



June 9, 2021

VIA ELECTRONIC MAIL

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Contra Costa County Planning Commission
c/o Hiliana Li
30 Muir Road
Martinez, CA 94553

Sean Tully, Principal Planner
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Re: Agenda Item No. 2a General Plan Amendment (GP07-0009); Rezoning (RZ09-3212); Vesting Tentative Tract Map (SD10-9280); Development Plan and Development Agreement (DP10-3008); Tassajara Parks Project

Dear Honorable Members of the Planning Commission:

On behalf of the Town of Danville, I submit these comments regarding the Final Environmental Impact Report ("EIR") prepared by Contra Costa County ("County") pursuant to the California Environmental Quality Act ("CEQA") (Pub. Resources Code, §§ 21000 et seq.; Cal. Code Regs., tit. 14, §§ 15000 et seq. [CEQA Guidelines]) and related land use entitlements for the Tassajara Parks Project ("Project"). This letter incorporates by reference our prior comments on the Draft EIR dated July 18, 2016 and on the Recirculated Draft EIR dated November 30, 2016. For reasons explained below, I am also attaching the letter submitted by the Town to you on September 30, 2020-the concerns raised in that letter remain valid and are incorporated herein. As explained in our previous three letters, the EIR does not comply with CEQA, State Planning and Zoning Law (Gov. Code, §§ 65000 et seq.), and the Subdivision Map Act (Gov. Code, §§ 66410, et seq.).

Before turning to the Town's comments regarding the updated information pertaining to water supply, I must address the Town's ongoing concerns regarding the lack of transparency with this project and the ongoing exclusion of the Town from the process.

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While we have raised some of these concerns in prior letters, the pattern of excluding input from the Town continues to occur:

- As indicated in Section 1 of our September 30, 2020 letter, the County has failed to respond to the first of our two comment letters on the Draft EIR. (See FEIR, Response to Comments, DAN pp. 1-2 of 20). While our September 30 letter addresses the legal ramifications of this failure, I highlight it to point out that this omission has never been acknowledged or addressed by the County.
- In our November 30, 2016 letter, the Town specifically asked that all future public notices for the project be sent to both the Town's outside counsel, Sabrina Teller, and the Town Attorney, Robert Ewing. While the Town did receive notice of the June 9, 2021 hearing, neither Ms. Teller nor Mr. Ewing have received any public notices since our 2016 request.
- Our September 30, 2020, letter is not included in the 323 page packet of materials provided to the Planning Commission for this hearing and as far as we can tell, that letter has never been distributed to members of the Planning Commission and certainly has not been seen by the public and other interested parties.
- Finally, and most significantly, the materials provided to the Planning Commission omit documents submitted by the Town illustrating action by the Danville Town Council opposing the Project. On October 20, 2020, the Town Council adopted Resolution No. 72-2020, formally opposing the project. On October 16, 2020, I personally emailed a link to the staff report and resolution to John Kopchik, Director of Conservation and Development for the County. Mr. Kopchik has been my primary contact at the County with regard to the Project and the proposed Agricultural Preservation Agreement.

Astonishingly, none of those documents are included in the Staff Report and accompanying packet submitted to the County Planning Commission for its June 9, 2021, public hearing. Though the Planning Commission staff report refers to actions taken by the City of San Ramon and East Bay Regional Park District to support the Agricultural Preservation Agreement, the report includes no mention of Danville's action opposing it, which occurred prior to actions taken by both of the other agencies mentioned.

Because of this omission, no member of the Planning Commission or member of the public would have the slightest idea that the Town Council has taken a formal position on the project. As Danville is the incorporated city in closest proximity to the proposed project and by any objective measure would be the most impacted by the project, it is hard to believe that the official view of

Danville's elected leaders is not worth providing to the County's decisionmakers. In order to provide members of the Planning Commission and the public with the Town Council's position, copies of the staff report, adopted resolution and transmitting email are attached and incorporated herein and can be found online here: https://danville-ca.granicus.com/MetaViewer.php?view_id=9&clip_id=1729&meta_id=36642

The Town and the County have had policy disagreements over the years regarding development in the San Ramon Valley, some of which have ended up in court. However, this is the first time we have experienced this level of difficulty in ensuring that the Town's input is even included and addressed in the public record for decisionmakers and the public to consider. This is simply indefensible.

Turning to the critical issue of water supply for the project, the analysis in the Recirculated Draft EIR ("RDEIR") remains inadequate. The County relies on a mitigation measure (MM USS-1) and related conditions of approval (COAs) wherein proof of water service must be demonstrated prior to filing a final map for the Project. (Staff Report, p. 5.) Not only does this constitute impermissible deferred mitigation, because the measure is infeasible and de facto punts mitigation to some future time after project approval (see, e.g., *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906), it also violates the holding in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 ("*Vineyard*"). The Supreme Court in *Vineyard* identified four key principles for an adequate water supply analysis under CEQA:

1. Decisionmakers must be presented with sufficient facts to evaluate the pros and cons of supplying the amount of water that the project will need;
2. An adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years;
3. Future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations are insufficient bases for decisionmaking under CEQA; and
4. Where it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of replacement sources or alternatives to the anticipated water, and of the environmental consequences of those contingencies.

(*Id.* at pp. 431-432.)

The County's water supply analysis directly violates the third and fourth principles, in turn violating the first. As it stands, the Project has no likely path toward procuring an adequate water supply. The theoretical future water supplier, the East Bay Municipal Utility District ("EBMUD"), opposes the Project and has stated that it does not have the water to service it and will reject the proposed annexation of the Project into its service district, as a matter of policy. (Staff Report, p. 4, attached Letter of EBMUD Dated May 27, 2021 [p. 1].) This provider admission makes the future water supply for the Project speculative and unrealistic, whereas *Vineyard* calls for a "confident prediction" of adequate water supply. (*Id.* at p. 432.) "When the verification [of water supply] rests on supplies not yet available to the water provider, it is to be based on firm indications the water will be available in the future...." (*Id.* at p. 433.) Here, the opposite occurs—the water provider is on record stating that it *cannot* meet the demands of its existing customers, let alone those of the Project. (Staff Report, attached Letter of EBMUD dated May 27, 2021 [pp. 2–3].) The EIR therefore must include a discussion of another, potentially feasible water supply alternative and its environmental impacts. But, the County has not presented this discussion in any of its EIR iterations. To date, the County has presented two infeasible water supply sources, and zero viable ones. As a result, decisionmakers cannot evaluate the pros and cost of supplying water to the Project, because you cannot evaluate what does not exist. The criteria set forth in *Vineyard* have not been met.

Furthermore, the recent information presented by the County regarding its supposed water supply solution—namely letters from EBMUD—is indeed "significant new information within the meaning of CEQA Guidelines section 15088.5," requiring recirculation of the EIR. (Staff Report, p. 4). Section 15088.5, subdivision (a)(2), requires recirculation prior to EIR certification upon new information containing "a disclosure showing that: ... [a] substantial increase in the severity of an environmental impact would result unless mitigation measure are adopted that reduce the impact to a level of insignificance." As demonstrated above, via EBMUD's disclosures in its letters, MM USS-1 is ineffective and cannot be relied on to reduce the impact to water supply to a less-than-significant level, as it claims to do. (RDEIR, p. 3.13-34.) Without this measure, the impact conclusion substantially increases, back to its pre-mitigation level of "[p]otentially significant," thereby triggering recirculation. Additionally, because of the County's lack of notice for this upcoming hearing, the Town was not allowed adequate time to meaningfully review the technical information presented in the memorandum provided by Tully & Young, in contravention of statutory directives that the CEQA process be a public one that provides "meaningful public disclosure." (Pub. Resources Code, § 21002.1, subd. (e); see also CEQA Guidelines, §§ 15002, subd. (a)(1), 15003, subds. (b)–(e).)

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Thank you for your attention to these comments. Please include this letter and attachments in the record of proceedings for this Project.

Sincerely,



Joseph A. Calabrigo
Town Manager

Cc: Town Council
Supervisor Candace Andersen
City Attorney
Sabrina Teller, Remy Moose Manley, LLP
Casey A. Shorrock, Remy Moose Manley, LLP

Enclosures

Attachment A: Town of Danville , September 30,2020 Comment Letter

Attachment B: Town of Danville Staff Report, dated 10/20/20; Danville Town Council Resolution No. 72-2020; Transmittal Email from Joe Calabrigo to John Kopchik, dated 10/16/20



*"Small Town Atmosphere
Outstanding Quality of Life"*

September 30, 2020

VIA ELECTRONIC MAIL

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Contra Costa County Planning Commission
c/o Hiliana Li
30 Muir Road
Martinez, CA 94553

Sean Tully, Principal Planner
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Re: Agenda Item No. 2 General Plan Amendment (GP07-0009); Agenda Item No. 3 Rezoning (RZ09-3212); Agenda Item No. 4 Vesting Tentative Tract Map (SD10-9280); Development Plan and Development Agreement (DP10-3008); Tassajara Parks Project

Dear Honorable Members of the Planning Commission:

On behalf of the Town of Danville, I submit these comments regarding the Final Environmental Impact Report ("EIR") prepared by Contra Costa County ("County") pursuant to the California Environmental Quality Act ("CEQA") (Pub. Resources Code, §§ 21000 et seq.; Cal. Code Regs., tit. 14, §§ 15000 et seq. [CEQA Guidelines]) and related land use entitlements for the Tassajara Parks Project ("Project"). This letter incorporates by reference our prior comments on the Draft EIR dated July 18, 2016 and on the Recirculated Draft EIR dated November 30, 2016. As explained in our previous two letters, the EIR does not comply with CEQA, State Planning and Zoning Law (Gov. Code, §§ 65000 et seq.), and the Subdivision Map Act (Gov. Code, §§ 66410, et seq.).

1. The Final EIR fails to adequately respond to the Town's comments on the Draft EIR.

As a threshold matter, the Final EIR fails altogether to address the Town's comments on the Draft EIR in violation of Public Resources Code section 21091, subdivision (d) and

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Police
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Parks and Recreation
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ATTACHMENT A

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CEQA Guidelines sections 15088, subdivision (a) and 15132. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 516 [responses to comments in a final EIR are an “integral part” of an EIR’s substantive analysis of environmental issues].) The Final EIR’s responses to the Town’s comments are limited to its comment letter dated November 30, 2016. (See Final EIR, pp. 3-53 to 3-72.) The Final EIR’s statement that its responses to the Town’s comments on the Recirculated Draft EIR address our previous comments on the Draft EIR is not accurate. The Final EIR does not address our comments related to the project description, baseline, land use, cultural resources, geology, hazards and hazardous materials, noise, public services and recreation, among others. The need for a reasoned, factual response is particularly acute when critical comments have been made by other agencies. (See *Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.) Failure of a lead agency to respond to comments raising significant environmental issues before approving a project frustrates CEQA’s informational purposes and renders an EIR legally inadequate. (See *Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1020.)

2. The Agricultural Preservation Agreement is an inextricably related action, the impacts of which must be analyzed in the EIR.

Under CEQA a “project” is “an activity which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.” (Pub. Resources Code, § 21065.) It includes “the whole of an action.” (CEQA Guidelines, § 15378, subd. (a).) The failure to analyze the “whole of the project” is a CEQA violation referred to as “piecemealing.” (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222.) The California Supreme Court has adopted the following test for reviewing piecemealing claims:

[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

(*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.)

While the Final EIR reiterates that the Agricultural Preservation Agreement can be approved separately from the Project and without CEQA review, the Project findings

included in the staff report make clear that the Agricultural Preservation Agreement serves as the basis for making the required finding of approval to change the County's Urban Limit Line (ULL). (Staff Report, pp. 26-28; Final EIR, pp. 2-8 to 2-10.) In doing so, the County impermissibly commits itself to the approval of the Agricultural Preservation Agreement "as a practical matter" without CEQA review. (See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 135.)

The County's use of the Agricultural Preservation Agreement is therefore a reasonably foreseeable consequence of the Project. The record clearly establishes that the sole purpose for proposing the draft Agricultural Preservation Agreement is to facilitate the making of a finding to permit the Project's approval under County Code section Chapter 82-1.018(a)(3) – which requires that "[a] majority of the cities that are party to a preservation agreement and the county have approved a change to the [ULL] affecting all or any portion of the land covered by the preservation agreement." The EIR must be revised and recirculated to address the impacts of the Agricultural Preservation Agreement.

Additionally, the Agricultural Preservation Agreement represents significant new information requiring recirculation of the EIR. (Guidelines, § 15088.5.) The Draft Memorandum of Understanding ("MOU") (subsequently referred to as the Agricultural Preservation Agreement in the Final EIR) was not included in the Draft EIR and Recirculated Draft EIR. Prior to the Final EIR, the only information provided was a cursory explanation of the "range of actions to be considered that include, but are not limited to" the identified actions. (Recirculated Draft EIR, p. 3.9-33.) In contrast, the staff report for the Project now includes a Draft Agricultural Preservation Agreement – upon which the County intends to rely to approve the change in ULL for the Project. As set forth above and in the Town's prior comments on the Draft and Recirculated Draft EIRs, the County's approval of the Project commits it to approving the Agricultural Preservation Agreement while denying the public and other agencies the opportunity to evaluate it and the validity of the conclusions drawn from it. (See *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 108; *Silverado Modjeska Recreation & Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 305.) Moreover, as described below, the Final EIR has been revised to remove the Town of Danville as a signatory to the Agricultural Preservation Agreement. In light of this significant new information, the Final EIR must be recirculated for public comment.

3. The County improperly limits signatory parties to the Agricultural Preservation Agreement.

The Recirculated Draft EIR provides that the Agricultural Preservation Agreement (referred therein as a MOU) was “being considered by the County, Town of Danville, City of San Ramon, and East Bay Regional Park District.” (Recirculated Draft EIR, pp. 2-15, 3.9-33.) In light of the Town’s objections to the change in ULL for the Project, the Final EIR was conspicuously revised to remove the Town as a party to the Agricultural Preservation Agreement with no explanation—although it is presumably due to concern that the County would not be able to achieve the required approval of a “majority of the cities” to support the necessary finding. (Final EIR, pp. 4-43, 2-5.)

The Project’s Northern Site is geographically related to the Town of Danville and is located within the Town of Danville’s planning area as described in the Danville 2030 General Plan. The Town of Danville would be one of the cities that would be expected to be a party to a preservation agreement. (See County Code, § 82-1.024 [Cooperation with cities].) It is against the notion of fair play (and quite frankly illogical) for the County and another city to enter into a preservation agreement that covers lands within the Town’s planning area, without the Town being a necessary party to such an agreement. The County’s actions further represent a lack of good faith particularly where the intent of a preservation agreement is “to reflect the desired relevant interagency collaboration on land use issues.” (Staff Report, p. 26.)

Furthermore, even if the East Bay Regional Parks District can be appropriately considered a “party to the preservation agreement,” it cannot be considered in making a finding that “a majority of cities” have approved the change to the ULL because it is not a city. (See also County Code, § 82-1.024 [“to the extent feasible, the county shall enter into preservation agreements with *cities in the county* designed to preserve certain land in the county for agriculture and open space, wetlands or parks”]; Staff Report, p. 26, citing County Code, § 82-1.024.) Thus, at most, the “majority of cities” upon which the County relies to make the required finding is conveniently a majority of one (i.e., San Ramon).

4. The approval of a change in the ULL for the Project without voter approval is a violation of the County Code.

A proposed general plan amendment that would expand the ULL by more than 30 acres requires voter approval pursuant to County Code section 82-1.018(b). Contrary to information in the EIR, the Project is not eligible for an exception to the voter approval

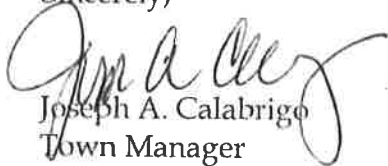
September 30, 2020
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requirement because the true extent of the Project's urban development is approximately 50 acres, not 30 acres. The Recirculated Draft EIR's characterization of the "NonUrban Development Area" is specious. (Recirculated Draft EIR, pp. 2-1, 2-2, fn. 1 ["All Project features outside of the Residential Development Area are nonurban in nature"], 2-23 to 2-24, Exhibit 2-4.) The true extent of the Project's urban development is approximately 50 acres, not 30 acres. As the Town noted in its previous comments, the area needed to widen Camino Tassajara and to provide corresponding buffer landscape improvements, detention basin, sewer pump station, and necessary grading operations all serve and support the Project's 125 residential units. These Project elements cannot be properly characterized as "nonurban uses" as defined in County Code section 82-1.032(b) as they are not rural residential or agricultural structures. Nor are they "necessary or desirable for the public health, safety or welfare" but for the development of the residential portion of the Project.

The County's conclusory response was simply to provide a recitation of County Code section 82-1.032. (Final EIR, p. 2-12.) Substantial evidence fails to support a finding that these Project components are "nonurban uses." Nor does the Final EIR's response to comments represent the good faith reasoned analysis required by CEQA. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940.)

Thank you for your attention to these comments. Please include this letter in the record of proceedings for this Project.

Sincerely,



Joseph A. Calabrigo
Town Manager

Cc: Town Council
Supervisor Candace Andersen
City Attorney
Sabrina Teller, Remy Moose Manley, LLP
Christina Berglund, Remy Moose Manley, LLP



TO: Mayor and Town Council

October 20, 2020

SUBJECT: Resolution No. 72-2020, opposing the Tassajara Parks project in unincorporated Contra Costa County and requesting that Contra Costa County reject the FEIR and deny the project and all related actions

BACKGROUND

Contra Costa County will shortly hold public hearings before the Contra Costa Planning Commission and Board of Supervisors to consider the Tassajara Parks project. Located east of the Town limits, the project encompasses 771 acres at the north end of the Tassajara Valley, outside of the voter-approved County Urban Limit Line (ULL). The application involves consideration of three interrelated components:

1. The Tassajara Parks project includes applications for a General Plan Amendment (GP07-0009), Rezoning (RZ09-3212), Subdivision (SD10-9280) and a Final Development Plan (DP10-3008) covering two sites:
 - The northern site includes 155 acres located adjacent to Tassajara Hills Elementary School on Camino Tassajara. This site is within the Town's planning area as defined by the Danville 2030 General Plan. Proposed development includes 125 residential lots, public streets, a detention basin, neighborhood park, staging area and equestrian facilities on a total of approximately 54 acres, with the balance of the site to be dedicated to East Bay Regional Park District (EBRPD).
 - The southern site includes three parcels totaling 616 acres located on the south side of Camino Tassajara, opposite Johnston Road and Highland Road. This site would be dedicated to EBRPD and the San Ramon Valley Fire Protection District (SRVFPD).
2. An Agricultural Preservation Agreement (APA) is proposed for the Tassajara Valley. The APA would preserve and protect up to 17,718 acres subject to current County general plan and zoning standards.
3. Certification of a Final Environment Impact Report (FEIR) prepared for the project.

The project raises both policy and environmental issues that have previously prompted the Town, at the direction of the Town Council, to provide extensive and detailed comments to both the DEIR and the recirculated DEIR. The FEIR has failed to satisfactorily address many of these concerns.

It is therefore appropriate for the Town Council to consider adoption of Resolution No. 72-2020, taking a formal position to oppose this project.

DISCUSSION

The Tassajara Parks application was initially filed with Contra Costa County in February 2014. Earlier development proposals encompassing the same sites (Emerald Homes and New Farm), were submitted and subsequently withdrawn without being acted upon by the County. Since 2014, processing of the application has stalled several times, owing to the need to identify how services would be provided, and undertaking and subsequently recirculating the project EIR on at least two occasions.

Last month, the Town was notified that the project was scheduled to be heard by the Contra Costa Planning Commission on September 30, 2020 (Attachment B). That meeting was subsequently cancelled due to a letter submitted by East Bay Municipal Utilities District (EBMUD) on September 29, 2020.

Tassajara Parks

Project Plans are included as Attachment C to this staff report. The property is currently designated for Agricultural use under the County general plan, and zoned Agricultural A-80 (80 acre minimum). Absent variances, this would permit no further subdivision of the northern site; the southern site, which is comprised of 3 existing parcels, could be subdivided into 7 parcels. In total, this would increase the number of parcels from 4 to 8 on both sites. As will be discussed later, the entire property is located outside of the ULL.

All development is proposed for the 155-acre northern site. This includes 125 single family homes proposed to be located on the southwest portion of the property, adjacent to the elementary school. Though proposed as a 30-acre exception to the voter approved ULL, the referenced 30-acre area includes only the residential lots and public streets. The FEIR indicates that the development includes an additional 19.3 acres of grading along with a 2.95-acre detention basin, and 1.44 acres of equestrian and pedestrian staging areas for a total development area of approximately 54 acres. The County staff report refers to the additional 24 acres as "non-urban developed area," a term which is not defined anywhere in the County general plan or zoning ordinance. (Note that additional land is also proposed for dedication to the San Ramon Valley Unified School District to expand and improve the parking area at the school). Absent the related grading and improvements, the 125 lots could not be developed.

As part of the project, the applicants propose to dedicate 727 acres of land to EBRPD, and 7 acres to SRVFPD. The project conditions would require payment of \$4 million to an

“agricultural enhancement fund” established by the County, and \$2.5 million to Contra Costa Livable Communities Trust Fund.

The project conditions of approval also require payment of \$484,361 to satisfy the County’s Inclusionary Housing Ordinance in lieu of providing the minimum 15% of affordable units on site.

Agricultural Preservation Agreement

The concept of an Agricultural Preservation Agreement for the Tassajara Valley dates back over two decades. An earlier version of an APA was developed in 1998 for consideration by Contra Costa County, Danville and San Ramon. This pre-dated voter approval of the county ULL. Danville acted to approve the agreement, while Contra Costa County and San Ramon never took action.

The currently proposed APA commits to preserving up to 17,718 acres in the Tassajara Valley subject to the current County general plan and zoning. From a general plan and zoning perspective, it imposes no new requirements that don’t already exist. That said, why enter into an APA if it adds no new protections? The simple answer is that it is the only potentially applicable basis to approve the project outside of the County ULL.

The Town has been involved in ongoing discussions regarding a draft APA since 2015. Initially drafted to include both the Town of Danville and the City of San Ramon (Attachment D), the APA recognized that both cities have planning areas that include portions of the Tassajara Valley within their respective General Plan planning areas, and that both are parties of interest.

In order to approve the Tassajara Parks project, the County must grant an exception to the voter approved ULL. The APA is intended to facilitate that action.

Chapter 82- 1 of the County Ordinance Code spells out how changes may be made to the voter approved ULL. Proposed expansions of 30 acres or less do not require voter approval and can be approved by a four-fifths vote of the Board of Supervisors upon making certain findings. This is where the APA becomes relevant. Section 82-1.018 (a) (3) states “A majority of the cities that are party to a preservation agreement and the county have approved a change to the urban limit line affecting all or any portion of the land covered by the preservation agreement.”

In approving the APA, the parties acknowledge that it enables the County to approve the Tassajara Parks project.

As parties to the APA, both cities would need to approve it in order to constitute “A majority of the cities” (while the East Bay Regional Park District is also included as a

signatory to the agreement, the District is not a city, and is therefore of no relevance to making the necessary board finding). However, the County subsequently and unilaterally decided to remove Danville as a party/signatory to the APA, and in so doing, removed any and all references to the Town in the latest version of the APA (Attachment E).

The ULL was approved by County and Danville voters. Attempts to develop the Tassajara Valley have been ongoing for three decades. With or without the APA, by virtue of the County General Plan and Zoning Ordinance, a voter approved ULL and the lack of water and sewer, use of the Tassajara Valley is effectively limited to agriculture, absent a change in policy by the Board of Supervisors.

Danville's 2030 General Plan includes the Upper Tassajara Valley as a Special Concern Area. This was included within the Town's planning area "to provide Danville with a greater voice in future land use changes that might be considered by Contra Costa County." The northern site proposed to be developed as part of the Tassajara Parks project is located within this area. The Special Concern Area language states that "Danville supports maintaining the agricultural uses and agricultural character of the Tassajara Valley. Land uses outside the UGB (ULL) should be consistent with the existing County General Plan designations for this area."

Final EIR

CEQA review of the project was initiated in 2015. A draft EIR was prepared and circulated for the project. The DEIR was subsequently revised and re-circulated prior to release of the FEIR. The Town has submitted extensive comment letters on the DEIR, RDEIR and FEIR (Attachments F1-F3). These letters have raised numerous issues related to the actions proposed, including but not limited to:

- Inconsistency of extending the ULL with Contra Costa County policies;
- Failure of the DEIR, RDEIR and FEIR to comply with CEQA with regard to:
 - The requested ULL exception exceeding 30 acres
 - Lack of feasible water supply alternatives for the project
 - Transportation and traffic issues
 - Air quality and GHG emissions not having been properly studied/evaluated
 - Aesthetics, light and glare impacts
 - Impacts upon agricultural, biological and cultural resources
 - Geology, soils and seismic factors
 - Noise
 - Public Services and Recreation
 - Lack of reasonable project alternatives

- Project inconsistency with General Plan violates planning and zoning law as well as the Subdivision Map Act.

It should be noted that the project proponents have applied to LAFCO to have East Bay Municipal Utility District (EBMUD) and Central Contra Costa Sanitary District (CCCSD) provide water and sewer service to the Tassajara Parks project.

The FEIR and the County staff report indicate that annexation of the site into EBMUD would be contingent upon project applicants funding offsite water conservation measures within EBMUD's existing service area which would offset the additional water demand created by the project. This would be subject to approval by the EBMUD Board of Directors.

In their September 29, 2020 letter to Contra Costa County (Attachment G), counsel for EBMUD challenges the validity of the water supply section of the FEIR, stating that the FEIR among other things: uses "an unsubstantiated and artificially low water demand estimate for the project"; fails to acknowledge the projects inconsistency with EBMUD annexation policies; and contains a faulty analysis of water supply impacts that violates the basic requirements of adequate water supply analysis under CEQA. The letter concludes by stating that "the County cannot assume EBMUD will solve the applicants water supply problems."

Based upon the EBMUD letter, it appears as though no viable source of water currently exists to serve the proposed project.

The FEIR may be viewed at <https://www.contracosta.ca.gov/4552/Tassajara-Parks>.

SUMMARY

Issues and concerns raised and highlighted in this report include:

1. Project inconsistency with the Danville 2030 General Plan.
2. Policy and precedent setting implications associated with amending the voter approved ULL; and considering a 30-acre exception to the ULL.
3. The Tassajara Parks project proposes a 54-acre development footprint that includes 125 single family homes, public streets, related grading, a neighborhood park, drainage facilities, staging area and other improvements - clearly exceeding the 30 acre exception that can be granted by the Board of Supervisors. As currently proposed, the project would require voter approval to expand the ULL.
4. The Town is a party to any actions regarding the future of the Tassajara Valley. This includes consideration of an APA. There are two cities that are parties to the APA. Absent one city, how can it reasonably be stated that "a majority of the cities

that are party to a preservation agreement and the county have approved a change to the urban limit line...”

5. Inconsistency with growth management principles built into Measure J (i.e. focusing housing and jobs around transit centers and downtowns).
6. Potentially significant environmental impacts related to traffic, aesthetics, utilities, services and facilities, etc.
7. Growth inducing impacts related to requiring EBMUD and CCCSD to serve property outside of the voter approved ULL.
8. Lack of any viable water service provider.

Greenbelt Alliance, Sierra Club and the Tassajara Property Owners have all previously expressed opposition to the proposal.

The Town has raised valid policy and environmental concerns related to the Tassajara Parks project for the past several years. Residents living on the east side of Town stand to be most directly impacted by the downstream impact that the project will generate.

The Tassajara Parks project is inconsistent with the Danville 2030 General Plan.

The currently proposed APA commits to preserving up to 17,718 acres in the Tassajara Valley subject to the current County general plan and zoning. In reality, from a general plan and zoning perspective, it imposes no new requirements that don't already exist, and is opposed by the majority of the affected property owners.

While the project includes extensive land dedications to various agencies, the entire site has very limited development potential under the current County general plan and zoning, and the dedications are simply trade-offs in an attempt to secure approval of a ULL exception to allow construction of another 125 homes. The decennial ULL review completed by the County in 2016 concluded that there was adequate land capacity within the current ULL. EBMUD has clearly stated that the property is outside of the District's service area boundary. At a time when the State and regional planning bodies are increasingly exerting their influence upon local agencies to focus new development into more urban, transit-oriented areas, this project would do just the opposite.

PUBLIC CONTACT

Posting of the meeting agenda serves as notice to the general public.

FISCAL IMPACT

None at this time.

RECOMMENDATION

Adopt resolution No. 72-2020, opposing the Tassajara Parks project in unincorporated Contra Costa County and requesting that Contra Costa County reject the FEIR and deny the project and all related actions.

Prepared and Reviewed by:



Joseph Calabrigo
Town Manager

- Attachments:
- A - Resolution No. 72-2020
 - B - September 30, 2020 Staff Report to the Contra Costa County Planning Commission
 - C - Tassajara Parks plans
 - D - April 29, 2016 Draft Memorandum of Understanding (Agricultural Preservation Agreement)
 - E - September 4, 2020 Agricultural Preservation Agreement
 - F1- September 30, 2020 Comment Letter to Contra Costa County
 - F2- November 30, 2020 Comment Letter to Contra Costa County
 - F3- July 18, 2020 Comment Letter to Contra Costa County
 - G - September 29, 2020 Comment Letter from East Bay Municipal Utility District to Contra Costa County

RESOLUTION NO. 72-2020

**OPPOSING THE TASSAJARA PARKS PROJECT IN UNINCORPORATED
CONTRA COSTA COUNTY AND REQUESTING THAT CONTRA COSTA
COUNTY REJECT THE FEIR AND DENY THE PROJECT AND ALL RELATED
ACTIONS**

WHEREAS, Contra Costa County is currently considering the "Tassajara Parks" project, including applications for a General Plan Amendment (GP07-0009), Rezoning (RZ09-3212), Subdivision (SD10-9280) and a Final Development Plan (DP10-3008) including 771 acres on two sites located east of the Town limits, at the north end the Tassajara Valley; and

WHEREAS, the project is located outside of the voter-approved County Urban Limit Line (ULL), which was also approved by Danville voters as the Town's Urban Growth Boundary (UGB); and

WHEREAS, the Town's 2030 General Plan includes the Upper Tassajara Valley as a Special Concern Area to provide Danville with a greater voice in future land use changes that might be considered by Contra Costa County, and the Special Concern Area language states that "Danville supports maintaining the agricultural uses and agricultural character of the Tassajara Valley" and that "Land uses outside the UGB (ULL) should be consistent with the existing County General Plan designations for this area."; and

WHEREAS, Chapter 82- 1 of the County Ordinance Code allows that proposed expansions of 30 acres or less to the voter approved ULL do not require voter approval and can be approved by a four-fifths vote of the Board of Supervisors upon making certain findings; and

WHEREAS, Section 82-1.018 (a) (3) states "A majority of the cities that are party to a preservation agreement and the county have approved a change to the urban limit line affecting all or any portion of the land covered by the preservation agreement," and

WHEREAS, the applicants for the Tassajara Parks project have proposed the adoption of an Agricultural Preservation Agreement (APA) that would effect up to 17,718 acres in the Tassajara Valley; and

WHEREAS, the Town has been a party to ongoing discussions regarding the APA since 2015, and the APA was originally drafted to include the Town of Danville and the City of San Ramon, recognizing that both cities have planning areas that include portions of the Tassajara Valley within their respective General Plan planning areas; and

WHEREAS, a draft EIR was prepared and circulated for the project, and has subsequently been revised and re-circulated two additional times; and

WHEREAS, the Town has submitted extensive comment letters on both the initial, revised and re-circulated project EIRs which have raised numerous issues and concerns regarding the adequacy of the DEIR, recirculated DEIR and FEIR; and

WHEREAS, the Danville Town Council has reviewed and considered all of the related actions associated with the Tassajara Parks project, and finds that:


1. The proposed project includes a total development area of approximately 54 acres, including 125 single family homes, subdivision grading necessary to build the single family lots, a detention basin necessary to meet storm water run-off requirements for the single family lots, a neighborhood park necessary to serve the single family lots, equestrian and pedestrian staging areas. The area being developed exceeds the 30-acre exception allowed under Chapter 82-1 of the County Ordinance Code by approximately 180% and should be subject to voter approval.
2. The Town has historically been considered to be a party to land use considerations that involve and effect the Tassajara Valley. The Town was a signatory to the original 1998 APA proposed for the Tassajara Valley prior to voter approval of a county ULL, and the Town has been a party to ongoing discussions regarding the APA proposed as a part of the Tassajara Parks project since 2015. The unilateral decision by Contra Costa County to exclude Danville as a signatory to the most recent APA is a bad faith action inconsistent with recent and past precedent.
3. Without Danville as a signatory to the proposed APA, the Town challenges the County's ability to find that "A majority of the cities that are party to a preservation agreement and the county have approved a change to the urban limit line affecting all or any portion of the land covered by the preservation agreement" subject to Section 82-1.018 (a) (3) of the County Ordinance Code.
4. From a general plan and zoning perspective, the APA imposes no new requirements and is proposed solely for the purpose of facilitating County consideration to grant an exception to the voter approved ULL.
5. The Town has submitted extensive comment letters on both the initial, revised and re-circulated project EIRs that have raised numerous concerns and identified numerous deficiencies pertaining to CEQA adequacy.
6. The project and related APA are inconsistent with the Danville 2030 General Plan Special Concern Area language which states that "Danville supports maintaining the agricultural uses and agricultural character of the Tassajara Valley. Land uses outside the UGB (ULL) should be consistent with the existing County General Plan designations for this area."

- 7. The decennial ULL review completed by the County in 2016 concluded that there was adequate land capacity within the current ULL to accommodate projected growth.
- 8. The proposed project is inconsistent with smart growth principles that call for new development to include greater affordability and be focused into more urban, transit-oriented areas, consistent with the goals set by the Sustainable Communities and Climate Protection Act of 2008 (SB 375) and the California Global Warming Solutions Act of 2006 (AB 32); **NOW THEREFORE BE IT**

RESOLVED that upon review and consideration of the application and record, the Danville Town Council wishes to register its formal opposition to the Tassajara Parks project and requests that Contra Costa County reject the FEIR and deny the project.


APPROVED by the Danville Town Council at a regular meeting on October 20, 2020, by the following vote:

AYES: Arnerich, Blackwell, Morgan, Stepper
NOES: Storer
ABSTAINED: None
ABSENT: None

DocuSigned by:

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MAYOR

APPROVED AS TO FORM:

DocuSigned by:

 895C6C40ADBFA4BF

CITY ATTORNEY

ATTEST:

DocuSigned by:

 71735A3F04C942F

CITY CLERK