



TO: Chair and Planning Commission

DATE: May 28, 2019

SUBJECT: Resolution No. 2019-05, recommending that the Town Council certify a Final Revised Environmental Impact Report and adopt findings and a Statement of Overriding Considerations, mitigation measures and a mitigation monitoring and reporting program; and approve a Preliminary Development Plan - Rezoning, Major Subdivision, Final Development Plan, and Tree Removal requests (Magee Preserve)

**DESCRIPTION**

The project proposes to develop approximately 29 acres (7%) of a 410-acre project site with 69 single family homes, seven attached accessory dwelling units, and associated roadways and infrastructure. The remaining 381 acres (93%) of the project site would be preserved as permanent open space and public trails.

The project site is located on the south side of Diablo Road and Blackhawk Road extending approximately two miles east from the intersection of Diablo Road/Green Valley Road/McCauley Road, as illustrated in Figure 1.

Figure 1: Project Location Map



This action would require the Town Council’s approval of Preliminary Development Plan - Rezoning request LEG10-0004, Major Subdivision request SD9291, Final Development Plan request DEV10-0072, and Tree Removal request TR10-0028.

**BACKGROUND**

The project site is the last undeveloped portion of a former large ranching property, which has been subdivided several times in the past. One of the previous subdivisions created the 250-home Magee Ranch neighborhood located just to the east. In July 2013, after a three-year project and environmental review process, the Danville Town Council certified a Final Environmental Impact Report (EIR) and approved a nearly identical project proposed by SummerHill Homes.

Subsequently, a lawsuit was filed to challenge the project’s approval. The lawsuit alleged that the project was inconsistent with the Town’s General Plan and land use restrictions, and that its 2013 Final EIR inadequately addressed a wide range of impacts. The end result of the litigation (which included a decision of the Superior Court in July 2014 and the Court of Appeal in September 2015) was that the courts upheld the Town’s General Plan and zoning decisions and upheld all aspects of the EIR except the claim that bicycle safety impacts were not adequately addressed. Consequently, the Final Revised EIR includes an extensive evaluation of bicycle safety based on updated traffic counts.

In February 2017, Davidon Homes became the project applicant and proposes to develop the same 69 residential lots on less acreage, dedicating nine more acres as permanent open space. Further, the current proposal would replace, rather than remove, the horse corral on the project site, and incorporate electric vehicle charging facilities on each residential lot.

**EVALUATION**

**Conformance with General Plan and Zoning**

	Existing	Proposed
General Plan:	Public and Open Space – General Open Space Public and Open Space – Agricultural Residential - Rural Residential Residential - Single Family – Low Density	No change No change No change No change
Zoning:	P-1; Planned Unit District A-2 General Agricultural District A-4 Agricultural Preserve District	P-1; Planned Unit District P-1; Planned Unit District P-1; Planned Unit District
Land Use:	Cattle grazing/private property: 410 acres	Single family residences; 29 acres Permanent open space/trails: 381 acres

As with the previous SummerHill Homes proposal, the current project does not request any General Plan amendments. The proposed single-family residential use would be consistent with the site's existing General Plan land use designations (described below) and the Town's determination of consistency has been upheld by both the Superior Court and Court of Appeal.

- a. Public and Open Space - General Open Space: This land use designation covers approximately 5.9 acres of the project site. The General Plan establishes that the Town's zoning districts of P-1; Planned Unit Development District and A-4; Agricultural Preserve District are consistent with this land use designation.
- b. Public and Open Space - Agricultural: This land use designation covers approximately 199 acres of the project site. This designation does not have a specific density range; density is established according to the applicable site-specific zoning. The A-2; General Agricultural District is listed as a consistent zoning district when agricultural land is not under Williamson Act Contract. These uses permitted-by-right include the allowance of a minimum lot size of 5-acres, and "a detached single family dwelling on each parcel and the accessory structures and uses normally auxiliary to it." This portion of the site is currently zoned A-4; Agricultural Preserve District and was previously under the Williamson Act Contract which granted preferential tax treatment in exchange for voluntarily agreeing to use the property only for agricultural purposes. The property owner has since opted out of the contract and no portion of the project site is currently under Williamson Act Contract.
- c. Residential - Rural Residential: This land use designation covers approximately 201 acres of the site. The General Plan specifies that the allowable density for lands with this designation as one unit per five acres. The General Plan also specifies that the zoning districts of P-1; Planned Unit Development District and the A-2; General Agricultural District are consistent with this land use designation.
- d. The Residential - Single Family - Low Density: This land use designation covers an approximately five acre portion of the project site along Diablo Road opposite Fairway Drive. This designation allows a residential development density range of 1-3 units per acre. The General Plan also specifies that the Town's zoning districts of P-1; Planned Unit Development District and the R-40, R-20 and R-15; Single Family Residential Districts are consistent with this land use designation.

## **P-1; Planned Unit District**

The Town's P-1; Planned Unit Development Zoning District is the only zoning mechanism available to transfer allowable development on a project site to the least sensitive areas of the site. In this case, the P-1; Planned Unit District would concentrate the proposed homes on the lowest and least-visible 29-acres of the site, allowing the preservation of the remaining 381 acres of visible ridgelines as permanent open space with public trails.

The use of the P-1; Planned Unit District is also consistent with the "Special Concern Area" language for the Magee Ranch property in both the 2010 and 2030 General Plans. Specifically, it calls for protecting "views and vistas from the road," encourages proposals that "transfer the allowable number of homes to the least sensitive and obtrusive parts of the site," and discourages "five-acre 'ranchette' sites ... that would require grading and road construction that could substantially diminish the visual qualities of the area."

## **Measure S**

Passed by Danville voters in 2000, Measure S requires a vote of the people or a 4/5's vote of the Town Council to change the General Plan land use designation of properties with a "General Open Space," "Parks and Recreation," or "Agricultural" land use designation. Measure S does not apply to rezoning nor does it alter any existing General Plan policies that may apply to properties with these General Plan land use designations.

One aspect of the litigation alleged that the Town's approval of the project constituted a general plan amendment, thus triggering the provisions of Measure S. The California Court of Appeal, First District, rejected this argument in 2015, concluding: "In sum, the General Plan's discussion of the Magee Ranch special concern area suggests defendants [Town] are correct and the entire project site, including the areas designated as agricultural open space, may be cluster developed and zoned P-1." This judicial interpretation is binding.

## **ENVIRONMENTAL REVIEW**

As described earlier, the adequacy of the 2013 Final EIR was challenged in court. The California Superior Court and the Court of Appeal rejected all allegations except the claim related to addressing bicycle safety. All other aspects of the 2013 Final EIR were upheld and found to be adequate.

In preparing a Final Revised EIR (FREIR) to address bicycle safety, the Town updated the entire transportation impact analysis given that time has passed since the 2013 FEIR was

certified. While not required by the Court, the FREIR includes an updated analysis of Air Quality and Greenhouse Gas, Noise, Energy, and Alternatives studies.

All other environmental chapters of the 2013 Final EIR are incorporated by reference as they are still valid, and their adequacy was upheld by the Courts in all regards.

### **Transportation Impact Analysis**

The updated transportation impact analysis includes an assessment of roadway and intersection operations, access, and bicycle safety (Appendix E of the FREIR). As a high-level summary, the analysis found that:

- Project impacts on intersection levels of service were less than significant *except* for the Diablo Road/Blackhawk Road/Mt. Diablo Scenic intersection, which can be mitigated to a level of insignificance with the installation of a traffic signal;
- Project impacts on bicycle level-of-service (BLOS) were less than significant.

#### Diablo Road/Blackhawk Road/Mt. Diablo Scenic

The analysis evaluated potential impacts in four scenarios: *Existing Conditions*, *Existing plus Project Conditions*, *Cumulative Conditions*, and *Cumulative Plus Project Conditions*. It found that project trips added to the Diablo Road/Blackhawk Road/Mt. Diablo Scenic intersection under *Existing plus Project* and *Cumulative plus Project Conditions* would operate at unacceptable levels during the AM peak and School PM peak hours. This would constitute a significant impact based on the established thresholds of significance.

Mitigation Measure 4.3-1 would require the project applicant to install a traffic signal that would mitigate the project's impacts at this intersection, improving traffic flow and reducing delay without acquiring right-of-way. However, the intersection is located wholly within unincorporated Contra Costa County (the "County") and installation of the traffic signal is not within the Town's purview. Consequently, the Draft Revised EIR continued to identify the project's impact as significant and potentially unavoidable because it was unknown at the time whether the County would accept the mitigation.

Since then, on October 15, 2018, the County Public Works Department submitted a letter stating that it agrees Mitigation Measure 4.3-1 should be implemented, that the applicant should install the traffic signal at the intersection, and that "as a precursor to signalization of the intersection, the developer should conduct a study to determine if a roundabout would be effective at this location."

In response, an Intersection Control Evaluation (“ICE”) was performed to compare the effectiveness of the existing all-way STOP control, single-lane roundabout and a traffic signal in reducing delay (“ICE” is included as Attachment A of the RFEIR). The analysis showed that the traffic signal would provide the most optimal level of service during all peak periods under all study scenarios with minimal or no impact to right-of-way. Most notably, the traffic signal would:

- Reduce delay by 86% and 92% in the AM commute and School PM peaks, respectively, in the *Existing* Condition.
- Reduce delay by 89% and 96% in the AM commute and School PM peaks, respectively, in the *Existing plus Project* Condition.
- Reduce delay by 88% and 94% in the AM commute and School PM peaks, respectively, in the *Cumulative plus Project* Condition.

The ICE also studied potential secondary traffic effects related to construction of this new intersection and found that the addition of this intersection would not change any of the conclusions of the Traffic Impact Report.

The roundabout alternative was found to operate unacceptably during the AM peak periods under *Cumulative* and *Cumulative plus Project* Conditions, while the traffic signal would operate acceptably under *all* scenarios.

While the County has expressed agreement with Mitigation Measure 4.3-1, neither the intersection nor the traffic signal installation is within the Town’s authority to approve. Therefore, it is recommended that a Statement of Overriding Considerations be adopted for Mitigation Measure 4.3-1 in the event that the County chooses not to allow construction of the signal.

### Bicycle Safety Analysis

In response to the Court of Appeal’s ruling that the 2013 project EIR needed to separately analyze the effects of project impacts on bicycle safety, the Town and its consultants searched for a standardized and nationally recognized methodology that is supported by years of testing and research.

After evaluating different methods, the Town selected the Highway Capacity Manual 2010 (HCM 2010) Bicycle Level of Service (BLOS) methodology. The BLOS is a nationally-used measure of on-road bicyclist comfort level and is cited in the *Contra Costa Transportation Authority’s Technical Procedures (2013)* as a standardized methodology that

has been developed by a national committee and provides a “rigorous quantitative methodology for defining LOS by roadway segment separately for pedestrians, bicyclists, and transit.” Further, the Santa Clara Valley Transportation Authority specifically encourages the use of BLOS methodologies as it measures features “that affect the comfort and safety of bicyclists from the user’s perspective” (SCVTA Transportation Impact Analysis Guidelines, Sections 5.2.5 and 9.3, October 2014).

As with intersection LOS analysis, BLOS expresses the on-road bicyclist comfort level using a letter grade (BLOS grades A – F). In simple terms, bicycle advocacy organizations that use this methodology (e.g., RideIllinois.org) describes BLOS grades A/B/C as "comfortable enough" for experienced cyclists, as are grades A/B for a broader range of adults. BLOS scores are derived by weighting several factors related to roadway geometry, traffic and safety conditions. The following are heavily weighted: roadway lane and shoulder widths, vehicle volumes and speeds, percentage of heavy vehicles, pavement condition, and number of travel lanes.

An analysis of BLOS (Attachment B of the Final Revised EIR) was conducted for five roadway segments along Diablo Road/Blackhawk Road:

1. McCauley Road/Green Valley Road to Calle Arroyo
2. Calle Arroyo to Alameda Diablo
3. Alameda Diablo to Avenida Nueva
4. Avenida Nueva to Diablo Creek Place
5. Diablo Creek Place to Magee Ranch Road/Hidden Oak Drive

BLOS conditions were assessed for both weekday and weekend (Saturday) periods under all project scenarios. The results of the BLOS analysis found that the project impacts on BLOS were less than significant with a less than one percent change in BLOS score for both weekday and weekend conditions, as illustrated in the excerpt below:



**Table 11: Weekday Peak Hour Segment BLOS – Existing plus Project Conditions**

Roadway	From	To	Direction	AM Peak			School PM Peak			PM Peak		
				BLOS Score	BLOS	%Diff.	BLOS Score	BLOS	%Diff.	BLOS Score	BLOS	%Diff.
Diablo Rd	McCauley Rd/ Green Valley Rd	Calle Arroyo	EB	3.75	D	0.00%	3.77	D	0.00%	3.73	D	0.00%
			WB	4.03	D	0.75%	3.97	D	0.25%	3.95	D	0.25%
Diablo Rd	Calle Arroyo	Alameda Diablo	EB	3.37	C	0.30%	3.38	C	0.00%	3.34	C	0.30%
			WB	3.30	C	0.30%	3.28	C	0.00%	3.28	C	0.31%
Diablo Rd	Alameda Diablo	Avenida Nueva	EB	3.59	D	0.00%	3.62	D	0.28%	3.57	D	0.00%
			WB	3.70	D	0.27%	3.68	D	0.00%	3.68	D	0.00%
Diablo Rd/ Blackhawk Rd	Avenida Nueva	Diablo Creek Pl	EB	<b>4.66</b>	<b>E</b>	0.00%	<b>4.68</b>	<b>E</b>	0.21%	<b>4.64</b>	<b>E</b>	0.00%
			WB	<b>4.83</b>	<b>E</b>	0.21%	<b>4.82</b>	<b>E</b>	0.21%	<b>4.81</b>	<b>E</b>	0.00%
Blackhawk Rd <sup>1</sup>	Diablo Creek Pl	Magee Ranch Rd/ Hidden Oak Dr	EB	3.77	D	0.00%	3.81	D	0.00%	3.78	D	0.00%
			WB	3.41	C	0.00%	3.40	C	0.00%	3.40	C	0.00%

Notes: BLOS = Bicycle Level of Service; EB = Eastbound; WB = Westbound

**Bold** indicates unacceptable operations.

Underline indicates one LOS letter-grade deterioration from "no Project" to "plus Project" Conditions.

%Diff. represents difference in BLOS Score between "no Project" and "plus Project" Conditions.

<sup>1</sup> Analysis performed prior to installation of bicycle lanes along study segment, however BLOS will not deteriorate with new bicycle facilities.

**Table 19: Weekend Peak Hour Segment BLOS – Existing and Existing plus Project Conditions**

Roadway	From	To	Direction	Existing Conditions		Existing plus Project Conditions		%Diff.
				BLOS Score	BLOS	BLOS Score	BLOS	
Diablo Rd	McCauley Rd/ Green Valley Rd	Calle Arroyo	EB	3.71	D	3.71	D	0.00%
			WB	3.83	D	3.83	D	0.00%
Diablo Rd	Calle Arroyo	Alameda Diablo	EB	3.31	C	3.31	C	0.00%
			WB	3.23	C	3.24	C	0.31%
Diablo Rd	Alameda Diablo	Avenida Nueva	EB	3.55	D	3.55	D	0.00%
			WB	3.64	D	3.64	D	0.00%
Diablo Rd/ Blackhawk Rd	Avenida Nueva	Diablo Creek Pl	EB	<b>4.62</b>	<b>E</b>	<b>4.62</b>	<b>E</b>	0.00%
			WB	<b>4.77</b>	<b>E</b>	<b>4.77</b>	<b>E</b>	0.00%
Blackhawk Rd <sup>1</sup>	Diablo Creek Pl	Magee Ranch Rd/ Hidden Oak Dr	EB	3.75	D	3.75	D	0.00%
			WB	3.37	C	3.38	C	0.30%

Notes: BLOS = Bicycle Level of Service; EB = Eastbound; WB = Westbound

**Bold** indicates unacceptable operations.

%Diff. represents difference in BLOS Score between "no Project" and "plus Project" Conditions.

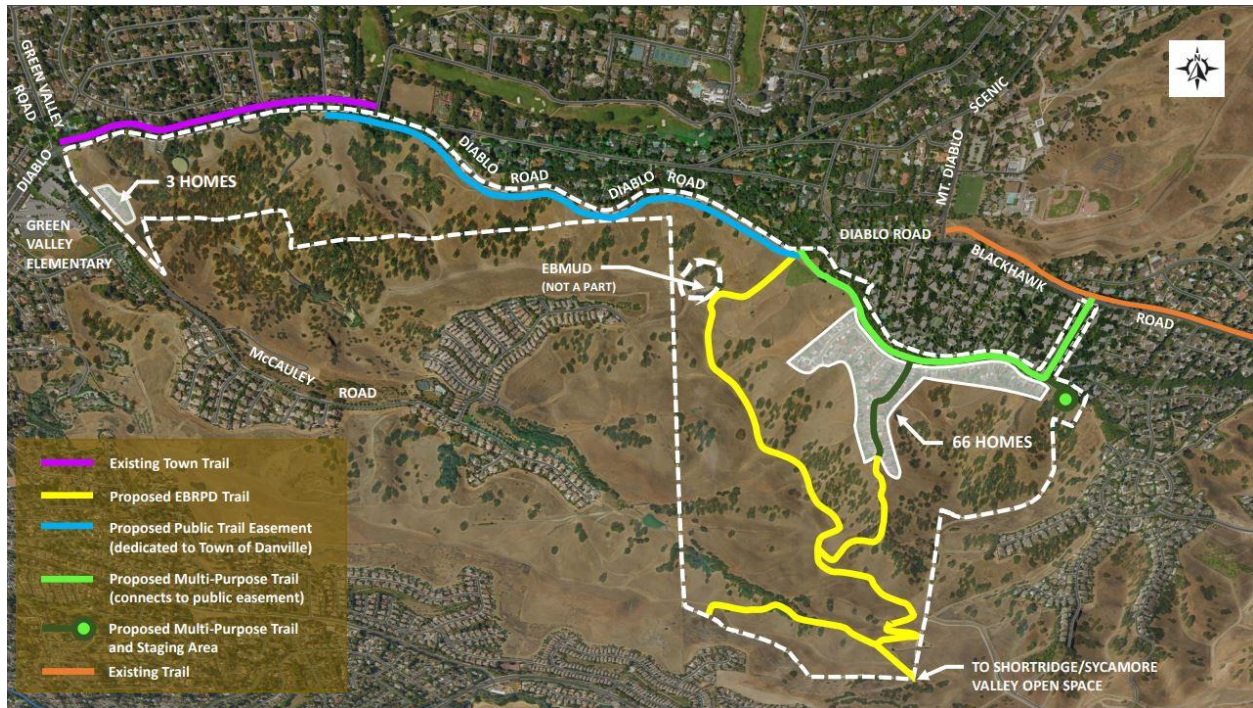
<sup>1</sup> Analysis performed prior to installation of bicycle lanes along study segment, however BLOS will not deteriorate with new bicycle facilities.

One of the study segments (Diablo Road/Blackhawk Road - Avenida Nueva to Diablo Creek Place) operates at unacceptable (BLOS "E") under all scenarios. This deficiency is product of the number of residential driveways that intersect this roadway segment and represents potential points of conflict in the BLOS methodology.

It should be noted that the Project would construct a paved multi-purpose trail that parallels and bypasses this deficient segment, represented as the green trail segment running along the south side of Green Valley Creek, as illustrated in Figure 2 (see also Attachment D – Project Trail Exhibit).



Figure 2: Project Trail Exhibit



### Paved Multi-Purpose Trail

As described earlier, the project would build an approximate 3,750 linear feet of paved, publicly accessible, multi-purpose trail along the south side of Green Valley Creek through the eastern (main) portion of the proposed project that connects to Blackhawk Road (Figure 2: bright green trail segment). The western leg of this multi-purpose trail would also serve as the project’s Emergency Vehicle Access, terminating at Diablo Road approximately 400 feet west of Avenida Nueva.

At the main project entrance, where the project’s paved multi-purpose trail would terminate, the applicant would be required to construct a crosswalk across Blackhawk Road to connect to an existing paved trail that runs along the north side of Blackhawk Road (Figure 2: orange trail segment).

There are several pedestrian-actuated warning device system options available with various advance markings and signage to clearly warn the motorists of an upcoming pedestrian crossing. As the crossing treatment would be within the jurisdiction of Contra Costa County, the ultimate design and improvement plans will be routed through Contra Costa County for approval. A detailed assessment of crosswalk treatment options would be conducted prior to final design to determine the most appropriate treatment that would serve this specific location.

## **Public Multi-Purpose Trail Easements**

The applicant would also be required to dedicate public trail easements throughout the project site. Some of these would be Pedestrian Access easements dedicated to the East Bay Regional Parks District from Diablo Road to the Sycamore Valley (Figure 2: yellow coded trails).

Another public trail easement would be dedicated to the Town of Danville for a paved multi-purpose trail located along the south side of Diablo Road, extending from a location near the vicinity of Diablo Road/Fairway Drive (Figure 2: blue trail segment) to a location approximately 400 feet west of Avenida Nueva to a location. This public easement would enable the Town to construct a paved multi-purpose trail that connects the existing “Barbara Hale” trail (Figure 2: purple trail segment) to the applicant-constructed trail within the subdivision (Figure 2: blue trail segment) and ultimately to the existing trail located along the north side of Blackhawk Road (Figure 2: orange trail segment). Closing this trail gap was envisioned in the first Danville Townwide Trail Plan, adopted in 1989.

In anticipation of completing this gap closure project, funds have been collected through the North East Roadway Improvement Association District (NERIAD) and allocated through Measure J (Contra Costa ½-cent Transportation Sales Tax program). In 2018, the Town completed a feasibility study that assessed trail alignment options and that would be used in the future to assist with preparation of the ultimate design should the Town be granted the easement.

## **TRAFFIX**

TRAFFIX is a traffic congestion relief program funded by Measure J, the Contra Costa County ½-cent transportation sales tax measure approved by voters in 2004. Now in its tenth year of service, the program provides school bus transportation as a means to reduce traffic congestion throughout the San Ramon Valley. TRAFFIX currently provides service to Monte Vista High School, Los Cerros Middle School and Green Valley Elementary School. It is anticipated that ridership will continue to increase, with the potential addition of a seventh bus to Monte Vista High School based on future demand.

As TRAFFIX would serve students within the future project development, the project applicant has agreed to provide a \$30,000 fund for homeowners within the project development to purchase TRAFFIX bus passes or to use for other school transportation programs.

## **Hydrology and Water Quality**

Additional storm water run-off would be created by the new impervious surfaces which would result from the project. In addition, there are downstream sections of Green Valley Creek which are eroding and currently does not have sufficient capacity to avoid flooding during major storm events. By law, the project is required not to exacerbate these conditions. As a result, the application proposes to construct an on-site detention basin which would receive all of the run-off from the development's impervious surfaces, and discharge the water into Green Valley Creek at a rate not to exceed pre-project flow rates. As a result, the project would not worsen downstream drainage impacts.

## **Tree Removal/Mitigation**

Over 300 trees were surveyed within the general area where development is proposed. There are hundreds of additional trees on the project site that were not surveyed as they have no potential to be impacted by the proposed project. A total 67 trees are proposed to be removed as part of the project, including 15 trees which are Town-protected trees based on the Town's Tree Preservation Ordinance. Most of the trees to be removed would be required to be removed to accommodate the proposed new access road east of Jillian Way, and to allow for intersection improvements which would require street widening on the south side of Diablo Road at the Diablo Road/McCauley Road/Green Valley Road intersection. The tree removal would be mitigated by the planting of new trees of a size and number to equal the total diameter of the Town-protected trees to be removed, and on a 1 to 1 ratio for all other trees.

## **Architecture/Landscaping**

The applicant proposes to construct 69 single family homes with five different floor plans ranging in size from 3,216 to 4,488 square feet (Exhibit G). Plan 1 is single story, and the other four plans are two-story plans. All plans are designed to accommodate a 250- 500 +/- square foot attached second dwelling unit "casita" as an option. The architectural plans for the project as approved in 2013 were reviewed by the Town's Design Review Board on four different occasions and were recommended for approval by the Planning Commission and approved by the Town Council; the proposed project conforms to those plans.

The development would include the installation of a significant amount of landscaping throughout the project (Exhibit H). Landscaping would be installed along both sides of the proposed new entry drive, as well as the median in the entry drive, and along the creek trail. This landscaping and irrigation would be maintained by the project's homeowners association. The developer would also install all front yard landscaping for

all of the lots. The landscape plans for the project were reviewed and recommended for approval by the Town's Design Review Board and Planning Commission, and approved by the Town Council; the proposed project substantially conforms to those plans.

### **GHAD/HOA**

The applicant is proposing to form, or annex into an existing, Geologic Hazards Abatement District (GHAD) to provide for the maintenance of geologic and related features associated with this project. A GHAD is an independent agency which serves to provide an ongoing resource for managing geologic hazards within the boundaries of the GHAD. The GHAD would also maintain the storm water detention basin which would be built as part of this project.

A Homeowners Association (HOA) would also be formed as part of the project. The HOA would be responsible for maintaining common landscaping and fences, as well as landscape irrigation.

### **Scenic and Conservation Easements**

The approximately 381-acre portion of the project site that would not be developed, would be required to be dedicated as permanent open space. A scenic easement which would prohibit the development of structures or significant grading, would be dedicated to the Town of Danville. The open space area would be maintained by the project's GHAD. In addition, some or all of the open space would be subject to a conservation easement for the benefit of special-status species, and approximately two miles of trails would be dedicated to the East Bay Regional Parks District for public use.

### **Inclusionary Housing**

Consistent with the Town's Inclusionary Housing Ordinance, 10 percent of the units (seven units) within this project would be required to incorporate second dwelling units. If rented, these second units shall be rented at an affordable rate, as set by the California Department of Housing and Community Development, to be affordable to low income households. All of the proposed floor plans for the project are designed to incorporate an attached 250- 500 square foot second dwelling unit.

### **PUBLIC NOTIFICATION**

Public notice of the May 28, 2019 meeting was mailed to property owners within 1,000 feet of the site. A total of 1,176 notices were mailed to surrounding property owners and interested parties. Posting of the meeting agenda serves as notice to the general public.

## RECOMMENDATION

Recommend that the Town Council certify a Final Revised Environmental Impact Report and adopt findings and a Statement of Overriding Considerations, mitigation measures and a mitigation monitoring and reporting program; and approve a Preliminary Development Plan - Rezoning, Major Subdivision, Final Development Plan, and Tree Removal requests (Magee Preserve).

Prepared by:

David Crompton  
Principal Planner

Attachments: A - Resolution No. 2019-05  
    Exhibit 1 - Environmental Impact Report Findings  
    Exhibit 2 - Mitigation Monitoring and Reporting Program  
B - Public Notification, Notification Map, and Public Notification List  
C - Final Revised EIR Master Responses  
D - Project Trail Exhibit  
E - Letters Received as of May 23, 2019  
F - Vesting Tentative Map Package  
G - Architecture Plans  
H - Landscape Plans

Final Revised EIR available online: <http://www.danville.ca.gov/DocumentCenter/View/2914/2019-Final-Revised-Environmental-Impact-Report-PDF>