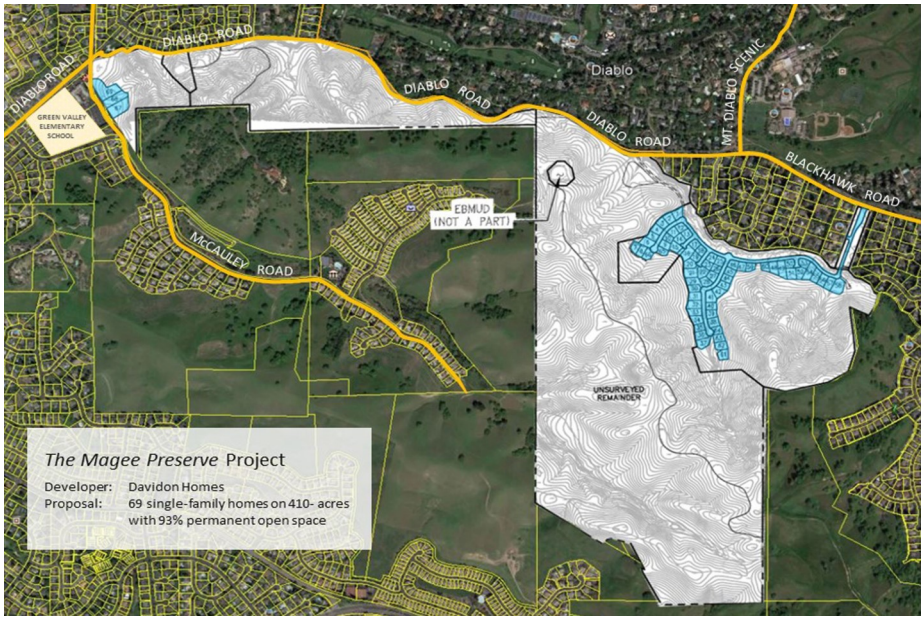
PRIVATE DEVELOPMENT PROPOSAL: MAGEE PRESERVE



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LOCATION

The property 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.

The Town has received a number of comments and questions regarding the proposed development of the Magee Ranch property by Davidon Homes. To address the potential for any misunderstanding or confusion, the following is an outline of the facts associated with the development proposal.

PROPOSED PROJECT

What is the Magee Preserve Project?

This is a proposal by Davidon Homes to develop approximately 29 acres (or 7%) of the 410-acre project site with 69 single family homes and seven attached secondary dwelling units (a.k.a. "casitas" or "in-law units"). As shown on the site plan above, the proposed lots are shown in blue while the remaining 381 acres (shown in white) would be converted to permanent open space.

Is it a development on an open space preserve?

No. The name of the proposed project selected by the developer is The Magee Preserve. If approved, the project would set aside approximately 93% of the site as permanent open space. However, at this time the property is privately owned by the Magee family and has development rights based on General Plan and zoning regulations established long before the Town's incorporation.

Where is it located ?

The property location is described above. Most of the proposed homes (66 units) would be situated behind existing development on the south side Blackhawk Road. The remaining three homes would be located off of McCauley Road, near the Diablo Road intersection.

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GENERAL PLAN AND ZONING

Several comments received by the Town raise questions about the existing General Plan land use designation and corresponding zoning district for the property. These two terms are not interchangeable, which can cause misunderstandings as they are not one and the same.

Because the land use designations and zoning districts determine the development potential of all property in the Town, it is important to fully understand them. Among other things, a property's General Plan land use designation dictates how the land can be used and how dense the land use can be. A property's Zoning district outlines more specific development standards for that land use (such as setbacks, height, etc.).

What are the existing General Plan and Zoning designations for the Magee property?

The existing "Magee property" is comprised of 10 separate parcels with a range of General Plan and zoning designations; most of the property is covered by the either the Agricultural or Rural Residential Land Use Designations. Table 3-2 (page 3-11) of the Revised Draft Environmental Impact Report (Revised DEIR) provides a summary by parcel.

It's important to note that both the Danville General Plan and Town's Zoning district for the Agricultural and Rural Residential Land Use Designations permit residential uses. Specifically, this property's zoning of A-2; General Agricultural District permits "a detached single-family dwelling on each parcel and the accessory structures and uses normally auxiliary to it" by right. The zoning allows up to one home per five acres.

How does the General Plan or Zoning district allow 69 lots on Agricultural land ?

As a first step in the Town's development review process, a lot study is undertaken to determine a property's maximum allowable development potential. This study takes into account the property's permitted density (example: up to one home per five acres) as well as the relevant development standards that apply (example: no development within 100 vertical feet of a ridgeline or on slopes in excess of 30-percent, etc.). The conclusion of this study was that the Magee Ranch property had the right to request a maximum of 78 lots.

Why can't the property be preserved in its current farmland state?

A city's General Plan outlines the development rights of every parcel within its limits. In this case, the property's General Plan land use designations and its corresponding zoning districts allows up to 78 lots. Denying a land owner the ability to request a development proposal consistent with the General Plan could constitute an unconstitutional taking of private property rights.

MEASURE S AND REZONING

Many of the comments received indicate belief that any approval of the project must be submitted to the voters pursuant to Measure S. However, based on a 2015 ruling by the California Court of Appeals, this is not the case.

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What is Measure S?

On November 7, 2000, the voters in Danville approved Measure S, which amended the Town's General Plan. It requires that any change to lands designated in the General Plan as (1) Agricultural, (2) General Open Space, or (3) Parks and Recreation would be subject to a vote of the people or a 4/5 vote of the Town Council.

Properties designated as General Open Space or Parks and Recreation have no development potential, but properties designated as Agricultural do have some limited development potential. Therefore, a property designated as Agricultural may be developed without triggering a Measure S vote – as long as the proposed development does not exceed the maximum density permitted by that land use designation. Any development proposal that exceeds the maximum permitted density would require a General Plan Amendment and be subject to a Measure S vote.

As a final note, many of the comments have referred to the property as "Agricultural Open Space," which has led to a misunderstanding that the property has no development potential. "Agricultural" and "Open Space" are, in actuality, two separate General Plan land use designations .

Is the project subject to a Measure S vote?

No. The reason why is that the proposed project is requesting a change in the Zoning district; not a change to its General Plan land use designation. The proposed rezoning does not add development potential. Instead, it serves to transfer all development rights of the 410-acre site to just 29 acres and preserves the remaining 381 acres as permanent open space (Revised DEIR, page 1-1).

Why does the property need to be rezoned?

While the property owner could propose to subdivide the property with all homes spread across the entire 410 acres, it would be inconsistent with the Town's General Plan. The Danville General Plan contains several "Special Concern Areas," which are properties that warrant additional and specific direction related to its potential development. The Magee Ranch property is one of these Special Concern Areas and the General Plan's direction for it states that:

> "[P]roposals which transfer the allowable number of homes to the least sensitive and obtrusive parts of the site are encouraged."
>
> "[S]ubdivision of this Special Concern Area into five-acre 'ranchette' sites similar to those in the Tassajara Lane/ Sherburne Hills area is strongly discouraged. Such development would require grading and road construction that could substantially diminish the visual qualities of the area. Transferring allowable densities to a limited number of areas within the ranch would enable the bulk of the site to be set aside as permanent open space."

The only way to meet these planning objectives is to rezone the property to allow for the transfer of potential development of the 410-acre site to just 29 acres, preserving the remaining 381 acres as permanent open space.

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PROJECT RELATED CONCERNS

How much traffic would the project generate ?

The traffic analysis studied the project's potential impact using a methodology that allows the Town to distinguish between current traffic conditions from the project's contribution to an existing traffic baseline. Under law, a project is only required to mitigate its own impacts to the baseline rather than to fix all existing problems.

The analysis concluded that the project would increase the daily traffic volume along the Diablo Road corridor, west of Mt. Diablo Scenic, by 4-percent. The project would also be required to contribute its fair share of future road improvements. As a contribution toward improving the travel corridor, the project applicant has agreed to improve the intersection of Diablo/Green Valley/McCauley intersection by extending the westbound right-turn and through lanes. This would increase the number of cars that can move through one traffic signal cycle and decrease the overall wait time, improving the operation of the intersection. It is also worth noting that the methodology used in the traffic analysis has been upheld by the both the Contra Costa County Superior Court (2013) and the California Court of Appeal (2015).

Were impacts to cyclists considered ?

Yes, the traffic study performed an analysis of bicycle safety using a nationally recognized method established by the Highway Capacity Manual (HCM 2010). The analysis concludes that a proposed development of 69 homes has a negligible impact on bicycle safety. It is also worth noting that the proposed project would enable the Town to implement a long-term vision to build a paved multi-purpose path across this property as alternative to Diablo Road.

Would the project cause downstream flooding and erosion?

The hydrologic analysis that was prepared for the project and described in detail within Draft Environmental Impact Report (DEIR) concluded that the project would mitigate potential hydrologic impacts related to increases in peak flow rates by installing a detention basin that would maintain post-project peak flows at pre-project levels. As a result, the project would not result in an increase in peak flows in the creek.

Would the development impair the ability for police and fire to respond?

The Draft EIR includes an analysis of the proposed development's potential impact on public services, including police and fire. The analysis included interviews with both appropriate police and fire personnel. The analysis concludes that, while the development would incrementally increase demands on services, the development would not adversely impact response times, and would be considered less than significant.

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PROJECT HISTORY AND LAWSUIT

Has this project been proposed before?

Yes. In 2010, SummerHill Homes submitted a development application for 85 homes. Through the environmental review process, the proposal was reduced to 78 homes in 2011 and subsequently to 70 homes by late 2012. In response to comments that surfaced through the Draft EIR prepared for the original project, the unit count was reduced further to 69 homes. After holding four public hearings to consider the development proposal, the Town of Danville approved the project in July 2013.

Was there a lawsuit filed against the original project ?

Yes. A lawsuit was filed in July 2013 to challenge the project approvals, alleging that the Final EIR inadequately addressed project impacts and that the project was inconsistent with the Town's General Plan.

The Trial Court rejected the majority of these claims and the Court of Appeal rejected all allegations except the claim that the EIR did not adequately address impacts to bicycle safety. Specifically, additional environmental analysis on bicycle safety is required before the Town considers approval of the proposed project.

Both the 2013 Contra Costa County Trial Court Decision and 2015 California Court of Appeal Decision can be found on the Town's website at www.danville.ca.gov/639/Magee-Preserve

What was the outcome of lawsuit on the SummerHill development proposal ?

The Superior Court rejected most of these claims and the Court of Appeal rejected all allegations except the claim that the EIR did not adequately address impacts to bicycle safety.

Specifically, additional environmental analysis on bicycle safety is required before the Town considers approval of the proposed project. As a part of updating the EIR to address bicycle safety, the Town has also chosen to update other environmental studies (such as transportation, air quality, greenhouse gas emissions, etc.).

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PUBLIC PROCESS

September 25, 2018	The Danville Planning Commission will conduct a public hearing to solicit input and comments on the proposed project's Revised DEIR. No decisions would be made at this hearing. *Note*: Those who are unable to attend this meeting may still submit comments and concerns via the methods listed below under "Provide Feedback."
October 15, 2018	The public comment period for the Revised DEIR closes. The consultant team that has prepared the Revised DEIR will review, document and craft formal responses to all public comments. These responses will be assembled into a "Response to Comments" document, otherwise known as the Final EIR. Depending on the number of comments received, it may take 4-6 weeks to prepare the Final EIR.
Late 2018/Early 2019	When the Final EIR is completed, it will be published for review and consideration by the Danville Planning Commission (the "Commission"). The Commission will make a recommendation to the Danville Town Council regarding whether the Final EIR should be certified and the proposed project be approved.
2019	At an available public hearing date, the Danville Town Council will consider the recommendations of the Planning Commission and take action on both the Final EIR and proposed project.

How can I provide feedback?

Anyone wishing to provide comments should send them to:

David Crompton, Principal Planner | Email: DCrompton@danville.ca.gov | Phone: 925-314-3349

Comments related to the *adequacy of the Revised DEIR* should be submitted no later than **October 15, 2018**.

Comments related to the *proposed project in general* can be submitted throughout the public review process, until the date of the final public hearing on this proposal (to be determined).

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The Magee Preserve
PUBLIC REVIEW PROCESS

Updated: September 25, 2018

August 31, 2018

REVISED DEIR PUBLISHED

The Revised Draft Environmental Impact Report is released for a 45-day public comment period, ending on October 15, 2018

September 25, 2018

PLANNING COMMISSION PUBLIC HEARING TO TAKE INPUT ON REVISED DEIR

The Danville Planning Commission will hold a public hearing to solicit input and comments on the adequacy of the Revised DEIR (not the project)

October 15, 2018

PUBLIC COMMENT PERIOD FOR REVISED DEIR CLOSES

Once all of the comments for the Revised DEIR has been received, the consultant team will begin the work of crafting formal responses to all comments received. These will be assembled into a "Response to Comments" document which, along with the Revised DEIR constitutes the Final EIR

Late 2018 or Early 2019

FINAL EIR IS PUBLISHED

Early 2019

PLANNING COMMISSION REVIEWS FINAL EIR AND PROPOSED PROJECT; MAKES RECOMMENDATION TO TOWN COUNCIL

2019

TOWN COUNCIL CONSIDERS RECOMMENDATION FINAL EIR AND PROPOSED PROJECT