

CHAPTER 5. CIRCULATION

DESCRIPTION OF EXISTING CONDITIONS

Regional and Local Roadways

At present, the only access into the Clayton Town Center is from the west and north via Clayton Road, and from the south and east via Marsh Creek Road. The two roads meet in the Town Center, where they become Main Street for three blocks between Oak and Marsh Creek Roads. Clayton Road—which will be a four-lane arterial by 1990—provides access to Central and East Contra Costa County by connecting to Ygnacio Valley Boulevard/Kirker Pass Road—a regional north-south arterial. Marsh Creek Road provides access to residences and farms to the east, en route to Brentwood and San Joaquin County.

The streets within the Clayton Town Center form a grid extending two blocks south from Main Street to High Street, and three blocks east from Oak Street to Marsh Creek Road. The Town Center streets are paved except for High Street and portions of Diablo and Morris south of Center. Marsh Creek Road provides arterial access to a number of curvilinear local streets to the south and east. Oak Street provides collector access to some of these areas, and Center Street provides access to Easley Drive to the east.

Intersection Levels of Service in 1988

The Level of Service (LOS) scale describes intersection operating conditions during a peak hour. For this report, a Level of Service method based on volume-to-capacity (V/C) ratios is used.¹

Figure 5-1, on the following page, describes each level of service in qualitative terms.

Existing intersection Levels of Service were not calculated for this study; rather, counts and levels of service from recent traffic studies in the area were used, as shown in Figure 5-2 on page 78.²

¹ The calculation method used in this report is the one most widely used for planning purposes. It is generally referred to as the Circular 212 Planning Method. For a description of the method, see the National Transportation Research Board, *Interim Materials on Highway Capacity*, Transportation Research Circular 212, January 1980.

² Two traffic studies in the vicinity of downtown Clayton have been published during the past three years: *Environmental Impact Report for the Oakhurst Project*, City of Clayton, February 1987, and *Environmental Impact Report for The Clayton Station Project*, City of Clayton, May 1988. The traffic count data and forecasts of cumulative background conditions in these two reports were used in this plan. Traffic generated by this Town Center Specific Plan was calculated especially for this present study. To obtain forecasts of future conditions with and without this planned Town Center, background forecasts contained in the Oakhurst EIR were used, after subtracting the traffic attributed to the Clayton Downtown Center in that previous study.

Figure 5-1: Intersection Level of Service Definitions

Level of Service	Interpretation	V/C Ratio
A-B	Uncongested operations; all approaches clear in a single signal cycle.	Less Than .700
C	Light congestion; occasional backups on critical approaches.	.700 - .799
D	Significant congestion on critical approaches but intersection functional. Cars required to wait through more than one cycle during short peaks. No long-standing queues (lines) formed.	.800 - .899
E	Severe congestion with some long-standing queues on critical approaches. Blockage of intersection may occur if traffic signal does not provide for protected turning movements. Traffic queue may block nearby intersection(s) upstream of critical approach(es).	.900 - .999
F	Total breakdown, stop-and-go operation.	1.00 and Above

Figure 5-2: Existing Traffic Levels of Service

LOCATION	ADT	V/C	LOS
Streets			
1. Kirker Pass at Clayton ³	23,300		
2. Clayton at Washington ⁴	17,600		
3. Main Street west of Marsh Creek Road	10,000		
Intersections			
1. Kirker Pass & Clayton		.73	C
2. Clayton & Washington		.55	A
3. Oak & Main		— 5	

³ Average Daily Traffic (ADT) shown is for Ygnacio Valley Boulevard/Kirker Pass Road.

⁴ ADT shown is for Clayton Road.

⁵ Unsignalized intersection. Main Street is currently operating at an acceptable Levels of Service, but not Oak Street. Oak Street intersection operations will improve after construction of the Clayton Road off-ramp.

The existing peak hour intersection conditions reported in previous studies indicate that although traffic volumes on Clayton Road/Main Street are high, the signalized intersections operate at acceptable Levels of Service. Due to high through volumes on Clayton Road/Main Street, however, side street traffic at unsignalized intersections is subject to a relatively long delay during the peak hour.

Programmed Improvements

As part of the Oakhurst project, by the spring of 1991 Clayton Road will be realigned to bypass the Town Center area, and a new Oakhurst Drive will be built through the Oakhurst development to Concord Boulevard at Kirker Pass Road. Access to Town Center properties from Clayton Road would not be permitted except for the service station envisioned at the southeast corner of Oakhurst Drive and Clayton Road. This Clayton Road bypass is intended to provide relief from through traffic currently traversing Main Street which is not destined to or from Clayton residences south and east of the Town Center, or to Town Center business. These improvements will relieve Main Street of its daily load of non-stop traffic, thereby enhancing the potential of the Town Center as a retail destination.

Another major circulation change is the new Oakhurst Drive, under construction as of 1989-90. This four-lane collector street will provide access through the Oakhurst project to Concord Boulevard and Kirker Pass Road by the end of 1989. By the middle of 1990, the bypass will be completed to Center Street. During 1990, traffic will continue to use both Marsh Creek Road south of Main Street and Center Street to the Phase I end of the Clayton Road Bypass. Turns from Clayton Road both in and out of Center will be allowed during Phase I. During the latter half of 1990, construction of the Phase II Clayton Road bypass to the south will close off Center Street from the bypass until the spring of 1991, when the "split-level" Clayton Road section will be completed to Marsh Creek Road south of Bigelow Street.⁶ Center Street will be constructed to meet Clayton Road at the terminus of Oakhurst Drive, so forming a four-way intersection controlled by a traffic signal.

(Amended by Resolution 65-98, dated 12/1/98)

After the bypass is completed in 1991, Clayton residents south of the Town Center and through traffic from Marsh Creek Road will have a choice of reaching Ygnacio Boulevard/Kirker Pass Road from Clayton Road or Concord Boulevard. Residents will also be able to bypass the Town Center via Marsh Creek Road. Clayton residents living to the east of the Clayton Road-Marsh Creek Road intersection will likely bypass the Town Center during commute hours. Those entering Marsh Creek Road between Montaire Parkway and El Molino will have a choice whether to take the bypass or go through the Town Center.

⁶ Source: Richard Angrisani, Clayton City Engineer, October, 1989.

The Oakhurst project will also add 1,485 households and an 18-hole golf course to the City of Clayton. This new development will construct local streets to the north and east of the Town Center and add new traffic to Town Center roads and streets.⁷

Parking

The existing parking supply in the Town Center area is adequate for the demand. It consists primarily of on-street parking, with the exception of parking lots provided at the Post Office parking lot, the Pioneer Inn, Village Market, and Saddlery, and a few smaller private off-street parking lots.

Although the current lack of sidewalks tends to enhance perceived parking shortages, during peak shopping periods, parking space is always available within a short distance.

Transit, Bicycle, and Pedestrian Circulation

Bus service to Clayton is currently provided via County Connection route 110. Passenger buses of 44-seat capacity are operated on this route from the Concord BART station via Clayton Road, Main Street and then south on Marsh Creek Road to residential areas. Ridership is below available capacity on this route. Morning peak-period buses depart from Clayton Town Center on the following schedule, which meets BART trains at Concord.

Figure 5-3: County Connection Departures from Clayton Town Center

5:43 AM
6:18 AM
6:48 AM
7:24 AM
8:00 AM

Bicycle/Pedestrian Facilities

Bicycle and pedestrian circulation in the Town Center is not specifically served by public facilities for these modes. Sidewalks are not generally available in the Town Center area, except for segments on Main and Oak Streets. Striped bike lanes are not provided on existing streets or highways. Pedestrian paths connect to Mt. Diablo Elementary School, and there is a pedestrian trail along Oak Street from the south. Bike lanes are striped on Clayton Road to the west.

⁷ For details regarding the Oakhurst Project traffic impacts, see *Environmental Impact Report for the Oakhurst Project*, City of Clayton, February, 1987. The forecast traffic from this report was incorporated into estimates of background future traffic used in this plan.

ISSUES

Connection between Marsh Creek Road and Clayton Road

Perhaps the most important circulation issue that needed to be resolved in the Clayton Town Center Specific Plan was how to connect the Town Center to the new Clayton Road Bypass.⁸ An easterly connection via Oakhurst, allowing access to the new Oakhurst Project, was assumed—since without it, the Oakhurst Project residents could not drive directly into the Town Center.⁹ Marsh Creek Road needed to be connected in some way to Clayton Road through the westerly or central portion of the Town Center, otherwise, the western portion of the Town Center would be isolated from Clayton Road. The issue concerned where and how to connect between Oakhurst and the new alignment of Clayton Road as it drops down to Main Street in the western part of the Town Center. The more direct the connection between Marsh Creek Road and the Clayton Road bypass, the less relief would be provided by the new bypass from through traffic going southeast on Marsh Creek Road. Connection via extensions of Morris, Diablo, and Oak Streets, and Marsh Creek Road were all reviewed by the Specific Plan Committee. A brief summary of the connection alternatives and the design review process follows.

The Morris Street extension was reviewed and eliminated as inferior to the Marsh Creek Road alignment, since it would require two more turns for traffic between Clayton and Marsh Creek Roads. In addition, the Morris right-of-way contains a large Black Oak which would have required either removal or a median island to protect the tree. A median would have required acquisition of additional right-of-way.

Diablo Street extension was considered as an alternative to Marsh Creek Road. Advantages included a reduced grade on the westbound Clayton approach to the possible new intersection, and a traffic signal on Clayton Road which would eliminate the need for a pedestrian tunnel under Clayton Road, which would be needed with a westbound one way off-ramp to Main at Oak (discussed further below). The Diablo signal would also improve accessibility for the western part of the Town Center since it would allow all turning movements, not just right turns eastbound from Clayton Road. Diablo Street also had urban design advantages: it provided a much less direct connection between Marsh Creek Road and Clayton Road. The additional two turns and a stop that it would require of trips through the Town Center would discourage such trips more than would the Marsh Creek Road connection. Such indirectness would result in lower “background” traffic volumes on Town Center streets, especially Main Street.

Reduction of through traffic provides important safety, noise, and air quality benefits, but this advantage is offset by the loss of the “background traffic effect”—a perception

⁸ Under construction, March, 1989.

⁹ Funding for some of the public infrastructure of this Town Center Specific Plan is provided through an assessment district including the Oakhurst Project parcels.

that background through traffic attracts customers to commercial areas, perhaps by generating the impression that the commercial area is a lively and competitive place.

Oak Street connection. Several alignment possibilities were considered by the Committee. The first was to use the existing Clayton Road as a one-way eastbound off-ramp to Main. This would encourage returning commute traffic during the PM peak to continue using Main Street to Marsh Creek Road, as this route would be more direct than using a signal to make a right turn at Marsh Creek Road, Morris, or Diablo. The second was to make this ramp a two-way street, with right turns in and out at Clayton Road. This was eliminated as unnecessary, since few drivers would make a right turn onto Clayton at this location. Finally, a linear (due north) extension of Oak to Clayton with a new signal was also eliminated, due to the steep grade of Clayton Road at this location. Based on the review process summarized above, the Committee then considered two design alternatives for the connection to the Clayton Road bypass.

Alternative 1 proposed a Diablo Street extension and signal at Clayton Road, with closure of the existing Clayton Road connection to Main Street at Oak Street. On the east, this alternative proposed the Oakhurst extension with a signal at Clayton, leaving a relatively large area uncrossed by any street between the two signals at Diablo and Oakhurst.

The major advantages of Alternative 1 were to reduce the amount of through traffic in the Town Center by preventing a direct connection to Marsh Creek Road, plus eliminating the Clayton Road pedestrian tunnel at west end of Main Street. The major disadvantages were the need to relocate the Pioneer Inn parking lot for the Diablo extension, plus the potential reduction in retail sales due to lower background traffic on Town Center streets.

Alternative 2, which was similar to the layout approved for funding by the Oakhurst Assessment District, proposed a one-way eastbound off-ramp down the existing hill to Main street plus a pedestrian tunnel under Clayton Road on the west. The intersection of Oak and Main would be channelized as shown on the Illustrative Site Plan (see Figure 4-3 following page 36) to ensure that drivers would not inadvertently attempt to drive up the off-ramp, and to provide a median island for this entrance to the Town Center. On the east, this alternative proposed that both Oakhurst Boulevard and Marsh Creek Road be extended to signalized intersections with Clayton Road.

The major advantage of this alternative was to provide a direct connection between the Clayton Road bypass and Marsh Creek Road, at the same time preventing outbound movements from using Main Street to Clayton Road west of Marsh Creek Road. This combination was judged by the Committee as the best way to keep through traffic off Main Street—at least in the westbound direction—while ensuring a direct Clayton Road to Marsh Creek Road connection for drivers using this route. Another advantage was the potential impetus to retail sales expected from higher background traffic on Town Center streets. The major disadvantages were the need to build the extension of Marsh Creek Road close to the fragile natural riparian habitat of Mt. Diablo Creek, and the potential

separation of existing (west) and new (east) areas of the Town Center caused by Marsh Creek Road crossing Main street exactly at the creek boundary between old and new.

After review and discussion, the Committee selected Alternative 2—the Marsh Creek Road extension—as the preferred means of connection between Marsh Creek Road and Clayton Road. Once the choice was made, City staff and consultants worked together to refine the design of the extension so as to preserve as much of the creekside in its natural state as possible, minimize the need to remove trees—especially large trees—and reduce the paved width to a minimum.

Oakhurst Boulevard Extension

The southern terminus of Oakhurst Drive shall meet with the northern terminus of Center Street, forming a four-way intersection at Clayton Road. This intersection will provide a direct entry for residents of Oakhurst to the Town Center via Center Street.

(Amended by Resolution 65-98, dated 12/1/98)

Main Street Configuration

Town Center circulation was not seen as independent from urban design and environmental concerns. These concerns played a vital part in the Committee's decisions regarding circulation design. A distinctive feature of the existing downtown area is its small-block grid street pattern—six small rectangular blocks that identify and define the Town Center.

(Amended by Resolution 65-98, dated 12/1/98)

Main Street will be the primary roadway within the Clayton Town Center. At 60 feet, Main Street is the widest street in the Town Center, a width sufficient for angle parking on one or both sides. Since parallel parking only is proposed on all other streets, this unique angle parking pattern will identify and define Main Street as the primary road identify way within the Town Center. Forty-five degree angle parking is acceptable for streets in destination shopping areas which have unlimited through traffic volumes, such as Main Street.¹⁰

(Amended by Resolution 65-98, dated 12/1/98)

¹⁰ Locust Street, in the City of Walnut Creek, is a successful example of 45° angle parking in a 60 foot roadway.

CIRCULATION GOALS AND STANDARDS

Roadway Improvements

The following roadway improvements are under construction¹¹ or are proposed by this Town Center Specific Plan (See Figure 4-3, Illustrative Site Plan following page 36):

1. Clayton Road Bypass to Marsh Creek Road
2. Main Street off-ramp and Oak/Main intersection channelization
3. Oak Street pedestrian/bicycle tunnel under Clayton Road
4. Marsh Creek Road extension, including realignment of Marsh Creek road south of Main Street, bicycle and pedestrian paths, *etc.*
5. Oakhurst extension to Center Street
6. Main Street Bridge over Mt. Diablo Creek
7. Main Street extension to Oakhurst
8. Improvements to streets and construction of sidewalks on other streets as shown on the Plan.

Street/Road Design Standards

The above roadway improvements will be constructed to City standards, with curb and gutter and five-foot minimum sidewalks (ten-foot recommended on Main Street). Bicycles will use striped five foot lanes on certain streets, and be prohibited on sidewalks in the Town Center. Recommended sections for these roadways are shown on page 85.

Parking Supply and Design

The parking supply needed for the new land uses planned for the Clayton Town Center can be estimated by applying parking demand rates to the planned floor areas by type of use. These parking demand rates estimate the peak daily parking demand generated by each use, per unit of floor area or other measure. The demand estimate is then reduced by 15 percent for linked trips (trips for two or more destinations in the Town Center). Existing parking supply in the Town Center is assumed to remain, so that demand generated by existing uses will continue to be met as it is today, in both on- and off-street spaces. No existing excess capacity is available to meet future demand. Finally, new and converted curbside on-street parking to be constructed in the Town Center is subtracted to give an estimate of new demand for off-street parking spaces. This estimate is illustrated in Figure 5-5, on the following page. The estimated net demand is for 185 new off-street parking spaces. These 185 new off-street parking spaces could be built either by private developers or by the City, using a parking assessment district or other funding mechanism.

¹¹ Projects 1 through 4 are funded through the Oakhurst Assessment District.

Figure 5-4: Roadway Sections

Street	Recommended Width in Feet		
	R.O.W.	Roadway	Sidewalk
Main Street	80	60	10N, 7.5S ¹²
Marsh Creek Road	68	38	7.5 + bikeway on east
Center Street	50	40	5.0

(Amended by Resolution 65-98, dated 12/1/98)

¹² A 10-foot sidewalk on the north side of Main Street from Diablo to Clayton Road will provide a "pedestrian boulevard," encouraging pedestrian use of this street. Of this width, 7.5 feet must be kept clear of obstructions such as street trees, poles, or waste receptacles. The 7.5-foot width is sufficient for pedestrian volumes on the south side, especially where large trees or the fronts of existing buildings would preclude the wider sidewalk design. Sidewalk width on Main Street should be increased at corners, in conjunction with the diagonal parking, to reduce crosswalk length to 34 feet (at Marsh Creek Road) or 24 feet (at other streets), and thus encourage pedestrian travel in the Town Center.

Figure 5-5: Parking Demand

	Amount square feet	Rate /KSF ¹³	Parking space demand
Planned new land use¹⁴			
Grocery ¹⁵	30,000	3.2	96
Drug	15,000	4.5	68
Restaurant	15,000	7.5	113
General	10,000	3.2	32
Convenience	8,500	6.5	4.2
Speciality	5,000	4.5	22.5
Financial	5,000	2.9	14.5
Services	7,500	4.0	30
<hr/>			
Subtotal	96,000		380.2
Linked trips reduction :		-0.15	323
Planned New On-Street Parking¹⁶			
1. 2825 LF at 30' per space, parallel, new streets.			94 new spaces
2. 1240 LF of Main Street, from Diablo to Oakhurst, converted from parallel to 45° diagonal on both sides			44 spaces net gain
3. Subtract from #2 above if 45° diagonal parking on one side only			(22) on north side only
<hr/>			
Net New Off-Street Parking Demand			185-207

Note: Since the preparation of the parking demand projections, the Clayton Station commercial complex with 119,421 square feet of commercial space and major grocery store has been constructed. The Clayton Station project must be considered in projecting future land uses and parking demands within the Town Center area. The demand for commercial development within Clayton's Town Center was analyzed in a 1998 study conducted by the firm Keyser Marsten. This study provides revised projection for anticipated commercial development in the Town Center area.

(Added by Resolution 65-98, dated 12/1/98)

¹³ Rate per 1,000 square feet. Source: Institute of Transportation Engineers, *Parking Generation*, 1985.

¹⁴ Mundie & Associates, *Final Market analysis for the Clayton Town Center Specific Plan*. December, 1988, "Recommended commercial uses for Clayton Town Center," Table 10, p. 39.

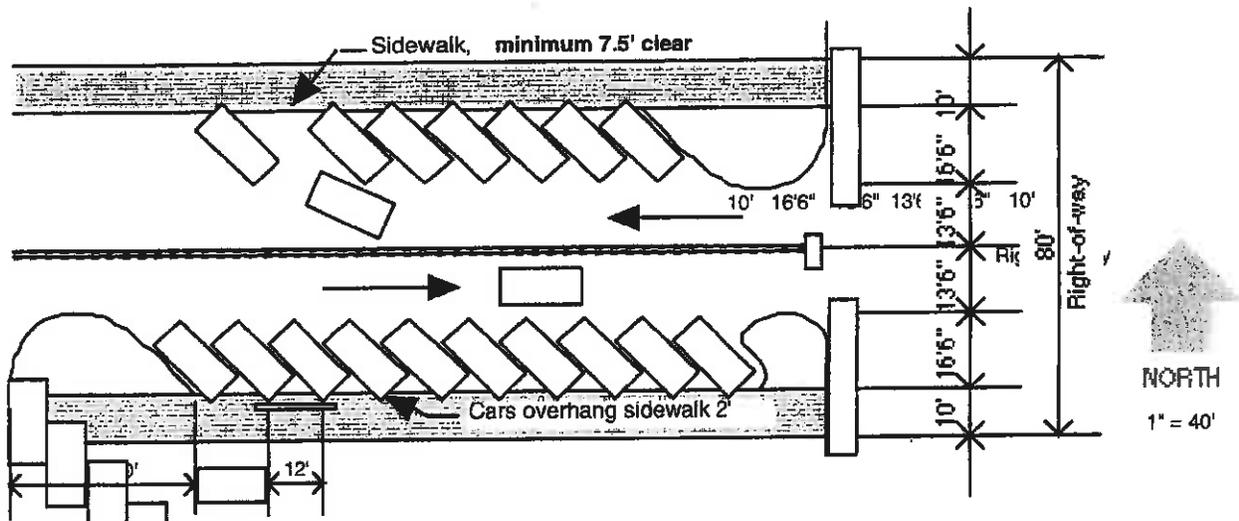
¹⁵ Grocery floor area was 20,000 square feet in Mundie & Associates report.

¹⁶ See Figure 5-6, page 87 for schematic design of diagonal parking on both sides of Main Street. Either one or both sides can be used for diagonal parking on this street.

Parking Standards

Two types of parking standards are needed to ensure that adequate parking is provided for intended Town Center uses: *supply standards* and *design standards*. *Supply standards* ensure that sufficient, but not excessive, parking and loading spaces are made available concurrently with the demand for that space, within acceptable walking distance of uses generating the demand. *Design standards* ensure that access, internal circulation, stall dimensions, accessibility, and amenity (landscaping, lighting, etc.) are acceptable and consistent with other adopted design standards. Detailed examples of these two types of standards can be found in the zoning ordinances of other jurisdictions.¹⁷ A representative selection of parking supply and design standards for downtowns are listed below. Many other design standards would be necessary for appropriate regulation of parking facilities—those listed illustrate some of these types of standards.

Figure 5-6: Proposed Cross-Section for Main Street, 45° Diagonal Parking Both Sides



¹⁷ See, for example, the City of Palo Alto *Zoning Ordinance*, Chapter 18.83: Off-street Parking and Loading Regulations. See also, the Urban Land Institute, *The Dimensions of Parking*, Washington, D.C. 152 pp., 1983.

Figure 5-7: Parking Standards

Land Use	Standard
SUPPLY STANDARDS	
Parking Spaces Required per 1000 sq. ft.¹⁸	
Non-residential land uses	
Bank	2.9
Professional Office	4.0
Personal Services	4.0
Intensive Retail	4.5
Restaurant	0.25 per seat; 7.5 per 1,000 sq. ft.

Residential land uses

1 space per bedroom, maximum of 2 per unit, plus 1 guest space per 10 units.

DESIGN STANDARDS

Element	Standard¹⁹
Standard 90° stall	8' 6" x 18'
Angle stall	45°, 8' 6" wide
Parallel stall, closed	20' 0" long, 7' 6" wide
Parallel stall, open ended	18' 0" long, 7' 6" wide
Landscaped area	5-10% of total parking area
Aisle width	28'
Handicapped	1 per 40 spaces up to 160 spaces
Driveway width, one-way	12'
Driveway width, two-way	20'
Driveway spacing	10-15'
Sidewalk width	7' 6"; 10' 0" on north side of Main; 5' 0" on Center west of Marsh Creek.

¹⁸ Adapted from: Institute of Transportation Engineers, Parking Generation, 1985.

¹⁹ City of Palo Alto Zoning Ordinance, Chapter 18.83.

Transit Service, Bicycle, and Pedestrian Circulation

No changes to bus frequency are needed to accommodate the Town Center Specific Plan. However, bus routes must be slightly altered to conform to the new street and road network. The Concord BART route will enter the Town Center from Clayton Road via the Main Street off-ramp, proceed east on Main Street, right on Marsh Creek Road; make a residential circuit to the south; and return via Marsh Creek Road to Clayton Road. Any new service to be provided on Oakhurst Boulevard will be routed into the Town Center via Oakhurst extension, turn right at Main Street and at Marsh Creek Road, and either right or left at Clayton Road, depending on the route back to Concord. For either route, service and stops are proposed on Main Street near the Marsh Creek Road intersection. Turn-out bus transit stops should be considered only on Clayton Road, due to its higher average speeds, but are not needed within the gridded street area of the Town Center. All bus stops in the Town Center should be provided with shelters, designed in conformance with Town Center Specific Plan design guidelines and installed with a minimum 5' 0" clear sidewalk width adjoining them.

Bicycles and Pedestrians

To encourage and facilitate pedestrian travel in the Town Center, the specific plan proposes that all roads and streets—both old and new—be constructed with curbs-and-gutter and with minimum 5' 0" wide sidewalks on both sides of the streets east of Oak and north of High Streets.

Sidewalks

Main street will have 10' wide sidewalks on the north side of the street and a minimum 5' clear on the south side (allow two feet for overhang of diagonally parked cars). Minimum clear width of the north sidewalk (after allowing for street furniture, landscaping, trees, and permitted encroachments) should be 7' 6"—sufficient width to allow a couple to pass a single person. Pedestrian walkways will be needed between off-street parking areas at the rear of buildings and sidewalks along the building frontage. All sidewalks must have handicap ramps at curb crossings. To provide pedestrians with the maximum clear area at crosswalks, the plan proposes design standards requiring that all sidewalks be kept clear of encroachment by trees, landscaping, lamp or sign posts, traffic signal fixtures, benches and private newspaper racks within a 5' 0" radius of crosswalk lines (7' 6" on Main Street).

All other streets and roads in the Town Center area will have 7' 6" wide sidewalks on one side of the street (the side most useful to pedestrians). For details, see Figure 5-8 on the following page.

Figure 5-8: Planned Sidewalks

Segment	Sidewalk Length	Width	Sq. Ft.
Sidewalks on both Sides			
Main Street	740'	10.0'	14,800
Center west of Easley to Oak Street ²⁰	1250'	7.5'	18,750
Diablo north of Center	220'	7.5'	3,300
Morris north of Center	220'	7.5'	3,300
Marsh Creek south of Main	410'	7.5'	6,150
	—		—
Subtotal	2840'		46,300
Sidewalks on One Side			
Oak north of Center, on east side	220'	7.5'	1,650
	—		—
Subtotal	220'		1,650
TOTAL	3060'		47,950

Note: The above estimates are based on analysis prepared for the 1990 Clayton Town Center Specific Plan. These estimates have been modified to approximate necessary sidewalk improvements following a reduction of the Town Center area in 1998.

(Added by Resolution 65-98, dated 12/1/98)

Additional pedestrian pathways or unpaved trails should be provided where needed to connect regional hiking and equestrian trails²¹ along Mt. Diablo and Mitchell Creeks, and to the Black Diamond Mine.

²⁰ The figures are based on 7.5'-wide sidewalks on both sides of the street; however, the sidewalks on Center Street west of Marsh Creek Road may be constructed to the narrower width of 5.0 feet. See Figures 5-4 and 5-7.

²¹ See City of Clayton, *Trail System and Open Space Master Plan* of 8/86 for a description of this regional network.

Bicycles

For bicycles, five-foot striped lanes will be provided on both sides of Clayton Road, Oakhurst extension, Center Street east of Marsh Creek Road, and on Oak between Center and Main, and on the shoulder of the Clayton Road/Main Street off-ramp. Bicycle lanes are not planned for Main Street due to the potentially hazardous sightline conditions during maneuvers from diagonal parking spaces planned for this street. Signs routing bicyclists off Main to Center Street should be posted at the intersections of Main and Oak, and Main and Oakhurst. A two-way, ten-foot, bike/pedestrian, paved pathway is planned on the west side of Oak between Center Street and the north side of Clayton Road, through a new pedestrian/bicycle tunnel under Clayton Road.²² Another similar ten-foot bike/pedestrian path will be constructed between Main Street and Clayton Road, along the east side of Marsh Creek Road, connecting to the crosswalk at the Clayton Road/Marsh Creek Road traffic signal. The east side of this road is preferable for this pathway, since the west side entails crossing the free-running right turn from eastbound Clayton Road to southbound Marsh Creek Road.

COSTS AND SCHEDULE

Costs

Preliminary cost estimates have been prepared for the circulation element of the Town Center Specific Plan, excluding those projects already included in the Oakhurst Assessment District. The estimates are preliminary planning estimates, since engineering drawings are not yet available. Standard 1989 unit prices have therefore been used to provide "ball-park" estimates for preliminary planning purposes. More precise cost estimates will be needed once engineering is completed. The estimated total planning, design and construction cost for the circulation and parking element of the Town Center Specific Plan, excluding the improvements funded by the Oakhurst Assessment District, is approximately 3.5 million dollars. For a more detailed description of this cost estimate, see Figure 5-9, on the following page.

Schedule

Portions of the improvements contemplated in the Town Center Specific Plan are being designed and will be constructed by the Oakhurst Assessment District by the end of 1989. These improvements include the Clayton Road bypass to Center Street, the Main Street off-ramp and the westernmost 100 feet of Main Street, Marsh Creek Road from Center Street to the Clayton Road bypass, and the easternmost 100 feet of the existing Main Street. All the improvements west of Marsh Creek Road are to be funded in connection with the City of Clayton Redevelopment Agency. Scheduling of these improvements will be dependent upon Agency funds and property owner contributions that will be determined by the City Council.

²² This pedestrian/bike path and tunnel project is funded through the Oakhurst Assessment District.

Funding for the improvements east of Marsh Creek Road will have to be determined. Possible sources include the redevelopment agency, assessment bonds, and developer contributions. Once funding has been secured, design and construction of these improvements can be accomplished within 18 months. If private development is proposed in any area prior to completion of improvements, significant construction beyond the development's limits may be required if deemed necessary by the City.

Figure 5-9: Cost Estimates

Project ²³	Units	Total Cost
ROADWAYS²⁴		
Oak Street Improvement north of Center	300 LF	8,500
Morris Street improvement	250 LF	7,100
Diablo Street improvement	250 LF	7,100
Subtotal, Roadways		\$221,700
Sidewalks ²⁵	46,300 sq. ft.	\$138,900
Parking Lots ²⁶ (185-207 spaces)	64,750 to 72,450 sq. ft.	\$582,750-\$652,050
TOTAL		\$744,350-\$813,650

Note: The above estimates are based on analysis prepared for the 1990 Clayton Town Center Specific Plan. These estimates have been modified to approximate necessary improvements following a reduction of the Town Center area in 1998. Estimates for required parking have not been modified. However, given the completion of Clayton Station, a large commercial complex, and the reduction in Town Center area and size, it is reasonable to assume that needed parking in the Town Center is between 25% and 50% of the estimate provided above.

(Added by Resolution 65-98, dated 12/1/98)

²³ See text and figures for description. Excludes R.O.W. costs.
²⁴ Excludes projects in the Oakhurst Assessment District. See Figure 5-4, page 85.
²⁵ Details on Figures 5-4, 5-7, and 5-8.
²⁶ Construction only. Excludes land cost for parking lots.

Chapter 6. Financial Mechanisms For Implementing The Town Center Specific Plan

In order for downtown Clayton to develop in a manner consistent with the Specific Plan, means must be found to fund area-serving facilities such as major roads, water and drainage systems, and park and recreation facilities. These and other improvements are needed to serve future development within the planning area and, in most cases, are a prerequisite for such development. This chapter summarizes several possible methods for financing such improvements, in common use in California.

This chapter cannot be considered a conclusive description of every available financing technique, nor does it purport to have described the process for applying any particular technique with any legal exactitude. The City Attorney should be consulted for definitive guidance as to the intricacies or application of any particular mechanism.

MELLO-ROOS COMMUNITY FACILITIES DISTRICTS

Information Source: California Government Code §53311 et seq.

Description: The Mello-Roos Community Facilities Act became law in 1982. It permits a legislative body to create a special district (within the legislative body's jurisdiction) that can issue tax-exempt bonds for the planning, design, acquisition, construction, and operation of public facilities as well as provision of public services to benefit district residents. Special tax assessments, levied by the district, are then used to repay the bonds. Distinctively, bonded indebtedness does not constitute an obligation of the legislative body, but rather an obligation of the district. Creation and continued operation of the district is subject to approval of (1) district land owners, or (2) if more than twelve voters reside in the district, a registered voter election. In some cases, a judicial "validation" proceeding is required (as determined by bond counsel) to verify that the special tax is not an *ad valorem* property tax.

Uses: A Mello-Roos district is generally created to build new public facilities in newly developing areas. A Mello-Roos district cannot be created as a technique for *replacing* existing facilities, although it may be used to *increase the capacity of* existing facilities. Bonds issued by a legislative body (issuer) on behalf of a Mello-Roos district are usually combined with other financing mechanisms such as development fees and/or exactions to cover the total cost of district public facilities development. Security for Mello-Roos bonds is in the form of a tax lien on district property. Any such property in default of property taxes (or, if separately levied, the "special tax" pertaining to the bonds) may be subject to foreclosure by the issuer.

Example: A developer needs capital to construct infrastructure needed to service a commercial development. It is anticipated that there will be no residents occupying the area. The City, as a legislative body, joins the developer to form a Mello-Roos district covering the area to be developed. The District then issues tax-exempt bonds which will be repaid from revenues derived through a special tax assessment on the commercial development. To retire the bonded indebtedness, the City, representing the District, each year taxes the developer the portion of the debt required to redeem mature bonds and cover the debt service on outstanding bonds for that year.

Advantages: The district can be designed to specifically address the needs of the property owners requesting its creation. The funds generated through the financing can be used not only to provide new public facilities and services but also to expand existing public facilities and services. Furthermore, the district can be enlarged and/or financing increased to include previously unserved or underserved areas. This method is in contrast to imposing all costs for public facilities/services in undeveloped areas—benefitting not only the development, but also property beyond the development—onto the developer; or, in more developed areas, imposing exactions or development fees onto the developer for facilities and services benefitting other property owners within the district.

Disadvantages: Creation and expansion of a district are both subject to action by a legislative body, but financing of district facilities by means of a special tax is subject to district landowner or registered voter approval. (If more than 12 voters reside in the district, a two-thirds majority in favor of the tax is required. If fewer than 12 voters reside in the district, then a two-thirds majority approval of property owners is required, with the votes apportioned according to the acreage owned.) If either creation/expansion or the special tax is disapproved, the developer may be discouraged from proceeding with the development which in turn may cost a city or public agency needed property tax or sales tax revenue. Also, a tax formula to repay district indebtedness must be arranged in a manner that does not become a burdensome pass-through to future property owners or tenants.

ASSESSMENT DISTRICTS

Municipal Improvement Acts of 1911 and 1913

Information Source: California Street and Highways Code §5000 *et seq.*
and Street and Highways Code §10000 *et seq.*

Description: California law authorizes an assessment procedure which can be employed to pay for public improvements directly benefitting a specific area (district). Each property owner located within the district is assessed his/her proportionate share of the cost for the public improvements. Tax exempt bonds may be issued under the Improve-

ment Bond Act of 1915 or the Improvement Act of 1911 to finance the improvements. Distinct from Mello-Roos bonds, approval of an assessment district does not require a two-thirds majority vote of property owners in favor of levying a special tax because the courts have classified *special assessments* as charges for special benefits over and above public benefits received by the general public; thus, special assessments are not subject to Proposition 13 *tax* limitations. Notwithstanding this exception to Proposition 13, Assessment Districts are subject to the Special Assessment Investigation Limitation and Majority Protest Act of 1931 (requiring a debt limit report and public hearing, both of which may be waived under certain circumstances).

Benefit Assessment Act of 1982

Information Source: California Government Code, §54703 *et seq.*

Description: This Act permits any local agency authorized to provide drainage, street lighting and/or flood control services to impose a *benefit assessment* to finance the maintenance and operation costs for such services of special benefit to properties provided with the services. The aggregate amount of the assessment is limited to the estimated annual cost of providing the service, while the assessment imposed on any parcel must be related to the benefit conferred on the assessed parcel.

Also, upon adoption of an ordinance or resolution by a local agency's legislative body imposing an assessment for the aforementioned services, a proposition must be submitted to the eligible voters within the area of benefit. The assessment is then to take effect upon majority approval of the registered area voters (or landowners if fewer than twelve registered voters reside in the assessed area). Except, under this Act, if a majority of voters in the district do not approve of the benefit assessment area, formation of it must be abandoned for at least one year. If the district is approved, then the assessment may be reviewed annually thereafter by the public agency's legislative body to determine the cost of the service, and an appropriate assessment imposed accordingly.

Landscaping and Lighting Act of 1972

Information Source: California Street and Highways Code, §22500 *et seq.*

Description: This Act permits a legislative body to form an assessment district for lighting, landscaping, and related improvements and maintenance, including land acquisition and preparation for park, recreational or open-space purposes, and provision of playground facilities.

The engineer (or equivalent) of the local agency proposing the assessment must submit a report detailing plans and specifications, including a diagram of the district and

estimated costs of the improvements. If bonds are to be issued, then an estimate of their principal amount must be included.

The legislative body of the public agency must approve the report (as modified if necessary) and adopt a resolution of intent to form the assessment district. A public hearing must occur afterwards at which a majority protest may be filed contesting district boundaries and/or assessment amounts. However, distinct from a Benefit Assessment District, a majority protest by property owners representing over fifty percent of the proposed assessment district may be over-ruled by a four-fifths vote of all members of the legislative body. The assessment is then to be levied on property within the district for the fiscal year referred to in the resolution of intent upon approval of the public hearing by the legislative body, with later assessments to be levied annually according to the benefit-cost formula described under the Benefit Assessment Act above.

Vehicle Parking District Law of 1943

Information Source: California Street and Highways Code, §19000 *et seq.*

Parking facilities may be acquired and improved through the formation of assessment districts under this law. Following this approach, the costs of the parking project are assessed against individual properties in proportion to the benefits received, with each assessment representing a fixed lien against the benefitted property. The Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 have been adopted as part of the Vehicle Parking District Law of 1943. Therefore, either the 1911 Act or the 1913 Act may be used for Vehicle Parking District assessment proceedings and either the 1911 Act or 1915 Act may be used to issue bonds for the acquisition and improvement of parking facilities.

Street and Lighting Acts of 1919 and 1931

Information Source: California Street and Highway Code §18000 *et seq.*

Both Acts authorize a city to erect and maintain street lighting facilities and place an assessment for the cost and expenses of such facilities on the lands benefitted. The same resolution of intent, (describing the facilities, boundaries, cost, and assessment), hearing process, and abandonment of proceeding applies to these Acts as that described for other assessment districts; except that the city council may over-ride a majority protest by a four-fifths affirmative vote for the improvement. The difference between the two Acts appears to be that the 1919 Act provides for alternative assessment procedures; specifically, an *ad valorem* or installment assessment approach is authorized by the earlier law whereas only an annual assessment is permitted by the later law.

Uses: Assessment districts are normally created to finance projects which are clearly defined and of special and direct benefit to the district. Generally, water systems, sanitation facilities, streets, street lighting, flood control, sidewalks, and similar projects of limited scope and purpose are financed by creating assessment districts.

Example: A group of property owners want their street improved. They approach the City requesting that the improvements be installed. The City does not have the funds available and has a policy that in areas already developed, the property owners should pay for improvements. An assessment district is formed to improve the street, with the City paying a share since the street has some benefit to the whole city. Bonds are issued, and district property owners are assessed fair share portions for the cost of the street, to be repaid annually as a special assessment tax for twenty years.

Advantages: Assessment districts are a mechanism for providing public facilities in areas of a city where previously they may have been unaffordable. Since the facilities are of a limited scope and purpose, they do not impose a financial burden on the entire city; instead, the burden is assumed by the residents or owners who benefit the most. Accordingly, a formula for assessing district property owners can be derived to assure fairness to each property owner. The district can be established in such a way that benefits of the public improvement are maximized both by: (1) promoting development consistent with community goals; and (2) completing a major public works project within a single, continuous time frame. Security for each bond may be provided by a lien on an individual property within the district, with collection conducted by the issuer's treasurer (1911 Act). Under this approach, the *bondholder* must institute foreclosure proceedings him/herself in the event a delinquent payment is not made within one year. Alternatively, security for the bonds may be provided by placing assessment liens on district private property which the *issuer* must foreclose on in the event any property owner is delinquent in paying his/her annual levy (1915 Act).

Disadvantages: Pursuant to the 1911 Act, an assessment district places liens on individual private properties within the district in the form of an annual fee. Since the yield on 1911 Act bonds is predetermined by statute, potential bondholders must consider the non-negotiable risk of having to institute foreclosure proceedings. Except in the case of a prime contractor or his assignee owning the bonds (either of which may be sold the bonds at a discount), the attractiveness of 1911 Act Bonds consequently may be diminished. Regarding 1915 Act bonds, there is significant risk in their use to benefit undeveloped, solely or severally owned land because property values are relatively uncertain. If values decline too much, tax foreclosure on any one property might result in insufficient revenue to pay for the improvements. Also, formation of a district requires a great deal of staff time dedicated to designing the improvements and deriving a billing or fair share liability formula (depending on whether the overriding bond issue is based on the 1911 Act or the 1915 Act, respectively). Relatively speaking, these factors make an assessment district complex and perhaps a risky financing technique to implement and manage.

MAINTENANCE DISTRICTS

Improvement Act of 1911

Information Source: California Streets and Highways Code §5820 *et seq.*

Description: Under the Improvement Act of 1911, California law authorizes the formation of Maintenance Districts. The district may cover large areas of diverse location in which an annual assessment is established and paid by the property owners of the district to cover necessary public facilities maintenance, improvement, and operation expenses.

Open Space Maintenance Act

Information Source: California Government Code §50575 *et seq.*

Description: This Act permits property owners to file a petition with the appropriate legislative body (*e.g.*, city council or county parks and recreation commission) to form an open space maintenance district. The district may be created to improve and maintain open spaces acquired by the legislative body (through its corresponding local agency) for open space preservation purposes. If owners of assessable land, amounting to twenty-five percent of the assessed value of all assessable land in the district, sign the petition (which must contain a description of the proposed district boundaries, the open space to be maintained, and a description of the maintenance to be conducted) a representative of the local agency must then file a report with the clerk containing the above described information and a map or diagram of the district and each parcel of land to be benefitted by the maintenance.

Resolutions of intent and public hearing are then executed by the legislative body. If at the hearing a majority of owners within the district object in writing to all aspects of the proposed maintenance, then no further action can continue regarding establishment of the district for six months. Otherwise, the legislative body may proceed with acquiring jurisdiction to form the district (if necessary), order the maintenance, and require that the cost and expense of the maintenance be paid by annual assessments upon district land on the basis of the benefit conferred on the property affected.

Uses: Maintenance districts normally are used to maintain improvements which are clearly defined and of limited scope and purpose. For example, these districts can provide a continuing source of revenue for the maintenance and replacement of landscaping in public rights-of-way (*i.e.*, landscaping in medians, cul-de-sacs, traffic islands, and parkway planting strips).

Example: A group of property owners want the public parking strip in their development maintained. The City does not have sufficient funds to provide the service but is willing to develop a unit cost for it. After adoption of a resolution of intent to form the district and public hearing as described above (taking into account that under the Improvement Act of 1911 a majority protest may be overridden by four-fifths of the city council), an ordinance is adopted forming the district and levying the assessment. Property owners are subsequently billed for the parking strip maintenance service based on a formula for the benefit each receives from it relative to the amount of property he/she owns.

Advantages: Maintenance districts provide a mechanism for maintaining areas that the City cannot afford to maintain. By having property owners pay for maintenance services of direct and limited benefit, City funds are freed for other uses.

Disadvantages: A legislative body is authorized to impose a special tax pursuant to creation of a maintenance district under the Improvement Act of 1911. The special tax, therefore, could be subject to a two-thirds majority voter approval, especially if nonpayment is grounds for foreclosure on one's property. Moreover, the maintenance fee may be subject to challenge as to whether or not property owners or resident voters will benefit at all from the maintenance or benefit in proportion to their share of the total assessment. Consequently, the process for establishing a maintenance district requires that there be a group consensus on the assessment that may be difficult to establish.

COMMUNITY REHABILITATION DISTRICTS

Information Source: California Government Code §53370 et seq. and Virginia L. Horler, Guide to Public Debt Financing in California, Packard Press, San Francisco, 1987.

The purpose of the district is to rehabilitate public capital facilities including but not limited to, streets and roads, sewer and water pipes, storm drains, treatment plants, sidewalks, curbs and gutters, bridges, overpasses, viaducts, street lights, public buildings, flood control works, criminal justice facilities (including jails and juvenile detention facilities), libraries, parks, and recreational facilities. The district may finance its rehabilitation projects under the 1911, 1913, and 1915 Improvement Acts and the Mello-Roos Community Facilities Act of 1982 and is authorized to levy fees, charges, special taxes or other assessments on those residing within the district. In addition, up to twenty-five percent of existing property tax revenues collected from within the district may be pledged to an issue of senior obligation bonds (functionally equivalent to tax allocation bonds described under Redevelopment Districts, below) to fund rehabilitation projects.

To establish a community rehabilitation district, the legislative body must adopt a resolution of intent, which contains information concerning the types of facilities to be rehabilitated, the cost of the work, the type of bonds to be sold to finance the projects, and proposed sources of funds to pay for the work and the financing costs. After a notice and public hearing, the members of the legislative body may establish the district and appoint themselves as directors of the district. If the legislative body intends to levy taxes or assessments and proceed with an issue of bonds, the actions necessary for the type of bonds to be sold can be enacted by the legislative body while the district is being formed.

REDEVELOPMENT DISTRICTS

Information Source: California Health and Safety Code §33000 et seq. and the Directory of Housing Handbook, HCD.

Description: Redevelopment Districts are used to redevelop areas defined as blighted according to the Community Redevelopment Law. In most cases, the value of property within the district is frozen for ten to twenty years, with any increase in assessed value generated through redevelopment efforts and collectable as property taxes (subject to Proposition 13 property tax limits) belonging to the district (*i.e., a tax increment*). Property taxes generated by the increase in value are used by the district to repay tax allocation bonds (pledged against tax increment revenues) or limited tax bonds (pledged against a special sales and use tax which may not exceed one percent). Such bonds are issued to finance various redevelopment district improvements as outlined in the redevelopment plan. *Note that twenty percent of the total tax increment revenues collected must be set aside for low and moderate income housing development.*

The process for creating a redevelopment district includes an evaluation of the community to identify areas of blight, preparation and adoption of a redevelopment plan, and negotiation of an agreement with other public agencies (such as school districts) enabling them to share the tax increment revenue during the life of the redevelopment district. (Such an agreement is negotiated on the basis of the burden any redevelopment project imposes on existing facilities and services financed by property taxes.)

Uses: Many communities have formed redevelopment agencies to improve blighted, distressed neighborhoods. Ordinarily, a district is formed to finance and promote revitalization of a dilapidated commercial and/or residential area. As part of revitalization goals, a host of improvement projects such as water, sewer, sidewalks, streets, and storm drains can be financed by establishing a redevelopment district. Also, the scope of the redevelopment plan may be broadened by an amendment to the plan, and areas contiguous to a redevelopment district may be annexed to the district. In summary, redevelopment districts promote the efficient use of land and maximization of property values and tax revenues, while simultaneously addressing the need for low and moderate income housing.

Example: A developer proposes a major commercial development on undeveloped land. The site is part of a redevelopment district that includes existing residentially and commercially developed land. The plan proposed by the developer suggests that the increase in property values stimulated by the development will generate sufficient property tax revenue to pay for public improvements long recognized by the City as necessary in the district. The redevelopment agency issues tax allocation bonds to finance the improvements. Ten years later, sufficient funds have been generated from district tax increment revenue to retire the bonded indebtedness and to pay for a Main Street redevelopment project located in the district.

Advantages: Public improvements are financed by bond proceeds, with the bonds paid from tax increment revenue in a redevelopment district. The benefit of this approach is that specific property taxes are applied to solve specific needs within the district. A district does not have to be approved by voters, and the city council may act as the board of directors for the redevelopment agency. Furthermore, based on a recent California Supreme Court decision, redevelopment authorities may make promises to developers to supply certain aspects of a development, including public facilities, with those promises constituting debt for purposes of cost recovery under the tax increment process.

Disadvantages: A redevelopment district trades short-run district tax revenue (used instead to service debt) in exchange for long-run returns realized from property appreciation in the redevelopment area. Redevelopment policy encourages such a trade-off for the purpose of long-term structural upgrading, including public improvements, development, and job creation in the redevelopment area. However, other public agencies that heavily rely on property taxes may sue a redevelopment agency unless an agreement is executed enabling the agencies to share the tax increment. Otherwise, the tax increment might not be used to support the affected agencies while the redevelopment continues to impose an additional burden on the agencies' facilities and services. Also, the redevelopment plan process generally requires a specialized consulting team consisting of a planner, attorney, and engineer. As a consequence, adoption of a redevelopment plan typically has a high initial cost which is commonly borne by the city's redevelopment agency.

GENERAL OBLIGATION BONDS

Information Source: Virginia L. Horler, *Guide to Public Debt Financing in California*, Packard Press, San Francisco, 1987.

Description: General Obligation (G.O.) Bonds may be issued by cities, counties and school districts and are used to finance the acquisition and improvement of real property and construction of public projects of all types—so long as the cost does not include operations, maintenance, or equipment expenses. Security for the bonds derives from the

full faith and credit of the issuer (which translates as the taxing power of the city, county, or school district). The process includes identifying the project, estimating the cost, and obtaining the approval of two-thirds of the voters to issue bonds for specific, identified projects. G.O. bonds are not used very often in California due to the two-thirds "super" majority requirement (authorizing *ad valorem* property taxes at whatever rate necessary to pay off the bonds). However, where there is community consensus, G.O. bonds are very effective and inexpensive.

Uses: Virtually any type of public improvement project that has a community-wide impact can be financed through the use of G. O. bonds.

Advantages: Approval requires community consensus, which means that the community really supports the issue. The cost of issuance is very low, since the issuer places its full faith and credit behind the issue. Sometimes several projects can be linked together under a "city plan" and offered as one ballot measure, thereby broadening the scope of the voter's decision whether or not to authorize issuance of G. O. bonds.

Disadvantages: The need for a two-thirds majority makes approval very difficult. Failure at a bond issue election could affect any future possibilities for constructing the project if funds are subsequently found because, some will say, the citizens turned down the project at one election.

PARKING LAW OF 1949

Information Source: California Street and Highways Code §32500 *et seq.*

This Act empowers a city to establish a parking authority for purposes of acquiring or disposing of property for parking purposes, as well as erecting, managing, and maintaining parking facilities. The parking authority also has the power to issue revenue bonds subject to the approval of a majority of voters in the city where the facilities are to be located.

PARKING AND BUSINESS IMPROVEMENT AREAS

Information Source: California Street and Highways Code §36500 *et seq.*

Description: A Parking and Business Improvement Area encompasses commercial businesses that pay a fee, assessment, or similar charge for parking facilities, aesthetic enhancements, or general business promotion. An area is formed upon request to the city council by twenty percent of the owners of businesses within the area to be formed or by the city council which may adopt a resolution of intent to form a parking and business improvement area on its own initiative. The parking and business improvement area may

not be established if a majority of business owners within the proposed area file written protests which are ruled upon at a public hearing addressing the city council's resolution of intent to establish the area. Otherwise, the city council may adopt an ordinance establishing the area and levy an assessment according to the estimated benefit to the businesses within the area. Funds collected in a parking and business improvement area must be used to benefit the area in which the assessments are collected, and each business may be assessed based on its type, size, and location as well as the cost of the service or improvement provided.

Uses: Possible uses of a parking and business improvement area include:

- Improving appearance, cleanliness, safety, and customer convenience.
- Conducting local promotions for purposes of maintaining and improving the mix of retail, office, and service businesses.
- Funding of marketing campaigns.
- Providing a source of matching funds as an incentive for streetscape and parking improvement projects to be undertaken by the City.

Example: A consortium of downtown businesses forms and wants to offer joint advertising. No individual wants to assume the responsibility for collecting fees. The City offers to collect the fees as part of a business improvement area. The area is formed, and through the participation of the businesses in a goal-setting session, numerous other ideas are generated. The City staff estimates the cost of the projects and programs identified and returns to the group with some ideas for assessments. After discussion, the group agrees to assess themselves \$100 to \$350 per business annually.

Advantages: This financing mechanism gets businesses located in the same proximity involved in supporting projects and programs that will benefit those same businesses. A parking and business improvement area also provides a constant source of income for the area so that projects and programs can be undertaken and goals for the area achieved over time. Moreover, support from the community-at-large for business improvement area projects has no financial burden associated with it.

Disadvantages: Although the City may recognize needed improvements that will directly and substantially benefit businesses located in the same proximity, there is no guarantee that those businesses will agree on the formation of a parking and business improvement area, or, if formed, agree with the City-recognized needs, or agree with the City on the share the business improvement area should contribute for any improvement. Also, there is no guarantee that the area will continue on a long term basis. Furthermore, a disagreement or a change of ownership among any participating businesses could disrupt the continuity of progress which the program facilitates.

PARKING DISTRICT LAW

Information Source: Street and Highways Code §35100 *et seq.*

Similar to a parking and business improvement area, a parking district may be established by property owners representing fifty-one percent of the total assessed value of real property in the proposed district. Upon submittal of a petition describing the boundaries of the district, the parking places to be acquired, public ways for ingress to and egress from the parking places, improvements to be made, and cost and revenue information, the city council may adopt a resolution of intent to form the district.

The resolution must be heard at a noticed public hearing and, if no majority protest is filed or recognized, adopted as an ordinance, with modification if necessary. In accordance with the ordinance, an assessment is then levied on district property—in much the same manner as a parking and business improvement area—to pay for the parking facilities (or bonds authorized to be issued for the same purpose).

CERTIFICATES OF PARTICIPATION

Information Source: Virginia L. Horler, *Guide to Public Debt Financing in California*, Packard Press, San Francisco, 1987.

Description: Certificates of Participation (COPs) governed by California case law can be used to finance municipal improvements and qualifying private projects that have a specific cash flow (such as a long-term lease), or a special fund, established in both cases to secure COPs. A primary issuer of certificates is the California Cities Finance Corporation (CCFC). The CCFC pools COP-financed projects from cities throughout California and issues certificates periodically to finance groups of public improvements. Collateral for the certificates are the leases and installment sales contracts which are enhanced by various insurance policies. In order for *lease-backed* COPs to be tax-exempt, the lease must be considered a *sale* agreement entered into under the public entity lessee's borrowing power. The I.R.S. also requires that the lease term be limited to no more than the anticipated useful life of the lease property. Additionally, lease-backed COPs are exempt from Proposition 13 debt limitations; therefore, no voter approval is required for this type of COP issuance.

COPs supported by an *installment sales agreement*, on the other hand, are subject to the Proposition 13 debt limitation unless the public entity issuer creates a special obliger fund, distinct from the public entity's general revenue fund, and appropriates COP payments from that fund. COPs backed by an installment sales agreement are exempt from federal income tax because a public entity is financing a public purpose facility.

Uses: Cities have used certificates for every type of major municipal purchase, including, for example, the purchase of a private water system.

Advantages: Certificates avoid the difficulty of a two-thirds majority vote. Also, the interest rates are very reasonable (compared to bank loan rates) when the certificates are tax exempt. Altogether, the procedure is very rapid, with financing usually requiring less than 120 days.

Disadvantages: A certificate issue needs to be tied to a specific source of revenue for repayment. In the case of the water system purchase, water service fees are pledged to repay the debt. Bond financing options pledge city tax or assessment revenues which are more secure: thus, they have lower interest rates. Moreover, as a consequence of the annual appropriation for an installment sales agreement type of COP issue, the city's balance sheet can be adversely affected.

DEVELOPMENT FEES

Information Source: California Government Code §66000 *et seq.*

Description: Development fees are implemented by a public agency upon review of a study of the actual costs for public facilities or services needed to serve a specific development. It is advisable in light of recent court rulings that local agencies adopt programs (e.g., a Capital Improvement Program) which establishes a "reasonable relationship" between imposition of the fee and the type of development project for which the fee will be used.

Uses: The fees can be immediately spent on site-related public improvements or saved for less than five years after which the public agency must make a finding as to the reasonable relationship between the fee and any proposed use of it. Possible development fees include:

- Water Modelling and Connection Fees (to contribute to the payment for and operation and maintenance of new and existing water facilities);
- Community Facilities Development Fees (for construction of major public improvements, the cost of which is borne by the developments that generate the need for the improvements);
- Storm Drainage Impact Fees (for the purpose of improving, operating, and maintaining increasingly burdened sewerage facilities, calculated on the basis of the estimated increase in water runoff attributable to a proposed development);

- Park and Recreation Land Improvements (for acquisition, development, and improvement of neighborhood and community park and recreation facilities);
- In-Lieu Housing Fees (as an option for developers to meet the housing policies of a city's General Plan requiring contributions to the housing stock relative to the size of a commercial or industrial development);
- Traffic Modelling and Mitigation Fees (for construction of major roadway and traffic improvements attributable to a proposed development. The traffic impact data are derived from established trip-generation rates for various land uses);
- Building Permit and Planning Processing Fees (to pay for building inspection and planning services including a share of the cost for the City's need to regularly update its General Plan); and
- School District Fees (for providing permanent school sites or financing interim school facilities necessitated by new residential development).

Advantages: The fees are paid by the developer and passed on to the purchaser or lessee of the property. There are no requirements for voter approval, and the City receives fees for any public improvement prior to construction on the development site. This approach protects residents of the community from having to finance or pay for public facilities which become necessary to accommodate large scale private development.

Disadvantages: Fees can increase the cost of development beyond the average home-buyer's or tenant's ability to pay. Consideration should be given to alternatives such as in-lieu mechanisms for large commercial developments (*e.g.*, land dedications or reservations). Also, derivation of a fee formula may require a large block of staff time and effort to assure fairness.

REVOLVING LOAN FUNDS AND TRUSTS

Information Source: California Government Code §55314.5 and Directory of Housing Programs, HCD.

Description: California Law authorizes revolving loan funds from moneys available to legislative bodies that have adopted Mello-Roos Community Facilities Districts and from the Predevelopment Loan Program.

The legislative body adopting a community facilities district may issue loans from legislative body funds for purposes of property acquisition, engineering services, or the

construction of district facilities. The borrowed funds are then to be repaid with interest within five years from the date when tax revenues or other moneys become available from the district.

The Predevelopment Loan Program, administered by the California Housing and Community Development Department, provides "seed money" for local agencies and non-profit corporations targeting the development or rehabilitation of low income housing in both rural and urban areas. Among other things, a Predevelopment loan may be used for site preparation expenses, such as water and sewer facilities installation. Although individual loans are limited to a term of one to three years, the 7% interest rate may be reduced or eliminated if the loan committee finds that it would prohibit significant numbers of very low income persons from owning or occupying units within the funded project.

Uses: A Parks Trust, whose funds are restricted to use for park purposes, could loan funds to the parks department for repayment over time, thereby maintaining the integrity of the trust while providing an excellent source of funds for park-related improvements and maintenance.

Advantages: Provides an on-going source of revenue, albeit of limited supply, for building rehabilitation and other public purpose projects.

Disadvantages: Usually such funds are not available in the large sums necessary to finance most public facilities projects.

FEDERAL ECONOMIC DEVELOPMENT ADMINISTRATION (EDA)

Information Source: Directory of Housing Programs, HCD.

The EDA sponsors various funding programs for research, technical assistance, and development initiated by local agencies and non-profit corporations. Step one of the qualification process for EDA assistance is the establishment of an *Overall Economic Development Program* (OEDP) Committee representing the community at-large. After an analysis of the area's economic activities, resources, and potential, as well as documenting a strategy for maximizing local economic and social capabilities, the OEDP adopted by the Committee is submitted to the EDA for approval. Upon approval of the OEDP, all public works and business development projects proposed for EDA assistance must be consistent with the OEDP.

EDA redevelopment areas that are delineated in the OEDP on the basis of specific statistical requirements are eligible for the complete range of EDA benefits. Economic Development Districts, on the other hand, target a multi-jurisdictional area since an

individual redevelopment area often lacks sufficient resources for a solid economic base. By grouping together distressed areas with those of economic health, the Economic Development District fosters development on a large scale. Among the grants available from EDA are: Administrative Expense Planning Grant, Comprehensive Economic Development Grant, Assistance to Districts for Professional Services, and Research Assistance. A fifth grant, the Public Works Program, provides funding for commercial and industrial site-related public utilities, construction of job-training facilities, public facilities at airports, harbors, blighted or congested commercial areas, publicly owned recreational facilities to enhance the area's tourism industry, and the renovation of inner-city buildings for special development purposes. EDA funds 50% of eligible projects and in some cases 80%–100%. Ineligible projects include those that are highly speculative or lack job creation and business development potential, or those that do not provide benefits to the poor and unemployed.

STATE OF CALIFORNIA COMMUNITY DEVELOPMENT BLOCK GRANTS (CDBG)

Information Source: Directory of Housing Programs, HCD.

As a city with a population under 50,000, Clayton may compete for funds from the Community Development Block Grant non-entitlement Program. Three eligible activity areas qualify: housing, public facilities, and economic development. Furthermore, at least one of three program objectives must be addressed—benefit to lower income people, elimination of slums or blight, or resolution of urgent community development needs. Eighty-one percent of the State's non-entitlement funds are earmarked for lower income housing development and economic development assistance. The economic development assistance includes funding for the off-site improvements necessary for businesses to locate in qualifying cities, granted under the proviso that the businesses provide permanent employment opportunities for lower income residents.

The four evaluation criteria for a non-entitlement grant are:

1. The relative extent of poverty within the community.
2. The relative benefit of each applicant's program to lower income households.
3. The relative seriousness of the needs each applicant proposes to remedy, the effectiveness of proposed resolutions, and the consistency of these proposals with State objectives; and
4. The relative cost-effectiveness of each applicant's program.

Programs that have been funded in the past include water, sewer, and infrastructure repair projects.

CREEKS, OPEN SPACE, AND TRAILS

Information Source: Urban Stream Restoration Program, California Department of Water Resources.

The objectives of this program are to assist communities in reducing damages from stream bank and watershed instability and floods, while restoring the environmental and aesthetic values of streams, and to encourage stewardship and maintenance of streams by the community. The program provides technical assistance to communities in designing solutions to flooding and bank stability problems and developing land use regulations to manage floodways and riparian environments. The program also provides grants on an annual cycle for on-site stream restoration work, design of restoration and flood damage reduction plans, organization of volunteer maintenance and monitoring projects, and acquisition of greenbelts along streams.

Counties, cities, and non-profit organizations are eligible to receive grants from the Urban Stream Restoration Program. The program's enabling legislation requires that the proposed projects restore or enhance the aesthetic, recreational, fish and wildlife values of the waterways. Proposals which stress community involvement are given a high priority. Small neighborhood, community organizations, or service groups are encouraged to apply by making arrangements with non-profit organizations or local governments to be their sponsor. Typically, the Department of Water Resources mails out requests for grant proposals in the fall. Proposals are reviewed in December or January, and arrangements for the transfer of grant monies to the successful applicants are made in the winter and spring. Project completion is usually expected within a year from the time the grant is awarded. To qualify, an applicant needs to have two objectives: first, restoring environmental resources and, second, addressing a problem of watershed stabilization or flooding.

Information Source: California Department of Fish and Game, Inland Fisheries Division Grant Program.

The Department of Fish and Game (DFG) provides grants for fishery restoration work. Typically, the application deadline falls in April, and funds are not available to successful applicants until at least September. Proposals are reviewed by the appropriate DFG unit biologist and for some sources of funding by the Salmon Stamp Committee or the Advisory Committee on Salmon and Steelhead Trout. Funds for this program come from a variety of sources:

- **The California Wildlife, Coastal, and Park Land Conservation Bond Act of 1988 (Proposition 70).** This Bond Act authorized various programs for purposes of park and recreation land and facility acquisition, development, and rehabilitation. These

programs, described in Figure 6-1 on the following page, also include funding for innovative programs, major maintenance projects, and archeological resource preservation. The DFG provides funds for the restoration and enhancement of salmon, native steelhead trout, and wild trout habitat.

- **The Cigarette and Tobacco Tax Benefit Fund (Proposition 99)** provides funds to benefit fish and wildlife. For both Prop 70 and Prop 99, funds may be available from the Wildlife Conservation Board (WCB) as well as the DFG. Approximately \$3 million was available from these sources in fiscal year 1989-90.

- **The Salmon Stamp program** provides funds for projects directed at restoring salmon populations through habitat enhancement or fish rearing, and to projects designed to educate the public on the importance and the ecological and environmental requirements of salmon. Anyone may apply. Action projects are preferred to studies, evaluations, or monitoring. Approximately \$500,000 was available in fiscal year 89/90.

- **The 1984 Fish and Wildlife Enhancement Bond Act (Proposition 19)** provides funds through the Wildlife Conservation Board to correct the more severe deficiencies in fish and wildlife habitat in California. Funds may be used only by public agencies to enhance, develop, or restore flowing waterways for the management of fish *outside the coastal zone*. Individuals or groups must affiliate with or act as the agent of a public agency to be eligible for these funds. Approximately \$1 million was available for new projects in fiscal year 1989-90.

**Information Source: State Water Resources Control Board,
Clean Water Construction Grant Program.**

The State Water Resources Control Board provides water quality management planning grants to State, local, and regional agencies to address a wide variety of surface and groundwater quality problems. These funds are provided by the Federal government under sections 205(j) and 604(b) of the Clean Water Act. Approximately \$1.2 million will be available per year for fiscal year 1989 and fiscal year 1990.

The funding emphasis will be on projects that focus directly on corrective or preventive actions for "State identified water quality impacted water bodies," proposed by agencies with the capacity to perform and complete the proposed work. However, projects that focus on other water quality problems will also be considered. Projects which are primarily research will not normally be funded.

Figure 6-1: Summary of Grant Programs Under Proposition 70

SUMMARY OF GRANT PROGRAMS UNDER PROPOSITION 70, OCTOBER 1988
 DEPARTMENT OF PARKS AND RECREATION
 OFFICE OF LOCAL ASSISTANCE
 P.O. BOX 942896, SACRAMENTO, CA 94296-0001 PHONE: (916) 445-4441

PROGRAM	TOTAL DOLLAR AMOUNT	COMPETITIVE OR BLOCK GRANT	APPLICATION DEADLINE	ELIGIBLE APPLICANTS	ELIGIBLE PROJECTS
Special District	\$10 mil. over 2 years (\$5 mil. in FY 89/90; \$5 mil. 90/91)	Competitive	September 15, 1989 for FY 90/91.	Special Districts who provide significant recreation services and are not eligible for funds under the Per Capita Program.	Acquisition, development rehabilitation of parks
Trails	\$5 mil. over 2 years (2.5 mil. in FY 89/90; \$2.5 mil. 90/91)	Competitive	Sept. 15, 1989 for FY 90/91.	Local units of governments and nonprofit organizations authorized to provide park, recreation or open space services or facilities.	Acquisition, development, rehabilitation of trails.
Per Capita	\$120 million	Block Grant	September 15, 1989 for FY 1990/91; September 15, 1990 for FY 1991/92.	Cities, counties, park & recreation districts, regional park districts, open space districts, & other qualifying districts.	Acquisition, development rehabilitation of parks & recreation.
Roberti Z'Berg Harris	\$20 million (70% State; 30% Local Match)	(1) Block Grant \$16,351,000 (2) Needs Basis \$ 2,947,120 \$ 401,880	(1) Application period is July 1, 1989 thru June 30, 1990. Agreement must be fully executed by 6/30/90. (2) October 1, 1989.	Cities, counties, qualifying special districts (as defined in Act).	Acquisition, development, rehabilitation of parks & recreation. Up to 30% may be used for innovative programs and special major maintenance projects.
Specified Local Agency	\$185.4 mil	N/A	Funds are available for ten years beginning June 8, 1989. Applications may be submitted anytime.	Only agencies specifically mentioned	Acquisition & development, specified in the Act.
History & Archeology	\$11 mil (1 mil for Archeology Projects) \$50,000 minimum grant	Competitive	December 1, 1988.	Local units of government and nonprofit organisations. Contact Office of Historic Preservation P.O. Box 942896, Sacramento California, 94296-0001 (916) 445-8006	Acquisition, development, rehabilitation, restoration of archeological resources.

**Information Source: Trails Grant Program
California Department of Parks and Recreation**

Eligible applicants: Local units of government and nonprofit organizations authorized to provide park, recreation, or open-space facilities or services to the general public.

Eligible projects: Acquisition of property for trails; development or rehabilitation of trail facilities.

Eligible costs: Acquisition and construction costs; consultant services; signs and interpretive aids; administrative and planning costs not to exceed 20% of the grant.

Amount and timing of grants: Applications are due 9/15/89 for the fiscal year 90/91 allocation of \$2.5 million.

**Information Source: Land and Water Conservation Fund Program,
California Department of Parks and Recreation.**

Eligible applicants: Counties, cities, recreation and park districts, special districts with public park and recreation areas, the California Department of Parks and Recreation, the Wildlife Conservation Board, the California Department of Boating and Waterways, and the California Department of Water Resources.

Eligible projects: Acquisition or development of neighborhood, community, or regional parks or facilities supporting outdoor recreation activities.

Amount and timing of grants: This is a reimbursement program; the applicant is expected to finance the entire project. Fifty percent of actual expenditures up to the support ceiling of the grant, minus 1/2 of the state's cost of administering the program, will be paid to the applicant when the project is completed.

In 1989 the application deadline was March 30; \$222,058 was available for northern California and \$333,087 for southern California local agencies.

**Information Source: Per Capita Grant Program,
California Department of Parks and Recreation.**

Eligible applicants: Counties, cities, and certain park, open-space, or recreation districts.

Eligible projects: Acquisition of open-space or lands or structures to be converted to recreational use; development or rehabilitation of park or recreation facilities; acquisition, preservation, reconstruction, or restoration of certain historic sites.

Eligible costs: Acquisition and construction costs; consultant services; signs and interpretive aids; and administrative and planning costs not to exceed 20% of the grant.

Amount and timing of grants: Minimum of \$20,000; applications are due 9/15/89 for fiscal year 90/91 and 91/92 appropriations; project must be started within three years of the date of appropriation.

**Information Source: Special Districts Grant Program,
California Department of Parks and Recreation.**

Eligible applicants: Special districts which provide significant park and recreational opportunities to the general public but which are not eligible for the Per Capita Grant Program.

Eligible projects and costs: Same as for the Per Capita Grant Program.

Amount and timing of grants: Minimum of \$20,000; a total of \$5 million is allocated for fiscal year 90/91; applications are due 9/15/89 for fiscal year 90/91; project must be started within three years of the date of appropriation.

**Information Source: Robertl-Z'berg-Harris Urban Open Space and
Restoration Grant Program,
California Department of Parks and Recreation.**

Eligible applicants: Counties, cities, certain regional park districts, recreation and park districts, public utility districts and memorial districts that offer park and recreation services on district land, community services districts that provide public recreation, and certain other special districts.

Eligible projects: Acquisition of open-space or lands or structures to be converted to recreational use; development or rehabilitation of park or recreation facilities; acquisition, preservation, reconstruction, or restoration of certain historic sites; special major maintenance projects performed on an annual or less frequent basis; innovative recreation program specifically designed for unique and otherwise unmet recreation needs of special urban populations such as senior citizens, disabled, poor, single parents, "latchkey" children, or minorities.

Eligible costs: Acquisition and construction costs; consultant services; signs and interpretive aids; administrative and planning costs not to exceed 20% of the grant; special major maintenance, project, and innovative recreational program costs not to exceed 30% of the amount received in an annual period.

Amount and timing of grants: Deadlines for application are established annually by the Department of Parks and Recreation, usually October 1 of the fiscal year the funds are appropriated. These are matching grants with a minimum local match of 30% of the allowable project cost. Grants for development may be matched by monetary contributions or by non-monetary contributions including property donations and in-kind contributions. One-third of the match must consist of monies or contributions from private or nonstate source, unless waived; other restrictions may also apply.

Information Source: The Foundation Center Library, San Francisco

The Foundation Center is a national service organization providing information on philanthropic giving, and may be able to help find the best place to apply for foundation funding. The Center's library network provides free access to the materials needed to do funding research and develop a proposal.

The Foundation Center produces a number of useful publications for fund seekers and nonprofit organizations, including the *Foundation Directory*, the *National Directory of Corporate Charity*, the *Foundation Grants Index*, and *The Board Member's Book*. All of the Center's publications are available for reference use at the Foundation Center Library. □

Appendix A. Preservation Of Mature Trees

The community recognizes that native oaks and other mature trees are important historical, aesthetic, and ecological resources that contribute to the distinctive character of Clayton. The City's Municipal Code and Ordinances provide for the preservation of trees, and regulate the removal of trees. The purpose of this Guideline is to create favorable conditions for the preservation and propagation of this irreplaceable plant heritage.

DEFINITIONS

- "Mature tree" shall mean any tree which is more than 8 inches in diameter as measured 4 feet 6 inches above the root crown.
- "Mature oak tree" shall mean any tree of the *quercus* genus more than 6 inches in diameter as measured 4 feet 6 inches above the root crown.

GUIDELINES

Site development plans should demonstrate a diligent effort to retain as many native oak and other mature trees as possible. In addition, other existing trees should be preserved to the maximum extent possible.

Criteria for Removal

In assessing the number of trees and the specific trees that may be removed, the applicant and Planning Commission should consider the following criteria:

- The condition of the oak or other mature tree with respect to disease, danger of falling, and the proximity to existing or proposed structures. Should debate over the health of the tree arise, a licensed arborist should be consulted at the expense of the applicant.
- The necessity to remove an oak or other mature tree in order to construct proposed improvements to prevent extreme economic hardships to the owner of the property.
- The topography of the land and the effect of oak or other mature tree removal on erosion, soil retention, and the diversion or increased flow of surface waters.
- The number of oak or other mature trees existing in the neighborhood. Decisions should be guided by the contribution of mature trees to the visual character of the neighborhood.
- Accepted professional (urban) forestry practices, such as the number of healthy oak or other trees which a given parcel of land or area can support.

Where Mature Trees Have Been Removed

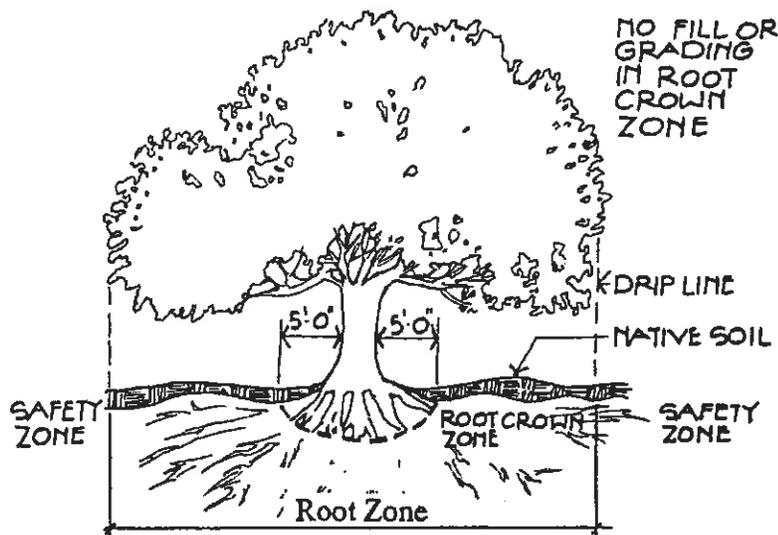
Tree Removal Permits may require the replacement or placement of additional trees on the subject property to offset the impacts associated with the loss of a tree, limbs, or encroachment into the protected zone of an oak tree. The permit may require relocating a tree on-site or off-site, or the planting of a new tree to offset the loss of a tree.

Prior to issuance of a permit to remove a tree, the following steps shall be taken:

- Determine the condition of the tree, based on structure, potential disease(s) and overall health, using a certified arborist (with demonstrated experience in Oak tree management).
- The Canopy of the tree shall be determined.
- Replace the designated tree canopy. This can be achieved by selecting a specimen (boxed) tree, or alternatively, by multiple tree planting which in the aggregate will equal the canopy of the tree removed. Multiple trees may require thinning and removal at a later time in order to promote healthy growth. If site conditions preclude multiple tree replacement, the balance of the trees required to replace the canopy cover shall be planted in another location as determined by the Planning Director.

Grading Techniques for the Preservation of Oaks

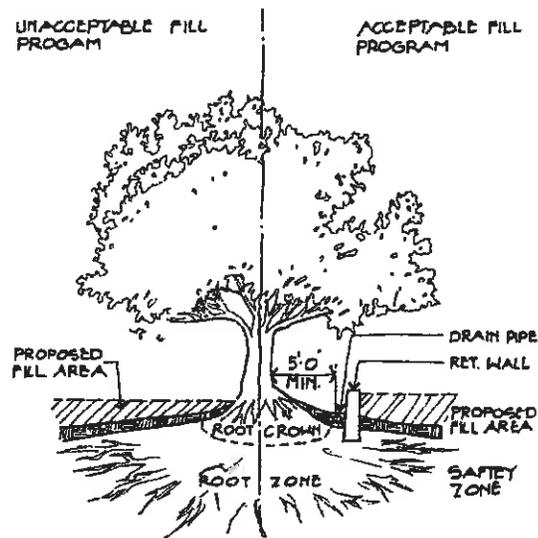
The most critical issue in the care and maintenance of an existing oak is the altering of conditions under which that tree has grown for possibly 100 or more years. "Altering" includes changing the grade within the drip line, changing watering practices from natural rainfall to supplemental irrigation, changing the leaf litter beneath the trees, changing drainage patterns, and compacting of soil around roots caused by heavy equipment.



- Should changes of grade be necessary, the following steps should be taken:

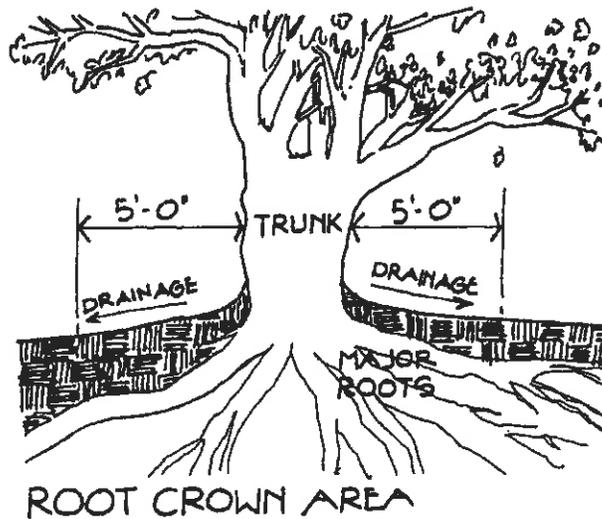
1) Establish radius of the existing root system by using soil probes or other means. This establishes a Root Crown Zone within which there should be no grading. New development may require gradual root pruning. Consult a arborist for proper techniques. Root pruning enables roots to be cut for a lowering of the natural grade. Under no circumstances should soil be added around the Root Crown Zone, but soil may be added over the Root Zone if the root crown is protected by retaining devices.

2) Overwatering oaks during the summer creates conditions favorable to root rot and oak root fungus. Besides reducing water to the root zone, draining water off the root crown quickly is vital for the health of the tree. Sloping soil away from the root crown improves drainage by creating rapid water runoff. In heavy soils, such as clays, leach lines installed within the drip line and extending out to drainage courses may be necessary to increase drainage. In all cases, the goal is to duplicate the native conditions under which the oak has lived. Essentially, if the existing conditions were dry, leave them dry; if they were wet, leave them wet.



3) Leaf litter is the accumulation of live and decaying leaves at the base of a tree. In the case of oaks, this litter contributes to a cool atmosphere for root growth, and an acid condition resulting from the decaying of the leaves. When possible, leave the natural litter in place.

4) Poor drainage caused by a change in grade or compaction produces constant moisture at the base of the trunk. Growing lawns beneath oaks also frequently produces poor drainage. This problem can be averted by using other ground covers, sloping the natural grade away from tree, and diverting sprinklers away from the trunk. A dense turf or compacted soil can greatly reduce aeration in the soil. Reduced aeration plus excessive water favors development of harmful soil organisms, such as oak root fungus, which may be present in an inactive stage until stimulated by favorable growing conditions or even mechanical root injury.



In summary, native oaks are extremely sensitive plants. Minimal grade changes within the drip line can drastically affect aeration of the roots and drainage around the root crown. Avoid changes of grade, if at all possible. Avoid summer irrigation which would produce constant moisture at the root crown. Treat oaks with the care they deserve. □

Appendix B. Plant Selection Guide

TREES

Large, above 50 feet in height

Coniferous Evergreen

<i>Calocedrus decurrens</i>	Incense Cedar
<i>Cedrus deodara</i>	Deodar Cedar
<i>Pinus halepensis</i> ¹	Aleppo Pine
<i>Pinus pinea</i>	Italian Stone Pine
<i>Pinus radiata</i> (existing) ²	Monterey Pine
<i>Sequoia sempervirens</i> ³	Coast Redwood

Broadleaf Evergreen

<i>Eucalyptus sp.</i> (existing)	Bluegum
may be satisfactory.	There are many other species which

Deciduous

<i>Alnus rhombifolia</i>	White Alder
<i>Juglans nigra</i>	Black Walnut
<i>Platanus acerifolia</i>	London Plane, Sycamore
<i>Populus fremontii</i>	Cottonwood
<i>Quercus lobata</i>	Valley Oak

Medium, 30 to 50 feet in height

Broad leaf Evergreen

<i>Ceratonia siliqua</i> ⁴	Carob Tree
<i>Eucalyptus sp.</i> ⁵	

¹ *Pinus halepensis brutia* (Calabrian Pine)
Denser, more erect than related *P. halepensis*. Faster, shapelier tree than related *P. halepensis*; form is less interesting at maturity. (Sunset New Western Garden Book)

² *Pinus radiata* (Monterey Pine)
More reliable near the coast than in the warmer interior valleys of Contra Costa County.

³ *Sequoia sempervirens* (Coast Redwood)
One of best growing places is in or next to lawn. Thrives on a luxurious supply of water. Away from lawns it needs occasional feeding and regular summer watering (at least for the first five years). (Sunset)

⁴ *Ceratonia* (Carob), *Olea* (Olive), and *Schinus* (Pepper) are all fine, vigorous, messy, spreading trees which need adequate space away from walks, streets, and garden areas

⁵ *Eucalyptus pulchella* *E. linearis* (White Peppermint)
Graceful tree to 25-50 ft. with weeping branches. Can be either asymmetrical or round-headed. Long, very narrow, dark green, pendulous leaves. White to light tan bark peels in thin strips. Fine landscaping and street tree.

<i>Maytenus boaria</i>	Mayten Tree
<i>Magnolia grandiflora</i>	Southern Magnolia
<i>Olea europea</i> ⁴	Olive
<i>Quercus agrifolia</i>	California Live Oak
<i>Quercus ilex</i>	Holly Oak
<i>Quercus suber</i>	Cork Oak
<i>Schinus molle</i> ⁴	California Pepper

Deciduous

<i>Acer Macrophyllum</i>	Bigleaf Maple
<i>Aesculus californica</i>	California Buckeye
<i>Ailanthus glandulosa</i>	Tree of Heaven
<i>Fraxinus oxycarpa</i> Raywood	Raywood Ash
<i>Juglans regia</i>	English Walnut
<i>Pistacia chinensis</i>	Chinese Pistache
<i>Salix babylonica</i>	Weeping Willow

Small, 15 to 30 feet in height

Broadleaf Evergreen

<i>Arbutus unedo</i>	Strawberry Tree
<i>Eucalyptus sp.</i>	
<i>Eriobotrya sp.</i>	Loquat
<i>Hymenosporum flavum</i>	Sweetshade
<i>Quercus dumosa</i>	California Scrub Oak
<i>Magnolia sp.</i>	Flowering Magnolias
<i>Schinus terebinthefolius</i>	Brazilian Pepper
<i>Trachycarpus fortunei</i>	Windmill Palm

Deciduous

<i>Acer palmatum</i>	Japanese Maple
<i>Cercis sp.</i>	Redbud
<i>Crataegus sp.</i>	Hawthorn
<i>Ficus carica</i>	Fig
<i>Lagerstroemia indica</i>	Crepe Myrtle
<i>Prunus sp.</i>	Flowering Plum, Cherry
<i>Malus sp.</i>	Flowering Crabapple
<i>Pyrus calleryana</i> Bradford	Bradford Pear
<i>Salix sp.</i>	Creek Willow

Beautiful form and willowy, well-mannered. Dark, dense foliage, masses contrast with light trunk. Good in light soils with little water. (Sunset)

These are upright trees of elegant character, unlike their larger and more gross cousins which are better known because of the vagaries of plant importation and distribution. They are suggested for the Oakhurst corridor because of their form and restraint. Buckeye and Toyon are too spreading and intrusive for the spaces in this corridor.

SHRUBS

Large, above 10 feet in height

<i>Arbutus unedo</i>	Strawberry Madrone
<i>Cercis occidentalis</i>	Western Redbud
<i>Magnolia liliflora</i>	Lily Magnolia
<i>Myrica californica</i>	Pacific Wax Myrtle
<i>Pittosporum eugenioides</i>	Tarata
<i>Prunus laurocerasus</i>	English Laurel
<i>Prunus lusitanicus</i>	Portugese Laurel
<i>Viburnum sp.</i>	No common name

Medium, 5 to 10 feet in height

<i>Abelia grandiflora</i>	Glossy Abelia
<i>Arctostaphylos densiflora McMinn</i>	Manzanita
<i>Aucuba japonica</i>	Gold Dust Plant
<i>Berberis thunbergi</i>	Barberry
<i>Buxus microphylla japonica</i>	Japanese Boxwood
<i>Ceanothus Frosty Blue</i>	No common name-Wild Lilac
<i>Chaenomeles japonicus</i>	Flowering Quince
<i>Cotoneaster lactea</i>	Red Clusterberry
<i>Eleagnus pungens (and variations)</i>	Silverberry, Yellowedge
<i>Escallonia exoniensis Fradesii</i>	Frades Escallonia
<i>Fatsia japonica</i>	Aralia sieboldi
<i>Forsythia suspensa</i>	No common name
<i>Grevillea Canberra</i>	No common name
<i>Ilex cornuta</i>	Chinese Holly
<i>Hydrangea macrophylla</i>	Garden Hydrangea
<i>Ligustrum texanum</i>	Texas Privet
<i>Mahonia aquifolium</i>	Oregon Grape
<i>Mahonia pinnata</i>	California Holly Grape
<i>Myrtus communis</i>	Roman Myrtle
<i>Nandina domestica</i>	Sacred Bamboo
<i>Nerium oleander</i>	Oleander
<i>Photinia fraseri</i>	No common name
<i>Pittosporum tobira</i>	Tobira
<i>Plumbago auriculata</i>	Blue Cape Plumbago
<i>Rhamnus californica</i>	California Coffeeberry
<i>Raphiolepis indica</i>	Indian Hawthorn
<i>Raphiolepis ovata</i>	No common name
<i>Spirea thunbergi</i>	No common name
<i>Ternstroemia gymnanthera</i>	No common name
<i>Viburnum sp.</i>	Various
<i>Xylosma congestum</i>	Shiny Xylosma

Small, 1 to 5 feet in height

<i>Cistus hybridus</i>	White Rock Rose
<i>Cistus ladaniferus</i>	Crimson Spot Rockrose
<i>Cistus purpureus</i>	Orchid Spot Rockrose
<i>Dietes (Morea) vegeta</i>	Fortnight Lily
<i>Dietes bicolor</i>	
<i>Escallonia Compacta</i>	Dwarf Escallonia
<i>Myrtus communis compacta</i>	Compact Myrtle
<i>Pittosporum tobira Wheeleri</i>	Dwarf Tobira
<i>Polystichum munitum</i>	Western Sword Fern
<i>Ribes viburnifolium</i>	Catalina Currant
<i>Sarcococca ruscifolia</i>	Fragrant Sarcococca
<i>Xylosma congestum compactum</i>	Compact Shiny Xylosma

GROUNDCOVERS

<i>Arctostaphylos Emerald Carpet</i>	Emerald Carpet Manzanita
<i>Baccharis pilularis Twin Peaks</i>	Dwarf Coyote Brush
<i>Ceanothus griseus horizontalis</i>	Carmel Creeper
<i>Coprosma kirki</i>	No common name
<i>Cotoneaster dammeri Lowfast</i>	No common name
<i>Hedera helix Hahns</i>	Hahns Ivy
<i>Mahonia aquifolium compacta</i>	Compact Oregon Grape
<i>Mahonia repens</i>	Creeping Mahonia

USE CRITERIA

Plant roots occupy roughly the same volume of space below ground as their tops do above—though not necessarily in the same form.

Upright forms get up out of spaces while round or spreading forms tend to dominate or fill them.

Evergreen forms give the same amount of shade summer and winter, while deciduous forms let in the winter sun.

Trees above 30 feet in height develop large root crowns as they mature. These buckle sidewalks, curbs, and paving, and become difficult management problems. Fifty-foot trees need at least ten feet of open ground on all sides; 30- to 50-foot trees need at least seven to eight feet; under 30 need five feet.

Trees and shrubs in general are most difficult and demanding the closer they are to structures and to paving including walks, streets, parking areas, plazas, and patios. Problems include not only growth expansion but fruit, flower, and sap deposits. Generally the smaller and slower plants are easier to live with, although they may be more demanding of food and water, and need protection from larger neighbors. □

Appendix C. General Plan Objectives and Policies

The text in the left-hand columns is quoted directly from Chapter 5, "Community Design," of the *Clayton: 2000 General Plan*, adopted July 17, 1985. The text in the right-hand columns represents the changes recommended in Chapter 2, "Land Use," of the *Town Center Specific Plan*, June 7, 1989, pages 17–20. Additions are shown *in italics*.

Page V-2, Policy 2b

Identify areas where vegetation should be preserved.

Page V-3, Policy 4c

Locate major arterials and collector streets on the periphery of the central area.

Policy 5a

Protect scenic vistas.

Page V-4, TOWN CENTER

Objective 11

To create a cohesive village ambience within the Town Center.

Page V-2, Policy 2b

No change.

Page V-3, Policy 4c

Except for the extension of Marsh Creek Road north through the Town Center to intersect with the Clayton Road bypass, locate major arterials and collector streets on the periphery of the central area.

Policy 5a

Protect scenic vistas *and view corridors.*

Page V-4, TOWN CENTER

Objective 11

To create a cohesive village ambience within the Town Center, *develop Main Street as a shopping street, with as few breaks in the shopping frontage as possible.*

Objective 11.1 (added)

Provide a small but growing built-in market for Town Center commercial uses and personal services.

Policy 11d

Designate the area within the Town Center as Town Center Commercial permitting either retail or office on the ground floor and residential on the second story subject to review for design and compatibility with adjacent uses.

Page V-5, Policy 13a

Reduce dependence on any single street in the Town Center by developing a northern bypass and upgrading Main and Center Streets for a traffic split.

Page V-9, Clayton Road

This route extends from Kirker Pass to the Town Center.

Marsh Creek Road

This route extends from the eastern limits to the Town Center.

Concord Boulevard

This route will extend from Kirker Pass to connect with Marsh Creek Road.

Page V-15, TOWN CENTER BOUNDARY

The Town Center will be the core of the commercial and administrative facilities serving Clayton. The present business area lies on both sides of Main Street and gener-

Policy 11d

Designate *areas* within the Town Center as Town Center Commercial. *This will permit retail, restaurants, personal services, and offices on the ground floor (except that ground floor offices on Main Street will be subject to the granting of a use permit), and all of those uses plus residential on the second story.*

Page V-5, Policy 13a

Reduce dependence on any single street in the Town Center by developing a northern bypass.

Page V-9, Clayton Road

This route extends from Kirker Pass *Road around the Town Center to connect with Marsh Creek Road southeast of the central area.*

Marsh Creek Road

This route extends from the eastern limits *through the Town Center to connect with Clayton Road.*

Deleted

Deleted.

Page V-15, TOWN CENTER BOUNDARY

No Change.

ally extends from Oak Street east to Marsh Creek Road. The district features a number of older residences and small retail uses. Commercial zoning currently exists on both sides of Main Street.

From a design standpoint, the Town Center limits should be based on limits that are readily apparent. These factors include physical topography of creeks and hillsides, circulation features, existing land use patterns and adequate area to provide necessary transition or buffer between the Town Center and residential areas.

The Town Center boundary, particularly after the area has been developed, should be clear to the average observer as well as the land owner. Land uses, landscape, roads and other features are used to reinforce the Town Center concept and boundary.

Exhibit V-3 provides the physical characteristics of the Town Center area. Exhibit V-4 provides the land use patterns of the Town Center area. Exhibit V-5 provides the proposed limits for the Town Center based on considerations mentioned above.

Boundaries to the Town Center that are visually clearest are to the west and north. The west side of the center area is reinforced by hillside, creek and city ownership. The north side is delineated by the confluence of Mitchell and Mt. Diablo Creeks which create a vegetative edge. The eastern boundary is limited by Mt. Diablo Creek and existing residential development. The boundary to the south is limited by an increase in elevation; however, the boundary is indefinite along Oak Street and Marsh Creek Road. This is where care

No change.

No change.

Exhibit V-3 provides the physical characteristics of the Town Center area. Exhibit V-4 provides the land use patterns of the Town Center area. Exhibit V-5 shows the proposed limits for the Town Center.

Boundaries to the Town Center that are visually clearest are to the west and north. The west side of the center area is reinforced by hillside, creek and city ownership. The north side is delineated by the confluence of Mitchell and Mt. Diablo Creeks which create a vegetative edge. The eastern boundary is the Clayton Road bypass. The boundary to the south is marked by an increase in elevation. The southern boundary shall be as follows: on the west side of Marsh Creek Road, the south right-of-way line of High Street, and that line ex-

must be taken to establish the limits of the Town Center to prevent strip development. The southern boundary shall be the southerly limits of Village Oaks and the PT&T building.

There are two exceptions to the Town Center limit. First, it may be necessary to extend the designation to the DeMartini Winery to enhance its viability as a facility. Second, an isolated site for commercial development has been approved previously at Mountaire Parkway and Marsh Creek Road. The area between the commercial site at Mountaire and the PT&T building should remain residential to prevent creation of a commercial strip.

TOWN CENTER CIRCULATION

Circulation issues that will affect the design and character of the Town Center area include the arterial configuration for through and local traffic, collector street location, boardwalk and sidewalk design, parking location and greenbelt system integration. Town Center circulation features are provided in Exhibit V-6.

Arterials

Basic to the concept for the development of a unified pedestrian-oriented Town Center was the decision in previous plans to relocate through traffic from Main Street one block south to Center Street. The current pattern provides a mix of traffic on Main Street. The advantages of this pattern are its historical use and high visibility of existing business. The disadvantages of this pattern are division of the downtown area, mixture of local and through traffic, con-

tended east to Marsh Creek Road; on the east side of Marsh Creek Road, the south parcel line of the Lemke property and the south right-of-way line of Center Street.

It may be necessary to extend the designation to the DeMartini Winery to enhance its viability as a facility. Second, an isolated site for commercial development has been approved previously at Mountaire Parkway and Marsh Creek Road. The area between the commercial site at Mountaire and the PT&T building should remain residential to prevent creation of a commercial strip.

TOWN CENTER CIRCULATION

Circulation issues that will affect the design and character of the Town Center area include the arterial configuration for through and local traffic, collector street location, sidewalk design, parking location and greenbelt system integration. Town Center circulation features are provided in Exhibit V-6.

Arterials

The current pattern provides a mix of traffic on Main Street. The advantages of this pattern are its historical use and high visibility of existing business. The disadvantages of this pattern are division of the downtown area, mixture of local and through traffic, congestion, high potential for accidents and difficulty in expanding upon the historic character.

gestion, high potential for accidents and difficulty in expanding upon the historic character.

Page V-16, (Arterials continued)

The Center Street alternative is indicated in Exhibit V-7. The advantages of this pattern are the historic commitment, the elimination of traffic from Main Street, the expansion of commercial area and the improvement of a poor roadway.

The disadvantages for this pattern of development are elimination of two houses, an imposition of a new pattern on existing uses, difficult curves for truck maneuvering, loss of commercial land to right-of-way expansion and costly road reconstruction.

The northern route alternative provides the main thoroughfare as indicated in Exhibit V-8. Its primary advantages are expansion of Town Center area to the north. There are no structures to acquire, a view of the Town Center is maintained and there is no impact on existing business except possibly the winery property.

Its disadvantages are unknown status of right-of-way, costly fill and roadway construction, possible condemnation needs, loss of land and negative impact on the winery.

Center Street has been the adopted route. A committee of town merchants and owners have strongly supported the northern alternative.

The Town Center Circulation Plan adopted by the 1984 General Plan Committee estab-

Page V-16, (Arterials continued)

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The adopted northern route is shown on Exhibit V-8. Its primary advantage is expansion of Town Center area to the north. There are no structures to acquire, and a view of the Town Center is maintained.

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lished a compromise among the issues of Town Center circulation.

Main Street would remain the truck route at the present time and be expanded to an 80-foot right of way.

Center Street would be developed to a standard 60-foot right of way.

An additional 2 lanes would be routed up the grade between Main Street and the elementary school as environmentally sensitive a manner as possible. This would extend to a northern bypass built parallel to Main Street upon the development of Keller Ranch. At that time engineering and environmental studies will be used to insure the following:

- a. That there would be no significant adverse impact upon Cardinet Glen.
- b. That the route selected create the least adverse impacts.
- c. That the impact upon the meadow and area vegetation be reduced and mitigated.
- d. That environmental and aesthetic effects be considered and mitigated.

The Main Street connection between Marsh Creel Road and Clayton Road is ultimately planned to accommodate four travel lanes with parking on one side (or two bike lanes) on the portion of the road system within the Town Center. This will accommodate up to 24,000 cars per day when completed. The right-of-way should be obtained for the up-

Clayton Road will become the truck route, and Main Street will be expanded to an 80-foot right-of-way.

Center Street will be developed in a 50-foot right-of-way west of Marsh Creek Road and a standard 60-foot right of way east of Marsh Creek Road.

Delete.

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hill portion for widening to four lanes as needed.

Marsh Creek Road is also designated as an arterial in the circulation plan. It is planned to be a 60-foot roadway within an 80-foot right of way that will accommodate two travel lanes, two bike lanes and on-street parking until there is the need to provide four travel lanes.

Ultimate design of traffic through the Town Center area must include separation of through traffic from Town Center destination traffic.

Page V-19, (Arterials continued)

Design attention must be given to Clayton Road and Marsh Creek Road to maintain vistas and provide introduction to the upcoming Town Center. Placement of vegetation, directional signs and construction will provide the means to strengthen the Town Center image.

Main Street, between Oak Street and Marsh Creek Road, has a 70-foot right-of-way that can be used to accommodate two wide travel lanes (14 feet), two off-street parking bays (9 feet), two boardwalk/sidewalk/streetscape areas (12 feet). Changes in design will be considered in the subsequent engineering and design studies. Precise alignments will be determined based on circulation criteria.

Boardwalks and Sidewalks

A combination of boardwalks and sidewalks is proposed for all public streets.

Delete.

The ultimate design of traffic through the Town Center is intended to separate through traffic from Town Center destination traffic.

Page V-19, (Arterials continued)

No change.

Main Street will be designed within an 80-foot right-of-way that can accommodate two wide travel lanes (13.5 feet), two rows of diagonal parking (16.5 feet each side), and two sidewalks (10 feet). Changes in design will be considered in the subsequent detailed engineering and design studies.

Boardwalks and Sidewalks

Delete.

within the a Town Center. The boardwalks would be composed of wood, bomanite or other approved material or texture.

As Main Street is envisioned to be the major shopping street in the future, widths of 8 to 12 feet for the boardwalks are planned on this street. Sidewalks on other streets would have a minimum width of 5 feet. The intersections of Morris and Diablo with Main Street are proposed to have special paver treatment as primary pedestrian crossings. Design standards for sidewalks are provided in Appendix C.

Parking

It is recommended that parking areas be constructed at strategic locations to intercept inbound shopper traffic from the major approach streets. In order that a pedestrian-oriented shopping area concept be implemented, there should be a minimum number of parking areas, located and landscaped in such a way that they do not become the dominant characteristic of the center, yet large enough that patrons do not have to drive from area to area in search of parking. Existing and proposed parking is indicated in Exhibit V-9. Parking design standards are provided in Appendix C.

Page V-23, EXISTING LAND USE

The land uses of the Town Center are provided in Exhibit V-4. The sites and structures with historic merit in the Town Center

As Main Street is envisioned to be the major shopping street in the future, *sidewalks ten feet in width are planned on this street to accommodate the expected pedestrian volumes. On the south side of Main Street, in the vicinity of the eucalyptus grove or wherever the widened road and sidewalks might otherwise encroach on existing buildings, the sidewalk may be narrowed to five feet.* Sidewalks on other streets would have a minimum width of 7.5 feet.

Parking

It is recommended that parking areas be constructed at strategic locations to intercept inbound shopper traffic from the major approach streets. In order that a pedestrian-oriented shopping area concept be implemented, there should be a minimum number of parking areas, located and landscaped in such a way that they do not become the dominant characteristic of the center, yet large enough that patrons do not have to drive from area to area in search of parking. *Parking existing in the Town Center in 1985 is indicated in Exhibit V-9. Parking design standards are provided in Chapter 5 of the Town Center Specific Plan.*

(No change in the remaining paragraphs on page V-19.)

Page V-23, EXISTING LAND USE

No change.

are indicated in Exhibit V-10. The structures should be preserved and restored to the extent possible since they provide a link to the past and promote a diversity of appearance. Vegetation must also be preserved. The tall trees contribute to the rural feel of the community as well as provide physical landmarks signifying the Town Center.

TOWN CENTER PLAN

The plan is indicated in Exhibit V-11. A series of uses will be incorporated into the plan. The primary designation will be Town Center (TC). It will permit the following uses:

Retail Commercial

Retail stores, specialty shops, convenience shopping facilities, restaurants, and service commercial.

Professional Office

Professional administrative offices, public and quasi-public facilities.

Accessory Uses

Medical and dental laboratories, printshops, storage facilities and similar support services. These uses will require review for compatibility with the retail/office functions of the Town Center.

Residential Uses

Second-story residential uses shall be permitted subject to review for design and compatibility.

TOWN CENTER PLAN

The plan is indicated in *Figures 2-1 and 4-3 of the Town Center Specific Plan*. A variety of uses will be incorporated into the plan. The primary designation will be Town Center (TC). *The permitted uses are listed in detail in Chapter 2 of the Town Center Specific Plan.*

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Appendix D. Designating and Acquiring Private Property for Public Benefit

California law requires cities to adopt general plans and allows them to adopt specific plans, and further authorizes revisions to these general and specific plans. Through Land Use Planning, a long range, comprehensive policy statement describing a community's future physical development is prepared and adopted. The California Supreme Court noted in *Selby Realty Co. v. County of Sacramento* (10 Cal 3d at 119, 109 Cal Rptr. at 805, 1973) that long range planning is—by its nature—tentative, and its adoption is “several leagues short” of an intention to condemn property.¹

In the process of preparing general and specific plans (which have planning periods of five to 15 years), city and county governments in California are often in the position of designating certain private properties for future public benefit or use, while noting that other private properties (floodways, for example) will not be allowed to be used for any private purpose. Cities and counties have such authority, and merely designating on a general or specific plan that a private property is to become a future park, for example, does not constitute a public “taking” of private property by “inverse condemnation.”

Recently—especially in the 1970s and 1980s—the federal and California courts have heard a number of cases where property owners have sued governments, alleging (in general) that the governmental agencies involved have tried to use (or “take”) private property for public purposes without properly compensating the owners for their alleged permanent or temporary monetary losses. In some cases, the owners have attempted to claim that a government action (generally planning or zoning) removed part or all of the value of their land, and thus the government “took” or “inversely condemned” the property. Naturally, these owners sought to be compensated for what they saw as their loss of actual or potential property value or present or future income from their properties.

This memorandum attempts to explain very briefly, and in lay language, how the land use planning process works in relation to property rights in California, and what constitutes a “taking” of private property by “inverse condemnation.” Inverse condemnation is also known as an “implied taking” of private property for which the owner of subject property pleads entitlement to just compensation for interference with private property rights.

¹ Property owners naturally become concerned when they learn that a government is making plans that will lead to public use of their private property. Governments regularly use their powers of “eminent domain” to openly and directly acquire, and pay fair market value for, privately owned land needed for public improvements, as in the case of highways or sewer plants. However, outright purchase in “fee title” is only one way to acquire the use of land. Cities, counties, and special districts have acquired easements (for road, trail, and open space purposes, for example), and property owners have dedicated land or easements to governments for specific uses under specific terms.

California case law defines the time when an inverse condemnation suit is ripe as that point when public action has occurred that is "direct and specific," such as the adoption of a *resolution of necessity* to proceed with acquiring private property by means of eminent domain (California Code Civil Procedures, Sect. 1245.260). When a city adopts such a resolution, it has six months to file an eminent domain suit. A property owner then has a year to file an inverse condemnation suit. The law is rapidly evolving in this area, however, and it is not clear precisely what public action is direct and specific enough to constitute an implied taking. Nevertheless, *adoption of a land use plan is clearly not enough to constitute an implied taking.*

Because any land use designation in a general plan is subject to change through a number of processes (legislative, E.I.R., public hearing, or inter-agency review, to name a few), private property owners whose land has been designated for public use in a general plan typically have not been successful in inverse condemnation lawsuits.

To prevail in an inverse condemnation lawsuit, a property owner must prove that there was direct and substantial interference with his or her property rights. For instance, such was the case in *Elks Hall Assoc. v. Richmond Redevelopment Agency* (561 F2d 1327, 9th Circuit, 1977) where, after adopting a redevelopment plan, the Agency began acquiring and demolishing property in the redevelopment area which included land surrounding plaintiff's property. This resulted in not only preventing the plaintiff from obtaining insurance or loans on his property, but also caused an exodus by those tenants who found out about the scheduled acquisition. These factors resulted in a reduction of rental income to the property owner, and the owner prevailed in this case.

Another successful inverse condemnation lawsuit occurred in *Jones v. People ex rel Department of Transportation* (22 Cal 3d 144, 148 Cal. Rptr. 640, 1978) which involved a freeway route plan that resulted in the Transportation Department depriving a property owner of the right to subdivide for a housing development by preventing him from gaining the necessary access to local streets.

Of note, however, is the case of *Taper v. City of Long Beach* (129 Cal. App.3d 590, 181 Cal. Rptr 169, 1982). There the question of damages for the unreasonable denial to a property owner of the right to develop her property due to publicly disseminated pre-condemnation announcements and activities by the city to acquire the property for a park (in disregard of a prior agreement between the owner and city), excluded any period of delay attributable to proper land use and fiscal planning. Similarly, in *Guinnane v. City and County of San Francisco* (197 Cal.App. 3d 862, 241 Cal Rptr. 787, 1987), a city delay in acting on a developer's building permit application in order to study the possible acquisition of the property for a city park was held not to constitute a taking.

"A California court has finally decided the takings issue in *First English*, the landmark case in which the United States Supreme Court held that landowners may recover damages for temporary takings.² The Supreme Court's 1987 decision set forth this

general rule but did not determine whether the ordinance in question actually effected a taking. The state court has now decided this issue, ruling that the Los Angeles County ordinance in question did not 'take' the Church's property, and thus the Church is not entitled to compensation. *First English Evangelical Lutheran Church v. County of Los Angeles*, 89 Daily Journal D.A.R. 6876 (1989)."

"The court applied the traditional takings test, pursuant to which a land use measure will effect a taking if it does not substantially advance a legitimate state interest or if it denies an owner economically viable use of his land. The County ordinance was designed to prevent human injury and death, described by the court as the 'highest possible public interest.' The court contrasted this interest with lesser public interests such as preventing premature development which had previously been determined to be legitimate public interests in the takings context."

"The *First English* decision links the determination of viable use to the public interest at stake. If the governmental action protects human lives and health, and there is no use of the property which would not threaten human lives or health, the government could deny a private owner all use of its property. Compensation would only be required for the denial of all economically viable use where the land use regulation advances lesser public purposes, such as preserving open space, preventing urbanization, or achieving aesthetic goals. Thus, the economically viable use test as applied in California courts probably will not be based upon any economic determination relating to a particular property, but rather on a balancing of the remaining uses and the strength of the public interest."

RELATION TO THE TOWN CENTER SPECIFIC PLAN

The Town Center Specific Plan designates various parcels for "public" land use. These include the City Hall, fire station, library, "the grove," and an area for public parking south of Clayton Road.

Presley of Northern California, a major property owner in the Town Center, is contractually obligated to provide (1) a site for the fire station and (2) either a site or *in lieu* fees for the City Hall. The Specific Plan represents the first step in the planning process for determining the location of and the amount of land needed for these two facilities. In the event a site other than one owned by the Presley Corporation is selected for the City Hall, the City and Presley will enter into negotiations leading to the trade or purchase of land and/or establishing the amount of the *in lieu* payment. □

² This and the concluding paragraphs are excerpted from McCutchen, Doyle, Brown & Enersen, *McCutchen Update, Legal Developments of Importance to our Clients*, June 13, 1989.



Appendix E. Summary Of The Market Analysis for the Clayton Town Center Specific Plan

Downtown Clayton today has an estimated 41,600 square feet of retail and office space. The Market Analysis recommends that 86,000 square feet of additional space be included in the Town Center Specific Plan. This amount of space would more than triple the existing space in the Town Center area.

This appendix briefly describes the information and judgments that were used to derive the 86,000 square foot estimate and the factors that influence their accuracy.

ESTIMATE OF COMMERCIAL SPACE THAT COULD BE SUPPORTED IN CLAYTON TOWN CENTER

The estimate that 86,000 square feet of additional space could be supported is based fundamentally on three factors:

- The number of households that are expected to live in the primary market area served by a Clayton Town Center.
- The expenditures that market area households are expected to make locally for the types of goods that are described in the market report.
- The likelihood that market area households will spend that money in Clayton Town Center instead of other locations.

Number of Households in the Primary Market Area

The market report considered a primary market area that encompasses all households east of Mitchell Canyon Road and within 1.5 miles north, south, and east of the Town Center. This approach recognizes that people are likely to shop in areas that are most convenient to where they live. Mitchell Canyon Road is approximately halfway between the Town Center and the intersection of Clayton Road and Ygnacio Valley Road, which has a large concentration of shopping opportunities.

This primary market area was estimated to have 1,140 households in 1988, and would have 2,735 households after buildout of the Oakhurst, Regency Meadows, and Greystone Estates projects. The increase in households in the primary market area would equal 140 percent of the existing households. An estimate of supportable space based solely on this growth would yield an estimate that a total of 99,800 square feet of building space could be supported in downtown Clayton. This total would add 58,200 square feet to the existing development.

Types of Space that Could Be Supported in Clayton Town Center

The downtowns of smaller cities, such as Clayton, are primarily places for convenience shopping rather than comparison shopping. Therefore, the Market Analysis focused initially on the amount of space that would be needed to meet the demands of market area households for items usually purchased in grocery stores and drug stores and on restaurant meals.

Based on studies of other smaller city downtowns, however, the Market Analysis also recommends that space also be included for the following types of stores and services:

- prepared foods;
- hardware, home improvements and general merchandise;
- convenience specialty goods such as books and gifts;
- comparison specialty goods similar to the Saddlery;
- financial institutions; and
- services.

The Market Analysis recommends that a service station be included on a site along Clayton Road.

Adjustment for Probable Locations of Expenditures

In addition to recognizing that people will shop where it is convenient, the Market Analysis recognizes that even people who live closer to the Town Center than to any other shopping area may have reasons for shopping in other areas some of the time. Some likely reasons are that other areas may offer different selections of goods, or may be able to satisfy a greater number of shopping needs in a single trip, or may be more attractive, or may be on the way to or from another destination (*e.g.*, work).

The Market Analysis assumes that Clayton Town Center will be able to capture 75 percent of the expenditures made by people who currently live in the primary market area and 50 percent of the expenditures of new residents. These assumptions are based on (1) the relative proximity of the households to Clayton Town Center compared to other shopping areas and (2) the alternative route (Oakhurst Boulevard) available to Oakhurst residents who wish to travel west without entering downtown Clayton.

Using these assumptions, the amount of supportable space in grocery stores, drug stores, and restaurants in Clayton Town Center is estimated in Table 5 on page 17 of the Market Analysis at 57,275 square feet, including existing space. This amount of space is 38 percent greater than the existing inventory.

The report also recommends that 29,325 square feet of space be provided to accommodate the other types of goods and services described above (such as convenience and comparison specialty stores, financial institutions, services, hardware, and prepared foods). This recommendation is based on the distribution of uses found in the successful downtowns of other smaller cities analyzed for this study.

ALTERNATIVE APPROACH TO ESTIMATING THE SUPPORT FOR COMMERCIAL SPACE

In response to a question posed by the Town Center Specific Plan Committee about the accuracy of the Market Analysis estimate, an industry “rule of thumb” could be applied to verify the reasonableness of the 86,000 square foot figure. As a rule, the anchor tenants in neighborhood shopping centers—which range in size from 50,000 to 150,000 square feet—occupy approximately 50 percent of the space. In the commercial building program recommended by the Market Analysis for Clayton Town Center, the anchor tenants would be the grocery store and the drug store. The analysis indicates that they should have a total of about 35,000 square feet of additional building space. If they occupied half of the total additional space, then the Town Center would need 70,000 additional square feet.

Downtown Clayton, however, has always had more restaurants than would be expected in a town of its size or in a neighborhood shopping center. The Market Analysis recommends that the Specific Plan include 16,000 square feet of restaurant space. Adding this amount of space to the earlier total yields an estimate of 86,000 square feet of new building space.

ACCURACY OF THE ESTIMATE

Although the two methods of investigation yield similar estimates, the figure of 86,000 square feet should not be assumed to be 100 percent accurate. Variations from the 86,000 square foot figure will occur if the actual population growth is different from the assumed growth; if spending patterns are different from those assumed; if the types of businesses that are included in the market program (summarized in Table 10 on page 39 of the Market Analysis—Figure 2-7 on page 17 of this Specific Plan) cannot find adequate support in Clayton, and are not replaced by other uses; or for other similar reasons.

It is reasonable to assume that the actual amount of additional space supportable in Clayton Town Center will be between 60,000 and 95,000 square feet. The range of error of the estimate is smaller on the high side than on the low. □

Appendix F. Amendments

The text, tables, and figures of the Town Center Specific Plan have been revised to incorporate the following amendments.

Resolution No. 65-98	Adopted December 1, 1998
Resolution No. 58-2001	Adopted September 18, 2001
Resolution No. 24-2004	Adopted June 1, 2004
Resolution No. 45-2005	Adopted July 19, 2005
Resolution No. 02-2007	Adopted January 16, 2007
Resolution No. 05-2008	Adopted February 5, 2008
Resolution No. 12-2012	Adopted April 3, 2012