

City of Clayton
6th Cycle Housing Element Update and Associated
Land Use Element and Zoning Code Amendments

FINAL Environmental Impact Report
(State Clearinghouse # 2022030086)

Lead Agency:

City of Clayton
Community Development Department
6000 Heritage Trail
Clayton, California 94517



Consultant to the City:

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FINAL EIR
November 30, 2022

- This document is designed for double-sided printing -

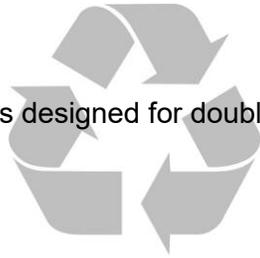


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1 – INTRODUCTION

This Final Environmental Impact Report (Final EIR) has been prepared to comply with Sections 15088 and 15089 of the State California Environmental Quality Act (CEQA) Guidelines (Guidelines). The City of Clayton (City) has prepared the Final EIR pursuant to the CEQA Guidelines, including Sections 15086 (Consultation Concerning Draft EIR) and 15088 (Evaluation of and Responses to Comments). As noted in Section 15089(b) of the Guidelines, the focus of a Final EIR should be on responses to comments on the Draft Environmental Impact Report (Draft EIR). In conformance with these guidelines, the Final EIR consists of the following volumes:

- (1) The **Draft EIR** circulated for a 45-day public agency and public review and comment period commencing on August 19, 2022, and ending on October 3, 2022. A Notice of Availability was sent to government agencies, neighboring jurisdictions, and non-governmental interested parties. The City's Notification List for the Draft EIR is provided in Section 4.0 (Public Circulation) of this Final EIR.
- (2) This **Final EIR document** includes a list of all commenters on the Draft EIR during the Draft EIR public review period, the responses of the City to these comments, revisions to the Draft EIR (presented in Section 3 Errata), the public circulation record, and the Mitigation Monitoring and Reporting Program (MMRP). None of the revisions to the Draft EIR represents a substantial increase in the severity of an identified significant impact or the identification of a new significant impact, mitigation, or alternatives that are substantially different from those already considered in the Draft EIR.

Certification of this Final EIR by the Clayton City Council must occur prior to approval of the Housing Element Update and related land use and zoning code amendments.

Availability of EIR Materials

Materials related to the preparation of this EIR are available for public review on the City of Clayton website <https://claytonca.gov/community-development/housing/housing-element/> and at the following physical location:

City of Clayton
Community Development Department
6000 Heritage Trail
Clayton, California 94517

Project Description

The City of Clayton updates its General Plan Housing Element on an eight-year cycle. The last update took place in December 2014 and established a housing plan for the City for the eight-year cycle between 2015 and 2023. In fall 2021, the City commenced the update of its Housing Element for the 6th cycle, which spans years 2023 through 2031. The community engagement process for the 6th cycle Housing Element Update included various meetings with stakeholders, community workshops, online surveys and community sessions and comment meetings.

The updated Housing Element includes programs, policies, and actions to further the goal of meeting existing and projected housing needs of all income levels and identifies how the City plans to accommodate its Regional Housing Needs Allocation (RHNA) of at least 570 dwelling units. The proposed Housing Element Update has the potential to result in development of up to 868 additional dwelling units in the Planning Area, which represents a 21.07 percent increase over existing conditions. Additionally, the proposed Housing Element Update has the potential to result in a population increase of up to an estimated 2,364 additional persons and an additional 71 employees within the Planning Area, which represents a 20.98 percent and 7.66 percent increase, respectively, over existing conditions. Finally, the proposed Housing Element Update has the potential to result in development of up to 13,000 square feet of additional non-residential building area within the Planning Area, which represents a 3.57 percent increase over existing conditions. The City of Clayton has identified 18 preliminary housing sites to accommodate the RHNA of 570 or more additional housing units. As described in the Housing Element Update, these sites include:

- Vacant properties zoned for residential, public, or agricultural use;
- An overflow parking lot owned by the Oakhurst Country Club;
- Within the Town Center, vacant properties (including a City-owned site), public parking lot, and private properties that could be redeveloped with mixed-use projects;
- Properties that are currently developed with a single-family home but are large enough to support additional residences or a multifamily housing project; and
- Sites owned by religious institutions that have expressed interest in developing housing on portions of their properties.

Not all of these properties are designated and zoned for residential use and for those that are, the density yields may not be high enough to achieve the RHNA through private development efforts. Thus, for this 6th cycle Housing Element, to accommodate its RHNA of 570 or more units, the City will need to amend General Plan land use policy to increase residential densities to support greater variety in multifamily housing types, amend the Zoning Code to provide for consistency with General Plan policy, and rezone properties to reflect parallel General Plan land use designations. With the proposed amendments, the City is able to plan for the RHNA and create a planning buffer that responds to State laws regarding no net loss of lower-income residential units, should a site planned for lower-income housing be developed with a lower density than was planned. It should also be noted that the 6th cycle inventory sites may change based on the public review process and comments from the California Department of Housing and Community Development (HCD).

Intended Use of the EIR

The planning framework proposed in the Housing Element Update would not result in the immediate construction of any new development nor entitlement of any new project. All new development within the City will continue to be subject to the City’s permitting, approval, and public participation processes. Elected and appointed officials along with City Staff will review subsequent project applications for consistency with the Housing Element, applicable Specific Plans, and the Zoning Ordinance, and will prepare appropriate environmental documentation to comply with CEQA and other applicable environmental requirements.

Pursuant to Section 15168 of the State CEQA Guidelines, this EIR is a **Program EIR**. The goals, policies, land use designations, implementation programs, and other substantive components of the Housing Element and implementing sections of the Zoning Ordinance comprise the “program” evaluated in this Program EIR. Subsequent activities undertaken by the City and project proponents to implement the Housing Element will be examined considering this Program EIR to determine the appropriate level of environmental review required under CEQA. Subsequent implementation activities may include but are not limited to the following:

- Rezoning of properties to achieve consistency with the Housing Element.
- Updating and approval of Specific Plans and other development plans and planning documents.
- Approval of tentative maps, variances, conditional use permits, and other land use permits and entitlements.
- Approval of development agreements.
- Approval of facility and service master plans and financing plans.
- Approval and funding of public improvement projects.
- Approval of resource management plans.
- Issuance of permits and other approvals necessary for the implementation of the Housing Element.
- Issuance of permits and other approvals necessary for public and private development projects.
- Future amendments to the City’s Housing Element and other General Plan Elements.

Plan Preparation Process and Public Participation

The City conducted an extensive public outreach process for the preparation and adoption of the Housing Element Update. The process involved consultation with community leaders, interested individuals, and the public at large during preparation of the Plan, a public workshop to discuss conceptual alternatives, an online survey, an online housing planning simulation, and public hearings. A detailed outline of the public participation process for the General Plan Update and EIR is included in Section 4.0 of this Final EIR.

Housing Element Update Objectives

The Housing Element Update serves as the guide for the City’s future residential growth and development. The Housing Element contains goals, policies, and programs that will provide City

staff and discretionary bodies with a foundation for decisions for long-range planning related to physical development and public services. The Housing Element Update also includes the objectives listed below for future residential development in the community.

1. Maintain and enhance existing housing and neighborhoods.
2. Ensure adequate sites are available to accommodate moderate housing and population growth and achievement of the City's regional housing needs allocation.
3. Update City policies and regulations to allow for a greater number and diversity of housing units.
4. Diversify the housing stock to increase housing opportunities at all income ranges and for both renters and homeowners.
5. Minimize governmental constraints to housing production.
6. Ensure fair housing practices.
7. Preserve and improve existing affordable housing stock.

City of Clayton Discretionary Approvals

The City Council as lead agency must take the following actions with respect to the Final EIR before the Council can adopt the Housing Element Update and approve any related land use and zoning code amendments:

- Certification of the Final EIR and the Findings of Fact
- Adoption of a Statement of Overriding Considerations
- Adoption of a Mitigation Monitoring and Reporting Program

Other Government Agency Approvals

Following certification of this EIR and adoption of the Housing Element Update by the lead agency (City of Clayton), other public agencies may use this Program EIR in the approval of subsequent implementation activities, including City public works projects and private development projects. These agencies may include but are not limited to those listed below:

- Bay Area Air Quality Management District
- California Department of Fish and Wildlife
- California Department of Conservation
- California Department of Housing and Community Development (HCD)
- California Department of Toxic Substances Control
- California Department of Transportation (Caltrans)
- Contra Costa County Local Agency Formation Commission (LAFCO)
- County of Contra Costa
- Contra Costa County Flood Control District
- Contra Costa Transportation Authority (CCTA)

1 – Introduction

- Central Contra Costa County Sanitary District
- Contra Costa Water District
- San Francisco Bay Regional Water Quality Control Board
- U.S. Fish and Wildlife Services

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2 – RESPONSE TO COMMENTS

The Draft EIR was circulated for 45-day public review and comment period beginning August 19, 2022 and ending on October 3, 2022. A Notice of Availability was sent to the State Clearinghouse, other government agencies, neighboring cities, and non-governmental interested parties. The City’s Local Agency Notification List, showing who received notice of the Draft EIR, is provided in Section 4.0 - Public Circulation - of this FEIR. Two (2) comment letters were received, both from state government agencies. In addition, members of the public and the City of Clayton Planning Commission submitted public comments on the Draft EIR at the Planning Commission Regular Meeting held on September 13, 2022.

The correspondences listed in Table 2-1 (Draft EIR Comments) were submitted to the City of Clayton concerning the Draft EIR. A copy of each comment letter, followed by written responses to those comments, follows.

**Table 2-1
Draft EIR Comments**

ID	Agency/Organization/Individual	Date
State Agencies		
A	California Department of Toxic Substances Control	September 9, 2022
B	California Department of Fish and Wildlife	October 3, 2022
PC	Clayton Planning Commission Regular Meeting	September 13, 2022

COMMENT LETTER A – CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL



SENT VIA ELECTRONIC MAIL

September 29, 2022

Ms. Dana Ayers
Community Development Director
City of Clayton
6000 Heritage Trail
Clayton, CA 94517
DanaA@claytonca.gov

DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF CLAYTON
6TH CYCLE HOUSING UPDATE ELEMENT UPDATE AND ASSOCIATED LAND USE
ELEMENT AND ZONING CODE AMENDMENTS – DATED AUGUST 2022
(STATE CLEARINGHOUSE NUMBER: 2022030086)

Dear Ms. Ayers:

The Department of Toxic Substances Control (DTSC) received a Draft Environmental Impact Report (EIR) for the City of Clayton 6th Cycle Housing Element Update and Associated Land Use Element and Zoning Code Amendments (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, work in close proximity to mining or suspected mining or former mining activities, presence of site buildings that may require demolition or modifications, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

A-1

DTSC recommends that the following issues be evaluated in the Hazards and Hazardous Materials section of the EIR:

1. A State of California environmental regulatory agency such as DTSC or Regional Water Quality Control Board (RWQCB), or a qualified local agency that meets the requirements of [Assembly Bill 304 \(AB304\)](#) should provide regulatory concurrence that newly developed sites are safe for construction and proposed uses.

A-2

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2. The EIR acknowledges the potential for historic or future activities on or near the project site to result in the release of hazardous wastes/substances on the project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The EIR should also identify the mechanism(s) to initiate any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight. A-2
3. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil DTSC, recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project described in the EIR. A-3
4. If any sites within the project area or sites located within the vicinity of the project have been used or are suspected of having been used for mining activities, proper investigation for mine waste should be discussed in the EIR. DTSC recommends that any project sites with current and/or former mining operations onsite or in the project site area should be evaluated for mine waste according to DTSC's 1998 [Abandoned Mine Land Mines Preliminary Assessment Handbook](#). A-4
5. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 [Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers](#). A-5
6. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the A-6

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imported materials be characterized according to DTSC's 2001 [Information Advisory Clean Imported Fill Material](#).

7. If any sites included as part of the proposed project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the EIR. DTSC recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 [Interim Guidance for Sampling Agricultural Properties \(Third Revision\)](#).

A-6 Cont.

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A-7

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DTSC appreciates the opportunity to comment on the EIR. Should you choose DTSC to provide oversight for any environmental investigations, please visit DTSC's [Site Mitigation and Restoration Program](#) page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at [DTSC's Brownfield website](#).

If you have any questions, please contact me at (916) 255-3710 or via email at Gavin.McCreary@dtsc.ca.gov.

Sincerely,



Gavin McCreary
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
Dave.Kereazis@dtsc.ca.gov

ID	Response to Comment Letter A – Department of Toxic Substances Control
A-1	The City acknowledges DTSC’s oversight role regarding activities or facilities that involve hazardous materials. However, this section does not comment on the EIR analysis, so no response is required.
A-2	First, it should be noted these comments are on the Draft EIR that was circulated for public comment, so it has already been prepared. The City’s development review process, which includes CEQA compliance for new projects, includes evaluation and a determination of if or to what degree a site is safe for construction and operation of a proposed development project. Under current laws and regulations, the City would be the lead agency under CEQA, and the City or other appropriate agencies would be responsible for site characterization and, if necessary, remediation prior to development. As a result, no changes are required to the EIR, and no additional mitigation is required for this regulatory compliance.
A-3	The identification of hazardous materials on a site and need for remediation of contaminants is already integrated into the development review/approval and CEQA compliance processes of the City. Part of that process is to identify, if necessary, the appropriate regulatory agency to provide oversight of any characterization and remediation of hazardous materials. For example, Phase I Environmental Site Assessments are required by the City for sites where potential contamination is known or suspected to have occurred. Similarly, Phase II characterization and/or Phase III remediation is required if contamination has been identified. Remediation must occur under the oversight of an appropriate state agency such as DTSC or RWQCB, although sometimes the oversight can occur under the Contra Costa County Department of Environmental Health where allowed under existing hazmat regulations. Therefore, no changes are required to the EIR, and no additional mitigation is required for this regulatory compliance.
A-4	Significant ADL contamination typically occurs only along freeways or other high-volume roadways which are not present in the City of Clayton. Therefore, ADL is not considered a potentially significant environmental impact that requires mitigation at this programmatic level within the City of Clayton. However, the City will comply for site-specific projects as appropriate with applicable portions of Caltrans’ ADL regulations including “Soil Management Agreement for Aerially Deposited Lead-Contaminated Soils” and Health and Safety Code Section 25187(b)(5). As a result, no changes are required to the EIR, and no additional mitigation is required for this regulatory compliance.
A-5	Mining activities have not historically occurred within the City of Clayton, including any of the housing sites identified in the HEU. Future development of these sites would have site-specific evaluation of the potential for historic mining activities on the respective properties. If it is determined that mining activities had actually occurred on a proposed housing site, appropriate additional evaluation of the potential for hazardous materials or waste to occur on the site would be conducted and appropriate action taken. Therefore, no changes are required to the EIR, and no additional mitigation is required.
A-6	The City’s development review process, which includes CEQA compliance for new projects, will evaluate and determine if or to what degree a site is safe for construction and operation of a proposed project. For example, a site with existing facilities may require a Phase I Environmental Site Assessment (ESA) to characterize (i.e., identify) if asbestos-containing materials, lead-based paint, polychlorinated biphenyls, or other

ID	Response to Comment Letter A – Department of Toxic Substances Control
	<p>hazardous materials (hazmat) are or may reasonably expected to be present onsite. If so, then a Phase II ESA may be required to sample and laboratory test onsite materials for the actual presence of these and other suspected hazardous materials. If the Phase II ESA characterization identifies such materials onsite, then a Phase III remediation plan may be needed to specify how identified hazmat will be safely removed from the site. Any characterization and remediation must follow established laws and regulations monitored by the appropriate regulatory agencies, such as DTSC, RWQCB, County Department of Environmental Health. For example, there are dozens of laws and regulations monitored by the U.S. Environmental Protection Agency for remediating asbestos-containing materials alone. The City will also refer preparers of ESAs to the reference cited by the commenter as appropriate. Under current laws and regulations, the City would be the lead agency under CEQA, and the City or other appropriate agencies will be responsible for site characterization and, if necessary, remediation prior to development. This information was explained in Section 4.9 of the Draft EIR as clarified here in this response. As a result, no changes are required to the EIR, and no additional mitigation is required for this regulatory compliance.</p>
A-7	<p>The City will comply with existing laws and regulations regarding the contents and safety of any fill materials, including the reference cited by the commenter regarding hazmat standards for fill materials. As a result, no changes are required to the EIR, and no additional mitigation is required for this regulatory compliance.</p>
A-8	<p>The City’s development review process includes CEQA compliance for new projects, which will evaluate and determine if or to what degree a site may be contaminated by past agricultural or weed abatement activities. Under current laws and regulations, the City would typically require a Phase I ESA. A Phase II characterization and/or Phase III remediation may also be required if contamination is already known or is identified in the Phase I ESA. Remediation in these instances must occur under the oversight of an appropriate state agency such as DTSC or RWQCB, although sometimes the oversight can occur under the County Department of Environmental Health where allowed under existing hazmat regulations. Therefore, no changes are required to the EIR, and no additional mitigation is required for this regulatory compliance.</p>

COMMENT LETTER B – CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 3, 2022

Dana Ayers, Community Development Director
City of Clayton
6000 Heritage Trail
Clayton, CA 94517
danaa@claytonca.gov

Subject: City of Clayton 6th Cycle Housing Element Update and Associated Land Use Element and Zoning Amendments, Draft Environmental Impact Report, SCH No. 2022030086, City of Clayton, Contra Costa County

Dear Ms. Ayers:

The California Department of Fish and Wildlife (CDFW) has reviewed the Draft Environmental Impact Report (DEIR) for the City of Clayton (City) 6th Cycle Housing Element Update and Associate Land Use Element and Zoning Code Amendments (Project).

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State [Fish and Game Code, Section 711.7, subd. (a) and I1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 15386, subd. (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., Section 1802). Similarly, for purposes of the California Environmental Quality Act (CEQA), CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related activities that have the potential to adversely affect fish and wildlife resources.

B-1

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority (Fish and Game Code, Section 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish and Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

B-2

Pursuant to our jurisdiction, CDFW has provided concerns, comments, and recommendations regarding the Project herein.

Conserving California's Wildlife Since 1870

Ms. Dana Ayers
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October 3, 2022
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PROJECT DESCRIPTION

The City proposes to update the Housing Element, as well as the associated Land Use Element and Zoning Codes, of the City of Clayton's General Plan for the years 2023 through 2031.

The Housing Element Update establishes programs, policies, and actions to further the goal of meeting the existing and projected housing needs of all income levels of the community; identify how the City plans to accommodate its Regional Housing Needs Allocation (RHNA) of 570 units across approximately 2460 acres through the year 2031; and identify changes to the General Plan Land Use Element needed to support the required housing capacity. The proposed Land Use changes have the potential to result in increased capacity for as many as 868 new dwelling units, an increase of approximately 20,000 square feet of commercial space, and a reduction of approximately 7,000 square feet of public facilities/institutional space. Potential increases of approximately 2,364 residents. Additionally, the City's Zoning Code is proposed to be amended in order to implement the proposed House and Land Use Elements.

The City has identified 18 preliminary housing sites to accommodate the addition of 570 or more housing units. As described in the Housing Element Update, these sites include:

- Vacant properties zoned for residential, public, or agricultural use;
- An overflow parking lot owned by the Oakhurst Country Club;
- Within the Town Center, vacant properties (including a City-owned site), public parking lots, and private properties that could be redeveloped with mixed-use projects;
- Properties that are currently developed with a single-family home but are large enough to support additional residences or a multifamily housing project; and
- Sites owned by religious institutions that have expressed interest in developing housing on portions of their properties.

PROJECT LOCATION

The City of Clayton is located in north-central Contra Costa County, at the base of the north slope of Mount Diablo. For the purposes of this Project, the planning area of interest includes all properties within the corporate City boundaries and the City's Sphere of Influence (SOI), as defined by the Contra Costa County Local Agency Formation Commission. This planning area is bounded to the south by Mt. Diablo State Park and to the northeast by Black Diamond Regional Preserve. The northern and western planning area boundaries are shared with the City of Concord. The planning

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area includes the entire City of Clayton (3.84 square miles of land), as well as its SOI (an additional 0.98 square miles).

B-4 Cont.
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REGULATORY AUTHORITY

Lake and Streambed Alteration Agreement

Please be advised that CDFW requires an LSA Notification, pursuant to Fish and Game Code, Section 1600 et seq., for any Project-related activities potentially affecting rivers, lakes, or streams, and their associated riparian habitat. LSA Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. CDFW, as a Responsible Agency, will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

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B-5

Several of the potential development sites identified in the DEIR appear to be subject to CDFW’s regulatory authority under Section 1600 et seq. CDFW recommends that an LSA Notification be submitted for all activities which have potential to affect rivers, lakes, or streams, and their associated riparian habitat, and that this requirement be made a Mitigation Measure within the Final EIR (FEIR). To obtain information about the LSA notification process, please access our website at: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

California Endangered Species Act and Native Plant Protection Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in take¹ of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP.

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B-6

The Project falls within areas covered by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCC HCP/NCCP or “Plan”). Participation in the Plan provides take coverage for certain CESA-listed species and is encouraged. The DEIR states that any subsequent projects undertaken due to the General or Housing Plan updates will need to receive take coverage from the ECCC

¹ Take is defined in Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt any of those activities.

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HCP/NCCP. However, if the Project may impact a CESA-listed species that is not covered under the Plan, then a CESA ITP may be needed for those individual species.

Please note that CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species (CEQA Guidelines, Section 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The Lead Agency's FOC does not eliminate the project proponent's obligation to comply with Fish and Game Code, Section 2080.

B-6 Cont.

Migratory Birds and Raptors

Fish and Game Code, Section 3503, 3503.5, and 3513 places protections on birds, their eggs, and nests. CDFW has authority over actions that may disturb or destroy active nest sites or take birds. Fully protected bird species, such as the golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*), may not be taken or possessed at any time (Fish and Game Code, Section 3511).

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COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Clayton in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

COMMENT 1: Cumulative Impact Analysis

The DEIR should also identify reasonably foreseeable future projects in the Project vicinity (which includes the future potential development sites), disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the project's contribution to the impact (CEQA Guidelines, Section 15355). Although a project's impacts may be less-than-significant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact, e.g., reduction of habitat for a special-status species should be considered cumulatively considerable.

B-8

COMMENT 2: Protocol-Level Surveys for Special-Status Animals and Plants

If take coverage is being obtained under the ECC HCP/NCCCP, surveys for those special-status species for which coverage is available should be conducted as part of the review process by the ECCC Habitat Conservation Agency.

For projects that do not elect to participate in the ECCC HCP/NCCCP, CDFW recommends that protocol-level surveys for special-status animals and plants be conducted by a qualified biologist. Surveys should be conducted for special-status

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species with potential to occur, following recommended survey protocols. Survey and monitoring protocols and guidelines for some species are available at: (<https://wildlife.ca.gov/Conservation/Survey-Protocols>). Where no protocols have been established, the surveys should be completed by a qualified biologist and the survey methodology should be approved by CDFW in advance of initiation of any such survey.

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), should be conducted during the blooming period for all species potentially impacted by the Project within the planning area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrology, and require the identification of reference populations. More than one year of surveys may be necessary given environmental conditions. Please refer the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities," which can be found online at: (<https://wildlife.ca.gov/Conservation/Survey-Protocols>). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. If a state-listed or state Rare² plant is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization through an ITP issued by CDFW pursuant to Fish and Game Code Sections 2081(b) and/or Section 1900 et seq is necessary to comply with Fish and Game Code CESA and the Native Plant Protection Act.

B-9 Cont.

COMMENT 3: Edits to Figure 4.4-1, Biological Resources Constraints Map

Figure 4.4-1, Biological Resources Constraints Map, should be revised to note that the blue areas demarcated as "NWI wetlands" are also creeks/streams. These areas are subject to CDFW regulatory authority, as set forth elsewhere in this letter.

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COMMENT 4: Evaluation of Impacts to Riparian Areas and Creeks

Issue: The planning area has the potential to contain water features subject to CDFW's regulatory authority, pursuant to Fish and Game Code, Section 1600 et seq. Project implementation could potentially result in temporary and permanent impacts to these features. The DEIR's 'Environmental Setting' section does not adequately describe or address waterways that are present within the planning area, and which have potential to be impacted by Project related activities. These waterbodies include, but are not limited to Mount Diablo Creek, Peacock Creek, Donner Creek, Mitchell Creek, tributaries thereto, and other unnamed creeks/waterways. Obtaining coverage via the ECCC HCP/NCCP does not provide mitigation for impacts to waterways or fin-fish

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² In this context, "Rare" means listed under the California Native Plant Protection Act.

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residing in those waterways. CDFW will require that these impacts be mitigated to a level of less-than-significant.

CDFW's regulatory authority over activities that may affect streams, rivers, or lakes is discussed on page 4.4-23, but the impacts to those resources arising from Project-related activities are not evaluated. Most of the potential sites identified in the DEIR, in particular sites B, D, F, G, I, J, L, M, and R, are definitively located within or adjacent to creeks and/or riparian woodlands and will require individual site-specific impact evaluation and will likely require a Notification to CDFW. Other potential sites identified in the DEIR might also be subject to the same requirements, depending on Project designs that are ultimately developed. The DEIR does not provide sufficient information for CDFW to determine if the impacts to creeks and riparian areas arising from Project-related activities would be considered significant, and if compensatory mitigation would be required. The Final EIR must disclose and evaluate potential temporary and permanent impacts to these areas. It will also need to include fully enforceable measures to minimize and mitigate potentially significant impacts and should not defer these measures to a future time, pursuant to CEQA Guidelines, Section 15126.4.

Specific impact: Project activities within wetland and riparian features have the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); and deposition of debris, waste, sediment, or other materials into water feature causing water pollution that is deleterious to fish and wildlife.

Evidence impact is potentially significant: Construction activities within these features has the potential to permanently impact wetland and riparian communities, as well as their downstream waters.

Recommended Biological Resource Mitigation Measures:

1. *Habitat Assessment.* A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the planning area or its immediate vicinity supports wetland and/or riparian communities. This survey should include, but not be limited to, Mount Diablo Creek, Peacock Creek, Donner Creek, Mitchell Creek, tributaries thereto, and other unnamed creeks/waterways, and drainage channels.
2. *Wetland Delineation.* CDFW recommends a formal wetland delineation be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands and riparian habitat present. Please note that, while there is overlap, State and Federal definitions of wetlands, as well as which activities may require Notification pursuant to Fish and Game Code Section 1602.

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3. *Project-Specific Notification of Lake and Streambed Alteration for Future Development Sites.* Fish and Game Code, Section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. Each site selected for development should be evaluated on an individual basis and will notify CDFW as required by law. CDFW retains sole discretion for determining whether a proposed activity is likely to substantially adversely affect an existing fish or wildlife resource [Fish and Game Code, Section 1603(a)]. The information provided to CDFW shall include a description of all of the activities associated with the proposed Project, not just those closely associated with the streams and creeks. Information included in a complete Notification package shall include but is not limited to: an analysis and description of all temporary and permanent impacts; a description of all proposed avoidance, minimization and mitigation for the described impacts; and project-specific drainage and hydrology changes that will result from Project implementation. Minimization and avoidance measures shall include species-specific pre-construction surveys, reporting, identification and avoidance of ecologically sensitive areas, environmental awareness training, and restoration of disturbed areas.

B-11
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Written verification of CDFW’s determination whether notification is required should be made a condition of approval for any Project proposed for coverage under the Final EIR.

4. *Compensatory Mitigation for Riparian Impacts.* Impacts to creeks and riparian areas will require compensatory mitigation at a minimum ratio of 1:1 (conserved habitat to impacted habitat) for temporary impacts and a minimum of 3:1 (conserved habitat to impacted habitat) for permanent impacts. This shall be calculated in acres and linear distance. Temporary impacts to stream/riparian habitat should be restored in the same year as impacted.

COMMENT 5: Large flowered fiddleneck (*Amsinckia grandiflora*)

Issue: In Table 4.4-1 (page 4.4-11), Large flowered fiddleneck (*Amsinckia grandiflora*) is documented as “Not Expected”. The historic geographic range of this species covers the entirety of the planning area.

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Resolution: CDFW recommends this determination be revised to “May be Present” in the “Probability to occur within the planning area and/or Housing Inventory Sites” column of Table 4.4-1 and that the Final EIR evaluate impacts to this species accordingly.

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COMMENT 8: Procedure or Checklist to Verify if Future Projects are Within Scope of EIR

CDFW recommends creating a procedure or checklist for evaluating subsequent Project impacts on biological resources to determine if they are within the scope of the Program EIR or if an additional environmental document is warranted.

CEQA Guideline 15126.4 (a)(1)(B) states: “Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.”

CDFW acknowledges that the DEIR is identified as a Program EIR. CDFW also recognizes that, pursuant to CEQA Guidelines, Section 15152, subdivision (c), if a Lead Agency is using the tiering process in connection with an EIR or large-scale planning approval, the development of detailed, site-specific information can be deferred if infeasible, in many instances, until such time as the Lead Agency prepares a future environmental document(s). This future environmental document(s) would cover a project of a more limited geographical scale and is appropriate if the deferred information does not prevent adequate identification of significant effects of the planning approval at hand.

However, while Program EIRs have a necessarily broad scope, CDFW recommends providing as much additional information related to anticipated future residential and non-residential development, as possible and recirculating the DEIR. The additional information may allow for further comment on the proposed Project to avoid and minimize potential impacts to species and habitat.

In addition, as subsequent projects will have site-specific impacts and require site-specific mitigation measures, CDFW still strongly recommends creating a procedure for evaluating these subsequent projects. CEQA Guidelines, Section 15168, subdivision (c)(4) states, “Where the later activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the Program EIR.” Based on CEQA Guidelines, Section 15183.3, and associated *Appendix N Checklist*, and consistent with other Program EIRs, CDFW recommends creating a procedure or checklist for evaluating subsequent project impacts on biological resources to determine if they are within the scope of the Program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the FEIR. A procedure or checklist will be critical to

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ensuring adequate analysis of Project effects on biological resources. Future analysis should include all special-status species and sensitive natural communities including but not limited to species considered rare, threatened, or endangered pursuant to CEQA Guidelines, Section 15380. The checklist should also outline how habitat will be analyzed per species or habitat type, how impacts will be assessed, and whether any mitigation is necessary.

When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a “within the scope” of the EIR conclusion. For subsequent Project activities that may affect sensitive biological resources, a site-specific analysis should be prepared by a qualified biologist to provide the necessary supporting information. In addition, the checklist should cite the specific portions of the DEIR, including page and section references, containing the analysis of the subsequent Project activities’ significant effects and indicate whether it incorporates all applicable mitigation measures from the DEIR.

COMMENT 9: Biological Resources Significance Thresholds (Section 4.4.3)

Issue: The DEIR indicates in Significance Thresholds for Biological Resources, Section 4.4.3, item (a)/Impact BIO-1 and (b)/Impact BIO-2, that the impact will be “less-than-significant” before mitigation. CDFW recommends that the DEIR be revised to indicate that these impacts will be “less-than-significant with mitigation incorporated”.

Mitigation is defined in Section 15370 of the California Code of Regulations (CEQA Guidelines) as: “Compensating for the impact by replacing or providing substitute resources or environment”.

- For item (a)/Impact BIO-1, the substantial adverse effects to candidate, sensitive, or special-status species are being accounted for with participation in ECCC HCP/NCCP. However, should participation in the ECCC HCP/NCCP be infeasible for some reason, impacts to these species arising from Project-related activities would be significant. Impacts to special-status species arising from Project activities should be fully mitigated under CESA. Participation in the ECCC HCP/NCCP, or equivalent CESA take coverage via an Incidental Take Permit from CDFW, would achieve this statutory threshold, and the Significance Threshold should be “less-than-significant with mitigation”.
- Item (b)/Impact BIO-2, states that substantial adverse effects to the bed, bank or channel of waterways, riparian habitat or other sensitive natural communities identified by the CDFW will be accounted for in the LSA process and the accompanying mitigation prescribed by CDFW. Without this, the impacts to these areas would be significant. Therefore, the Significance Threshold should be “less-than-significant with mitigation”.

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Resolution: The DEIR should be revised to indicate the Significance Threshold determinations for items (a) and (b) will be “less-than-significant with mitigation incorporated”. Additionally, the following Mitigation Measures shall be included in the Final EIR.

Recommended Biological Resource Mitigation Measures:

1. Full Mitigation for Impacts to Special-Status Species. Prior to initiation of Project activities, all sites selected for development will be evaluated on an individual, project-by-project basis and will submit all required information and a Planning Survey Report (PSR) to the ECCC Habitat Conservation Agency for review and acceptance. All survey protocols, avoidance and minimization measures, and construction monitoring as specified in the PSR shall be implemented and adhered to by the Project proponent and representatives of the Project proponent including all on-site personnel, employees, and contractors. If participation in the ECCC HCP/NCCP is either not possible or does not address the mitigation requirement, then each Project shall seek individual take coverage by applying to CDFW for an Incidental Take Permit.
2. Please see the suggested Mitigation Measure “Individual Notification of Lake and Streambed Alteration for Future Development Sites” above.

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COMMENT 10: Nesting Bird Protections

Issue: The City is responsible for ensuring that the project does not result in any violation of relevant Fish and Game Codes (such as Sections 3503 or 3503.5). The DEIR has no evaluation of potential impacts to nesting or migratory birds.

Specific impacts: Tree and vegetation removal or modification have the potential to impact nesting birds. In addition to direct impacts, nesting birds might be indirectly affected by noise, vibration, odors and movement of workers or equipment.

Evidence impact is potentially significant: Construction activities resultant from the housing re-zoning decisions have the potential to directly and indirectly impact nesting or migratory birds.

Recommended Biological Resource Mitigation Measures: CDFW recommends including the following Mitigation Measures, if project activities might occur during nesting bird season:

1. *Nesting Birds.* If Project activities will occur during nesting bird season (February 15 to September 15 for raptors; March 15 to August 30 for non-raptors), the Qualified Biologist shall conduct a focused survey for active nests within **5 days** prior to the initiation of project-related activities. Surveys shall be conducted in all suitable habitat located at project work sites and in staging and storage areas.

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The minimum survey radii surrounding the work area shall be the following: (1) **250 feet** for non-raptors; (2) **1,000 feet** for raptors.

2. *Active Nest Protections.* If active nests are found, the Qualified Biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings. Once work commences, all active nests shall be regularly monitored by the Qualified Biologist for a minimum of **two (2)** consecutive days to detect any signs of disturbance and behavioral changes as a result of the project. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors and movement of workers or equipment. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards project personnel, standing up from a brooding position, and flying away from the nest. If signs of disturbance and behavioral changes are observed, work shall halt, and the Qualified Biologist shall either halt work until the nest is no longer active and increase protective buffer zones (see Mitigation Measure 3 below).
3. *Active Nest Buffers.* Active nest sites and protective buffer zones shall be designated as Ecologically Sensitive Areas (ESAs), where no project-related activities may occur and no personnel may enter. These ESAs shall be maintained (while occupied, or longer for multi-clutch and annually returning species such as raptors) during project activities with the establishment of a fence barrier or flagging surrounding the nest site. Buffers shall remain in place throughout project activities or until the nest becomes inactive, whichever comes first.
4. *Bird Protections During Vegetation Removal.* To the maximum extent possible, vegetation within the stream or creeks shall not be removed between **February 15 to September 15** to avoid impacts to nesting birds. If any vegetation removal must occur during this time, vegetation will only be removed if the following requirement is met:
5. Within the 3 days prior to vegetation modification or removal activities, the Qualified Biologist will conduct a focused survey for nesting birds in the vegetation slated to be removed or modified and either determines no nesting birds are present or if present then the Qualified Biologist shall determine and demarcate an active nest buffer.

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COMMENT 11: Changes to Table 2-1 Resultant from CDFW Comment

Please reflect all changes in determinations and mitigation measures resultant from CDFW's comments above, in Table 2-1, Summary of Potentially Significant Impacts and Recommended Mitigation Measures.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, Section 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & Game Code, Section 711.4; Pub. Resources Code, Section 21089).

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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Clayton in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Sabrina Dunn, Environmental Scientist, at (707) 428-2069 or Sabrina.Dunn@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at (707) 339-6052 or Michelle.Battaglia@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ID	Response to Comment Letter B – California Department of Fish and Wildlife
B-1	It is agreed that the CDFW is California’s Trustee Agency for fish and wildlife resources and has jurisdiction in the process of this environmental review. This comment has been recorded for the record. No changes are required in response to this comment.
B-2	It is agreed that the CDFW is a Responsible Agency for this environmental review. This comment has been recorded for the record. No changes are required in response to this comment.
B-3	The project description is adequately summarized in the CDFW’s comment letter. This comment has been recorded for the record. No changes are required in response to this comment.
B-4	The project location is adequately summarized in the CDFW’s comment letter. This comment has been recorded for the record. No changes are required in response to this comment.
B-5	The regulatory authority over the Lake and Streambed Alteration Agreement permitting process of the CDFW is adequately summarized in the CDFW’s comment letter. This comment has been recorded for the record. No changes are required in response to this comment.
B-6	The regulatory authority over the California Endangered Species Act and Native Plant Protection Act permitting processes of the CDFW is adequately summarized in the CDFW’s comment letter. This comment has been recorded for the record. No changes are required in response to this comment.
B-7	Fish and Game Code protections on Migratory Birds and Raptors are adequately summarized in the CDFW’s comment letter. This comment has been recorded for the record. No changes are required in response to this comment.
B-8	The cumulative impact analysis can be found starting on the last paragraph on page 4.4-31 of the Draft EIR. The project does not have expected significant impacts in combination within any known project(s), as it is not expected to result in a net reduction in habitat for rare or special-status species, or any other new CEQA impacts, based on conforming with the requirements of ECCC HCP/NCCP. The 18 proposed sites have been at least partially previously developed (A, B, E, F, G, H, I, J, K, M, N, O, Q, R, S), are disturbed by fire maintenance mowing/disking (D, L), or are entirely developed (P) and are generally within an urban corridor, and the proposed housing developments would not be expected to significantly impact biological resources when implementing the requirements of the ECCC HCP/NCCP. No changes have been made based on this comment.
B-9	The City of Clayton complies with the ECCC HCP/NCCP for projects pursuant to Ordinance No. 412 and Chapter 16.55 to the Clayton Municipal Code. Individual project sites will be evaluated for compliance with the ECCC HCP/NCCP pursuant to the Clayton Municipal Code. The applicant(s) themselves may not opt out of ECCC HCP/NCCP compliance without review by the City of Clayton. Any exemptions are reviewed in per 16.55.030 for the Clayton Municipal Code and Chapter 9.3.1 of the ECCC, which generally only exclude development fees for already developed urban cover. Surveys for special-status wildlife and plants are already required pursuant to the ECCC HCP/NCCP for any sites that may have potential impacts to rare or special-status species.

ID	Response to Comment Letter B – California Department of Fish and Wildlife
	<p>A table has been added (under response to Comment B-15) to clarify which sites will likely require ECCC HCP/NCCP applications pursuant to 16.55.030 of the ECCC HCP/NCCP. Only one site (Site P), which consists of a paved parking lot in an urban setting, might be excluded from the requirements of the ECCC HCP/NCCP based on the City of Clayton Municipal Code, as no sensitive species or habitats are expected to occur in such a developed area.</p> <p>No new mitigation measures have been added in response to this comment.</p>
B-10	<p>The Biological Resources Constraints Map is updated to change the “NWI wetlands” to “NWI Wetlands, including Creeks/Streams.” Please see Section 3.0, Errata for the updated map. Additionally, text has been added to the Errata section to indicate that the state also has jurisdiction over these areas and adjacent riparian vegetation.</p> <p>No additional mitigation measures have been added in response to this comment.</p>
B-11	<p>Less than significant impacts are expected for state and federal jurisdictional waters areas under the Clayton HEU with implementation of the Conservation Measures included in the ECCC HCP/NCCP. Although less than significant impacts are expected, additional descriptions of waterways present within the Planning Area are outlined in the Errata (Section 3.0) to provide an improved description of the Environmental Setting at the CDFW’s request. As a provision of the ECCC HCP/NCCP, development setbacks from federal and state jurisdictional waters are required: please see table provided for comment B-15 for a review of sites that likely will require setbacks and be subject to ECCC HCP/NCCP requirements and review procedures. The ECCC HCP/NCCP includes a set of conservation requirements (see Table 9-5 of the ECCC HCP/NCCP) to address offsets for potential project-level impacts that requires evaluating temporary and permanent impacts that may serve as the basis for jurisdictional permitting, if required.</p> <p>No significant impacts are expected to occur to fin-fish or any special-status fish species outlined in Table 4.4-1 of the Draft EIR. As the drainages that that cross the proposed sites are intermittent or seasonally inundated, fin-fish can be completely avoided by the project(s). Pursuant to Conservation Measure 2.12 <i>Wetland, Pond, and Stream Avoidance and Minimization</i> of the ECCC HCP/NCCP, impacts to streams (habitat for fin-fish) are to be avoided. Conservation Measure 1.10, <i>Maintain Hydrologic Conditions and Minimize Erosion</i>, which is intended to protect sensitive fish populations, will also serve to avoid significant impacts to fin-fish.</p> <p>A jurisdictional delineation is required for sites B, D, F, G, I, J, L, M, and R, in accordance with the requirements of the ECCC HCP/NCCP, and due to the potential presence of waterways or wetlands under multiple existing regulations (e.g., Fish and Game Code, Clean Water Act). However, site-specific jurisdictional delineations are not required at this time and are impractical as, at this program level of review, development footprints, timing and other project level characteristics cannot be known until an actual development proposal is submitted to the City. Jurisdictional delineations typically expire within five years, as formalized in U.S. Army Corps of Engineers’ Guidance Letter No. 05-02 (2005), because conditions may change locally and will not remain the same for an infinite amount of time, due to both man-made (such as impoundments up- or downstream) and natural causes (flooding, erosion, etc.). Specifically for the same reason, potential impacts such as “substantial diversion or obstruction of natural flows; substantial change or use of material from</p>

ID	Response to Comment Letter B – California Department of Fish and Wildlife
	<p>the bed, bank, or channel (including removal of riparian vegetation); and deposition of debris, waste, sediment, or other materials into water feature causing water pollution that is deleterious to fish and wildlife” are not evaluated in this program-level planning document at this time, as no site plans are yet available. All the mitigation measures (1 to 4) recommended in this comment are covered by the following conservation measures of the ECCC HCP/NCCP, respectively.</p> <ol style="list-style-type: none"> 1. Habitat Assessment – See Chapter 6.3.1, <i>Planning Surveys</i> of the ECCC HCP/NCCP, which requires a site assessment by a biologist to evaluate if jurisdictional waters may be present on site. 2. Wetland Delineation – See Chapter 6.3.1 <i>Planning Surveys</i>, under the heading <i>Jurisdictional Wetlands and Waters</i> of the ECCC HCP/NCCP, which requires a jurisdictional delineation to be performed as part of the application process. 3. Project-Specific Notification of Lake and Streambed Alteration for Future Development Sites – Conservation Measure 2.12. <i>Wetland, Pond, and Stream, Avoidance and Minimization</i> requires jurisdictional permitting as part of ECCC HCP/NCCP compliance. Each of the 18 sites will be evaluated for compliance with the ECCC HCP/NCCP at a project-level. It is anticipated that most projects will avoid impacts to waterways by implementing the setbacks described in Conservation Measure 1.7 in Chapter 6 of the ECCC HCP/NCCP. The measures required in the ECCC HCP/NCCP are intended to serve as a basis for Lake and Streambed Alteration Agreements and other water permitting (e.g., Clean Water Act), if required, and are reviewed as part of the ECCC HCP/NCCP application process. <p>Compensatory Mitigation for Riparian Impacts – See Chapter 5.2.3 <i>Mitigation for Jurisdictional Wetlands and Waters</i>, Conservation Measure 2.12, and Chapter 9.3.1 <i>Mitigation Fees</i> of the ECCC HCP/NCCP, which provide general guidance on compensatory mitigation. No new mitigation is added in response to this comment.</p>
B-12	<p>The known range of large-flowered fiddleneck (<i>Amsinckia grandiflora</i>) does not historically overlap the Planning Area based on publicly available datasets of documented occurrences (e.g., Consortium of California Herbaria [https://ucjeps.berkeley.edu/consortium/] and BIOS [https://wildlife.ca.gov/Data/BIOS]), and no collection or documentation of this species is known to have ever been made within the limits of the Planning Area. The large-flowered fiddleneck is only known from a few occurrences in the Diablo Ranges that are all outside of the Planning Area, with the closest occurrences being over 2.3 miles away on the unique substrates of the Black Diamond Mines. It is understood that the U.S. Fish and Wildlife Service’s (USFWS) IPaC/ECOS range map shows that the range incorrectly overlaps with the Planning Area; however, this range map is based on models and/or presumptions rather than actual data. Of note, USFWS IPAC/ECOS range maps often encapsulate areas of unsuitable habitats to illustrate a range as a polygon rather than specific occurrences, and sometimes the range maps do not accurately reflect the true range of a given species.</p>
B-13	<p>We agree that the loggerhead shrike (<i>Lanius ludovicianus</i>) may be present within the Planning Area, but since the species did not come up on the CNDDDB search, it was inadvertently left out of the table. As seen in eBird, loggerhead shrike has many occurrences and a large distribution within and around the Planning Area. The</p>

ID	Response to Comment Letter B – California Department of Fish and Wildlife
	number of species with potential to occur has been updated; evaluation of loggerhead shrike as “May be Present” can be found in the Errata (Section 3.0). Each individual project site that could support sensitive species would be required to prepare a Biological Resources Study to evaluate project-specific impacts pursuant to requirements of the ECCC HCP/NCCP. With the required incorporation of the Conservation Measures required for the ECCC HCP/NCCP, including pre-project surveys, less than significant impacts are anticipated to loggerhead shrike.
B-14	See comment B-9. Each individual project site that could support rare or special-status species would be required to prepare a Biological Resources Study to evaluate project-specific impacts pursuant to requirements of the ECCC HCP/NCCP. It is not anticipated that the sites selected in the Clayton 6 th Cycle Housing Element Update would significantly impact any State Fully Protected Species with incorporation of the Conservation Measures developed for the ECCC HCP/NCCP, including pre-project surveys. No additional mitigation measures beyond the actions required by the ECCC HCP/NCCP are required to comply with the California Fish and Game Code.
B-15	Table B-15 has been included below to summarize the requirements of the ECCC HCP/NCCP. Because the ECCC HCP/NCCP review will occur before the approval of separate site developments under the Clayton HEU rather than at the time of this Program EIR, the individual required Conservation Measures per site are not considered final at this time. Note that Table B-15 does not provide any new information not presented in the Draft EIR but provides a summary of requirements.

Table B-15. Proposed Sites and Requirements of the East Contra Costa HCP/NCCP.

Note: This table does not provide any new information not presented in the Draft EIR but provides a summary of requirements.

Site	Potentially Regulated Species or Habitat (Potential or Less Likely*)	Wetlands, Streams, or Riparian Vegetation Present	Requirements of the East Contra Costa HCP/NCCP		
			Submittal and Approval of HCP/NCCP application, including implementing planning biological surveys for covered activities and fee payment	Compliance with Specific Conditions on Covered Activities described in Chapter 6.4 of the ECCC HCP/NCCP	Jurisdictional Delineation and Establishment of Stream Setbacks (see CM 1.7 in Chapter 6 of the ECCC HCP/NCCP)
A	Less Likely	No	Yes	Yes	No
B	Potential	Yes	Yes	Yes	Yes
D	Potential	Yes	Yes	Yes	Yes
E	Less Likely	No	Yes	Yes	No
F	Potential	Yes	Yes	Yes	Yes
G	Potential	Yes	Yes	Yes	Yes
H	Potential	No	Yes	Yes	No
I	Potential	Yes	Yes	Yes	Yes
J	Potential	Yes	Yes	Yes	Yes
K	Less Likely	No	Yes	Yes	No
L	Potential	Yes	Yes	Yes	Yes
M	Potential	Yes	Yes	Yes	Yes
N	Potential	No	Yes	Yes	No
O	Potential	No	Yes	Yes	No
P	Less Likely	No	Unlikely**	No	No
Q	Less Likely	No	Yes	Yes	No
R	Potential	Yes	Yes	Yes	Yes
S	Potential	No	Yes	Yes	No

*Sites located in urban and well-developed areas that are significantly less likely to support most of these species include Sites A, E, H, K, N, O, P, S; however, field surveys are required to confirm for compliance with the ECCC HCP/NCCP.
 ** This site has potential to be excluded from requirements of the ECCC HCP/NCCP based on 16.55.030 Applicability, as it is located within an urban area and is a developed parcel that would not be expected to contain native vegetation or suitable habitat for sensitive species.

B-16	Complying with the Conservation Measures of the ECCC HCP/NCCP does not constitute additional mitigation measures pursuant to CEQA, but rather is compliance with existing laws and plans. Both Significance Thresholds for Impact BIO-1 and Impact BIO-2, and corresponding mitigation measures recommended by CDFW, are already covered by conservation measure requirements of the ECCC HCP/NCCP. Please also see response to comment B-11.
B-17	<p>In the ECCC HCP/NCCP, measures are already incorporated to avoid impacts to nesting birds, and no take of migratory birds is requested as part of this program level EIR. Projects are already required to be seasonally timed, to avoid impacts to Covered migratory birds (see the last paragraph of page 6-25 that continues to 6-26), and seasonal timing will also assist with avoidance of non-covered migratory birds. Additionally, the BMPs provided in Conservation Measures 1.12 and 1.14 incorporate avoidance guidelines for compliance with the Migratory Bird Treaty Act and conform to those typically used for compliance with the California Fish and Game Code.</p> <p>The required Planning Surveys (see Chapter 6 of the ECCC HCP/NCCP), will be used to establish if suitable habitat is present for migratory birds, including nesting sites, and project designs must avoid take. No additional mitigation measures are required to comply with the existing California Fish and Game Code or Migratory Bird Treaty Act. No changes have been made in response to this comment.</p>
B-18	No changes have been made to Table 2-1, as no new mitigation measures have been applied pursuant to the comments provided by CDFW.
B-19	The requirement for submitting environmental data is adequately summarized in the CDFW's comment letter. This comment has been recorded for the record. No changes are required in response to this comment.
B-20	The requirement for Filing Fees is adequately summarized in the CDFW's comment letter. This comment has been recorded for the record. No changes are required in response to this comment.

COMMENT LETTER PC – CLAYTON PLANNING COMMISSION REGULAR MEETING

**Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, September 13, 2022**

1. CALL TO ORDER

Vice Chair Miller called the meeting to order at 7:01 p.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Richard Enea led the Pledge of Allegiance.

3. ROLL CALL

Present: Vice Chair Ed Miller
Commissioner Justin Cesarin
Commissioner Richard Enea
Commissioner Maria Shulman
Commissioner Daniel Richardson

Planning Commission Secretary/Community Development Director Dana Ayers and Assistant Planner Milan Sikela were present from City staff.

4. ELECTION OF CHAIR AND VICE CHAIR

Vice Chair Miller stated that, to avoid any discontinuity to the Planning Commission should he be elected to the City Council, he did not wish to be elected as Planning Commission Chair. He was happy to serve with the Commission as a member. He then invited a motion for election of the Planning Commission Chair for the current fiscal year.

Commissioner Enea moved to elect Commissioner Richardson as Chair of the Planning Commission. Commissioner Shulman seconded the motion. The motion passed by vote of 5 to 0.

Vice Chair Miller invited a motion for election of the Planning Commission Vice Chair for the current fiscal year.

Commissioner Shulman moved to elect Commissioner Enea as Vice Chair of the Planning Commission. Chair Richardson seconded the motion. The motion passed by vote of 5 to 0.

Chair Richardson took over as Chair of the meeting at this time. He thanked Commissioner Miller for his service as Vice Chair during the prior year. He acknowledged the new beginning of the Commission with its three new members

and two continuing members, and he looked forward to the opportunity to work with the Commission for the benefit of the community. Vice Chair Enea expressed gratitude for his election as Vice Chair and looked forward to being back on the Commission.

5. PRESENTATIONS

Director Ayers advised that there were no presentations on the evening’s agenda. However, because this was only the second meeting with a hybrid in-person and virtual format, she requested an opportunity to review meeting protocol. She reminded all in-person meeting attendees to silence their cell phones and explained the means for virtual attendees to indicate a request to speak on an agenda item. She further explained that communications between a member of the public and an individual Commissioner during the meeting was prohibited outside of the public meeting setting, and relatedly, that the “chat” feature in the virtual meeting platform was turned off.

6. ACCEPTANCE OF THE AGENDA

There were no changes to the agenda as submitted.

7. PUBLIC COMMENT

There were no public comments.

8. CONSENT CALENDAR

A. Minutes of Planning Commission Meeting of June 28, 2022.

Director Ayers confirmed Commissioner Miller’s statement that under Robert’s Rules of Order, a Commissioner who had not attended a Planning Commission meeting could vote on that meeting’s minutes; provided, that the Commissioner had reviewed the draft minutes. There being no member of the public attending in person or virtually who wished to comment on the Consent Calendar, Chair Richardson invited a motion on the item.

Commissioner Miller moved to adopt the Consent Calendar with Meeting Minutes of the June 28, 2022, meeting, as submitted. Commissioner Cesarin seconded the motion. The motion passed by vote of 5 to 0.

9. COMMENT SESSION

A. Comment Session on the Draft Environmental Impact Report Prepared for the City of Clayton 6th Cycle (2023-2031) Housing Element Update and Associated Land Use Element and Zoning Code Amendments.

This is a comment session for the purpose of soliciting spoken comments from interested parties, individuals and other public agencies on the Draft

Environmental Impact Report (EIR) prepared for the City of Clayton 6th Cycle (2023-2031) Housing Element Update and Associated Land Use Element and Zoning Code Amendments (“Project”).

The Draft EIR is being circulated for 45 days for public and agency review and comment in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines and Clayton’s Local CEQA Guidelines (Resolution No. 62-2012). During the 45-day review and comment period, members of the Planning Commission, public and other agencies are invited to provide input on the analysis and discussion of alternatives contained within the Draft EIR. Planning Commissioners and other interested parties can provide their input on the Draft EIR via written letters or emails to the Community Development Department during the comment period, which began on August 19, 2022, and ends on October 3, 2022, or they may state their comments aloud at this comment session. Responses to all substantive comments on environmental issues of the Draft EIR, as well as revisions to the Draft EIR that result from those responses, will be incorporated into a Final Environmental Impact Report (Final EIR) that staff and the consultant will prepare following the end of the comment period and ahead of future noticed public hearings on the proposed Project with the Planning Commission and City Council.

Director Ayers presented the item and shared a slide deck summarizing Housing Element law, CEQA and the content of the Draft EIR prepared for the Project.

Chair Richardson invited Commissioners to ask questions of staff. No Commissioners had questions at this time. Chair Richardson explained that comments on the Draft EIR would be invited from members of the public first, followed by members of the Commission. He re-emphasized that written comments on the Draft EIR could continue to be submitted to City staff through October 3.

Vince Moita requested to speak. He stated that he was a land use attorney who lived in subsection A of the Marsh Creek Road Specific Plan (MCRSP) area between 1993 and 2006. He explained that few, if any, of the planned 290 housing units were actually built in the MCRSP area when he was growing up there. Given recent housing mandates from State and Association of Bay Area Governments (ABAG), as well as current severe lack of housing experienced by citizens, he suggested that it would be prudent to re-evaluate the current Countywide Urban Limit Line (ULL) at the northeastern municipal boundary of Clayton. Noting that the ULL and the MCRSP were adopted within months of each other, but that the ULL bifurcated a swath of area within the MCRSP area, he suggested that the City consider supporting a request to the Contra Costa County Board of Supervisors to review amendment to the ULL to match the MCRSP planning area boundary. He suggested that the inconsistency between the ULL, the

PC-1

MCRSP planning area, and the City’s Sphere of Influence (SOI) put the area outside the ULL off limits to the City to achieve its maximum buildout, and it robbed Clayton of opportunity for sustainable growth. He suggested that the land in the MCRSP area could be re-evaluated and its land use designations amended to increase densities to address the full 6th cycle regional housing needs allocation of 570 units with medium- and low-density residential growth that would be similar to existing neighborhoods on Eagle Peak Avenue or in Peacock Creek and that would preserve the character of Clayton. He suggested that “shutting the door” to this opportunity would cause the City to lose its development discretion and would force it to adopt projects like those that would be mandated pursuant to Senate Bill 35 to meet its housing needs. He explained that the City’s General Plan envisions annexation of the SOI and suggested that the Draft EIR include an alternative scenario that includes adoption of the existing SOI. He stated that annexations of lands in the SOI that did not strain City resources would be consistent with current planning documents, and he specifically cited General Plan Land Use Element Objective 3 and Policy 3a. He concluded by requesting that the Draft EIR evaluate annexation of all lands within the MCRSP planning area to facilitate development of the MCRSP lands within the municipal boundary should the ULL be amended in 2026. He thanked the Commission and wished them the best Commission going forward.

PC-1
Cont.

There being no other member of the public attending in person or virtually who wished to speak on this item, Chair Richardson invited comments from Commissioners.

Vice Chair Enea requested that staff clarify the location of the SOI in the area that the Mr. Moita had referenced. Vice Chair Enea confirmed with Director Ayers and Assistant Planner Milan Sikela that the lands were unincorporated; outside the Clayton municipal boundary and therefore, subject to County land use designations and zoning; and that the lands were zoned by the County as Agricultural.

Commissioner Miller suggested that there be more explanation of the intent of the SOI.

Director Ayers screen shared the image of the City’s General Plan land use map and identified the ULL, the SOI line and areas that were within the MCRSP planning area. She explained that the lands to which Mr. Moita spoke were north of Marsh Creek Road in the planning area. In response to Commissioner Miller, Director Ayers advised that the SOI line encompassed those lands that the City anticipated annexing. She explained that some lands inside the SOI were outside of the ULL. While any annexation of lands outside the municipal boundary would be subject to approval by the Contra Costa Local Agency Formation Commission (LAFCO), requests to annex lands outside the ULL would also be subject

to approval by the County Board of Supervisors. She explained that parts of the area that Mr. Moita referenced were pre-zoned as low-density residential in the MCRSP, and that those pre-zoning classifications would become effective upon approval of the lands being annexed into the City.

In response to Chair Richardson, Director Ayers spoke to the recent entitlement of the Oak Creek Canyon Development, a residential project of six single-family residences that was within the MCRSP planning area and within the municipal boundary near the City's eastern edge. She advised that the City Council approved that project in July 2021.

Commissioner Miller asked about the procedural requirements for changing the ULL and how the timelines for that process related to the deadlines for the Housing Element. He confirmed with staff that the process for annexations or amendments to the ULL would involve agencies outside of the City's control, and expressed concern about extended timelines in those instances.

Commissioner Shulman referenced page 2-24 of the Executive Summary, where population projections from the Contra Costa Water District Urban Water Master Plan (CCWD UWMP) were mentioned along with the HEU population projections. She noted that the CCWD UWMP projected 530 new residents, which was significantly fewer residents than the HEU's projection of 2,364 new residents. She requested clarification on the source of the data that informed the CCWD UWMP and why the difference was so large. She expressed concern about water demands of increased housing given increased frequency of droughts in the region.

PC-2

Commissioner Miller spoke to the Greenhouse Gas (GHG) and Utilities and Service Systems sections of the Draft EIR. He confirmed with staff that, based on the analysis in the Draft EIR, GHG impacts would not be fully mitigated, even with adoption of mitigation measures. He noted that all but one of the six recommended mitigation measures push toward electrification of vehicles and appliances and away from natural gas installations in new construction. He expressed concern that that particular mitigation could introduce an additional problem in the form of utilities and increased draw electrical power sources. He questioned whether the community would be underserved by electrical infrastructure with implementation of the measure. He felt that the GHG mitigation measures prohibiting natural gas seemed aggressive. By contrast, he liked the mitigation measure that encouraged energy efficiency measures, such as roof-mounted solar, that exceeded state Standards, though he noted that that measure was not mandatory and might not even be implemented for certain projects, such as those that would be exempt from CEQA.

PC-3

Commissioner Cesarin said he appreciated the forward thinking of the mitigation measure eliminating the need for natural gas. He believed there

PC-4

would be more limitations on that and more need for individuals to cut back on natural gas use in the future. He suggested the Draft EIR couple the mitigation measures with new technologies and new energy initiatives for power generation that would make up for the increased demand for electricity. Speaking to recommended mitigation measure MM GHG-2 regarding adoption of a zero net energy (ZNE) ordinance, he suggested removing the word “consider,” to make more of a commitment to adopting a ZNE ordinance. He confirmed with Director Ayers that the analysis needed to develop and adopt a ZNE ordinance was lengthy, and he understood the analysis of the decision of whether to pursue ZNE ordinance would include a report of feasibility and cost-efficiency. He encouraged development of an alternative report that evaluated the viability and cost-effectiveness of *not* adopting and implementing a ZNE ordinance.

PC-4
Cont.

Speaking to the Alternatives in the Draft EIR, Commissioner Cesarin asked how Alternative 2 was developed for the Draft EIR. Director Ayers advised that Alternative 2 was “status quo” for the sites in the Town Center and housing inventory Site M. In that scenario, existing zoning designations and allowable densities would not change from what was already adopted for those sites. She advised that both Alternative 2 and Alternative 3, the latter of which added sites to the housing inventory based on property owner request, were developed based on public comments received in response to the Housing Element and Balancing Act surveys and input received during the community comment period on the Public Review Draft Housing Element in May and June 2022. Director Ayers advised that Site P and Site S were not new additions to the inventory of sites in the draft Housing Element Update, though Sites U and V in Alternative 3 were.

PC-5

There being no other member of the public attending in person or virtually who wished to speak, Chair Richardson closed public comment on the item.

10. PUBLIC HEARINGS

There were no public hearings.

11. COMMUNICATIONS

There were no Communications.

12. ADJOURNMENT

The meeting was adjourned at 8:00 p.m. to the next regular meeting of the Planning Commission on September 27, 2022.

[Remainder of this page left blank. Signatures on the following page.]

Respectfully submitted:

Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:

Daniel Richardson, Chair

ID	Response to Planning Commission Regular Meeting Comments
PC-1	This comment does not address the adequacy of the environmental impact analysis contained in the Draft EIR. This comment has been recorded for the record. No changes to the Draft EIR are required in response to this comment.
PC-2	<p>The commenter asks why the HEU and UWMP population projects are so different. The reason for the difference is that the two estimates of future population growth were prepared for different purposes. The UWMP is based on the California Department of Finance (DOF) E-5 projected Population Estimates for Cities and Counties and growth rates provided in the Association of Bay Area Governments (ABAG) Projections 2040 book (CCWD UWMP p. 1-4). The housing and population projections shown in the HEU are also based, in part, on regional projections from ABAG as outlined in their Plan Bay Area 2050, which is updated every 5 years (last updated in 2020). However, every 7-8 years, the State’s Regional Housing Needs Allocation (RHNA) process, through ABAG and other Councils of Government (COG) throughout the State, assigns each city and county in California their regional share of new housing units to be built. These housing units are intended to accommodate both existing need and projected growth in each region. Unlike the DOF or UWMP estimates, the HEU RHNA for the City is not a projection or forecast: it is a goal to attain for the City to accommodate its RHNA. These goals are based on directives from the Governor, the Legislature, and the State. Department of Housing and Community Development (HCD) intended to help meet the State’s large housing deficit by encouraging more housing to be built at the local level.</p> <p>Mitigation Measure MM UTL-1 (see below) helps assure there will be direct, timely connectivity between the provision of new housing and the availability of water in the future. With implementation of this measure, the EIR concluded development under the HEU would be less than significant.</p> <p>MM UTL-1 Water Demand Management. Prior to receiving entitlements for new residential development under the Housing Element Update, new projects must contact the CCWD and obtain confirmation that adequate water service can be provided and adequate water supplies are available consistent with their latest Urban Water Management Plan.</p>
PC-3	<p>The commissioner’s concern that the Draft EIR GHG mitigation measures could be problematic for utilities and electric infrastructure is consistent with information in State planning documents related to GHG emissions reductions. It is generally accepted that the State’s electric grid will need to undergo transitions to address, support, and achieve the State’s long-term GHG emissions reduction goals. For example, the California Air Resources Board’s (CARB) Draft Scoping Plan (pp. 156 to 163) identifies that vehicle and building electrification plans will result in unprecedented electric system load growth and emphasizes the need for a clean electric grid that supports decarbonization of California’s economy.</p> <p>Staff notes that the 2022 Energy Code, which will take effect on January 1, 2023, will support building electrification and associated utility improvements in Clayton, Contra Costa County, and the State. For example, the 2022 Energy Code encourages efficient electric heat pumps, establishes electric-ready requirements for new homes, and expands solar photovoltaic and battery storage standards for certain new residential developments. Staff also notes that the Draft EIR provides flexibility regarding energy resources. Mitigation Measure GHG-1 (Prohibit Natural Gas</p>

ID	Response to Planning Commission Regular Meeting Comments
	<p>Plumbing and Appliances in New Housing Sites) is consistent with the latest guidance and recommendations from the Bay Area Air Quality Management District but provides specific exceptions where a prohibition on natural gas infrastructure may not be warranted or possible. In addition, the natural gas prohibition identified in Mitigation Measure GHG-1 could be replaced by the City with a Zero Net Energy Ordinance (per Mitigation Measure GHG-2) that provides energy flexibility specific to Clayton. For these reasons, the Draft EIR GHG mitigation measures would not result in unanticipated or unexpected planning or logistical issues surrounding utility infrastructure.</p>
PC-4	<p>Draft EIR Mitigation Measure GHG-1 (Prohibits Natural Gas Plumbing and Appliances in New Housing Sites) is consistent with the BAAQMD’s April 2022 CEQA thresholds for evaluating climate change impacts of land use projects and plans. Mitigation Measure GHG-2 (Consider Adoption of a Zero Net Energy Ordinance) provides flexibility for the City to develop alternative means to enhance energy efficiency, reduce GHG emissions, and retain natural gas usage in buildings. At this time, the City is uncertain if such an approach is feasible and appropriate for the City given that future specific development characteristics in the City, and more specifically in the HEU housing sites, are unknown. Staff will seek clear direction from the City Council on whether to study the development of ZNE ordinance, and any potential ramifications of not adopting a ZNE ordinance.</p>
PC-5	<p>This comment does not address the Draft EIR analysis. City staff provided information about how Alternative 2 was formulated during the Planning Commission meeting. This comment has been recorded for the record. No changes to the Draft EIR are required in response to this comment.</p>

3 – ERRATA

This section identifies revisions to the City of Clayton Housing Element Update Draft EIR to incorporate clarifications, corrections, or additions prepared in response to comments received on the Draft EIR. These changes include minor errors or editorial corrections identified through subsequent review. Additions are shown in underline. Deletions are shown in ~~strike through~~. Commentary notes are shown in *Italic type* where needed.

None of the revisions below represents a substantial increase in the severity of an identified significant impact or the identification of a new significant impact, mitigation, or alternative considerably different from those already considered in the Draft EIR.

Draft EIR Chapter 4.4, Biological Resources

Draft EIR Section 4.4.1, Environmental Setting, Special-Status Species

(Page 4.4-2, 2nd paragraph, first sentence): Based on a review of databases and a desktop habitat assessment, approximately ~~33~~ 34 special status species were determined to “May be Present” within the Planning Area, with potential to occur on at least some of the Sites (see Table 4.4-1).

Draft EIR Section 4.4.1, Environmental Setting, Jurisdictional Wetlands

(Page 4.4-2, 3rd paragraph): Multiple wetlands are mapped within the Planning Area by the USFWS National Wetlands Inventory (NWI). Although a field delineation would be needed to confirm this, it is highly likely that wetlands, including Creeks/Streams, under federal and state jurisdiction are present on some of the Sites, including Sites B, D, F, G, I, J, L, M, and R. The United States Army Corps of Engineers uses the 1987 *Corps of Engineers Wetlands Delineation Manual* and regional supplements to define wetlands under Section 404 of the federal Clean Water Act using three criteria: hydrophytic (water-loving) vegetation, hydric soils, and hydrology. An area that meets all three criteria is considered a wetland under federal and State jurisdiction. Additionally, riparian vegetation adjacent to wetlands and streams is also under State jurisdiction.

Draft EIR Section 4.4.1, Environmental Setting, Jurisdictional Wetlands

(Page 4.4-2, new text, immediately follows 3rd paragraph):

Descriptions of Waterways

While planned for avoidance with setbacks per terms of the ECCC HCP/NCCP, sites B, D, F, G, I, J, L, M, and R have documented waterways present. Creeks within the Planning Area include Mount Diablo Creek (potentially crosses Sites B, D, I, M, and R), Peacock Creek, Donner Creek (potentially crosses Site I), Mitchell Canyon Creek (potentially crosses F and G), Back Creek, and unnamed creeks waterways (some potentially cross Sites J and L). All creeks within the Planning Area are freshwater systems that are intermittent to ephemeral, being especially dry in the summers. The Suisun Bay Watershed (Hydrological Unit Code 18050001) encapsulates the waters within the Planning Area, with all the waters having connectivity to the Suisun Bay. The unnamed creeks within the City of Clayton may have historical connectivity with one or more of the tributaries within the watershed. Peacock Creek is a tributary of Kirker Creek which stems

from the north and east of the Planning Area. Mount Diablo Creek branches several times within the Planning Area with forming tributaries including Donner Creek, Mitchell Canyon Creek, Back Creek and some unnamed tributaries within the Planning Area.

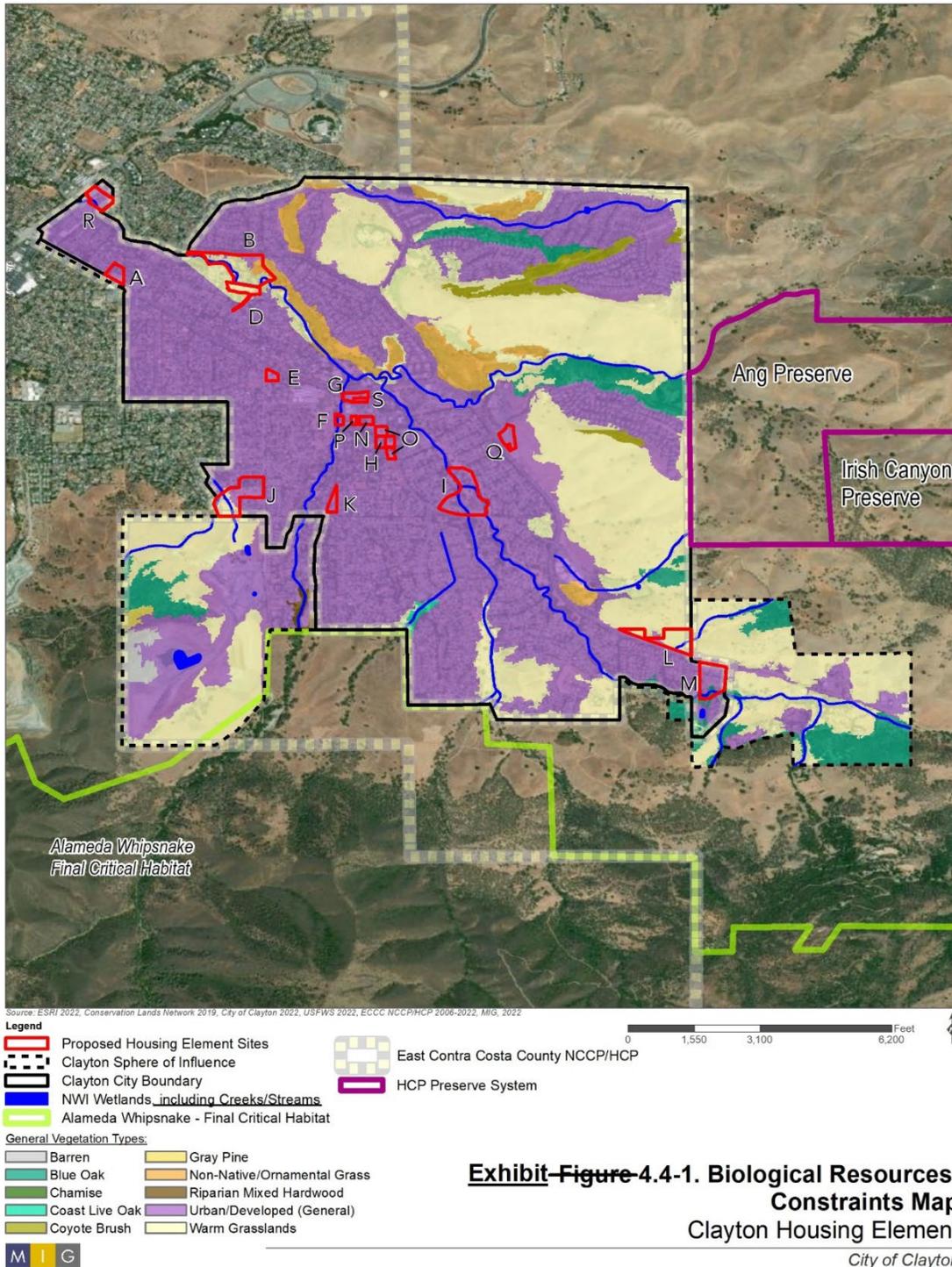
Draft EIR Section 4.4.1, Environmental Setting, Table 4.4-1

(Page 4.4-7, Table 4.4-1, between entries for California black rail and Suisun song sparrow):

<u>Lanius ludovicianus</u>	<u>loggerhead shrike</u>	SSC	<u>Woodlands, savannah, pinyon-juniper, Joshua tree, and riparian woodlands, desert oases, scrub and washes, developed urban or agricultural areas with trees and open fields.</u>	May be Present. <u>Wetlands and similar habitats are known to occur within the Planning Area that could support this species.</u>
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Draft EIR Section 4.4.1, Environmental Setting, Figure 4.4-1

(Page 4.4-3, Figure 4.4-1): Figure 4.4-1 has been updated with “NWI Wetlands, including Creeks/Streams” based on the request from CDFW. Additionally, the word “Figure” was changed to “Exhibit” in the title. The updated version of this map is provided below.



Draft EIR Chapter 5, Alternatives

The following changes to Draft EIR Chapter 5 are the result of the inadvertent omission of “Site T” from Alternative 3. Alternative 3 was supposed to include the addition of Sites T, U, and V; however, the Draft EIR only included the addition of Sites U and V. Site T consists of two adjacent parcels on Marsh Creek Road, under common ownership, and totaling 1.45 acres. Site T could support 33 residential dwelling units. Site T was included in the draft Housing Element submitted to the California Department of Housing and Community Development (HCD) and was considered by the public and decision-makers through the public review process for the draft Housing Element. For this Final EIR, the recalculation of total units for Alternative 3 has been revised to account for Site T and adjustments to Sites U and V based on 80 percent of maximum capacity for each site based upon the respective General Plan land use designation. The total unit yield for Alternative 3 under this revised condition is 936 units. This total is below the 966 unit count examined in this EIR. Thus, the inclusion of Site T would not result in any new impacts not already considered in the Alternatives analysis.

The changes to Chapter 5, Alternatives, identified below focus on including Site T in the text of this Chapter.

Draft EIR Section 5.3, Alternatives Selected

(Page 5-3, third bullet point):

- Alternative 3: Reduced Residential Development at Site M and Town Center and Addition of Sites T, U, and V to the Housing Site Inventory

Draft EIR Section 5.3, Alternatives Selected

*(Page 5-3, Alternative 3 discussion): **Alternative 3** would include the reduced densities encompassed in Alternative 2, with addition of new Sites T, U, and V to the housing inventory. Additional Site T is located at 6500/6530 Marsh Creek Road, additional Site U is located on a portion of the existing driving range at the Oakhurst Golf Club at 1001 Peacock Creek Drive, and additional Site V is located at 1970 Eagle Peak Avenue. The respective owners of Sites T, U, and V have expressed interest in developing their properties with townhouses at an estimated density of 20 du/ac. The reduction of densities on Site M and the Town Center, with inclusion of Sites T, U, and V into the housing inventory would result in an increase in potential residential development capacity from 868 dwelling units to 966 dwelling units.*

Draft EIR Section 5.3, Alternatives Selected

(Page 5-5, Table 5-1):

Impact/Resource	1. No Project-- Existing Housing Element Development Capacity	2. Reduced Development Capacity at Site M and Town Center Sites	3. Reduced Residential Development at Site M and Town Center/ Addition of Sites T, U, and V to Housing Inventory
Aesthetics	Reduced LTS	Reduced LTS	Similar LTS
Agriculture and Forestry Resources	Similar No Impact	Similar No Impact	Similar No Impact
Air Quality	Reduced LTS	Reduced LTS	Similar LTS
Biological Resources	Similar LTS	Similar LTS	Similar LTS
Cultural Resources	Similar LTS	Similar LTS	Similar LTS
Energy	Reduced LTS	Reduced LTS	Similar LTS
Geology and Soils	Similar LTS	Similar LTS	Similar LTS
Greenhouse Gas Emissions	Reduced SU	Reduced SU	Similar SU
Hazards and Hazardous Materials	Similar LTS	Similar LTS	Similar LTS
Hydrology and Water Quality	Similar LTS	Similar LTS	Similar LTS
Land Use	Similar LTS	Similar LTS	Similar LTS
Mineral Resources	Similar No Impact	Similar No Impact	Similar No Impact
Noise	Similar LTS	Similar LTS	Similar LTS
Population and Housing	Reduced LTS	Reduced LTS	Similar LTS
Public Services	Reduced LTS	Reduced LTS	Similar LTS
Recreation	Reduced LTS	Reduced LTS	Similar LTS
Transportation	Reduced SU	Reduced SU	Similar SU
Tribal Cultural Resources	Similar LTS	Similar LTS	Similar LTS
Utilities and Service Systems	Reduced LTS	Reduced LTS	Similar LTS
Wildfire	Similar LTS	Similar LTS	Similar LTS
Source: MIG, 2022 LTS= Less-than-Significant Impacts SU= Significant and Unavoidable Impacts			

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-13, Alternative 3 analysis title): **Alternative 3: Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory**

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-13, Alternative 3 discussion): This Alternative assumes that overall residential development associated with the HEU would be increased from 868 dwelling units to 966 dwelling units, an increase in development capacity of approximately 11 percent when compared to the proposed project. This alternative assumes that policies and goals associated with the Housing Element Update would be applicable to development under this alternative. Table 5-1 shows how impacts associated with the implementation of this alternative compared to the impacts associated with implementation of the Reduced Residential Development at Site M and Town Center and Addition of Sites T, U, and V to the Housing Inventory Alternative. The potential impacts associated with the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative are described below.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-13, Aesthetics analysis): **a. Aesthetics.** The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative assumes the amount of development would be increased compared to the project. As with the project, aesthetic impacts are anticipated to be less-than-significant under the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative. Project-specific impacts with respect to scenic vistas were determined to be less than significant. Buildout of proposed housing sites under the Housing Element Update would occur at locations in the City of Clayton that are either already developed or in vacant properties in developed areas. There are no proposed housing sites in undeveloped portions of the Planning Area, and as such, the project would not result in cumulative impacts with respect to scenic vistas. Outdoor lighting is regulated by 15.03.612 (Public Nuisance Lighting) of the City's Municipal Code. Any new development under this Alternative would be required to undergo design review, which would ensure compliance with regulations and review for potential light and glare. This alternative would result in a similar less-than-significant impact, when compared to the project, despite the increase in development associated with this alternative.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-14, Air Quality analysis): **c. Air Quality.** As described in Section 4.3, the project would result in a less than significant construction-related air quality impact with mitigation incorporated. Because the identified potentially significant air quality impacts of the project are related to site-specific construction activities, similar potentially significant construction impacts from increased development potential under this Alternative would be less than significant with incorporation of mitigation measures. As such, the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative would result in similar less than significant impacts with mitigation incorporated as the proposed project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-14, *Biological Resources analysis*): **d. Biological Resources.** Approximately 33 special status species were determined to “May be Present” within the Planning Area, with potential to occur on at least some of the housing inventory sites. Many of the housing inventory sites are located within or adjacent to streams, riparian woodlands, and/or other suitable habitats that could potentially support these sensitive species, including Sites B, D, F, G, I, J, L, M, Q, R, U, and V. While field surveys are required to confirm for compliance with the ECCC HCP/NCCP, housing inventory sites located in urban and well-developed areas that are significantly less likely to support most of these species include Sites A, E, H, K, N, O, P, S. While the amount of development under this alternative would be increased, all future projects would be required to adhere to existing regulations regarding nesting birds. Similar to the project, the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative would have a similar less-than-significant impact on biological resources.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-14, *Cultural Resources analysis*): **e. Cultural Resources.** As with the project, development under the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative could still uncover previously unknown cultural resources or destroy/change structures that could be considered historic. Therefore, future development under this alternative could have the potential to disturb or destroy sensitive cultural resources. Similar to the project, development projects under this alternative are required to implement cultural resources mitigation for cultural resource monitoring during all ground-disturbing activities. Therefore, similar to the project, this alternative would have a less-than-significant impact on cultural resources with incorporation of mitigation.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-14, *Energy analysis*): **f. Energy.** As with the project, development associated with the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative would require the consumption of electricity, natural gas, and vehicle fuel resources to accommodate growth. Development under this alternative would result in increased energy consumption compared to the project; however, it is not likely that the increase would result in the wasteful use of energy or require mitigation to reduce impacts to less than significant. Therefore, this alternative would have a similar less-than-significant energy impact compared to the project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-15, *Geology and Soils analysis*): **g. Geology and Soils.** The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative would result in geology and soils impacts similar to those associated with the project, as both the alternative and the project would be exposed to the same existing geologic conditions within the City. As with the project, existing building requirements would be applicable under this alternative. Additionally, all future projects would be required to be designed and constructed in compliance with all applicable City and state codes and requirements. Finally, as with the project, the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative would still require future development to implement mitigation measures in order to reduce potential impacts to

paleontological resources to less than significant. As such, the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative would have a similar less-than-significant geology impact as the proposed project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-15, Greenhouse Gas Emissions analysis): **h. Greenhouse Gas Emissions.** The project would result in a significant unavoidable GHG emissions impact. The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative would result in an increase in development potential when compared to the project. Given this alternative would result in increased development potential, this alternative would have a greater significant and unavoidable impact as the project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-15, Hazards and Hazardous Materials analysis): **i. Hazards and Hazardous Materials.** Hazardous materials would be present during construction and operation of development associated with the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative. The amount and use of these chemicals present during construction would be limited, would be in compliance with existing government regulations, and would not be considered a significant hazard. As with the project, any future development under this alternative would be subject to the City's standard environmental review as well as hazardous materials policies included in the existing General Plan. This alternative would have a less-than-significant hazards and hazardous materials impact and would be considered similar to the project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-15, Hydrology analysis): **j. Hydrology and Water Quality.** Development associated with implementation of the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative would be subject to all existing water quality regulations and programs. This alternative assumes a population and development increase that would be less than the project. Similar to the project, this alternative would have a less-than-significant hydrology and water quality impact.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-15, Land Use and Planning analysis): **k. Land Use Planning.** As with the project, the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the Housing Inventory Alternative would not physically divide an established community. Development would be consistent with the existing General Plan policies, and would not conflict with regulations adopted to avoid environmental effects. Similar to the project, this alternative would have a less-than-significant land use impact.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-16, Mineral Resources analysis): **l. Mineral Resources.** Similar to the proposed HEU, no development would take place in any location with known mineral resources or at any known mineral resources extraction site under the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the RHNA Inventory Alternative. As with the project, this alternative would have no impact on mineral resources.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-16, Noise analysis): **m. Noise.** The project would result in less than significant construction noise impacts with mitigation incorporated and less than significant operational noise impacts. The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the RHNA Inventory Alternative would result in greater potential development when compared to the project. Similar to the project, mitigation measures would be required to ensure that construction noise is mitigated for projects located near sensitive receptors. Due to the increase in development the traffic noise impact would be increased when compared to the project; however, the potential increase in development capacity from this individual site would not be great enough to require mitigation and would still be less than significant. Therefore, this alternative would have a similar less than significant impact to the project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-16, Population and Housing analysis): **n. Population and Housing.** The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the RHNA Inventory Alternative would result in increased residential development and population growth relative to the project. However, it would not induce substantial unplanned growth nor would it displace substantial numbers of persons or housing compared to the project. Therefore, this alternative would result in a similar less-than-significant impact related to population and housing when compared to the project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-16, Public Services analysis): **o. Public Services.** The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the RHNA Alternative would result in an increased amount of development and related population and employment growth, which would result in greater demand for public services relative to the project. However, with continued payment of development impact fees to offset incremental growth, this alternative would result in a similar less-than-significant public services impact when compared to the project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-16, Recreation analysis): **p. Recreation.** The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the RHNA Inventory Alternative would result in an increased amount of development and associated population growth, which would result in greater demand for recreational facilities relative to the project. However, with continued payment of development impact fees to offset incremental growth, this alternative would result in a similar less-than-significant recreation impact when compared to the project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-16, Transportation analysis): **q. Transportation.** The proposed project would result in significant and unavoidable VMT impacts. The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the RHNA Inventory Alternative would result in an increase in residential development and associated VMT relative to the project. Given the increase in residential development associated with this alternative, significant and

unavoidable transportation impacts of a greater magnitude compared to the project would likely occur under this alternative.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-16, Tribal Cultural Resources analysis): **r. Tribal Cultural Resources.** As with the project, development under the Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the RHNA Inventory Alternative could uncover previously unknown Tribal Cultural Resources. Compliance with existing regulations regarding burial grounds and consultation with Native American tribes, in addition to mitigation measures requiring cultural resource monitors during all ground-disturbing activities, would ensure that potential impacts would be reduced to less than significant. Similar to the project, this alternative would have a less-than-significant impact on cultural resources with adherence to existing regulations and implementation of mitigation.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-17, Utilities and Service Systems analysis): **s. Utilities and Service Systems.** The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the RHNA Inventory Alternative would result in an increased amount of development and associated population and employment growth, which would result in greater demand for utilities services compared to the project. However, with continued adherence to existing regulations and implementation of mitigation for water service impacts, this alternative would have a greater but still less-than-significant utilities and service system impact when compared to the project.

Draft EIR Section 5.6, Alternative 3 Analysis

(Page 5-17, Attainment of Project Objectives): The Reduced Residential Development at Site M and Town Center Sites and Addition of Sites T, U, and V to the RHNA Inventory Alternative assumes an 11 percent increase in residential development population growth within the Planning Area, but a similar level of non-residential growth as associated with the project. This alternative assumes HEU goals and policies would be applicable. It would generally meet the following project objectives, similar to the project:

4 – PUBLIC CIRCULATION

Availability and Distribution

On March 2, 2022, the City of Clayton as lead agency submitted Notice of Preparation (NOP) of an EIR for the Housing Element Update and related land use and zoning amendments to the State Clearinghouse for distribution to State agencies. The City also distributed the NOP to governmental and non-governmental interested parties identified on the standard notification list maintained by the City of Clayton Community Development Department (See Attachment A). The NOP was circulated for a 34-day public review period from March 2 to April 4, 2022. The NOP was available on the City's website during the entire NOP public review period.

A virtual Scoping Meeting was held on March 8, 2022, with the City Planning Commission for public agencies and the public to ask questions about the Housing Element Update and provide input as to important issues that should be addressed in the Draft EIR (See Attachment B).

On August 19, 2022, the City distributed Notice of Availability (NOA) of the Draft EIR by first class or electronic mail to public agencies, interested individuals, and other entities on the City's notification list. The NOA was also filed with the Contra Costa County Clerk's Office and published in the East County Times on August 19, 2022 (See Attachment C). The NOA was sent to the same public agencies, interested individuals, and entities that received notification of the NOP (See Attachment D), including government agencies, neighboring jurisdictions, and non-governmental interested parties. The NOA and Notice of Completion (NOC) were both submitted electronically to the State Clearinghouse (SCH) for distribution to State agencies (See Attachment E) and the project was issued SCH #2022030086. The NOA and Draft EIR materials were also available on the City's website during the entire Draft EIR comment period. Notification was also submitted to local Native American Tribal Governments in accordance with CEQA statutes, guidelines, and Assembly Bill 52 (Gatto, 2014).

Agency Mailing List

State of California

State Clearinghouse

State Department of Housing and Community Development

Department of Transportation, District 4

State Office of Historic Preservation

Native American Heritage Commission

Department of Toxic Substances Control

Department of Fish and Wildlife, Bay Delta Region 3

Contra Costa County

Contra Costa County Department of Conservation and Development

Contra Costa County Fire Protection District

Central Contra Costa Sanitary District

Contra Costa Water District

Regional

Regional Water Quality Control Board, San Francisco Bay Region 2

4 – Public Circulation

Association of Bay Area Governments
East Bay Regional Parks District
Contra Costa Local Agency Formation Commission
Bay Area Air Quality Management District, Environmental Planning Division

Local Cities

City of Concord Community Development Department
City of Concord Public Works Department
City of Walnut Creek Community Development Department

Transportation

Contra Costa Transportation Authority
Contra Costa Regional Transportation Planning Committee/TRANSPAC

Education

Mt. Diablo Unified School District

Utilities/Services

Pacific Gas & Electric
Republic Services

Native American Tribes

Wilton Rancheria
Amah Mutsun Tribal Band of Mission San Juan Bautista
Indian Canyon Mutsun Band of Costanoan
Muwekma Ohlone Indian Tribe of the San Francisco Bay Area
North Valley Yokuts Tribe
The Ohlone Indian Tribe

ATTACHMENT A: NOTICE OF PREPARATION



NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT AND NOTICE OF SCOPING MEETING FOR THE CITY OF CLAYTON 6th CYCLE (2023-2031) HOUSING ELEMENT UPDATE AND ASSOCIATED LAND USE ELEMENT AND ZONING CODE AMENDMENTS

TO: Responsible Agencies, Trustee Agencies, and Interested Parties

DATE: March 1, 2022

The City of Clayton is the Lead Agency under the California Environmental Quality Act (CEQA) and will prepare an Environmental Impact Report (EIR) for a project involving a comprehensive update of the City of Clayton General Plan Housing Element, focused updates to the Land Use Element, and parallel amendments to the Zoning Code ("project").

The updated Housing Element will establish programs, policies and actions to further the goal of meeting existing and projected housing needs of all income levels and will identify how the City plans to accommodate the Regional Housing Needs Allocation (RHNA) of 570 units through the year 2031, as established by the Association of Bay Area Governments (ABAG). The City also proposes updates to the Land Use Element to correspond to the Housing Element's housing plan, as well as Zoning Code amendments necessary to implement the Housing and Land Use Elements, as amended. Details on the project are provided below, and other information about the Housing Element and the Housing Element process can be found on the City's website at <https://claytonca.gov/community-development/housing/housing-element/>.

The City is requesting identification of environmental issues, environmental impacts, and information that you or your organization believes need to be considered and analyzed in the EIR, including environmental impacts, mitigation measures, and alternatives.

NOTICE OF SCOPING MEETING

Pursuant to California Public Resources Code Section 21083.9 and California Code of Regulations, Title 14, Chapter 3 ("CEQA Guidelines") Section 15082(c)(1), the Lead Agency will conduct a public scoping meeting for the purpose of soliciting written comments from interested parties, responsible agencies, agencies with jurisdiction by law, trustee agencies, transportation agencies, and involved federal agencies as to the appropriate scope and content of the EIR.

The public scoping meeting will be held in an online format using the Zoom application and will be an opportunity for agencies and interested parties to provide spoken comments on the scope

of the EIR. City staff will be available during this meeting to provide clarification on the project and the environmental review process. Interested parties wishing to provide comments or public testimony can speak during the meeting or provide their comments in writing, as described under “Submittal of Written Comments” below. No decisions about the project will be made at the scoping meeting. A separate public hearing for the project will be scheduled after the completion of the EIR. The date, time, and virtual location of the public scoping meeting is as follows:

Date: March 8, 2022 at 7:00 p.m.

Location: Virtual Webinar

To protect residents, officials, and staff, and in accordance with California State Assembly Bill 361 and Government Code Section 54953(e), the scoping meeting will be conducted during a regular Planning Commission meeting held using teleconferencing. A physical location from which members of the public may observe or participate in the meeting in person will not be available. The following options are provided to view, listen to, or provide comments during the meeting:

Videoconference: To join the meeting on-line via smart phone or computer, click on the link <https://us02web.zoom.us/j/87901324143>; or, through the Zoom application, enter **Webinar ID: 879 0132 4143**. No registration or meeting password is required. To indicate your request to speak, use the ‘Raise Hand’ feature when the Planning Commission Chair invites public comments on the agenda item.

Phone-in: Dial toll free 877-853-5257. When prompted, enter the Webinar ID above. If joining the meeting by phone, press *9 to ‘Raise Hand’ to indicate your request to speak, then press *6 to unmute yourself when prompted by the Planning Commission Chair or staff.

RESPONSIBLE AND TRUSTEE AGENCIES

The City requests your agency’s views on the scope and content of the environmental information relevant to your agency’s statutory responsibilities in connection with the project, in accordance with the CEQA Guidelines, Section 15082(b). Your agency will need to use the EIR prepared by the City when considering any permits or other project approvals that your agency must issue. As such, your responses to this Notice of Preparation (NOP), at a minimum should identify: (1) the significant environmental issues and reasonable alternatives and mitigation measures that your agency will need to have explored in the EIR; and (2) whether your agency will be a responsible or trustee agency for this project.

REVIEW AND RESPONSE PERIOD

March 2, 2022 to April 4, 2022

Pursuant to CEQA Guidelines Section 15082(b), responses to this NOP must be provided during this response period.

SUBMITTAL OF WRITTEN COMMENTS

Please send your written comments to:

Dana Ayers, AICP,
Community Development Director
City of Clayton Community Development Department
6000 Heritage Trail
Clayton, California 94517

Email: danaa@claytonca.gov
Tel: (925) 673-7343
Fax: (925) 672-4917

Project Location

The City of Clayton is located in north-central Contra Costa County, approximately 20 miles east of downtown Oakland. The City is located at the base of the north slope of Mt. Diablo. For the purposes of this project, the area of interest includes all properties within the corporate City boundaries and the City's Sphere of Influence (SOI), as defined by the Contra Costa County Local Agency Formation Commission. This planning area is bounded to the south by Mt. Diablo State Park and to the northeast by Black Diamond Regional Preserve. The northern and western planning area boundaries are shared with the City of Concord. The regional context of Clayton is shown in Exhibit 1 (Regional Context Map). Exhibit 2 (Planning Area Map) provides a more detailed view of the planning area and illustrates the current General Plan land use diagram.

The planning area includes the entire City of Clayton, which is 3.84 square miles of land, as well as its SOI, which is an additional 0.98 square miles. The City also has a Planning Area which extends beyond the SOI that will not be impacted by this project. Freeways and highways that provide regional access include Interstate 680 (I-680) to the west, State Route 242 (SR 242) to the northwest, and Interstate 580 (I-580) to the south. Regional arterials directly serving Clayton are Ygnacio Valley/Kirker Pass Road and Clayton Road. Clayton Road carries traffic to downtown Clayton from SR 242. Marsh Creek Road connects Clayton to the east to Brentwood.

Project Description

The Housing Element is one of the mandated General Plan elements. All cities and counties in California are required to update their Housing Element every eight years to meet existing and future projected housing needs of all economic segments of the community. Clayton, as a part of the ABAG region, is preparing this 6th cycle Housing Element for the 2023-2031 planning period.

The Housing Element Update establishes programs, policies, and actions to further the goal of meeting the existing and projected housing needs of all income levels of the community; provides evidence of the City's ability to accommodate the RHNA through the year 2031, as established by ABAG; and identifies changes to the General Plan Land Use Element needed to support the required housing capacity. In addition, the Housing Element includes goals and strategies to maintain the quality of the existing housing stock, promote housing opportunities for special needs

households, incorporate energy conservation approaches that can contribute to reduced housing costs, and affirmatively further fair housing practices. The Housing Element must be adopted by January 2023.

The City has been assigned a RHNA of 570 units, distributed among the four income categories shown in the adjacent diagram. Achieving this RHNA will require that the City amend the Land Use Element to clearly define and possibly increase multi-family residential densities and change land use designations in the downtown. Parallel changes would need to be made to the Zoning Code and zoning map.



Exhibit 3 identifies existing land uses, and Exhibit 4 identifies the proposed land use changes associated with the Housing Element Update. These changes would affect the ultimate build-out reported in the General Plan Land Use Element. As shown in the table below, these proposed land use changes have the potential to result in increased capacity for as many as 883 new dwelling units, an increase of approximately 20,000 square feet of commercial space, and a reduction of approximately 7,000 square feet of public facilities/institutional space. Potential increases of approximately 2,397 residents and 100 jobs are projected for the 2031 horizon year.

Land Use Data Table

Development Indicators	Existing Conditions (2021)	Future Buildout Conditions (2029)	Existing to Buildout Change (Numbers)	Existing to Buildout Change (Percentage)
Dwelling Units	4,120	5,003	+883	21.4%
Population	11,268	13,665	+2,397	21.3%
Employees	1,510	1,610	+100	6.6%
Non-Residential Building SF	357,140	307,140	+13,000	3.6%
<i>Commercial</i>	173,490	193,490	+20,000	11.5%
<i>Office</i>	83,650	83,650	0	0.0%
<i>Public Facilities/Institutional</i>	100,000	93,000	-7,000	-7.0%

Source: City of Clayton, 2021; MIG, Inc. 2022; UrbanFootprint, 2021; Department of Finance (DOF) Demographic and Research Unit, 2021; and Esri Business Summary, 2021.
Notes: Vacancy Rate: 2.79%; Persons Per Household: 2.81 (DOF, 2021)

Programmatic EIR

The City of Clayton has determined that the proposed project will require preparation of an EIR pursuant to CEQA. The City is the Lead Agency for preparation of a Program EIR for the proposed Housing Element update and associated changes to the Land Use Element and Zoning Code. The Program EIR will evaluate the environmental impacts resulting from implementation of the proposed project and will recommend mitigation measures to avoid or reduce significant impacts, where applicable. The Program EIR also is intended to help the City review future project proposals pursuant to section 15168 (Program EIR) of the CEQA Guidelines. The following environmental topics will be evaluated in the EIR:

- Aesthetics
- Agriculture and Forestry
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Tribal Cultural Resources
- Transportation and Circulation
- Utilities and Service Systems
- Wildfire
- Cumulative Impacts
- Alternatives

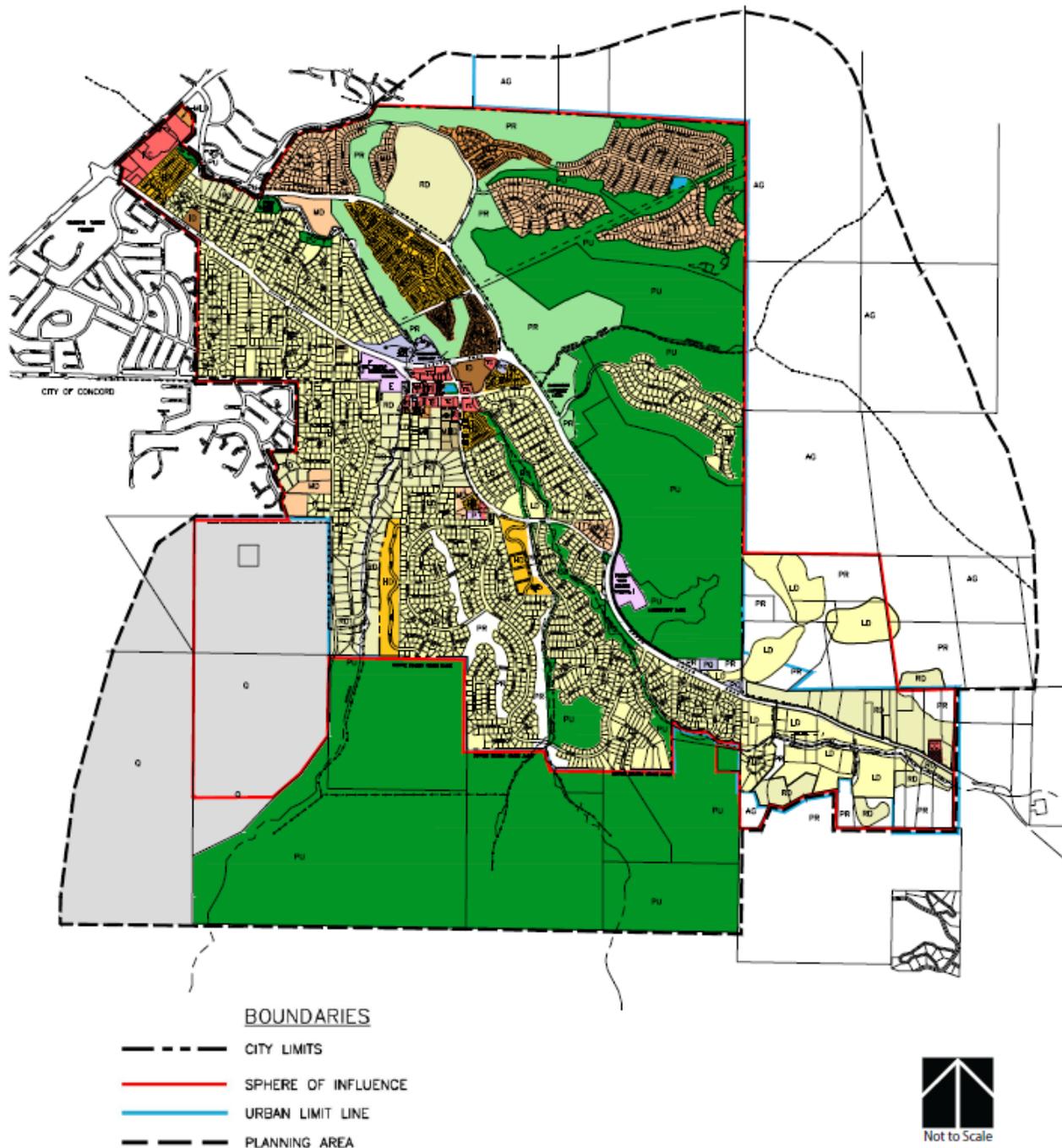
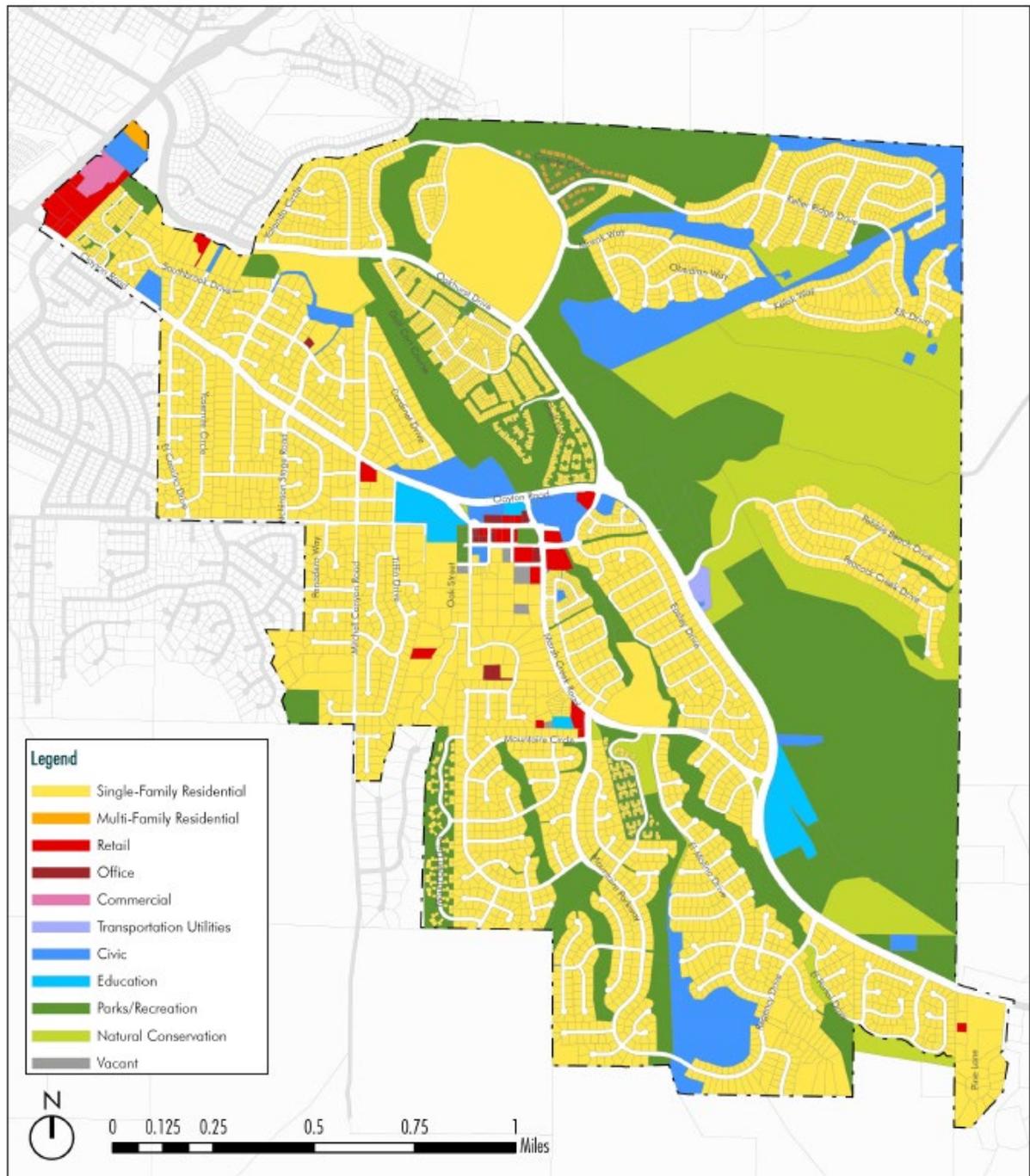


Exhibit 2 Planning Area Map

City of Clayton 6th Cycle (2023-2031) Housing Element Update
Clayton, California



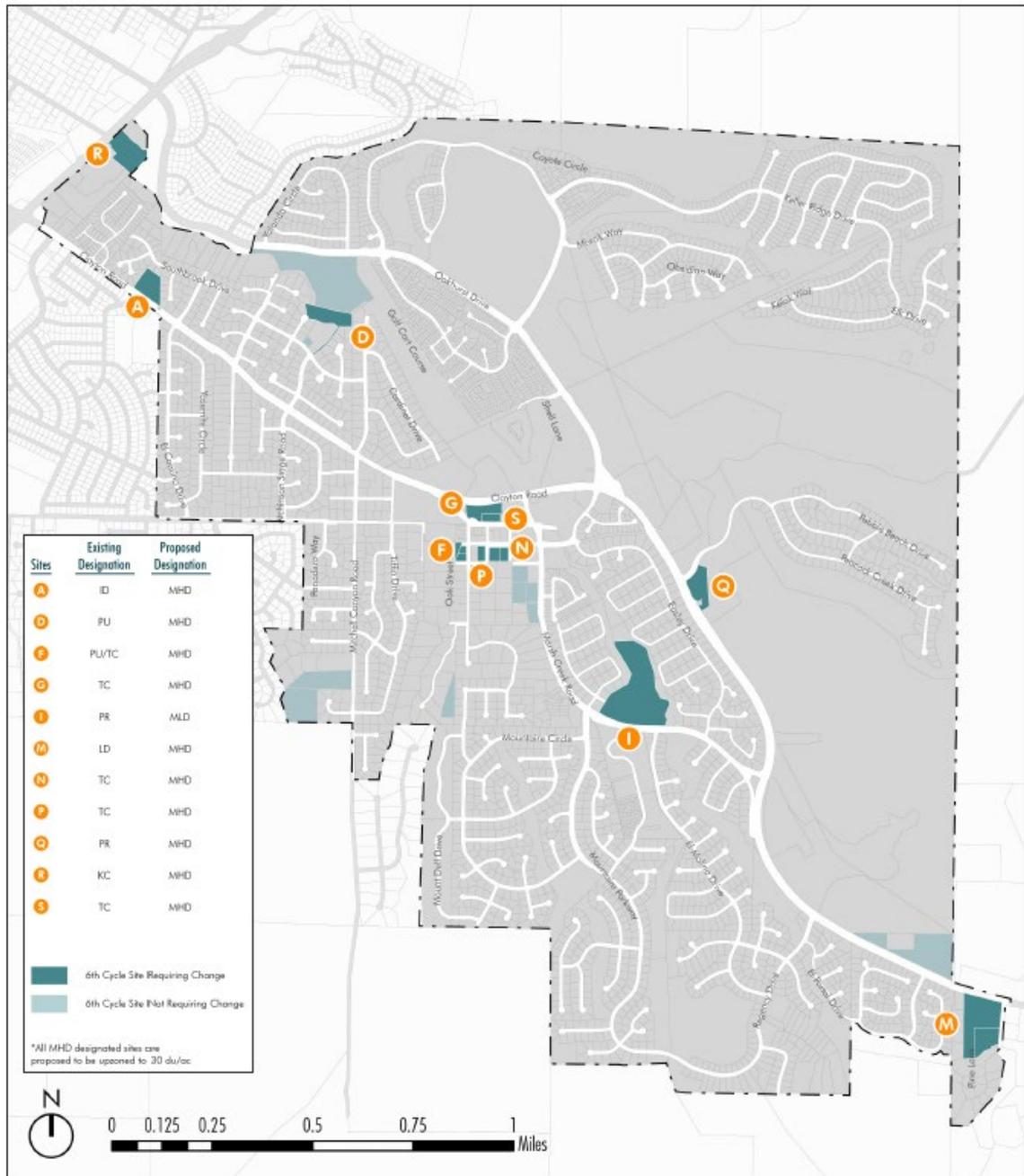


Source: Clayton General Plan
<http://www.migcom.com> • 951-781-9222

Exhibit 3 Existing Land Use Map

City of Clayton 6th Cycle (2023-2031) Housing Element Update
 Clayton, California





Source: MIG, Inc.

<http://www.migcom.com> • 951-787-9222



Exhibit 4 Proposed Land Use Changes

City of Clayton 6th Cycle (2023-2031) Housing Element Update
Clayton, California

ATTACHMENT B: SCOPING MEETING MINUTES

**Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, March 8, 2022**

1. CALL TO ORDER

Chair Denslow called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

Vice Chair Miller led the Pledge of Allegiance.

3. ROLL CALL

Present: Chair Terri Denslow
Vice Chair Ed Miller
Commissioner Justin Cesarin
Commissioner Amy Hines-Shaikh

Excused: Commissioner Frank Gavidia

4. PRESENTATIONS AND ANNOUNCEMENTS

There were no presentations or announcements.

5. ACCEPTANCE OF THE AGENDA

There were no changes to the agenda as submitted.

6. PUBLIC COMMENT

There were no public comments on non-agendized matters.

7. CONSENT CALENDAR

A. Minutes of Planning Commission Meeting of February 22, 2022.

Commissioner Hines-Shaikh clarified for the record that she had intended to inquire about the “acutely low-income” category at the February 22 meeting when she had mistakenly stated “extremely low-income” in her question to staff. She otherwise had no corrections to the minutes as submitted.

Commissioner Hines Shaikh moved to approve the minutes as submitted. Vice Chair Miller seconded the motion. The motion passed by vote of 4-0.

8. SCOPING SESSION

A. CEQA Scoping Session for the Environmental Impact Report for the City of Clayton 6th Cycle (2023-2031) Housing Element Update and Associated Land Use Element and Zoning Code Amendments.

This is a scoping session, held pursuant to the California Environmental Quality Act (CEQA), for the purpose of soliciting spoken comments from interested parties, individuals and other public agencies as to the scope and content of the environmental impact report (EIR) that will analyze the potential environmental effects of adoption and implementation of the City of Clayton 6th Cycle (2023-2031) Housing Element Update and Associated Land Use Element and Zoning Code Amendments (“project”).

Community Development Director Dana Ayers introduced the item and the consultant, Cameron Hile from MIG, Inc., who was managing preparation of the EIR for the Housing Element Update. Mr. Hile presented a brief overview of CEQA and the purpose of tonight’s public scoping session.

Speaking to greenhouse gas (GHG) emissions, Commissioner Hines-Shaikh asked if the EIR would only evaluate a scenario wherein GHG emissions would increase because of new development, or if consideration could be provided in the EIR regarding the consequences of building locations, and more specifically, the relationship between shortened distances from residences to jobs and reduction in GHG emissions from shorter vehicle commutes.

Mr. Hile explained that emissions from the project would be calculated and compared against a threshold to determine whether a significant impact might occur. He described that the model for evaluating GHG emissions was not so granular as to evaluate specific sites, though it could account for particular GHG reduction measures that could be applied to future development. Vehicle trip generation and vehicle miles traveled projected to be generated from all of the housing units in the plan would be used as inputs into the GHG model, which would estimate GHG emissions. Thresholds for certain air pollutants have been set by regional air quality agencies for the Bay Area basin, and if the air modeling showed that the project would result in exceedance of those thresholds, then mitigation should be introduced into the project. No mitigation would be required if projected emissions fell below the threshold.

Commissioner Hines-Shaikh said she understood that potential mitigation measures for GHG would be tangible things such as building materials. She

asked if human behavior was accounted for in the modeling; for example, if the construction of homes in certain areas closer to job centers would result in the model showing the residents in those areas driving shorter distances to work. Mr. Hile was not sure if that was accounted for in the air quality model but could follow up with his colleagues performing that modeling.

Chair Denslow understood the project area to be the city of Clayton. With that understanding, she asked if impacts would be evaluated within that project boundary and if impacts outside of that line, for example, within another city, would be outside the scope of the EIR. Director Ayers confirmed that the project area was the municipal boundary, but that environmental impacts would be evaluated based on their particular context and setting. For example, air emissions and vehicle trips are regional and/or global phenomena that necessitate regional or global evaluation of environmental impacts. Recreational or aesthetics impacts, by contrast, might be more local and limited to the use of city parks or impacts to views of and from properties within the city.

Chair Denslow then asked staff to clarify, if a job center was located in another city, would the environmental impacts of the Housing Element be greater because trips to that job center would be longer. Director Ayers advised that modeling was based on some level of assumptions about human behavior. If a census tract had housing, a school, a shopping center and an office building, the model would assume some level of interplay of trips between those uses within that census tract; for example, a parent driving to school to drop off a child and then driving to work in an office building. Mr. Hile explained that the modeling of vehicle trips and vehicle miles traveled would be conducted within the transportation model that would inform the GHG and air emissions model. He also explained that air quality and transportation modeling are performed on a regional basis.

Commissioner Cesarin asked if the EIR would include recommendations, such as adding a bus route, to County or State entities regarding transportation and GHGs based on housing siting assumptions. Mr. Hile explained that the EIR process did not include recommendations to agencies other than the City. Mitigation measures would be recommended to the City if they were necessary to reduce environmental impacts, but he was not sure at this time if any mitigation was necessary. Commissioner Cesarin then asked if other agencies had opportunity to comment on, appeal, or challenge the Housing Element or its EIR. Director Ayers and Mr. Hile advised that the City of Concord, Contra Costa County, and the City of Walnut Creek, the two former of which were jurisdictions that adjoined Clayton's municipal boundary, were sent copies of the Notice of Preparation (NOP) and invited to give feedback on the scope of the EIR. The NOP was also noticed to State agencies with jurisdiction in the area. Commissioner Cesarin also asked whether the EIR would address and

mitigate effects to wildlife, to which Mr. Hile advised that that analysis would be conducted under the Biological Resources section of the EIR.

Chair Denslow requested clarification on timing of the EIR. Understanding that the Housing Element had needed to be complete by January 2023, she asked if the schedule would accommodate multiple iterations of the analysis in the EIR, if necessary. Director Ayers confirmed the schedule and said that the timeline was tight, but that she had seen EIRs written in this amount of time, and the project was currently on track with the timeline in the scope of work that the City Council approved in May 2021.

Chair Denslow confirmed with Director Ayers that the “project” on which the EIR analysis would be based assumed a high intensity scenario wherein the majority of the sites in the draft Housing Element site inventory were rezoned to allow up to 30 units per acre. Chair Denslow then asked about a hypothetical scenario wherein some of the sites were rezoned to allow more than 30 units per acre, and if in that scenario, the EIR would have to be recirculated. Mr. Hile advised that a limited focus addendum to the EIR could possibly be prepared in that instance. That was a shorter process than preparation of an EIR; if no new impacts or mitigation measures were identified in the addendum and the conclusions of the EIR remained valid for the hypothetical higher-intensity project, then the EIR would not have to be recirculated as a subsequent EIR.

Chair Denslow asked if there was any reason why the analysis in the EIR could not start with the highest densities, if directed by decision-making bodies and to reduce the potential need for recirculation. Director Ayers advised that the adopted Housing Element might include some sites with more than 30 unit per acre densities, and some might have fewer than 30 unit per acre densities, such that the total averaged unit count might be consistent with the project unit count as described in the NOP. Director Ayers also suggested that, in addition to mitigation measures, comments on the scope could include comments about potential alternatives, and a more intense scenario could be suggested during the NOP process as an alternative to be considered in the EIR. Mr. Hile advised that, in evaluating that scenario as an alternative, that scenario’s impacts would be compared against the impacts of the project, and it would also be evaluated on how well it would meet the objectives of the Housing Element Update. Chair Denslow said that some comments made at previous Planning Commission and City Council meetings were in support of higher densities in certain locations, and she did not want to see time lost in recirculation if the EIR did not adequately consider that scenario.

Chair Denslow confirmed with staff that the scope of the Housing Element Update that was described in the NOP should not be perceived to be locked and not subject to future changes or input.

Chair Denslow asked Mr. Hile to clarify the analysis that will be in the Wildfire section of the EIR. Mr. Hile explained that Wildfire section was a new addition to the CEQA Checklist following recent years' increases in major incidents of wildfires and related impacts such as mudslides and loss of life. He explained that the EIR will need to evaluate whether the project would impair emergency response and evacuation plans; whether construction near slopes could weaken the slope or place structures in areas where they could cause fires; and whether development of infrastructure to support the project would exacerbate fire risk or if it would need to be put into place to mitigate fire risk. Flooding, landslides, increases in runoff, and soil instability post-fire would also need to be assessed. Mr. Hile noted that most of the sites suggested for rezoning would be in developed areas outside of high fire severity zones, but that the EIR might have to look at sites that are further from developed areas and assess wildfire threat to those sites. In response to Chair Denslow, Mr. Hile clarified that his mention of "infrastructure" was in reference to facilities such as fire truck access roads, fuel breaks, emergency water sources and power lines; fire response service would be discussed in the Public Services section of the EIR.

In response to Chair Denslow, Mr. Hile explained that coordination with the City was important to keep the EIR on schedule. His team had worked on several Housing Element environmental documents recently and had an efficient process for their preparation.

Chair Denslow invited attendees to speak on the item.

Max Davis shared his observations that CEQA seemed dated in its focus on localized impacts. He referenced studies out of the University of California, Berkeley, and stated that there are regional and global environmental benefits of density with respect to increasing housing affordability and reducing vehicle miles and air emissions from vehicles. He suggested that providing affordability and protecting property values can be perceived to be at odds with each other. He encouraged facilitating development of more units than cities' regional housing needs allocations as a means to get out of the housing and climate crisis.

Nathan Burkhardt confirmed with Mr. Hile that the EIR will include analysis of potential housing impacts on schools. Mr. Burkhardt referenced page 61 of the Mt. Diablo Unified School District report on student demographics, 10-year projections, prepared by Davis Demographics, where it was noted that Clayton's elementary school was projected to reach capacity based on historic development data. He noted that only past development data through 2014 was factored into that report.

Vice Chair Miller shared that he was anecdotally aware of the school capacity comment Mr. Burkhardt referenced, stating that his new neighbors had been told there was not a guarantee that their children could enroll in Mt. Diablo Elementary School because it was impacted. He was interested in seeing whether the data was consistent with those observations.

There was no one else present who wished to speak on this item. Chair Denslow confirmed with staff that the Commission did not need to take any action at this time.

9. PUBLIC HEARING

A. Flourishing Learners, UP-01-2022.

Stephanie Jones, the applicant, requests approval of a Use Permit (UP-01-2022) to allow the operation of a business providing tutoring services (personal improvement service) in an existing ground-floor tenant space located in the Town Center. The tutoring services are proposed to be located at 6160 Center Street, Suite D (Assessor's Parcel No. 119-018-006) and would be conducted daily from 8:00 a.m. to 7:00 p.m. This project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 – Existing Facilities.

Assistant Planner Milan Sikela presented the item and explained that staff recommended approval of the use permit request.

Commissioner Hines-Shaikh complimented the thoroughness of staff's analysis. She asked if the tutoring facility would be subject to the additional safety, exiting and seismic requirements that would be expected of a school. Assistant Planner Sikela said that had spoken about the project with representatives of the Contra Costa Fire Protection District and Contra Costa County Building Department. He said that staff likened the proposed tutoring business to a one-one-one personal service such as music instruction that was differentiated from a classroom-type group setting. Director Ayers added that the conversations held with Fire and Building representatives were in response to staff's concerns about occupancy ratings of the tenant space and the ability for students to exit the building in the event of an emergency. She also explained that public and compulsory education schools fall under the regulatory authority of the State Architect for compliance with standards for exiting, ventilation and recreational space. Because the proposed tutoring center was a private business and not a public compulsory education program, it did not need to abide by the regulations of the State Architect, though it still needed to comply with Building Code.

Commissioner Cesarin asked how long the tenant space had been vacant. Assistant Planner Sikela suggested that the applicant might be able to provide a response. Director Ayers said that she did not know precisely how long the tenant space had been vacant but that the applicant had made inquiries to the City about occupying the space for her business since late last year. Neither Director Ayers nor Assistant Planner Sikela had received any other inquiries from potential tenants of the space, with exception of a single inquiry to use the space to temporarily store supplies for the upcoming Art and Wine Festival in April 2022.

Vice Chair Miller said he previously volunteered as an elementary school math tutor and said he was curious about whether the tenant space would have student cubicles, walls or other mechanisms to reduce sound between student work spaces.

Chair Denslow asked if the applicant had already leased the space and was now asking the Planning Commission for approval of her business. Director Ayers said that staff would not require an applicant to have a signed lease before bringing a use permit application forward to the Planning Commission, as long as there was assurance that the property's owner was aware of the filing of the use permit request. She said she has seen applicants choose to wait to sign a lease until after a decision has been made on the use permit, or to sign a lease with an exit clause that could be enacted if the use permit was denied. She was not sure if either of those situations applied to this applicant. In response to Chair Denslow, Director Ayers also advised that entitlements for the approved residential development on the opposite side of High Street remained valid. Chair Denslow suggested that that development might add activity to the High Street/Marsh Creek Road intersection. Director Ayers agreed that that was a possibility, but she added that staff's recommendation for approval of the use permit was also based on the tenant space's lack of storefront glass and the large setback of the tenant space from High Street due to the on-site parking lot, two elements that would make successful retail challenging.

Chair Denslow opened the public hearing.

The applicant, Stephanie Jones, was invited to speak to the Commission. Ms. Jones stated that she has owned Flourishing Learners for two years. She currently tutored children in 21 Clayton families and three non-Clayton families, and most of her students were elementary-aged, though she did tutor a few middle schoolers. Addressing Vice Chair Miller's question about noise, she said that the space would most often be occupied by one student with one tutor; other tutors that worked with her would continue to make house calls, and she would continue to make house calls on occasion, as well. She said that many parents enjoy the luxury of tutors coming to their homes to tutor, but that the commercial tenant space would give some

families the opportunity to study in a more structured educational setting outside of the home and with fewer distractions.

Chair Denslow asked why the applicant did not opt to locate in Flora Square, as that commercial building was closer to the elementary school. The applicant said that she and her agent had observed that a lot of students frequently walk through Town Center and The Grove. The tenant space she was requesting to use was a convenient distance from the school and from The Grove, was in a central Town Center location for Clayton families, and did not have a lot of foot traffic from passersby that could pose a distraction to students.

In response to an earlier question posed by Commissioner Cesarin, Ms. Jones said that she believed that the tenant space had been vacant for about a year. Responding to an earlier question from Chair Denslow, Ms. Jones also reported that she had negotiated a lease that allowed her not to make lease payments until the City approved the use permit for her business.

Commissioner Cesarin asked Ms. Jones if she planned to incorporate a retail component into her business. Ms. Jones advised that she intended to offer classes in elective topics such as cooking or origami, to small classes of four to five students. She did not intend to sell computer software, though she did intend to sell merchandise, such as shirt-decorating activity kits with her business' bunny logo. Commissioner Cesarin inquired of staff whether adding a retail component to the business in the future would trigger another review of the use permit application. Director Ayers advised that addition of a retail component to the tutoring business would be ancillary to the tutoring business and would not effectively change how the tutoring business would operate, as students and tutors would still be coming to and going from the space for personal instruction as the primary use. Director Ayers added that the request for a use permit was triggered by the proposal to use the space for a non-retail use; otherwise, retail uses were permitted by right in the Town Center.

There was no one else present who wished to speak on this item. Chair Denslow closed the public hearing.

Commissioner Hines-Shaikh moved to approve Use Permit UP-01-2022 allowing the operation of a business providing tutoring services in the existing ground-floor tenant space located at 6160 Center Street, Suite D, in the Town Center. Commissioner Cesarin seconded the motion. The motion passed 4-0.

10. ACTION ITEMS

There were no action items.

11. COMMUNICATIONS

Commissioner Hines-Shaikh said it was wonderful to be a part of the volunteer effort to conduct outreach for the Housing Element Update and Balancing Act through the distribution of doorhangers to Clayton residences. She expressed gratitude to the City Council for coordinating the effort.

Chair Denslow shared Commissioner Hines-Shaikh's sentiments and said it was great to see Commissioner Cesarin, Commissioner Hines-Shaikh, Vice Chair Miller, as well as City Councilmember Wolfe, Vice Mayor Tillman and Mayor Cloven participating in the effort. Chair Denslow also wished everyone a happy International Women's Day.

11. ADJOURNMENT

The meeting was adjourned at 8:50 p.m. to the next regular meeting of the Planning Commission on March 22, 2022.

Respectfully submitted:



Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:



Terri Denslow, Chair

ATTACHMENT C: NOTICE OF AVAILABILITY



NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF CLAYTON 6th CYCLE (2023-2031) HOUSING ELEMENT UPDATE AND ASSOCIATED LAND USE ELEMENT AND ZONING CODE AMENDMENTS

DATE: August 18, 2022

TO: Responsible Agencies, Trustee Agencies, and Interested Parties

FROM: City of Clayton Community Development Department

CONTACT: Dana Ayers, Community Development Director

PROJECT: City of Clayton 6th (2023-2031) Cycle Housing Element Update and Associated Land Use Element and Zoning Code Amendments

SCH #: 2022030086

PROJECT LOCATION: The Planning Area is located in north-central Contra Costa County, approximately 20 miles east of downtown Oakland, and encompasses all properties within the City's corporate boundaries, Sphere of Influence (SOI), and some open space areas outside the City's corporate boundaries and SOI. The City of Clayton is located at the base of the north slope of Mt. Diablo. The City is bordered by the unincorporated ghost town of Nortonville to the northeast. The City of Concord lies to the west, and Walnut Creek lies to the southwest.

PROJECT DESCRIPTION: The City of Clayton updates its General Plan Housing Element on an eight-year cycle. The last update took place in December 2014 and established a housing plan for the City for the eight-year cycle between 2015 and 2023. In fall 2021, the City commenced the update of its Housing Element for the 6th cycle, which spans years 2023 through 2031. The community engagement process for the 6th cycle Housing Element Update included various meetings with stakeholders, community workshops, online surveys and community sessions and comment meetings.

The updated Housing Element includes programs, policies, and actions to further the goal of meeting existing and projected housing needs of all income levels and identifies how the City plans to accommodate its Regional Housing Needs Allocation (RHNA) of at least 570 units. The proposed Housing Element Update has the potential to result in development of up to 868 additional dwelling units in the Planning Area, which represents a 21.07 percent increase over existing conditions. Additionally, the proposed Housing Element Update has the potential to result in a population increase of up to 2,364 additional persons and an additional 71 employees within the Planning Area, which represents a 20.98 percent and 7.66 percent increase, respectively, over existing conditions. Finally, the proposed Housing Element Update has the potential to result in development of up to 13,000 square feet of additional non-residential building square footage within the Planning Area, which represents a 3.57 percent increase over existing conditions. The City of Clayton has identified 18 preliminary housing sites to accommodate the RHNA of 570 or more additional housing units. As described in the Housing Element Update, these sites include:

- Vacant properties zoned for residential, public, or agricultural use;
- An overflow parking lot owned by the Oakhurst Country Club;
- Within the Town Center, vacant properties (including a City-owned site), public parking lot, and private properties that could be redeveloped with mixed-use projects;
- Properties that are currently developed with a single-family home but are large enough to support additional residences or a multifamily housing project; and
- Sites owned by religious institutions that have expressed interest in developing housing on portions of their properties.

Not all of these properties are designated and zoned for residential use and for those that are, the density yields may not be high enough to achieve the RHNA through private development efforts. Thus, for this 6th cycle Housing Element, to accommodate its RHNA of 570 or more units the City will need to amend General Plan land use policy to increase residential densities to support greater variety in multifamily housing types, amend the Zoning Code to provide for consistency with General Plan policy, and rezone properties to reflect parallel General Plan land use designations. With the proposed amendments, the City is able to plan for the RHNA and create a planning buffer that responds to State laws regarding no net loss of lower-income residential units, should a site planned for lower-income housing be developed with a lower density than was planned. It should also be noted that the 6th cycle inventory sites may change based on the public review process and comments from the California Department of Housing and Community Development (HCD).

POTENTIALLY SIGNIFICANT ENVIRONMENTAL EFFECTS: Based on the analysis in the Draft EIR, the City of Clayton 6th Cycle Housing Element Update and Associated Land Use Element and Zoning Code Amendments could result in potentially significant environmental effects in the resource areas of Air Quality, Cultural Resources, Greenhouse Gases, Hazards and Hazardous Materials, Noise, Transportation, Utilities and Service Systems, and Wildfire. Measures are identified in the Draft EIR to mitigate the potentially significant impacts. With the exception of Greenhouse Gases and Transportation, the mitigation measures identified in the Draft EIR would reduce the potentially significant environmental impacts to less than significant. Potentially significant Greenhouse Gas and Transportation (specifically, vehicle miles traveled) impacts resulting from the project would remain significant and unavoidable even with implementation of mitigation measures. None of the potential housing inventory sites identified by the City in the Draft Housing Element is located on or in close proximity to a list of hazardous materials sites enumerated under Section 65962.5 of the California Government Code.

PUBLIC REVIEW PERIOD: The 45-day public review period for the Draft EIR will commence on **August 19, 2022**, and end on **October 3, 2022**, for interested individuals and public agencies to submit written comments on the document. Any written comments on the Draft EIR must be received at the below address within the public review period. The Draft EIR is available in digital format online at: <https://claytonca.gov/community-development/housing/housing-element/>, and paper copies of the Draft EIR will be available for viewing at Clayton City Hall, 6000 Heritage Trail in Clayton, and at the Clayton Community Library, 6125 Heritage Trail in Clayton.

WRITTEN COMMENTS: Please submit written comments to:

Dana Ayers, AICP, Community Development Director
City of Clayton Community Development Department
6000 Heritage Trail
Clayton, California 94517
danaa@claytonca.gov
Tel: (925) 673-7343
Fax: (925) 672-4917

ATTACHMENT D: AGENCY MAILING LIST

Agency	Street Address 1	Street Address 2	City, State ZIP
OPR / State Clearinghouse	<i>CEQASubmit</i>		
Contra Costa County Clerk	<i>Hand Deliver to 555 Escobar St, Mtz</i>		
State Dept of Housing & Community Development	C/O Land Use & Planning Unit	2020 West El Camino Ave, Suite 500	Sacramento, CA 95833
State Dept of Fish & Wildlife	Bay Delta Region 3	2825 Cordlia Road, Suite 100	Fairfield, CA 94534
California Dept of Transportation	District 4 Local Assistance	P.O. Box 23660	Oakland, CA 94623-0660
Office of Historic Preservation		1725 23rd Street, Suite 100	Sacramento, CA 95816
Bay Area Air Quality Management District	Environmental Planning Division	375 Beale Street, Suite 600	San Francisco, CA 94105
Contra Costa County	Dept of Conservation & Development	30 Muir Road	Martinez, CA 94553
City of Concord	Community Development Department	1950 Parkside Drive, Building D	Concord, CA 94519
City of Walnut Creek	Community Development Department	1666 North Main Street, 2nd Floor	Walnut Creek, CA 94596
Contra Costa LAFCO		40 Muir Road, 1st Floor	Martinez, CA 94553
Contra Costa Water District		1331 Concord Avenue	Concord, CA 94520
City of Concord	Public Works Department		
Central Contra Costa Sanitary District			
Contra Costa County Fire Protection District			
East Bay Regional Parks District			
Association of Bay Area Governments			
Mt. Diablo Unified School District			
Contra Costa Transportation Authority			
TRANSPAC			
Pacific Gas & Electric			
Republic Services			
Native American Heritage Commission			
SF Regional Water Quality Control Board			
Wilton Rancheria	Raymond Hitchcock, Chairperson	9728 Kent Street	Elk Grove, CA 95624
Amah Mutsun Tribal Band of Mission San Juan			
Bautista	Irene Zwierlein, Chairperson	789 Canada Road	Woodside, CA 94062
Indian Canyon Mutsun Band of Costanoan	Ann Marie Sayers, Chairperson	P.O. Box 28	Hollister, CA 95024
Muwekma Ohlone Indian Tribe of the SF Bay Area	Charlene Nijmeh, Chairperson	20885 Redwood Road, Suite 232	Castro Valley, CA 94546
North Valley Yokuts Tribe	Katherin Erolinda Perez, Chairperson	P.O. Box 717	Linden, CA 95236
The Ohlone Indian Tribe	Andrew Galvan	P.O. Box 3152	Fremont, CA 94539

online or hand delivery

certified mail

first class mail

ATTACHMENT E: NOTICE OF COMPLETION

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH # 2022030086

Project Title: City of Clayton 8th Cycle Housing Element Update and Associated Land Use Element and Zoning Code Amendments
Lead Agency: City of Clayton **Contact Person:** Dana Ayers, Community Development Director
Mailing Address: 8000 Heritage Trail **Phone:** 925-873-7343
City: Clayton **Zip:** 94517 **County:** Contra Costa

Project Location: County: Contra Costa City/Nearest Community: Clayton
Cross Streets: Clayton and Marsh Creek Roads **Zip Code:** 94517
Longitude/Latitude (degrees, minutes and seconds): 37 ° 56 ' 33 " N / 121 ° 56 ' 14 " W **Total Acres:** +/-2.480
Assessor's Parcel No.: multiple **Section:** **Twp.:** T01N **Range:** R01W **Base:** MDM
Within 2 Miles: State Hwy #: N/A **Waterways:** Mitchell Creek, Donner Creek, Mt. Diablo Creek
Airports: N/A **Railways:** N/A **Schools:** Mt. Diablo Elem, Diablo View Middle

Document Type:
CEQA: NOP Draft EIR NEPA: NOI Other: Joint Document
 Early Cons Supplement/Subsequent EIR EA Final Document
 Neg Dec (Prior SCH No.) Draft EIS Other:
 Mit Neg Dec Other: FONSI

Local Action Type:
 General Plan Update Specific Plan Rezone Annexation
 General Plan Amendment Master Plan Prezone Redevelopment
 General Plan Element Planned Unit Development Use Permit Coastal Permit
 Community Plan Site Plan Land Division (Subdivision, etc.) Other:

Development Type:
 Residential: Units 888 Acres Transportation: Type
 Office: Sq.ft. Acres Employees Mining: Mineral
 Commercial: Sq.ft. 13,000 Acres Employees Power: Type MW
 Industrial: Sq.ft. Acres Employees Waste Treatment: Type MGD
 Educational: Hazardous Waste: Type
 Recreational: Other:
 Water Facilities: Type MGD

Project Issues Discussed in Document:
 Aesthetic/Visual Fiscal Recreation/Parks Vegetation
 Agricultural Land Flood Plain/Flooding Schools/Universities Water Quality
 Air Quality Forest Land/Fire Hazard Septic Systems Water Supply/Groundwater
 Archeological/Historical Geologic/Seismic Sewer Capacity Wetland/Riparian
 Biological Resources Minerals Soil Erosion/Compaction/Grading Growth Inducement
 Coastal Zone Noise Solid Waste Land Use
 Drainage/Absorption Population/Housing Balance Toxic/Hazardous Cumulative Effects
 Economic/Jobs Public Services/Facilities Traffic/Circulation Other: Energy

Present Land Use/Zoning/General Plan Designation:
 Multiple

Project Description: (please use a separate page if necessary)
 The project involves a comprehensive update of the City of Clayton General Plan Housing Element for the 8th housing cycle (2023-2031). The updated Housing Element will establish programs, policies and actions to further the goal of meeting existing and projected housing needs of all income levels and will identify how the City plans to accommodate its Regional Housing Needs Allocation of at least 570 units through the year 2031. The proposed Housing Element Update has the potential to result in development of up to 888 additional dwelling units and up to 13,000 square feet of additional non-residential building square footage within the Clayton Planning Area, which encompasses all properties within the City's corporate boundaries, Sphere of Influence (SOI), and some open space areas outside the City's corporate boundaries and SOI. The project includes focused updates to the General Plan Land Use Element and parallel amendments to the City's Zoning Code to implement the General Plan amendments. This project is City-wide.

Note: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. Notice of Preparation or previous draft document) please fill in.
 Revised 2010

Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with an "X". If you have already sent your document to the agency please denote that with an "S".

<input checked="" type="checkbox"/> Air Resources Board	<input checked="" type="checkbox"/> Office of Historic Preservation
<input type="checkbox"/> Boating & Waterways, Department of	<input type="checkbox"/> Office of Public School Construction
<input checked="" type="checkbox"/> California Emergency Management Agency	<input type="checkbox"/> Parks & Recreation, Department of
<input type="checkbox"/> California Highway Patrol	<input type="checkbox"/> Pesticide Regulation, Department of
<input checked="" type="checkbox"/> Caltrans District # 4	<input type="checkbox"/> Public Utilities Commission
<input type="checkbox"/> Caltrans Division of Aeronautics	<input checked="" type="checkbox"/> Regional WQCB # 2
<input type="checkbox"/> Caltrans Planning	<input type="checkbox"/> Resources Agency
<input type="checkbox"/> Central Valley Flood Protection Board	<input type="checkbox"/> Resources Recycling and Recovery, Department of
<input type="checkbox"/> Coachella Valley Mtns. Conservancy	<input type="checkbox"/> S.F. Bay Conservation & Development Comm.
<input type="checkbox"/> Coastal Commission	<input type="checkbox"/> San Gabriel & Lower L.A. Rivers & Mtns. Conservancy
<input type="checkbox"/> Colorado River Board	<input type="checkbox"/> San Joaquin River Conservancy
<input checked="" type="checkbox"/> Conservation, Department of	<input type="checkbox"/> Santa Monica Mtns. Conservancy
<input type="checkbox"/> Corrections, Department of	<input type="checkbox"/> State Lands Commission
<input type="checkbox"/> Delta Protection Commission	<input type="checkbox"/> SWRCB: Clean Water Grants
<input type="checkbox"/> Education, Department of	<input checked="" type="checkbox"/> SWRCB: Water Quality
<input checked="" type="checkbox"/> Energy Commission	<input type="checkbox"/> SWRCB: Water Rights
<input checked="" type="checkbox"/> Fish & Game Region # 3	<input type="checkbox"/> Tahoe Regional Planning Agency
<input type="checkbox"/> Food & Agriculture, Department of	<input checked="" type="checkbox"/> Toxic Substances Control, Department of
<input checked="" type="checkbox"/> Forestry and Fire Protection, Department of	<input checked="" type="checkbox"/> Water Resources, Department of
<input type="checkbox"/> General Services, Department of	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Health Services, Department of	<input type="checkbox"/> Other: _____
<input checked="" type="checkbox"/> Housing & Community Development	
<input checked="" type="checkbox"/> Native American Heritage Commission	

Local Public Review Period (to be filled in by lead agency)

Starting Date August 19, 2022 Ending Date October 3, 2022

Lead Agency (Complete if applicable):

Consulting Firm: <u>MIG, Inc.</u>	Applicant: <u>City of Clayton</u>
Address: <u>800 Hearst Avenue</u>	Address: <u>8000 Heritage Trail</u>
City/State/Zip: <u>Berkeley, CA 94710</u>	City/State/Zip: <u>Clayton CA 94517</u>
Contact: <u>Laura Stetson, AICP</u>	Phone: <u>925-673-7343</u>
Phone: <u>510-845-7549</u>	

Signature of Lead Agency Representative: Dana Ayers Digitally signed by Dana Ayers
Date: 2022.08.18 14:21:07 -0700 Date: 8/18/2022

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

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5 – MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) identifies Mitigation Measures incorporated into the Clayton Housing Element Update Draft EIR. For each Mitigation Measure, the MMRP identifies the significant impact, the related mitigation measure, the implementation entity, the monitoring and verification entity, and timing requirements.

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IDENTIFIED IMPACT	RELATED MITIGATION MEASURE	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
AIR QUALITY						
Exposure of Sensitive Receptors to Substantial Pollutant Concentrations.	<p>MM AIR-1: Implement BAAQMD Basic Construction Mitigation Measures. The City shall require new project development projects to implement the BAAQMD’s Basic Control Mitigation Measures to address fugitive dust emissions that would occur during earthmoving activities associated with project construction. These measures include:</p> <ol style="list-style-type: none"> 1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. 2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered. 3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. 4. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour. 5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon 	Project Proponent/Applicant	City of Clayton Community Development and Engineering Departments.	Prior to issuance of grading permits and throughout construction.		

5 – Mitigation Monitoring and Reporting Program

IDENTIFIED IMPACT	RELATED MITIGATION MEASURE	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
	<p>as possible after grading unless seeding or soil binders are used.</p> <p>6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.</p> <p>7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.</p> <p>8. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Bay Area Air Quality Management District’s phone number shall also be visible to ensure compliance with applicable regulations.</p>					

<p>Exposure of Sensitive Receptors to Substantial Pollutant Concentrations.</p>	<p>MM AIR-2: Prepare Project-level Construction Emissions Assessment. The City shall require new projects requiring discretionary review to include a quantitative project-level construction criteria air pollutant and toxic air contaminant emissions analysis prior to the start of construction activities that shows project construction activities would not exceed BAAQMD project-level thresholds of significance. The analysis may rely on BAAQMD construction screening criteria to demonstrate that a detailed assessment of criteria air pollutant and toxic air contaminant construction emissions is not required for the project. If the project does not satisfy all BAAQMD construction screening criteria, the analysis shall estimate and compare construction criteria air pollutant and toxic air contaminant emissions against the project-level thresholds of significance maintained by the Bay Area Air Quality Management District (BAAQMD) and, if emissions are shown to be above BAAQMD thresholds, the implement measure to reduce emissions below BAAQMD thresholds. Mitigation measures to reduce emissions could include, but are not limited to:</p> <ul style="list-style-type: none"> • Watering exposes surfaces at a frequency adequate to maintain a minimum soil moisture content of 12 percent, as verified by moisture probe or lab sampling; • Suspending excavation, grading, and/or demolition activities when average wind speeds exceed 20 miles per hour; 	<p>Project Proponent/Applicant</p>	<p>City of Clayton Community Development Department.</p>	<p>Prior to discretionary project approval.</p>		
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5 – Mitigation Monitoring and Reporting Program

	<ul style="list-style-type: none"> • Selection of specific construction equipment (e.g., specialized pieces of equipment with smaller engines or equipment that will be more efficient and reduce engine runtime); • Installing wind breaks that have a maximum 50 percent air porosity; • Restoring disturbed areas with vegetative ground cover as soon as possible; • Limiting simultaneous ground-disturbing activities in the same area at any one time (e.g., excavation and grading); • Scheduling/phasing activities to reduce the amount of disturbed surface area at any one time; • Installing wheel washers to wash truck and equipment tires prior to leaving the site; • Minimizing idling time of diesel-powered construction equipment to no more than 2 minutes or the shortest time interval permitted by manufacturer’s specifications and specific working conditions. • Requiring equipment to use alternative fuel sources (e.g., electric-powered and liquefied or compressed natural gas), meet cleaner emission standards (e.g., U.S. EPA Tier IV Final emissions standards for equipment greater than 50-horsepower), and/or utilizing added exhaust devices (e.g., Level 3 Diesel Particular Filter); • Requiring that all construction equipment, diesel trucks, and generators be equipped with Best 					
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IDENTIFIED IMPACT	RELATED MITIGATION MEASURE	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
	<p>Available Control Technology for emission reductions of NOx and PM;</p> <ul style="list-style-type: none"> • Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines; and • Applying coatings with a volatile organic compound (VOC) that exceeds the current regulatory requirements set forth in BAAQMD regulation 8, Rule 3 (Architectural Coatings). 					
<p>Cause Substantial Adverse Cumulative Air Quality Impacts.</p>	<p>See Mitigation Measures AIR-1 and AIR-2, above.</p>	<p>Project Proponent/Applicant</p>	<p>City of Clayton Community Development and Engineering Departments.</p>	<p>Prior to issuance of grading or building permits and throughout construction.</p> <p>Prior to discretionary project approval.</p>		

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IDENTIFIED IMPACT	RELATED MITIGATION MEASURE	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
CULTURAL RESOURCES						
Cause Substantial Adverse Change in the Significance of an Archaeological Resource	MM CUL-1: Prior to the issuance of a grading permit, the grading plan shall include a requirement (via notation) indicating that if cultural resources, or human remains are encountered during site grading or other site work, all such work shall be halted immediately within 100 feet of the area of discovery and the contractor shall immediately notify the City of the discovery. In such case, the City, at the expense of the project applicant, shall retain the services of a qualified archaeologist and/or qualified tribal monitor for the purpose of recording, protecting, or curating the discovery as appropriate. The archaeologist and/or tribal monitor shall be required to submit to the City for review and approval a report of the findings and method of curation or protection of the resources. Further grading or site work within the vicinity of the discovery, as identified by the archaeologist and/or tribal monitor, shall not be allowed until the preceding steps have been taken.	Project Proponent/Applicant	City of Clayton Community Development Department.	Prior to issuance of grading permits and throughout grading or other land disturbing activities.		
Disturbance of Human Remains	MM CUL-2: Pursuant to State Health and Safety Code Section 7050.5(c) and State Public Resources Code Section 5097.98, if human bone or bone of unknown origin is found during construction, all work shall stop within 100 feet of the vicinity of the find, and the Contra Costa County	Project Proponent/Applicant	City of Clayton Community Development and Engineering Departments.	During grading and construction.		

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	Coroner shall be contacted immediately. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission who shall notify the person believed to be the Most Likely Descendant (MLD). The MLD shall work with the contractor to develop a program for re-internment of the human remains and any associated artifacts. Additional work shall not take place in the immediate vicinity of the find, which shall be identified by the qualified archaeologist at the applicant's expense, until the preceding actions have been implemented.					
GEOLOGY AND SOILS						
Directly or Indirectly Destroy a Unique Paleontological Resources.	MM GEO-1: In the event that fossils or fossil-bearing deposits are discovered during grading or construction of the Project, excavations within 50 feet of the find shall be temporarily halted until the discovery is examined by a qualified paleontologist, in accordance with the applicable Society of Vertebrate Paleontology standards (Standard Procedures for the Assessment and Mitigation of adverse Impacts to Paleontological Resources, Society of Vertebrate Paleontology, 2010), and assessed for significance under CEQA. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. If the find	Project Proponent/Applicant	City of Clayton Community Development and Engineering Departments.	During grading and construction.		

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	is determined to be significant and if avoidance is not feasible, the paleontologist shall design and carry out a data recovery plan consistent with the Society of Vertebrate Paleontology standards.					
GREENHOUSE GAS EMISSIONS						
Generation of Greenhouse Gases that May Have a Significant Impact on the Environment.	<p>MM GHG-1: Prohibit Natural Gas Plumbing and Appliances in New Housing Sites. The City shall prohibit natural gas plumbing and the use of natural gas appliances such as cook tops, water heaters, and space heaters in all new housing site developments. Upon request by the project developer, exceptions to this prohibition may be allowed in the following instances:</p> <ul style="list-style-type: none"> • Accessory dwelling units constructed on a parcel with an existing residential building with gas infrastructure. • Newly constructed buildings with a valid planning entitlement or other effective development agreement approved prior to the date of certification of this EIR. • It can be demonstrated there is no commercially available technology capable of meeting the specific appliance or building system application. <p>Projects subject to the above exceptions shall provide the necessary infrastructure</p>	City of Clayton	City of Clayton Community Development Department.	Prior discretionary project approval.		

IDENTIFIED IMPACT	RELATED MITIGATION MEASURE	MONITORING			VERIFICATION	
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	to support future electrification of appliances and building systems. This prohibition on natural gas plumbing and natural gas appliances shall cease if and when the City adopts a ZNE ordinance per Mitigation Measure GHG-2.					
Generation of Greenhouse Gases that May Have a Significant Impact on the Environment.	MM GHG-2: Consider Adoption of a Zero Net Energy Ordinance. Within one year of the adoption of the HEU, the City shall complete an evaluation on the feasibility of adopting an ordinance that amends the City's Municipal Code to require all new residential and/or non-residential development subject to Title 24, Part 6 of the California Building Code to achieve Zero Net Energy (ZNE) standards. If the City finds ZNE technology, programs, and/or other strategies are feasible and cost-effective, the City shall adopt a ZNE ordinance as expeditiously as possible given City resources. As defined by the California Energy Commission (CEC), ZNE standards require the value of the net energy produced by project renewable energy resources to equal the value of the energy consumed annually by the project, using the CEC's Time Dependent Valuation. In the event the City adopts a ZNE ordinance, Mitigation Measure GHG-2 would no longer apply to housing site projects in the City.	City of Clayton	City of Clayton Community Development Department.	Within one year of adoption of the Housing Element Update.		

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<p>Generation of Greenhouse Gases that May Have a Significant Impact on the Environment.</p>	<p>MM GHG-3: Residential Electric Vehicle and Bicycle Parking Requirements. The City shall require new residential housing sites to comply with the Tier 2 electric vehicle charging and bicycle parking requirements in the latest edition of the California Green Building Standards Code (CalGreen) in effect at the time the building permit application is submitted to the City. Currently, the 2019 CalGreen code, Section A4.106.8, Electric Vehicle Charging for New Construction, and Section A4.106.9, Bicycle Parking, require the following measures to facilitate the future installation and use of electric vehicle chargers and bicycle travel:</p> <ul style="list-style-type: none"> • New one and two-family dwellings and townhouses with attached private garages include a dedicated 208/240-volt branch circuit rated at 40 amperes minimum. • New multi-family dwellings provide 20 percent of the total number of parking spaces on a building site be electric vehicle charging spaces capable of supporting future electric vehicle supply equipment. • New multi-family buildings provide on-site bicycle parking for at least one bicycle per every two dwelling 	<p>City of Clayton</p>	<p>City of Clayton Community Development Department.</p>	<p>Prior discretionary project approval.</p>		

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	units, with acceptable parking facilities conveniently reached from the street.					
Generation of Greenhouse Gases that May Have a Significant Impact on the Environment.	<p>MM GHG-4: Non-Residential Electric Vehicle and Bicycle Parking Requirements. The City shall require new commercial development included as part of mixed-use housing sites to comply with the Tier 2 bicycle accommodations, clean air vehicle parking, and electric vehicle charging requirements in the latest edition of the California Green Building Standards Code (CalGreen) in effect at the time the building permit application is submitted to the City. Currently, the 2019 CalGreen code, Section A5.106.4.3, Changing Rooms, Section A5.106.5.1, Designated Parking for Clean Air Vehicles, and Section A5.106.5.3, Electric Vehicle Charging, require the following measures to facilitate bicycle travel, clean air vehicles, and the future installation and use of electric vehicle chargers:</p> <ul style="list-style-type: none"> • Non-residential buildings with more than 10 tenant-occupants provide changing/shower facilities for tenant-occupants in accordance with Table A5.106.4.3 of the CalGreen code. • Non-residential development involving the installation, addition, 	City of Clayton	City of Clayton Community Development Department.	Prior to discretionary project approval.		

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	<p>or alteration of 10 or more vehicular parking spaces provide designated parking for any combination of low-emitting, fuel-efficient, and carpool/van pool vehicles pursuant to Table A5.106.5.1.2 of the CalGreen code.</p> <ul style="list-style-type: none"> • Non-residential development shall provide electric vehicle charging spaces capable of supporting electric vehicle supply equipment pursuant to Table A5.106.5.3.2 of the CalGreen code. 					
<p>Generation of Greenhouse Gases that May Have a Significant Impact on the Environment.</p>	<p>MM GHG-5: Require a Project-level Greenhouse Gas Emissions Assessment for Housing Site Projects. The City shall require development projects that are determined not to be categorically exempt from CEQA, and that require the quantitative VMT assessment required by Mitigation Measure VMT-1, to submit a project-level greenhouse gas (GHG) emissions analysis. The GHG emissions analysis shall evaluate the project’s consistency with adopted state-wide GHG emissions reduction goals using the latest guidance and recommendations from the Bay Area Air Quality Management District, or another accepted methodology. If the project’s GHG emissions could interfere with state-wide GHG emission reduction goals, mitigation shall be identified and implemented to reduce emissions.</p>	<p>Project Proponent/Applicant</p>	<p>City of Clayton Community Development Department.</p>	<p>Prior to discretionary project approval.</p>		

IDENTIFIED IMPACT	RELATED MITIGATION MEASURE	MONITORING			VERIFICATION	
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	<p>Mitigation measures to reduce GHG emissions could include, but are not limited to:</p> <ul style="list-style-type: none"> • Increasing the energy efficiency of the proposed building(s) (e.g., identifying building practices that go beyond CalGreen Code standards, identifying specific energy efficient appliances, etc.); • Incorporating on-site renewable energy generation into project-design; • Reducing the quantity of parking provided by the proposed development; • Reducing indoor and outdoor potable water consumption; and • Increasing solid waste diversion rates. 					
Conflict with an Applicable Plan, Policy or Regulation Adopted for the Purpose of Reducing the Emissions of Greenhouse Gases	See Mitigation Measures GHG-1 through GHG-5, above.	City of Clayton Project Proponent/Applicant	City of Clayton Community Development Department.	Prior to issuance of construction permits. Prior discretionary project approval.		
Cause Substantial Adverse Impacts	See Mitigation Measures GHG-1 through GHG-5, above.	City of Clayton	City of Clayton Community	Prior to issuance of construction permits.		

IDENTIFIED IMPACT	RELATED MITIGATION MEASURE	MONITORING			VERIFICATION	
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with Respect to Greenhouse Gas Emissions		Project Proponent/Applicant	Development Department.	Prior discretionary project approval.		
HAZARDS AND HAZARDOUS MATERIALS						
Exposure of People or Structures to Wildfire.	MM HAZ-1: The City shall determine if it will prepare an update to its Local Hazard Mitigation Plan (LHMP) or cooperate with Contra Costa County in an update to its Emergency Operations Plan (EOP). This update must address the evacuation planning and coordination directives outlined in SB 99 and AB 747 as they apply to the City. The selected update shall address areas of the City or its Planning Area that have high fire risks and identify adequate evacuation routes with ongoing maintenance needs and operational and public education needs to support use of these routes during emergency conditions. The City shall decide which document update is most appropriate for the City within 90 days of adoption of the HEU.	City of Clayton Project Proponent/Applicant	City of Clayton Community Development Department.	Within 90 days of the adoption of the Housing Element Update.		

IDENTIFIED IMPACT	RELATED MITIGATION MEASURE	MONITORING			VERIFICATION	
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NOISE						
Exposure to Noise Levels in Excess of Standards.	<p>MM NOI-1: Reduce Potential Housing Site Development Construction Noise Levels. To reduce potential noise levels from construction activities pursuant to the HEU, the City shall require that future development projects subject to discretionary approval comply with the following:</p> <p><i>1) Notify Residential and Commercial Land Uses of Planned Construction Activities.</i> This notice shall be provided at least one week prior to the start of any construction activities, describe the noise control measures to be implemented by the Project, and include the name and phone number of the designated contact for the Applicant/project representative and the City of Clayton responsible for handling construction-related noise complaints (per Section 7). This notice shall be provided to:</p> <p>A) The owner/occupants of residential dwelling units within 500 feet of construction work areas; and</p> <p>B) The owner/occupants of commercial buildings (including institutional buildings) within 100 feet of work areas or within 400 feet of construction work areas if pile driving equipment will be used.</p> <p><i>2) Restrict Work Hours.</i> Construction-related work activities, including material</p>	Project Proponent/Applicant	City of Clayton Community Development Department.	<p>Prior to discretionary project approval (Include as project conditions of approval).</p> <p>Preparation and City signoff on Construction Noise Plan prior to issuance of grading permits.</p>		

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	<p>deliveries, shall be subject to the requirements of City Municipal Code Section 15.01.101. Construction activities, including deliveries, shall occur only during the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, unless otherwise authorized in writing by the City Engineer or designee or other project conditions of approval. If such authorization is granted, construction-related work activities shall still conform to the requirements of General Plan Policy 3b., which limits construction activities to the hours 7:00 a.m. to 5:30 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on weekends when adjacent neighbors are affected. The applicant/project representative and/or its contractor shall post a sign at all entrances to the construction site informing contractors, subcontractors, construction workers, etc. of this requirement.</p> <p>3) <i>Control Construction Traffic and Site Access.</i> Construction traffic, including soil and debris hauling, shall follow City-designated truck routes and shall avoid local roads in the City that contain residential dwelling units as much as possible unless an alternative route that provides access to the specific project location is not available.</p> <p>4) <i>Construction Equipment Selection, Use, and Noise Control Measures.</i> The following measures shall apply to construction equipment used to develop</p>					

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	<p>housing sites:</p> <p>A)Contractors shall use the smallest size equipment capable of safely completing work activities.</p> <p>B)Construction staging shall occur as far away from residential and commercial land uses as possible.</p> <p>C) All stationary noise-generating equipment such as pumps, compressors, and welding machines shall be shielded and located as far from sensitive receptor locations as practical. Shielding may consist of existing vacant structures or a three- or four-sided enclosure provide the structure/barrier breaks the line of sight between the equipment and the receptor and provides for proper ventilation and equipment operations.</p> <p>D) Heavy equipment engines shall be equipped with standard noise suppression devices such as mufflers, engine covers, and engine/mechanical isolators, mounts, etc. These devices shall be maintained in accordance with manufacturer's recommendations during active construction activities.</p> <p>E) Pneumatic tools shall include a noise suppression device on the compressed air exhaust.</p> <p>F) The applicant/project representative and/or their contractor shall connect to existing electrical service at the site to avoid the use of stationary power generators unless electrical service is</p>					

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	<p>not available or the electricity provider indicates service cannot be provided.</p> <p>G)No radios or other amplified sound devices shall be audible beyond the property line of the construction site.</p> <p>6)Implement Construction Activity Noise Control Measures: The following measures shall apply to construction activities in the Plan Area:</p> <p>A) Demolition: Activities shall be sequenced to take advantage of existing shielding/noise reduction provided by existing buildings or parts of buildings, and methods that minimize noise and vibration, such as sawing concrete blocks and prohibiting on-site hydraulic breakers, crushing, or other pulverization activities, shall be employed when activities occur adjacent to sensitive residential areas.</p> <p>B) Demolition Site Preparation, Grading, and Foundation Work: During all demolition, site preparation, grading, and structure foundation work activities within 500 feet of a residential dwelling unit or 400 feet of a commercial building (including institutional buildings), a 6-foot tall physical noise barrier shall be installed and maintained around the work site perimeter to the maximum extent feasible given site constraints and access requirements. Physical barriers shall consist of a solid material (i.e., free of openings or gaps other than weep holes) that has a minimum rated</p>					

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	<p>transmission loss value of 20 dB. The noise barrier may be removed following the completion of building foundation work (i.e., it is not necessary once framing and typical vertical building construction begins provided no other grading, foundation, etc. work is still occurring on-site).</p> <p>C) Pile Driving: If pile driving activities are required within 500 feet of a residential dwelling unit or 400 feet of a commercial building, the piles shall be pre-drilled with an auger to minimize pile driving equipment run times.</p> <p>7) <i>Prepare a Construction Noise Complaint Plan.</i> The Construction Noise Complaint Plan shall: A) Identify the name and/or title and contact information (including phone number and email) for a designated project and City representative responsible for addressing construction-related noise issues; B) Includes procedures describing how the designated project representative will receive, respond, and resolve construction noise complaints; C) At a minimum, upon receipt of a noise complaint, the project representative shall notify the City contact, identify the noise source generating the complaint, determine the cause of the complaint, and take steps to resolve the complaint; D) The elements of the Construction Noise Complaint Plan may be included in the project-specific noise evaluation prepared</p>					

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	to satisfy Section 7 or as a separate document.					
Cause a Substantial Adverse Cumulative Impact with Respect to Noise.	See Mitigation Measure NOI-1, above.	Project Proponent/Applicant	City of Clayton Community Development Department.	<p>Prior to discretionary project approval (Include as project conditions of approval).</p> <p>Preparation and City signoff on Construction Noise Plan prior to issuance of grading permits.</p>		
TRANSPORTATION						
<p>Conflict or Be Inconsistent with CEQA Guidelines section 15064.3, Subdivision (b)..</p> <p>Cause a Substantial Adverse Cumulative Impact with</p>	<p>VMT-1: The Project shall implement the following VMT Reduction Measures:</p> <ul style="list-style-type: none"> Individual housing project development proposals that do not screen out from VMT impact analysis shall provide a quantitative VMT analysis using the methods applied in this EIR, with modifications if appropriate based on future changes to City of Clayton practices and CCTA 	Project Proponent/Applicant	City of Clayton Community Development Department.	Prior discretionary project approval.		

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Respect to Transportation.	VMT analysis methodology guidelines. Projects which result in a significant impact shall include travel demand management measures and physical measures to reduce VMT, including, but not limited to, the measures below, which have been identified as potentially VMT reducing in the California Air Pollution Control Officers Association (CAPCOA) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity (December 2021). Project developers may substitute any of the measures listed below with one or more alternative measures; provided, that any substitute measures would reduce GHG from VMT in an amount that is equal to or greater than the reduction achieved by the measure being replaced, and the amount of the reduction is supported by evidence. Potential VMT reduction estimates are included below, but detailed requirements, calculation steps, and limitations are described in the CAPCOA Handbook. In addition, application of one or more of the measures below is generally expected to result in a net VMT reduction of 10 percent or less for development projects in suburban settings such as Clayton:					

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	<ul style="list-style-type: none"> ○ Unbundle parking costs (i.e., sell or lease parking separately from the housing unit). Effectiveness: up to 15.7 percent reduction in GHG from VMT per the CAPCOA Handbook. ○ Provide car-sharing, bike sharing, or scooter sharing programs. Effectiveness: 0.15 – 0.18 percent reduction in GHG from VMT for car share, 0.02 – 0.06 percent for bike share, and 0.07 percent for scooter share, per the CAPCOA Handbook. The higher car share and bike share values are for electric car and bike share programs. ○ Subsidize transit passes for residents of affordable housing. Effectiveness: up to 5.5 percent reduction in GHG from VMT per the CAPCOA Handbook. 					
Cause a Substantial Adverse Cumulative Impact with Respect to Transportation.	See Mitigation Measure VMT-1, above.	Project Proponent/Applicant	City of Clayton Community Development Department.	Prior discretionary project approval.		

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UTILITIES AND SERVICE SYSTEMS						
Relocation or Construction of New or Expanded Water, Wastewater Treatment, Stormwater Drainage, Electric Power, Natural Gas, or Communications Facilities.	<p>MM UTL-1: Water Demand Management. Prior to receiving entitlements for new residential development under the Housing Element Update, project applicants must contact the CCCWD and obtain confirmation that adequate water service can be provided and adequate water supplies are available consistent with their latest Urban Water Management Plan. If the CCCWD indicates it cannot guarantee water supplies for the new development, or the project involves an increase over planned development (i.e., General Plan Amendment or Rezoning) to a use or uses that would consume more water than under the current General Plan and zoning, then the development must implement one or more of the following water conservation measures to the degree necessary to achieve the level of water use that would have occurred under the current General Plan and/or zoning designation(s):</p> <ul style="list-style-type: none"> • Install appliances and plumbing that exceed current State Green Building Code water conservation requirements (i.e., those “current” at the time of application). Examples include but are not limited to low or dual flush toilets, composting toilets, high efficiency washing machines, 	Project Proponent/Applicant	City of Clayton Community Development Department.	Prior discretionary project approval.		

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	<p>shower timers, low-flow faucet and shower aerators, insulate water pipes, etc.;</p> <ul style="list-style-type: none"> • Prohibit installation of a swimming pool or allow only a spa; • Prohibit installation of water-consuming landscape features (fountains, ponds, etc.); • Prohibit installation of turf and promote individual gardens; • Install all hardscape or all xeriscape (drought-tolerant) plants; • Install only highly efficient drip irrigation systems - do not allow installation of any overhead sprayers or aerial sprinkler systems; • Install rain barrels or other rain storage systems to reduce demand on domestic water needed for landscaping; • Evaluate feasibility of installing grey water collection and recycling system, and install the system if feasible; and • For a General Plan Amendment or Rezoning, the project must demonstrate that it would exceed state and/or regional water conservation requirements sufficient to achieve water use that would have occurred under the existing land use and zoning designations. 					

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	Projects are not limited to this list but can recommend additional improvements or systems as appropriate to maximize water conservation. A project must identify the water conservation measures to be implemented with the project prior to entitlement and must demonstrate full compliance with this measure, including installation of specified improvements, prior to receiving a certificate of occupancy. This measure shall be implemented to the satisfaction of the City Planning Department.					
Have Sufficient Water Supplies Available to Serve the Project and Reasonably Foreseeable Future Development.	See Mitigation Measure UTL-1, above.	Project Proponent/Applicant	City of Clayton Community Development Department.	Prior discretionary project approval.		
Cause a Substantial Adverse Cumulative Impact with Respect to Utilities and Service Systems.	See Mitigation Measure UTL-1, above.	Project Proponent/Applicant	City of Clayton Community Development Department.	Prior discretionary project approval.		

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WILDFIRE						
Exposure of Project Occupants to Pollutant Concentrations from a Wildfire.	MM HAZ-1: The City shall determine if it will prepare an update to its Local Hazard Mitigation Plan (LHMP) or cooperate with Contra Costa County in an update to its Emergency Operations Plan (EOP). This update must address the evacuation planning and coordination directives outlined in SB 99 and AB 747 as they apply to the City. The selected update shall address areas of the City or its Planning Area that have high fire risks and identify adequate evacuation routes with ongoing maintenance needs and operational and public education needs to support use of these routes during emergency conditions. The City shall decide which document update is most appropriate for the City within 90 days of adoption of the HEU.	City of Clayton	City of Clayton Community Development Department.	Within 90 days of adoption of the HEU.		