

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

September 9, 2015 (Agenda)

September 9, 2015
Agenda Item 9

LAFCO 14-05 Reorganization 186 (Magee Ranch) – Annexations to Central Contra Costa Sanitary District (CCCSD) and East Bay Municipal Utility District (EBMUD)

PROPONENT CCCSD by Resolution No. 2014-018 adopted June 19, 2014

SYNOPSIS The project site consists of 410± acres, 40± acres of which will become a 69-lot single family subdivision; the remaining 370± acres will be preserved as permanent open space.

The applicant proposes to annex 400.4± acres (eight parcels) to CCCSD and 367± acres (seven parcels) to EBMUD. The property is located on the south side of Diablo and Blackhawk Roads in the Town of Danville as shown on the attached map (Attachment 1).

This item was continued from the August 12, 2015 LAFCO meeting, and the public hearing remains open.

Since the Commission last heard this item, the Court of Appeal scheduled oral arguments on August 4, which starts the 90-day clock for the court to issue a decision. According to the court documents, cause was argued and submitted. There was no ruling on August 4th; consequently, we recommend continuing the LAFCO hearing to October 14, 2015.

DISCUSSION

CCCSD filed an application with LAFCO to annex the properties to both CCCSD and EBMUD. The annexation area will contain 69 single family lots and 370± acres to be preserved as permanent open space. The property owner has petitioned CCCSD for annexation. In their ongoing efforts to clean up service area boundaries, the Districts are proposing to annex all of the project area, including the open space portion, which will avoid leaving large holes or islands within their service boundaries.

Government Code §56668 sets forth factors that the Commission must consider in evaluating a proposed boundary change as discussed below. In the Commission's review, no single factor is determinative. In reaching a decision, each is to be evaluated within the context of the overall proposal.

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

The area proposed for annexation is within the SOIs of both CCCSD and EBMUD, and within the County Urban Limit Line.

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

Existing land uses for the 410± acre site consist primarily of 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 370± 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 370-acre open space area will be privately owned by either a Geologic Hazard Abatement District or the project's Homeowners Association.

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. Environmental Impact of the Proposal:

On June 18, 2013, the Town of Danville, as Lead Agency, certified an Environmental Impact Report (EIR), adopted Findings of Fact, and a Statement of Overriding Considerations, and adopted Mitigation Measures and a Mitigation Monitoring and Reporting Program in conjunction with the development project. Copies of these documents were previously provided to the Commissioners and are available for review in the LAFCO office.

In July 2013, Save Open Space (SOS) Danville, a local citizen group, filed a lawsuit challenging the Town of Danville's approval of the SummerHill development project. The suit challenged the Town's position that the development did not require an amendment to the Town's General Plan, and therefore, did not invoke Measure S – a 2000 measure that requires voter approval by ballot for General Plan amendments or zoning changes involving agricultural or open space lands. The suit also challenged various aspects of the Town's EIR.

In July 2014, Contra Costa County Superior Court Judge Steven K. Austin ruled that the Danville Town Council violated part of the Town's General Plan when it rezoned the property and failed to conform to the requirements of Measure S which requires a vote of the people. The Court also found that the EIR was deficient in that it failed to adequately analyze the impact of the added homes on bicyclists' safety along Diablo Road. The court ruling was issued after the CCCSD Board took action to apply to LAFCO.

The judgment set aside the EIR and the Town's approval of the development project, pending the resolution of the appeal filed by the Town. The Court Order included an injunction that enjoined the Town, the developer, "and those acting in in concert with them... from issuing any construction or development permits or undertaking any construction activities related to the Town's approval of the project." The Town has appealed the judgment of the Superior Court.

The Court of Appeal scheduled oral arguments in the case on August 4th, which starts the 90-day clock for the court to issue its decision. There was no ruling on August 4th; consequently, we recommend continuing the LAFCO hearing to October 14, 2015.

4. 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, it 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 currently 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.

5. 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.

6. 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 211, based on 2014 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.

7. 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.

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.

8. 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 the Commission or the Executive Officer:

- (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.

The District's Plan for Providing Services is on file in the LAFCO office. The annexation area is served by various local agencies including, but not limited to, the Town of Danville and the San Ramon Valley Fire Protection District.

The proposal before the Commission is to annex the property to CCCSD and EBMUD for the provision of sanitary sewer and water services, respectively.

CCCSD currently serves an estimated population of 471,000 residents in a 144-square-mile service area. CCCSD's wastewater collection system consists of 1,500 miles of sewer mains with 19 pump 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 of approximately 33.8 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.

9. Timely Availability of Water and Related Issues:

The proposal also 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 331 square miles (Contra Costa and Alameda counties). EBMUD provides potable water to approximately 1.3 million people within the two-

county service area. Within Contra Costa County, EBMUD provides water service to a 146± square mile service area, serving an estimated 477,212 residents.

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 364,046 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.

Following the January 2015 LAFCO meeting, LAFCO staff consulted with EBMUD staff regarding the details and timing of obtaining USBR approval. EBMUD staff reports that in 2006, EBMUD and the USBR entered into a long-term renewal contract under which EBMUD can receive supplemental water from the CVP during dry years. The contract defines EBMUD's CVP Contractor's Service Area (CSA), and USBR must approve the addition of any new areas requesting water service that are outside of the CSA. To support its review of a request for such additions, USBR must comply with the National Environmental Policy Act (NEPA), the Endangered Species Act, and Section 106 of the National Historic Preservation Act.

Applying to USBR for inclusion of new areas into EBMUD's CVP CSA can be a lengthy process. A formal application for inclusion cannot be submitted to USBR until EBMUD's Board of Directors adopts a resolution for such application, which is dependent on receiving a LAFCO Certificate of Completion approving the annexation. After a formal application for inclusion is submitted, USBR can take several months to review, approve the inclusion, and issue a revised EBMUD CVP CSA map. As part of the inclusion application, EBMUD works with the developer and forwards applicable CEQA documents, U.S. Army Corps of Engineers permits, and NEPA documents to USBR for review. In the meanwhile, no water service can be provided to the annexed area until USBR approval is obtained.

According to EBMUD staff, USBR indicates that it will not accept an application for inclusion with any uncertainties, such as an annexation conditioned on the outcome of pending litigation. The USBR action would amend the EBMUD CVP CSA to include the annexed area; thus, if the

LAFCO action is conditioned on the outcome of the court appeal, the USBR will not accept the application.

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 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.

10. Assessed Value, Tax Rates and Indebtedness:

The annexation area is within tax rate areas 16001, 16002 and 16003. The assessed value for the annexation area is \$3,447,117 (2014-15 roll). The territory being annexed shall be liable for all authorized or existing taxes comparable to properties presently within the annexing agencies.

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 may waive the protest hearing (Gov. Code §56662). All landowners and registered voters within the proposal area(s) and within 300 feet of the exterior boundaries of the area(s) received notice of the initial hearing on January 14, 2015.

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 proposals for a change of organization or reorganization will promote environmental justice. As defined by statute, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services. The proposed annexation is not expected to promote or discourage the fair treatment of minority or economically disadvantaged groups.

14. Disadvantaged Communities:

In accordance with recent legislation (SB 244), 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 Planning Department, the annexation area does not meet the criteria of a DUC.

15. Comments from Affected Agencies/Other Interested Parties

On January 7, 2015, LAFCO received communication from Maryann Cella with SOS Danville Group (Attachment 3) informing LAFCO of the status of the lawsuit and the injunction issued by the Court. Ms. Cella requested that LAFCO table its consideration of the Magee Ranch annexations until there is a legally valid EIR and a legally valid development plan approval for the SummerHill/Magee project.

On January 9, 2015, LAFCO was copied on a letter from Stuart M. Flashman, attorney for SOS Danville Group, claiming that CCCSD, EBMUD and LAFCO are subject to the injunction issued by the Superior Court, and that moving forward with approving the reorganization while the injunction remains in effect would be a violation of that injunction and could subject the parties to a claim of being in contempt of court (Attachment 4).

LAFCO staff has continued to communicate with the Town of Danville, CCCSD and EBMUD staff, and with representatives of SOS Danville Group and SummerHill Homes on the proposal.

On August 6, 2015, LAFCO received correspondence from Maryann Cella, SOS Danville Group (Attachment 5) requesting that LAFCO reduce the annexation boundary to include only the parcels that will require sewer and/or water service (APNs 202-050-071/078/079 and 215-040-002) – see Attachment 6. Ms. Cella notes that the other six parcels will be preserved as permanent open space, will not be developed; and therefore, will have no need for utility services.

The Town of Danville staff indicates that as part of the project, 40± acres will be developed, and the remaining 370± acres will remain undeveloped, shall be preserved as permanent open space, and designated as such on the final map for the project. In addition, the applicant shall dedicate to the Town a scenic easement covering the undeveloped portions of the project site. The scenic easement shall preclude any future development on these portions of the project site.

The developer, CCCSD and EBMUD support annexation of the entire area, as proposed, in order to ensure logical and orderly boundaries; and the Town of Danville's primary focus is that the residential units in the project, as approved, have the ability to be served by the utilities. The Commission has discretion to amend the annexation boundaries as desired.

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 CONTINUE this matter to a future meeting. Based on the information obtained from the parties, and in anticipation of an Appellate Court decision, it is recommended that LAFCO continue the matter to October 14, 2015.

Option 2 APPROVE the reorganization as submitted.

- A. Find that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Magee Ranches EIR and related environmental documents as certified by the Town of Danville on June 18, 2013; and that the Commission adopts the Town of Danville's Findings of Fact and Statement of Overriding Considerations.
- B. Adopt this report, approve LAFCO Resolution No. 14-05 (Attachment 2), and approve the proposal, to be known as Reorganization 186 (Magee Ranch/SummerHill):
Annexations to CCCSD and 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 agency.
 2. That 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 conditional upon EBMUD receiving acceptance for inclusion of the annexed areas from the USBR, pursuant to the requirements in EBMUD's contract with USBR for supplemental water supply from the CVP.
 4. LAFCO's approval is conditioned on a) receipt from the Town of Danville of a valid EIR (either through acceptance of the EIR by the Court of Appeal, or through the revision/recirculation process); and b) validation from the Court of Appeal that the Town of Danville's approval of the SummerHill Homes development plan and related actions are legally valid. As noted above, the USBR will not accept an application for inclusion of an area in the EBMUD CVP service area if there are uncertainties, such as a conditional approval by LAFCO.
- C. Find that the subject territory is uninhabited, the proposal has 100% landowner consent, and the conducting authority (protest) proceedings are hereby waived.

Option 3 APPROVE the reorganization as modified by the Commission.

- A. Find that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Magee Ranches EIR and related environmental documents as certified by the Town of Danville on June 18, 2013; and that the Commission adopts the Town of Danville's Findings of Fact and Statement of Overriding Considerations.
- B. Adopt this report, approve LAFCO Resolution No. 14-05 (Attachment 2), and approve the proposal, to be known as ***Reorganization 186 (Magee Ranch/ SummerHill): Annexations to CCCSD and 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 agency.

2. That 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 conditional upon EBMUD receiving acceptance for inclusion of the annexed areas from the USBR, pursuant to the requirements in EBMUD's contract with USBR for supplemental water supply from the CVP.
 4. LAFCO's approval is conditioned on a) receipt from the Town of Danville of a valid EIR (either through acceptance of the EIR by the Court of Appeal, or through the revision/recirculation process); and b) validation from the Court of Appeal that the Town of Danville's approval of the SummerHill Homes development plan and related actions are legally valid. As noted above, the USBR will not accept an application for inclusion of an area in the EBMUD CVP service area if there are uncertainties, such as a conditional approval by LAFCO.
- C. Find that the subject territory is uninhabited, the proposal has 100% landowner consent, and the conducting authority (protest) proceedings are hereby waived.

Option 4 Adopt this report and DENY the proposal.

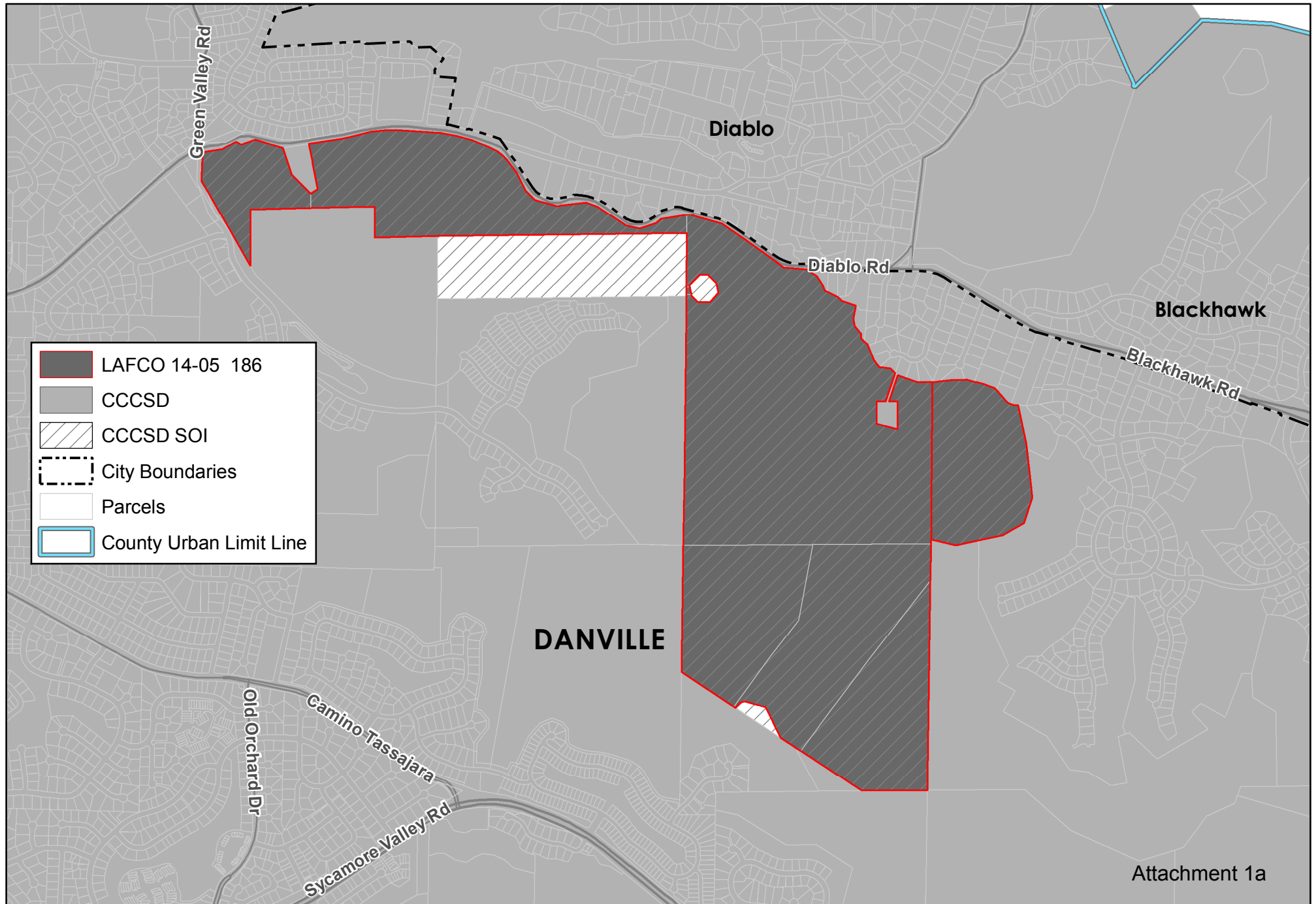
RECOMMENDED ACTION: **Approve Option 1** and continue the matter to October 14, 2015.

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

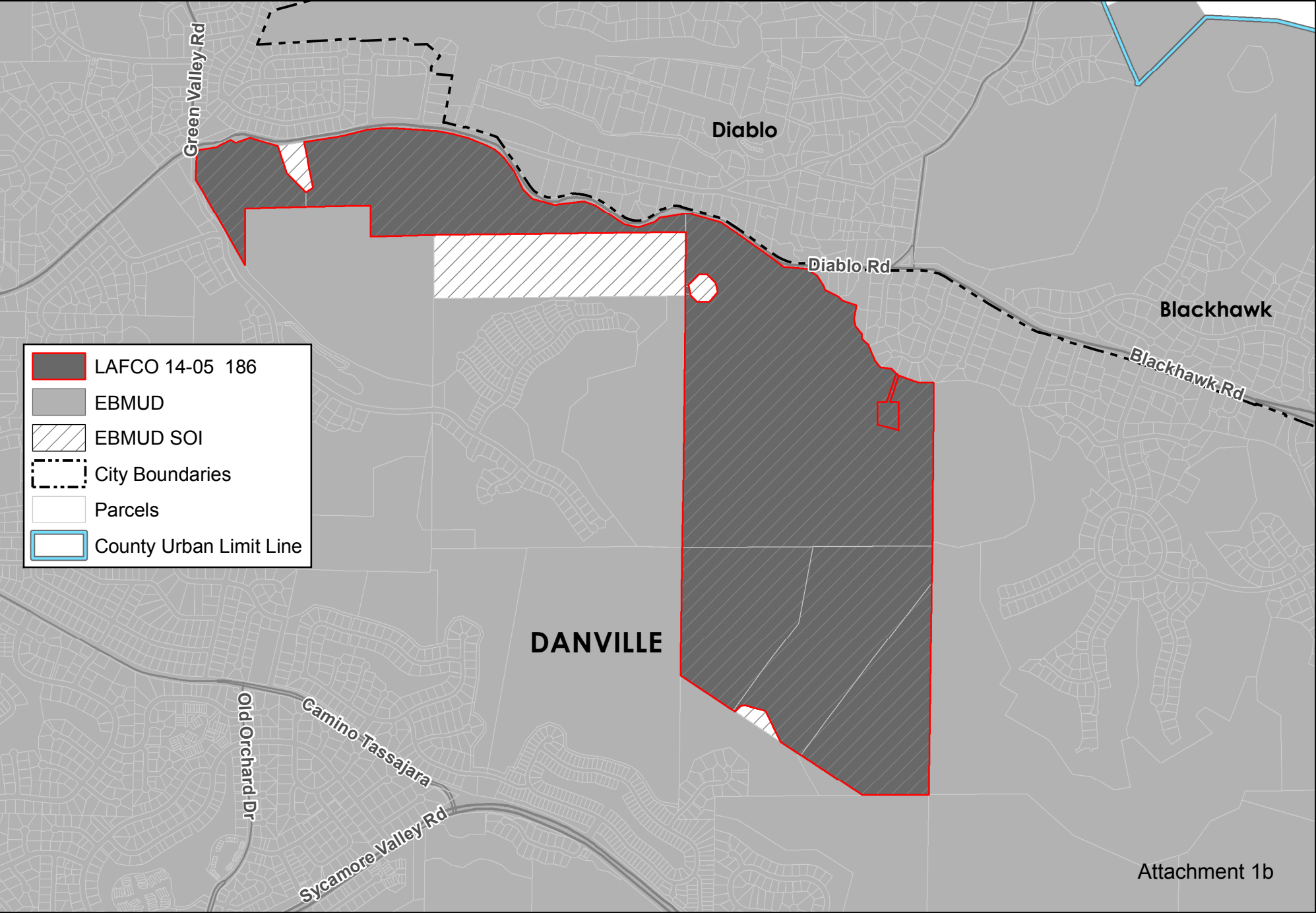
Attachments:

- 1a & 1b – CCCSD/EBMUD Annexation Maps
- 2 – Draft LAFCO Resolution 14-05
- 3 – E-mail communication dated January 7, 2015 from Maryann Cella with SOS Danville Group
- 4 – Letter dated January 9, 2015 from Stuart M. Flashman, Attorney for SOS Danville Group
- 5 – Communication dated August 6, 2015 from Maryann Cella, SOS Danville Group
- 6 – Annexation Map – Reduced Boundary Option

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



LAFCO No. 14-05: Annexation 186 Magee Ranch/Summerhill to East Bay Municipal Utilities District



Kate Sibley

From: Lou Ann Texeira
Sent: Wednesday, January 21, 2015 2:58 PM
To: Kate Sibley
Subject: FW: OPPOSITION TO LAFCO 14-05. Reorganization 186. SummerHill/Magee Ranch annexations to CCCSD and EBMUD.
Attachments: Order on Petition for Writ of Mandate.pdf

From: Maryann Cella [<mailto:maryann.cella@gmail.com>]
Sent: Wednesday, January 07, 2015 12:03 PM
To: Lou Ann Texeira
Cc: Todd B. Gary; jonpat@sbcglobal.net; CHARLES S WAITMAN; Clelen Tanner; stu@stuflash.com
Subject: RE: OPPOSITION TO LAFCO 14-05. Reorganization 186. SummerHill/Magee Ranch annexations to CCCSD and EBMUD.

Hi, Ms. Texeira. Thank you for speaking with me this morning regarding the above-captioned matter. As discussed, SOS-Danville requests that **LAFCO table its consideration of the Magee Ranch annexations until there is a LEGALLY VALID EIR and a LEGALLY VALID DEVELOPMENT PLAN APPROVAL for the SummerHill Homes Magee Ranches project.**

Pursuant to our discussion, I attach Judge Austin's rulings in SOS-Danville v. Town of Danville, et al. The rulings give rise to three reasons why LAFCO should table the SummerHill Homes Magee Ranch annexation.

1. THE SUMMERHILL HOMES MAGEE RANCHES EIR IS LEGALLY INVALID. As you will see from the rulings, Judge Austin determined that **the Town of Danville's EIR for the SummerHill Homes Magee Ranches development is LEGALLY INVALID.** For the specifics, please see the section of the rulings entitled as follows:

"Impacts on traffic---bicycle safety: petition granted. "

Because the Magee Ranches EIR is legally invalid, **it would be legally wrong for LAFCO to base a decision on that EIR.** Accordingly, SOS-Danville respectfully requests that **LAFCO table its consideration of the Magee Ranch annexations until there is a LEGALLY VALID EIR.**

2. THERE IS AN INJUNCTION AGAINST LAFCO AS AN ENTITY "ACTING IN CONCERT" WITH DEFENDANTS. I will send you shortly Judge Austin's FINAL JUDGEMENT containing the **injunction.** As we discussed, the injunction is against the Town of Danville, SummerHill Homes, the Magee Ranch investors, their agents, and THOSE ACTING IN CONCERT WITH THEM. We believe that the injunction applies to LAFCO as an entity ACTING IN CONCERT with SummerHill Homes and the Magee Ranch investors. **Therefore LAFCO is enjoined from acting on the annexations application as long as the injunction is in place and LAFCO must table the annexations unless and until the injunction is no longer in effect.**

3. THE DEVELOPMENT PLAN APPROVAL FOR THE SUMMERHILL MAGEE RANCHES PROJECT IS LEGALLY INVALID. Please review the section of the rulings entitled "Rezoning of

Agricultural land to P-1". Judge Austin determined that the Danville Town Council's approval of the SummerHill Homes development plan application was legally invalid because the plan required a rezoning to P-1, Planned Unit Development, which is not allowed on Agricultural-designated land. Because the development plan approval was illegal, it is not appropriate for LAFCO to consider annexations based upon that approval.

The rezoning to P-1 was the CENTRAL ISSUE of the case, and because SOS-Danville won that issue, Judge Austin determined in his final judgment that **SOS-Danville is the PREVAILING PARTY in the suit.** Commonly, plaintiffs in these sorts of cases raise many issues and don't expect to win all of them. Winning the key issue or issues, makes a party the "prevailing party".

The Town of Danville is now appealing both of the issues they lost. If the appellate court affirms Judge Austin's decision, SummerHill Homes will have to go back to the drawing board and RESUBMIT a **new development application** including a "GENERAL PLAN AMENDMENT" TO CHANGE THE LAND USE DESIGNATION of the Ag. parcel to a residential one. Then there will have to be the study prepared that is referenced in the General Plan's Ag. section regarding the possibilities for continued Ag. use of the Ag. parcel. **There will also have to be another EIR section prepared on the bike safety issue** (the rest of the EIR will still be good only if the resubmitted plan is still the same or fewer number of and same location for the units). If the Council approves the new EIR and the new development plan application, Danville's Open Space Protection law, Measure S, will be triggered. Measure S will require a public vote of approval on the application before the development can go forward.

Please let me know if you have any questions. My cell # is 980-6170. I look forward to hearing from you regarding this matter.

Thank you so much for your consideration. You may wish to contact our SOS-Danville attorney, Stuart Flashman, at [510-652-5373](tel:510-652-5373).

Maryann Cella
SOS-Danville Group
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DELIVERY VIA E-MAIL AND U.S. MAIL

January 9, 2015

Mr. Andrew Faber, Esq.
Berliner Cohen
10 Almaden Boulevard, Suite 1100
San Jose, CA 95113-2233

Re: Final Judgment in *SOS-Danville Group v. Town of Danville et al.*, Contra
Costa County Superior Court Case No. MSN13-1151

Dear Mr. Faber:

I am writing to you on behalf of my client, SOS-Danville Group in your role as legal counsel for the real parties in interest in the above-entitled case, and specifically as counsel for Summerhill Homes, LLC. As you know, final judgment was entered against your clients on August 18, 2014. As you also know, that judgment included a permanent injunction against real parties in interest, their agents, employees, servants, officers, assigns, and those acting in concert with them against issuing any construction or development permits that are dependent on Respondents' approvals of the Magee Ranch Residential Project that were challenged in the case. A copy of that judgment (without attachments) is attached hereto.

It has come to my attention that Summerhill has applied to the Contra Costa County LAFCO for annexation of the Magee Ranch Project property to the service areas for East Bay MUD and Central Contra Costa County Sanitary Districts. Both these annexations, which SOS-Danville Group considers to be a form of development permit as they are necessary adjuncts to moving forward with the development of the Project, rely upon the Final EIR for the Project, the approval of which was one of the approvals that was successfully challenged in the litigation.

As a consequence, Contra Costa County LAFCO and the two annexing agencies are acting in concert with Summerhill in approving the annexations, and are therefore subject to the injunction in that judgment.

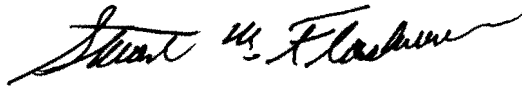
In addition, unless the Court of Appeal reverses the trial court's judgment, the approvals for the Project must be rescinded and the property will revert to its former Agricultural land use and zoning, under which the proposed annexations would be improper under the Cortese-Knox act.

By this letter, you, Summerhill, and the three agencies involved are placed on notice that moving forward with approving the annexations while the injunction and the final judgment remain in effect would be a violation of that injunction and could subject you, and them, to a claim of being in contempt of court.

As you know, while the writ of mandate for rescission of the Towns approvals has been stayed by the appeal your clients have filed, the final judgment and the prohibitory injunction included in the judgment (and properly served on you) were not. If you and your clients believe the circumstances justify allowing these annexations to move forward while the appeal of the judgment is pending, my client believe the proper course

would have been to apply to the Court of Appeal for a stay of that injunction. In the absence of such a stay, the terms of the injunction remain in effect. We expect you and your client to respect the trial court's judgment and to not move forward with the pending annexation proceedings until and unless you receive a valid stay of the injunction.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart M. Flashman", with a stylized flourish at the end.

Stuart M. Flashman
Attorney for SOS-Danville Group

Attachment: Final Judgment

cc: Contra Costa County LAFCO
East Bay MUD
Central Contra Costa Sanitary District

COPY

1 Stuart M. Flashman (SBN 148396)
2 5626 Ocean View Dr.
3 Oakland, CA 94618-1533
4 Telephone/Fax: (510) 652-5373
5 e-mail: stu@stuflash.com

6 Attorney for Petitioner and Plaintiff SOS-DANVILLE GROUP

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CLERK OF SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: _____
D. WEBER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

SOS – DANVILLE GROUP,
Petitioner and Plaintiff

vs.

TOWN OF DANVILLE, *et al.*,
Respondents and Defendants
SUMMERHILL HOMES, LLC, *et al.*,
Real Parties In Interest

No. MSN13-1151 Filed July 25, 2013
Assigned for all purposes to Hon. Steven K.
Austin, Dept. 33

[~~proposed~~] FINAL JUDGMENT

BY FAX

This action came on regularly for hearing on June 25, 2014 in Department 33 of the Contra Costa County Superior Court, the Honorable Steven K. Austin presiding. Petitioner and Plaintiff SOS – Danville Group (“Petitioner”) appeared by Stuart M. Flashman. Respondents and Defendants Town of Danville (“Town”) and Danville Town Council (the foregoing, collectively, “Respondents”) appeared by Robert S. Perlmutter, Esq. of Shute, Mihaly & Weinberger LLP and Andrew L. Faber, Esq. of Berliner Cohen LLP. Real Parties in Interest Summerhill Homes LLC, Magee Investment Company, and Teardrop Partners LP (the foregoing, collectively, “Real Parties”) appeared by Andrew L. Faber, Esq. of Berliner Cohen LLP.

The Court, having considered the papers and evidence submitted by the parties and the arguments of counsel at hearing, issued its Order re: Petition for Writ of Mandate (CEQA) and Order re: Demurrer to First Amended Civil Petition, copies of which are attached hereto as Exhibits A and B respectively and are incorporated herein by this reference, on July 28, 2014.

Pursuant to the Court’s orders, and based upon the pleadings, evidence and argument submitted in this case, **IT IS ORDERED, ADJUDGED AND DECREED** as follows:

1 1. Rulings on Preliminary Matters: The Court grants all the parties’ requests for
2 judicial notice as requested. The objections to the Declaration of David Crompton are overruled.

3 2. Petitioner’s First Cause of Action for mandamus under the California
4 Environmental Quality Act (“CEQA”) is **GRANTED** in part and **DENIED** in part as set forth in
5 greater detail in the attached order.

6 3. Petitioner’s Second Cause of Action for mandamus under California Planning and
7 Zoning Law for approval of a project inconsistent with the Town’s General Plan is **GRANTED**
8 in part and **DENIED** in part as set forth in greater detail in the attached order.

9 4. Petitioner’s Third Cause of Action, for Declaratory Relief, is **DISMISSED**
10 **WITH PREJUDICE** as set forth in greater detail in the attached order on the demurrer thereto.

11 5. This Final Judgment fully disposes of all of the matters related to this action.

12 6. A Peremptory Writ of Mandate shall issue, under seal of the Court, ordering
13 Respondents to rescind their actions in approving the Magee Ranch Residential Project and
14 certifying the Final Environmental Impact Report for said project. Respondents shall file a
15 written return to said writ within sixty days of its service.

16 7. Respondents, Real Parties in Interest, their agents, employees, servants, officers,
17 assigns, and those acting in concert with them are hereby **PERMANENTLY ENJOINED** from
18 issuing any construction or development permits or undertaking any construction activities
19 which permits or construction activities are dependent on Respondents’ approvals of the Magee
20 Ranch Residential Project that were challenged herein.

21 8. Petitioner, as the prevailing party, shall recover its costs of suit as provided by
22 law. Such costs shall be appended to this judgment.

23 9. The right of Petitioner to seek attorneys’ fees in this matter under Code of Civil
24 1021.5 is hereby reserved for later determination in accordance with California Rule of Court
25 3.1702.

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IT IS SO ORDERED.

Date: 8-11-14

STEVEN K. AUSTIN

Steven K. Austin
Judge of the Superior Court

Approved as to form:
Date: 8/6/14

Robert B. Ewing, City Attorney

Shute, Mihaly & Weinberger LLP
Robert S. Perlmutter

Attorneys for Respondents and Defendants
Town of Danville and Danville Town
Council

By: Robert B. Ewing
Robert B. Ewing

Date: 8/5/14

Andrew L. Faber
Andrew L. Faber
Attorney for Real Parties in Interest
Summerhill Homes, LLC, Magee
Investment Company, and Teardrop
Partners, LP

Kate Sibley

From: Maryann Cella <maryann.cella@gmail.com>
Sent: Thursday, August 06, 2015 5:05 PM
To: Kate Sibley
Subject: LAFCO 14-05 - Reorg. 186 (Magee/SummerHill): Danville planner's answers to questions regarding the "permanent Open Space" associated with the SummerHill Homes "Magee Ranches" development
Attachments: 4370_001.pdf

PLEASE ATTACH THE LETTER BELOW (INCLUDING THE ATTACHMENT) TO THE PACKET FOR THE WEDNESDAY, AUGUST 12TH LAFCO HEARING.

CONTRA COSTA COUNTY LAFCO
 Lou Ann Texeira, Executive Officer

Dear Ms. Texeira,

Thank you for providing us with timely notice of the upcoming LAFCO hearing. It has been a pleasure to work with you, Kate Sibley, and Sharon Anderson throughout this process.

SOS-Danville has the following comments regarding the upcoming hearing:

1. We concur with the Executive Officer's recommendation to continue the hearing regarding LAFCO 14-05 - Reorg. 186 (Magee/SummerHill) until September 2015.
2. We respectfully request that the EBMUD and the CCC Sanitary District annexation areas be reduced to include only the following four parcels:

[202-050-071](#)

[202-050-078](#)

[202-050-079](#)

[215-040-002](#)

You will recall that at the May hearing regarding the above annexation, SOS-Danville requested that the planned permanent Open Space associated with the Magee Ranches developments be removed from the area to be annexed. That Open Space area will never be developed, and therefore annexation of it is improper.

Below, you will see the Danville planner David Crompton's listing of the only 4 Magee Ranch parcels (of the 10 that comprise the current Magee Ranch) that are to be developed, and the legal means that are supposed to ensure that the rest of the parcels remain undeveloped.

Thank you for consideration of our comments.

Sincerely,
Maryann Cella
SOS-Danville Group
www.sos-danville.com

----- Forwarded message -----

From: **David Crompton** <DCrompton@danville.ca.gov>

Date: Wed, May 27, 2015 at 8:09 AM

Subject: RE: Questions regarding the Danville -Town- Council-approved SummerHill Homes development for Magee Ranch

To: "Maryann Cella (maryann.cella@gmail.com)" <maryann.cella@gmail.com>

Hi Maryann,

As approved, homes and/or infrastructure would be developed on the following APNs:

202-050-071

202-050-078

202-050-079

215-040-002

No other parcels would receive any development (see attached chart).

Condition of Approval B.5. of Town Council Resolution No. 60-2013 reads as follows.

As part of the subject P-1; Planned Unit Development District, the remaining approximately 372 acre undeveloped portion of the site shall be preserved as permanent open space, and shall be designated as such on the final map for the project. In addition, the applicant shall dedicate to the Town of Danville a Scenic Easement covering the undeveloped portions of the project site. The scenic easement shall

preclude any future development on these portions of the project site. The public trail easement area to be located along Diablo Road shall be excluded from the scenic easement.

Sincerely,

David Crompton

Principal Planner

From: Maryann Cella [mailto:maryann.cella@gmail.com]

Sent: Monday, May 18, 2015 2:49 PM

To: David Crompton

Subject: Questions regarding the Danville -Town- Council-approved SummerHill Homes development for Magee Ranch

Hi, David. I hope all is well with you.

Could you please answer the following questions regarding the "Magee Ranches" SummerHill Homes project, as approved:

1. Of the 11 parcels contained within the current Magee Ranch site, which parcels will contain homes or infrastructure associated with the project, as approved?
2. Which of the 11 parcels will not contain any homes or infrastructure associated with the project, as approved?
3. Please list any specific conditions of approval for the project that will restrict the future development of any of the parcels that will not contain homes or infrastructure associated with the project.

Thank you for your assistance.

Maryann Cella

Proposed Development

The project proposes to develop 70 new residential units on approximately 410 acres. At least 10 percent of the units would include second units (referred to as “casitas”) to satisfy the Town’s affordable housing requirements. Second units are excluded from density determinations in accordance with California Government Code §65852.2.¹ Development would be primarily clustered in two areas of the project site. Approximately 302 acres would be dedicated as permanent open space.

The proposed project would concentrate site development activities on approximately 108 acres. In order to cluster development, the project proposes to rezone the project site to P-1; Planned Unit Development District. Table 4.9-1 below shows the existing General Plan land use designations and the existing and proposed zoning designations. No General Plan amendments are proposed in connection with the project.

Table 4.9-1 Existing and Proposed Zoning/General Plan Designations				
APN	General Plan Designations	Existing Zoning	Proposed Zoning	Acres
202-050-071	Public and Open Space -Agricultural	A-4	P-1	36.4
202-050-073	Public and Open Space - General Open Space	P-1	P-1	3.4
202-050-078	Public and Open Space -Agricultural	A-4	P-1	159.1
202-050-079	Residential - Rural Residential	A-2	P-1	17.2
202-050-080	Residential - Rural Residential	A-2	P-1	52.7
	Residential - Single Family - Low Density	A-2	P-1	5.0
202-100-017	Residential - Rural Residential	A-2	P-1	40.8
202-100-019	Residential - Rural Residential	A-2	P-1	38.9
202-100-038	Residential - Rural Residential	A-2	P-1	51.1
202-100-040	Public and Open Space -- General Open Space	P-1	P-1	2.5
215-040-002	Public and Open Space -Agricultural	A-4	P-1	3.2
Total Acres				410.3
A-2; General Agricultural District A-4; Agricultural Preserve District P-1; Planned Unit District Sources: Town of Danville 2010 Land Use Map; Town of Danville Zoning Map				

Regulatory Environment

Local

2010 Town of Danville General Plan. Pursuant to California Government Code §65300, each city is required to adopt a comprehensive General Plan to guide the physical development of the community. The 2010 General Plan consists of goals, policies, and implementation measures for the physical development of the Town.

¹ Municipal Code §32-76, which regulates second dwelling units further states that, “a second dwelling unit, which meets the requirements of this section [§32-76], shall be allowed on a parcel, which is zoned for single-family residential use. A second dwelling unit which meets the requirements of this section shall be considered in compliance with the allowable density for the lot upon which the second dwelling unit is located and shall be considered a residential use that is consistent with the existing General Plan and zoning designation for the lot.”

