

To: Board of Supervisors

From: Julia R. Bueren, Public Works Director/Chief Engineer

Date: August 2, 2011



Contra
Costa
County

Subject: APPROVE and AUTHORIZE the Joint Exercise of Powers Agreement for the Operation and Maintenance of Hap Magee Ranch Park with the Town of Danville.

RECOMMENDATION(S):

APPROVE and AUTHORIZE the Chair of the Board of Supervisors to execute a Joint Exercise of Powers Agreement for the Operation and Maintenance of Hap Magee Ranch Park with the Town of Danville. Project No. 7758-6X5536

FISCAL IMPACT:

No fiscal impact.

BACKGROUND:

Hap Magee Ranch Park (the Property) consists of approximately 17 acres that are located along the Alamo area/Danville boundary at the north end of La Gonda Way. Pursuant to an agreement entitled "Agreement Among the Town of Danville, the County of Contra Costa and Contra Costa County Public Facilities Corporation Relating to the Purchase of Real Property," dated May 26, 1987, the County and Town each contributed fifty percent of the purchase price of the Property to permit the Contra Costa County Public Facilities Corporation (the "PFC") to purchase the Property. The PFC acquired the Property on June 2, 1987. In December 2010, the PFC transferred the Property to the County and the Town to own as tenants in common, each with an undivided one-half interest.

<input checked="" type="checkbox"/> APPROVE	<input type="checkbox"/> OTHER
<input checked="" type="checkbox"/> RECOMMENDATION OF CNTY ADMINISTRATOR	<input type="checkbox"/> RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: 08/16/2011 APPROVED AS RECOMMENDED OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYES	<u>5</u>	NOES	<u> </u>
ABSENT	<u> </u>	ABSTAIN	<u> </u>
RECUSE	<u> </u>		

Contact: Cheryl Sousa; 925-313-2252



I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown

ATTESTED: August 16, 2011

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Carrie Del Bonta
By: Carrie Del Bonta, Deputy

cc: Real Property; Fina Prak, Deputy Admin; Brian Balbas, Engineering Services; Warren Lai, Special Districts; Susan Cohen

BACKGROUND: (CONT'D)

Since its acquisition by the PFC in 1987, the County and the Town have jointly operated and maintained the Property pursuant to an agreement entitled "Joint Powers Agreement (Magee Park)," dated May 26, 1987 (the 1987 JPA). Many of the provisions of the 1987 JPA are outdated. As a result, the County and the Town desire to replace the 1987 JPA Agreement with a simplified Joint Exercise of Powers Agreement to facilitate the ongoing operation and maintenance of the Park.

CONSEQUENCE OF NEGATIVE ACTION:

The County and Town would continue to operate the Park under the 1987 JPA.

CHILDREN'S IMPACT STATEMENT:

Not applicable.

**JOINT EXERCISE OF POWERS AGREEMENT FOR THE
OPERATION AND MAINTENANCE OF
HAP MAGEE RANCH PARK**

This Joint Exercise of Powers Agreement ("Agreement") is dated AUGUST 16 2011, 2011 and is between the County of Contra Costa, a political subdivision of the State of California ("County") and the Town of Danville, a municipal corporation ("Town").

RECITALS

- A. Hap Magee Ranch Park consists of approximately 17 acres that are located along the Alamo area/Danville boundary at the north end of La Gonda Way, as more specifically described in Exhibit A (the "Property," or the "Park").
- B. Pursuant to an agreement entitled "Agreement Among the Town of Danville, the County of Contra Costa and Contra Costa County Public Facilities Corporation Relating to the Purchase of Real Property" that is dated May 26, 1987, the County and the Town each contributed fifty percent of the purchase price of the Property to permit the Contra Costa County Public Facilities Corporation (the "PFC") to purchase the Property. The PFC acquired the Property on June 2, 1987. On December 6, 2010, the PFC transferred the Property to the County and the Town as tenants in common, each with an undivided one-half interest.
- C. Since its acquisition by the PFC, the County and the Town have jointly operated and maintained the Property pursuant to an agreement entitled "Joint Powers Agreement (Magee Park)," dated May 26, 1987 (the "1987 JPA Agreement").
- D. Many of the provisions of the 1987 JPA Agreement have been completed. The County and the Town desire that the 1987 JPA Agreement be replaced by this Agreement to allow for a more cost-effective means of managing the ongoing operation and maintenance of the Park in the future.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

AGREEMENT

1. Purpose.

The purpose of this Agreement is to establish procedures that will enable the County and the Town to share equally, as co-owners, the costs, benefits, and

decision-making that relate to the operation and maintenance of the Park in a manner that serves the best interests of the public.

2. **Superseding 1987 Agreement.**

This Agreement supersedes and replaces in its entirety the 1987 Joint Powers Agreement. The parties mutually agree that the 1987 Joint Powers Agreement is hereby terminated.

3. **Maintenance.**

The Town will be responsible for providing all maintenance services at the Park at a level of service equivalent to that provided for other park facilities owned and maintained by the Town.

4. **Operations and Use.**

- (a) The Town will be responsible for the day-to-day operation of the Park, including rentals, special events and scheduling of activities.
- (b) Use of the Park will be governed by the Chapter 13-2 of the Danville Municipal Code (Parks and Community Facilities-Use Restrictions), and by applicable use policies adopted by the Town under the authority of Chapter 13-2.

5. **Expenditures and Revenues.**

- (a) The Town and the County shall share equally (i) all costs incurred in the operation and maintenance of the Park, and (ii) all revenues generated by the Park.
- (b) The Town shall prepare an annual budget for the maintenance and operation of the Park. The annual budget will include costs for Town labor, contracted services, utilities, materials and supplies, and administrative overhead at a rate equal to that used by the Town for its overall maintenance budget. The budget will also identify estimated rental revenues.
- (c) The Town shall present the annual budget to the County Public Works Department by April 15 of each year in substantially the form of Exhibit B - Annual Maintenance and Operation Budget. The County will have 60 days to review the annual budget and to either approve it or request modifications to it. Modifications proposed by the County may be based

on fiscal or other considerations identified by the County. If the County requests modifications to the annual budget within the time allotted, the parties shall use good faith efforts to finalize the annual budget for the upcoming fiscal year before the July 1 start of that fiscal year. If the County fails to notify the Town of its intent to either approve, or request modifications to, the annual budget within the time allotted, the annual budget will be deemed to be approved for the upcoming fiscal year.

- (d) The Town will invoice the County on a quarterly basis for the cost of operating and maintaining the Park in the prior quarter. The County shall pay the Town the amount due to the Town within thirty (30) days of receipt of the invoice. In no event is the County obligated to pay in any fiscal year an amount greater than the amount identified as the County's obligation in the annual budget in effect for that fiscal year.
- (e) The Town will be strictly accountable for fiscal management of the expenditures and revenues related to the Park. In order to ensure that accountability, the Town shall comply with all applicable government accounting standards and its own applicable budgeting procedures.
- (f) In the event of an emergency, the Town has the authority to respond and to incur reasonable costs to stabilize the situation and to prevent continuing damage or injury. These costs will be shared equally by the Town and the County.

If the cost of permanent repair to Park property damaged by an emergency condition exceeds funds available in the operating budget, then the parties shall evaluate the estimated improvement costs and determine whether to appropriate additional funds.

A situation will be considered an emergency when (i) it is unanticipated, (ii) threatens imminent injury or damage to people or property, and (iii) requires immediate attention. Examples of an emergency include stabilization of creek banks due to major slumping or failure, removal of fallen tree limbs, and repair of buildings due to storm or water damage.

6. Capital Improvements.

- (a) If the parties determine that capital improvements to the Park are needed, the Town shall prepare a capital improvement budget for the fiscal year in which the work is anticipated to occur. The Town shall present the capital improvement budget to the County Public Works Department by April 15

of the year that precedes the fiscal year in which the work is expected to occur. Such budget will be in substantially the form of Exhibit C - Capital Improvement Budget. The County will have 60 days to review the annual budget and to either approve it or request modifications to it. Modifications proposed by the County may be based on fiscal or other considerations identified by the County. If the County requests modifications to the annual budget within the time allotted, the parties shall use good faith efforts to finalize the annual budget for the upcoming fiscal year before the July 1 start of that fiscal year, but if no agreement is reached, the proposed capital improvement project(s) will be delayed until the parties mutually agree.

- (b) The cost of any capital improvements will be shared equally by the parties, subject to appropriations by the County Board of Supervisors and Danville Town Council.
- (c) The Town will invoice the County on a quarterly basis for capital improvement-related expenses incurred in the prior quarter, including Town labor, contracted services, materials and supplies, utilities and administrative overhead. The County shall pay the Town the amount due to the Town within thirty (30) days of receipt of the invoice.
- (d) Each of the parties is responsible for providing for appropriate contingency and capital reserves to address unanticipated costs, capital replacement, and future improvements.

7. **Rental and Use Policies.**

- (a) The objective of the use policy will be to maximize the use and enjoyment of the Park by as broad a segment of Town and Alamo residents as possible.
- (b) Facilities will be made available on a "first come, first served" basis in accordance with user priorities established by Town Council Resolution No. 184-91. Those priorities are: 1) official Town or Alamo programs; 2) programs or events co-sponsored by the Town or Alamo; 3) private or non-profit programs or events; and 4) commercial programs or events. A sliding fee scale may be assigned according to user priority. Within the user priorities just described, Park facilities shall be made available on an equal basis to residents of Danville and Alamo.
- (c) Individuals or groups renting facilities at the Park (including, but not limited to, buildings, group picnic areas, etc.) will be charged fees for such

rentals. The fees will be established by the Town through adoption of its annual master fee schedule. There will be no fee differential between residents of the Town or Alamo, although non-resident surcharges may be applied to park users outside these boundaries to the extent lawful. All fees collected will be deposited into the Hap Magee Ranch Park Revenue Account, which the Town shall maintain and account for as a separate fund.

8. Insurance.

- (a) Liability Insurance. Each party shall maintain throughout the term of this Agreement either (i) commercial general liability insurance in commercially reasonable amounts but in no event in an amount less than \$3,000,000 per occurrence, protecting and insuring against claims for bodily injury, death, property damage and personal injury occurring within or resulting from use of the Park, or (ii) a general self-insurance program covering bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Park.
- (b) Property Insurance. Each party shall maintain throughout the term of this Agreement fire insurance and a standard all risk policy covering the Park. The cost of any loss will be shared equally by the Town and the County.
- (c) Contractors and Consultants. Any contractors or consultants retained to perform work related to the Park shall be required to provide the following insurance coverages, as appropriate: commercial general liability, automotive liability, workers compensation/employers liability and professional errors and omissions. The commercial general liability insurance shall be in commercially reasonable amounts, but in no event in an amount less than \$1,000,000. If a contractor is building a structure on the Property, then the contractor shall be required to carry completed operations coverage and, if applicable, builder's risk insurance. Where applicable, the above policies shall name the County and Town and their respective officers, employees and agents as additional insureds. Such contracts shall also include, to the extent legally permissible, the duty to indemnify, defend and hold harmless the County, Town and their respective officers, employees and agents.

9. Indemnification.

- (a) County shall defend, indemnify, save and hold harmless the Town and its officers, employees and agents from any and all claims, costs and liability, including reasonable attorney's fees, for any damages, death or injury to

persons or property to the extent the liability is caused by the willful misconduct or negligent acts, errors or omissions of the County, its officers, employees or agents.

- (b) Town shall defend, indemnify, save and hold harmless the County and its officers, employees and agents from any and all claims, costs and liability, including reasonable attorney's fees, for any damages, death or injury to persons or property to the extent the liability is caused by the willful misconduct or negligent acts, errors or omissions of the Town, its officers, employees or agents.

10. **Privileges and Immunities.**

In accordance with Government Code Section 6513, all of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of the officers, agents or employees of the County, the Town, or both, when such officers, agents or employees are performing their respective functions within the territorial limits of their respective agencies, apply to them to the same degree and extent when they are engaged in the performance of any of their functions and duties extraterritorially in furtherance of the objectives of this Agreement.

11. **Law Enforcement.**

The Town will have primary responsibility for providing law enforcement within the Park. In the event of an emergency, whichever law enforcement department is first to respond (Town Police Department or County Sheriff) shall act as the lead agency during that incident.

12. **Disposition of Property.**

Any distribution of the Property to the parties will be based on jurisdictional boundaries. If the value of the property distributed to one party is greater than the value of the property distributed to the other party, as determined by an appraisal, the party receiving the more valuable distribution shall pay the other party an amount equal to the difference in value. In the event that one or the other jurisdiction wishes to purchase all or a portion of the other's property, the purchase price will be based on the appraised market value of the property.

13. **Surplus Money.**

Upon termination of this Agreement, any surplus money on hand will be returned to the County and the Town in proportion to contributions made.

14. Successors-Assignment.

This Agreement binds and inures to the benefit of the successors of the parties. Neither party may assign any right or obligation under this Agreement without the prior written consent of the other.

15. Term of Agreement; Amendments.

(a) Term. This Agreement will remain in effect indefinitely unless terminated by mutual written agreement of the parties.

(b) Amendments. This Agreement may be amended in writing by the parties.

16. Counterparts.

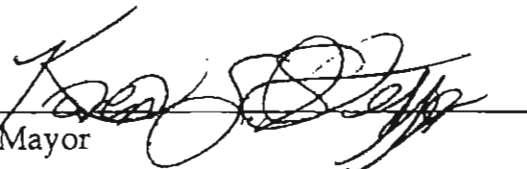
This Agreement and any amendment may be executed in any number of counterparts.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written above.

COUNTY

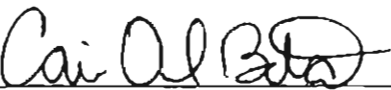
TOWN

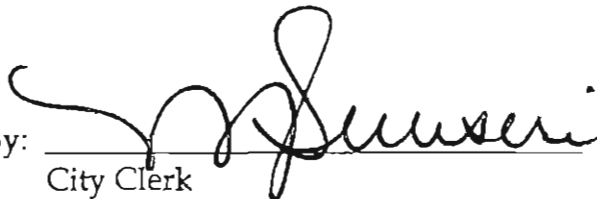
By: 
Chair, Board of Supervisors

By: 
Mayor

Attest: David Twa, Clerk of the Board of Supervisors and County Administrator


Attest:

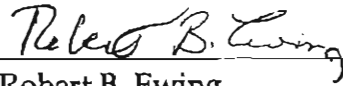
By: 
Deputy

By: 
City Clerk

Recommended for Approval:

Approved as to Form:

By: 
Julia R. Bueren
Public Works Director

By: 
Robert B. Ewing
City Attorney

Approved as to Form:

Sharon L. Anderson
County Counsel

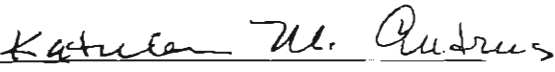
By: 
Kathleen M. Andrus
Deputy County Counsel

EXHIBIT A

DESCRIPTION

ORDER NO. W-491148

Those parcels of land in the City of Danville, County of Contra Costa, State of California, Described as follows:

PARCEL ONE

Lots 55 and 56, map of Rancho El Rio, filed March 24, 1910, Map Book 2, page 48, Contra Costa County Records

EXCEPTING FROM PARCEL ONE:

- 1- As to Lot 55: The interest conveyed to Contra Costa County by deed recorded June 14, 1944, Book 760, Official Records, page 359.
- 2- As to Lot 55: That portion thereof described in the deed to Harry H. Magee, Jr., et ux, recorded February 16, 1961, Book 3806, Official Records, page 199.
- 3- That portion thereof described as Parcel One in the deed to State of California, recorded September 21, 1962, Book 4207, Official Records, page 391.
- 4- As to lot 55: That portion thereof described as Parcel One in the deed to Harry H. Magee, et ux, recorded August 24, 1967, Book 5439, Official Records, page 450.

PARCEL TWO

Portion of Lot 55, map of Rancho El Rio, filed March 24, 1910. Map Book 2, Page 48, Contra Costa County records, described as follows:

From a point in the center line of the road designated on said map as El Monte, at the most eastern corner of said Lot 55; thence from said point of commencement north 20° 43' West along said center line 125.25 feet; thence leaving said center line north 68° 32' west 26.98 feet; thence westerly 61.77 feet along the arc of a curve concave to the south, tangent to the last-mentioned course, said curve having a radius of 48.72 feet; thence leaving said curve south 76° 22' 56" west 36.53 feet; thence north 83° 46' 30" west 75.70 feet; thence south 60° 45' west 94.25 feet to the actual point of beginning of this description; thence north 63° 45' west

44.5 feet; thence north 60° 45' west 105.42 feet; thence north 28° 56' east 205 feet; thence south 61° 4' east 150 feet; thence south 28° 56' west 203 feet to the point of beginning.

PARCEL THREE

Portion of Lot 55, map of Rancho El Rio, filed March 24, 1910, Map Book 2, page 48. Contra Costa County records, described as follows:

Beginning at the most northerly corner of the parcel of land described in the deed to Harry H. Magee, et ux, recorded February 16, 1961, Book 3806, Official Records, page 199; thence from said point of beginning, along the exterior line of the said Magee parcel, as follows: South 28° 56' west, 205 feet; south 60° 45' east, 105.42 feet and south 63° 45' east, 44.5 feet to the most southerly corner thereof; thence south 25° 56' west, along the direct extension south 28° 56' west of the southeast line of said Magee parcel, 86.38 feet to the southwest line of said Lot 55; thence north 61° 04' west, along said southwest line, 245.15 feet, more or less, to a point which bears south 47° 08' 36" west from the point of beginning, thence north 47° 08' 36" east, 304.90 feet to the point of beginning.

PARCEL FOUR

Right of way created in reference to Parcels Two and Three above in the deed to Harry H. Magee, et ux, recorded August 24, 1967, Book 5439, Official Records, page 450, as follows:

"A right of way (not to be exclusive) for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipelines, and for telephone, television service, electric light and power lines, together with the necessary poles of conduits, as an appurtenance to Parcel One above, and as an appurtenance to the parcel of land described in the deed to Harry H. Magee, Jr., et ux, recorded February 16, 1961, Book 3806, Official Records, page 199, over a portion of Lot 55, map of Rancho El Rio, filed March 24, 1910, Map Book 2, page 48, Contra Costa County records, being the "Proposed 20' NON-EXC, R/W", as designated on the map of Record of Survey, Filed June 2, 1967, Book 48, Licensed Surveyors Maps, page 15".

Those parcels of land in the unincorporated area of the County of Contra Costa, State of California, described as follows:

PARCEL FIVE

Portion of the Rancho San Ramon, described as follows:

Commencing at the point of intersection of the Easterly line of the County Road between the Towns of Walnut Creek and Danville with the southerly boundary line of the

property known as the "Ford Tract" in the Rancho San Ramon, said point also being on the northerly boundary line of that certain parcel of land particularly described in the certain deed executed August 23, 1927 by Josiah Boucher and Ada Boucher, his wife, to Fred H. Van, recorded August 24, 1927 in Volume 93 of Official Records, page 199, records of Contra Costa County, California, thence from said point of commencement, along the easterly line of said County Road, North 41° 35' west 22.00 feet to the southwesterly corner of that certain parcel of land particularly described in that certain deed executed January 12, 1911 by James C. Jones to Flora Stone Jones, recorded January 16, 1911 in Volume 160 of Deeds, page 340, records of said county; thence, along the southeasterly boundary of said parcel of land, North 47° 30' east, parallel to the southerly boundary of said "Ford Tract", 9.42 chains, more or less, to the center of San Ramon Creek, said point being in the southwesterly boundary of that certain 191.13 acre tract of land particularly described in that certain deed executed December 5, 1899 by Bank of Martinez, a corporation to George Van Gorden, recorded January 16, 1900 in Volume 84 of Deeds, page 108, records of said County; thence up the center of said creek, following the southwesterly boundary of said 191.13 acre tract, southeasterly, to the southerly boundary of said "Ford Tract", said point being the most northerly corner of said parcel of land now or formerly of Fred H. Van, first hereinbefore referred to; thence, along the southerly line of said "Ford Tract" and along the northerly line of said lands now or formerly of Van, to the point of commencement.

PARCEL SIX

Portion of Lot 1, map of Hemme Subdivision, filed March 4, 1895, Map Book C, page 71, Contra Costa County records, described as follows:

Beginning in the center line of San Ramon Creek, at the most southerly corner of the parcel of land described as Parcel One in the deed to H. & J. Co., recorded February 21, 1951, Book 1719, Official Records, page 353; thence from said point of beginning north 47° 45' east, along the southeast line of said H. & J. Co. parcel, to the southwest line of the parcel of land described as Parcel One in the deed to State of California, recorded September 20, 1962, Book 4206, Official Records, page 354; thence along said southwest line as follows: North 50° - 57" west, 339.06 feet; north 41° 46' 17" west, 459.98 feet and north 45° 31' 45" west, 289.98 feet to the southeast line of the 6 acre parcel of land described in the deed to Jennie V. Minor, recorded November 6, 1915, Book 257. Deeds, page 114; thence south 28° 30' west, along said southeast line, to the center line of said San Ramon Creek; thence along said center line to the point of beginning.

EXHIBIT B

AGREEMENT SUPPLEMENT No. 2011-1

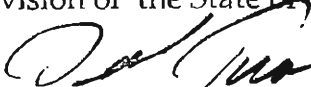
This Agreement Supplement No. 2011-1 is dated June __, 2011 and supplements the "Joint Exercise of Powers Agreement for the Ownership, Operation and Maintenance of Hap Magee Ranch Park" dated _____ (the "Agreement") between the Town of Danville, a municipal corporation of the State of California (the "Town") and the County of Contra Costa, a political subdivision of the State of California (the "County").

1. The Town is responsible for the maintenance and operation of Hap Magee Ranch Park at a service level equivalent to that provided for other park facilities owned and maintained by the Town.
2. The Town and the County equally share all costs and revenues.
3. The County's Obligation for the Fiscal Year beginning July 1, 2011 is One hundred-seventy-six thousand, four hundred fifteen dollars (\$176,415.00).
4. This Agreement Supplement No. 2011-1 is effective in accordance with the terms of the Agreement.

COUNTY

COUNTY OF Contra Costa, a political subdivision of the State of California

By:

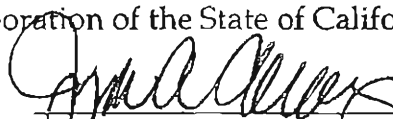


David Twa
County Administrator

TOWN

TOWN OF DANVILLE, a municipal corporation of the State of California

By:



Joseph A. Calabrigo
Town Manager

EXHIBIT C


AGREEMENT SUPPLEMENT No. 2011-2

This Agreement Supplement No. 2011-2 is dated June __, 2011 and supplements the "Joint Exercise of Powers Agreement for the Ownership, Operation and Maintenance of Hap Magee Ranch Park" dated ____ (the "Agreement") between the Town of Danville, a municipal corporation of the State of California (the "Town") and the County of Contra Costa, a political subdivision of the State of California (the "County").

1. The Town is responsible for serving as the project manager for capital improvements at Hap Magee Ranch Park.
2. The Town and the County equally share all capital improvement costs.
3. Projects proposed and approved for the Fiscal Year, beginning July 1, 2011 includes ongoing capital maintenance.
4. The County's Obligation for the Fiscal Year beginning July 1, 2011 is Twenty-one thousand, eight hundred seventy-five dollars (\$21,875.00).
5. This Agreement Supplement No. 2011-2 is effective in accordance with the terms of the Agreement.

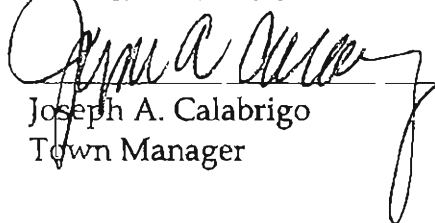
COUNTY

COUNTY OF Contra Costa, a political subdivision of the State of California

By: 
David Twa
County Administrator

TOWN

TOWN OF DANVILLE, a municipal corporation of the State of California

By: 
Joseph A. Calabrigo
Town Manager