June McHuen

From: Rob Ewing <REwing@danville.ca.gov>
Sent: Monday, July 12, 2021 10:27 AM
To: Clerk of the Board; Sean Tully
Cc: Joe Calabrigo
Subject: Submission for Board Agenda Item D.4-Tassajara Parks
Attachments: Danville letter to BOS-with attachments.pdf

Attached, please find the Town of Danville's written comments for the above-referenced agenda item for tomorrow's board meeting.

Rob Ewing
City Attorney
Town of Danville | 510 La Gonda Way | Danville, CA 94526
(925) 314 3383| f (925) 838-0548 |
rewing@danville.ca.gov | www.danville.ca.gov
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Town of Danville offices and facilities are reopening on July 6. Per CDC guidance, masks are not required for fully vaccinated visitors. Visitors who are not fully vaccinated must wear masks upon entering. **Let's all work together to keep our community healthy!**

July 12, 2021

VIA ELECTRONIC MAIL
clerkoftheboard@cob.cccounty.us.
sean.tully@dcd.cccounty.us

Contra Costa County Board of Supervisors
c/o Clerk of the Board
1025 Escobar Street
Martinez, CA 94553

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

Re: Tassajara Parks Project—General Plan Amendment (CDGP07-0009); Rezoning (CDRZ09-3212); Vesting Tentative Tract Map (CDSD10-9280); Development Plan and Development Agreement (CDDP10-3008)—Support for Project Denial

Dear Honorable Members of the Board of Supervisors:

On behalf of the Town of Danville, I submit all prior comments and additional new comments regarding the Environmental Impact Report ("EIR") prepared by Contra Costa 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") and suggested findings that support the Board of Supervisor's ("Board") denial of the Project. We encourage the Board to review this letter closely, along with the Town's prior letters and other documents attached hereto, and follow the recommendation of its Planning Commission, and deny all approvals associated with the Project.

Recent Background

On June 9, 2021, the County Planning Commission held a hearing where it considered the Project and voted to recommend that the Board deny the Project. The decision to recommend denial of the Project came after listening to testimony from staff at the East

Bay Municipal Utility District ("EBMUD"), whose Board of Directors and Managers adopted a formal resolution to oppose the Project on June 8, 2021, as a result of an inability to serve the Project for lack of adequate water supply (attached hereto for the Board's convenience). Also discussed at the Planning Commission hearing, amongst County staff and members of the Planning Commission, was the confusion as to the size of the Project site and the total acreage of disturbance, which was especially troubling given that the EIR is, theoretically, at its final stage. Lastly, pertaining to previous comments made by the Town, Executive Officer Lou Ann Texeira testified for the Contra Costa County Local Agency Formation Commission ("LAFCO") that the Project cannot be annexed into EBMUD because a key requirement for annexation cannot be met.[1]

Previous Comments

The Town has sent four prior comment letters to the County on this Project and its various CEQA documents: a first comment letter on the Draft EIR dated July 18, 2016; a second comment letter on the Recirculated Draft EIR dated November 30, 2016; a third comment letter on the Final EIR dated September 30, 2020; and a fourth comment letter on the updated information regarding water supply and ongoing transparency issues dated June 9, 2021. Each letter is attached hereto for the Board's convenience and incorporated herein by reference. As explained in our previous four 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.). Also as previously articulated, the County has failed to properly address the vast majority of the Town's comments, either by making necessary revisions to the EIR or by preparing adequate responses to comments. To wit, the County completely failed to respond at all to the Town's July 18, 2016, comment letter on the Draft EIR—the legal ramifications of which are outlined in our September 30, 2020 letter.

Additional Comments

After listening to the discussions that took place at the June 9th hearing, and further considering the County's response to comments in the Final EIR, the Town submits the additional following comments for the Board's consideration.

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[1] Annexation into EBMUD requires a completed application to LAFCO, which in turns requires a will-serve letter from EBMUD, which will not be forthcoming. Without a completed application, annexation cannot occur.

As a threshold concern, the Town requests that the County clarify, and support with evidence, what exactly it considers to be the size of the Project site to determine the proper project description and verify that the analysis conducted in the EIR is adequate. CEQA requires a lead agency to present a stable project description because inconsistencies "impair[] the public's right and ability to participate in the environmental review process." (*Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 288.) At the June 9th hearing, there was a valid debate as to whether the project site (and therefore the size of the potential exception proposed to the Urban Limit Line ["ULL"]) consisted of approximately 30 acres or approximately 50 acres. This debate did not appear to be adequately resolved. This fundamental component of the project description must be investigated, resolved, and the outcome articulated to decisionmakers and the public, with document recirculation as applicable.

Regarding traffic analysis, in its EIR the County does not use the vehicle miles traveled ("VMT") standard for determining traffic impacts, despite it being a CEQA requirement since 2018. (See CEQA Guidelines, § 15064.3.) Indeed, the County does not even present VMT analysis for informational purposes, although that has become commonplace and expected for CEQA documents that can still technically rely on the level of service ("LOS") standard. The use of VMT for impact analysis provides the most usable data and information and ensures decisionmakers and the public have the best understanding of project impacts. It also allows a lead agency to prepare the best and most enforceable mitigation measures. Omitting VMT analysis reduces the informational value of the EIR and subjugates its function as a "meaningful and useful" document. (See CEQA Guidelines, §§ 15002, subd. (a)(1), 15003, subd. (c); Pub. Resources Code, § 21003, subd. (b).) The County had plenty of time and opportunity to include VMT analysis in between draft and final versions of the document, and it should have, especially considering that VMT was a topic of several comments on the Recirculated Draft EIR.

Furthermore, the Town calls into question the validity of data generated for air quality, greenhouse gas ("GHG"), and traffic analysis. The most obvious problem is that data projections used in the EIR are based off of a construction schedule that starts in July 2017 and assumes the Project is fully operational in the spring of 2020. (See Recirculated Draft EIR, p. 2-140, Appendix B [pp. 1, 38].) It is now 2021 and the Project has, rightfully, yet to be approved. While it is reasonable to give a certain amount of leeway to the use of older data when engaging in a prolonged CEQA review process, there are inherent problems with the use of data that relies on construction and operational benchmarks that have well come and gone, by years. Especially when, as in the instant

case, the lead agency has had four years between draft and final versions of the document to update these critical portions of the analysis. In the same vein, the EIR uses the 2013 version of CalEEMod for air and GHG emission projections (see Recirculated Draft EIR, pp. 3.3-36), however a new version was released in 2016, and an even newer version in 2020. Likewise, traffic projections were generated using methods defined in the 2010 version of the Highway Capacity Manual, while a new version was released in 2016. This woefully outdated data and modeling further calls into the question the informational value of the EIR and its usefulness to decisionmakers and the public.

Suggested Findings to Support Denial of Project

Unresolvable problems with the Project and failings with its environmental review led the Planning Commission to vote to recommend that the Board deny approval of the Project. The Town agrees with the Planning Commission's decision and offers the following findings to support a decision to deny the Project—both collectively as a singular Board action and as individual members.

California Environmental Quality Act Findings

The Board of Supervisors ("Board") considered the Draft Environmental Impact Report ("EIR"), the Recirculated Draft EIR, the Final EIR, and subsequent technical information provided for the Project in regards its water supply, along with all comments received on the Project and its environmental review, and, based on the entire administrative record before the Board, finds that the EIR is inadequate as it is presented. The EIR requires additional information and analysis to better address impacts to, at least, the following areas and to ensure compliance with the California Environmental Quality Act ("CEQA"):

1. Project Description: The record contains inconsistencies regarding the total urban acreage of the project site and the total acreage of disturbance (County Code Section 82-1.032(b)) and as a result presents a potentially unstable project description in violation of CEQA. Testimony and evidence presented at the June 9, 2021, Planning Commission hearing raised questions concerning this issue. Additional information is required to properly determine the accurate size of the project site with adequate evidence to support the County's final determination.
2. Transportation/Traffic: The record contains substantial evidence that the EIR does not adequately analyze traffic impacts from the project on the Town of Danville. This evidence consists of expert peer review studies in the record and was noted by members of the County Planning

Commission. In addition, the record does not contain sufficient information to assess traffic impacts as a result of the omission of the vehicles miles traveled ("VMT") standard. Additional analysis is required to provide decisionmakers with an appropriate amount of information and to keep current with existing CEQA Guidelines.

3. Water Supply: The record does not contain sufficient information to ensure that an adequate water supply for the Project is available. Recent information from the East Bay Municipal Utility District ("EBMUD")—the water supply provider assumed in the CEQA document—has cast doubt on the utility's ability to provide water to the Project. Additional analysis is required to demonstrate that the Project has a potentially feasible source of water on the presumption that EBMUD's statements are accurate that it cannot provide water to the Project.
4. The EIR fails to discuss an adequate range of alternatives to the project which would lessen impacts and not require granting of an exception to the Urban Limit Line.
5. The EIR uses outdated data that reduces its effectiveness as an informational document and contains several other inadequacies in its analysis of environmental impacts that violate CEQA.

As a result of the foregoing, the Board finds that it cannot certify the EIR as presented. CEQA Guidelines Section 15090 requires the Board to certify the EIR prior to approving the Project. Similarly, Contra Costa County adopted CEQA Guidelines Section 15090, that requires the Board to certify the EIR prior to taking action to approve an application for a project. Accordingly, because the Board cannot certify the EIR as presented, it cannot approve the Project.

Zoning and Land Use Findings

The Project's proposal to extend the Urban Limit Line is inconsistent with the County's policies, the requirements in County Code Section 82-1.018, and the express will of the voters. Additionally, the Project's inconsistency with the County's General Plan violates both the Planning and Zoning Law and the Subdivision Map Act. Accordingly, because Project does not adhere to County policies and its General Plan, County code requirements, the express will of its voters, and state land use laws, the Board cannot approve the Project.

Conclusion for Findings

The Board of Supervisors make the above Findings of Fact in support of its action to **DENY** the Tassajara Parks Project/General Plan Amendment (CDGP07-0009);

Rezoning (CDRZ09-3212); Vesting Tentative Tract Map (CDSD10-9280); Development Plan and Development Agreement (CDDP10-3008).

* * *

Thank you for your attention to these comments and findings. 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
Rob Ewing, Town Attorney
Sabrina Teller, Remy Moose Manley, LLP
Casey A. Shorrock, Remy Moose Manley, LLP

Attachments

7/18/16 Comment Letter on DEIR

July 18, 2016

John Oborne, Senior Planner
Contra Costa County
Department of Conservation & Development
39 Muir Road
Martinez, CA 94553
Email: john.oborne@dcd.cccounty.us

RE: Town of Danville's comments on the Draft EIR for the Tassajara Parks Project
County File Numbers GP07-0009, RZ09-3212, SD10-9280, DP10-3008

Dear Mr. Oborne:

On behalf of the Town of Danville, we submit these comments regarding the County's Draft Environmental Impact Report (EIR) for the Tassajara Parks Project. The Town has carefully reviewed the Draft EIR, as have the Town's outside counsel, Remy Moose Manley, LLP. The Town is concerned about the Project's environmental impacts, especially transportation and traffic impacts, because of the proximity of the project's residential development portion to the Town. We provide the following comments to alert the County to:

(1) the ways in which the proposal to extend the Urban Limit Line is inconsistent with the County's own policies, the requirements in County Code Section 82-1.018, and the express will of the voters;

(2) the Draft EIR's numerous violations of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) (CEQA);

(3) how the Project violates the Planning and Zoning Law (Gov. Code, § 65000 et seq.) because the proposed single-family, high-density residential land uses in the Northern Site are incompatible with the General Plan; and

(4) why the Project's inconsistency with the County's General Plan violates the Subdivision Map Act (Gov. Code, § 66410 et seq.).

We have also included several attachments to support our comments. Although the Town appreciates the information and analysis that is included in the Draft EIR, the Town asks the County to make revisions that address the defects identified in this letter.

The efforts to characterize the project as development that can properly evade the voters' scrutiny of the proposed change to the County's Urban Limit Line (ULL) subverts the intent behind relevant policies in the County's General Plan and adopted ordinances. First, contrary to the intent behind the adoption of the ULL, the project does not meet inclusionary housing requirements, opting to pay in-lieu fees instead of providing affordable housing on the Project site. Second, the Draft EIR appears to improperly rely on a yet-to-be-created preservation agreement that is designed to provide the Board with a flimsy justification for approving the extension of the ULL for urban development under County Code Section 82-1.018(a)(3). Third, the Draft EIR draws an arbitrary distinction between the project's urban and non-urban land uses, claiming that the portions of the project area that are required for: (i) road dedication to widen Camino Tassajara (limited to that portion of dedication in direct proximity to the proposed development zone); (ii) frontage buffer landscape improvements directly behind this proposed new right-of-way boundary; (iii) the project's detention basin and pumping station; (iv) the proposed debris bench at the base of the proposed engineered slopes that would protect the proposed residential project; and (v) slide repair area are somehow "non-urban" land uses despite their express purpose of serving the project's 125 single-family residences.

These contortions also result in a legally insufficient Draft EIR. As explained in more detail below, the Draft EIR contains: (i) an unstable and incomplete project description; (ii) an inaccurate and misleading description of the project baseline and setting; (iii) inadequate analysis and mitigation of project-specific environmental impacts, including significant and unavoidable greenhouse gas emissions and traffic impacts; (iv) an erroneous understanding of the legal requirements related to analysis of cumulative impacts; (v) a refusal to analyze an alternative in an offsite location; (vi) a failure to sufficiently consider and discuss growth-inducing impacts that result from the project's two potential water sources; and (vii) an improperly cursory analysis of energy conservation impacts.

I. The Tassajara Parks project is inconsistent with the intent of the Urban Limit Line because it would extend urbanization into agricultural lands without providing any onsite affordable housing.

A. The voter-approved intent behind the establishment of the Urban Limit Line

In 1990, the Contra Costa County voters approved Measure C, which enacted the 65/35 Contra Costa County Land Preservation Plan Ordinance ("65/35 Ordinance"). The purpose of the measure was to preserve agriculture and open space land, parks, wetlands, and other nonurban uses and manage growth to protect the quality of life, while also providing for the County's fair share of safe and affordable housing. Measure C accomplished this, in part, by establishing the County's Urban Limit Line, a line beyond which no urban land use can be designated. Measure C also limited urban development to no more than 35 percent of the land in the County and required that at least 65 percent be preserved for agriculture, open space, wetlands, parks, and other non-urban uses.

In California, a general plan serves as the "constitution" to which all future development must carefully adhere.[1] During the process of preparing a comprehensive update to the County's General Plan, the voters expressed concern over the growing "urbanization of the County" and the threat that further development poses to "the long term viability of agricultural and open space land, parks, wetlands, hillsides and ridgelines."[2] At the same time, voters recognized "a critical need to make decent, safe and affordable housing available to all . . . economic segments of the County."[3] Measure C was specifically designed to address both of these concerns. Thus, the voters' approval of Measure C signified their broad support for a general plan with strict preservation principles that could only be sidestepped in order to ensure the adequate development of affordable housing.

B. The intent behind the provision for "minor" or less than 30-acre adjustments to the Urban Limit Line

The County's concerned residents did not stop with Measure C, which was set to expire in 2010. In 2004, voters approved Measure J, which withheld sales tax proceeds for local transportation purposes unless the County and cities mutually agreed to reestablish the

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[1] / *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.

[2] / Attachment 4, p. 1-26 [Contra Costa General Plan, Chapter 1, Section 1.11, Measure C-1990, Section 3(B)(1)].

[3] / Attachment 4, p. 1-26 [Measure C, Section 3(B)(3)].

ULL. Measure J also required that the renewal of the ULL include new provisions for periodic review and for "minor (less than 30 acres) nonconsecutive adjustments."[4]

In July 2005, the County Board of Supervisors approved a version of the Urban Limit Line ballot measure that represented a compromise between the environmental and business communities. The staff report detailing this compromise makes clear that future adjustments to the ULL should only be allowed if there is evidence that the proposed project is necessary to meet the area's projected housing or job needs and is placed in a location that can take advantage of planned transportation improvements:

> **WITH RESPECT TO URBAN LIMIT LINE PLACEMENT TO BE PRESENTED TO THE VOTERS IN 2006, there will be no changes [to] the recently adjusted ULL for a minimum of ten years and then, changes would be allowed *only if it is shown that there is not a 20 year housing supply available in the County as per criteria set forth below.***
>
> . . .
>
> The purposes of the ULL are: (l) to ensure *preservation and protection* of identified nonurban land, including agricultural, open space, parkland, and other areas, by establishing a line beyond which urban uses generally cannot be designated; (2) to *link land use decisions with the transportation investments in Measure J* by channeling future growth to locations more suitable for urban development; (3) to ensure that land use policies within the ULL effectively *promote appropriate development that accommodates the area's projected housing and job needs* over a 20-year period.[5]

The principles expressed in this compromise were ratified in 2006 when the voters overwhelmingly approved Measure L, which extended the 65/35 Ordinance until 2026. In compliance with the mandate in Measure J, Measure L added to the ordinance a provision requiring that any change to the ULL greater than 30 acres obtain both a 4/5 vote of the County Board of Supervisors and voter approval. If, however, a project is

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[4] / Attachment 5, p. 29[CCTA's Measure J, Contra Costa's Transportation Sales Tax Expenditure Plan, Attachment A- "Principles of Agreement for Establishing the Urban Limit Line"].)

[5] / Attachment 6, p. 8 [July 12, 2015 staff report on ballot measure for extension of the Urban Limit Line], italics added.)

less than 30 acres, it must still be approved by 4/5 of the Board of Supervisors subject to certain findings. Thus, under the existing version of the 63/35 Ordinance, any change to the ULL, whether less than or greater than 30 acres, must be approved by a 4/5 vote of the Board of Supervisors after making one of seven findings[6]; but only changes greater than 30 acres require voter approval.[7]

Measure L also required a comprehensive review of the Urban Limit Line in 2016 to determine whether there is sufficient land available to satisfy housing and jobs needs for Contra Costa County for the following 20 years.[8] This requirement for a comprehensive review, which now appears in County Ordinance 82-1.018(d), is necessary to "determine whether a change to the boundary . . . is warranted, based on facts and circumstances resulting from . . . a comprehensive review of the *availability of land* in Contra Costa County sufficient *to meet housing and job needs for twenty years.*"[9]

C. An example of the appropriate use of the 30-acre exception to voter approval: the Bay Point Waterfront Project

The relevant requirements related to changes to the ULL are now enshrined in County Ordinance Section 82-1.018. It is instructive to briefly review the one project that has been approved using the 30-acre exception to the requirement for voter approval of changes to the ULL.

In 2009, the Board of Supervisors approved the Bay Point Waterfront project, which consisted of a new full-scale marina, open spaces, recreational playfields, trails, and up to 450 multi-family residential units.[10] The Bay Point Waterfront Project moved approximately 21 acres of undeveloped open space and commercial recreation lands *inside* the ULL in exchange for moving 22 acres of regional parkland outside the ULL. The change to the ULL was possible because the Board adopted the finding in Section

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[6] / Compare Attachment 4, pp. 1-27 to 1-28 [Measure C, Section 4(B)(7)] to County Ordinance 82-1.018.

[7] / The only way to circumvent voter approval, when required, is if 4/5 of the Board finds it is necessary to avoid an unconstitutional taking of private property or to comply with state or federal law.

[8] / Attachment 7, p. 12 [Measure L Voter Pamphlet].)

[9] / County Ordinance 82-1.032(d), italics added; see Attachment 3.

[10] / Attachment 8, p. 4 [November 3, 2009 staff report on Bay Point Waterfront General Plan Amendment and Development Plan Modification].)

82-1.018(a)(4): that the change would more accurately reflect topographical characteristics or legal boundaries.[11]

The residential component of the project involved placing 450 multi-family residential units on 17 acres of land that was previously designated Open Space. Importantly, as commended in the Board's Findings, the Bay Point Waterfront Project provided for 15% of the 450 residential units to be affordable housing. In contrast, as discussed in more detail below, the Tassajara Parks project will provide no onsite affordable housing and effectively converts more than 30 acres of agricultural lands to residential land uses.

D. The Tassajara Parks project's inappropriate proposal to change the Urban Limit Line

Voters have repeatedly shown their commitment to preserving agriculture and open space by approving the creation and extension of the ULL and, most recently, by *strengthening* the previous ULL provisions to require voter approval for projects outside the ULL that are over 30 acres. The Tassajara Parks project's proposal to change the Urban Limit Line violates the intent behind the adoption of the ULL in three important ways: (1) the project extends urbanization into agricultural lands without evidence showing that there is not currently a 20-year housing supply in the County; (2) it improperly attempts to take advantage of the 30-acre exception to voter approval by characterizing as "non-urban" land uses that only have the purpose of serving the project's urban, residential development; and (3) it does not provide any onsite affordable housing.

First, the Tassajara Parks project proposes to permanently convert agricultural lands to residential, urban uses. But the Draft EIR does not point to any evidence that the County currently lacks a 20-year housing supply, or that such necessary development could not be accommodated through more appropriate development *within* the existing Urban Limit Line. Thus, the project conflicts with the intent of the voter-approved 2006 Measure L. At the very least, the Board should delay its consideration of the project until after the comprehensive 2016 review of the ULL boundary is completed and the County possesses more information about the "availability of land . . . sufficient to meet housing and job needs for twenty years."[12]

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[11] / Attachment 8, p. 11.

[12] / County Ordinance 82-1.032(d).

Second, the project is not eligible for the 30-acre exception to voter approval because the true extent of the project's urban development is approximately 50 acres, not 30 acres. In other words, the project proposes to use approximately 50 acres to house or directly support 125 single-family residential units. Although the Draft EIR claims that only 30-acres will be used for "urban" development, the Town challenges the Draft EIR's characterization of the "Non-Urban Development Area." (DEIR, pp. 2-25 to 2-29.) 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.[13] These project elements are not rural residential or agricultural structures, and, thus, cannot be characterized as "nonurban uses."[14] They should instead be counted toward the total acreage of urban development because their only purpose is to serve the proposed residential units. Frankly, the Draft EIR's insistence that these uses can be excluded from the total acreage proposed for inclusion in the ULL is disingenuous.

Third, the project completely fails to provide any onsite affordable housing. Without any discussion, the Draft EIR states that "the Project would pay in-lieu fees in place of providing inclusionary housing units as part of the project."[15] The Draft EIR provides no explanation for why a certain percentage of the proposed residential units couldn't be offered as affordable housing. Recently constructed residential developments in the vicinity of the project, whether within the Town limits or in the unincorporated area east of the Town boundary, have provided, at a minimum, 15% of the residential units as housing affordable to moderate income households. When the County approved the

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[13] / See Draft EIR, p. 2-28 [explaining grading operations and landslide grading operations], pp. 2-49 & 3.13-35 [describing pump station as necessary for and owned and operated by residential development's Homeowners Association], pp. 3.8-10 & 3.13-37 [explaining how the 7.6-acre detention basin is necessary to attenuate the stormwater flows in the residential area]. The Draft EIR is misleading when it states that the Residential Development Area encompasses all of the "Project's urban development" because the 30 acres only covers lots and interior project roadways, not all related urban improvements. (Draft EIR, p. 2-25.)

[14] / County Ordinance 82-1.032(b) states: "the term "nonurban uses" shall mean rural residential and agricultural structures allowed by applicable zoning and facilities for public purposes, whether privately or publicly funded or operated, which are necessary or desirable for the public health, safety or welfare or by state or federal law."

[15] / Draft EIR, p. 3.9-33.

Bay Point Waterfront project, it found that the provision for 15% of the 450 units to be affordable would help to implement the housing-related goals in the General Plan.

Without a similar provision here, the project fails to support or implement relevant housing policies in the County General Plan and would be inconsistent with the stated purpose and intent of the County's Inclusionary Housing Ordinance, which reads:

> 822-4.204 Purpose and Intent. The purpose of this chapter is to facilitate the development and availability of housing affordable to a broad range of households with varying income levels within the County. It is intended in part to implement State policy declaring that local governments have a responsibility to exercise their powers to facilitate the development of housing necessary to adequately provide for the housing needs of all economic segment of the community. The goal of this chapter is to ensure that affordable housing units are added to the County's housing stock in proportion to the increase in new housing units in the County, in accordance with Goal 3 of the Housing Element of the County General Plan.

It appears that the in-lieu fee option laid out in the County's Inclusionary Housing Ordinance (see Section 822-4.404 In-Lieu Fee) is meant to have the developer burden of providing the requisite affordable units be the same whether the units are supplied in the project or through the payment of an in-lieu fee. The regulations direct that the fee amount for for-sale units is to be equivalent to the cost differential between the affordable sales price for a targeted household and the median price, as determined by the County, of all single-family home sales in the County within the previous 12 months. It is unclear what the process has been that lead to a determination that the project would pay in-lieu fees rather than provide affordable housing as part of the project.

E. Reliance upon the finding in Section 82-1.018(a)(3) would be improper.

Even if the project could overcome the defects identified above, any reliance upon the finding in Section 82-1.018(a)(3) would be improper and unsupported by substantial evidence.

The Draft EIR ambiguously states that the "Project would include a 30-acre change to the ULL, as allowed by Chapter 82-1.018(a)(3) of the Contra Costa County Ordinance

Code."[16] Section 82-1.018(a)(3) provides that the County may approve a change to the Urban Limit Line if it can make a finding "based on substantial evidence in the record" 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." While the Town is aware that the County and the project applicant have been drafting a potential preservation agreement, the Draft EIR does not provide any details about any relevant existing preservation agreements or any soon-to-be-executed agreements.

The entire purpose of a preservation agreement is to prevent cities from annexing unincorporated portions of the County so that agricultural lands, open space, wetlands, or parks may be preserved.[17] 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. Therefore the Town of Danville would be one of the cities that would be expected to be a party to a preservation agreement. At the present time, the Town of Danville is not a party to an existing preservation agreement that covers the Project's Northern Site, the entire project site, or lands beyond the project site, and it would be unfair and illogical for the County and another city to enter into a preservation agreement that covers lands within the Town's planning area, absent the Town being a party to such agreement.

Any future preservation agreement should cover all of the lands that currently comprise the entire project site. If the preservation agreement does not cover the Northern Site, then the Board cannot rely upon the finding in subdivision (a)(3) because the proposed change to the ULL must affect "all or any portion of the land covered by the preservation agreement."

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[16] / Draft EIR, p. 3.9-32.

[17] / The Land Use Element of the General Plan includes Policy 3-u, which states that the County should pursue preservation agreements that are "designed to preserve land for agriculture, open space, wetlands or parks." (Attachment 4, p. 3-39 [Contra Costa General Plan, Chapter 3- Land Use Element].) Elsewhere, the Land Use Element explains that the purpose of non-urban preservation agreements is "to prevent annexation by cities of certain appropriate properties." (*Id.* at p. 3-9.)

II. The Draft EIR does not comply with CEQA.

A. The Draft EIR fails to provide an adequate project description.

Under CEQA, an "accurate and stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) An adequate description of all parts of a project are necessary if an EIR is to serve its informational purpose. If important elements are omitted, then "some important ramifications of the proposed project" may remain "hidden from view at the time the project [is] being discussed and approved." (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830.)

Here, the Draft EIR's informational purpose is undermined by the many uncertain project elements. First, the Draft EIR provides a misleading description of the residential development area in the Northern Site. According to the Draft EIR, all of the project's "urban development" would occur within the 30-acre Residential Development Area. (DEIR, p. 2-25.) As noted above, this characterization is incorrect and solely designed to allow the project to evade the requirement to obtain voter approval. Table 2-2 (Summary of Ground Disturbance Areas) separates the 30 acres of the Residential Development Area from the 23.71 acres of "Non-Urban Development Area" on the theory that the listed uses are "nonurban uses" as defined by County Ordinance 82-1.032. (DEIR, p. 2- 27.) But the detention basin, sewer pump station, project grading areas, and landslide grading areas are not "rural residential and agricultural structures" that would qualify as nonurban uses. (DEIR, pp. 2-27 to 2-28.) Rather, all of these project elements exist solely to serve the Project's 125 residential units.

The Town asks that the Project Description be revised to clearly explain that all of the following components would be included in the project's Residential Development Area:

Sub Area	Acreage	Source for Area Calculation
"Footprint" of the proposed 125 Residential Lots	22.5	Estimated from Exhibit 2-6 – Residential Site Plan
"Footprint" of the proposed Internal Project Roadways	7.5	Estimated from Exhibit 2-6 – Residential Site Plan
Area to be offered in dedication to the County and to receive frontage improvements, road widening and landscape improvements for Camino Tassajara	3.0	Parcel "F" on Exhibit 2-7 - Development Plan
Project Detention Basin	3.0	Parcels "A" and "H" on Exhibit 2-7 - Development Plan
Disturbed Area - Grading Improvements	7.0	Exhibit 2-13 - Grading Impact Areas
Disturbed Area - Remedial Grading	16.0	Exhibit 2-13 - Grading Impact Areas
Offsite parking lot improvements for Tassajara Hills Elementary School	0.7	Exhibit 2-13 - Grading Impact Areas
Totals	59.7 /30 acres	*NOTE: Total acreage is approximately 200% larger than the cited 30 acre "Residential Development Area"*

Additionally, the following parcels (and assumed parcels) appear to have been left out of the tabulation of the subdivision/vesting tentative map application requests:

Parcel or Anticipated Parcel	Size (Acres)	Purpose of Lot or Parcel
Parcel "A"	0.02	Assumed to relate to utility improvements associated with project
Parcel "D"	0.09	Provides project connection from "D" Street to abutting debris bench and "Disturbed Area – Remedial Grading"
Parcel "K"	0.19	Provides project connection from "D" Street to abutting debris bench and "Disturbed Area (Grading/Improvements)"

Second, as noted above, the Draft EIR fails to provide any details about the preservation agreement that the County intends to rely upon to make a finding under Section 82-1.018(a)(3). (See DEIR, p. 3.9-32.) The Draft EIR does not explain if there is an existing preservation agreement, does not identify which cities are or will be party to the preservation agreement, and does not include an exhibit of the land to be covered by the preservation agreement. The preservation agreement must be part of the project because it is one of the "approvals" that will be necessary for the project to proceed. The preservation agreement should have been listed along with the other discretionary approvals in the Draft EIR's project description. (See DEIR, pp. 2-1 to 2-2.) The vague reference to the County Code does not tell the public anything about that discretionary action or the factors and parties involved in considering it.

Third, the Draft EIR is unclear about the following items:

1. The total area of ground disturbance: It appears that certain project elements, including the Future Equestrian Staging Area, are still in flux. Consequently, the Draft EIR makes unsupported assumptions and fails to accurately identify the total acreage that will be disturbed under the project. (See DEIR, pp. 2-25, 2-36.)

2. The method for conveyance of preservation areas: The Draft EIR states that the "applicant proposes to convey almost all of the Southern Site . . . to the East Bay Regional Park District (EBRPD) by fee simple transfer and/or other appropriate legal mechanism, subject to a conservation easement on a portion of the Southern Preservation Area that would also need to be acceptable to the applicable resource agencies." (DEIR, p. 2-26 [similar statement with regards to the Pedestrian Staging Area and the Future Equestrian Staging Area].) There are too many uncertainties in this statement. Has EBRPD agreed to this proposal? What kind of legal mechanism will be used? What are the terms of the conservation easement? Have the applicable resource agencies approved these terms? Would EBRPD agree to take on the responsibilities imposed by mitigation measures in the EIR, such as MM BIO-3 (DEIR, p. 3.4-75). Given past experience, it is doubtful that the EBRPD would be willing to assume the risk of slope failure occurring and damaging surrounding properties. (See DEIR, p. 3.1-17.)

3. Annexation of the Northern Site into Wendt Ranch Geologic Hazard Assessment District (GHAD): The Draft EIR states that the "applicant proposes that the entire Northern Site be annexed into an existing . . . (GHAD) . . . for the purpose

of appropriately addressing geological hazards as permitted under GHAD law." (DEIR, p. 2-26.) The Draft EIR assumes that the GHAD would "assume specified responsibilities" and provide for "funding of monitoring and maintenance of biotic resources, as required and consistent with the Plan of Control." (DEIR, pp. 2-41 to 2-42.) It is unclear what biological resources the Draft EIR assumes a GHAD, which is designed to address geologic hazards, would be responsible for monitoring. (DEIR, pp. 3.9-10 to 3.9-11.)

4. Future uses on the potential future fire district parcel: The Draft EIR admits that "while the Project applicant has contingently offered to convey the Potential Future Fire District Parcel, it is not known whether [the San Ramon Valley Fire Protection District (SRVFPD)] will accept such offer of dedication, nor is it known what or when (if at all) any such potential future use(s) may be pursued." (DEIR, p. 2-42.) The Draft EIR mentions a Contingent Offer of Land Dedication, but it does not include a copy of this offer or any other written evidence that clarifies this potential arrangement. (DEIR, p. 2-27.)

5. LAFCO approval of annexation of Residential Development Area and Pedestrian Staging Area into service area of East Bay Municipal Water District (EBMUD): The Draft EIR explains that the "applicant is expected to request annexation of the Residential Development Area (as well as the adjacent Pedestrian Staging Area) into the service area of EBMUD." (DEIR, p. 2-44.) Such annexation requires approval from both EBMUD and LAFCO. The Draft EIR also states that the Pedestrian Staging Area could only include approximately 21 parking spaces and a restroom facility and water fountain if "LAFCO approval of the inclusion of this portion of the Project Site into the annexation proposal" is obtained. (DEIR, p. 2-36.) The Draft EIR does not explain when EBMUD and LAFCO approval would be obtained. It does not adequately explain what factors will be used by LAFCO to determine if the inclusion is appropriate. (DEIR, p. 3.9-34.)

Fourth, the Draft EIR presents two different potential sources of water supply for the project: (a) "a long-term agreement to purchase water from the Calaveras Public Utility District," or (b) "the augmenting of EBMUD's potable water availability by expanding recycled water use in lieu of existing potable water use within EBMUD's service area by an amount sufficient to offset the Project's water demand." (DEIR, p. 2-49.) According to the Draft EIR, the applicant "would request that EBMUD play a role (subject to the EBMUD Board's discretion) in implementing this flexible water strategy." (DEIR, p. 2-

44.) While the Town can understand the appeal of pursuing a flexible water strategy, the Draft EIR's reliance on two such different water supply options is problematic. The Draft EIR does not explain what factors will be considered to make a final decision between these two choices, one of which would involve the construction of 1.8 miles of pipeline within the right-of-way of San Ramon Valley Boulevard from Alcosta Boulevard to Montevideo Avenue. (DEIR, p. 2-49.) In addition, while Appendix J, Exhibit 1 to the DEIR refers to a "Term Sheet between CPUD and Project Proponent," that exhibit is not included.

B. The Draft EIR's description of the project baseline and setting is misleading and incomplete.

CEQA requires an EIR to "delineate environmental conditions prevailing absent the project, defining a 'baseline' against which predicted effects can be described and quantified." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447.) An EIR "must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published . . . from both a local and regional perspective." (CEQA Guidelines, § 15125, subd. (a).)[18] "If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete, or misleading, the EIR does not comply with CEQA." (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 87.) In this instance, the Draft EIR's "description and consideration" of the project baseline and setting is so incomplete and misleading that it fails to meet the standard set forth in Section 15125.

First, the Draft EIR claims that the project site is "semi-flat" (p. 2-25). This is misleading. Based on Exhibit 2-6, it appears that between 2.5 and 5 acres of the 30-acre Residential Development Area to be occupied by lots and roadways have existing slopes in the 15-30 percent horizontal-to-vertical slope gradient. (DEIR, p. 2-19.) Another five to 7.5 acres is estimated to have existing slopes in the 30-40 percent horizontal-to-vertical slope gradient. It is typical to include a slope gradient map as a project exhibit to show existing slope gradients, both for the area to be occupied by roads and lots and for the area of anticipated corrective soils and geotechnical work. (See General Plan Policies 9-14, 9-22, 9-24.) General Plan Policy 10-24 states, in part, "Development on very steep open hillsides and significant ridgelines throughout the County shall be restricted, and

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[18] / CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.

hillsides with a grade of 26 percent or greater shall be protected through implementing zoning measures and other appropriate actions." To correctly evaluate the project's conformance to general plan policies, the Draft EIR should indicate how much of the site, inclusive of area described on Exhibit 2-13 as "Disturbed Area (Grading/Improvements), has an existing slope gradient of 26 percent or greater.

Figure 2 (Site Plan) from Appendix E should be included in the Draft EIR's Project Description section text. Figure 2 indicates that half a dozen earth flows are in direct contact with, or overlap with, the proposed residential lots in the project. One of these earthflows is identified as a deep-seated earth slump/flow. That deep-seated slide occupies more than six acres, with its "footprint" overlapping all or portions of proposed Lots 34-39 and Lots 51-59. More than half of the horizontal footprint of the slide has an existing slope gradient in excess of 20 percent. The topmost reaches of the slide, as well as the area extending up to the top of the ridge above the mapped location of the slide, has an existing slope gradient of over 40 percent. The hinge point at the point the slide transitions from the lower, flatter area of the slide to the upper portion of the slide; and the area above the mapped top of the slide scales to a vertical rise of approximately 80 feet across a horizontal distance of approximately 200 feet. Recently completed Google Earth oblique aerial mapping appears to readily indicate the presence of a related slide that is not indicated on Figure 2—a slide that is located above and slightly east of the centerline of the deep-seated slide and that appears to extend to the ridge. It may be that this omitted slide occurred after the 2005 site-specific landslide evaluation that was part of the ENGEO geotechnical feasibility study. Please see the Town's more complete comments on Geotechnical and Grading Concerns in Attachment 2. The fact that the project site has several "explored landslides . . . found to be at least 30 to 40 feet thick" should not be buried in Appendix E of the DEIR. (See Draft EIR, Appendix E- ENGEO Preliminary Geotechnical Report, p. 3.)

Second, the Draft EIR provides a misleading description of the mature California black walnut trees that will be removed as part of the project despite being identified as protected trees under the County Code. (DEIR, p. 3.4-43.) Apart from indicating that they are "greater than 6.5 inches in diameter," the Project Description section provides very little information about the 10 mature walnut trees in the southwest corner of the Northern Site. (DEIR, pp. 2-34 to 2-35.) Elsewhere, the Draft EIR discloses that these walnut trees are remnants of a historic orchard dating back to the 1950s. (DEIR, pp. 3.2-4 [part of orchard dating back to 1958-1968], 3.5-11 [orchard present in archival photos from 1946].) Appendix C of the Draft EIR explains that the average diameter of the single-trunked walnut trees is 32 inches and that several of the trees have multiple

trunks. (Appendix C, pp. 137, 150-151 ["Tree Assessment" table].) And Appendix C indicates that nine of the walnut trees are in "fair" condition, which means that they are trees "with moderate vigor . . . [and] moderate structural defects that might be mitigated with regular care." (Appendix C, pp. 136-137.) Yet, the Draft EIR dismisses these walnut trees as not being "in good condition" because of the "decay" present. (DEIR, p. 3.4-43.) This characterization is directly contradicted by Appendix C, which reports that at least two of the California black walnuts to be removed are moderately suited for preservation. (Appendix C, pp. 143, 150-151 [trees # 28 and 29 marked for removal and having "moderate" suitability for preservation].) Please revise the Project Description to include a fuller and more accurate discussion of the California black walnut trees to be removed during grading for the residential units.

C. The Draft EIR improperly relies upon project design elements that should be included as enforceable mitigation measures.

In *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658, the court held that the EIR in that case failed to comply with CEQA in its evaluation of the project's impact on old growth redwood roots adjacent to the roadway. Caltrans had incorporated mitigation measures into its project description and concluded that any potential impacts would be less than significant. "By compressing the analysis of impacts and mitigation measures into a single issue," the court stated, "the EIR disregards the requirements of CEQA."

Here, the Draft EIR improperly relies upon project design elements instead of including these measures as enforceable mitigation measures. For example, the Draft EIR explains that the "landslide grading area" incorporates "recommended measures into the Project design to address geotechnical issues as recommended by the geotechnical engineer." (DEIR, p. 2-28.) Appendix E provides eight pages of recommendations that ENGEO indicated "should be incorporated in the design and construction of the project." (Appendix E, pp. 11-19.) It is unclear if the project design incorporates all of these recommendations. And there are no mitigation measures in the Geology, Soils, and Seismicity section that specifically include or reference these eight pages of recommendations. (DEIR, pp. 3.6-12 to 3.6-17 [MM GEO-1 simply requires applicant to submit a design-level geotechnical investigation to the County for review and approval].)

Similarly, the Draft EIR improperly assumes that a GHAD will be formed and that a Plan of Control will be implemented to address geologic hazards related to the location

of the project on "an unstable geologic unit or soil." (DEIR, pp. 3.6-15 to 3.6-17.) The Draft EIR states that with "the implementation of MM GEO-1 *and the GHAD*, impacts related to potentially unstable geologic conditions would be reduced to less than significant." (DEIR, p. 3.6-17, italics added.) In other words, the Draft EIR based its conclusion that Impact GEO-3 is less than significant partly on the assumed future establishment of a GHAD. But this assumption is not supported by substantial evidence because the formation of a GHAD is not required by an enforceable mitigation measure. Although the Project applicant might earnestly "anticipate establishing a GHAD," the applicant's anticipation cannot be equated with an enforceable mitigation measure. (DEIR, p. 3.6-16.)

These are just two examples. Please review the entire Draft EIR and consider if there are other elements of the project design or other unsupported assumptions that properly should be transformed into enforceable mitigation measures.

D. The Draft EIR fails to adequately analyze and mitigate the project's potentially significant environmental impacts.

CEQA requires an EIR to provide "a sufficient degree of analysis" about a proposed project's adverse environmental impacts to inform the public and allow decisionmakers to make intelligent judgments. (CEQA Guidelines, § 15151.) An EIR must demonstrate a good faith effort at full disclosure. As explained below, additional analysis and mitigation are necessary for the Draft EIR here to comply with CEQA.

1) Transportation and Traffic:

The Draft EIR concludes that the project will result in four different significant and unavoidable transportation and traffic impacts:

- Impact TRANS-1 ("unacceptable traffic operations under Existing Plus Project conditions") (pp. 3.12-34 to 3.12-44);
- Impact TRANS-2 ("unacceptable traffic operations under Near-Term Plus Project conditions") (pp. 3.12-44 to 3.12-57);
- Impact TRANS-3 ("unacceptable traffic operations under Cumulative Plus Project conditions") (pp. 3.12-57 to 3.12-68) ; and
- Impact TRANS-5 ("conflict with an applicable congestion management program's level of service standards established by the County congestion management agency for designated roads or highways") (pp. 3.12-76 to 3.12-81).

CEQA requires the County to consider all feasible mitigation measures and alternatives that may help avoid or lessen these significant and unavoidable impacts. But the Draft EIR fails to do this.

The California Supreme Court has "explained that [an agency's] duty to mitigate extend[s] beyond the boundaries of the [project]." (*City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 957.) This is because "CEQA requires a public agency to mitigate or avoid its projects' significant effects not just on the agency's own property but '*on the environment*' (Pub. Resources Code, § 21002.1, subd. (b), italics added), with 'environment' defined for these purposes as 'the physical conditions which exist *within the area which will be affected by a proposed project.*' (*id.*, § 21060.5, italics added)." (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 360.) Here, the area that will be affected by the project includes the Town of Danville.

Please review and respond to the attached technical comments from the Town's expert traffic consultant. (Attachment 1 [Peer Review of Tassajara Parks Traffic Impact Study].) Among other concerns, the traffic peer review concludes that: (a) the Draft EIR's Traffic Impact Study uses parameters that do not match the Town of Danville's signal timing plans at many intersections; (b) multimodal LOS analysis was not but should be conducted at least at intersections with high pedestrian/bike volumes; (c) school PM peak analysis was not but should be conducted at intersections next to schools; (d) several mitigation measures related to signal timing improvements overestimate the benefits of signal timing and should be revisited; (e) there is insufficient information about the nearest transit stop on Route 35; (f) select link analylsis using more accurate assumptions about the project and surrounding land uses run by the Town's consultant shows significantly different trip generation patterns than those used in the Draft EIR's study; and (g) traffic circulation analysis for the schools within the project study area were not but should be analyzed.

Additionally, the Town notes that the design of the landscape buffer between road widening improvements for Camino Tassajara and project lots is inadequate when compared to the depth of perimeter landscape buffers provided directly south of the project site or west of the project site, which typically ranged from 40 to 50 feet in width. The buffered setback should match the depth of the widest buffer provided in proximate projects – not be the narrowest.

2) Air Quality/ GHG Emissions:

The Draft EIR concludes that Impact AIR-6 ("generate direct and indirect greenhouse gas emissions that would result in a significant impact on the environment") is significant and unavoidable. (DEIR, p. 3.3-65.) With regard to the remaining Air Quality/ Greenhouse Gas Emissions (GHG) impacts, two are less than significant and would not require mitigation, while four are less than significant with mitigation. (DEIR, pp. ES-7 to ES-9.) There are numerous defects in the Draft EIR's analysis of these impacts.

First, the Draft EIR's reliance upon the Bay Area Air Quality Management District's (BAAQMD's) adopted thresholds of significance is problematic. (DEIR, pp. 3.3-36 to 3.3-37, 3.3-61 to 3.3-65.) Table 3.3-5 and Table 3.3-27 both indicate that the BAAQMD threshold for operational GHG emission impacts is 4.6 $MTCO_2e$ per service population per year (SP/yr). But the Draft EIR does not explain if this threshold is tied to 2020 goals in Assembly Bill (AB) 32, the 2006 Global Warming Solutions Act. Since the project's lifespan is assumed to be 30 years (DEIR, p. 3.3-64) and construction wouldn't be complete until 2020 (DEIR, p. 2-50), the Draft EIR must use significance thresholds for operational GHG emission impacts that are tied to relevant 2050 goals. For example, Executive Order S-3-05 calls for the reduction of GHG emissions to 80 percent below 1990 levels by 2050. This 2050 goal represents the level scientists believe is necessary to reach climate-stabilizing levels. And Executive Order B-30-15 establishes a mid-term GHG reduction target for California of 40 percent below 1990 levels by 2030. If the BAAQMD's recommended operation threshold of 4.6 $MTCO_2e$/SP/yr does not take into account the more recent 2030 and 2050 goals, then the Draft EIR needs to consider using a different or additional significance threshold.

Second, the analysis of Impact AIR-6 suffers from other deficiencies. Noting that BAAQMD does not have a construction-related GHG generation threshold, the Draft EIR provides a calculation of the total construction emissions (1,281 $MTCO_2e$) without any additional analysis to help the public and decisionmakers to determine if this amount of emissions is significant. (DEIR, pp. 3.3-62 to 3.3.-63.) Additionally, MM AIR-6 is weak. Why is on-site generation of renewable energy, such as solar, only required to meet 10 percent of the Project's total energy demand? Why not 25 percent or 40 percent or 100 percent? Why doesn't the Draft EIR discuss and require the purchase of carbon credits or other potentially feasible mitigation measures? The Draft EIR cannot hide behind a significant and unavoidable impact conclusion to avoid considering all potentially feasible mitigation.

Third, the analysis of Impact AIR-1 ("conflict or obstruct implementation of the applicable air quality plan") is inaccurate. (DEIR, pp. 3.3-38 to 3.3- 40.) The Draft EIR concludes that the project is consistent with applicable criterion in BAAQMD's 2010 Clean Air Plan. But the project is inconsistent with Criterion 1 ("support the primary goals") because the significant and unavoidable GHG emissions impact (Impact AIR-6) cannot reasonably be interpreted as supporting the air quality plan's primary goal of reducing GHG emissions and protecting the environment. (DEIR, p. 3.3-38.) The Project is also inconsistent with Criterion 2 ("include applicable control measures"). (DEIR, pp. 3.3-38 to 3.3-39.) One of the 2010 Clean Air Plan's control measures is "ECM 2-Renewable Energy," which consists of two components: "1) promote incorporation of renewable energy sources into new developments and redevelopment projects, and 2) foster innovative renewable energy projects through provision of incentives." (See BAAQMD's Clean Air Plan, Vol. II, p. E-6, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/Plans/2010%20Clean%20Air%20Plan/CAP%20Volume%20II_Sections%20A-F.ashx (last visited June 30, 2016).) The 2010 Clean Air Plan explains that one of the primary approaches to increasing renewable energy is to "replace grid-tied electricity with 100% renewable electricity produced through distributed generation such as solar panels, micro wind turbines, or onsite cogeneration." (*Ibid.*) The Draft EIR points to the project's provision of 10 percent on-site renewable energy generation and the fact that PG&E's power mix comes from 19 percent renewable sources as evidence that the project is consistent with this control measure. But this is unconvincing evidence. The project would need to require a much higher percentage of onsite renewable energy in order to honor measure ECM-2.

Fourth, the analysis of operational "CO hotspot" impacts associated with traffic congestion under Impact AIR-2 is incorrect. (DEIR, pp. 3.3-41 to 3.3-42.) The Draft EIR indicates that the project must be "consistent with an applicable congestion management program" among other criteria. The Draft EIR concludes that the project is consistent with the Contra Costa Transportation Agency's (CCTA's) Congestion Management Plan (CMP). But the Draft EIR reveals that three freeway segments would "operate below standards under Cumulative Conditions," and the addition of the project would result in LOS F. In spite of this, the Draft EIR claims that the project is consistent with the CMP because the Traffic Impact Study "identified mitigation measures to reduce Project impacts on these CMP routes." (DEIR, p. 3.3-42.) What the analysis of Impact AIR-2 fails to consider is that for Impact TRANS-3 the Draft EIR concluded that "the project would result in significant unavoidable impacts to freeway segments even after the implementation of mitigation" under the Cumulative Plus

Project conditions. (DEIR, p. 3.12-67.) It is unclear how significant and unavoidable impacts resulting in traffic congestion that contributes to a CO hotspot on these freeway segments can be found to be consistent with the CMP.

Fifth, the Draft EIR improperly relies on MM AIR-3 to support a less than significant conclusion for Impact AIR-3 ("potential to result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is in nonattainment"). (DEIR, pp. 3.3-43 to 3.3-54.) MM AIR-3 states: "Off-road diesel-powered construction equipment greater than 50 horsepower shall meet United States Environmental Protection Agency Tier 4 off-road emissions standards *to the extent feasible.*" (DEIR, p. 3.3-54, italics added.) Without further explanation, the use of the phrase "to the extent feasible" here renders the entire mitigation measure vague and unenforceable. Who gets to decide if it is feasible? What are the criteria for deciding feasibility? The Draft EIR needs to explain if the calculations in Tables 3.3-11 through 3.3-15 (mitigated construction emissions) assume that 100 percent of the off-road diesel-powered construction equipment greater than 50 horsepower would meet Tier 4 standards. Such an assumption would not be supported by substantial evidence because compliance with MM AIR-3 and its "to the extent feasible" clause could result in much less than 100 percent of the equipment meeting Tier 4 standards.

Sixth, the analysis of Impact AIR-4 ("potential to expose sensitive receptors to substantial pollutant concentrations") is deficient. The project's residential area is located just 133 feet away from Tassajara Hills Elementary School and just 175 feet away from residences on Kingswood Drive. The Draft EIR downplays the potential impacts from use of heavy diesel equipment by stating that the preparation phase "would only occur over a brief duration (estimated to require approximately 173 working days)." One hundred and seventy-three working days this close to an elementary school and residences does not appear to be a "brief" duration. Please also explain if the calculations in Table 3.3-23 (Construction Health Risk Assessment Summary with Mitigation) assume that 100 percent of the off-road diesel-powered construction equipment greater than 50 horsepower would meet Tier 4 standards. (DEIR, p. 3.3-57 [relying on the implementation of MM AIR-3]; see also DEIR, Appendix B, p. 75 [Appendix C –Health Risk Assessment Screening].) And please consider evaluating the potential risk of Valley Fever, which may affect sensitive receptors even if MM AIR-2 is able to lessen impacts from construction fugitive dust.

Finally, the analysis of Impact AIR-7 ("conflict with any applicable plan, policy or regulation of an agency adopted to reduce the emissions of greenhouse gases") is

incorrect. (DEIR, pp. 3.3-65 to 3.3-70.) The Draft EIR concludes that the project is consistent with the Contra Costa County Climate Action Plan's applicable measures. (DEIR, pp. 3.3-66 to 3.3-67.) Measure LUT 4 states: "New residential and nonresidential development will be located within one half-mile of a BART or Amtrak station, or within one quarter-mile of a bus station." (DEIR, p. 3.3-67.) The Draft EIR admits that the project is "not currently served by transit," meaning that the residential development area is not located within one-half-mile of a BART or Amtrak station, or within one-quarter-mile of a bus station. Yet, the Draft EIR assumes that the project is consistent with the Climate Action Plan because it "increases development density in the area, increasing the feasibility of providing service on Tassajara Road in the future." This conclusion is unsupported by the substantial evidence and must be revised.

3) Land Use, Population, and Housing:

The Draft EIR's discussion of the Urban Limit Line is misleading and incomplete. (DEIR, p. 3.9-4.) Please see comments above regarding the voters' intent behind the establishment of the ULL and the intent behind the 30-acre exception to voter approval. The Draft EIR should be revised to present a more complete picture of the ULL issue, including acknowledging the importance of providing affordable housing. As noted above, please provide more details about the intended use of the preservation agreement finding in Section 82-1.018(a)(3). (DEIR, p. 3.9-32.)

The Town also notes that the project would not qualify for the finding under Section 82-1.018(a)(4) for a "minor change to reflect topographical characteristics or legal boundaries." The existing ULL boundary (which was described at the time as representing the "Watershed and Ridge Line boundary") accurately represents the topographical characteristics in that portion of the Northern Site so a finding under subsection (a)(4) would not be justified.)

The Draft EIR concludes that Impact LU-1 ("would not conflict with any applicable provisions of the Contra Costa County General Plan adopted for the purposes of avoiding or mitigating an environmental effect") is less than significant. But this conclusion is not supported by substantial evidence. The project is inconsistent with Policy 3-7 because the project will result in significant unavoidable traffic impacts; it is inconsistent with Policy 3-9 because the project prematurely extends development into undeveloped areas outside the ULL before utilizing vacant and under-utilized sites within urban areas; it is inconsistent with Policy 3-10 because the project extends growth-inducing infrastructure into agricultural areas outside the ULL; and it is

inconsistent with Policy 3-11 because the project conflicts with existing agricultural uses. (DEIR, pp. 3.9-28 to 3.9-29.) Also, the project's small average lot size is not consistent with the development to the west of the project and is not aligned with the County's policy directive to go to lower density development at the outer edges of development.

The Draft EIR concludes that Impact LU-2 ("would not conflict with any applicable provision of the Contra Costa County Ordinance Code adopted for the purpose of avoiding or mitigating an environmental effect") is less than significant, in part, because the "Project would pay in-lieu fees in place of providing inclusionary housing units as part of the Project." (DEIR, pp. 3.9-30 to 3.9-33.) As noted above, the Draft EIR improperly dismisses the provision of onsite affordable housing without any discussion or analysis. The strategy of paying in-lieu fees is inconsistent with the purpose behind the 30-acre exception to voter approval of changes to the ULL.

In the analysis of Impact LU-3 ("would not conflict with any applicable Local Agency Formation Commission policies adopted for the purposes of avoiding or mitigating an environmental effect"), the Draft EIR assumes that the Contra Costa LAFCO will approve the extension of EBMUD utility service to the Residential Development Area. (DEIR, pp. 3.9-34 to 3.9-35.) Please provide more information about the process and criteria that would be used by the Contra Costa LAFCO. Why is it reasonable to assume that approval will be granted?

In the analysis of Impact LU-4 ("may conflict with any applicable East Bay Municipal Utility District annexation policies adopted for the purposes of avoiding or mitigating an environmental effect"), the Draft EIR concludes that the project is consistent with all applicable policies. (DEIR, pp. 3.9-35 to 3.9-39.) But the project is not consistent with Policy 3.01 because it is outside the Ultimate Service Boundary (USB). And Table 3.9-7's explanations of the project's consistency with exceptions to Policy 3.01 are unconvincing: (i) 30 acres is not a small boundary adjustment; (ii) the project's residential area is not the smaller part of a larger project located primarily within the USB; and (iii) there is no support for the conclusion that EBMUD is the logical provider of water service. (DEIR, pp. 3.9-36 to 3.9-37.)

4) Aesthetics, Light, and Glare:

The Draft EIR's conclusion that Impact AES-2 ("would not substantially degrade the existing visual character or quality of the site and its surroundings") is less than

significant is unsupported. (See DEIR, p. 3.1-18 to 3.1-23.) The project involves changing more than 30 acres of agricultural/ open space lands outside the ULL to residential uses. Additionally, the project will result in the installation of a 250-foot-long and 4-foot-tall wall along Camino Tassajara. (DEIR, p. 3.1-18.) But the Draft EIR improperly reasons that these changes "would not substantially degrade the visual quality of the Project Site" because they are so small when compared to the great number of acres that will be preserved by the Project. (DEIR, p. 3.1-23.) The visual simulation of the Project in Exhibit 3.1-2 demonstrates clearly that the construction of 125 new residential units will result in a significant change to the existing visual character of the project site. In addition, the visual simulation provided does not account for the likelihood that the slide corrective work above proposed lots 32-40 will result in steep engineered slopes with drainage benches extending up to the ridgeline above these lots – scarring the existing topographic conditions that will likely be visible above the perimeter architectural wall and the proposed residences that would back up to Camino Tassajara. The aesthetic impact of the new residential development is not somehow canceled out or negated just because the project also proposes to preserve other portions of the project site at a location some distance away from the residential development. And, contrary to what the Draft EIR implies, the aesthetic impact of new residential development is not automatically reduced to less than significant levels because there are existing residences nearby.

The project is inconsistent with the following General Plan Goals that are related to aesthetics: LU3.8-3-A ("protection of agriculture and open space"), 9-B ("conserve the open space and natural resources of the County through control of the direction, extent and timing of urban growth"), 9-9 ("preserve open space lands located outside the Urban Limit Line"; "County shall not designate any open space land located outside the ULL for an urban use"), and 9-15 ("projects shall be designed to minimize damages to significant trees and other visual landmarks"). (DEIR, pp. 3.1-3 to 3.1-4.) The project will convert agriculture and open space outside the ULL to residential uses, and it will remove several mature California black walnut trees that are protected by the County's tree ordinance. Please consider these inconsistencies when reevaluating the project's aesthetic impacts.

5) Agricultural Resources:

The Draft EIR discloses that the project would change 30 acres of Farmland of Local Importance to residential use, rezoning from Agricultural Land to P-1, Planned Unit

District. (DEIR, p. 3.2-11.) Yet the Draft EIR concludes that Impact AG-2 ("would not conflict with existing zoning for agricultural use, or a Williamson Act contract") is less than significant. (DEIR, pp. 3.2-12 to 3.2-13.) This conclusion appears to be based on circular reasoning: the project will be consistent once approved because the project requires approval of rezoning. Please revise to correct this deficiency.

6) Biological Resources:

As noted above, the Draft EIR provides a misleading description of the Northern California black walnut trees that will be removed by the project. The Draft EIR explains that there are only three extant native populations and only one viable native occurrence of the California black walnut as of 2003. (DEIR, p. 3.4-14.) And the Draft EIR goes on to explain that planted or naturalized California black walnut, such as the ones on the project site, threaten native stands and "have no special status." (DEIR, p. 3.4-19.) This is confusing because even the native black walnut trees do not have federal or state status. (DEIR, p. 3.4-14.) Why is the Draft EIR trying to disparage planted or naturalized California black walnut? The Draft EIR should acknowledge in this discussion that the black walnut trees on the project site are locally important and protected by the County tree ordinance.

Mitigation measure BIO-3 states that the "applicant is proposing to compensate for Impacts to waters of the U.S. and State by creating wetlands on the Southern Site," but that the applicant "may also choose to purchase mitigation credits" in lieu of creating the wetlands. (DEIR, p. 3.4-75.) Please explain who would monitor the created wetlands. And how many mitigation credits would be bought? Will the mitigation credits be required to meet the 2:1 (creation to impact) ratio indicated in subsection (b)?

The Draft EIR concludes that Impact BIO-5 ("would not conflict with local policies or ordinances protecting biological resources") is less than significant. But the project is consistent with Policy 3-4 because it will convert agricultural lands to urban uses; it is inconsistent with Policy 8-6 because significant and mature California black walnut trees will be removed and will not be preserved; it is inconsistent with Policy 8-9 because the project site contains endangered species and the project will not maintain all areas in their natural state; and it is inconsistent with Policy 8-27 because the project will impact wetlands instead of protecting them.

Finally, as noted above, the Draft EIR assumes that the project will be annexed into an existing GHAD, which would "assume specified responsibilities" and provide for

"funding of monitoring and maintenance of biotic resources, as required and consistent with the Plan of Control." (DEIR, pp. 2-41 to 2-42.) Please explain why it is reasonable to assume that a GHAD, which is designed to address geologic hazards, would have the interest in and expertise to manage biological resources. (DEIR, pp. 3.9-10 to 3.9-11.)

7) Cultural Resources:

Based on CEQA Guidelines section 15064.5 and Appendix G of the CEQA Guidelines, a project would have significant adverse impacts to cultural resources if the project would:

- Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5;
- Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to Section 15064.5;
- Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; or
- Disturb any human remains, including those interred outside of formal cemeteries.

Any one of the above-cited impacts to a historical resource, as defined by Public Resources Code sections 21084.1 and 5020.1, constitutes a substantial adverse change pursuant to CEQA. A substantial adverse change to a historical resource is considered a significant impact on the environment.

CEQA requires that, for projects financed by, or requiring the discretionary approval of public agencies in California, the effects that a project has on historical and unique archaeological resources must be considered. (Pub. Resources Code, § 21083.2, subd. (a); CEQA Guidelines, § 15064.5.) For purposes of CEQA, a historical resource is "a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources [CRHR]"; and any "substantial adverse change in the significance of an historical resource" is considered a significant effect on the environment. (Pub. Resources Code, § 21084.1.) Historical resources can be "any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California." (Pub. Resources Code, § 5020.1, subd. (j).) "Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation,

or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." (CEQA Guidelines, § 15064.5, subd. (b)(1).)

The Draft EIR states that the California black walnut trees on the project site are remnants of a historic orchard dating back to the 1950s. (DEIR, pp. 3.2-4 [part of orchard dating back to 1958-1968], 3.5-11 [orchard present in archival photos from 1946].). Has the County determined whether the remnants of the walnut orchard are a historic resource? If the County finds the walnut orchard to be a historic resource, the removal of these trees would be a substantial adverse change and would thus be a significant cultural resources impact. (CEQA Guidelines, § 15064.5, subd. (b)(1).)

Mitigation measure CUL-1 provides that, in the event of the inadvertent discovery of potentially significant cultural resources during construction, the "archaeologist shall make recommendations concerning appropriate measures, including but not limited to excavation and evaluation of the finds." (DEIR, pp. 3.5-13 to 3.5-14.) This mitigation is insufficient to ensure that impacts will be less than significant because it does not ensure no substantial adverse change in the significance of the historical resource. CEQA Guidelines section 15064.5 provides that relocation or alteration of the resource of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired is a substantial adverse change. (CEQA Guidelines, § 15064.5, subd. (b)(1).)

Mitigation measure CUL-3 requires that, in the event a significant paleontological resource is inadvertently discovered during construction, "the paleontologist shall design and carry out a data recovery plan consistent with the Society of Vertebrate Paleontology standards." (DEIR, p. 3.5-15.) What are the standards referenced here? Again, this mitigation is insufficient to ensure that impacts will be less than significant because it does not ensure that there would be no substantial adverse change in the significance of the historical resource.

8) Geology, Soils, and Seismicity:

Please review and respond to the attached technical comments from the Town's staff. (Attachment 2 [Geotechnical and Grading Concerns].)

Appendix E, the Preliminary Geotechnical Report, includes recommended measures that should be referenced in the Geology, Soils, and Seismicity section. (See, e.g., DEIR,

Appendix E, pp. 8["Landslide mitigation measures should be incorporated where improvements are planned adjacent to open-space areas that will remain in a natural condition."], 12 ["The Geotechnical Engineer or qualified representative should be present during all phases of grading operations to observe demolition, site preparation, grading operations, and subdrain placement"],16 ["2:1 slopes should be provided with erosion control protection such as Rhino Snot Soil Stabilizer or other equivalent soil stabilization product"; "subsurface water flow and spring activity should be controlled in development areas through the use of subdrains"], 19 ["we recommend that landsliding at the site be further characterized in order to assess the potential impact to the site grading and proposed development"].)

If implementation of a GHAD is necessary to reduce impacts to less than significant levels, this requirement should be identified as a mitigation measure.

Please also explain how the project is consistent with General Plan Policies 10-22, 10-24, 10-26, 10-28, and 10-29 (see Attachment 2). The slides, steepness of the slopes in and above the slides, and the highly visible scar that likely would be left after slide mitigation (e.g., exposed bedrock from the ridgeline down 80-100 vertical feet of the repair area and/or use of geogrid reinforcing) all fly in the face of the intent of General Plan Safety Element Policies.

9) Hazards and Hazardous Materials:

In its discussion of Impact HAZ-5 ("would not expose people or structures to a significant risk of loss, injury or death involving wildland fires"), the Draft EIR states that "consistent with the SRVFPD Exterior Hazard Abatement Program, open space areas adjacent to the Residential Development Area would be required to provide a 15-foot disked or bladed fuel break along the perimeter of the property." (DEIR, p. 3.7-16.) Please explain more about the SRVFPD Exterior Hazard Abatement Program. Who ensures compliance with this program and how? If these measures are not codified, why doesn't the Draft EIR include these requirements as mitigation measures?

10) Noise:

The Draft EIR concludes that Impact NOI-1 ("exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance") is less than significant with mitigation. (DEIR, pp. 3.10-18 to 3.10-30.) In particular, the Draft EIR concludes that pipeline construction noise impacts would be

less than significant with mitigation. (DEIR, p. 3.10-24.) But the analysis for this impact is inaccurate. If the worst case scenario of noise is 85 dBA L_{max} at a distance of 50 feet from the active construction area, and the six-to-eight-foot-high soundwall provides 6 dBA to 10dBA reduction to residences along the west side of San Ramon Valley Boulevard, then wouldn't the residences experience up to 79 dBA L_{max}? Yet the DEIR reports that it will be 69 dBA L_{max}.

Mitigation Measure NOI-1a provides for an "onsite complaint and enforcement manager" to respond to and track complaints. Please explain how noise complaints be handled. Will relocation be offered? Or will activities be stopped? (DEIR, p. 3.10-29.) The mitigation measure should be revised to specify the potential avenues for redressing complaints.

Mitigation Measure NOI-1b requires all proposed residential units located within 216 feet of the centerline of Camino Tassajara to include air conditioning or some form of ventilation system to ensure that windows can remain closed for a prolonged period of time. (DEIR, pp. 3.10-26, 3.10-30.) This mitigation measure appears inadequate. Were other mitigation measures considered? How does this requirement compare to requirements imposed on other projects that the County has conditionally approved because the ambient noise levels are between 60-70 dBA L_{dn}? (DEIR, p. 3.10-12.)

Please explain how the Project is consistent with the following General Plan policies: Policy 11-2 ("standard for outdoor noise levels in residential areas is a DNL of 60 dB"), and Policy 11-4 ("require new single-family housing projects to provide for an interior DNL of 45 dB or less"). (DEIR, p. 3.10-12.)

Please also explain why long-term noise measurements were only conducted on the Southern Site and not the Northern Site? (DEIR, p. 3.10-6.)

11) Public Services and Recreation:

In the discussion of Impact PSR-1 ("would not result in substantial adverse physical impacts associated with the provision of new or physically altered fire facilities"), the Draft EIR states that "comments and requirements provided by SRVFPD in its review" of the planning application for the Project "would be included as conditions of approval to ensure appropriate access and compliance with all applicable codes and standards." (DEIR, pp. 3.11-11 to -12) But what are these conditions and requirements? Why arethey

not included in the Draft EIR as mitigation measures? Please revise this discussion to ensure there is no improper deferral of mitigation.

The Draft EIR concludes that Impact PSR-2 ("would not result in substantial adverse physical impacts associated with the provision of new or physically altered law enforcement facilities") is less than significant. But there is no substantial evidence to support this conclusion. Police response times are not meeting General Plan Policy 7-59 goals of 5 minutes for 90 percent of all priority 1 and 2 call's emergency response times in urban and suburban areas (DEIR, pp. 3.11-3, 3.11- 8). Actual response times are 11 minutes, 24 seconds to 16 minutes, 46 seconds. And the project's response time could be as high as 17 minutes. Yet, DEIR simply relies upon a vague reference to a "response" from the Sheriff's Office that "did not indicate that the Project would result in the need for new or expanded Sheriff facilities in order to maintain acceptable service ratios, response times, or other performance objectives." (DEIR, p. 3.11-12.) Please provide a copy of any written response from or a more complete summary of any conversations with the Sheriff's Office.

In addition, the DEIR does not address potential impacts on the Town of Danville's Police Department. Because the Town's police department facility and officers in the field are physically closer to this unincorporated area of the County, the Town's officers are frequently first responders to Priority 1 calls under mutual aid. Any addition of units, as well as increased response times due to additional traffic, should be addressed.

12) Utilities and Service Systems:

In the discussion of Impact USS-2 ("would not require or result in the construction of wastewater treatment facilities or expansion of off-site existing facilities") and Impact USS-3 ("would not result in a need for new or expanded off-site storm drainage facilities"), the Draft EIR focuses only on "off-site" facilities. (DEIR, pp. 3.13-35 to 3.13-36.) Yet the corresponding significance thresholds for these impacts does not include the term "off-site" and instead broadly applies to any new facilities. (DEIR, p. 3.13-21.) Please explain this discrepancy.

E. The Draft EIR's analysis of cumulative effects is inadequate and violates CEQA.

An EIR must analyze cumulative impacts because "the full environmental impact of a proposed project cannot be gauged in a vacuum." (*Communities for a Better Environment*

v. Cal. Resources Agency (2002) 103 Cal.App.4th 98, 114.) The CEQA Guidelines define cumulative impacts to be "the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." (Guidelines, § 15355, subd. (b).) Thus, impacts that are "individually minor" may be "collectively significant." (*Ibid.*)

In assessing a proposed project's contribution to cumulative effects, CEQA requires a lead agency to undertake a two-step analysis. First, the agency must consider whether the combined effects from the proposed project and other projects would be cumulatively significant. And second, if the answer is yes, the agency must then consider whether the "proposed project's incremental effects are cumulatively considerable." (*CBE v. Resources Agency, supra*, 103 Cal.App.4th at p. 120; Pub. Resources Code, § 21083, subd. (b)(2); Guidelines, §§ 15355, subd. (b), 15064, subd. (h)(1).)

Here, the Draft EIR's Cumulative Effects section appears to disregard the fact that impacts that are individually minor may be collectively significant. Only those impacts with significant and unavoidable project-level impacts are found to be cumulatively considerable. (DEIR, pp. 4-5 [greenhouse gas emissions impacts], 4-13 [transportation impacts].) For all the other impacts, the Draft EIR concludes the cumulative impacts are less than cumulatively considerable based on two assumptions: (i) that the Project's project-specific mitigation measures would reduce the project's contribution to cumulative impacts to less than cumulatively considerable levels; and (ii) that other cumulative projects would be similarly required to implement adequate mitigation. These assumptions are not supported by substantial evidence.

For example, in discussing the cumulative Biological Resources impacts, the Draft EIR states that the "required mitigation would reduce the Project's contribution to any significant cumulative impact on special-status wildlife species to less than cumulatively considerable." (DEIR, p. 4-6.) There is no further discussion of why this conclusion is reasonable and accurate. Instead, this conclusory statement is followed by another in the same vein: "Some of the other projects listed in Table 4-1 are located on sites with similar biological attributes and, therefore, would be required to mitigate for impacts on special-status plant and wildlife species in a manner similar to the project." There is no true analysis or evidence offered, much less substantial evidence.

Similarly, in discussing cumulative Agricultural Resources impacts, the Draft EIR states that, "due to the increase in urbanization . . . since the 1940s," there is an "existing cumulatively significant impact related to loss of farmland." (DEIR, p. 4-4.) And the

Draft EIR admits that the project could result in the conversion of lands from Farmland of Local Importance to non-agricultural uses. But there is no explanation for why the project's incremental effects are not cumulatively considerable. (DEIR, p. 4-4.)

F. The Draft EIR lacks a reasonable range of alternatives and improperly dismisses alternative locations or offsite alternatives.

CEQA requires an EIR to "describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects . . . and evaluate the comparative merits of the alternatives." (Guidelines, §§ 15126.6, subd. (a), 15002, subd. (a)(3).) The evaluation of alternatives must "contain analysis sufficient to allow informed decision making." (*Laurel Heights I, supra*, 47 Cal.3d at pp. 404, 406 [requiring "meaningful detail"]; *Kings County, supra*, 221 Cal.App.3d at p. 735 [finding EIR lacked "quantitative, comparative analysis" of alternatives].) An "EIR is nonetheless defective under CEQA" when it fails to explain a lead agency's "analytic route." (*Laurel Heights I*, at p. 404; *Kings County*, at p. 731 ["[a]n inadequate discussion of alternatives constitutes an abuse of discretion"].)

The Draft EIR here only analyzes two alternatives: the No Project Alternative and the Reduced Intensity Alternative. (DEIR, p. 5-2.) Since the No Project Alternative is required by CEQA and contemplates, as required, the consequences of approving nothing, the Reduced Intensity Alternative is the only true "project" alternative analyzed. And, although the Reduced Intensity Alternative would avoid the project's significant unavoidable greenhouse gas emissions impacts, significant and unavoidable transportation impacts would still occur. (DEIR, pp. 5-5, 5-7.) The Draft EIR should be revised to add one or more additional alternatives, and those new alternatives should be aimed at reducing the project's transportation impacts to less than significant levels.

Offsite alternatives should be considered because they are more likely than the Reduced Intensity Alternative to reduce the project's significant and unavoidable transportation impacts. But the Draft EIR improperly dismissed several such alternatives from further consideration, apparently out of concern that those alternatives might look so much better than the proposed project that it would not be fair to the project. The Draft EIR states that "only sites located within or directly adjacent to the ULL in the San Ramon, Danville, Blackhawk area that are currently designated for agricultural uses were considered, *in order to facilitate an equitable comparison of the Project to an alternative project*

location." (DEIR, p. 5-10, italics added.) This rationale is inconsistent with CEQA's mandate to evaluate an adequate range of alternatives that can avoid or substantially lessen the project's significant impacts. The "'applicant's feeling about an alternative cannot substitute for the required facts and independent reasoning" showing the agency's independent "analytical route.'" (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1458.)

The Draft EIR goes on to reject two specific alternative sites for weak and unsupportable reasons. The Norris Canyon Alternative Site, which would not require adjustment of the ULL, is rejected in part because a project in that location "would likely utilize the Bolinger Canyon Road and Norris Canyon Road intersection, which is currently a four-way, stop-controlled intersection and may need to be signalized to accommodate increased traffic." (DEIR, p. 5-11.) It is unclear why the need for signalization of one intersection is an insurmountable traffic hurdle or why it isn't preferable to the project's creation of significant and unavoidable traffic impacts. An "agency may not simply accept at face value the project proponent's assertion's regarding feasibility" of an alternative. (*Save Round Valley Alliance, supra,* 157 Cal.App.4th at p. 1458.) Another reason offered for rejecting this alternative is that "development on this parcel could potentially be implemented at a greater intensity because approximately 90 acres of the site is within the ULL." This is pure speculation and circular logic. Furthermore, the Norris Canyon Alternative Site consists of two parcels; the parcel closest to existing residential development (i.e., APN 211-210-029) is 31.5+/- acres in size. This fact further erodes the logic that the Norris Canyon Alternative Site can't be considered as a comparable site for the development area of the Tassajara Parks Project because of the anticipated development intensity. The 31.5+/- portion of the Norris Canyon Alternative Site has existing single family residential development directly to the east. Looking at the most proximate 31.5+/- acre portion of abutting residential development indicates the presence of 48 lots with an average lot size in excess of 17,750 square feet (i.e., an average lot size in excess of 225% of the average lot size proposed in the Tassajara Parks Project). The existing residential development on this 31.5+/- acres would serve as a good representation of the reasonable development yield for a 30+/- acre area with gentle to moderate slopes in close proximity of the ULL (i.e., the Tassajara Parks Project Site). The analysis that should have occurred looking at the Norris Canyon Alternative Site arguably could have also served to provide direction for an "Environmentally Superior Alternative Plan" for the Tassajara Parks Project. The Draft EIR can easily define an alternative at the Norris Canyon site that includes the same number of residential units as the proposed project. Since the Draft EIR rejected this alternative from further

consideration, there is no analysis of whether or not this alternative would be able to avoid or lessen the project's significant and unavoidable transportation impacts.

The reasons for rejecting Chapparal Court Alternative Site are equally unconvincing. CEQA does not restrict an agency's authority to consider an adequate range of alternatives to only those that perfectly match a proposed project. The Draft EIR states that "residential development on this site would likely create significant traffic impacts requiring mitigation, particularly on San Ramon Valley Boulevard." (DEIR, p. 5-12.) Again, it is unclear why the need for mitigation should be used to reject an alternative without further analysis. The Draft EIR also repeats the same reason noted above that "development on this parcel could potentially be implemented at a greater intensity because the majority of the site is within the ULL." One of the two parcels constituting the Chapparal Court Alternative Site is also close in size to the proposed development area in the Tassajara Parks Project (i.e., APN 211-010-042, at 20+/- acres in size). As with the Norris Canyon Alternative Site, there is existing residential development directly east of the Chapparal Alternative Site. The abutting 30+/- acres of the most proximate residential development to the east of the Chapparal Court Alternative Site contains 72 lots with an average lot size measurably larger than is proposed by the Tassajara Parks Project (i.e., 10,500+/- square feet versus 7,850+/- square feet in the Tassajara Parks Project - giving an average lot size that is 133% larger than the average lot size proposed in the Tassajara Parks Project). It is noteworthy that an application for single family residential development over the 20+/- acre Chapparal Court parcel and a 10-acre portion of the larger parcel making up the Alternative Site could be processed.

Finally, the Town recommends that the Reduced Intensity Alternative be modified to have the 30-acre development envelope include a maximum of 65 total units, including ten below market rate units to meet the project's 15% inclusionary housing requirement. This modified Reduced Intensity Alternative should include withinin the 30-acre Residential Development Area: (1) all proposed residential lots and project roadways; (2) the requisite area for roadway dedication along Camino Tassajara; (3) a 35-to-40-foot-wide buffer landscape area along the project frontage on Camino Tassajara; (4) the detention basin/ storm water treatment facility; (5) the area necessary for debris benches at the interface of project lots or roadways and natural or engineered slopes; and (6) the area necessary to correct landslides to provide for the project's development. This layout should avoid the slopes containing or abutting the deep seated landslide. This plan should limit the corrective work for the large landslide at the middle rear section of the current project layout to construction of keyways at the toe of the slide to lessen the probability of a subsequent major failure of the slide.

G. The Draft EIR's cursory discussion of growth-inducing impacts ignores the potential impacts that would result from the removal of a major obstacle to population growth: adequate water supply.

It is "settled that [an] EIR must discuss growth-inducing impacts even though those impacts are not themselves a part of the project under consideration, and even though the extent of the growth is difficult to calculate." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 368.) Thus, EIRs must "[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." (CEQA Guidelines, § 15126.2, subd. (d).) This mandate applies especially where, as here, a project "would remove obstacles to population growth." (*Ibid.*)

The Draft EIR only provides a cursory analysis of the project's growth-inducing impacts, populated with conclusory statements unsupported by substantial evidence. (DEIR, pp. 6-1 to 6-2.) In a single paragraph of analysis, the Draft EIR explains that the "nominal 0.07 percent" increase in the County's population "is considered negligible, and, therefore, direct population growth would be less than significant." (DEIR, p. 6-2.) The Draft EIR goes on to state that "urban infrastructure would be extended only to the 30-acre Residential Development Area, [and] adjacent areas would remain outside of the Contra Costa Urban Limit Line, thereby prohibiting further expansion." (DEIR, p. 6-2.) This analysis is insufficient. The Draft EIR needs to consider and analyze the potential growth-inducing impacts of securing more water than the project is expected to need. In the Utilities and Service Systems section, the Draft EIR discloses that the Long-term Water Purchase Agreement Term Sheet provides for the purchase of up to 200 acre feet per year (AFY) of Calaveras Public Utility District Water. Since the project's maximum demand is only 47 AFY, the Draft EIR goes on to explain that the "final" purchase agreement is likely to be 100 AFY, with 50 AFY of water "for an ample margin of safety." (DEIR, p. 3.313-26.) If the project proceeds under this water supply option, the Project would have secured twice the amount of water needed to serve the project. This is the very definition of removing an obstacle of future growth.

Similarly, if the project proceeds with recycled water as its water source, then the project would result in the construction of a 1.8-mile recycled water pipeline along San Ramon Valley Boulevard from Acosta Boulevard to Montevideo Avenue. (DEIR, p.

3.13-31.) This length of pipeline is "not currently included in future recycled water projects." (DEIR, p. 3.13-31.) Thus, the project would again be removing an obstacle to growth by providing infrastructure that was not previously planned.

H. Energy Conservation Analysis.

CEQA Guidelines, Appendix F states: "If appropriate, the energy intensiveness of materials may be discussed. [¶] 2. The effects of the project on local and regional energy supplies and on requirements for additional capacity. [¶] 3. The effects of the project on peak and base period demands for electricity and other forms of energy. [¶] 4. The degree to which the project complies with existing energy standards. [¶] 5. The effects of the project on energy resources. [¶] 6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives." Appendix F also lists mitigation measures that may be included in the EIR: "1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed. [¶] 2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid-waste. [¶] 3. The potential for reducing peak energy demand. 4. Alternate fuels (particularly renewable ones) or energy systems. [¶] 5. Energy conservation which could result from recycling efforts."

The Draft EIR's discussion of Energy Conservation is inadequate. (DEIR, pp. 6-3 to 6-7.) Specifically, Draft EIR improperly relies solely upon compliance with the building code to mitigate operational and construction energy impacts, without further discussion of the Appendix F criteria. This strategy was disapproved in *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 211. Additionally, the Draft EIR's provision of transportation fuel consumption estimates in Table 6-2 is not sufficient assessment of the transportation energy impacts. How does 595 gallons per day compare to other projects? Why couldn't mitigation measures be required to reduce this? The Draft EIR should explicitly consider the feasibility of the mitigation measures suggested in Appendix F, including the use of more onsite renewable energy.

III. The Project's inconsistency with the General Plan violates both the Planning and Zoning Law and the Subdivision Map Act.

The general plan has been described as the "constitution for all future development" and thus all local land use decisions must be consistent with it.[19] The Planning and Zoning Law provides "[c]ounty or city ordinances shall be consistent with the general plan."[20] The Subdivision Map Act similarly provides that "[n]o local agency shall approve a tentative map, or a parcel map for which a tentative map was not required, unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan."[21] The local agency must deny the tentative map if it is not consistent with the general plan.[22]

A project is "inconsistent with a general plan 'if it conflicts with a general plan policy that is fundamental, mandatory, and clear.'"[23] In the recent *Spring Valley Lake Association v. City of Victorville* case, the Court of Appeal disapproved of the city's general plan consistency finding because the project failed to comply with a "specific, mandatory, and fundamental" requirement.[24] The city's general plan included an implementation measure requiring "all new commercial or industrial development to generate electricity on-site to the maximum extent possible."[25] The city's project approvals for the commercial retail development did not require on-site electricity generation, effectively finding it infeasible.[26] But the court concluded that the city failed to "provide facts, reasonable assumptions, or expert opinion amounting to substantial evidence to

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[19] / *O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774, 782.
[20] / Gov. Code, § 65860, subd. (a).
[21] / Gov. Code § 66473.5.
[22] / See Gov. Code § 66474, subds. (a) & (b). Other findings that must result in denial of a tentative map include that the site is not physically suitable for the development, the design is likely to cause substantial environmental damage or serious public health problems, and that the design would conflict with a public easement. (Gov. Code § 66474, subds. (c)-(g).)
[23] / *Spring Valley Lake Assn. v. City of Victorville* (May 25, 2016, D069442) __ Cal.Rptr.3d__ [2016 WL 3361554 at p. 4] (*Spring Valley*) [citing *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782].
[24] / *Id.* at p. 5.
[25] / *Id.* at p. 3.
[26] / *Id.* at p.4.

support a conclusion solar power generation or other alternatives for on-site electricity generation [were] completely infeasible."[27]

Despite the deference afforded to an agency's fact-finding and the deference that courts must pay to agencies interpreting their own plans and policies, it is not uncommon for courts to overturn project approval when projects are inconsistent with general plan policies that are *fundamental, mandatory, and clear*. For example, in *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1340-1342, the court found that a residential subdivision was inconsistent with a general plan land use element policy that restricted low density residential (LDR) designations to land contiguous to community regions or rural centers. The court noted that the project's use of the LDR designation was at odds with undisputed evidence showing that the project site was not contiguous to community regions or rural centers. Concluding that the policy at issue was fundamental and mandatory, the appellate court agreed with plaintiffs that the project was inconsistent with the land use element and reversed the trial court's ruling in favor of the county.

Similarly, in *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-784, the court held that the project was inconsistent with the general plan's traffic service level policy. The county's general plan included a policy requiring projects to achieve LOS C or better under a specific method of analysis. The EIR explained that it used a different method of analysis to achieve LOS C because the project would result in LOS D or E under the general plan's preferred method of analysis. The court disapproved of this attempt to skirt the requirements in the general plan policy, deemed the project inconsistent, and set aside the approval.

Here, as explained above, the Tassajara Parks project is inconsistent with several General Plan policies and goals, many of which are arguably "fundamental, mandatory, and clear." The Project includes a General Plan amendment, rezoning of both the Northern and Southern Sites, and a subdivision/ vesting tentative map.[28] Therefore, the County must make required findings about the Project's consistency with the General Plan under Government Code sections 65860, 66473.5, and 66474.

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[27] / *Ibid.*

[28] / Draft EIR, p. 2-2.

In addition to responses to the arguments above relating to General Plan inconsistencies, the Town requests that the County specifically explain how the Project is consistent with the following policies and goals:

- General Plan Goal 3-G
- General Plan Goals LU3.8-3-A, 9-B, 9-9, 9-15.
- Policies 3-7, 3-9, 3-10, 3-11
- Policies 7-59, 7-137, 7-142
- Policies 8-4, 8-6, 8-9, 8-27
- Policies 9-14, 9-22, 9-24
- Policies 10-22, 10-24, 10-26, 10-28, 10-29
- Policies 11-2, 11-4

The existing explanations in the Draft EIR for the Project's consistency with these and other policies noted in sections above are insufficient. Please provide additional analysis and information instead of simply repeating what is already stated in the Draft EIR.

IV. Conclusion

The Town appreciates this opportunity to provide comments on the Draft EIR for the Tassajara Parks Project and looks forward to working with the County to address the issues raised in this letter.

Very truly yours,

Joseph A. Calabrigo
Town Manager

cc: Mayor and Town Council
Supervisor Anderson, District 2
Sabrina Teller & L. Elizabeth Sarine, Remy Moose Manley, LLP

Enclosures

Attachment 1:	Stantec's July 15, 2016 Peer Review of Tassajara Parks Traffic Impact Study
Attachment 2:	Town Staff's Geotechnical and Grading Concerns
Attachment 3:	County Code sections related to Urban Limit Line & Measure C
Attachment 4:	Contra Costa General Plan- Chapters 1, 3, & 4
Attachment 5:	Contra Costa Transportation Authority's Measure J Transportation Sales Tax Expenditure Plan
Attachment 6:	Board of Supervisor's July 12, 2005 staff report on Urban Limit Line
Attachment 7:	Measure L Voter Pamphlet (November 2006 election)
Attachment 8:	Board of Supervisor's November 3, 2009 approval of Bay Point Waterfront Project

11/30/16 Comment Letter on RDEIR

November 30, 2016

John Oborne, Senior Planner
Contra Costa County
Department of Conservation & Development
30 Muir Road
Martinez, CA 94553
Email: john.oborne@dcd.cccounty.us

RE: Town of Danville's comments on the Recirculated Draft EIR for the Tassajara Parks Project, County File Numbers GP07-0009, RZ09-3212, SD10-9280, DP10-3008

Dear Mr. Oborne:

On behalf of the Town of Danville, we submit these comments regarding the County's Recirculated Draft Environmental Impact Report (RDEIR) for the Tassajara Parks Project. The Town has carefully reviewed the RDEIR, as have the Town's outside counsel, Remy Moose Manley, LLP. We provided comments on the Draft EIR on July 18, 2016 (attached as Attachment A). Please provide responses to our comments in the July 2016 letter as well as the additional comments below that are specific to the new and revised text in the RDEIR.

Although the RDEIR includes many minor textual edits, the three main changes relate to: (1) the new discussion of a potential Memorandum of Understanding (MOU) relating to the use of a preservation agreement to justify changing the County's Urban Limit Line, (2) the replacement of the recycled-water option with an off-site water conservation option for the Project's water supply, and (3) a new conclusion of significant and unavoidable impacts related to the project's inconsistency with plans for reducing greenhouse gas (GHG) emissions (Impact AIR-1). As explained below and in our July 2016 letter, the EIR, even as revised, does not comply with the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) (CEQA), the Planning and Zoning Law (Gov. Code, § 65000 et seq.), and the Subdivision Map Act (Gov. Code, § 66410 et seq.).

Our July 2016 letter included eight attachments. This letter is accompanied by different and additional attachments. For the County's convenience, Attachment A to this letter reproduces the July 2016 letter, but it does not reproduce Attachments 1-8 to that letter.

Please include all attachments in the Final EIR so that the public and decision-makers may review them.

I. Request for Notice

While I received written notice of the revised DEIR, this letter is also our formal written request for additional notice of all future public hearings or environmental documents, and any other public notices related to this Project. Please include the following names, emails, and addresses on your mailing list for all future public notices issued for the Project:

- Sabrina Teller
  Remy Moose Manley, LLP
  555 Capitol Mall, Ste. 800
  Sacramento, CA 95814
  steller@rmmenvirolaw.com

- Robert Ewing
  Town of Danville
  510 La Gonda Way
  Danville, CA 94526
  rewing@danville.ca.gov

Please forward this request to any other relevant departments of the County, including the County Clerk-Recorder's Office.

II. The County's treatment of the preservation agreement MOU as an action separate from the Project is improper piecemealing and violates CEQA.

The RDEIR states that the Project involves concurrent discretionary approvals of the General Plan Amendment, Development Plan, Development Agreement, and Change to the ULL. (RDEIR, pp. 2-41 to -42.) The "Change to the ULL" category includes "the making of required findings and any actions related thereto." (*Ibid.*; County Code, § Chapter 82-1.018(a)(3).) This phrase arguably means that the MOU should be considered part of the project as an "action related" to the making of required findings for changing the ULL. Yet, the RDEIR insists that the MOU can be approved separately from the Project and without CEQA review. (RDEIR, p. 2-16.) Please clarify if the County plans to approve the MOU separately and before it considers approval of the Project. If so, then this is improper piecemealing. (Pub. Resources Code, § 21002.1, subd.

(d); see, e.g., *Berkeley Keep Jets Over the Bay Committee v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1358; *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1333.)

The RDEIR explains that the MOU would include a range of actions largely related to conserving and preserving agricultural lands, but it would also include a "mechanism for a project like Tassajara Parks to be removed from the enhancement area boundary if it contributes at least $4 million to agricultural enhancement and dedicates at least 500 acres of land." (RDEIR, p. 2-21.) Since the RDEIR does not provide the final language of the MOU, and in fact, the MOU currently exists only in draft form and is subject to further revision and modification, the Town reserves the right to challenge the MOU at a later time. But we note that the MOU may violate CEQA if it commits the County to approval of the Tassajara Parks project "as a practical matter." (See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 135.)

The County's use of the preservation agreement MOU as described in the RDEIR would also be improper for other reasons.

First, because the terms of the proposed MOU allowing a project to be removed from the enhancement area are clearly specific to the Project and have been negotiated in advance, and since the MOU is not intended to "modify existing laws, regulations or policies regarding the Tassajara Valley Agricultural Enhancement Area nor to limit any jurisdiction's power conferred under Article 11, Section 7 of the California Constitution", it appears the only reason for proposing the MOU is to facilitate the making of a finding to permit the Project's approval under County Code, § Chapter 82-1.018(a)(3). Second the inclusion of the East Bay Regional Parks District (EBRPD) as a party to the MOU is improper. EBRPD is not considered a local government under Article 11, Section 7 of the California Constitution, and as such does not have the same police powers that apply to zoning and land use matters. As such, under County Code, § Chapter 82-1.018(a)(3), EBRPD cannot be considered a "party to the preservation agreement". Finally and apart from any arguments about the propriety of the MOU, in light of the $4 million dollars being offered by the applicant as part of the MOU, the County and applicant will not be able to assert that funding additional mitigation measures that reduce the Project's significant and unavoidable impacts related to transportation and greenhouse gas emissions are somehow financially infeasible.

It should also be noted that the County is currently in the process of undertaking a comprehensive decennial review of the County ULL as called for under County Code, § Chapter 82-1.018(d) - *"The board of supervisors will review the boundary of the urban limit line in the year 2016. The purpose of the year 2016 review is to determine whether a change to the*

boundary of the county's urban limit line map is warranted, based upon facts and circumstances resulting from the county's participation with cities in a comprehensive review of the availability of land in Contra Costa County sufficient to meet housing and job needs for twenty years." Based upon information presented at a public meeting held on November 15, 2016, the County has a sufficient supply of land available within the boundary of the current urban limit line to accommodate the projected housing and job growth forecast through the year 2040.

III. The RDEIR does not comply with CEQA.

A. The RDEIR still fails to adequately analyze and mitigate the project's potentially significant environmental impacts.

1) Utilities and Service Systems:

The RDEIR replaced the recycled-water option with an East Bay Municipal Utility District (EBMUD) off-site water conservation option as the "Source 2" option for supplying the Project's maximum dry-year demand of 48 acre-feet per year (AFY). (RDEIR, p. 3.13-7 to -8.) No changes were made to the Source 1 (Calaveras Public Utility District water) option, so all comments in our July 2016 letter related to the Source 1 option still need to be addressed.

The RDEIR asserts that the new Source 2 option "creates a potable water source by funding the accelerations or expansion of water conservation measures within EBMUD's service area" and thereby "reduc[ing] current potable use within EBMUD's service area by an amount sufficient to offset the Proposed Project's water demand." (RDEIR, p. 3.13-7.) But, as explained below, the RDEIR's math does not add up: the additional savings that could be achieved through additional funding for or acceleration of the 53 conservation measures in EBMUD's Water Supply Management Program (WSMP) 2040 Final Plan do not appear to equal the Project's demand of 48 AFY. (See EBMUD, April 2012, Final, Water Supply Management Program 2040 Plan, at http://www.ebmud.com/index.php/download_file/force/674/1403/?wsmp-2040-revised-final-plan.pdf (last visited Nov. 4, 2016).)

EBMUD's WSMP 2040 Plan projects that the District will need conservation measures to produce 39 million gallons per day (MGD) (approximately 120 AFY) in order for the District to meet projected need for water in the District's existing service area, which does not include the Project site. (EBMUD WSMP, pp. 1-2, 2-1 ["expected growth within EBMUD's own service area"].) Indeed, the Project is outside of EBMUD's Ultimate

Service Boundary (USB), which defines the District's "limit of future annexation for extension of water service." (EBMUD WSMP, p. 3-8; RDEIR, p. 3.13-1 [Project is outside of EBMUD's "urban service boundary (USB)" – a term that should read "ultimate service boundary" as shown in the WSMP p. 7-9]; see also RDEIR, Appendix A, EBMUD's June 17, 2014 letter with comments on the Notice of Preparation ["The following EBMUD policies . . . establish that EBMUD will oppose annexation of properties outside of EBMUD's USB and the extension of service by EBMUD to those properties"].) Since the Project's demand of 48 AFY (approximately 15.6 MGD) would be in addition to the projected needs of the District's existing USB service area, the only way for the Project's Source 2 option to adequately supply the Project's water needs would be if the Project is able to help EBMUD accelerate or expand its water conservation measures in ways that produce an additional 15.6 MGD, for a total conservation target of approximately 55 MGD.

The RDEIR's description of the potential conservation measures that could be funded by the Project is confusing and inaccurate. The RDEIR notes that WSMP "approved conservation Levels B through D, accounting for a projected water savings of 39 mgd" but that "a number of the elements through Level D have not been fully implemented and are awaiting the allocation of funding." (RDEIR, p. 3.13-8.) The RDEIR implies that fully funding measures listed in Levels B through D and expanding the proposed measures under Levels B through E would somehow produce enough additional water in the District to meet the Project's water needs (approximately 15.6 MGD) in addition to the District's projected water needs for its existing USB service area through 2040. But the WSMP explains that fully funding and implementing Levels A through E would only produce 41 MGD total, with the four additional measures in Level E contributing a total of 2 MGD on top of the 39 MGD achieved by Levels A-D. (EBMUD WSMP, p. 6-5.)

> Five conservation programs (Levels A through E) were created each providing increasing levels of water savings, with the fifth level (E) being the maximum theoretical level of water savings (Table 6-1). Each program built on the prior program: Program A included the plumbing code only; Program B (equivalent to the District's current program) contains 25 conservation measures. Program C includes Program B measures plus 15 additional measures and uses the Automatic Metering System (AMS) to help identify (to the customer and to EBMUD) leakage and excessive use. This enhances the ability of EBMUD to conduct effective water surveys of residential and business customers. Program D has all 40 measures from Program C and adds a net of three measures. Program E includes four additional measures to Program D.

(EBMUD WSMP, p. 6-4.) In other words, even if the Project helped EBMUD fully fund or accelerate all 53 conservation measures in Levels A through E, this would only produce an additional 2 MGD that could be devoted solely to the Project's needs instead of the District's projected needs for its existing USB service area. Moreover, EBMUD explains how it rejected 47 other conservation measures for reasons unrelated to availability of funding: "Technology/Market Maturity; Service Area Match; Customer Acceptance/Equity; and Relative Effectiveness of Measure Available." (EBMUD WSMP, pp. 6-3 to 6-4.)

Given the above, please explain how the off-site water conservation option would be able to produce 48 AFY or 15.6 MGD in additional water conservation above the 39 MGD of conservation that EBMUD estimates will be needed to meet the projected needs of its existing USB service area.

2) Air Quality/ GHG Emissions:

In our July 2016 letter, we raised four issues related to the DEIR's analysis of GHG emissions. First, we pointed out that the GHG analysis relied on BAAQMD's thresholds of significance for operational GHG emissions (1,100 $MTCO_2E$/year and/or 4.6 $MTCO_2E$/SP/year) despite those standards being limited to 2020 reduction targets. The DEIR did not explain why these thresholds were appropriate given that virtually all of the project's operational GHG emissions would occur after 2020. Second, despite stating that GHG analysis relied on BAAQMD's guidance, the DEIR failed to do so when it came to construction emissions. BAAQMD recommends calculation and disclosure of construction GHG emissions followed by an analysis of the significance of those construction emissions. The DEIR appeared to calculate and disclose the construction emissions without analyzing their possible significance. Third, we pointed out that the project does not support the primary goals of the BAAQMD Clean Air Plan (Impact AIR-1) because the project was found to have a significant and unavoidable impact on climate change (Impact AIR-6). Fourth, we noted that the analysis of Impact AIR-7 incorrectly stated that the project was consistent with the Contra Costa County Climate Action Plan ("CAP") despite a glaring inconsistency with Measure LUT 4.

In response to these and other issues raised through public comment, the RDEIR includes some helpful revisions. But the RDEIR ultimately creates more questions than it answers. Under Impact AIR-6, the RDEIR added an explanation of annualizing the construction emissions over the life of the project, and a brief explanation of the use of the BAAQMD thresholds despite their being tied to 2020. Under Impact AIR-7, a discussion of the applicability of measure LUT-4 was added, as well as discussions of consistency with SB

375, Contra Costa County US Cool Counties Climate Stabilization Declaration, and Executive Orders S-3-05 and B-30-15, though the RDEIR incorrectly states that it is unnecessary to apply post-2020 targets to the project. The RDEIR also changed the DEIR's less-than-significant conclusion for Impact AIR-1 ("The Project may conflict with or obstruct implementation of the applicable air quality plans") to a significant and unavoidable impact.

As explained below, there are a number of issues with the updated analysis in the RDEIR. First, Impact AIR-7 cannot be less than significant if Impacts AIR-1 and AIR-6 are significant and unavoidable, because AIR-1 and AIR-6 were deemed significant due to the project's inconsistency with applicable plans. Second, the RDEIR's use of the BAAQMD's GHG emission thresholds—which are limited to AB 32's 2020 target—remains inappropriate because the vast bulk of the project's GHG emissions will occur over its 30-year projected lifespan between 2020 and 2050. The RDEIR fails to address why the outdated targets are appropriate for use in determining the significance of the project's operational GHG emissions, even though there are applicable post-2020 targets by which the project could be measured. Third, the RDEIR does explain that the construction emissions were annualized and added to the operational emissions (as recommended by the Sacramento Metropolitan Air Quality Management District and others). But this approach only serves to further skew the GHG emissions analysis in this case. Fourth, the added discussion of Measure LUT 4 under Impact AIR-7 is little more than an attempt to sidestep the project's inconsistency with that measure, and Contra Costa County's Climate Action Plan (CAP). Fifth, while the RDEIR did add discussions of SB 375, the Cool Counties Declaration, and Executive Orders S-3-05 and B-30-15 under Impact AIR-7, it fails to address new Senate Bill 32 (SB 32) and several applicable plans, policies, and regulations. One glaring example is that AIR-7 does not address the project's consistency with BAAQMD's Clean Air Plan, which has an applicable GHG component, as indicated in Impact AIR-1. (See Attachment E.)

a) The Analysis of the GHG Impacts in the RDEIR is Fundamentally Flawed and Contradictory

First, the RDEIR is fundamentally flawed because the analysis is internally inconsistent. Impacts AIR-1 and AIR-6 were declared significant and unavoidable while Impact AIR-7 was found to be less than significant, but the significance of Impact AIR-7 hinges on the project's consistency with applicable plans, policies, and regulations. Under both Impacts AIR-1 and AIR-6, the project was found to be inconsistent with an applicable plan. AIR-1 found the project to be inconsistent with the BAAQMD 2010 Clean Air Plan, and the

conclusion under AIR-6 requires the reader to presume that the project is inconsistent with Contra Costa County's Climate Action Plan.

As indicated in Impact AIR-1, the BAAQMD 2010 Clean Air Plan contains a GHG emissions component that is applicable to the project. (RDEIR, p. 3.3-41.) Indeed, Impact AIR-1 was revised from "less than significant" to "significant and unavoidable" because the project does not "support the primary goals of the AQP," one of which is reducing GHG emissions and protecting the climate. (*Ibid.*) If Impact AIR-1 is significant and unavoidable because of the project's inconsistency with the 2010 Clean Air Plan, then Impact AIR-7 is significant as well, for the same reason. The analysis of Impact AIR-7 must be revised to reflect the project's inconsistency with the BAAQMD Clean Air Plan.

In analyzing Impact AIR-6, the RDEIR acknowledges that the project will generate GHG emissions and states that the significance of those emissions will be determined based on BAAQMD's May 2011 project-level significance thresholds. (RDEIR, p. 3.3-65.) Those thresholds are:

- Compliance with a qualified Greenhouse Gas Reduction Strategy, or
- 1,100 $MTCO_2E$/year, or
- 4.6 $MTCO_2E$/SP/year (where SP= employees plus residents).[1]

After adopting these as the thresholds of significance for Impact AIR-6 (see RDEIR, pp. 3.3-37 to -40, and 3.3-65 to -66) the RDEIR states that "if the project is less than any one of the thresholds identified above, then the Project would result in a less than significant cumulative impact to global climate change," meaning that Impact AIR-6 would be less than significant. (RDEIR, p. 3.3-66.) Impact AIR-6 was determined to be significant and unavoidable. So it can be assumed that the project is not less than any of the BAAQMD thresholds, including "consistency with a Qualified Greenhouse Gas Reduction Strategy." The RDEIR identifies the CAP as a "qualified Greenhouse Gas reduction strategy" and then states that the "primary means of determining project significance is through an assessment of consistency of the project with the CAP" (*id.* at p. 3.3-65). There is no assessment of the project's consistency with the CAP under Impact AIR-6. But the conclusion under Impact AIR-6 leads us to conclude that the project was not found to be consistent with the CAP.

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[1] As we noted in our initial comment letter, these thresholds are limited to reduction targets for 2020.

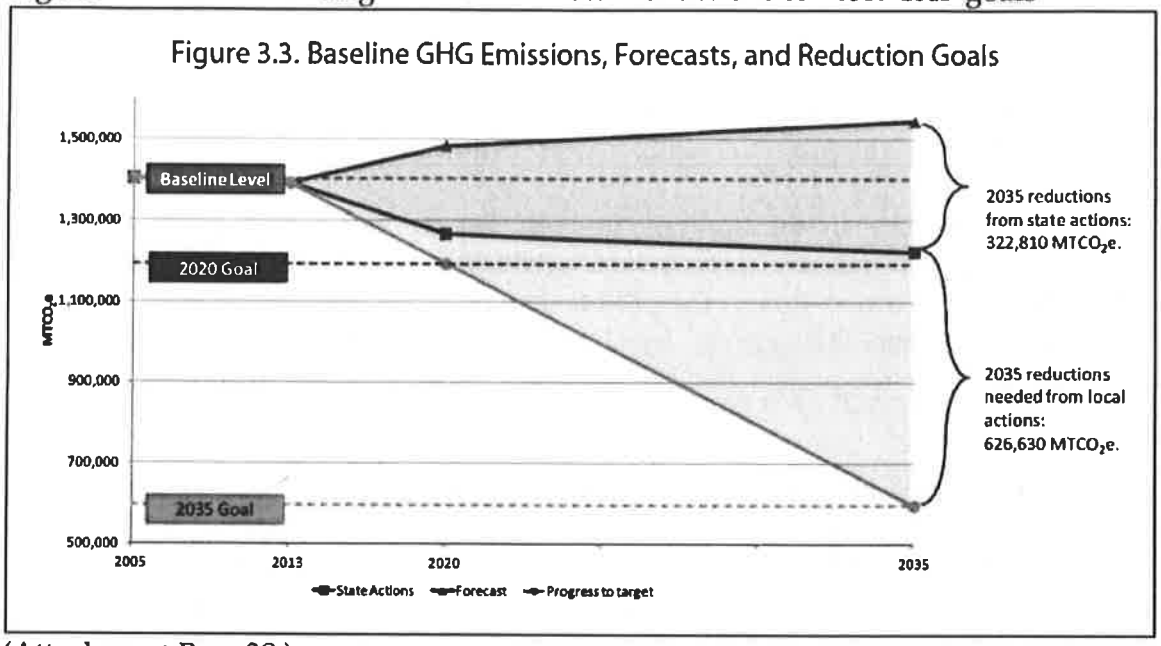
The analysis under Impact AIR-7 reaches the opposite conclusion. Impact AIR-7 states (incorrectly) that the project is consistent with the CAP, and therefore Impact AIR-7 is less than significant. Both of these statements cannot be true, and this contradictory claim requires both impacts to be reassessed. Either the project is consistent with the CAP or it isn't. As discussed below, the project is not consistent with the CAP.

Another fundamental flaw in the analysis of both Impact AIR-6 and AIR-7 is the conclusion that the 2020 targets are "appropriate." (RDEIR, p. 3.3-39.) The RDEIR justifies this claim with two assertions. First, "the project is expected to be completed prior to 2020" (*ibid.*) and second, that there are no "legislative mandate[s]" and/or targets beyond 2020 that would apply to the project. (RDEIR, p 3.3-68 and -75.) Both of these assertions are incorrect.

While the project may be fully constructed by 2020 (and even that seems quite ambitious), the project will not be "complete" until the end of its operational lifespan, which is calculated to be 30 years. (RDEIR, p. 3.3-66.) As stated in our July 2016 comments, virtually all of the project's operational emissions would occur between 2020 and 2050. These emissions represent the vast bulk of the project's GHG emissions and cannot be excused without mitigating them to the fullest extent feasible.

Moreover, there are two applicable post-2020 GHG reduction targets against which the project could measure its operational (and annualized construction) emissions. The first is SB 32—the California Global Warming Solutions Act of 2006, which Governor Brown signed into law on September 8, 2016. SB 32 is a "legislative mandate" to reduce GHG emissions by 40% below 1990 levels by 2030. (Legis. Council's Dig., Sen. Bill No. 32, (2015-2016 Reg. Sess.) Chapter 249; SB 32 available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32 (last visited Nov. 4, 2016).) The EIR must analyze the Project's consistency with this target, which applies to both the project's construction and operational emissions. The second applicable post-2020 target is the CAP's 2035 GHG emissions reduction target of 50% below 1990 levels, or 57% below the 2005 baseline level. (Contra Costa County Climate Action Plan, #3, p. 37 (Attachment B).) The CAP goes beyond setting the overall target for 2035, and establishes the amount of "reductions needed from local actions" to meet the 2035 target. (*Id.* at p. 38, see Figure 1.) As Figure 1 illustrates, there is great need for reductions from local actions in addition to any anticipated reductions from state actions. The RDEIR must analyze the project's consistency with this target as well.

Figure 1: Chart illustrating the need for local reductions to meet CAP goals



(Attachment B, p. 38.)

Lastly, though the RDEIR acknowledges the cumulative nature of GHG impact analysis, no cumulative analysis was performed under AIR-6 or AIR-7. There was no comparison of the project, its GHG emissions, and proposed mitigation measures to other projects in the county and/or region to determine what this project's "fair share" of GHG emission reductions should be. The EIR must justify its selection of MM AIR-6 as the only feasible mitigation, potentially by comparing it to other projects in the county in a true cumulative analysis.

b) The Analysis of Construction GHG Emissions is Skewed and Misleading

We note that the RDEIR does address our July 2016 comments on construction emissions, in that it explains that the construction emissions were annualized and added into the project's operational emissions calculations. (RDEIR, p. 3.3-66.) Even if several air districts have recommended this approach generally, in this case the approach serves to further skew the GHG analysis. The RDEIR's significance thresholds are limited to 2020, and the project purportedly will be completely constructed by 2020. Hence, all of the project's construction GHG emissions could occur by 2020, and could be accurately analyzed under the 2020 thresholds. Instead, the RDEIR "annualizes" the construction emissions and adds them to the operational emissions (which would largely occur

between 2020 and 2050) which are (inappropriately) measured against 2020 thresholds. So the project's construction emissions are not "counted" until after 2020, during the project's operational lifespan out to 2050. The effect is that the construction and operational emissions are analyzed under thresholds that are inapplicable right out of the gate.

There is also an inconsistency in the calculations of the annualized construction emissions. When the RDEIR "annualizes" the construction emissions, the calculation results in 43 $MTCO_2E$/year. (RDEIR, p. 3.3-66.) When the annualized construction emissions are added to the operational emissions, they are listed as 42 $MTCO_2E$/year. (RDEIR, pp. 3.3-67 and -68.) Our calculations indicate the actual number 42.7 $MTCO_2E$/year, which should be rounded up to 43 $MTCO_2E$/year for consistency's sake. As such, the operational emissions tables need to be recalculated throughout this section. (See RDEIR, pp. 3.3-67 and -68.)

c) The Analysis of Operational Emissions is a Bald Attempt to Avoid Performing All Feasible Mitigation Measures

The RDEIR attempts to downplay the project's significant GHG emissions by stating that future projects will be more efficient because of new targets and thresholds that will be adopted by the state, county, and or BAAQMD in the future. (RDEIR, p. 3.3-69.) A statement of belief that future projects will be more efficient is no justification for the proposed project's level of pollution now. Nor can the project's contribution be dismissed by relying totally on state-government level policy and regulation. (See RDEIR, pp. 3.3-39 and -40.) It is not completely clear what "recent studies" the RDEIR is referring to, but the analysis in both the CAP and BAAQMD's CEQA Guidelines indicate that there will be a "gap" between state policy and the necessary reductions to meet the GHG reduction goals. (See Figures 1 and 2 below, comparing CAP's Table 3.6 Expected GHG Reductions from State Policies, 2020 and 2035, p. 35, with CAP's Table 3.8 Baseline GHG Emissions, Forecasts, and Reduction Goals, p. 38; see also, Attachment C [BAAQMD CEQA Guidelines Updated May 2011, Appendix D: Threshold of Significance Justification], pp. D-13 to D-22 (Attachment C).)

Figure 2: Table illustrating the "gap" between forecasted emissions with statewide reductions and the CAP reduction target

Table 3.8. Baseline GHG Emissions, Forecasts, and Reduction Goals

	2020 $MTCO_2e$	2035 $MTCO_2e$
2005 Baseline Emissions	1,403,610	1,403,610
Forecasted Emissions	1,483,720	1,545,980
Forecasted Emissions Minus Estimated Statewide Reductions	1,265,620	1,223,170
Reduction Target	1,193,070	596,540
Local Reductions Needed	**-72,550**	**-626,630**

Source: Michael Baker International 2015

(Attachment B, p. 38.)

The RDEIR also fails to provide any justification for proposing only the measures in MM AIR-6 and, as we noted in our July 2016 comments, attempts to avoid doing so by finding the impact to be significant and unavoidable. This finding does not allow a project to avoid analyzing all potentially feasible mitigation measures. For example, a cumulative/comparative analysis of other projects in Contra Costa County would be helpful. By analyzing these projects, their GHG emissions, and the feasibility of proposed mitigation measures, the County could determine what level and type of mitigation represents each project's "fair share" of the reductions necessary to meet the applicable emissions targets. Whatever method the County employs, the EIR must contain some analysis of why the proposed mitigation measures are the only feasible and "fair" measures available to the project.

There are a plethora of potential mitigation measures available that could possibly reduce the project's operational emissions to less than significant levels. To illustrate, we have attached examples from BAAQMD's CEQA Guidelines Update May 2011 (Attachment C) and CAPCOA's whitepaper on CEQA & Climate Change (Attachment D). The feasibility of these measures and those proposed in MM AIR-6 should be discussed. Some of the more effective mitigation measures that the RDEIR should analyze include:

- Purchase carbon offset credits or participate in an Off-site Mitigation Fee Program (CAPCOA, p. B-33.)
- Provision of more on-site solar energy.
- Planting appropriate, native trees in previously deforested areas to provide for carbon sequestration.
- LEED Certification (CAPCOA, p. B-20.)
- Exceed Title 24 Efficiency Requirements by 20% (CAPCOA, p. B-24.)

- Solar Orientation: Orient 75% or more of homes and/or buildings to face either north or south (within 30° of N/S). Building design includes roof overhangs that are sufficient to block the high summer sun, but not the lower winter sun, from penetrating south facing windows. Trees, other landscaping features and other buildings are sited in such a way as to maximize shade in the summer and maximize solar access to walls and windows in the winter. (CAPCOA, p. B-24.)
- Provide a complimentary electric lawnmower to each residential buyer. (CAPCOA, Table 16 Mitigation Measure Summary, p. B-19.)
- Energy Star Roof materials (CAPCOA, p. B-23.)
- Use light-colored/high albedo materials for non-roof impervious surfaces. (CAPCOA, p. B-24.)
- Low Energy Cooling. Optimize building thermal distribution by separating ventilation and thermal conditioning systems. (CAPCOA, p. B-26.)
- Provide public transit incentives such as free or low-cost monthly transit passes.
- Provide zero emission shuttle service to public transit and Project buildings/amenities.
- Promote ride sharing programs e.g., by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading and waiting areas for ride sharing vehicles, and providing a website or message board for coordinating rides.
- Provide education on energy efficiency.
- Reduce the use of pavement and impermeable surfaces.
- Require the use of construction materials with the lowest carbon footprint.

The RDEIR does mention several measures that are suggested by CAPCOA and/or BAAQMD including the installation of solar or tankless water heaters, complying with California Green Building standards, and installing on-site renewable energy generation. But the RDEIR does not discuss why these measures are the only feasible measures for mitigating the project's GHG emissions. It may be possible, through the adoption of additional and/or more stringent measures (such as those outlined above) for the project's GHG emissions to be reduced much further to a less than significant level. The RDEIR should explain whether additional or more stringent measures are feasible, and adopt them if they are found to be feasible. For example, the RDEIR could discuss different percentages of the total energy demand that could be produced via on-site renewable energy generation, and then compare the different GHG emission reductions of those percentages with the cost to implement. Such a cost/benefit analysis would allow decision makers to accurately determine if settling on 10% of total energy demand is the

only feasible renewable energy generation measure. The RDEIR would also benefit from a discussion of sources of renewable energy generation and their feasibility at the project site. Similarly, there is no discussion of why meeting the Green Building standards is feasible but exceeding them (by 20% for example) is not. The RDEIR should be revised to discuss these issues.

d) The Project is Not Consistent With the Contra Costa Climate Action Plan (CAP)

The RDEIR's analysis of the CAP under AIR-7 erroneously concludes that the project is consistent with the CAP. As we indicated in our July 2016 letter, the project is not consistent with Measure LUT 4. In Appendix E to the CAP, the County provides a checklist for new development projects that includes Table E.1: Standards for CAP Consistency - New Development. Under this table, for a new development to be consistent with Measure LUT 4, it must "be located within one half-mile of a BART or Amtrak station, or within one quarter-mile of bus station." (CAP, Appendix E, p. E-3.) The project will not meet this standard for consistency. The RDEIR attempts to circumvent this by stating that the measure is inapplicable to the project (ironically, because the project cannot meet the standard) and therefore the project is consistent with the CAP—sans the measure that the project cannot comply with. (RDEIR, p. 3.3-71.)

While it may be true that Measure LUT 4 was not intended to completely preclude development in areas without close proximity to transit, this does not allow projects to claim consistency with the CAP by picking and choosing measures they like while ignoring those they do not comply with. Developments that are inconsistent with the CAP are not precluded from being proposed or built, but they must analyze and mitigate the significant environmental impacts they create through their inconsistency. This would be true of a project that refused or was unable to comply with any of the measures in the CAP, such as Measure RE1, for example. Consistency with the CAP cannot be established by selective enforcement of its standards.

The RDEIR also mischaracterizes Measure LUT 4 as a measure concerned only with project density. The RDEIR alleges that, "[f]or a project to be inconsistent with this measure, it would need to be within the distance radii described from those facilities and to propose low density development." (RDEIR, p. 3.3-71.) This statement misrepresents the measure. Measure LUT 4 is a statement of the County's goal of reducing VMT through increased transit ridership. The CAP's Appendix D ("GHG Reduction Tech Appendix")—where the RDEIR claims to find justification for its unsupported conclusion—does not contain standards for density or distance attributes of individual

projects. Appendix D provides the assumptions and performance metrics the CAP uses to quantify estimated GHG emissions reductions; in other words, it lists the local "action items" that the county will need to implement to reach the CAP goals. (See Attachment B [CAP, Appendix D], p. D-1.) In contrast, Appendix E contains the standards that apply to individual projects in determining consistency with the CAP. (Attachment B [CAP, Appendix E], p. E-1.)

Measure LUT 4 is discussed on pages D-24 and D-25 in Appendix D of the CAP. The discussion begins with a statement of the measure's goal to "[r]educe vehicle miles traveled," followed by a list of the "action items" the county will undertake to reach that goal. One of the "action items" is for the county to encourage increased density in close proximity to public transit. But Appendix D does not state how the County will "encourage [the] increased density in close proximity to public transit" or how a land use project can be consistent with this goal. Appendix E contains the Standards for CAP Consistency, which are standards by which new development projects (including the proposed project) are measured for consistency with the policy goals in the CAP—such as whether a project will help reduce vehicle miles traveled, by being constructed in close proximity to transit. The tail does not wag the dog. Individual projects cannot selectively dictate which CAP policies the County will enforce. Just as they cannot select which Standards of Consistency in the CAP are "applicable to the Project."

The discussion of Impact AIR-7 also lacks the substantial linkage with the CAP necessary to establish actual consistency. (See *Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 225 ("*Newhall Ranch*").) The holding of the Newhall Ranch case is discussed in the RDEIR, as are the court's suggestions for providing a "reasoned explanation backed by substantial evidence," but the RDEIR fails to follow the court's advice. (RDEIR, pp. 3.3-35 to -36.) The RDEIR states that the CAP requires a County-wide 15% reduction in GHG emissions below the 2005 baseline levels by 2020. It then states that service population growth in unincorporated Contra Costa County is projected to be 6% between 2005 and 2020. The analysis goes on to allege that individual projects can comply with the CAP by reducing GHG emissions by 21% (15% + 6%) compared to a 2005 BAU scenario. (RDEIR, pp. 3.3-71 to -74.) This is the same error committed by the Department of Fish and Wildlife in *Newhall Ranch*, albeit on a smaller geographic scale.

In *Newhall Ranch*, the court found that the EIR failed to show how the project's 31% GHG emissions reduction as compared to a BAU model was consistent with achieving the statewide goal of a 29% reduction from a statewide BAU model. (*Newhall Ranch, supra*, 62 Cal.4th 204, 225.) The court went on to state that "The EIR simply assumes that the level

of effort required in one context, a 29 percent reduction from business as usual statewide, will suffice in the other, a specific land use development." (*Id.* at p. 227.) Here, the RDEIR makes the same assumption when it comes to the reduction target under the CAP. There is no discussion of how the proposed project's 29% reduction is consistent with Contra Costa County achieving its countywide target of 21% below BAU. The RDEIR simply assumes that because 29% is a greater reduction than 21%, the project is consistent. It then goes on to make the same error in comparing the project's reduction vs. BAU to the ARB Scoping Plan reduction goal of 21.7% vs. *statewide* BAU. (RDEIR, p. 3.3-74.)

As stated above, a true cumulative analysis of the proposed project and other projects in the county, where their respective GHG emissions and relative reduction burdens are compared and analyzed, could provide the necessary evidence to establish the link between this project and the CAP, as required under the *Newhall Ranch* decision. Such an analysis would support the RDEIR's conclusion that the proposed reductions are the project's "fair share" of the countywide reduction burden. The RDEIR contains no such analysis.

Another potential approach would be to forgo the BAU analysis completely, as many projects have elected to do after the *Newhall Ranch* decision. Under this alternative methodology, the GHG efficiency threshold established by BAAQMD can be adapted using the applicable 2030 and/or 2035 targets. BAAQMD came up with its threshold by taking the statewide 2020 GHG reduction goal (for the sectors applicable to land use projects) in AB 32 and dividing it by the projected statewide service population for 2020. (See Attachment C [BAAQMD CEQA Guidelines Updated May 2011, Appendix D], p. D-22.) While BAAQMD's threshold is limited to 2020, the same kind of calculation (land use sector GHG emissions target for a given year, divided by projected service population for the same year) can be used to establish an efficiency threshold for the proposed project that is tied to 2030 or 2035 targets.

Here, the project's efficiency could be measured against thresholds established using either the SB 32 goal of 40% below 1990 levels by 2030, or the CAP's 2035 target of 57% below the 2005 baseline levels. (Attachment B [CAP, Appendix C], p. C-21.) The CAP also projects service population growth in unincorporated Contra Costa County by 2035 to be 11% compared to 2005. (*Id.* at pp. C-17 to C-18 [Figure 3].) A project-level efficiency threshold could be established for 2035 using these two numbers in the same formula used by BAAQMD. To be truly consistent with the CAP, and to at least partially account for the project's operational emissions over its lifetime, the RDEIR must be revised to analyze project efficiency compared to the CAP's 2035 target.

Figure 3: Table illustrating the projected service population growth for 2020 and 2035

Table C.17. ABAG Projections for Unincorporated Contra Costa County, 2005–2035

	2005	2013	2020	2035	2005–2035 Change
Population	159,650	162,230	166,100	173,500	6%
Households	57,980	58,550	59,720	61,740	9%
Jobs	41,270	43,210	47,670	50,330	22%
Service Population	200,920	205,440	213,770	223,830	11%

Source: Association of Bay Area Governments 2009, 2013

(Attachment B, p. C-17.)

The analysis under AIR-7 also erroneously concludes that it is "unnecessary to apply post-2020 targets" because the goals established by executive order "have not been codified." As stated above, SB 32 codified the 2030 GHG reduction goal. In addition, the CAP includes an applicable 2035 GHG reduction target and the RDEIR alleges the project is consistent with the CAP. We have outlined above an alternative and more appropriate methodology for performing a quantitative efficiency analysis to ensure that the project is consistent with the CAP's 2035 target.

Lastly, though Impact AIR-7 was revised to include discussions of several applicable plans, policies, and regulations, there is at least one significant exclusion. As indicated in Impact AIR-1, the BAAQMD 2010 Clean Air Plan contains a GHG emissions component that is applicable to the project. (RDEIR, p. 3.3-41.) Indeed, Impact AIR-1 was changed from less than significant to significant and unavoidable because the project does not "support the primary goals of the AQP," one of which is reducing GHG emissions and protecting the climate. (*Ibid.*) As discussed above, if Impact AIR-1 is significant and unavoidable because of the project's inconsistency with the 2010 Clean Air Plan, then Impact AIR-7 is significant as well, for the same reason. The analysis of Impact AIR-7 must be revised to reflect the project's inconsistency with the Contra Costa County CAP and the BAAQMD Clean Air Plan.

e) The Flaws in The Analysis Require Further Revision and Recirculation

For all of the reasons above, the RDEIR must be revised and recirculated again so that decision makers and members of the public will be fully informed of the project's GHG emission impacts and the appropriateness of the mitigation measures selected.

3) Transportation and Traffic:

The RDEIR did not update the Traffic Impact Study in Appendix I and there were only a few minor edits in the Transportation and Traffic chapter. Please see our prior comments in the July 2016 letter. In addition, we ask that the County correct an intersection phasing

mismatch for the Camino Tassajara/Hansen intersection that was inconsistent with signal timing sheets provided by the Town of Danville. Although the RDEIR acknowledges that there is a +5.0-second change in delay when the correct phasing is applied, the RDEIR failed to update the numbers in the Tables to show the additional delays. In particular, notes have been added ("Note 1") to Tables 3.12-7, 3.12-10, and 3.12-13 in the RDEIR that acknowledge the coding mismatch. The RDEIR also explains that application of the correct phasing did not change the LOS but did increase delay by +5 seconds. Yet, the Tables still show the same delays reported in the DEIR. Please revise and update the relevant tables to show the recalculated delays for this intersection.

4) Aesthetics, Light, and Glare:

In addition to the comments in our July 2016 letter, please:

- explain why the RDEIR deleted any references to General Plan goals LU3.8-3-A ("protection of agriculture and open space")and 9-9 ("preserve open space lands located outside the Urban Limit Line"; "County shall not designate any open space land located outside the ULL for an urban use") when they were included in the DEIR (RDEIR, pp. 3.1-3 to -4); and
- explain if the RDEIR has adopted a new significance threshold for Impact AES-2 ("substantially degrade the existing visual character or quality of the site and its surroundings") where the RDEIR includes new text explaining that a visual change "must alter either the visual character or quality in a substantially negative way to be considered a significant impact" (RDEIR, p. 3.1-18).

5) Agricultural Resources:

The RDEIR provides five reasons why the Project site "would not be considered Prime Agricultural Lands." (RDEIR, p. 3.2-13.) Please provide citations to and copies of supporting studies or other substantial evidence supporting the five statements (e.g., "on-site irrigation is not feasible due to limited groundwater availability").

6) Biological Resources:

The RDEIR revised mitigation measure (MM) BIO-3, subdivision (e), to provide that, if mitigation credits are purchased in lieu of creating waters of the U.S. and State on the Project site, "the mitigation ratio would be a minimum of 1:1." (RDEIR, p. 3.4-77.) Where is the substantial evidence to support this mitigation ratio? MM BIO-3, subdivision (b), provides that "[a]t a minimum, all impacts to waters of the U.S. and State would be compensated for via creation and preservation of new waters of the U.S. and State at a minimum of 2:1 (creation to impact) ratio." (RDEIR, p. 3.4-76.) Why does the EIR conclude

that a 2:1 ratio is necessary if the Project creates waters of the U.S. and State but only a 1:1 minimum ratio is necessary if mitigation credits are purchased?

B. The RDEIR improperly fails to discuss any additional mitigation measures or alternatives that could feasibly avoid or lessen the Project's significant and unavoidable impacts.

The RDEIR adds a new significant and unavoidable impact (Impact AIR-1) to the other five previously-identified significant and unavoidable GHG and transportation impacts. (RDEIR, p. ES-2 to ES-3.) And the RDEIR reveals that the project applicant is ready and willing to provide $4 million dollars or more in payment for a preservation agreement MOU. (RDEIR, p. 2-21.) Yet, the RDEIR failed to provide any new mitigation measures or alternatives that would avoid or substantially lessen any of the significant and unavoidable impacts. Why couldn't the $4 million dollars be used to increase the percentage of solar energy generated onsite, or to provide for transportation infrastructure improvements, or even to purchase a different site located within the Urban Limit Line that would avoid so many of the significant impacts caused by allowing this leapfrog development? Please also respond to our prior comments in the July 2016 letter about the alternatives analysis.

IV. Conclusion

As noted above, we request that the County provide responses to our comments in the July 2016 letter as well as the additional comments above that are specific to the new and revised text in the RDEIR. The absence of comments on a particular topic in this letter should *not* be taken as any implicit abandonment of prior comments in the July 2016 letter and is *not* an acknowledgement that the RDEIR has adequately responded to those prior comments.

Very truly yours,

Joseph A. Calabrigo
Town Manager

cc: Mayor and Town Council
Supervisor Anderson, District 2
Sabrina Teller & L. Elizabeth Sarine, Remy Moose Manley, LLP

Enclosures

Attachment A:	Town of Danville, July 18, 2016 Comment Letter on the Draft EIR for the Tassajara Parks Project (without Attachments 1-8)
Attachment B:	Excerpts from the Contra Costa County, December 15, 2015 Climate Action Plan. The full document is incorporated by reference, and available online at: http://www.co.contra-costa.ca.us/4554/Climate-Action-Plan
Attachment C:	Excerpts from the Bay Area Air Quality Management District, CEQA Guidelines Update May 2011. The full document is incorporated by reference, and available online at: http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx?la=en
Attachment D:	Excerpts from the California Air Pollution Control Officers Association, January 2008 whitepaper titled CEQA & Climate Change. The full document is incorporated by reference, and available online at: http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf
Attachment E:	Excerpts from the Bay Area Air Quality Management District, Clean Air Plan 2010. The full document is available online at: http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans

9/30/20 Letter to Planning Commission

September 30, 2020

VIA ELECTRONIC MAIL
hiliana.li@dcd.cccounty.us
sean.tully@dcd.cccounty.us

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

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

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

6/9/21 Letter to Planning Commission

June 9, 2021

VIA ELECTRONIC MAIL
hiliana.li@dcd.cccounty.us
sean.tully@dcd.cccounty.us

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.

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).)

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

September 30, 2020

VIA ELECTRONIC MAIL
hiliana.li@dcd.cccounty.us
sean.tully@dcd.cccounty.us

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

ATTACHMENT A

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

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

ADMINISTRATIVE STAFF REPORT 7.2

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.

ATTACHMENT B

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:
Otto Blackwell
4A068AE9E30A4EC...

MAYOR

APPROVED AS TO FORM:

DocuSigned by:
Robert B. Ewing
B9SC6C40ADBE4BE...

CITY ATTORNEY

ATTEST:

DocuSigned by:
71735A3E04C942F...

CITY CLERK

From: Joe Calabrigo
Sent: Friday, October 16, 2020 11:33 AM
To: John Kopchik <John.Kopchik@dcd.cccounty.us>
Subject: RE: Tassajara Parks Project ASR

John:

Happy to talk. Have a good weekend.

Joe

Joseph A. Calabrigo
Town Manager
Town of Danville | 510 La Gonda Way | Danville, CA 94526
(925) 314-3302 | (925) 838-0548 (Fax)
jcalabrigo@danville.ca.gov | www.danville.ca.gov
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From: John Kopchik <John.Kopchik@dcd.cccounty.us>
Sent: Friday, October 16, 2020 11:14 AM
To: Joe Calabrigo <JCalabrigo@danville.ca.gov>
Subject: RE: Tassajara Parks Project ASR

Thanks for the heads up Joe. And thanks for the call and voicemail earlier today. After I review, if I have any questions, I may take you on your invitation to call you back.

Have a nice weekend.

--John

=-=
John Kopchik, Director
Contra Costa County Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Phone: 925-674-7819 Fax: 925-674-7250
Email: john.kopchik@dcd.cccounty.us
=-=

From: Joe Calabrigo <JCalabrigo@danville.ca.gov>
Sent: Friday, October 16, 2020 10:47 AM
To: John Kopchik <John.Kopchik@dcd.cccounty.us>
Subject: FW: Tassajara Parks Project ASR

John:

I'm forwarding on the link to our staff report on the Tassajara Parks project which will go to Council on October 20.

https://danville-ca.granicus.com/MetaViewer.php?view_id=9&event_id=1354&meta_id=36609

Joseph A. Calabrigo
Town Manager
Town of Danville | 510 La Gonda Way | Danville, CA 94526
(925) 314-3302 | (925) 838-0548 (Fax)
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6/8/21 EBMUD Board Resolution

Draft Prepared By
Office of General Counsel

RESOLUTION NO._____

DECLARING EAST BAY MUNICIPAL UTILITY DISTRICT'S (DISTRICT) OPPOSITION TO ANNEXING THE TASSAJARA PARKS PROJECT INTO THE DISTRICT'S SERVICE AREA, FINDING THE PROJECT INCONSISTENT WITH THE DISTRICT'S ANNEXATION POLICIES, AND MAKING FINDINGS AND DECLARATIONS REGARDING THE UNAVAILABILITY OF WATER TO SERVE THE PROJECT

Introduced by Director ; Seconded by Director

WHEREAS, Contra Costa County (County) is considering approving the Tassajara Parks Project (Project), a proposed 125-unit single family residential development in unincorporated County territory, outside the County's Urban Limit Line; and

WHEREAS, the Project is outside but adjacent to the District's service area, Ultimate Service Boundary (USB), and Sphere of Influence; and

WHEREAS, the USB defines the geographic area within which the District has planned to provide water service to existing and future customers; and

WHEREAS, due to the Project's location outside the USB, the District has not planned to provide it with water service; and

WHEREAS, as set forth in District Policy 3.05 - Considerations for Extension of Water Beyond the Ultimate Service Boundary, it is the policy of this Board of Directors (Board) that the District shall not extend water to areas outside the current USB if such extension would result in a reduction in the quantity or quality of water available to serve present and future customers within the USB or an increase in the costs of service; and

WHEREAS, as set forth in District Policy 3.01 - Annexations, it is further the policy of this Board to oppose annexations outside the current USB unless several enumerated conditions are met; and

WHEREAS, as set forth in District Policy 3.08 - Advisory Election for Annexations Outside the Contra Costa County Urban Limit Line, it is further the policy of this Board to oppose annexations of proposed residential developments of less than 200 units located outside the County's Urban Limit Line that are inconsistent with Policy 3.01; and

WHEREAS, based on these Policies, throughout the County's environmental review process for the Project, the District has stated its opposition to annexing the Project into its service area; and

WHEREAS, despite the District's opposition to annexing the Project, the County has consistently assumed the District would provide water service to the Project; and

WHEREAS, the County's Final Environmental Impact Report (EIR) for the Project, published in September 2020, assumed the District would provide water service to the Project based on a proposed offsite water conservation offset (Proposal), under which the Project would fund water

conservation programs throughout the District's service area to offset the Project's water demand; and

WHEREAS, the Proposal relies on implementation of water conservation programs, a component of the District's water supplies available to meet the needs of current and future customers within the current USB; and

WHEREAS, as a long-time leader in water conservation, the District has engaged in a decades-long, comprehensive effort in water conservation throughout its service area, and its efforts to promote water conservation include, but are not limited to:

(a) adopting a Water Conservation Master Plan in 1994, specifying water conservation strategies for building on the District's then-existing water conservation efforts and creating a pathway for future water conservation through expanding rebates and incentives and providing conservation information to its customers. The Master Plan was updated in 2011-- to extend the planning horizon to 2040-- and is currently in the process of being updated again;

(b) sponsoring legislation to ensure that land use planning takes into account the availability of adequate water supplies for proposed new development before the development is approved. These efforts included SB 901 (1995) to require water supply assessments, and SB 221 and SB 610 in 2001 to further improve upon the water supply assessment process;

(c) adopting its own water efficiency and wise water use requirements through Sections 29 and 31 of its Board-adopted Regulations Governing Water Service to Customers of East Bay Municipal Utility District;

(d) implementing a long-running water conservation education program, including school education efforts beginning in 1974, writing and publishing large format books promoting water conservation, and engaging with the public regarding water conservation by maintaining water conservation demonstration gardens, staffing water conservation displays at community events, and organizing and sponsoring the annual Water Conservation Showcase since 2004, which event brings together representatives from water agencies, industry, government, and nonprofits to discuss pressing water issues and learn about new water conservation technologies and solutions;

(e) incentivizing water conservation through a fully staffed, permanent, year-in, year-out water conservation program, with a cumulative budget now totaling over $100 million, and including measures such as water conservation rebate and incentive programs and distribution of water conservation devices to customers; and

WHEREAS, water conservation has long been a key component of the District's water supply portfolio, pursuant to which the District (1) achieved approximately 46 million gallons per day (MGD) in water conservation savings between 1995 and 2018 and (2) continues to pursue further expansion of its already-robust water conservation program; and

WHEREAS, remaining water conservation potential within the District's USB is an important

tool the District can and does use to address the impacts of water supply deficiencies on its customers; and

WHEREAS, the Final EIR generally failed to analyze the feasibility of the Proposal and specifically failed to assess whether and to what extent depleting the District's remaining water conservation potential would jeopardize the District's ability to meet the needs of current and future customers within the District's current USB; and

WHEREAS, the District submitted to the County detailed comments on the Final EIR, objecting to the County's failure to analyze the feasibility of the Proposal, explaining the Project's inconsistency with the District's Board-adopted Policies regarding annexation of new service territory, and stating the District's opposition to annexing the Project into its service area; and

WHEREAS, following publication of the Final EIR, District staff engaged in discussions with County staff and the Project developer's team regarding the feasibility of Proposal; and

WHEREAS, the Project developer's team prepared an assessment addressing in part the technical and economic feasibility of the Proposal; and

WHEREAS, the Project developer's assessment did not address the effect of the Proposal on the District's ability to serve current and future customers within the current USB; and

WHEREAS, current drought conditions prevailing throughout much of California have highlighted the importance of protecting all of the District's water supplies—including supplies created through water conservation—for current and future District customers within the current USB; and

WHEREAS, 2021 has thus far been the second driest year on record in the Mokelumne River basin, where most of the District's water supplies originate; and

WHEREAS, 2021 has thus far been the driest year on record for the East Bay; and

WHEREAS, the snow depth at Caples Lake, a Mokelumne basin snow survey reference point, was at 52 percent of average as of April 19, 2021 and the California Department of Water Resources' Bulletin 120 forecast of the forecasted runoff on the Mokelumne River is at 42 percent of average; and

WHEREAS, on March 22, 2021, the State Water Resources Control Board sent a warning letter to the District and other water rights holders which noted the unusually dry conditions prevailing throughout California, and urged water rights holders to begin planning for potential water supply shortages by taking actions such as increasing water conservation and diversifying water supply portfolios; and

WHEREAS, on April 27, 2021, based on the projected impact of the prevailing dry conditions on the District's water supplies, this Board declared the District's water supplies deficient for meeting customer demands, declared a Stage 1 drought, established a District-wide ten percent rationing goal, declared the need to purchase supplemental supplies, and directed District staff to take actions to promote customer water conservation; and

WHEREAS, since this Board's April 27, 2021 drought-related actions, the District's water supply projections for this water year have continued to decline, with the District's anticipated end-of-September storage levels now 65-70 thousand acre-feet lower than previously projected; and

WHEREAS, as demonstrated in this year's drought and other droughts in recent years, the District's water supplies are not sufficient to meet customer demand in times of drought, requiring the District to purchase supplemental supplies and impose water rationing requirements on its customers; and

WHEREAS, dry year deficiencies in the District's supplies are expected to persist, and the District's Draft Urban Water Management Plan 2020 identifies both a substantial increase in USB-wide demand over the next thirty years, and several thousand acre-feet in unmet need for water in times of drought in the future; and

WHEREAS, in addition to drought, many other stressors threaten to reduce the amount of water available to District customers now and in the future, including climate change, future regulatory actions, and cutbacks in the availability of water to the District under its Central Valley Project (CVP) contract with the United States Department of Interior Bureau of Reclamation (Reclamation); and

WHEREAS, the District's Urban Water Management Plan 2015 estimated that climate change could result in a several thousand acre-foot increase in the District's unmet need for water by the year 2040; and

WHEREAS, climate change may also result in more frequent and severe droughts in the future; and

WHEREAS, the State Water Resources Control Board's efforts to update the Bay-Delta Water Quality Control Plan have thus far focused on improving Bay-Delta water quality by significantly increasing instream flow requirements on tributary rivers to the Bay-Delta, like the Mokelumne River, where most of the District's water supplies originate; and

WHEREAS, the Bay-Delta Water Quality Control Plan Update is likely to increase the District's Mokelumne River instream flow obligations by tens of thousands of acre-feet per year, adding a significant new constraint on the District's water supplies that could impair its ability to meet customer demands in the future; and

WHEREAS, during the last drought, the State of California directly involved itself in local water management, both by issuing curtailment orders requiring water rights holders like the District to divert less water, and by promulgating emergency regulations dictating reductions in customer demand; and

WHEREAS, 2014 and 2015 curtailment orders required the District to bypass approximately 76 thousand acre-feet of water on the Mokelumne River that would have otherwise been available to serve its customers; and

WHEREAS, the State of California could take similar actions this year and in future droughts,

requiring the District to achieve short-term reductions in water consumption and reducing the availability of Mokelumne River water for District customers; and

WHEREAS, in addition to customer rationing, the District's CVP contract provides a key source of supply to meet customer demands during droughts; and

WHEREAS, during the 2014-15 drought, CVP allocations were cut to only 25% for Municipal and Industrial contractors like the District, significantly reducing the amount of CVP water available to the District and forcing the District to purchase supplemental supplies on the spot water transfers market; and

WHEREAS, securing supplemental supplies on the spot transfers market in 2015 was both challenging and expensive, with spot transfer water prices seven to ten times higher than CVP water prices; and

WHEREAS, on May 26, 2021, Reclamation indicated the District's CVP allocation would again be cut to 25%, thus dramatically reducing the amount of CVP water available to address the District's drought-induced water supply deficiencies this year; and

WHEREAS, because of the late date on which CVP cutbacks were announced, it is very unlikely the District will be able to purchase water on the spot transfers market, as most available water has already been purchased by other parties; and

WHEREAS, CVP allocations could be similarly reduced in future droughts, and there are no assurances that supplemental water will be available on the spot transfers market to replace the District's reduced CVP supplies, potentially leaving the District without adequate supplies to meet customer demands; and

WHEREAS, given the existing and predicted future deficiencies in the District's water supplies during droughts, and other threats and stressors on those supplies, the District must adhere to its policies regarding the annexation of new service territory; and

WHEREAS, offsetting the Project's demand through conservation programs would take "new water" created through those programs away from District customers within the USB, thereby violating Policy 3.05 by reducing the quantity of water available to those customers; and

WHEREAS, the Project is located entirely outside the USB, would result in the addition of more than 100 residential units outside the USB, and is inconsistent with Policy 3.05, such that (1) the Project does not meet Policy 3.01's enumerated conditions for annexation of territory outside the USB, and (2) annexation of the Project would therefore be inconsistent with Policy 3.01; and

WHEREAS, because the Project is less than 200 units in size, is located outside the County's Urban Limit Line, and is inconsistent with Policy 3.01, it also does not comply with Policy 3.08; and

WHEREAS, the District has a legal obligation to provide adequate water service to all members of the community within its service area; and

WHEREAS, given the deficiencies in the District's water supplies in times of drought, the potential threats to those supplies, and the anticipated growth in water demand within the USB, the District cannot afford to dedicate any water available to it—including new water supplies created through water conservation programs—to a proposed development outside its current service area, and outside the USB;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Municipal Utility District finds, determines and declares the following:

1. The Board finds the above recitals to be true and correct.

2. The Board hereby finds and declares the District has not planned to serve the Project and does not have adequate water supplies to support the proposed annexation of the Project into the District's service area.

3. The Board hereby finds and declares the District must reserve all sources of water supply available to mitigate water supply deficiencies it experiences during droughts and to address the potential impacts of other stressors and constraints on its water supplies.

4. The Board hereby finds and declares that serving the Project using water created through implementation of conservation programs throughout the District's service area is not feasible because doing so would take a source of water supply away from existing and future customers within the USB, thereby exacerbating deficiencies in the District's water supplies during droughts.

5. The Board hereby finds and declares that the proposed annexation of the Project is inconsistent with District Policies 3.01 and 3.05 and does not comply with Policy 3.08.

6. The Board hereby declares the District (a) is opposed to annexing the Project into its service area and (b) does not intend to serve the Project.

ADOPTED this 8th day of June, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
President

ATTEST:

_____
Secretary

APPROVED AS TO FORM AND PROCEDURE:

_____
General Counsel