and for vehicles to safely enter and exit the garages of each residence while these vehicles are parked there? *Assistant Planner Sikela indicated that the driveway extends well beyond (north of) the shared vehicular access easement, allowing ample room for vehicles to park and for other vehicles to maneuver safely around parked vehicles.*
- Where is the sewer line connection for Gibson Lane located on the landscape plan? *Assistant Planner Sikela indicated that the sewer line connection is shown on the landscape plan crossing Lot 3 and being stubbed out on Gibson Lane.*

Vice Chair Wolfe had the following questions:

- Is there adequate space in the vehicular access easements for fire safety and life safety vehicles to enter and exit? *Assistant Planner Sikela indicated that, yes, there is adequate space for fire safety and life safety vehicles to enter and exit and this ingress/egress issue was reviewed by the Contra Costa County Fire Protection District.*
- Who will maintain the stormwater biofiltration swales and basins? *Assistant Planner Sikela indicated that a homeowners association would be established for the subdivision which would maintain the stormwater biofiltration swales and basins.*

Commissioner Cloven asked how would the stormwater biofiltration swales and basins be maintained. *Assistant Planner Sikela indicated that, in addition to the maintenance of the stormwater biofiltration swales and basins being the responsibility of the homeowners association, a stormwater operation and maintenance plan would be established for the subdivision which would involve, in part, monitoring of the stormwater biofiltration swales and basins by the City Engineering Department.*

Chair Richardson had the following questions:

- Would the current Variance request for the residences of Lots 5 and 6 only be for the side setbacks from the residences to the shared vehicular access easement? *Assistant Planner Sikela indicated that was correct.*
- Where are the locations of the existing trees to be retained? *Assistant Planner Sikela indicated that there are existing trees to be retained in the southwest and west sides of Lot 5 and along the east side of Lot 4.*

The representative of the applicant, Steve Garrett with Castle Companies, indicated the following:

- We are in agreement with the recommendations and conditions proposed by staff.
- The residences have been designed to fit in with the existing surrounding neighborhood by proposing single-story homes.
- The shared driveway apron on Lots 5 and 6 extends far beyond the northernmost edge of the vehicular access easement in order to allow adequate space for vehicles to park and maneuver.
- We have provided a stubbed-out sewer line for a possible future subdivision that may be developed along Gibson Lane.
- Regarding project-related stormwater drainage, State law requires that the stormwater biofiltration swales and basins shall be inspected by a qualified inspection company and they will be maintained by the homeowners association.
- We have chosen landscaping within the stormwater detention basins that is adequate for filtration purposes.
- We request deletion of proposed Condition of Approval 4 requiring that concrete tile roof material shall be used on all residences. The reason for this requested deletion is that, while concrete tile roof material is complementary with the Mediterranean plan, it would be too heavy of a roof material for the Craftsman and Farmhouse plans whereas the composition shingle roof material would be much more complementary with the architecture for the Craftsman and Farmhouse plans. Also, concrete tile roofs are more prone to being cracked and damaged in the instance that someone may need to walk on the roof.

The public hearing was opened.

Brent Wakefield, 7 Pardi Lane, had the following comments and questions:

- I live in the Pine Hollow Estates subdivision directly adjacent to and east of the Verna Way subdivision.
- I am in support of having only two detention basins on the project site instead of a detention basin on each lot like we do in the Pine Hollow Estates subdivision.
- Will the storm drainage system be open or closed?
- What is the paving surface proposed for the vehicular access easement and will this paving surface be maintained by the homeowners association?
- What are the hours and days that construction will be allowed on the project site?

Jeanine Wakefield, 7 Pardi Lane, asked what the price point of the proposed residences is.

The public hearing was closed.

The representative of the applicant, Steve Garrett, had the following responses to the public's inquiries:

- The stormwater drainage system is a closed system. We chose this design since an open design, which usually involves a ditch, allows water to increase in velocity as it travels downslope which may create flooding problems.
- The vehicular access easements will be surfaced with asphalt or concrete and will be maintained by the homeowners association.
- The price point for the residences is approximately 1.1 million dollars.

Assistant Planner Sikela responded to the question regarding hours and days of construction indicating that the allowable times and days of construction are provided as Advisory Note 8 appearing on Page 17 of the staff report and states that, in accordance with Clayton Municipal Code Section 15.01.101, all construction and other work shall occur only between 7:00 a.m. and 5:00 p.m. Monday through Friday with any such work beyond these hours and days being strictly prohibited unless specifically authorized by the City Engineer.

Commissioner Gall confirmed that a stubbed-out sewer line will be available for residential properties located on Gibson Lane. *Steve Garrett indicated that is correct and the details of the sewer line would be provided on the improvement plans.*

Commissioner Atwal asked who makes sure that the on-site pest control is implemented. *Director Gentry indicated that, prior to issuance of their building permit or tree removal permit; staff would ensure that the developer had addressed this issue by requesting the appropriate evidentiary documentation.*

Commissioner Gall asked if there were any public comments received after the public hearing notice was sent out. *Assistant Planner Sikela indicated that no comments were received by staff after the public hearing notice was distributed.*

Chair Richardson initiated discussion on and Vice Chair Wolfe concurred with removal of proposed Condition of Approval 4 requiring that concrete tile roof material shall be used on all residences. *Director Gentry indicated that the condition was proposed in order to incorporate more durable, longer-lasting roof materials for the residences which the concrete tile roofing would provide.*

The Commission concurred that, since there is no safety aspect of the concrete tile roof material and staff proposed the condition only for durability purposes, the concrete tile roof material would not integrate visually with the Craftsman and Farmhouse plans and, as a result, requested that staff delete the condition.

Commissioner Gall indicated that the differing plan elevations proposed for Lots 1 and 2 on Verna Way as well as Lots 5 and 6 on Pine Hollow Road would provide a beneficial look for the respective streetscapes.

Commissioner Atwal explained that he did not support approval of the Variance since he felt the Variance request did not meet the required findings since the residences of Lots 5 and 6 could have adhered to the required setbacks from the edge of the shared vehicular access easement had they been designed with smaller footprints or sited further back on the lots.

Commissioner Cloven asked if the requirement for a shared vehicular access easement for Lots 5 and 6 is required as a result of a condition of Tentative Map approval. *Assistant Planner Sikela indicated that the shared vehicular access easement was a condition of the Tentative Map approval.*

Vice Chair Wolfe indicated that he was in support of the Site Plan Review Permit and Variance with deletion of proposed Condition of Approval 4 and noted that there was no neighborhood opposition to the Site Plan Review Permit and Variance requests.

Chair Richardson indicated this subdivision will be a beneficial addition to the community and he was in support of the relocated stormwater detention basins, residential elevations and finishes, landscaping, shared vehicular access easement on Lots 5 and 6, lighting, and conditional approval of the Variance and Site Plan Review Permit, with deletion of Condition of Approval 4.

Commissioner Cloven indicated the proposed residences incorporate designs that are consistent with existing residences on Verna Way and Pine Hollow Road and is in support of conditionally approving the Variance and Site Plan Review Permit, with deletion of Condition of Approval 4.

Commissioner Gall indicated that he supported staff's recommendation for the Variance and Site Plan Review Permit, with proposed Condition of Approval 4 still included, and made a motion to conditionally approve the Verna Way Residential Subdivision Site Plan Review Permit (SPR-02-17) with the finding the Variance and Site Plan Review Permit were considered and evaluated in the previously-adopted Verna Way Residential Subdivision Initial Study/Mitigated Negative Declaration. The motion was not seconded.

Commissioner Altwal indicated that he did not support the Variance but supported conditional approval of the Site Plan Review Permit, with deletion of Condition of Approval 4.

Vice Chair Wolfe moved and Commissioner Gall seconded a motion to adopt Planning Commission Resolution No. 03-17 approving the Verna Way Residential Subdivision Variance (VAR-01-17). The motion passed 4-1 (Denial – Commissioner Atwal).

Commissioner Gall moved and Commissioner Altwal seconded a motion to conditionally approve the Verna Way Residential Subdivision Site Plan Review Permit (SPR-02-17), with the finding the Variance and Site Plan Review Permit were considered and evaluated in the previously-adopted Verna Way Residential Subdivision Initial Study/Mitigated Negative Declaration, and with deletion of Condition of Approval 4. The motion passed 5-0.

6. OLD BUSINESS

None.

7. NEW BUSINESS

- 7.a. **GPA-01-17, City of Clayton.** Review of the Fiscal Year 2017-2018 Capital Improvement Program Projects for Conformity with the Clayton General Plan.

The staff report was presented by Director Gentry.

Commissioner Altwal had the following comment and questions:

- My experience is that the word “handicap” is no longer used and has been replaced with the term “person(s) with disabilities”.
- Do we have a transitional Americans With Disabilities Act (ADA) plan in Clayton? *Director Gentry indicated that, yes, Clayton has a transitional ADA plan.*
- Who reviews ADA compliance within the City? *Director Gentry indicated that that, depending on the project, generally speaking the City Engineer would review Capital Improvement Program (CIP) Projects for ADA compliance.*
- Regarding Item 6, the Field 1 Rehabilitation Project, what type of material are they using to resurface Field 1? *Director Gentry indicated that Field 1 would be resurfaced with grass.*

Commissioner Richardson indicated the projects contained within the CIP were already adopted by the City Council and the Planning Commission’s role was merely to determine the project’s conformance with the City’s General Plan.

Commissioner Altwal moved and Vice Chair Wolfe seconded a motion to find the City’s Capital Improvement Program Projects for the Fiscal Year 2017-2018 are in conformity with the Clayton General Plan (GPA-01-17) and there is no possibility this finding may have a significant effect on the environment. The motion passed 5-0.

- 7.b. **ZOA-02-17, City of Clayton.** The City of Clayton is requesting a hearing to seek direction from the Planning Commission regarding the City Council’s proposed modifications to a City-initiated Ordinance amending Title 15 “Building and Construction”, Chapter 15.08 – Sign Provisions of City of Clayton Municipal Code, which was previously heard by the Planning Commission on April 25, 2017.

The staff report was presented by Director Gentry.

Commissioner Cloven asked for clarification regarding the maximum area allowance of thirty (30) square feet versus the City Council’s recommended three (3) square feet for temporary noncommercial signs. *Director Gentry indicated the Council’s direction was to limit campaign signs to three (3) square feet to avoid visual clutter during campaign season, which would result in the allowable square footage for temporary noncommercial signs being reduced from thirty (30) to three (3) square feet. Temporary noncommercial signs, which encompass campaign, community event signs, and nonprofit organizations, would all then be limited to three (3) square feet under the Council’s proposed modifications. However, the Council’s direction of limiting temporary noncommercial signs will have an unintended consequence by also limiting community event signs due to the required content neutrality of the City’s sign code in order to be compliant with Reed vs. Town of the Gilbert, Arizona. However, Reed vs. Town of Gilbert, AZ does not limit government speech; therefore due to the impact to community event signs by lowering the allowable square footage of temporary noncommercial signs, staff is proposing language to allow temporary event signage to be a maximum of twenty-four (24) feet in area.*

Commissioner Cloven asked if anyone has requested approval of a variance to have a larger sign than what was allowed. *Director Gentry indicated that the Sign Provisions in the Clayton Municipal Code would not allow approval of a variance for larger signage area.*

Commissioner Cloven moved and Commissioner Gall seconded a motion to approve the City Council's proposed modifications to the Ordinance amending the City's Sign Provisions (ZOA-02-17). The motion passed 5-0.

8. COMMUNICATIONS

8.a. Staff

Director Gentry indicated the following:

- Regarding the Ordinance for the calculation of net acreage for properties with physical constraints, one issue has been flagged regarding the Ordinance's compliance with State law as it relates to the Clayton General Plan Housing Element. As a result, this item will be brought back before the Planning Commission for further review.
- A big thank you to Chair Richardson for all his years of hard work on the Planning Commission and Trails and Landscape Committee.
- A new Planning Commissioner, A.J. Chippero, has been appointed to the Planning Commission by the City Council.
- Commissioner Cloven was also reappointed to a full term on the Planning Commission.

Assistant Planner Sikela also thanked Chair Richardson for all his years of hard work on the Planning Commission.

8.b. Commission

Chair Richardson passed along his insight, advice, and input about the role of the Planning Commission.

Commissioner Gall and Commissioner Altwal both indicated they would be absent from the July 25, 2017 Planning Commission meeting.

9. ADJOURNMENT

- 9.a. The meeting was adjourned at 8:57 p.m. to the regularly-scheduled meeting of the Planning Commission on July 11, 2017.

Submitted by
Mindy Gentry
Community Development Director


Approved by
Dan Richardson
Chair

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**PLANNING COMMISSION
STAFF REPORT**

Meeting Date: July 11, 2017

Item Number: 5.a.

From: Mindy Gentry 
Community Development Director

Subject: Ordinance to Determine the Calculation of Residential Density on Parcels with Sensitive Land Areas (ZOA-03-17)

Applicant: City of Clayton

REQUEST

The City of Clayton is requesting a public hearing to consider a City-initiated Ordinance to amend Title 17 “Zoning” by adding Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas (ZOA-03-17) (**Attachment A**).

PROJECT INFORMATION

Location: Citywide

Environmental: Pursuant to CEQA Guideline Section 15162, the proposed amendments to the Zoning Code will result in activities less intense than those analyzed in the General Plan EIR and the Housing Element IS/ND. The Ordinance will not constitute a substantial change or result in new significant environmental effects or have a substantial increase in the severity of the previously identified significant effects and there is no new information of substantial importance that was not known at the time. Accordingly, based on substantial evidence set forth in the record, including but not limited to, the General Plan EIR and the Housing Element IS/ND, and all related information, the General Plan EIR and Housing Element IS/ND serve as adequate CEQA documentation for the Ordinance.

Public Notice: On July 1, 2017, a public hearing notice was published in the Contra Costa Times and, on June 30, 2017, a public hearing notice was posted at designated locations in the City and mailed to residences within a 1000-foot radius of the Silver Oak Estates project.

BACKGROUND

On April 25, 2017, the Planning Commission held a public hearing to consider a version of the subject Ordinance as well as a General Plan amendment. The General Plan amendment was to modify the manner in which residential densities are calculated and to not require a minimum density on residentially-designated parcels. These two amendments together would reduce the overall buildable

density on residentially-zoned parcels and take sensitive land areas into consideration when determining density. The consensus of the Planning Commission was the Ordinance and the accompanying General Plan amendment would be beneficial to the community and would assist in achieving the goals contained within the City's General Plan. The Commission unanimously recommended approval of both the General Plan amendment and Ordinance to the City Council (**Attachment B**).

On May 16, 2017, the City Council held a public hearing to consider the aforementioned General Plan amendment and Ordinance. The City Council indicated these amendments would be conducive to achieving the goals of the City's General Plan while also taking sensitive habitat into consideration. The City Council unanimously approved the General Plan amendment and the Ordinance for introduction (**Attachment C**).

A second reading of the Ordinance was scheduled to be heard before the City Council on June 6, 2017; however, the City received an email from Mr. Bill Jordan identifying concerns with the Ordinance in regards to compliance with the City's Housing Element and State law (**Attachment D**). The second reading of the Ordinance was continued by the City Council at the June 6, 2017 hearing to provide staff additional time to research these possible Housing Element and State law issues. Following research regarding these concerns, staff concluded that, even though State law takes precedence over local municipal codes, it is a better practice to be transparent and fully demonstrate compliance with State law within the Municipal Code. Therefore, staff is now returning to the Planning Commission with a revised Ordinance with language exempting parcels where the General Plan designation was amended to comply with State law to meet the City's 2007-2014 Regional Housing Needs Allocation obligation and to fully demonstrate compliance with State law.

DISCUSSION

The City of Clayton's 2007-2014 Housing Element identified a shortfall of land to accommodate residential development at a density deemed appropriate for affordable housing. The City's lack of demonstrated capacity for 84 units of extremely low-, very low-, and low-income, as identified by the Regional Housing Needs Allocation (RHNA), required certain actions be taken by the City. These actions, as identified by State law, require that land be rezoned or re-designated to meet a RHNA shortfall (Government Code Section 65583.2(h) and (i)). In order to comply with State law to meet the aforementioned and identified shortfall from the 2007-20174 planning period, the City amended the General Plan designation for properties in and adjacent to the Town Center as well as the Old Firehouse Site and an adjacent property to Multifamily High Density (MHD) residential (**Attachment E**). State law also required this General Plan designation to be at least 20 units per acre and the high density use to be permitted by right (no Use Permit required).

In order to address and comply with these specific State law requirements, language was added to the subject Ordinance specifically exempting those properties where the City amended the General Plan designation to Multifamily High Density (MHD) residential in order to meet the 2007-2014 Regional Housing Needs Allocation. These properties do not qualify to have the proposed sensitive land area net density calculation apply to them because the State has mandated a density of 20 units per acre. For ease of review and clarity purposes, a redline version of the Ordinance has been provided as **Attachment F**.

RECOMMENDATION

Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 04-17

recommending the City Council approve the revised Ordinance adding Chapter 17.22 to Title 17 “Zoning” determining the methodology of residential density calculations for residential parcels with sensitive land areas.

ATTACHMENTS

- A. Planning Commission Resolution 04-17 with attachment:
 - Exhibit 1 – Draft Ordinance Adding Chapter 17.22 in Title 17 “Zoning” with attachment:
 - Exhibit A - Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Uses
- B. April 25, 2017 Planning Commission Staff Report and Excerpt of the Minutes
- C. Excerpt from the May 16 2017 City Council Staff Report and Minutes
- D. Email Correspondence from Mr. Bill Jordan
- E. General Plan Map of Multifamily High Density (MHD) Residential Designated Properties
- F. Redline Changes to the Ordinance

ATTACHMENT A

CITY OF CLAYTON PLANNING COMMISSION RESOLUTION NO. 04-17

RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE ADDING MUNICIPAL CODE CHAPTER 17.22 – RESIDENTIAL DENSITY CALCULATIONS FOR RESIDENTIAL PARCELS WITH SENSITIVE LAND USES IN TITLE 17, “ZONING” (ZOA-03-17)

WHEREAS, the City of Clayton is ninety-eight (98) percent built-out and the majority of properties available to develop are marginal or more difficult due to sensitive land areas such as slopes or creeks; and

WHEREAS, the City of Clayton City Council adopted a General Plan amendment to modify residential density calculations and to not require a minimum density; and

WHEREAS, the City of Clayton wishes to protect sensitive land areas in a manner that these areas would be excluded from the gross or legal acreage of a developable residential parcel; and

WHEREAS, the City amended the General Plan designation of certain properties to Multifamily High Density Residential to meet the City’s 2007-2014 Regional Housing Needs Allocation (RHNA) obligation shortfall, which are exempt from the net density calculations to comply with State law; and

WHEREAS, the City has a certified Housing Element with a total Regional Housing Needs Allocation (RHNA) obligation of 141 units and there is a total of 272 available units identified in the City’s certified 2015-2023 Housing Element, which provides a surplus of 131 units; and

WHEREAS, the proposed amendments to the Clayton Municipal Code will still provide the City with adequate capacity to accommodate its Regional Housing Needs Allocation (RHNA) obligation and the proposed Ordinance is internally consistent with the balance of the General Plan; and

WHEREAS, this Ordinance will amend Title 17 “Zoning” by adding Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas with the purpose of describing and determining the calculation of General Plan residential densities for proposed residential projects when sensitive land areas exist on a residential parcel; and

WHEREAS, the Planning Commission has determined that the proposed amendments to the Clayton Municipal Code do not conflict and are in general conformance with the City of Clayton General Plan because the Ordinance fulfills the goals and policies outlined in the Land Use Element and do not conflict with the development standards in the Clayton Municipal Code; and

WHEREAS, pursuant to CEQA Guideline Section 15162, the proposed amendments to the Zoning Code will result in activities less intense than those analyzed in the General Plan EIR and the Housing Element IS/ND. The Ordinance will not constitute a substantial change or result in new significant environmental effects or have a substantial increase in the severity of the previously identified significant effects and there is no new information of substantial importance that was not known at the time. Accordingly, based on substantial evidence set forth in the record, including but not limited to, the General Plan EIR and the Housing Element IS/ND, and all related information, the General Plan EIR and Housing Element IS/ND serve as adequate CEQA documentation for the Ordinance; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, on July 11, 2017, the Clayton Planning Commission held a duly-noticed public hearing on the matter, received and considered testimony, both oral and documentary, and recommended approval to the City Council of an Ordinance to modify Title 17 "Zoning" by adding Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Uses; and

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Clayton, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of the proposed Ordinance to add Chapter 17.22 to the Clayton Municipal Code pertaining to residential density calculations for residential parcels with sensitive land areas, attached hereto as Exhibit 1 and incorporated herein by this reference.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the 11th day of July, 2017.

APPROVED:

ATTEST:

Chair

Mindy Gentry
Community Development Director

ATTACHMENTS

Exhibit 1 – Draft Ordinance Adding Chapter 17.22 with Exhibit:

A: Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Uses

EXHIBIT 1

ORDINANCE NO. 476

AN ORDINANCE AMENDING TITLE 17, "ZONING", BY ADDING CHAPTER 17.22 TO THE CLAYTON MUNICIPAL CODE REGARDING RESIDENTIAL DENSITY CALCULATIONS FOR RESIDENTIAL PARCELS WITH SENSITIVE LAND AREAS

THE CITY COUNCIL City of Clayton, California

THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS FOLLOWS:

WHEREAS, the city of Clayton is ninety-eight (98) percent built-out and the majority of properties available to develop are marginal or more difficult due to sensitive land areas such as slopes or creeks; and

WHEREAS, the City of Clayton wishes to create the opportunity for more desirable developments rather than applying a singular approach in regards to the determination of density; and

WHEREAS, the City of Clayton wishes to protect sensitive land areas in a manner that such areas would be excluded from the gross or legal acreage of a developable residential parcel; and

WHEREAS, the City amended the General Plan designation of certain properties to Multifamily High Density Residential to meet the City's 2007-2014 Regional Housing Needs Allocation (RHNA) obligation shortfall, which are exempt from the net density calculations to comply with State law; and

WHEREAS, the City has a total Regional Housing Needs Allocation (RHNA) obligation of 141 units and there is a total of 272 available units identified in the City's certified 2015-2023 Housing Element, which provides a surplus of 131 units; and

WHEREAS, the proposed amendments to the Clayton Municipal Code will still provide the City with adequate capacity to accommodate its Regional Housing Needs Allocation (RHNA) obligation; and

WHEREAS, the proposed amendments to the Clayton Municipal Code do not conflict and are in conformance with the City of Clayton General Plan because the General Plan identifies developable acreage and residential density calculations to be further defined in the Clayton Municipal Code and does not require a minimum density for residential properties with sensitive land uses; and

WHEREAS, on July 18, 1985 the City certified an Environmental Impact Report in support of its approved General Plan (General Plan EIR). The General Plan EIR analyzed the potential significant environmental effects that may occur as a result of the General Plan's implementation and concluded that, with the implementation of the General Plan, all impacts could be mitigated to a less-than-significant level; and

WHEREAS, on November 19, 2014, the City adopted an Initial Study/Negative Declaration (Housing Element IS/ND) in support of its approval of the 2015-2023 Housing Element. The IS/ND concluded that the 2015-2023 Housing Element would not result in new significant or more severe environmental impacts than those identified in the General Plan EIR; and

WHEREAS, the Clayton Planning Commission held a duly-noticed public hearing on July 11, 2017, at which it adopted Resolution No. 04-17 recommending City Council approval of the proposed Ordinance to amend Title 17 of the Clayton Municipal Code, by adding Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas; and

WHEREAS, proper notice of the public hearing on this Ordinance for this time and date was given in all respects as required by law; and

WHEREAS, the Clayton City Council has reviewed all written evidence and oral testimony presented to date on this matter.

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

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Amendment. Chapter 17.22 of the Clayton Municipal Code is hereby added to read in full as set forth in Exhibit A, attached and incorporated by this reference.

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

Section 4. CEQA. The City Council hereby determines, pursuant to CEQA Guideline Section 15162, that the proposed amendments to the Zoning Code will result in activities less intense than those analyzed in the General Plan EIR and the Housing Element IS/ND. Accordingly, based on substantial evidence set forth in the record, including but not limited to, the General Plan EIR and the Housing Element IS/ND, and all related information presented to the City Council, the City Council hereby finds that the Ordinance:

(a) does not constitute a substantial change that will require major revisions of the General Plan EIR or Housing Element IS/ND due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(b) does not constitute a substantial change with respect to the circumstances under which the Project is undertaken that will require major revisions of the General Plan EIR or Housing Element IS/ND due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(c) does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the General Plan EIR was certified or the Housing Element IS/ND was adopted, that shows any of the following: (i) the Project will have one or more significant effects not discussed in the General Plan EIR or Housing Element IS/ND; (ii) significant effects previously examined will be substantially more severe than shown in the General Plan EIR or Housing Element IS/ND ; (iii) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the lead agency declined to adopt such measures; or (iv) mitigation measures or alternatives considerably different from those analyzed in the General Plan EIR or Housing Element IS/ND would substantially reduce one or more significant effects on the environment, but which the lead agency declined to adopt.

As such, the General Plan EIR and Housing Element IS/ND serve as adequate CEQA documentation for the Ordinance.

Section 5. Conflicting Ordinances Repealed. Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

Section 6. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on August 1, 2017.

Passed, adopted, and ordered posted by the City Council of the City of Clayton, California at a regular public meeting thereof held on September 19, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Jim Diaz, Mayor

ATTEST

Janet Brown, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular public meeting of the City Council of the City of Clayton held on August 1, 2017, and was duly adopted, passed, and ordered posted at a regular public meeting of the City Council held on September 19, 2017.

Janet Brown, City Clerk

EXHIBIT A

Chapter 17.22

RESIDENTIAL DENSITY CALCULATIONS FOR RESIDENTIAL PARCELS WITH SENSITIVE LAND AREAS

Sections:

17.22.010	Purpose
17.22.020	Calculating Density for Residential Parcels with Sensitive Land Areas
17.22.030	Determining Capacity
17.22.040	Density Calculation
17.22.050	Constraints Map
17.22.060	Exceptions

17.22.010 Purpose. The purpose of this section is to describe and determine how General Plan residential densities are calculated for proposed residential projects when sensitive land areas exist on a residential parcel.

17.22.020 Calculating Density for Residential Parcels with Sensitive Land Areas. The General Plan establishes minimum and maximum densities for all residentially designated uses within the City. Residential density is a computation expressing the number of dwelling units per acre based on the developable acreage of the land. The developable acreage shall not include sensitive land areas for purposes of calculating the permitted subdivision capacity (density) on a parcel or parcels of land. Because of the constraints due to sensitive land areas, residential parcels with sensitive land areas shall fall within a not to exceed maximum density for developable acreage and shall not have a minimum density requirement.

Public rights-of-way and utility easements are to be considered as part of the developable acreage.

17.22.030 Determining Capacity. Developable acreage shall be determined by excluding the following sensitive land area(s) from the gross or legal acreage of a parcel(s):

- 1) Land within the 100-year floodplain;
- 2) Land or slopes exceeding 26 percent;
- 3) Creeks, streams, and the associated setback provisions as set forth in the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan as implemented by City Ordinance No. 412;
- 4) Rock outcroppings; and
- 5) Wetlands as defined and determined by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan;

- 6) Land containing species of endangered plants that have been identified as a no-take species as defined and determined by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan; and
- 7) Any other similar features as determined by the Planning Commission.

17.22.040 Density Calculation. To calculate the numerical maximum range of housing units; exclude the identified sensitive land areas from the legal or gross acreage and then multiply the remaining acreage by the highest number in the density range for the applicable residential General Plan land use designation for the maximum density.

17.22.050 Constraints Map. Prior to permitting any request for a subdivision or parcel map allowing for the construction of any residential units, a constraints map shall be submitted analyzing the developable and non-developable acreage of the property.

17.22.060 Exceptions. The provisions of this chapter shall not apply to any property where the City amended the General Plan designation to Multifamily High Density Residential (MHD) in order to comply with State law to meet the City's 2007-2014 Regional Housing Needs Allocation (RHNA) obligation.

ATTACHMENT B

PLANNING COMMISSION STAFF REPORT

Meeting Date: April 25, 2017

Item Number: 5.a.

From: Mindy Gentry *MAG*
Community Development Director

Subject: General Plan Amendment and Ordinance to Modify the Calculation of Residential Density on Parcels with Sensitive Land Areas (GPA-03-16 and ZOA-03-17)

Applicant: City of Clayton

REQUEST

The City of Clayton is requesting a public hearing to consider a City-initiated General Plan Amendment to its Land Use Element and an Ordinance to modify the residential density calculations and to not require a minimum density on residentially-designated parcels containing sensitive land areas (**Attachment A**). The Ordinance would amend Title 17 "Zoning" by adding Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas (GPA-03-16 and ZOA-03-17).

PROJECT INFORMATION

Location: Citywide

Environmental: Pursuant to CEQA Guideline Section 15166, the Environmental Impact Report (EIR) was included as part of the City's General Plan, which provided an analysis of the potential significant effects that may occur as a result of the General Plan implementation. The EIR was adopted by the Clayton City Council on July 18, 1985 with the finding that the impacts associated with the implementation of the General Plan can be mitigated to a less-than-significant level. Adoption of this General Plan amendment and Ordinance will result in activities less intense than assumed in the Clayton City Council adopted EIR; therefore these activities would be covered under the existing General Plan EIR.

Public Notice: On April 14, 2017, a public hearing notice was published in the Contra Costa Times and a public hearing notice was posted at designated locations in the City.

BACKGROUND

On October 25, 2016, the Planning Commission held a study session to provide feedback regarding a General Plan Amendment to allow a net acreage density calculation in lieu of gross or legal acreage on properties with physical constraints. This issue is described in full detail in the Planning Commission study session staff report from October 25, 2016 (**Attachment B**); however a brief summary is provided below.

This issue was derived due to the Silver Oak Estates project, located between the northerly terminus of Lydia Lane and south of Oakhurst Drive, having to contend with large physical constraints on the property and the inability for a project to be designed to meet both the prescribed General Plan density range and the product type. More specifically, the parcel contains undevelopable areas such as the Mount Diablo Creek, which requires a substantial setback as well as sloped topography, conditions which have made it difficult to meet the designated density range of 43 to 70 units. Further, the physical constraints or sensitive land areas such as the aforementioned creek and slope contained on the property made it questionable whether the remaining parcel was large enough to fit a detached single-family product type, as required by the City's General Plan, and within the prescribed density range of 3.1 to 5 units per acre. This issue is occurring because the General Plan bases the density range on legal or gross acreage of the parcel whether or not there are physical constraints on the property. Given this predicament, which could affect other parcels within the City, the Planning Commission expressed support at their October 25, 2016 meeting for initiating a General Plan amendment and any associated Zoning Code changes to allow net acreage density calculations when a site has a physical constraint or sensitive land areas in order to meet the density range and product type as identified by the City's General Plan.

DISCUSSION

The General Plan has established minimum and maximum densities for all residentially designated uses within the City. That density range is currently calculated from the legal or gross acreage of the parcel, which is considered to be all land including easements and rights-of-way. Gross acreage and net acreage are commonly used measurements of land area. Net acreage would be any developable acreage following any required subtractions which could include open space or public rights-of-way, amongst others.

Further, the General Plan requirement for density on the legal or gross acreage of the parcel fits for those properties that are flat and/or minimally constrained; however this requirement does not appropriately apply to those properties that are limited in their developable land due large physical site constraints. The City of Clayton is approximately 98 percent built-out and many of the available properties left to develop are marginal or more difficult, particularly properties with site constraints such as slopes or creeks. The overall intent of these amendments would be to prevent unwarranted density on a site that is really much smaller, given the constraints that exist, and to provide the City with the opportunity for more desirable developments rather than applying a singular approach in regards to the determination of density.

GENERAL PLAN AMENDMENT

After receiving support and direction from the Planning Commission at the study session, staff began to research the issue of determining residential density calculations while also conforming to the goals and policies of the City's General Plan. The proposed language changes to the Land Use Element are contained within one paragraph at the beginning of the discussion on Residential Designations, located on Page II-5 (**Attachment C**). These proposed changes would allow density calculations to be determined based off of the net developable acreage of the parcel as well as not require the minimum

density to be met for sites that have sensitive land areas. The intent of the proposed change will allow developers with constrained lots containing sensitive areas to meet both the prescribed General Plan density and product type. Further, given the community's lack of interest for higher density housing developments and the General Plan's support of lower density developments, these amendments would apply to and be required for all qualifying property and not optional.

The City of Clayton's General Plan Land Use Element contains the following goals:

- To maintain the rural character that has been the pride and distinction of Clayton.
- To encourage a balance of housing types and densities consistent with the rural character of Clayton.
- To preserve natural features, ecology, and scenic vistas of the Clayton area.

The proposed amendment captures the intent and vision as discussed in the goals of the General Plan. The amendment would decrease the overall density to help retain the rural character of Clayton, while balancing a variety of housing types and densities. The amendment will also help to preserve natural features, ecology, and scenic vistas by decreasing the overall required density on a property that has sensitive land uses such as creeks and rock outcroppings.

In addition, the General Plan Land Use Element, under Objective 1, identifies a policy of establishing density designations based on terrain, circulation, adjacent uses, and area characteristics. This proposed change in density calculations would help to fulfill this General Plan policy because as outlined in the proposed Ordinance, any slopes over 26% would be subtracted from the developable acreage thereby better fitting the density to the terrain and would retain sensitive land areas, which would result in developments better tailored to the area characteristics.

Housing Element Compliance

The City has a total Regional Housing Needs Assessment (RHNA) obligation of 141 units for the 2014-2022 planning period. The City's certified Housing Element, after taking into consideration a subsequently approved General Plan Amendment, has an estimated capacity of 272 housing units, which results in a housing surplus of 131 units. The subject General Plan Amendment may reduce the overall residential density capacity of the assumed and identified housing units within the Housing Element. However, the Housing Element did assume some known constraints, such as slopes, on particular properties, which were taken into account when determining the realistic capacity, but not all constraints were documented on vacant or underdeveloped properties. Given that the City has an estimated housing surplus of 131 units and this proposed amendment would only impact parcels with sensitive land areas, it is anticipated the decrease in density will still result in adequate capacity to accommodate its RHNA obligation given the large surplus of housing units. Even after taking the largest available parcel, 13.96 acres (Silver Oak Estates), for development into consideration, it would still result in a surplus of 104 to 108 units.

ZONING ORDINANCE

As referenced in the language of the General Plan amendment, the calculation of residential densities is to be further defined and described in the Clayton Municipal Code. The proposed addition of Chapter 17.22 in the Clayton Municipal Code would provide those details on how to calculate residential densities when sensitive land areas existing on a residential parcel. The Ordinance sets the parameters for determining developable acreage as well as what sensitive land areas are considered to be excluded from the gross or legal acreage of the parcel. The sensitive land areas that were identified were features that were clearly definable and constituted areas that cannot be developed, should avoid being developed, or should be preserved due to their environmental value such as floodplains, creeks, and

wetlands.

For illustrative purposes, if a developer has a property that is ten legal or gross acres in size and the property has a General Plan designation of Single Family Medium Density General Plan (3.1 to 5 units per acre) it would result in a density range of 31 to 50 units. However if the property happens to contain sensitive land areas, such as 1.3 acres of land within the 100-year floodplain and 0.7 acres with a slope that exceeds 26%, then those combined two acres would need to be subtracted from the gross or legal acreage to determine the developable acreage. Following the exclusion of these sensitive areas, it would result in eight developable acres, which would create a density range of 24.8 to 40 units per acre. This calculation results in lowering the overall density on residential parcels with sensitive land areas.

RECOMMENDATION

Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 01-17 recommending the City Council approve:

- 1) A General Plan Amendment to modify the calculation of residential densities and not require a minimum density for residential parcels with sensitive land areas; and
- 2) An Ordinance adding Chapter 17.22 to Title 17 "Zoning" determining the methodology of residential density calculations for residential parcels with sensitive land areas.

ATTACHMENTS

- A. Planning Commission Resolution 01-17 with attachment:
Exhibit 1 – Draft Ordinance Adding Chapter 17.22 in Title 17 "Zoning" with attachment:
Exhibit A - Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Uses
- B. October 25, 2016 Planning Commission Study Session Staff Report and Minutes
- C. Redline Changes to the General Plan Land Use Element

ATTACHMENT A

CITY OF CLAYTON PLANNING COMMISSION RESOLUTION NO. 01-17

RECOMMENDING CITY COUNCIL APPROVAL OF A GENERAL PLAN AMENDMENT TO THE LAND USE ELEMENT TO MODIFY THE CALCULATION OF RESIDENTIAL DENSITIES AND NOT REQUIRE A MINIMUM DENSITY FOR RESIDENTIAL PARCELS WITH SENSITIVE LAND AREAS AND AN ORDINANCE ADDING MUNICIPAL CODE CHAPTER 17.22 – RESIDENTIAL DENSITY CALCULATIONS FOR RESIDENTIAL PARCELS WITH SENSITIVE LAND USES IN TITLE 17, “ZONING” (GPA-03-16 AND ZOA-03-17)

WHEREAS, State Planning and Zoning Law, and specifically California Government Code Section 65358, authorizes cities to amend their general plans; and

WHEREAS, the City of Clayton is ninety-eight (98) percent built-out and the majority of properties available to develop are marginal or more difficult due to sensitive land areas such as slopes or creeks; and

WHEREAS, the City of Clayton wishes to amend its General Plan to create the opportunity for more desirable developments rather than applying a singular approach in regards to the determination of density; and

WHEREAS, the City of Clayton wishes to protect sensitive land areas in a manner that these areas would be excluded from the gross or legal acreage of a developable residential parcel; and

WHEREAS, the City has a certified Housing Element with a total Regional Housing Needs Allocation (RHNA) obligation of 141 units and there is a total of 272 available units identified in the City’s certified 2015-2023 Housing Element, which provides a surplus of 131 units; and

WHEREAS, this General Plan amendment will still provide the City with adequate capacity to accommodate its Regional Housing Needs Allocation (RHNA) obligation and the proposed amendment is internally consistent with the balance of the General Plan; and

WHEREAS, the proposed amendment of the General Plan Land Use Element would be in the public interest; and has been assessed for potential impacts and has been determined to not be detrimental to the public health, safety, or welfare; and

WHEREAS, this Ordinance will amend Title 17 “Zoning” by adding Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas with the purpose of describing and determining the calculation of General Plan residential densities for proposed residential projects when sensitive land areas exist on a residential parcel; and

WHEREAS, the Planning Commission has determined that the proposed amendments to the Clayton Municipal Code and Land Use Element of the General Plan do not conflict and are in general conformance with the City of Clayton General Plan because the amendments fulfill the goals and policies outlined in the Land Use Element and do not conflict with the development standards in the Clayton Municipal Code; and

WHEREAS, pursuant to CEQA Guideline Section 15166, the Environmental Impact Report (EIR) was included as part of the City's General Plan, which provided an analysis of the potential significant effects that may occur as a result of the General Plan implementation. The EIR was certified by the Clayton City Council on July 18, 1985 with the finding that the impacts associated with the implementation of the General Plan can be mitigated to a less-than-significant level. Adoption of this General Plan amendment and Ordinance will result in activities less intense than assumed in the Clayton City Council adopted EIR; therefore these activities would be covered under the existing General Plan EIR; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, on April 25, 2017, the Clayton Planning Commission held a duly-noticed public hearing on the matter, received and considered testimony, both oral and documentary, and recommended approval to the City Council of the proposed General Plan Amendment to modify the calculation of residential densities and not require a minimum density for residential properties with sensitive land uses and an Ordinance to modify Title 17 "Zoning" by adding Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Uses; and

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Clayton, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of an amendment to the General Plan Land Use Element of a section entitled "Residential Designations" on Page II-5 and Page II-6 to be amended as follows:

"RESIDENTIAL DESIGNATIONS

There are seven residential designations. The density ranges for each residential land use designation are based on the developable acreage of the parcel. Developable acreage and residential density calculations are further defined and described in the Clayton Municipal Code regarding residential parcels with sensitive land areas. Maximum density cannot be guaranteed but will fall within the range identified for each residential land use designation. Due to differences in developable acreage because of the constraints attributable to sensitive land areas, residential parcels with sensitive land areas shall fall within the not to exceed maximum density for developable acreage, and shall not have a minimum density requirement. Second dwelling units are exempt from the determination of residential densities.

When clustering is proposed for development, the City may provide relief from the lot coverage standards discussed below.

Unless otherwise noted, the following uses are allowed in each of the General Plan residential categories, provided they meet the requirements of the underlying zoning district, applicable specific plan policies and guidelines, and applicable general plan policies:

- Churches and places of worship;
- Public / quasi-public buildings and facilities;
- Day care centers, family day care homes, and residential care facilities;
- Bed and breakfast facilities;
- Lodges, fraternal organizations, and clubs;
- Crop and tree farming and horticulture, not including the raising or keeping of any animals other than ordinary household pets; and
- Publicly-owned parks and playgrounds.

Additional uses allowed under each category are described below.”

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Planning Commission of the City of Clayton, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval of the proposed Ordinance to add Chapter 17.22 to the Clayton Municipal Code pertaining to residential density calculations for residential parcels with sensitive land areas, attached hereto as Exhibit 1 and incorporated herein by this reference.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the 25th day of April, 2017.

APPROVED:

ATTEST:

Dan Richardson
Chair

Mindy Gentry
Community Development Director

ATTACHMENTS

Exhibit 1 – Draft Ordinance Adding Chapter 17.22 with Exhibit:

A: Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Uses

EXHIBIT 1

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CLAYTON, AMENDING TITLE 17, "ZONING", BY ADDING CHAPTER 17.22 TO
THE CLAYTON MUNICIPAL CODE REGARDING RESIDENTIAL DENSITY
CALCULATIONS FOR RESIDENTIAL PARCELS WITH SENSITIVE LAND AREAS**

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

**THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS
FOLLOWS:**

WHEREAS, the City of Clayton is ninety-eight (98) percent built-out and the majority of properties available to develop are marginal or more difficult due to sensitive land areas such as slopes or creeks; and

WHEREAS, the City of Clayton wishes to create the opportunity for more desirable developments rather than applying a singular approach in regards to the determination of density; and

WHEREAS, the City of Clayton wishes to protect sensitive land areas in a manner that these areas would be excluded from the gross or legal acreage of a developable residential parcel; and

WHEREAS, the City has a total Regional Housing Needs Allocation (RHNA) obligation of 141 units and there is a total of 272 available units identified in the City's certified 2015-2023 Housing Element, which provides a surplus of 131 units; and

WHEREAS, the proposed amendments to the Clayton Municipal Code will still provide the City with adequate capacity to accommodate its Regional Housing Needs Allocation (RHNA) obligation; and

WHEREAS, the proposed amendments to the Clayton Municipal Code do not conflict and are in conformance with the City of Clayton General Plan because an amendment to the General Plan has been brought simultaneously to modify the calculations of residential densities and not require a minimum density for residential properties with sensitive land uses; and

WHEREAS, the Clayton Planning Commission held a duly-noticed public hearing on April 25, 2017, at which it adopted Resolution No. 01-17 recommending City Council approval of the proposed Ordinance to amend Title 17 of the Clayton Municipal Code, by adding Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas; and

WHEREAS, proper notice of the public hearing on this Ordinance was given in all respects as required by law; and

WHEREAS, the Clayton City Council has reviewed all written evidence and oral testimony presented to date on this matter.

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

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Amendment. Chapter 17.22 of the Clayton Municipal Code is hereby added to read in full as set forth in Exhibit A, attached and incorporated by this reference.

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

Section 4. CEQA. The City Council hereby determines, pursuant to CEQA Guideline Section 15166, the Environmental Impact Report (EIR) was included as part of the City's General Plan, which provided an analysis of the potential significant effects that may occur as a result of the General Plan implementation. The EIR was certified by the Clayton City Council on July 18, 1985 with the finding that the impacts associated with the implementation of the General Plan can be mitigated to a less-than-significant level. Adoption of this General Plan amendment and Ordinance will result in activities less intense than assumed in the Clayton City Council adopted EIR; therefore these activities would be covered under the existing General Plan EIR.

Section 5. Conflicting Ordinances Repealed. Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

Section 6. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on [month] [day], 2017.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular meeting thereof held on [month] [day], 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Jim Diaz, Mayor

ATTEST

Janet Brown, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on [month] [day], 2017, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on [month] [day], 2017.

Janet Brown, City Clerk

Exhibit A

Chapter 17.22

RESIDENTIAL DENSITY CALCULATIONS FOR RESIDENTIAL PARCELS WITH SENSITIVE LAND AREAS

Sections:

17.22.010	Purpose
17.22.020	Calculating Density for Residential Parcels with Sensitive Land Areas
17.22.030	Determining Capacity
17.22.040	Density Calculation
17.22.050	Constraints Map

17.22.010 Purpose. The purpose of this section is to describe and determine how General Plan residential densities are calculated for proposed residential projects when sensitive land areas exist on a residential parcel.

17.22.020 Calculating Density for Residential Parcels with Sensitive Land Areas. The General Plan establishes minimum and maximum densities for all residentially designated uses within the City. Residential density is a computation expressing the number of dwelling units per acre based on the developable acreage of the land. The developable acreage shall not include sensitive land areas for purposes of calculating the permitted subdivision capacity (density) on a parcel or parcels of land. Because of the constraints due to sensitive land areas, residential parcels with sensitive land areas shall fall within a not to exceed maximum density for developable acreage and shall not have a minimum density requirement.

Public rights-of-way and utility easements are to be considered as part of the developable acreage.

17.22.030 Determining Capacity. Developable acreage shall be determined by excluding the following sensitive land area(s) from the gross or legal acreage of a parcel(s):

- 1) Land within the 100-year floodplain;
- 2) Land or slopes exceeding 26 percent;
- 3) Creeks, streams, and the associated setback provisions as set forth in the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan as implemented by City Ordinance No. 412;
- 4) Rock outcroppings; and
- 5) Wetlands as defined and determined by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan;
- 6) Land containing species of endangered plants that have been identified as a no-take species as defined and determined by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan; and

7) Any other similar features as determined by the Planning Commission.

17.22.040 Density Calculation. To calculate the numerical maximum range of housing units; exclude the identified sensitive land areas from the legal or gross acreage and then multiply the remaining acreage by the highest number in the density range for the applicable residential General Plan land use designation for the maximum density.

17.22.050 Constraints Map. Prior to permitting any request for a subdivision or parcel map allowing for the construction of any residential units, a constraints map shall be submitted analyzing the developable and non-developable acreage of the property.

ATTACHMENT P

PLANNING COMMISSION STAFF REPORT

Meeting Date: October 25, 2016

Item Number: 5.b.

From: Mindy Gentry *MG*
Community Development Director

Subject: Study Session to Consider a General Plan Amendment to Allow Net Acreage Density Calculations on Properties with Physical Site Constraints (GPA-01-16)

Applicant: City of Clayton

DISCUSSION

SILVER OAK ESTATES GENERAL PLAN CONFORMANCE ISSUE

The proposed Silver Oak Estates project consists of 59 units which are comprised of seven (7) single-family homes, 28 town homes, and 24 "Green Courts" located on approximately 5.37 acres; a neighborhood swimming pool and cabana on 0.59 acres; roadways on 2.10 acres; and open space on 7.84 acres. The project is to be located on the 13.96-acre Hurd Ranch property located between the northerly terminus of Lydia Lane and south of Oakhurst Drive in Clayton. The currently proposed project has been going through the City's entitlement process since approximately 2010, which has included the completion of a draft Initial Study/Mitigated Negative Declaration and the start of the process to undertake an Environmental Impact Report.

Due to staffing changes and following staff's cursory review of the project in 2016, it became apparent the attached product type being proposed by the applicant, the 28 town homes and 24 "Green Courts", were not in conformance with the City's General Plan. The General Plan designation for the property is Single Family Medium Density (MD) (3.1 to 5 units per acre) which is described in the General Plan as being "intended for and allows planned unit development (PUD) and single-family subdivisions. Development will range from a standard single-family subdivision to a zero lot line or single-family home." This General Plan designation would allow for 43 to 70 units on the subject property. While the proposed number of units, 59, fits within the overall allowed density, the General Plan land use designation of Single Family Medium Density (MD) is reserved for various single-family detached product types; therefore, the proposed attached product type would not fit within the Single Family Medium Density designation and would only fit within one of the three Multifamily General Plan land use designations, Multifamily Low, Multifamily Medium, or Multifamily High Density. In regards to product type, this determination has been consistently applied throughout the City and there is no evidence the City has ever deviated from its interpretation of the General Plan Single Family land use designation as being anything other than a designation for a single-family detached product type. In light of the proposed product type only fitting into the three multifamily land use designations, another issue arises because these designations require a higher density with more units to the acre, which, if applied to the subject site, would result in additional units being required in order to fit the General Plan density range of which the subject property really cannot manage given the physical constraints—the creek and sloping topography—located on the site. A General Plan amendment to Multifamily Low Density would result in a minimum unit count 106 units (7.6 units/acre) in order to allow the proposed product type, which would be an overall increase of 47 units on the property from the proposed 59

units.

Further, if the applicant were to try and fit the prescribed product type on the subject site it would result in a small lot single-family development of detached homes more than likely with a zero lot line or minimal setbacks. Given the physical constraints of the property, it is questionable whether the parcel is large enough to even fit a detached single-family product type.

PREVIOUSLY SUBMITTED PROJECT BACKGROUND FOR SILVER OAK ESTATES

Prior to 2010, the project previously filed with the City back in 2000 on the subject property consisted of a single-family detached residential development with 28 homes. The applicant is claiming at the time this application was subject to and required a General Plan amendment to change the land use density of the site from Multifamily Medium Residential to Single Family Medium Residential, which is evidenced by a letter from the Community Development Director at the time, Jeremy Graves. Mr. Graves indicated in his letter dated August 7, 2000 to the applicant, Callida Development LLC, "The current *General Plan Diagram* designation for the site is Multi-Family Medium Density (10.1 – 15 units per gross acre). Since the density proposed for the project is approximately 2.1 units per gross acre, an amendment of the *General Plan Diagram* designation for the site to [Single Family] Low Density (1.1 – 3 units per gross acre) is needed." Even though Mr. Graves identified the property having a designation of Multifamily Medium Density residential, staff is unable to find any indication in the official City records that the property ever had a Multifamily residential land use designation. The previously adopted Housing Elements, one adopted in June of 2000 and the other adopted in September of 2005 both show the property designated as Single Family Medium Density (3.1 to 5 units per acre). Further, City Council resolutions approving any General Plan amendments on this property are absent.

GENERAL PLAN AMENDMENT

Given the difficulty of being able to meet the General Plan density range with the allowed product type and the community contention surrounding the project, the applicant has requested that the City take the lead in processing a General Plan amendment. Further, the applicant has alluded to the processing of this amendment would assist in alleviating the previous determinations made by staff.

The General Plan Land Use Element currently states, "The acreages are based on the legal or gross acreage of the parcel. Maximum density cannot be guaranteed but density will fall within a range due to differences in sites" (**Attachment A**). The concept of the proposed General Plan amendment would be to allow projects with large physical site constraints to determine the density calculation based on net developable acreage rather than the gross or legal acreage of the parcel. The amendment would be drafted in a manner to allow the City Council or the Planning Commission the opportunity to make findings to support the request to use net acreage in instances where the site contains a certain percentage of slopes over 25%, or if the site contains a flood plain, rock outcroppings, a creek, or another type of physical constraint.

For example, the subject site for the Silver Oak Estates project contains large physical constraints such as sloping topography and Mount Diablo Creek (**Attachment B**). In particular, the Habitat Conservation Easement is 6.53 acres, which includes a minimum 50-foot required setback from the top of bank of Mount Diablo Creek. This constraint alone removes almost half, 47%, of the developable acreage of the site, making it nearly impossible for a development project to fit within the parameters of the General Plan as it pertains to development intensity and allowed product type. Further, the topography on the property additionally restricts the number of units due the slope and required grading.

These physical constraints on the project site provide limited land available for development in order to fit the required number of units and to provide the allowable product type identified in the General Plan. This issue is occurring because the General Plan bases the density range on legal or gross acreage of the parcel whether or not there are physical constraints on the property. Another way to categorize the issue would be trying to fit unwarranted intense density on a site that is really much smaller given the constraints that exist. By not providing the option of using the net acreage by subtracting the constrained property, this could result in a less desirable project given that the site may not necessarily have a proper land use designation due to the constraints and the resulting development intensity would not correspond given its location and surroundings.

The General Plan requirement for density on the legal or gross acreage of the parcel fits for those properties that are flat and/or minimally constrained; however this requirement does not appropriately apply to those properties that are limited in their developable land due large physical site constraints. The City of Clayton is approximately 98 percent built-out and the available properties left to develop are marginal or more difficult, particularly properties with site constraints such as slopes or creeks. This amendment could provide the City with the opportunity for more desirable developments rather than applying a singular approach in regards to the determination of density.

The particulars of the General Plan amendment and possibly appropriate corresponding changes to the Clayton Municipal Code would be addressed during this process. The proposed details such as the applicability, standards, and findings would come back at a later date to the Planning Commission and City Council for review and consideration. For example, a benchmark, such as a percentage of property that is constrained, identifying when the net acreage versus gross acreage could be applied to a property that contains a physical constraint could result from the process. The amendment is envisioned so that the required findings and/or standards of review for the use of net acreage versus gross acreage would need to be considered and identified during a site specific entitlement process as well.

OTHER CONSIDERATIONS

- HCD – The City has a total Regional Housing Needs Assessment (RHNA) obligation of 141 units for the 2014-2022 planning period. The City’s Housing Element has an estimated capacity of 275 housing units, which results in a housing surplus of 137 units. The subject property was included in the City’s inventory of available sites for housing units, which help to demonstrate that the City could accommodate its given RHNA (Attachment C). The City’s Housing Element identified the site with an assumed realistic capacity (80% of maximum density) of 56 units; however the physical constraints were not fully taken into consideration, which resulted in a much higher estimate of capacity given the allowed product types within the General Plan. If the site were to be developed not utilizing the gross developable acreage as called for in the General Plan, but rather a net acreage by removing, at a minimum, the 6.53 acre Conservation easement the property would yield approximately 23 to 37 units. This would decrease the City’s adopted Housing Element’s assumed realistic capacity to 29 units from the assumed 56, assuming no further acreage deductions would be necessary for the sloping topography. By applying the unit range of the General Plan designation based on the reduced acreage, the City of Clayton would still have adequate housing capacity based on the density range, 104 to 118 additional housing units above its RHNA obligation.
- Other Applications – While this proposed amendment has been generated from one particular situation, it could be beneficial to other parcels in the City. For example, one parcel that could benefit from this amendment, if applied, would be the vacant High Street property behind the Post Office. This property has a significant slope, which could constrain the property from achieving the required density, at 20 units per acre. This amendment could also assist the property in resulting in a more suitable development for the area.

RECOMMENDATION

It is recommended the Planning Commission consider and discuss as well as provide feedback to staff regarding whether a formal General Plan amendment process, along with associated changes to the Clayton Municipal Code, if required, should be initiated. Considerations as to the scope of the General Plan amendment and changes to the Clayton Municipal Code, if that process is recommended, are also being requested by staff.

ATTACHMENTS

- A. Excerpt from the General Plan Land Use Element
- B. Sample Constraints Map
- C. Excerpt from the Housing Element – Capacity to Accommodate the 2014-2022 RHNA

ATTACHMENT A

- 7b Support establishment of a Heritage Center that would permit uses that support historical heritage and community activity within the Town Center.
- 7c Support development of community playfields. (Amended by Resolution 21-87, dated 5/16/87)

Objective 8

To direct development of Keller Ranch within appropriate areas as constrained by topography, visual corridors, geologic factors, water courses and other planning considerations.

Policies

- 8a Utilize map designation footprint to indicate development form.
- 8b Permit density transfer among residential development areas within the overall unit limit.
- 8c Designate Country Club and athletic field facilities as Open Space/Facility.
- 8d Permit minor design deviation among residential development, open space, open space/facility, and commercial designation footprints through the Planned Development approval process. (Amended by Resolution 21-87, dated 5/16/87)

LAND USE DESIGNATIONS

The General Plan Diagram indicates application, location, extent, type and density of development. Designations provide assurance of city policy and guidance to homeowners, landowners, and developers. (Amended by Resolution 25-2004, dated 6/1/04)

RESIDENTIAL DESIGNATIONS

There are seven residential designations. The acreages are based on the legal or gross acreage of the parcel. Maximum density cannot be guaranteed but density will fall within a range due to differences in sites. Second dwelling units are exempt from the determination of residential densities.

When clustering is proposed for development, the City may provide relief from the lot coverage standards discussed below.

Unless otherwise noted, the following uses are allowed in each of the General Plan residential categories, provided they meet the requirements of the underlying zoning district, applicable specific plan policies and guidelines, and applicable general plan policies:

- Churches and places of worship;
- Public / quasi-public buildings and facilities;
- Day care centers, family day care homes, and residential care facilities;
- Bed and breakfast facilities;
- Lodges, fraternal organizations, and clubs;

- Crop and tree farming and horticulture, not including the raising or keeping of any animals other than ordinary household pets; and
- Publicly-owned parks and playgrounds.

(Amended by Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Additional uses allowed under each category are described below.

Rural Estate (0 to 1.0 Units Per Acre)

This density range is intended for single-family estates, or horse set-ups on individual lots of an acre or more. Allowable uses include single-family homes, private stables and corrals with access to greenbelts and equestrian facilities, and accessory structures and uses normally auxiliary to them. Second dwelling units are also allowed.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Single Family Low Density (1.1 to 3 Units per Acre)

This density range is intended for development of single-family houses on lots that range between 12,500 and 40,000 square feet. This designation has been the predominant density in Clayton. Uses allowed under this designation include single-family homes, and the accessory structures and uses normally auxiliary to them. Second dwelling units are also allowed.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Single Family Medium Density (3.1 to 5 Units Per Acre)

This density is intended for and allows planned unit development (PUD) and single-family subdivisions. Development will range from a standard single-family subdivision to a zero lot line or single-family home. Accessory structures and uses normally auxiliary to them are also allowed, as well as second dwelling units.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Single Family High Density (5.1 to 7.5 Units Per Acre)

This designation is an urban single-family density that will allow patio homes, zero lot line and cluster homes in a PUD development. Accessory structures and uses normally auxiliary to them are also allowed, as well as second dwelling units. Second dwelling units are also allowed. Development will require innovative design with a combination of development concentration and open space. Development intensity will permit individual parcel coverage of up to 75% provided common open space is provided. Development excluding recreational amenities shall not exceed total structural land coverage of 25%.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Multifamily Low Density (7.6 to 10 Units Per Acre)

This designation is intended for and allows cluster units such as duplexes, triplexes, townhouses, garden units, and other types of PUDs, as well as single family detached dwellings on smaller lots with a conditional use permit, that provide a development with amenities to balance the increased density. This density must be adequately buffered from single-family and estate development. Structural coverage, excluding recreational amenities, shall not exceed 40% of the site area. Second dwelling units are allowed.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 64-98, dated 12/1/98, and Resolution 11-2012, dated 4/3/12)

Multifamily Medium Density (10.1 to 15 Units Per Acre)

This designation is intended for and allows multifamily units, including duplexes, triplexes, and townhouses, located where the site area, circulation system and other features can comfortably accommodate increased density. Development within this density shall be encouraged to use a PUD concept and standards with incorporation of significant design and amenity in the project. Structural coverage, excluding recreational amenities, shall not exceed 50% of the site area. Second dwelling units are allowed.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 25-2004, dated 6/1/04, and Resolution 11-2012, dated 4/3/12)

Multifamily High Density (15.1 to 20 Units Per Acre)

This designation is intended for and allows two-story (or higher) apartments or condominiums located where higher densities may be appropriate, such as near major public transportation and commercial centers. Development within this density shall be encouraged to use a PUD concept and standards with incorporation of significant design and amenity in the project. Structural coverage, excluding recreational amenities, shall not exceed 65% of the site area.

(Resolution 11-2012, dated 4/3/12)

Institutional Density (7.6 to 20 Units Per Acre)

This designation is intended for development of various forms of senior housing under sponsorship of public or quasi-public agencies. The density of senior projects is not always equivalent to standard concepts of density; therefore, a density range of 7.6 to 20 units per acre may be permitted. Group dining, limited vehicles, medicine-dispensing services and other characteristics make this form of housing unique.

Senior projects must be submitted as planned developments and will have to be reviewed for site limitations including density, number of stories and structure height, on a case-by-case basis. It is assumed that densities can exceed 15 units per acre when possible impacts can be mitigated. Development intensity can reach 100% structural coverage of each individual parcel. Structural coverage shall not exceed 50% of the site area, however, specific sites and relationship to adjacent uses may pose additional limitations.

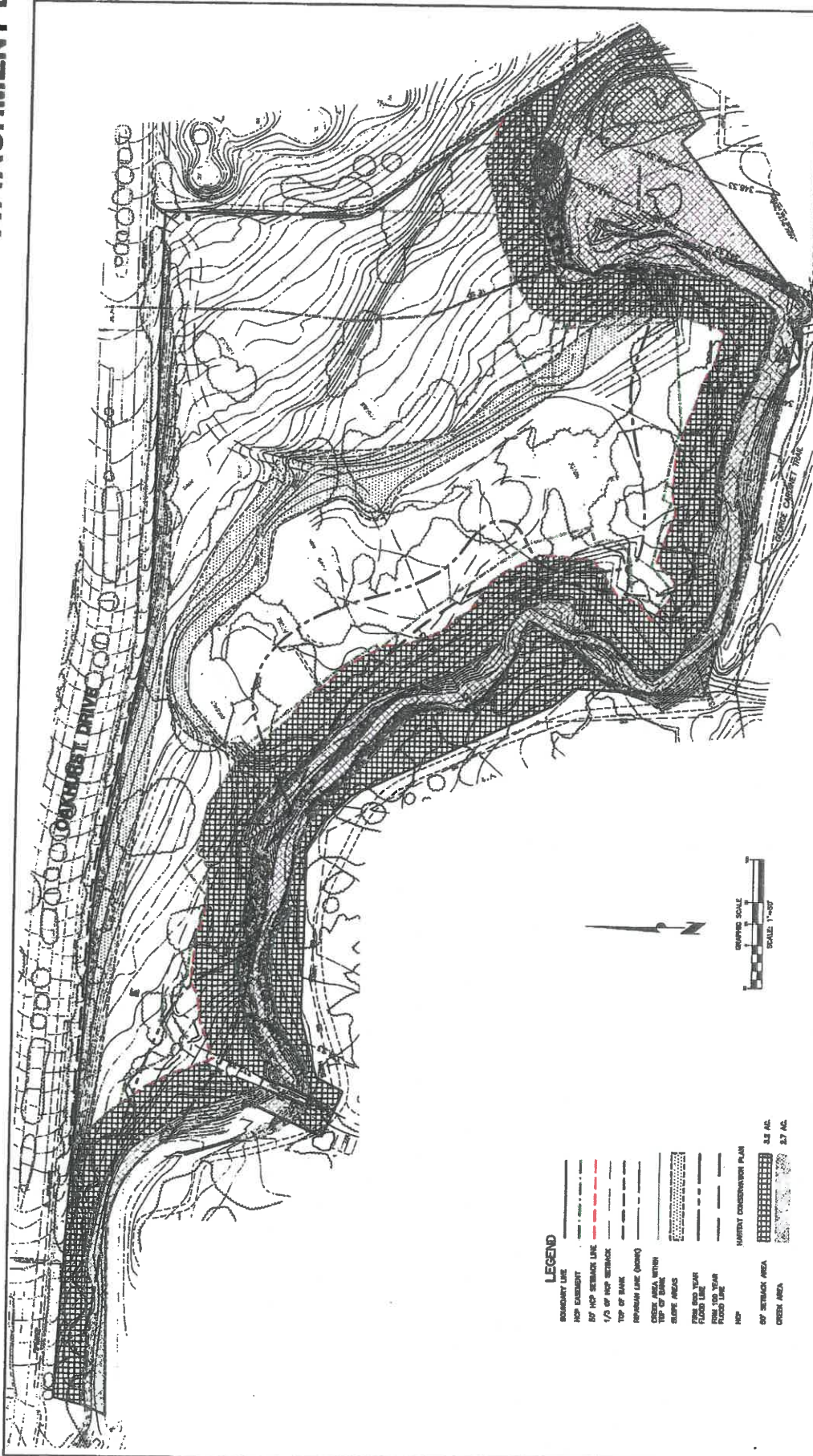
(Amended by Resolution 21-87, dated 5/16/87, Resolution 64-98, dated 12/1/98, Resolution 25-2004, dated 6/1/04, and Resolution 11-2012, dated 4/3/12)

Residential Density and Population Projections

The 2010 census indicated that Clayton had an average population of 2.72 persons per unit for occupied units. Clayton's high occupancy rate compared to other cities in Contra Costa County is due to the large homes on large parcels. As homes decrease in size, occupant size can also be expected to decrease.

The analysis of the relationship of units per acre to population is not direct. Population is based on relationship of residential unit size and living pattern of residents. Generally the size of the units will indicate the number of bedrooms. Variables include the reduced size of the family, larger homes on smaller lots, ethnic and cultural preferences for family size and use of space, economic fluctuations, percentage of unmarried shared rent households and changes in taste. The projected population levels are as follows:

ATTACHMENT B



LEGEND

- BOUNDARY LINE
- HQP EXEMPT
- 50' HQP SETBACK LINE
- 1/3 OF HQP SETBACK
- TOP OF BANK
- REVERSE SLOPE (down)
- CRIPPLE AREA WITHIN 50' OF BANK
- CRIPPLE AREAS
- FIELD AND WETLANDS
- FIELD LINE
- FIELD LINE
- HQP
- HABITAT CONSERVATION PLAN
- 50' SETBACK AREA
- CRIPPLE AREA



CONSTRAINTS EXHIBIT
SILVER OAK ESTATES
 CLAYTON - CONTRA COSTA COUNTY - CALIFORNIA
 OCTOBER 18, 2018



CITY OF CLAYTON	HOUSING ELEMENT
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As stated in Implementation Measure I.1.1, the City will continue to track and monitor the inventory of available sites throughout the planning period to ensure that adequate sites remain available to accommodate the City's RHNA.

Table 45. Capacity to Accommodate the 2014–2022 RHNA

Income Category	RHNA	Planned/ Approved (see Table 46) ¹	Vacant Land (see Table 47) ²	Underdeveloped Sites (see Table 48) ²	Remaining Need (Surplus)
Extremely Low	25	2	57	86	(69)
Very Low	26				
Low	25				
Moderate	31	11	79	43	(68)
Above Moderate	34				
Total	141	13	136	129	(137)

Source: ABAG 2014–2022 Regional Housing Needs Allocation 2013; Clayton Community Development Department 2014

¹ Units estimated in the lower-income categories will be deed-restricted for affordability in the Creekside Terrace and Oak Creek Canyon Projects. ² Units estimated in the lower-income categories are located in General Plan land use designations that allow up to at least 20 units per acre (Multi-family High Density and Town Center Commercial), in keeping with the “default density” for the City of Clayton as determined by HCD.

6.2 Adequate Sites Inventory

State law requires that the Housing Element include an “inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment” (Government Code Section 65583[a][3]). State law further requires that the Housing Element analyze zoning and infrastructure on these sites to ensure that housing development during the planning period is actually feasible. Through this process, the City must demonstrate that it has sufficient land to accommodate its fair share of the RHNA as described above.

The City must also show that the land supply is capable of supporting housing demand for all economic segments of the community, including lower-income households. The state has generally held that the best way to demonstrate capacity for “affordable” housing is to provide sufficient and suitable land zoned for higher-density multi-family housing.

All sites identified in the inventory are shown on the map in **Appendix B**.

Approved Projects

As of March 2014, 13 housing units were approved for development in the City of Clayton. As shown in **Table 46**, these units are located in the Creekside Terrace and Oak Creek Canyon projects.

C1

- 5.b. **GPA-01-16; General Plan Amendment; City of Clayton.** A study session to consider a General Plan amendment to allow net acreage density calculations on properties with physical site constraints.

Director Gentry presented the staff report and indicated that an email was received from a citizen in support of the General Plan amendment.

Chair Richardson asked how the City will determine what the “constraints” are. *Director Gentry indicated that staff will create a list of constraints once we receive feedback.*

Commissioner Altwal indicated that it would be good to have a list of site constraints and was supportive of utilizing a tool that would allow projects to achieve compliance with applicable General Plan densities.

Vice Chair Catalano asked is staff proposing to change the General Plan definition from gross acreage to net acreage or will the City continue to use gross acreage and just allow projects with site constraints to use net acreage? *Director Gentry indicated that, as currently proposed, gross acreage would continue to be used and then we would need to still determine whether this would a City-generated necessity to use net acreage or would the use of net acreage be at the request of the developer.*

The public hearing was opened.

Mark Kelson, 29 Tiffin Court, expressed support for the General Plan amendment.

Jennifer Butticci, 343 Alexander Place, expressed opposition to the Silver Oak Estates project, specifically raising concerns over the impacts the development would cause to wildlife current living on the project site.

Ann Vestal, 1737 Indian Wells Way, expressed opposition to the Silver Oak Estates project, specifically raising concerns over project-generated traffic, the height of the proposed structures, and the compatibility of the project with the existing neighborhoods in Clayton.

Heather Prewitt, 1778 Indian Wells Way, expressed opposition to the Silver Oak Estates project, specifically raising concerns over the impacts the development would cause to wildlife current living on the project site, project-generated traffic, the height of the proposed structures.

Cedric Jensen, 301 Saclan Terrace, indicated that the number of units proposed for the Silver Oak Estates project should be compliant with what the neighboring property owners want.

The public hearing was closed.

By consensus, the Planning Commission expressed support for initiating the General Plan amendment process, along with associated changes to the Clayton Municipal Code to allow net acreage density calculations on properties with physical site constraints.

Section II

LAND USE ELEMENT

PREAMBLE

GOALS, OBJECTIVES, POLICIES, AND IMPLEMENTATION MEASURES

LAND USE DESIGNATIONS

RESIDENTIAL DESIGNATIONS

COMMERCIAL DESIGNATIONS

PUBLIC AND QUASI PUBLIC FACILITY

OPEN SPACE DESIGNATIONS

ANNEXATIONS AND SPHERE OF INFLUENCE

PREAMBLE

It is important to recognize that this General Plan describes the kind of city that Clayton intends to become. The Plan is the culmination of a legally defined process of citizen review, professional advice, public hearings, and adoption. The Plan, subject to periodic review, is a living document which takes on meaning as it is translated into policies and regulatory ordinances.

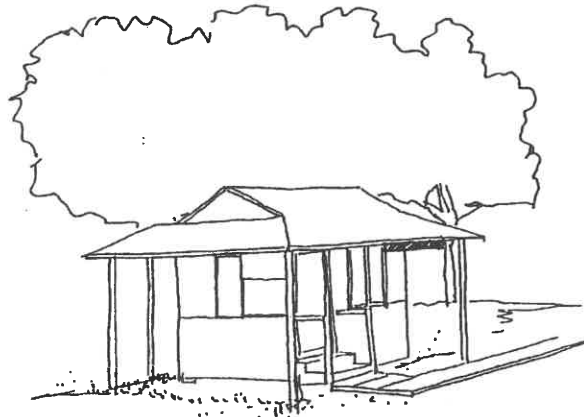
When an amendment to the Plan is considered, the proposed amendment must be considered in the context of the following goals, objectives, and policies and any such amendment must be shown to be consistent with them.

LAND USE ELEMENT

GOALS

1. To maintain the rural character that has been the pride and distinction of Clayton.
2. To encourage a balance of housing types and densities consistent with the rural character of Clayton.
3. To preserve the natural features, ecology, and scenic vistas of the Clayton area.
4. To control development through appropriate zoning, subdivision regulations and code enforcement.
5. To provide a comprehensive, integrated, greenbelt system, which includes bicycle, equestrian, and walking paths and is connected to regional systems.
6. To encourage a pedestrian-oriented community with areas of open space and recreational facilities for public use.
7. To enhance the sense of identity and pride in and to encourage historical awareness of Clayton.
8. To ensure an adequate commercial tax base for Clayton.
9. To create and maintain an attractive Town Center area and to make it the commercial, civic, and heritage focus for the community.
10. To provide housing opportunities which serve the varied social and economic segments of the Clayton community.

(Amended by Resolution 64-98, dated 12/1/98)



CLAYTON CITY HALL

GOAL

To provide a mixture of land uses that responds to needs of the City of Clayton.

Residential

Objective 1

To retain the rural character of Clayton through a predominance but not exclusive use of single-family, low-density residential development balancing needs of the housing element and preservation of open space.

(Amended by Resolution 21-81, dated 5/16/87)

Policies

- 1a Establish density designations based on terrain, circulation, adjacent uses and area characteristics.
- 1b Identify a variety of densities, which decrease as slope increases.
- 1c Permit limited high density areas.
- 1d Preserve historic structures and open space areas with uses such as community facilities, bed and breakfast facilities, or large single-family homes.
(Amended by Resolution 43-95, dated 6/28/95)
- 1e Encourage the clustering of development to preserve open space.
(Amended by Resolution 43-95, dated 6/28/95)

Objective 2

To preserve the natural beauty and the feeling of openness in the community by preserving ridgelines and limiting development in the hills.

Policies

- 2a To prevent deterioration of scenic or sensitive areas, development should be clustered in less sensitive areas and an Open Space designation should be applied to undeveloped portions of parcels.
(Amended by Resolution 43-95, dated 6/28/95)
- 2b Promote mitigation measures that maintain the aesthetic quality of the hills in transition areas.

Objective 3

To establish boundaries for the City of Clayton that follow standard principles of urban design and municipal development.

Policies

- 3a Promote annexation of all land area within the City's Sphere of Influence, provided there is no drain on current City resources.
- 3b Encourage Contra Costa County to follow the example of Santa Clara County and other progressive counties in establishing policies supporting city annexation within spheres.

- 3c The City should review its Sphere of Influence at least every five years and request a boundary amendment as needed. (Amended by Resolution 43-95, dated 6/28/95)

Commercial

Objective 4

To plan for and promote adequate commercial facilities to serve the needs of Clayton residents.

Policies

- 4a Expand the commercial tax base in appropriate areas.
- 4b Maintain the Town Center and the commercial areas of Kirker Pass Road and Marsh Creek Road as the sole areas for commercial development. (Amended by Resolution 43-95, dated 6/28/95)
- 4c Require a master development plan for combination of parcels where appropriate.

Objective 5

To prevent strip development and other inappropriate commercial uses.

Policies

- 5a Review commercial development to ensure compatibility with surrounding uses and the environmental setting.
- 5b Provide strict control of nuisance characteristics of uses.

Major Developments

Objective 6

To promote development of the Keller Ranch with Clayton.

Policies

- 6a Require a design constraints analysis prior to Keller Ranch development.
- 6b Review the design for Keller Ranch as a whole rather than a piecemeal process.
- 6c Incorporate or promote adoption of all reasonable mitigation measures for Keller Ranch development whether in the City of Clayton or in another jurisdiction.

Objective 7

To promote community amenities within the Keller Ranch development.

Policies

- 7a Support development of a country club facility that would include a golf course, tennis courts, swimming pool, clubhouse, restaurant, overnight accommodations and other uses deemed ancillary by the Planning Commission.

7b Support establishment of a Heritage Center that would permit uses that support historical heritage and community activity within the Town Center.

7c Support development of community playfields. (Amended by Resolution 21-87, dated 5/16/87)

Objective 8

To direct development of Keller Ranch within appropriate areas as constrained by topography, visual corridors, geologic factors, water courses and other planning considerations.

Policies

8a Utilize map designation footprint to indicate development form.

8b Permit density transfer among residential development areas within the overall unit limit.

8c Designate Country Club and athletic field facilities as Open Space/Facility.

8d Permit minor design deviation among residential development, open space, open space/facility, and commercial designation footprints through the Planned Development approval process. (Amended by Resolution 21-87, dated 5/16/87)

LAND USE DESIGNATIONS

The General Plan Diagram indicates application, location, extent, type and density of development. Designations provide assurance of city policy and guidance to homeowners, landowners, and developers. (Amended by Resolution 25-2004, dated 6/1/04)

RESIDENTIAL DESIGNATIONS

There are seven residential designations. The ~~acreages~~ density ranges for each residential land use designation are based on the ~~legal or gross~~ developable acreage of the parcel. Developable acreage and residential density calculations are further defined and described in the Clayton Municipal Code regarding residential parcels with sensitive land areas. Maximum density cannot be guaranteed but ~~density~~ will fall within ~~the~~ range identified for each residential land use designation. ~~Due~~ Due to differences in developable acreages ~~because of the constraints attributable to sensitive land areas, residential parcels with sensitive land areas shall fall within the not to exceed maximum density for developable acreage and shall not have a minimum density requirement. Second dwelling units are exempt from the determination of residential densities.~~

When clustering is proposed for development, the City may provide relief from the lot coverage standards discussed below.

Unless otherwise noted, the following uses are allowed in each of the General Plan residential categories, provided they meet the requirements of the underlying zoning district, applicable specific plan policies and guidelines, and applicable general plan

policies:

- Churches and places of worship;
- Public / quasi-public buildings and facilities;
- Day care centers, family day care homes, and residential care facilities;
- Bed and breakfast facilities;
- Lodges, fraternal organizations, and clubs;

- Crop and tree farming and horticulture, not including the raising or keeping of any animals other than ordinary household pets; and
- Publicly-owned parks and playgrounds.

(Amended by Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Additional uses allowed under each category are described below.

Rural Estate (0 to 1.0 Units Per Acre)

This density range is intended for single-family estates, or horse set-ups on individual lots of an acre or more. Allowable uses include single-family homes, private stables and corrals with access to greenbelts and equestrian facilities, and accessory structures and uses normally auxiliary to them. Second dwelling units are also allowed.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Single Family Low Density (1.1 to 3 Units per Acre)

This density range is intended for development of single-family houses on lots that range between 12,500 and 40,000 square feet. This designation has been the predominant density in Clayton. Uses allowed under this designation include single-family homes, and the accessory structures and uses normally auxiliary to them. Second dwelling units are also allowed.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Single Family Medium Density (3.1 to 5 Units Per Acre)

This density is intended for and allows planned unit development (PUD) and single-family subdivisions. Development will range from a standard single-family subdivision to a zero lot line or single-family home. Accessory structures and uses normally auxiliary to them are also allowed, as well as second dwelling units.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Single Family High Density (5.1 to 7.5 Units Per Acre)

This designation is an urban single-family density that will allow patio homes, zero lot line and cluster homes in a PUD development. Accessory structures and uses normally auxiliary to them are also allowed, as well as second dwelling units. Second dwelling units are also allowed. Development will require innovative design with a combination of development concentration and open space. Development intensity will permit individual parcel coverage of up to 75% provided common open space is provided. Development excluding recreational amenities shall not exceed total structural land coverage of 25%.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 43-95, dated 6/28/95, and Resolution 25-2004, dated 6/1/04)

Multifamily Low Density (7.6 to 10 Units Per Acre)

This designation is intended for and allows cluster units such as duplexes, triplexes, townhouses, garden units, and other types of PUDs, as well as single family detached dwellings on smaller lots with a conditional use permit, that provide a development with amenities to balance the increased density. This density must be adequately buffered from

single-family and estate development. Structural coverage, excluding recreational amenities, shall not exceed 40% of the site area. Second dwelling units are allowed.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 64-98, dated 12/1/98, and Resolution 11-2012, dated 4/3/12)

Multifamily Medium Density (10.1 to 15 Units Per Acre)

This designation is intended for and allows multifamily units, including duplexes, triplexes, and townhouses, located where the site area, circulation system and other features can comfortably accommodate increased density. Development within this density shall be encouraged to use a PUD concept and standards with incorporation of significant design and amenity in the project. Structural coverage, excluding recreational amenities, shall not exceed 50% of the site area. Second dwelling units are allowed.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 25-2004, dated 6/1/04, and Resolution 11-2012, dated 4/3/12)

Multifamily High Density (20 Units Per Acre)

This designation is intended for and allows two-story (or higher) apartments or condominiums located where higher densities may be appropriate, such as near major public transportation and commercial centers. Development within this density shall be encouraged to use a PUD concept and standards with incorporation of significant design and amenity in the project. Structural coverage, excluding recreational amenities, shall not exceed 65% of the site area.

(Resolution 11-2012, dated 4/3/12, Amended by Resolution 49-2016, dated July 19, 2016)

Institutional Density (7.6 to 20 Units Per Acre)

This designation is intended for development of various forms of senior housing under sponsorship of public or quasi-public agencies. The density of senior projects is not always equivalent to standard concepts of density; therefore, a density range of 7.6 to 20 units per acre may be permitted. Group dining, limited vehicles, medicine-dispensing services and other characteristics make this form of housing unique.

Senior projects must be submitted as planned developments and will have to be reviewed for site limitations including density, number of stories and structure height, on a case-by-case basis. It is assumed that densities can exceed 15 units per acre when possible impacts can be mitigated. Development intensity can reach 100% structural coverage of each individual parcel. Structural coverage shall not exceed 50% of the site area, however, specific sites and relationship to adjacent uses may pose additional limitations.

(Amended by Resolution 21-87, dated 5/16/87, Resolution 64-98, dated 12/1/98, Resolution 25-2004, dated 6/1/04, and Resolution 11-2012, dated 4/3/12)

Residential Density and Population Projections

The 2010 census indicated that Clayton had an average population of 2.72 persons per unit for occupied units. Clayton's high occupancy rate compared to other cities in Contra Costa County is due to the large homes on large parcels. As homes decrease in size, occupant size can also be expected to decrease.

The analysis of the relationship of units per acre to population is not direct. Population is based on relationship of residential unit size and living pattern of residents. Generally the size of the units will indicate the number of bedrooms. Variables include the reduced size of the family, larger homes on smaller lots, ethnic and cultural preferences for family size and use of space, economic fluctuations, percentage of unmarried shared rent households and changes in taste. The projected population levels are as follows:

<u>Designation</u>	<u>Persons Per Unit</u>
Rural Estate	3.3
Low Density	3.1
Medium Density	2.8
High Density	2.5
Multifamily Low Density	2.3

(Amended by Resolution 21-87, dated 5/16/87, Resolution 43-95, dated 6/28/95, and Resolution 11-2012, dated 4/3/12)

COMMERCIAL DESIGNATIONS

The commercial designations, including uses and development standards are listed below. The development standards apply to the net acreage of the commercial parcels and exclude any areas dedicated for public right-of-way. (Amended by Resolution 05-2007, dated 2/6/07)

Town Center

This designation is located in the center of the City of Clayton which has been a historical commercial center since Clayton's inception.

Uses

The uses allowed within this designation are the retail sales, commercial service, restaurant, bar, commercial recreation, child day care, office, upper-floor residential, visitor-accommodation uses listed in the "Town Center Commercial" land use designation of the *Town Center Specific Plan*. Population in residential uses is estimated at 1 person per 300 square feet.

All new development projects shall be reviewed for design compatibility with existing structures, as well as the theme and character of the Town Center, as described in the *Town Center Specific Plan*. Building height shall not exceed forty (40) feet. Structural coverage of a site primarily used for ground-floor retail with upper-floor retail, upper-floor office, and/or upper-floor residential purposes shall comply with the standards listed below. Structural coverage of a site primarily used for ground-floor office purposes or other uses shall not exceed thirty-five (35) percent.

(Amended by Resolution 21-87, dated 5/16/87 and Resolution 05-2007, dated 2/6/07)

1. Parcels 10,000 square feet or less: Up to one hundred (100) percent structural coverage.
2. Parcels between 10,001 and 40,000 square feet: Up to the percent structural coverage allowed by the following formula.

$$X = 100 - 2(Y - 10)$$

X is the Maximum Structural Coverage in percent
Y is the Square Footage of the Parcel in 1,000's of square feet

For example, a 30,000 square foot parcel is allowed 60 percent structural coverage.

$$X = 100 - 2 (30 - 10)$$

$$X = 100 - 2 (20)$$

$$X = 100 - 40$$

$$X = 60$$

3. Parcels greater than 40,000 square feet: Up to forty (40) percent structural coverage.
(Amended by Resolution 05-2007, dated 2/6/07)

Development projects must comply with the structural coverage standards applicable to the square footage of the respective Parcel(s) as shown on the Assessor's Maps of the Contra Costa County Assessor's Office as of January 1, 2007. Notwithstanding this provision, any Parcel larger than one acre may be initially subdivided into two parcels. Upon subdivision, each resultant parcel (termed "Resultant Parcel") shall be subject to the applicable structural coverage standard set forth in the above criteria which shall continue to apply to any further subdivision of a Resultant Parcel. (Amended by Resolution 05-2007, dated 2/6/07)

Additional Town Center discussion may be found in the Community Design Element.

Kirker Corridor

Kirker Corridor represents the only commercial location in the city limits of Clayton that has regional potential. Nearly all of Clayton's sales tax dollars are lost to neighboring communities. The Kirker Corridor represents a series of sites that can serve to recapture a portion of that lost income, provide local control over the types of shops and facilities needed and reduce the extent of travel to commercial centers further away. The primary emphasis is on retail facilities although the complementary office and retail service uses are necessary for variety and market balance. Structural coverage shall not exceed thirty (30) percent of the site and height shall not exceed fifty (50) feet.

(Amended by Resolution 21-87, dated 5/16/87 and Resolution 05-2007, dated 2/6/07)

Uses

All uses permitted in the Town Center. In addition, the following shall be permitted: auto sales and service, hotel and motel, wholesale distribution and other commercial uses determined to be consistent with the designation and overall development.

In order to prevent the Kirker Corridor from becoming a strip commercial site or to limit potential for future development, it will be necessary to present any specific proposal within the context of concept master plans for the entire area covering issues such a circulation, architectural design theme, and site planning.

Convenience Commercial

This designation is highly restricted and designated for those sites that provide specific commercial needs for the community. Currently there are two sites along Marsh Creek Road where such uses exist; a landscape nursery exists near the town center, and a general store operates in the Marsh Creek Road Specific Plan area. This designation allows retail

uses of a neighborhood convenience nature where facility and operation are compatible with surrounding residential areas. Structural coverage on these sites shall not exceed twenty-five (25) percent of the site area. Building height shall not exceed thirty five (35) feet.

(Amended by Resolution 21-87, dated 5/16/87 and Resolution 05-2007, dated 2/6/07)

Implementation

Implementing ordinances shall be developed to guide and control use and appearance for all commercial designations. Development in the Kirker Corridor shall produce a unified concept.

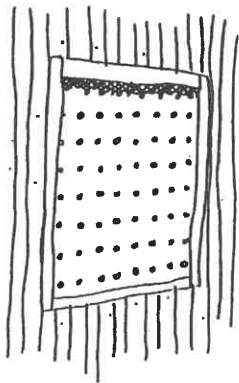
The size of Clayton and its commercially designated area provides a series of limitations on the extent of uses that can be permitted. Uses that do not fit into the categories mentioned, such as mini-warehouse, contractor yards and non-office industrial uses, may have to locate elsewhere due to the severe space limitations.

PUBLIC AND QUASI PUBLIC FACILITY DESIGNATIONS

This designation applies to public and private school facilities, city facilities, fire district facilities, and other public and quasi-public uses. Day care facilities are consistent with this designation.

New public facilities should be located so that they will not intrude on residential areas. Where a public facility must be located adjacent to residences, all feasible mitigation measures shall be considered.

(Amended by Resolution 21-87, dated 5/16/87)



**JAIL WINDOW:
PERFORATED BROILER
PLATE**



OPEN SPACE DESIGNATIONS

The City of Clayton seeks to preserve open space and provide recreational opportunities to Clayton residents within the City Limits. Four designations have been created to fulfill these goals: Private Open Space, Public Park/Open Space, Quarry, and Agriculture. The following text describes these four categories:

(Amended by Resolution 21-87, dated 5/16/87, and Resolution 43-95, dated 6/28/95)

1. **Private Open Space (PR)**

This designation includes privately-owned open spaces. Typical examples in Clayton include the Oakhurst golf course and areas where development has been clustered to retain open space. Other examples include private recreational facilities such as the riding club southeast of Clayton, the swimming pools at Marsh Creek Park Villas and Dana Hills, and the open space within Dana Hills and Westwood. These facilities allow individuals to expand their recreational opportunities at a cost and benefit to the users rather than the public at large. Such facilities should be promoted so long as traffic, noise and other related impacts are mitigated.

Only open space development, recreation and preservation are allowed in this designation. Owners' potential rights to other types of development on these properties have been clustered on adjoining parts of some parcels.

(Amended by Resolution 43-95, dated 6/28/95)

2. **Public Park/Open Space/Open Space and Recreational (PU)**

This designation applies to lands under City, County or State jurisdiction. Such uses within the planning area include City-owned open space areas and developed neighborhood and community parks, creek corridors, Mt. Diablo State Park, and the Open Space areas within the Oakhurst subdivision (dedicated to the City). Allowable uses in this designation include trails, greenbelts, playfields and parks, as well as accessory structures and uses normally auxiliary to them.

(Amended by Resolution 43-95, dated 6/28/95)

3. **Quarry (Q)**

Uses allowed under this designation include quarries and accessory structures and uses normally auxiliary to them.

There are no quarries located within the city limits of Clayton; however, the Lone Star quarry is located on the southwestern edge of the community. The quarry produces high quality rock and gravel and the quarry has an expected life in excess of 50 years. There are two negative impacts generated by quarry operation. First, there are occasional blasts to separate the rock and secondly, there is an average of 160 trucks per day traveling along Mitchell Canyon Road. This figure is based on information obtained from Lone Star Quarry. The quarry has taken a series of measures to mitigate its effect upon Clayton.

(Amended by Resolution 43-95, dated 6/28/95)

4. **Agriculture (AG)**

Areas to the northeast and east of the city limits include rugged terrain that is primarily used as rangeland for livestock and other similar open uses. The City supports and encourages the continuation of agriculture in these areas. Given the low intensity of agricultural activities, the minimum parcel size is 20 acres but is encouraged to be 40 acres to ensure agricultural viability.

The purpose of the Agriculture designation is to preserve and protect lands capable of and generally used for the production of food, fiber, and plant materials. The title is intended to be descriptive of the predominant land-extensive agricultural uses that take place in these areas, but the land use title allows other types of

agricultural, open space or non-urban uses.

(Amended by Resolution 43-95, dated 6/28/95)

ANNEXATIONS AND SPHERE OF INFLUENCE

The City of Clayton wishes to have control over those areas that demand services, that make up its urban form, that affect its livelihood and that help create an efficient unit of government services. It is therefore the policy of the City of Clayton to annex all land within its Sphere of Influence and to promote development of land in the City of Clayton. Support for the concept of City development is included in the scale of community responsiveness to needs, efficiency and consistency of standards.

The Sphere of Influence and Planning Area boundary should be reviewed at least at 5 year increments to determine whether expansion is warranted.

(Amended by Resolution 43-95, dated 6/28/95)

If development is proposed in the un-sphered area north or east of Clayton, Clayton will request expansion of its Sphere at that time to the limits of its Planning Area.

The City of Clayton will be interested in any development along Marsh Creek Road between Clayton and Byron, due to the direct effect on traffic through the City. The effect on Clayton circulation should be considered in any County proposal.

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Minutes
Clayton Planning Commission Meeting
Tuesday, April 25, 2017

1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

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

Present: Chair Dan Richardson
Vice Chair Carl Wolfe
Commissioner Bassam Altwal
Commissioner Peter Cloven
Commissioner William Gall

Absent: None

Staff: Community Development Director Mindy Gentry
Assistant Planner Milan Sikela, Jr.

2. ADMINISTRATIVE

2.a. Review of agenda items.

2.b. Declaration of Conflict of Interest.

None.

2.c. Vice Chair Wolfe to report at the City Council meeting of May 2, 2017.

3. PUBLIC COMMENT

None.

4. MINUTES

4.a. Approval of the minutes for the April 11, 2017 Planning Commission meeting.

Vice Chair Wolfe moved and Commissioner Gall seconded a motion to approve the minutes, as submitted. The motion passed 5-0.

5. PUBLIC HEARINGS

5.a. **GPA-03-16 and ZOA-03-17, General Plan Amendment and Municipal Code Amendment, City of Clayton.** A request for consideration of an amendment to the Land Use Element of the General Plan regarding the determination of residential density calculations as well as an Ordinance pertaining to the associated changes to the Clayton Municipal Code for the purposes of determining residential density calculations for residential parcels with sensitive land areas.

The staff report was presented by Director Gentry.

Commissioner Altwal had the following questions:

- Since 98% of Clayton is built out, of the remaining 2% that is undeveloped, which of that 2% is sensitive land area? *Director Gentry indicated that, of the 2%, no parcel-specific site assessment of sensitive areas has been conducted. Some parcels may contain sensitive areas such as slopes and creeks while other parcels may contain such attributes as PG&E easements. However, PG&E easements would not constitute a sensitive land area.*
- Can there be a reduction in the amount of items being listed as sensitive land areas in proposed Section 17.22.030 – Determining Capacity? *Director Gentry indicated that the list being reduced or expanded is up to the Planning Commission.*

Vice Chair Wolfe asked if this amendment is based solely on the developable part of the land. *Director Gentry responded that was correct and added that part of the impetus for this amendment emerged from the Silver Oak Estates project (which is not being discussed at tonight's meeting since the Silver Oak Estates project is not on tonight's agenda) which, because of the physical constraints on the site, the developer could not meet the development range and product type required by the General Plan.*

Commissioner Gall had the following questions:

- What does the Regional Housing Needs Allocation (RHNA) obligation of 141 units mean? *Director Gentry indicated that the State of California allocates to regional governments—which, in the Bay Area's case is the Association of Bay Area Governments (ABAG)—the number of housing units that ABAG is required to plan for in the Bay Area and then, in turn, ABAG distributes the number of housing units to all communities within ABAG's jurisdiction. With regards to Clayton, ABAG has allocated an obligation of 141 units that Clayton has to demonstrate that there is adequate capacity within the community to accommodate the 141 units.*
- In Attachment A of the Planning Commission Resolution, on Page 2 of 3, under Residential Designations, it states that second dwelling units are exempt from the determination of residential densities; so does that mean that a second dwelling unit on a residential property would not be counted toward calculation of density requirements? *Director Gentry replied that, based on recent State mandates, the State has removed a lot of local jurisdictional control over the development of second dwelling units, which are now known as accessory dwelling units, and cities are now required to allow accessory dwelling units in residential districts. Second units would not to be included when calculating density.*

Commissioner Cloven had the following questions:

- There are two developments—Silver Oak Estates and High Street Townhomes—that would be potentially impacted by this Ordinance; were there any other possible future projects in Clayton that might be impacted as well? *Director Gentry indicated that currently no applications have been submitted to the City for projects that might be affected by this Ordinance.*

Commissioner Altwal asked who initiated this amendment? *Director Gentry indicated that this amendment was generated by staff as a method of rectifying inconsistencies when a project is unable to meet the General Plan density and product type requirements.*

Chair Richardson had the following questions:

- If the old Fire Station property were to be redeveloped, would the PG&E tower easement be counted toward density requirements as covered by this amendment? *Director Gentry indicated that this amendment would only apply to environmentally-sensitive land issues such as creeks and slopes and would not apply to power lines.*
- Am I correct in understanding that this amendment, when applied to pertinent developments, would actually result in fewer units being constructed on the project site? *Director Gentry indicated that was correct.*

The public hearing was opened.

Rod Padilla, 311 Saclan Terrace, indicated the following:

- Although he appreciated the City for trying to remedy the General Plan density inconsistency issue, he does not support approval of the amendment and urged the City to find another way to address this issue.
- When a prospective developer is looking at a project site, they know what already exists on that site and should respect the natural attributes of that site.
- The City should not be accommodating developers; developers should be accommodating the City.

Bill Jordan, 6690 Marsh Creek Road, indicated the following:

- This should be a developer-initiated amendment.
- Based on the feedback received by the community and City over the conceptual High Street Townhome project, the City should not be initiating this amendment.
- I hope that if, this Ordinance is approved, that there is still an option for a project developer to opt out of having to comply with these regulations and be allowed to use other methods of compliance such as density bonuses.

Mark Kelson, 29 Tiffin Court, indicated the following:

- I support this amendment.
- I think it is important to have a method of providing consistency between the General Plan and what is actually existing on the project site.
- When Clayton was established, the vision was to keep our community semi-rural and low density and this amendment provides a mechanism to help protect that vision.

Shirley Jensen, 301 Saclan Terrace, indicated that, now that she understands the components of the Ordinance, she supports the amendment.

Steve Crockett, 6001 Golden Eagle Way, indicated the following:

- He has concerns that the amendment is being proposed by the City in order to accommodate the development of the Silver Oak Estates project.

- The developer of the Silver Oak Estates project should be developing their property in accordance with Clayton's vision.

Chair Richardson indicated that the Silver Oak Estates project is not on the agenda tonight, so the merits of the project cannot be discussed. This public hearing is about the amendment only and how this amendment would apply to the development of future projects Citywide.

Laurel Crockett read passages from the General Plan Land Use Element and indicated the following:

- She is opposed to the amendment.
- Approval of the amendment will allow high density development to destroy our community.
- I do not understand why the City is proposing to amend regulations to help the developer of Silver Oak Estates construct a high density development in our community.
- This amendment does not comply with the rural character of Clayton and the vision of the General Plan Land Use Element.

David Shihabi, 177 Brandywine Place, indicated the following:

- He is opposed to the amendment.
- This amendment will bring high density housing and more people to our City and, yet, we do not have the infrastructure to handle this type of development and the increased traffic and other impacts it will bring to Clayton.

Ann Vestal, 1737 Indian Well Way, indicated the following:

- She is opposed to the amendment.
- This amendment will bring high density housing to Clayton which does not fit in with our community.

Dane Horton, 100 Forest Hill Drive, indicated the following:

- He is opposed to the amendment.
- This amendment will bring high density to our City which will be a visual eyesore as well as impacting parking, traffic, and draining our water resources.

Nancy Topp, 175 Brandywine Place, indicated the following:

- She is opposed to the amendment.
- Been a Clayton residence for 20 years and moved because of the open space amenities.
- This amendment would bring to Clayton the type of development we see in San Francisco or Walnut Creek and would ruin the character of our community.
- We have very little retail space or retirement living opportunities in Clayton and we should be preserving our remaining developable land for retail and retirement development.

The public hearing was closed.

Director Gentry indicated the following:

- City staff introduced this amendment as way to decrease the density designation and number of units when sensitive land uses are present on a property.
- This amendment is a tool to allow a reduction in the proposed number of units in order to avoid a situation where a developer would have to construct higher density units in order to meet the density range on a particular piece of property that is constrained by sensitive land areas.

Commissioner Gall had the following questions and comment:

- So there is no high density housing being proposed as part of this amendment? *Director Gentry indicated that was correct as this amendment is only addressing how residential densities are calculated which would actually result in a less dense project on particular property that is constrained by sensitive land areas.*
- So this amendment would only be applicable to these sensitive areas? *Director Gentry indicated that was correct.*
- Would this amendment would actually assist in meeting our General Plan goals and objectives of preserving our rural character and encourage this balance of housing types and densities consistent with this rural character? *Director Gentry responded yes and added that we are also trying to achieve compliance with the densities and product types listed in the General Plan.*

Commissioner Altwal asked how much of the two percent of remaining developable land in Clayton is comprised of the Silver Oak Estates project site? *Director Gentry indicated that the Silver Oak Estates project site is the largest parcel of undeveloped land remaining, being approximately 14 acres in area, which would comprise approximately 30 percent on the remaining developable land in Clayton.*

Vice Chair Wolfe indicated the following:

- He appreciated the interest of the public in this amendment.
- There is a misunderstanding as to what we are trying to achieve with this amendment.
- We are not proposing high density housing.
- This amendment will go a long way toward lessening the density on applicable parcels of land.
- We are continuing the public's desire to preserve the rural character of Clayton and this amendment will provide us with another method of attaining this preservation of character.
- Projects will still have to come before the Planning Commission and City Council and be scrutinized on an individual basis.

Commissioner Gall indicated the following:

- He concurs with Vice Chair Wolfe's comments.
- This amendment will allow us to protect those attributes of Clayton we love such as slopes greater than 26%, creeks, and other sensitive areas which are part of the character of our community.

Commissioner Altwal indicated the following:

- He concurs with Vice Chair Wolfe's comments.
- This amendment will help us to meet the requirements of the General Plan and help reduce density on applicable parcels of land in Clayton.

Commissioner Cloven indicated the following:

- He is in support of the amendment.
- The amendment would not increase density but would actually reduce the number of units that could be built on particular piece of property.
- This amendment will assist in preserving the character of Clayton.

Chair Richardson indicated the following:

- When I moved to Clayton 30 years ago, I remember it being very different from today.
- I very much enjoy the rural character and quality of life in Clayton that includes such things as the sidewalks in the Town Center being stamped to look like wood and bringing our third grade children downtown to show them the beauty and history of our community as we pass on our legacy.
- We are always trying to find ways to carry our traditions and lifestyle forward as part of the vision of our community.
- It is an ongoing challenge to balance the rights of property owners to improve their property with what we as a community can accept on that property.
- This amendment allows a property that could be developed with 100 units to be developed with a less amount of units once the sensitive areas on the property are subtracted out.
- This amendment protects our environmental resources and removes impediments to meeting the housing requirements mandated by the State.

Commissioner Altwal moved and Vice Chair Wolfe seconded a motion to adopt Resolution No. 01-17 recommending City Council approval of:

- 1) **A General Plan Amendment to modify the calculation of residential densities and not require a minimum density for residential parcels with sensitive land areas (GPA-03-16); and**
- 2) **An Ordinance adding Chapter 17.22 to Title 17 "Zoning" determining the methodology of residential density calculations for residential parcels with sensitive land areas (ZOA-03-17).**

The motion passed 5-0.

- 5.b. **ZOA-02-17, Municipal Code Amendment, City of Clayton.** A request for consideration of a City-initiated Ordinance amending Title 15 "Building and Construction", Chapter 15.08 – Sign Provisions of City of Clayton Municipal Code in order to revise the Sign Provisions to comply with the U.S. Supreme Court decision in *Reed vs. Town of Gilbert, Arizona*, to prohibit mobile billboards, and to incorporate other best practices.

Director Gentry presented the staff report.



STAFF REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: MINDY GENTRY, COMMUNITY DEVELOPMENT DIRECTOR

DATE: MAY 16, 2017

SUBJECT: PUBLIC HEARING TO CONSIDER A GENERAL PLAN AMENDMENT TO THE LAND USE ELEMENT AND THE INTRODUCTION OF AN ORDINANCE TO MODIFY THE CALCULATION OF RESIDENTIAL DENSITY ON PARCELS WITH SENSITIVE LAND USES (GPA-03-16 AND ZOA-03-17)

RECOMMENDATIONS

It is recommended the City Council consider all information provided and submitted, open the Public Hearing and consider all public testimony and, if determined to be appropriate, take the following actions:

1. Following closure of the public hearing, subject to any changes by the City Council, motion to approve the Resolution amending the Land Use Element of the General Plan to modify the determination of residential developable acreage and density calculations and not require a minimum density on parcels with sensitive land areas (GPA-03-16) (**Attachment 1**).
- 2a. Motion to have the City Clerk read the Ordinance No. 476 by title and number only and waive further reading; and
- 2b. Following the City Clerk's reading, by motion approve Ordinance No. 476 for Introduction, adding Section 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas to the *Clayton Municipal Code* describing and determining how General Plan residential densities are calculated for proposed residential projects on parcels with sensitive land areas (**Attachment 2**).

BACKGROUND

SILVER OAK ESTATES GENERAL PLAN CONFORMANCE ISSUE

A proposed Silver Oak Estates project consists of 59 units which are comprised of seven (7) single-family homes, 28 townhomes, and 24 "Green Courts" located on approximately 5.37 acres; a neighborhood swimming pool and cabana on 0.59 acres; roadways on 2.10 acres; and open space on 7.84 acres. The project is to be sited on the 13.96-acre Hurd Ranch property located between the northerly terminus of Lydia Lane and south of Oakhurst Drive in Clayton. The currently proposed project has been in various stages of the City's entitlement process since approximately 2010, which has included the completion of a draft Initial Study/Mitigated Negative Declaration and the start of the process to undertake an Environmental Impact Report.

Due to staff attrition and following this staff's cursory review of the project in 2016, it became apparent the attached product type (e.g. townhomes) being proposed by the applicant, the 28 townhomes and 24 "Green Courts", were not in conformance with the City's General Plan. The General Plan designation for the property is Single Family Medium Density (MD) (3.1 to 5 units per acre) which is described in the General Plan as being "intended for and allows planned unit development (PUD) and single-family subdivisions. Development will range from a standard single-family subdivision to a zero lot line or single-family home." The current General Plan designation would allow for 43 to 70 units on the subject property. While the proposed number of units, 59, fits within the overall allowed density, the General Plan land use designation of Single Family Medium Density (MD) is reserved for various single-family detached product types; therefore, the proposed attached product type would not fit within the Single Family Medium Density designation and would only fit within one of the three Multifamily General Plan land use designations, Multifamily Low, Multifamily Medium, or Multifamily High Density.

In light of the proposed product type only fitting into the three multifamily land use designations, another issue arises because these designations require a higher density with more units to the acre. When applied to the subject site it would force additional units being required in order to fit the General Plan density range, a result of which the subject property really cannot manage given the physical constraints—the creek and sloping topography—located on the site. If the project applicant wanted to further pursue the proposed product type, a General Plan amendment to Multifamily Low Density would result in a minimum unit count 106 units (7.6 units/acre), which would be an overall increase of 47 units on the property from the proposed 59 units.

Further, if the applicant were to try and fit the prescribed product type, detached single family homes, on the subject site it would result in a small lot single-family development of detached homes more than likely with a zero lot line and/or minimal setbacks. Given the physical constraints or sensitive land uses on the property, it is questionable whether the parcel is large enough to even fit a detached single-family product type in the density range prescribed by the General Plan.

For example, the subject site for the Silver Oak Estates project contains large physical constraints or sensitive land areas such as sloping topography and Mount Diablo

Creek (**Attachment 3**). Specifically, the Habitat Conservation Easement is 6.53 acres, which includes a minimum 50-foot required setback from the top of bank of Mount Diablo Creek. This constraint alone removes almost half, 47%, of the developable acreage of the site, making it nearly impossible for a development project to fit within the parameters of the General Plan as it pertains to development intensity and allowed product type. Further, the topography on the property additionally restricts the number of units due the slope and required grading.

These physical constraints on the project site provide limited developable land in order to fit the required number of units and to provide the identified product type, detached single-family home. This issue is occurring because the General Plan bases the density range on legal or gross acreage of the parcel whether or not there are physical constraints or sensitive land uses on the property. Another way to categorize the issue would be trying to fit unwarranted density on a site that is really much smaller given the constraints that exist. By not providing the option of using the net acreage by subtracting the constrained property, this could result in a less desirable project given that the site may not necessarily have a proper land use designation due to the constraints and the resulting development intensity would not correspond given its location and surroundings.

Staff's purpose for sharing some details of the proposed Silver Oaks Estate Project is not to trigger the City Council's discussion of this specific proposed project, but rather to use the unintended consequence of applying this existing General Plan Land Use Element requirement as the reason for staff's submittal of an amendment to produce projects more befitting of the current character of Clayton's residential neighborhoods. In fact, staff respectfully requests the City Council not discuss the merits or details of the proposed Silver Oaks Estate Project except to the extent it is a real-world example supporting a beneficial necessity to modify this Land Use Element requirement.

PLANNING COMMISSION REVIEW

A Planning Commission study session was held on October 25, 2016 (**Attachment 4**) considering and discussing the aforementioned predicament and whether there would be support to address this issue by allowing a net density calculation to occur in situations where there are physical constraints or sensitive land uses on a residentially designated site in order to meet the density range and product type as identified by the General Plan. The Planning Commission was supportive of this idea and directed staff to proceed with drafting a proposal utilizing net density when there are physical constraints or sensitive land uses on residentially designated parcels.

The Planning Commission held a duly-noticed public hearing on April 18, 2017 (**Attachment 5**) considering the proposed amendment to the Land Use Element of the General Plan and the associated Ordinance to make changes to the *Clayton Municipal Code*. Due to some initial social media confusion regarding the intent of the proposed General Plan amendment and Ordinance, members of the public appeared speaking against this proposal. However, once the true purpose of these proposed changes was clearly explained and staff was able to respond to specific questions on how this

would apply and matriculate to future development projects and affect development within the City, the public sentiment morphed to one of support. The Planning Commission also expressed support for this Amendment and Ordinance because it will create the opportunity for more desirable developments and prevent unwarranted density on constrained sites.

DISCUSSION

The General Plan has established minimum and maximum densities for all residentially designated uses within the City and gross acreage and net acreage are commonly used measurements of land area. The General Plan residential density ranges or developable areas are currently calculated from the legal or gross acreage of the parcel, which is considered to be all land including easements and rights-of-way. Net acreage would be any developable acreage following any required subtractions which could include open space or public rights-of-way, amongst others.

Further, the General Plan requirement for density on the legal or gross acreage of the parcel fits for those properties that are flat and/or minimally constrained; however this requirement does not appropriately apply to those properties that are limited in their developable land due large physical site constraints. The city of Clayton is approximately 98 percent built-out and many of the available properties left to develop are marginal or more difficult, particularly properties with site constraints such as slopes or creeks. The overall intent of these amendments would be to prevent unwarranted density on a site that is really much smaller, given the constraints that exist, and to provide the City with the opportunity for more desirable developments rather than applying a singular approach in regards to the determination of density.

GENERAL PLAN AMENDMENT

The proposed language changes to the Land Use Element are contained within one paragraph at the beginning of the discussion on Residential Designations, located on Page II-5 of the General Plan (**Attachment 6**). These proposed changes would allow density calculations to be determined from the net developable acreage of the parcel as well as not require the minimum density to be met for sites that have sensitive land areas. The intent of the proposed change will allow developers with constrained lots containing sensitive areas to meet both the prescribed General Plan density range and product type. Further, given the community's general lack of support for higher density housing developments and the General Plan's support of lower density developments, these amendments would apply to and be required for all qualifying property and therefore not optional.

The City of Clayton's General Plan Land Use Element contains the following goals:

- To maintain the rural character that has been the pride and distinction of Clayton.
- To encourage a balance of housing types and densities consistent with the rural character of Clayton.
- To preserve natural features, ecology, and scenic vistas of the Clayton area.

The proposed amendment captures the intent and vision as discussed in the goals of the General Plan. The amendment would decrease the overall density on certain eligible properties to help retain the rural character of Clayton, while balancing a variety of housing types and densities. The amendment will also help to preserve natural features, ecology, and scenic vistas by decreasing the overall required density on a property that has sensitive land uses such as creeks and rock outcroppings.

In addition, the General Plan Land Use Element, under Objective 1, identifies a policy of establishing density designations based on terrain, circulation, adjacent uses, and area characteristics. This proposed change in density calculations would help to fulfill this General Plan policy because as outlined in the proposed Ordinance, any slopes over 26% would be subtracted from the developable acreage thereby better fitting the density to the terrain and would retain sensitive land areas, which would result in developments better tailored to the area characteristics.

Housing Element Compliance

The City has a total Regional Housing Needs Assessment (RHNA) obligation of 141 units for the 2014-2022 planning period. The City's certified Housing Element, after taking into consideration a subsequently approved General Plan Amendment, has an estimated capacity of 272 housing units, which results in a housing surplus of 131 units. The subject General Plan Amendment may reduce the overall residential density capacity of the assumed and identified housing units within the Housing Element. However, the Housing Element did assume some known constraints, such as slopes, on particular properties, which were taken into account when determining the realistic capacity, but not all constraints were documented on vacant or underdeveloped properties. Given that the City has an estimated housing surplus of 131 units and this proposed amendment would only impact parcels with sensitive land areas, it is anticipated the decrease in density will still result in adequate capacity to accommodate its RHNA obligation give the large surplus of housing units. Even after taking the largest parcel available for development, 13.96 acres (Silver Oak Estates), into consideration, its application would still result in a surplus of 104 to 108 units.

ZONING ORDINANCE

As referenced in the language of the General Plan amendment, the calculation of residential densities is to be further defined and described in the *Clayton Municipal Code*. The proposed addition of Chapter 17.22 - Residential Density Calculations for Residential Parcels with Sensitive Land Areas in the *Clayton Municipal Code* would provide those details on how to calculate residential densities when sensitive land areas exist on a residential parcel (**Exhibit A of Attachment 2**). The Ordinance sets the parameters for determining developable acreage as well as what sensitive land areas are considered to be excluded from the gross or legal acreage of the parcel. The sensitive land areas that were identified were features that were clearly definable and constituted areas that cannot be developed, should avoid being developed, or should be preserved due to their environmental value such as floodplains, creeks, and wetlands.

For illustrative purposes, if a developer has a property that is ten legal or gross acres in size and the property has a General Plan designation of Single Family Medium Density General Plan (3.1 to 5 units per acre) it would result in a density range of 31 to 50 units. However if the property happens to contain sensitive land areas, such as 1.3 acres of land within the 100-year floodplain and 0.7 acres with a slope that exceeds 26%, then those combined two acres would need to be subtracted from the gross or legal acreage to determine the developable acreage. Following the exclusion of these sensitive areas, it would result in eight developable acres, which would create a lesser density range of 24.8 to 40 units per acre. This calculation results in lowering the overall density on residential parcels with sensitive land areas.

ENVIRONMENTAL

Pursuant to CEQA Guideline Section 15166, the Environmental Impact Report (EIR) was included as part of the City's General Plan, which provided an analysis of the potential significant effects that may occur as a result of the General Plan implementation. The EIR was adopted by the Clayton City Council on July 18, 1985 with the finding the impacts associated with the implementation of the General Plan can be mitigated to a less-than-significant level. Adoption of this General Plan amendment and Ordinance will result in activities less intense than assumed in the Clayton City Council adopted EIR; therefore these activities would be covered under the existing General Plan EIR.

FISCAL IMPACT

Due to fewer parcels that would be created, the proposed action could lead to a possible nominal reduction in future overall property tax revenue to the City.

ATTACHMENTS

1. Resolution No. -2017 [3 pp.]
2. Ordinance No. 476 [2 pp.] with the attachment:
Exhibit A – Chapter 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas
3. Sample Constraints Map [1 pp.]
4. Excerpt of the Staff Report and Minutes from the October 25, 2016 Planning Commission Study Session [4 pp.]
5. Excerpt of the Staff Report and Minutes from the April 18, 2017 Planning Commission [9 pp.]
6. Redline Changes to the Land Use Element of the General Plan [1 pp.]

Councilmember Pierce added during a campaign season, Councilmembers receive a number of phone calls inquiring on where signs can be placed; she noted the current process of obtaining permits for the rights of way signs appear to be working.

Mayor Diaz opened the Public Hearing for public comment.

Dan Hummer, Stranahan resident, agrees with limiting the size of political signs.

Russ Remoy, 1843 Yolanda Circle, shared his concerns about high-density housing changing the character of Clayton. Mayor Diaz advised him those concerns would be allowed during the next item on the agenda.

Mayor Diaz closed the Public Hearing.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to refer this item back to the Planning Commission for its further review on the sign size limit change to retain the existing 3 sq. ft. aggregate limitation in the Sign Provisions Ordinance (Passed; 5-0 vote).

- (b) Public Hearing to consider a proposed City-initiated General Plan Amendment to modify the determination of residential developable acreage and density calculations and to not require a minimum density on residentially designated property with sensitive land areas and the Introduction and First Reading of Ordinance No. 476 adding Section 17.22 – Residential Density Calculations for Residential with Sensitive Land Areas to Title 17 Zoning of the Clayton Municipal Code describing and determining how General Plan densities are calculated for proposed residential projects with sensitive land areas.

Community Development Director Mindy Gentry presented the staff report noting as a real life example, the proposed Silver Oak Estates subdivision project will discussed tonight as to why these amendments are being proposed. However, she noted that project is not on the agenda therefore staff recommends the ensuing discussion not focus on the merits or details of that project; it is merely a real-world example to illustrate the beneficial necessity of the proposed amendments.

Ms. Gentry advised the proposed Silver Oaks Estates project consists of 59 units which are comprised of seven single family homes, 28 town homes and 24 “Green Courts” in the terminus of Lydia Lane. The currently proposed project has been through various stages in the entitlement process since 2010. Due to City staff attrition and cursory review of the project, in 2016 it became apparent the proposed townhomes and green courts were not in conformance with the City’s General Plan. The General Plan designation for the property is Single Family Medium Density which calls for 3.1 to 5 units per acre with a product type of single family detached homes. Consequently, the current General Plan would allow 43 to 70 units on the property. Although the proposed 59 units fits within that overall allowed density, the various single family detached product types do not; therefore, the proposed attached product type would only fit within one of three Multifamily General Plan land use designations. If the project applicant wanted to further pursue the proposed product type, a General Plan Amendment to multifamily low density would be required, resulting in a minimum unit count of 106 units, an increase of 47 units on the property above the proposed 59 units. Alternatively, if the project applicant tried to fit the proposed single family detached homes on the site resulting in a small lot single-family development of detached homes, it would likely occur with a zero lot line and/or minimal setbacks. Given the physical constraints of the property, it is questionable whether the parcel is large enough to even fit a detached

single-family product type in the density range prescribed by the current General Plan. The proposed Silver Oak Estates project land contains large physical constraints or sensitive land areas such as sloping topography and Mt. Diablo Creek. Specifically, the Habitat Conservation Easement is 6.53 acres, including a minimum 50-foot required setback from the top of the bank of Mt. Diablo Creek; this constraint removes almost half of the developable acreage of the site making it nearly impossible to fit within the parameters of the General Plan.

This issue is occurring because the General Plan bases the density range on legal or gross acreage of the parcel, regardless of whether there are physical constraints or sensitive land uses on the property. Another way to categorize the issue would be trying to fit unwarranted density on a site that is really much smaller given the constraints that exist. By not providing the option of using the net acreage by subtracting the constrained property, this could result in a less desirable project for the city. The General Plan requirement for density on the legal or gross acreage of the parcel fits for those properties that are flat and/or minimally constrained; however, this requirement does not appropriately apply to those properties that are limited in their developable land due to large physical constraints.

The city of Clayton is approximately 98-percent built-out and many of the available properties left to develop are marginal or more difficult, particularly properties with site constraints such as slopes or creeks. The proposed changes would allow density calculations to be determined based on the net developable acreage of the parcel as well as not require the minimum density to be met for sites that have sensitive land areas. The overall intent of these amendments would be to prevent unwarranted density on a site that is functionally much smaller, given the constraints that exist, and to provide the City with the opportunity for more desirable developments rather than applying a singular approach in regards to the determination of density.

Ms. Gentry further noted this proposed change will allow constrained lots containing sensitive areas to meet both the prescribed General Plan product type and density range, particularly for the single family residentially designated parcels. Given the community's lack of interest and tolerance for higher density housing developments and the General Plan's support of lower density developments, these proposed amendments would apply to and be required of all qualifying properties and not optional.

She indicated the proposed amendment captures the intent and vision as discussed in the goals of the General Plan. The amendment would decrease the overall density to help retain the rural character of Clayton, while balancing a variety of housing types and densities. The amendment will also help to preserve natural features, ecology, and scenic vistas by decreasing the overall required density on a property that has sensitive land areas such as creeks and rock outcroppings. The City has a total Regional Housing Needs Assessment obligation of 141 units and an estimated capacity of 272 housing units giving the City an estimated housing surplus of 131 units. The proposed amendment would only affect parcels with sensitive land uses or areas. It is anticipated the net decrease in density will still result in adequate housing capacity to accommodate the City's RHNA obligation given its large surplus of 131 units. The proposed zoning changes would further define and determine the calculation of residential density when there are sensitive land areas on the property. The Ordinance sets the perimeters of determining developable acreage as well as what sensitive lands areas are to be considered excluded from the gross or legal acreage of the parcel. The sensitive land areas that being identified are features that are clearly definable and constitute areas that cannot be developed, should avoid being developed, or should be preserved due to its environmental value such as floodplains, creeks and wetlands.

For illustrative purposes, if a developer has a property that is ten legal or gross acres in size and the property has a General Plan designation of Single Family Medium Density

General Plan 3.1 to 5 units per acre, it would result in a density range of 31 to 50 units. However if the property happens to contain sensitive land areas, such as 1.3 acres of land within the 100-year floodplain and 0.7 acres with a slope that exceeds 26%, then those combined two acres would need to be subtracted from the gross or legal acreage to determine the developable acreage. By exclusion of these sensitive areas, the calculation results in eight developable acres which creates a new density range of 24.8 to 40 units per acre. This proposed methodology results in lowering the overall density on residential parcels with sensitive land areas.

Ms. Gentry concluded by noting on the Council dais is an email from Mr. Bill Jordan indicating his support of the amendments; however he requests exclusion of his potential housing project which would be on a vacant piece of land on High Street behind the U.S. Post Office.

Councilmember Pierce summarized this Amendment is having the effect of looking carefully at the sensitive habitat within our community and eliminating those acres from the calculation for allowable buildings, thereby reducing the number of possible buildings on those properties; which is significant improvement with much lower development then previously allowed.

Vice Mayor Haydon reiterated the proposed Silver Oaks Project was just an example and not for discussion this evening.

Mayor Diaz opened the Public Hearing for public comment.

Brian Buddell, 2 year resident of Clayton in the Peacock Creek Subdivision, remarked some of the things that drew his family to this area are its rural nature, beautiful vistas, the sense of community and community pride. Clayton did not have many apartments, town homes or overcrowded parking lots like surrounding communities. Mr. Buddell indicated these amendments do not prevent a large condominium complex to be built, and carries a fatal flaw of it being based on a 1985 Environmental Impact Report; there have been a lot of changes in the community since that Report which may bring potential legal challenges and raises questions if this has been properly evaluated. In fact, he will look into a lawsuit if it is passed, and he is opposed to it.

David Nieman, 5903 Cardinet Drive, indicated the location of his home is desirable as it is very close to the mentioned creek and he spent his childhood running through the creek every Saturday and after school, knee deep in water. He moved his family from Boston to Clayton so they could have similar childhood experiences. Mr. Nieman advised it is a confusing proposal and he wanted to clarify if it constricts the number of developable acres that are considered, but then increases the number of units that can be built? Ms. Gentry clarified this item decreases the overall developable acreage, which concurrently decreases the number of units that may be built on one particular site that has sensitive land areas. To meet the General Plan density range and product type this would take into consideration sensitive land areas and reduce the overall developable acreage, the density range would still remain the same. An applicant would have to request a General Plan amendment to change the designation from single-family to multi-family units.

Mark Ventura, Tara Court resident, understands the amendment removes the minimum density requirements in sensitive land areas, what about non-sensitive land areas? If a developer or land owner has property with a slope of 26%, what prevents a retaining wall to be built pushing the slope further away and expand the developable land area? Ms. Gentry advised the 26% slope refers to existing topography on the site, prior to a developer seeking entitlements from the City to alter it; the area will be mapped out with identifiable areas that can be developed. Ms. Gentry added the General Plan identifies designated density ranges with a minimum and maximum.

Dan Hummer, had a question about Mr. Jordan's property and the exclusion request in regards to the minimum density, with the existing slope would his property be affected by the proposed amendments and reduce the number of possible units? Ms. Gentry responded the City has not received any detailed documents showing the existing grades on his property.

Russ Remoy, Yolanda Circle, expressed concerns about possible traffic issues that may arise on the building of additional housing units and he would prefer more open space to improve the quality of life in Clayton. It is all about greed, money, and more taxes. Councilmember Shuey remarked the City does not own the land parcels and private citizens that own the land have rights to develop their land. Councilmember Shuey also reiterated the proposed amendment actually reduces the number of required housing units allowed when developing in sensitive land areas. City Manager Napper added the proposed Silver Oaks Estates project was used only as an example this evening; for those concerned about the higher density in town, the status quo is far worse than the proposed Amendment. He noted the City of Clayton receives only 6.9% of one's property tax bill paid on a home's assessed valuation, which places Clayton into the category of Low Property Tax Cities. If it was about chasing money and tax revenues, the lands in town would be converted by the City to commercial designations which create more local tax revenues than residential properties.

Mayor Diaz closed the Public Hearing.

1. **It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to adopt Resolution No. 14-2017 amending the Clayton General Plan Land Use Element to modify the calculation of residential densities and not require a minimum density for residential parcels with sensitive land areas. (Passed; 5-0 vote).**

2. **It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to have the City Clerk read Ordinance No. 476, by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 476 by title and number only.

3. **It was moved by Councilmember Pierce, seconded by Councilmember Catalano, to approve Ordinance No. 476 for Introduction with the finding adding Section 17.22 – Residential Density Calculations for Residential Parcels with Sensitive Land Areas to the Clayton Municipal Code describing and determining how General Plan residential densities are calculated for proposed residential projects on parcels with sensitive land areas will result in activities less intense than assumed in the previously-certified EIR for the City's General Plan adopted by the City Council on July 18, 1985. (Passed; 5-0 vote).**

8. ACTION ITEMS

- (a) Update report and continued discussion on whether the City of Clayton should participate in a Community Choice Energy (CCE) Program, plus a further presentation from MCE Clean Energy (MCE) with the offer to join its Joint Powers Authority (JPA).

Community Development Director Mindy Gentry presented the staff report noting in October 2015 the Board of Supervisors directed County staff to research the possibility

ATTACHMENT D

Mindy Gentry

From: William P Jordan <billjordan@sbcglobal.net>
Sent: Tuesday, June 06, 2017 1:51 PM
To: Mindy Gentry
Subject: Fw: New Clayton ordinance for calculating density/non compliance of Housing Element Law

Hi Mindy,

Here is an email I sent to Julie Pierce last night. She has not gotten back to me yet so I am sending it to you to share with the council tonight.

I am hoping you hit the "pause" button on the new ordinance tonight and look into this further for my reasons listed below.

It seems like it will cause a lot of wasted time and money if an organization decides to make City of Clayton defend the new lesser allowable number of units in the downtown area.

Thank you.

Bill Jordan

On Monday, 5 June 2017 10:19 PM, William P Jordan <billjordan@sbcglobal.net> wrote:

Good evening Julie,

I am writing to you to see what your opinion is regarding the proposed ordinance as it relates to non compliance and conflict of Housing Element Law.

As noted in an email to Mindy Gentry that was given to you prior to last city council meeting, I am in support of the new ordinance but thought that my Affordable Housing Opportunity Site (AHO) should be exempted.

I am writing again with another concern and ask that you look into the legality of passing this ordinance as it seems contrary to Housing Element Law and what was just approved in November of 2016 which increased the minimum density to 20 units per acre on the MHD lots. In other words, this proposed ordinance takes several units away on an AHO site from the intent of the last ordinance passed. And that November 2016 ordinance was meant to bring our Housing Element into compliance.

This new ordinance does not achieve the goals of RHNA, ABAG and our own Housing Element as part of the General Plan. These urban MHD lots downtown Clayton near businesses and transit are unintended targets of an ordinance meant to benefit another development along a creek and rural in nature.

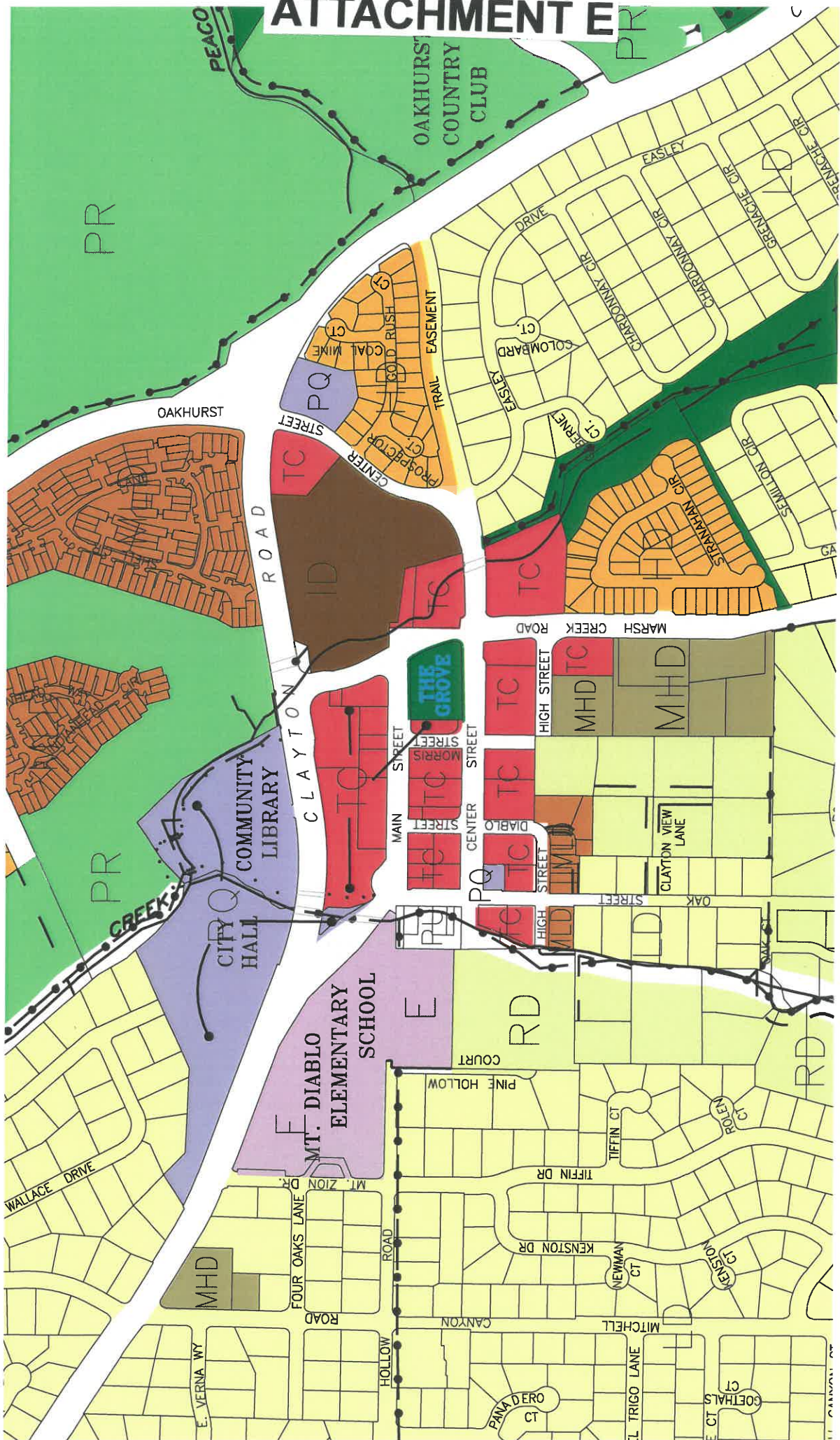
I would think that the proposed ordinance is fine as long as it exempts parcels in the Town Center Specific Plan and/or by geographic boundaries. This seems to be a cleaner and less vulnerable position for housing advocates to litigate against our city.

Please let me know your thoughts.

Thank you.

Bill
872-7249

ATTACHMENT E



ATTACHMENT F

Chapter 17.22

RESIDENTIAL DENSITY CALCULATIONS FOR RESIDENTIAL PARCELS WITH SENSITIVE LAND AREAS

Sections:

17.22.010	Purpose
17.22.020	Calculating Density for Residential Parcels with Sensitive Land Areas
17.22.030	Determining Capacity
17.22.040	Density Calculation
17.22.050	Constraints Map
<u>17.22.060</u>	<u>Exceptions</u>

17.22.010 Purpose. The purpose of this section is to describe and determine how General Plan residential densities are calculated for proposed residential projects when sensitive land areas exist on a residential parcel.

17.22.020 Calculating Density for Residential Parcels with Sensitive Land Areas. The General Plan establishes minimum and maximum densities for all residentially designated uses within the City. Residential density is a computation expressing the number of dwelling units per acre based on the developable acreage of the land. The developable acreage shall not include sensitive land areas for purposes of calculating the permitted subdivision capacity (density) on a parcel or parcels of land. Because of the constraints due to sensitive land areas, residential parcels with sensitive land areas shall fall within a not to exceed maximum density for developable acreage and shall not have a minimum density requirement.

Public rights-of-way and utility easements are to be considered as part of the developable acreage.

17.22.030 Determining Capacity. Developable acreage shall be determined by excluding the following sensitive land area(s) from the gross or legal acreage of a parcel(s):

- 1) Land within the 100-year floodplain;
- 2) Land or slopes exceeding 26 percent;
- 3) Creeks, streams, and the associated setback provisions as set forth in the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan as implemented by City Ordinance No. 412;
- 4) Rock outcroppings; and
- 5) Wetlands as defined and determined by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan;

- 6) Land containing species of endangered plants that have been identified as a no-take species as defined and determined by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan; and
- 7) Any other similar features as determined by the Planning Commission.

17.22.040 Density Calculation. To calculate the numerical maximum range of housing units; exclude the identified sensitive land areas from the legal or gross acreage and then multiply the remaining acreage by the highest number in the density range for the applicable residential General Plan land use designation for the maximum density.

17.22.050 Constraints Map. Prior to permitting any request for a subdivision or parcel map allowing for the construction of any residential units, a constraints map shall be submitted analyzing the developable and non-developable acreage of the property.

17.22.060 Exceptions. The provisions of this chapter shall not apply to any property where the City amended the General Plan designation to Multifamily High Density Residential (MHD) in order to comply with State law to meet the City's 2007-2014 Regional Housing Needs Allocation (RHNA) obligation.