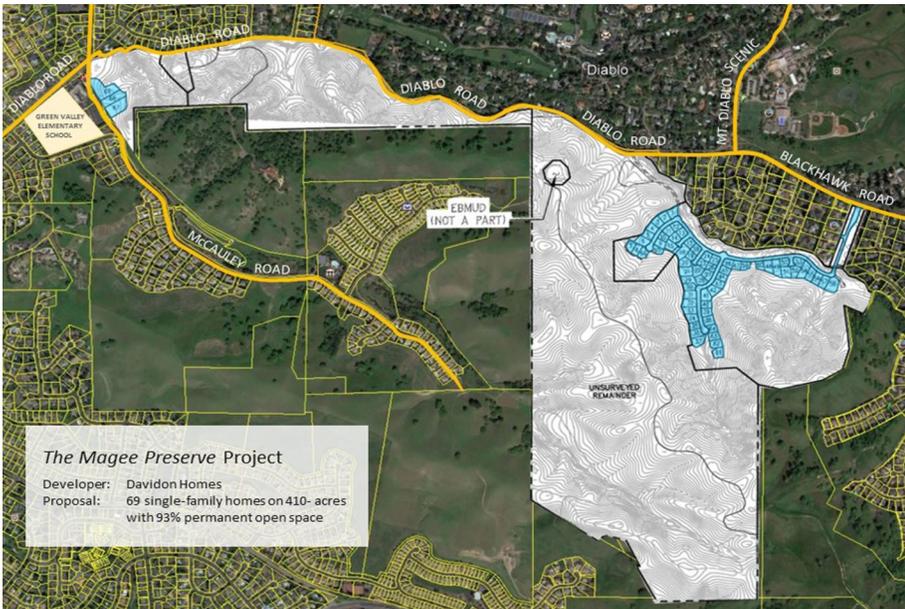




**PRIVATE DEVELOPMENT PROPOSAL: MAGEE PRESERVE**



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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 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.



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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/MageePreserve](http://www.danville.ca.gov/MageePreserve)

#### ***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.).

### MEASURE Y

#### ***What will happen if Measure Y passes, or if it fails?***

If Measure Y passes, the 69 lot project that was approved by the Town Council in July would be affirmed, and the applicant could go forward with project development.

If Measure Y fails, the Town's approval would be overturned. As a result, the property would stay as it is until a future development is proposed and approved. More information can be found at: <https://www.danville.ca.gov/711/March-3-2020-Election>



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### ***What public trails would be associated with the development?***

The applicant would be required to dedicate public trail easements throughout the project site. Some of these would be dedicated to the East Bay Regional Park District. A trail easement running parallel to Diablo Road would also be dedicated to the Town of Danville. More information on project trails can be found here: <https://www.danville.ca.gov/645/Diablo-Road-Trail-Feasibility-Study>

### ***Who will maintain the trails?***

The trails would be maintained through a Geologic Hazards Abatement District (GHAD) that would be established as part of the project. As a result, the new homeowners would pay for the maintenance.

### ***Will Diablo Road be improved?***

The cost of widening Diablo Road has been studied and found to be cost prohibitive <https://www.danville.ca.gov/645/Diablo-Road-Trail-Feasibility-Study>. However, both the Diablo/Blackhawk/Mount Diablo Scenic and Diablo/Green Valley/McCauley Road intersections would be improved.

### ***How will the open space be assured to be permanent?***

The P-1; Planned Unit Development rezoning would transfer all development rights to 29 acres of the site, leaving the remaining 381 acres of the site with no development rights. In addition, scenic easements and protective easements covering the 381 acres would be dedicated to the Town. Finally, the East Bay Regional Parks District (EBRPD) has agreed to accept over 90 percent of the land in either fee title ownership or restrictive easements assuring no future development. See EBRPD letter <https://www.danville.ca.gov/DocumentCenter/View/3941/12-05-19-Letter-from-EBRPD-to-Town-Manager-Joe-Calabrigo-PDF>

### ***Will the project have a negative impact on fire safety?***

Fire safety and police services were fully studied as part of the Environmental Impact Report (EIR) prepared for the project. In consultation with the San Ramon Valley Fire Protection District and Danville Police Department, the report found that the project would not have a significant impact on police service or fire safety in the area. Regarding fire safety, the project would provide three evacuation routes through the open space area to the south and west in addition to Blackhawk Road. You can watch and listen to the information provided by the San Ramon Valley Fire Protection District's Fire Marshall on this subject at: [https://danville-ca.granicus.com/player/clip/1170?view\\_id=9](https://danville-ca.granicus.com/player/clip/1170?view_id=9). Discussion starts at the 50:00 minute mark and finishes at 56:30.

### ***Are there State laws that require development of open space?***

Concerns have been expressed that even with preservation of open space, the state could require further housing development on the open space. There are no state laws that would force the development of open space.



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### ***How many vehicles trips would the development add to the roadway network?***

As documented in the development's Traffic Impact Analysis, the development would add an estimated 841 vehicle trips in a 24-hour period, with 804 originating from the 66 homes entering from the Blackhawk Road access and 37 vehicle trips originating from the 3 homes that that would access from the McCauley Road entry.

Specifically, of the 804 vehicle trips that would originate from the Blackhawk Road entry, approximately **93** vehicles (31 inbound and 62 outbound) would be generated during the 7:00 – 9:00 **AM peak hour**, **83** vehicles (50 inbound and 33 outbound) would be generated during the 2:00 – 4:00 **PM (school) peak hour**, and **68** vehicles (43 inbound and 25 outbound) would be generated during the 4:00 – 6:00 **PM (commute) peak hour**.

Of the **93 AM peak hour** vehicles, 62 vehicles would exit the development on to Blackhawk Road with 40 vehicles traveling west on Diablo Road and 22 vehicles traveling east on Blackhawk Road.

Of the **83 school PM peak hour** vehicles, 33 vehicles would exit the development on to Blackhawk Road with 20 vehicles traveling west on Diablo Road and 13 vehicles traveling east on Blackhawk Road.

Of the **68 commute PM peak hour** vehicles, 25 vehicles would exit the development on to Blackhawk Road with 16 vehicles traveling west along Diablo Road and 9 vehicles traveling east along Blackhawk Road. There would be a total of 43 vehicles coming into the Blackhawk Road project entry with 28 vehicles traveling east on Diablo Road and 15 vehicles traveling west on Blackhawk Road.