

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

October 14, 2020
Agenda Item 7

October 14, 2020 (Agenda)

LAFCO 14-05 *Central Contra Costa Sanitary District (CCCSD) DA 186 Magee Preserve Boundary Reorganization - Annexations to CCCSD and East Bay Municipal Utility District (EBMUD)*

APPLICANT CCCSD by Resolution No. 2020-012 adopted April 16, 2020

SYNOPSIS The project site consists of 410± acres, 29± acres of which will become a 69-lot single family subdivision; the remaining 381± acres will be preserved as permanent open space.

The applicant proposes to annex 402± acres (nine parcels) to CCCSD and 367± acres (seven parcels) to EBMUD. The property is located on the south side of Diablo Road and Blackhawk Road in the Town of Danville as shown on the attached maps (Exhibits A and B).

BACKGROUND

In 2014, the Town of Danville approved the “Magee Ranch” project and CCCSD, by Board resolution, filed an application with LAFCO to annex the properties to CCCSD and EBMUD. Subsequently, a legal challenge to the Town’s Environmental Impact Report (EIR) and land use approvals found the bicycle safety component of the EIR inadequate and the LAFCO process was paused.

Consequently, the Town of Danville adopted a Revised Final EIR and a new developer – Davidon Homes – acquired the project. On March 3, 2020, the Town of Danville voters were asked to vote on the Magee Preserve project. The measure was approved 54% YES and 46% NO. On May 27, 2020 CCCSD resubmitted the application to LAFCO.

DISCUSSION

The project includes construction of 69 single family homes on 29± acres and preservation of the remaining 381± acres as permanent open space. The property owner petitioned CCCSD for annexation. In their ongoing efforts to clean up service area boundaries, CCCSD and EBMUD propose to annex all of the project area, including the open space portion, which will avoid having large holes and islands within their service boundaries.

In its review of a boundary change proposal, the Commission must consider a variety of factors pursuant to Government Code §56668. In the Commission's review of these factors, no single factor is determinative. In reaching a decision, each factor is to be evaluated within the context of the overall proposal.

1. **Consistency with the Sphere of Influence (SOI) of Any Local Agency:**

LAFCO is charged with both regulatory and planning functions. Changes of organization are a regulatory act, while establishing SOIs is a planning function. The SOI is an important benchmark as it defines the primary area within which urban development may occur. For the Commission to approve an annexation, it must be consistent with the jurisdiction's SOI. The area proposed for annexation is within the SOIs of CCCSD and EBMUD. The annexation area is also within the Contra Costa County Urban Limit Line

2. **Land Use, Planning and Zoning - Present and Future:**

Existing land uses for the 410± acre site includes open range land and hillsides used for cattle operations. Existing structures on the site include water storage facilities, cell tower sites, storage buildings, horse corrals, a parking area, and access roads associated with the existing ranch use.

In 2013, the Town of Danville approved rezoning changes consistent with the preliminary development plan for the project, which consists of a single-family residential subdivision and 381± acres of open space.

The single-family homes will be located in two separate clusters. Three homes are proposed on McCauley Road, south of the Diablo Road/McCauley Road/Green Valley Road intersection, and the remaining 66 homes will be located on the eastern portion of the property, accessed by a new driveway just east of Jillian Way. The project's open space will be preserved through development conditions and a scenic easement requirement. A significant portion of the site will be dedicated to the East Bay Regional Park District. The remainder will be owned by a combination of the homeowners' association and Geologic Hazard Abatement District (GHAD). The entire undeveloped portion of the site will be covered by scenic easements and conservation easements.

The Town's General Plan designations for the annexation area include General Open Space, Agricultural, Rural Residential and Single family – Low Density (with clustering allowed). The Town's zoning designation is Planned Unit Development (P-1). A minimum of 10% of the homes will include second dwelling units in accordance with the Town's affordable housing requirements.

The approved P-1 (Planned Unit Development District) zoning allows clustering of residential units on the flatter portions of the site while maintaining the same overall density allowed under the current General Plan Land Use designation. This allows portions of the site that contain steeper slopes and visible ridgelines to be retained as open space.

The 410± acre site is bounded by single family residences and the Sycamore Valley Open Space Preserve to the north, south and east. To the west are single family homes, along with the San Ramon Valley Fire Protection District Station 33, the Sunrise Assisted Living facility, and the Green Valley Elementary School.

3. The Effect on Maintaining the Physical and Economic Integrity of Agricultural Lands:

As described in the project EIR, the 410± acre project site has historically been used and continues to be used for cattle grazing and related operations; however, the Town's EIR found that no Prime Farmland, Unique Farmland, or Farmland of Statewide Importance are located on the project site and on this basis, found that the project would not result in a loss of Farmland of Statewide Importance to non-agricultural use. While the project site consists of grazing land, it does not meet the criteria for prime or important agricultural land as defined by CEQA, nor does it qualify as prime land for livestock production per the USDA Handbook criteria (one animal unit per acre), since the average stocking rate for grazing operations on the project site is one cow per 10 acres. Thus, the subject property is not Prime Agricultural Land as defined in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH).

No portion of the proposal area is under a Williamson Act Land Conservation Act agreement. Four of the 10 parcels on the project site were formerly subject to a Williamson Act contract. A notice of non-renewal was filed in 2000, and the properties came out of the Williamson Act contract in 2010.

4. Topography, Natural Features and Drainage Basins:

The site consists primarily of undeveloped land and hillsides used for cattle operations. Oak woodland is scattered throughout the property. The site varies in elevation from approximately 430 feet in the northwestern corner to approximately 955 feet in the southern portion of the site. The East Branch Green Valley Creek extends in a northwesterly direction along portions of the north boundary of the project site. To the south and east of the project site are rolling hills. To the west and north are residential uses in generally flat areas. Mt. Diablo State Park is located approximately one mile northeast of the site.

5. **Population:**

Development of 69 single family homes is planned for the annexation area. Of the 69 units, 10% (seven units) within the project will be required to incorporate second dwelling units. The estimated population increase for the annexation area is approximately 215, based on 2020 California Department of Finance estimates for households in the Town of Danville. The estimate includes both the 69 single family homes and the second units.

6. **Fair Share of Regional Housing:**

In its review of a proposal, LAFCO must consider the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the regional council of governments. Regional housing needs are determined by the State Department of Housing and Community Development; the councils of government throughout the State allocate to each jurisdiction a "fair share" of the regional housing needs (Government Code §65584).

In Contra Costa County, the Association of Bay Area Governments (ABAG) determines each city's fair share of regional housing needs. Each jurisdiction is required in turn to incorporate its fair share of the regional housing needs into the housing element of its General Plan. In July 2013, ABAG adopted the 2015-2023 Regional Housing Needs Allocation (RHNA) Plan for the San Francisco Bay Area. The RHNA Plan includes the following allocations for the Town of Danville: total RHNA is calculated at 557 units, including 126 above moderate, 124 moderate, 111 low and 196 very low-income units.

Of the 69 units, 10% (seven units) within the project site will be required to incorporate second dwelling units, which are to be rented at rental rates set by the California Department of Housing and Community Development as being affordable to "low income" households.

7. **Governmental Services and Controls - Need, Cost, Adequacy and Availability:**

Whenever a local agency submits a resolution of application for a change of organization or reorganization, the local agency shall also submit a plan for providing services within the affected territory (Gov. Code §56653). The plan shall include all of the following information and any additional information required by LAFCO:

- (1) An enumeration and description of the services to be extended to the affected territory.
- (2) The level and range of those services.
- (3) An indication of when those services can feasibly be extended to the affected territory.
- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- (5) Information with respect to how those services will be financed.

CCCSD submitted a plan for providing services which covers water and wastewater services. The level and range of services to be extended to the subject area following annexation will be comparable to other areas served by CCCSD and EBMUD. The subject area is currently served by other local agencies including, but not limited to, the Town of Danville and the San Ramon Valley Fire Protection District.

CCCSD serves nearly half a million residents and more than 3,000 businesses within a 145-square-mile service area, including Alamo, Danville, Lafayette, Moraga, Orinda, Pleasant Hill, Walnut Creek; portions of Martinez and San Ramon; and unincorporated communities within central Contra Costa County. CCCSD also treats wastewater from the cities of Concord and Clayton. CCCSD's wastewater collection system consists of 1,540 miles of sewer mains with 18 pumping stations. The majority of CCCSD's system operates with gravity flow with some pumping stations and force

mains. All sewer connections to the subject property will be either gravity flow or individual residential pump systems. CCCSD's wastewater treatment plant provides secondary level treatment for an average dry weather flow in 2019 of approximately 34.1 million gallons per day (mgd) of wastewater. The wastewater treatment plant has a permitted discharge limit of 53.8 mgd.

Based on the maximum number of dwelling units planned for the annexation area, the maximum demand for service is approximately 15,405 gallons of wastewater per day. CCCSD has the capacity to serve the project.

CCCSD has infrastructure in the area and serves a significant number of surrounding properties.

All gravity mains required to serve the affected parcels will be 8-inch diameter or up to 2-inch diameter for pressure mains (CCCSD's minimum size). All laterals will be 4-inch diameter (CCCSD's minimum size for gravity laterals), or 1¼ to 2-inch diameter pump laterals (CCCSD's minimum size for pump laterals, depending on the specific pump type installed).

All capital costs including any required sewer main extensions, along with connections fees, will be borne by the property owner/developer. CCCSD funds the maintenance of all sewers through its annual sewer service charge.

8. **Timely Availability of Water and Related Issues:**

Pursuant to the CKH Act, LAFCO must consider the timely and available supply of water in conjunction with a boundary change proposal. The proposal includes annexation to EBMUD. EBMUD provides potable water services and limited wastewater collection and treatment services in portions of the District's service area. The EBMUD service area is approximately 332 square miles (Contra Costa and Alameda counties). EBMUD provides potable water to approximately 1.4 million people within the two-county service area. Within Contra Costa County, EBMUD provides water service to a 225± square mile service area, serving an estimated 522,000 residents (2015 UWMP).

EBMUD's water supply is distributed through a collection system consisting of aqueducts, reservoirs, and other components. The primary source of water supply for EBMUD is the Mokelumne River; this watershed accounts for 90 percent of EBMUD's water supply. EBMUD's existing water rights allow the delivery of up to 325 mgd or approximately 364,037 acre-feet per year of water from the Mokelumne River.

EBMUD's water rights are subject to variability, particularly during dry and multiple dry years. The availability of the Mokelumne River runoff is subject to senior water rights of other users, downstream fishery flow requirements, and other Mokelumne River water uses. Given the variability, EBMUD indicates that supplemental water supply sources are needed to meet future water demand during extended periods of drought.

The Freeport Regional Water Facility is a regional water supply project that provides supplemental water supply to EBMUD during dry years, as part of the Central Valley Project (CVP), a federal water management program. During periods of drought, EBMUD receives CVP water from its Freeport Regional Water Facility to augment its water supply. The U.S. Bureau of Reclamation (USBR) provides supplemental water supply during dry and multiple dry years to ensure the reliability of EBMUD's water supply. In conjunction with the request to annex the property, EBMUD is also seeking approval from the USBR.

EBMUD has adequate capacity to serve the project from the District's Scenic Pressure Zone, with a service elevation between 650 and 850 feet. Main extensions will be required to serve the proposed development.

Additionally, the proposed project is required to comply with the California Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all applicable water-efficiency measures described in the regulations are installed.

The costs associated with the water supply system as described, as well as development system capacity and service connection fees, will be borne by the project sponsor. Ongoing maintenance of the system will be funded through usage fees collected by EBMUD. The project EIR estimates the water demand will be 46,530 gallons per day. EBMUD has the capacity to serve the project.

9. **Assessed Value, Tax Rates, and Indebtedness:**

The annexation area is within tax rate areas 16001, 16002 and 16003. The total assessed value for the annexation area is \$3,761,488 (2019-20 roll). The territory being annexed shall be liable for all authorized or existing taxes comparable to properties presently within the annexing agencies.

10. **Environmental Impact of the Proposal:**

On June 18, 2013, the Town of Danville, as Lead Agency, certified an EIR, and adopted Findings of Fact, a Statement of Overriding Considerations, and adopted Mitigation Measures and a Mitigation Monitoring and Reporting Program in conjunction with the development project.

Subsequently, a lawsuit was filed alleging that the 2013 Final EIR inadequately addressed impacts to traffic, bicycle safety, pedestrian safety and several other factors; and that the project was inconsistent with the Town's General Plan and with other land use restrictions. The Court of Appeals rejected all allegations except the claim that the EIR did not adequately address impacts to bicycle safety. In response to the Court's ruling, the Town of Danville prepared and circulated a Draft Revised EIR; and on July 2, 2019, the Danville Town Council adopted a Final Revised EIR.

Copies of these documents were previously provided to the Commissioners and are available through the LAFCO office.

11. **Landowner Consent and Consent by Annexing Agency:**

According to County Elections, there are fewer than 12 registered voters in the area proposed for annexation; thus, the area proposed for annexation is considered uninhabited.

CCCSD indicates that 100% of the affected landowners have provided written consent to the annexation. Thus, if the Commission approves the annexation, the Commission will waive the protest proceedings. All landowners and registered voters within the proposal area and within 300 feet of the exterior boundaries of the area were notified of the October 14, 2020 hearing.

12. **Boundaries and Lines of Assessment:**

The annexation area is within the SOIs of both CCCSD and EBMUD and is contiguous to the districts' service boundaries. A map and legal description to implement the proposed boundary changes have been received and are being reviewed by the County Surveyor.

13. **Environmental Justice:**

LAFCO is required to consider the extent to which a change or organization of reorganization will promote environmental justice. As defined by statute, environmental justice means "the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the location of public facilities and the provision of public services, to ensure a healthy environment for all people such that the effects of pollution are not disproportionately borne by any particular populations or communities." [Gov. Code § 56668(p)] The proposed boundary

reorganization is not expected to promote or discourage the fair treatment of minority or economically disadvantaged groups.

14. Disadvantaged Communities:

In accordance with state law, local agencies and LAFCOs are required to plan for disadvantaged unincorporated communities (DUCs). Many of these communities lack basic infrastructure, including streets, sidewalks, storm drainage, clean drinking water, and adequate sewer service. LAFCO actions relating to Municipal Service Reviews, SOI reviews/amendments, and annexations must take into consideration DUCs, and specifically the adequacy of public services, including sewer, water, and fire protection needs or deficiencies, to these communities. According to the County Department of Conservation and Development, the area proposed for annexation is not a DUC.

15. Comments from Affected Agencies/Other Interested Parties:

No comments have been received to date.

16. Regional Transportation and Regional Growth Plans:

In its review of a proposal, LAFCO shall consider a regional transportation plan adopted pursuant to Gov. Code §65080 [Gov. Code §56668(g)]. Further, the Commission may consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis (Gov. Code §56668.5). Regarding these sections, LAFCO looks at consistency of the proposal with the regional transportation and other regional plans affecting the Bay Area.

SB 375, a landmark state law, requires California's regions to adopt plans and policies to reduce the generation of greenhouse gases (GHG), primarily from transportation. To implement SB 375, in July 2013, the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) adopted Plan Bay Area as the "Regional Transportation Plan and Sustainable Communities Strategy" for the San Francisco Bay Area through 2040. Plan Bay Area focuses on where the region is expected to grow and how development patterns and the transportation network can work together to reduce GHG emissions. The Plan's key goals are to reduce GHG emissions by specified amounts; and to plan sufficient housing for the region's projected population over the next 25 years.

In July 2017, ABAG and MTC adopted Plan Bay Area 2040, which updates the 2013 Plan Bay Area and reaffirms the goals/targets identified in the earlier version. Plan Bay Area establishes "Priority Conservation Areas" (PCAs) and "Priority Development Areas" (PDAs) and focuses growth and development in nearly 200 PDAs. These existing neighborhoods are served by public transit and have been identified as appropriate for additional, compact development.

This fall, ABAG and MTC are starting Plan Bay Area 2050 which will focus on four key issues - the economy, the environment, housing and transportation - and will identify a path to make the Bay Area more equitable for all residents and more resilient in the face of unexpected challenges. Work with local jurisdictions is currently underway to explore new PDAs, PCAs and a new variable - Priority Production Areas (PPAs).

The area proposed for annexation is within the Town of Danville's urban growth boundary and is not within a designated PDA or PCA. The proposed boundary changes do not appear to conflict with the regional growth plan.

ALTERNATIVES FOR COMMISSION ACTION

After consideration of this report and any testimony or additional materials that are submitted the Commission should consider taking one of the following actions:

Option 1 Approve the reorganization as proposed including annexations to CCCSD and EBMUD.

- A. Find that, as a Responsible Agency under CEQA, the Commission has considered the information contained in the Magee Ranches EIR and related environmental documents as certified by the Town of Danville on June 18, 2013, along with the Revised Final EIR adopted on July 2, 2019, and the Town of Danville's Findings of Fact and Statement of Overriding Considerations.
- B. Adopt this report, approve LAFCO Resolution No. 14-05 (Attachment 1), and approve the proposal, to be known as *Central Contra Costa Sanitary District (CCCSD) DA 186 Magee Preserve Boundary Reorganization - Annexations to CCCSD and East Bay Municipal Utility District (EBMUD)* subject to the following terms and conditions:
 1. The territory being annexed shall be liable for the continuation of any authorized or existing special taxes, assessments, and charges comparable to properties presently within the annexing agencies.
 2. The CCCSD has delivered an executed indemnification agreement providing for CCCSD to indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.
 3. Water service is conditioned upon EBMUD receiving acceptance for inclusion of the annexed areas from the United States Bureau of Reclamation (USBR), pursuant to the requirements in EBMUD's contract with USBR for supplemental water supply from the Central Valley Project.
- C. Find that the subject territory is uninhabited, the proposal has 100% landowner consent, and the conducting authority (protest) proceedings are hereby waived.

Option 2 A. Find that, as a Responsible Agency under CEQA, the Commission has considered the information contained in the Magee Ranches EIR and related environmental documents as certified by the Town of Danville on June 18, 2013, along with the Revised Final EIR adopted on July 2, 2019, and the Town of Danville's Findings of Fact and Statement of Overriding Considerations.

B. Adopt this report and DENY the proposal.

Option 3 If the Commission needs more information, CONTINUE this matter to a future meeting.

RECOMMENDED ACTION:

Approve Option 1.

LOU ANN TEXEIRA, EXECUTIVE OFFICER
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

c: Distribution

Exhibits

- A – CCCSD Annexation Map
- B - EBMUD Annexation Map

Attachment

- 1 – Draft LAFCO Resolution 14-05

RESOLUTION NO. 14-05

RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
MAKING DETERMINATIONS AND APPROVING CENTRAL CONTRA COSTA SANITARY
DISTRICT (CCCSO) DA 186: MAGEE PRESERVE BOUNDARY REORGANIZATION
ANNEXATIONS TO CCCSD AND EAST BAY MUNICIPAL UTILITY DISTRICT

WHEREAS, the above-referenced a proposal was filed with Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code section 56000 et seq.); and

WHEREAS, the Executive Officer has examined the application and executed her certification in accordance with law, determining and certifying that the filing is sufficient; and

WHEREAS, at the time and in the manner required by law the Executive Officer has given notice of the Commission's consideration of the proposal; and

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations therein, and the report and related information have been presented to and considered by the Commission; and

WHEREAS, at public hearings held on January 14, February 11, May 13, 2015, August 12, 2015, and September 9, 2015, and October 14, 2020, the Commission heard, discussed and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendation, the environmental documents or determination, applicable General and Specific Plans, consistency with spheres of influence, contiguity with the districts' boundaries, and related factors and information including those contained in Gov. Code §56668; and

WHEREAS, information satisfactory to the Commission has been presented that no affected landowners/registered voters within the subject territory object to the proposal; and

WHEREAS, the Local Agency Formation Commission finds the proposal to be in the best interest of the affected area and the total organization of local governmental agencies within Contra Costa County.

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission **DOES HEREBY RESOLVE, DETERMINE AND ORDER** as follows:

1. As a Responsible Agency under CEQA, the Commission has considered the information contained in the Magee Ranches EIR and related environmental documents as certified by the Town of Danville on June 18, 2013, along with the Revised Final EIR adopted on July 2, 2019, and the Town of Danville's Findings of Fact and Statement of Overriding Considerations.
2. The applicant (CCCSO) has delivered an executed indemnification agreement providing for the District to indemnify LAFCO against any expenses arising from any legal actions challenging the reorganization.
3. The reorganization is hereby approved.
4. The subject proposal is assigned the distinctive short-form designation:

CENTRAL CONTRA COSTA SANITARY DISTRICT DA 186 – MAGEE PRESERVE
BOUNDARY REORGANIZATION - ANNEXATIONS TO CENTRAL CONTRA COSTA
SANITARY DISTRICT AND EAST BAY MUNICIPAL UTILITY DISTRICT

5. The boundaries of the affected territory are found to be definite and certain as approved and set forth in Exhibits A and B, attached hereto and made a part hereof.
6. The subject territory shall be liable for any authorized or existing taxes, charges, and assessments comparable to properties within the annexing agencies.
7. Said territory is found to be uninhabited.
8. The proposal has 100% landowner consent and said conducting authority (protest) proceedings are hereby waived.
9. Water service is conditioned upon EBMUD receiving acceptance for inclusion of the annexed areas from the United States Bureau of Reclamation (USBR), pursuant to the requirements in EBMUD’s contract with USBR for supplemental water supply from the Central Valley Project.
10. All subsequent proceedings in connection with this reorganization shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

PASSED AND ADOPTED THIS 14TH day of October 2020, by the following vote:

- AYES:
- NOES:
- ABSTENTIONS:
- ABSENT:

CANDACE ANDERSEN, CHAIR, CONTRA COSTA LAFCO

ATTEST: I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated above.

Dated: October 14, 2020

Lou Ann Texeira, Executive Officer

LAFCO No. 14-05: Annexation 186 Magee Ranch/Summerhill to Central Contra Costa Sanitary District



