

June 23, 2025

VIA EMAIL

Will Nelson
Principal Planner, Advance Planning
Department of Conservation and Development
Contra Costa County
30 Muir Road
Martinez, CA-94533
e-mail: advanceplanning@DCD.cccounty.US

**Re: Urban Limit Line Renewal
APN 011-210-029
Board of Supervisors Meeting: June 24, 2025, at 9:00 am**

Dear Mr. Nelson:

Abbott & Kindermann, Inc., represents Bixler Petroleum, LLC (“**Bixler**”) the owner of APN number 011-210-029 comprising 10 acres located at the corner of State Route Highway 4 (“**SR4**”) and Bixler Road near Discovery Bay (“**Property**”) in Contra Costa County (“**County**”). Attachment 1 is a view of the property in relation to SR4 and the Discovery Bay Community.

We are submitting this correspondence to be included in the record at the June 24, 2025, hearing by the County Board of Supervisors considering staff’s proposal for the location of the Urban Limit Line (“**ULL**”). Staff’s proposal for the ULL has been developed pursuant to the Board of Supervisors’ direction to County staff to prepare an adjusted ULL for consideration of County voters in 2026.

Bixler respectfully requests that the County redraw the line as currently proposed to include the entire 10 acre Property within the ULL for the following reasons which will be further detailed below:

- 1) the Property is appropriate for urban uses; and
- 2) County General Plan 2045 (“**GP**”) policies and actions support the types of uses Bixler could offer on the Property.

The Property is Appropriate for Urban Uses

The Property is located south of and essentially adjacent to SR4. The intervening narrow strip of land owned by the Contra Costa Water District is directly adjacent to SR4. See Attachment 1.

The Property has not been in agricultural production since prior to Bixler's acquisition over a decade ago. Directly across Bixler Road, also south of SR4, is a boat and recreational vehicle storage and repair facility. Directly across SR4 is urban development as part of the Discovery Bay community.

Chapter 5 of the County GP, Transportation Element, defines SR4 as follows:
Freeways are high-speed facilities that move inter-city or regional traffic.
Freeways that provide regional access to, from, and within Contra Costa County include Interstate (I-) 80, I-680, I-580, State Route (SR) 4, SR 24, SR 242, and SR 160.

SR 4 is the principal east-west transportation corridor serving the industrial areas of the 55-mile Northern Waterfront.

The Property's position along this significant east-west transportation corridor provides appropriate opportunities for highway serving amenities that could be offered to travelers, instead of those same vehicles leaving the highway to seek services in areas remote from the freeway. Those travelers would add vehicle miles travelled ("VMT"), traffic, air quality, climate change and public safety impacts to Discovery Bay and other County communities, all of whom are seeking to enhance pedestrian and bicycle access for the residents in accordance with the GP and the communities' individual general plans.

The brands that Bixler is affiliated with include Black Bear Diner, Sonic Drive-In and Popeye's. Having an amenity such as this would provide quick stop opportunities for travelers going either direction on SR4. Level 3 zero occupancy electric vehicle ("ZEV") charging is also available with these amenities.

Additionally, adding the Property's 10 acres would not interfere with attainment of the County's 65/35 Land Preservation Standard ("**Standard**"). The proposed inclusion of the Property acreage is de minimis and would not alter the balance of overall total developable acres in the County, thereby upholding the 65/35 Standard.

County GP Policies and Actions Support the Types of Uses Bixler Could Offer for the Property.

Several elements of the GP provide support for the type of uses Bixler could offer on the Property. Examples of some, but not all of the policies and actions follow.

Transportation Element

The Transportation Element of the GP provides several policies that seem to encourage keeping SR4 traffic near the freeway and away from the collector streets in urban areas.

TR-P6.1 Partner with neighboring jurisdictions, CCTA, and the MTC to manage regional movement of goods through unincorporated areas, minimizing impacts on residents and other sensitive receptors.

TR-P6.4 Use all available policy tools to ensure that trucks use designated truck routes.

Transportation Element Performance. ● Reduced per-capita VMT. ● Reduced single-occupant vehicle mode share. ● Increased bicycle and pedestrian trips. ● Reduced average commute time for county residents. ● Increased ZEV charging and fueling infrastructure. ● Reduced number of roadway collisions involving fatalities and serious injuries.

Land Use Element

There are also policies and actions in the GP Land Use Element supporting a jobs housing balance, and acknowledgement that industrial traffic, which also uses SR4, needs to be minimized in neighborhoods and other commercial areas.

LU-P3.1 Support regional efforts to achieve a jobs-housing balance within the county and within subregions of the county by maintaining an adequate supply of developable land designated for job-generating uses. For any General Plan amendment proposing to convert commercial, industrial, or office land uses to residential or non-urban land uses, evaluate the project's effect on the local and countywide jobs-housing balance.

LU-P8.1 Plan for a sufficient quantity, variety, and distribution of commercial uses to meet the basic daily needs of residents in communities throughout the county. LU-P8.2 Support development of neighborhood-serving commercial services in and adjacent to residential areas

LU-P9.3 Designate industrial land adjacent to major transportation infrastructure (i.e., freeways, rail lines, ports) and in other locations where the impacts of industrial traffic on neighborhoods and commercial areas can be minimized.

Conclusion

Based on the foregoing discussion, Bixler respectfully requests that the County consider including the Property within the ULL. Bixler appreciates the opportunity to present this request and looks forward to further discussing this with the County.

Very Truly Yours,

Diane G. Kindermann

DKH/ks

Attachment

Cc: Client

Clerk of the Board of Supervisors < clerkoftheboard@cob.cccounty.us >

Supervisor John Gioia, District I < john_gioia@bos.cccounty.us >

Supervisor Candace Andersen, District II < supervisorandersen@bos.cccounty.us >

Supervisor Diane Burgis, District III < supervisor_burgis@bos.cccounty.us >

Supervisor Ken Carlson, District IV < ken.carlson@bos.cccounty.us >

Supervisor Shanelle Scales-Preston, District V < district5@bos.cccounty.us >

ATTACHMENT A

[illegible]



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

715 P Street, 15-300
Sacramento, CA 95814

916.445.5511
DELTACOUNCIL.CA.GOV

CHAIR
Julie Lee

VICE CHAIR
Gayle Miller

MEMBERS
Diane Burgis
Frank C. Damrell, Jr.
Ben Hueso
Maria Mehranian
Daniel Zingale

EXECUTIVE OFFICER
Jessica R. Pearson

June 23, 2025

Will Nelson, Principal Planner
Contra Costa County
Department of Conservation and Development
30 Muir Road, Martinez, CA 94553

Delivered via email: Will.Nelson@dcd.cccounty.us;
advanceplanning@dcd.cccounty.us

RE: Proposed Contra Costa County Urban Limit Line Renewal

Dear Will Nelson:

Thank you for the opportunity to review and comment on the adjustments to the Contra Costa County (County) Urban Limit Line (ULL) proposed by the Board of Supervisors (Board). The Delta Stewardship Council (Council) recognizes the Board's objective to renew the current ULL, which was last approved as Measure L by County voters on November 7, 2006, and will repeal December 31, 2026.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009. (Wat. Code, § 85000 et seq.; Delta Reform Act) The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin Delta (Delta) ecosystem. (Wat. Code, § 85054.) The Council furthers California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh. (Wat. Code, § 85300.)

The Council's attention to the outcome of the ballot measure stems from Delta Plan policy **DP P1** "Locate New Urban Development Wisely," (Cal. Code Regs., tit. 23, § 5010.) which places certain limits on new urban development within the Delta. The policy states that new residential, commercial, or industrial development be limited to areas within the 2006 voter-approved ULL. This policy is intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk. If County voters approve the proposed renewal of the ULL, the Council may consider updating the regulatory policy accordingly.

The potential ULL adjustments before the Board constitute a total of 10,787 acres of ULL contraction and 1,634 acres of ULL expansion, for a net contraction of 9,153 acres, 4832.5 acres of which are located within the Delta.¹ Based on information provided to Council staff by County staff, proposed adjustments to the ULL consist of both contractions and expansions within the Delta as follows:

- *Antioch*: Contraction of 273.5 acres to align with city limits or land owned by the East Bay Regional Park District (EBRPD). Expansion of 90.4 acres to align with city limits.
- *Bethel Island*: Contraction of 2,721.0 acres due to development constraints.
- *Discovery Bay*: Contraction of 858.4 acres within agricultural easements and subdivision buffers. Expansion of 5.4 acres to include an existing roadway within the ULL.
- *Oakley*: Contraction of 77.5 acres to align with the city sphere of influence or city limits. Expansion of 26.7 acres to include already existing development and align with city limits.
- *Pittsburg*: Contraction of 15 acres to align with city limits. Expansion of 29 acres to align with city limits and to include existing development.
- *Browns Island*: Contraction of 685.6 acres of the island on land owned by EBRPD.
- *Byron Airport*: Contraction of 201.5 acres within the Legal Delta on the western and northern edge of the airport on lands either owned by EBRPD or within conservation easements. Potential expansion of 500.0 acres involving land to the east located between the airport and Byron Highway, contemplated as a precursor to future aviation-related development.

¹ These numbers do not include the approximately 500-acre Byron Airport Study Area.

June 23, 2025

- *Cleanups:* Numerous other small acreages of contraction or expansion to align with various city limits, account for existing development, and simplify the mapping of the shoreline.

While Council staff has a continued interest in better understanding how future development may proceed near Byron Airport, the net contraction of developable areas within the ULL in the Delta is a positive outcome that supports Delta Plan strategies to locate new development wisely, reduce flood risks, protect lands for restoration, and safeguard against land loss.

We invite County staff to continue engaging with Council staff as this process continues. Please contact Jeff Henderson at (916) 842-9333 or Jeff.Henderson@deltacouncil.ca.gov with any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jeff Henderson', with a long horizontal flourish extending to the right.

Jeff Henderson

Deputy Executive Officer



**MILLER STARR
REGALIA**

1331 N. California Blvd.
Suite 600
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.msrlgal.com

Matthew C. Henderson
Direct Dial: 925 941 3271
matthew.henderson@msrlgal.com

June 23, 2025

VIA E-MAIL

John Kopchik
Director
Department of Conservation &
Development
Contra Costa County
1025 Escobar Street
Martinez, CA 94553
E-Mail: john.kopchik@dcd.cccounty.us

Re: Contra Costa County ULL Extension for Tassajara Parks Project

Dear Mr. Kopchik:

As you know, this office represents FT Land, LLC, Meach, LLC, BI Land, LLC, and TH Land, LLC, applicants for the Tassajara Parks residential development and open space project ("Project") in unincorporated Contra Costa County. This letter is sent to clarify the effect of the judgments involving the County in Contra Costa County Superior Court case nos. N21-1274, N21-1509, and N21-1525 and, more particularly, address inaccuracies in a letter dated May 12, 2025 from Jessica Blome, counsel of record for Petitioners Sierra Club, Greenbelt Alliance, Jim Blickenstaff, and Donna Gerber in case no. N21-1509. Ms. Blome's letter was attached as Exhibit A to an undated letter from Greenbelt Alliance and others to the County regarding the County Urban Limit Line ("ULL") and the extension of the same with respect to the Project.

Ms. Blome's letter asserts that the 30-acre expansion of the ULL associated with the Project¹ is ineffective and that the ULL has not been so extended. This is erroneous. Ms. Blome bases her position on the following language from the judgment in case no. N21-1509 (which is identical to the language of the judgments

¹ For the sake of clarity, as addressed below, the ULL expansion was not dependent upon the Project; it could be (and was) accomplished irrespective of whether or not the Project actually moves forward. In other words, the Project depends upon the ULL expansion, but the ULL expansion does not depend on the Project.

in the other two cases) issued by Judge Danielle K. Douglas, which directed the County to:

Set aside and vacate all other Project-related approvals challenged in the Petition with the exception of (a) the expansion of the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3), to the extent that approval of the expansion of the ULL merely extends the ULL by 30 acres not limited by or to the Project's residential development of 125 homes under the Development Agreement, and (b) the approval of the Tassajara Agreement related to the 30-acre expansion of the ULL under CCC Code section 82-1.018(a)(3).

Ms. Blome derives from this language the following conclusion:

In other words, the court's final judgment conditioned court approval of Project-related documents related to the expansion of the ULL "to the extent that approval of the expansion of the ULL merely extends the ULL by 30 acres not limited by or to the Project's residential development of 125 homes under the Development Agreement." (*Id.*) This conditional language is crucial because the Tassajara Agreement, which serves as the predicate preservation agreement for the purposes of ULL expansion, is itself conditioned on approval of the Tassajara Parks Project. County staff know that the Tassajara Agreement has not resulted in the dedication of any land to the East Bay Regional Parks District because the County has not legally approved the Tassajara Parks Project.

(Blome letter, p. 2.)

This is a mischaracterization of both the judgment and the "Tassajara Agreement," which is formally titled "Agreement Regarding Preservation and Agricultural Enhancement in the Tassajara Valley," also sometimes referred to as an "agricultural preservation agreement" pursuant to County Code section 82-1.018(a)(3), or, more colloquially, the "APA." A copy of the APA is attached hereto for your ease of reference.

With respect to the judgment, the phrase "to the extent" is not conditional, but is instead a factual descriptor explaining why the ULL expansion was not set aside by the court as was done with other Project entitlement approvals: because it "merely" (meaning "only" or "simply") expanded the ULL by 30 acres without doing more. In other words, the ULL expansion as referenced in the judgment is just that, expansion of a line demarcating land that is eligible to be considered for urban development proposals, but it does not approve, and is in no way tied to, limited by, or conditioned on any particular proposed future development of that area, whether it be for the Project or otherwise. Thus, the language Ms. Blome cites does not hold that the ULL expansion was conditional, it simply explains the reason why the

expansion was allowed to stand while the Project-specific entitlements were not. The absence of any conditional language in the judgment is telling – had the court intended to rule that the expansion of the ULL was conditional, it would have said so. This conclusion is driven home by the court’s order rejecting the Town of Danville’s request for attorneys’ fees in case no. N21-1525. Judge Douglas, the same judge who issued the judgment Ms. Blome quotes, stated in that order, “**The Court affirmed the expansion of the County’s ULL** and only remanded the matter for proper disclosure of the availability of water supply.” (Emphasis added.) A copy of this order is attached. Judge Douglas’s construal of her own judgment and writ is obviously more relevant than Ms. Blome’s contrary position.

This also relates to the validity of the APA, which the court also affirmed in the judgment. The validity of the APA was a necessary precondition to the expansion of the ULL under County Code section 82-1.018(a)(3). Because Judge Douglas upheld the validity of the expansion, she necessarily upheld the validity of the APA as the judgment expressly holds.

This inescapable conclusion is confirmed by the procedural history of the APA. It was formally approved and executed by the County, the City of San Ramon, and the East Bay Regional Park District (“EBRPD”), all pursuant to duly noticed and authorized formal proceedings of their respective governing bodies. On November 24, 2020 the San Ramon City Council unanimously approved entering into the APA via Resolution No. 2020-114. On December 1, 2020 the EBRPD Board unanimously approved Resolution No. 20-12-285 authorizing EBRPD to enter into the APA. And on July 13, 2021, the County Board of Supervisors passed Resolution No. 2021/216 finding that the APA satisfied County Code section 82-1.018(a)(3), thereby rendering it fully valid and enforceable.

Accordingly, whatever requirements were needed to render the APA a fully enforceable agreement were in place as of July 13, 2021, the day it was approved by the County, the last of the parties to it. (That date is also the APA’s effective date as set forth in the agreement.) No further “conditions” needed to be satisfied to make it a binding contract.

Parsing Ms. Blome’s argument more closely, she contends not only that the APA is conditional, but that it is “conditioned on approval of the Tassajara Parks Project,” and because the Project has not yet been finally approved, the APA is not effective. Again, she cites no language from the APA to support this position, because the APA does not support it. While certain provisions in the APA are conditional, the effectiveness of the agreement itself, and most of its provisions, are not.² Ms.

² To the extent Ms. Blome’s argument is that the APA was “conditioned” on it being approved and entered into by San Ramon, EBRPD, and the County, every

Blome's argument cannot trump the plain language of the APA. Her analysis is also backwards – as noted above, the Project depends on the ULL expansion; the ULL expansion does not depend on the Project.

Another fundamental problem for Ms. Blome's current position is that it is barred by the doctrine of *res judicata*. Her clients, the petitioners in case no. N21-1509 (including Sierra Club and Greenbelt Alliance), strenuously argued that the APA was invalid and could not support extending the ULL, but lost on that point as the judgment conclusively shows. The petitioners did not appeal that judgment, rendering it final and beyond collateral attack, which is what Ms. Blome's letter actually represents – a baseless collateral attack on a final judgment. Her clients never alleged or claimed in the litigation that the APA was conditional;³ the argument is being made for the first time now. One must ask why Ms. Blome did not make the argument that the APA is conditional in the trial court, but the answer to that question is ultimately irrelevant. Even though the argument was not made, it could have been, and therefore is still subject to – and barred by – *res judicata*. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 324 [“*Res judicata* bars the litigation not only of issues that were actually litigated but also issues that could have been litigated.”].)

Ms. Blome's current position is also belied by the subsequent history of the APA. While the Board of Supervisors rescinded other Project entitlements as called for in the judgment and resulting writ on December 5, 2023, as stated in its initial return to the writ of mandate, it did not rescind Resolution No. 2021/216 given the court's ruling that the APA remained valid and enforceable. No party challenged the Board's actions in rescinding the approvals, nor the County's return to the writ.

The APA therefore remains a valid, binding, and enforceable agreement, as the trial court found, contrary to the arguments of Ms. Blome's clients. Because it is not conditional, it therefore was and is sufficient to warrant the 30 acre expansion of the ULL as the trial court expressly confirmed. The expansion of the ULL was accomplished in July of 2021 and upheld by Judge Douglas in all three actions attacking the Project. Thus, the County's latest update to the ULL properly shows the 30-acre extension.

contract is “conditioned” on being actually entered into, so the agreement of the parties is a prerequisite and not a “condition.” Moreover, it is indisputable that all three parties to the APA did formally agree and issue approvals to enter into it, so even if their agreement and approval were considered to be a “condition,” such was satisfied by July of 2021.

³ Neither did the petitioners in the other two companion cases.

John Kopchik
June 23, 2025
Page 5

Thank you for your attention to this matter. Please don't hesitate to contact me should you have any questions regarding the foregoing.

Very truly yours,

MILLER STARR REGALIA

A handwritten signature in blue ink that reads "Matthew Henderson". The signature is written in a cursive, flowing style.

Matthew C. Henderson

MCH:klw
Encls.

**AGREEMENT
REGARDING PRESERVATION AND AGRICULTURAL ENHANCEMENT IN THE
TASSAJARA VALLEY**

This Agreement Regarding Preservation and Agricultural Enhancement in the Tassajara Valley (“**Agreement**”) is entered into on July 13, 2021 (“**Effective Date**”) by and among the County of Contra Costa, a political subdivision of the State of California (“**County**”), the City of San Ramon, a California municipal corporation (“**San Ramon**”), and the East Bay Regional Park District (“**EBRPD**”), a regional park district formed pursuant to Article 3 of Chapter 3 of Division 5 of the Public Resources Code. The County, San Ramon, and EBRPD are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. The Parties enter into this Agreement for the purpose of cooperating to preserve and enhance agricultural uses within the Tassajara Valley. This Agreement is intended to be a “preservation agreement” under the Land Use Element (Chapter 3) of the County of Contra Costa General Plan 2005-2020 (“**County General Plan**”) and Section 82-1.018 of the Contra Costa County Ordinance Code (“**County Ordinance Code**”). This Agreement is also intended to protect the economic viability of agricultural land within the Tassajara Valley and accomplish the dedication and permanent preservation of certain land therein.

B. The general plans of the County and San Ramon, and the EBRPD Master Plan, (collectively, “**Existing Agricultural and Open Space Protection Policies**”) contain provisions intended to protect agricultural lands and open space. The Existing Agricultural and Open Space Protection Policies include the Contra Costa County Urban Limit Line (“**ULL**”) and the San Ramon Urban Growth Boundary (“**UGB**”).

C. In November 1990, voters approved Measure C-1990, the Contra Costa County 65/35 Land Preservation Plan Ordinance (Ordinance Code Chapter 82-1). The 65/35 Land Preservation Plan Ordinance limits urban development to no more than thirty-five percent (35%) of the land in the County and requires that at least sixty-five percent (65%) of the land in the County be preserved for agriculture, open space, wetlands, parks, and other non-

urban uses. Measure C-1990 also established the County's ULL to enforce the 65/35 standard.

D. In 2004, County voters approved Measure J. Among other things, Measure J requires the County and all cities within the County to have a voter-approved urban limit line, developed and maintained in accord with the "Principles of Agreement for Establishing the Urban Limit Line" ("**Principles**"), to receive the sales tax proceeds from Measure C-1988.

E. In November 2006, County voters approved Measure L, which extended the term of the 65/35 Land Preservation Plan Ordinance to December 31, 2026, and required a four-fifths (4/5) vote of the Board of Supervisors and voter approval to expand the ULL by more than thirty (30) acres.

F. In 1999, San Ramon voters approved a growth management initiative known as Measure G, initiating a general plan update that created a UGB that protects visible hillsides and ridgelines from development, protects significant agricultural resources, preserves open space, encourages infill development and workforce housing, and encourages efficient provision of municipal services such as sewer and water. Land beyond the UGB is intended to remain rural in nature until such time as the UGB is reevaluated to assess the city's future needs for housing and employment.

G. In November 2010, San Ramon voters disapproved Measure W, a ballot initiative that would have amended the city's general plan to add a portion of the Tassajara Valley and lands in the west side of the city within its UGB. With the defeat of Measure W, the Tassajara Valley remains outside of San Ramon's UGB and San Ramon's Sphere of Influence ("**SOI**") and under the jurisdiction of the County.

J. EBRPD's jurisdiction includes all of the counties of Alameda and Contra Costa and provides regional park facilities and activities within this two-county area. EBRPD has a broad mandate under Public Resources Code section 5541 to "plan, adopt, lay out, plant, develop, and otherwise improve, extend, control, operate, and maintain a system of public parks, playgrounds, golf courses, beaches, trails, natural areas, ecological and open space preserves, parkways, scenic drives, boulevards, and other facilities for public recreation, for the use and enjoyment of all the inhabitants of the district."

K. Through this Agreement the Parties express their interest in endeavoring to preserve and enhance agricultural and other non-urban land uses within an approximately seventeen thousand six hundred sixty seven (17,667)-acre area in the Tassajara Valley, located in unincorporated Contra Costa County, as more particularly shown on Exhibit A (“**Preservation and Enhancement Area**”).

L. The Parties also agree to support the dedication and permanent preservation of land at two locations comprising approximately seven hundred twenty seven (727) acres in the Tassajara Valley, as shown on Exhibit B, (collectively, “**Dedication Area**”). Following project approval by the County, the Dedication Area will be permanently preserved through fee title conveyance to EBRPD or Regional Parks Foundation.

M. The Preservation and Enhancement Area and the Dedication Area are outside of the County's ULL and the San Ramon UGB. The Preservation and Enhancement Area and Dedication Area do not fall within any municipality's SOI, and they are outside of the current service areas and SOIs for all special districts providing water and sewer service in adjacent areas.

NOW, THEREFORE, based on the foregoing recitals, which are true and correct and incorporated by this reference, the Parties agree to the following understandings:

AGREEMENT

1. Each Party hereby expressly reaffirms its commitment to the Existing Agricultural and Open Space Protection Policies adopted by each respective Party's legislative body for all land within the Party's respective jurisdiction, including but not limited to the County's ULL and the San Ramon UGB (referred to collectively as the “**ULL/UGBs**”). Each Party acknowledges and agrees that the Preservation and Enhancement Area and Dedication Area are outside the ULL/UGBs, both of which prevent urban development.
2. The Parties acknowledge and agree that, under the Existing Agricultural and Open Space Protection Policies, no new urban development will be allowed in the

Preservation and Enhancement Area or Dedication Area, except as otherwise provided in this Agreement.

3. The Parties agree to support the addition of the Preservation and Enhancement Area and Dedication Area to the Association of Bay Area Government's list of Priority Conservation Areas to improve access to grant funding for acquisition of land or easements from willing sellers.
4. Consistent with the Existing Agricultural and Open Space Protection Policies for their respective jurisdictions, and except as otherwise provided in this Agreement, each Party agrees not to support any proposal to annex all or any portion of the Preservation and Enhancement Area or Dedication Area into a municipality or a utility services district unless the annexation serves non-urban uses, such as agriculture, open space, wetlands, parks, recreation, and other non-urban uses. EBRPD agrees that following County certification of the EIR (as defined below) and Project approval (as defined below), it will accept fee title to the Dedication Area, either directly from the Developer or through a dedication from the Regional Parks Foundation. The Parties will also cooperate to cause the County General Plan land use designation for the Dedication Area changed to Parks and Recreation (-PR).
5. Consistent with the Existing Agricultural and Open Space Protection Policies for their respective jurisdictions, and except as otherwise provided in this Agreement, each Party agrees not to support any proposal to modify the SOI of any municipality or utility services district to include all or any portion of either the Preservation and Enhancement Area or Dedication Area, unless the modification serves non-urban uses such as agriculture, open space, wetlands, parks, recreation, and other non-urban uses in the Preservation and Enhancement Area or Dedication Area.
6. Consistent with the Existing Agricultural and Open Space Protection Policies for their respective jurisdictions, and except as otherwise provided in this Agreement, each Party agrees not to support any proposal to extend, expand, or connect to urban infrastructure or service, all or any portion of either the Preservation and Enhancement Area or Dedication Area, unless: (a) the extension, expansion, or connection serves non-urban uses such as agriculture, open space, wetlands, parks, recreation, and other non-urban

uses; or (b) the extension, expansion, or connection (i) is the minimum necessary to avoid an unconstitutional taking of private property, (ii) is the minimum necessary to comply with state or federal law, or (iii) is the minimum necessary to avoid specific, adverse impacts upon public health and safety.

7. Consistent with the Existing Agricultural and Open Space Protection Policies for their respective jurisdictions, and except as otherwise provided in this Agreement, each Party understands that the County does not support amending the General Plan land use designation for all or any portion of either the Preservation and Enhancement Area or Dedication Area, unless such proposed amendment is for one or more of the following County General Plan land use designations: Agricultural Lands, Public and Semi-Public, Open Space, or Parks and Recreation Uses, or other non-urban uses.
8. Consistent with the Existing Agricultural and Open Space Protection Policies for their respective jurisdictions, and except as otherwise provided in this Agreement, each Party understands that the County does not support amending the zoning designations in either the Preservation and Enhancement Area or Dedication Area to a non-agricultural designation or other designation that is not compatible with agriculture, open space, parks, recreation, and other non-urban uses.
9. Consistent with the Existing Agricultural and Open Space Protection Policies for their respective jurisdictions, each Party agrees that it does not support any future urban development in either the Preservation and Enhancement Area or Dedication Area, except as otherwise provided in this Agreement.
10. The Parties agree to work together to support, develop, and implement policies, programs, and other actions intended to enhance agriculture and to preserve open space, wetlands, parks, recreation, and other non-urban uses in the Preservation and Enhancement Area. Actions which include, but are not limited to, the following:
 - (a) Encouraging and promoting purchase of land or conservation easements, from willing sellers, to protect and enhance agriculture and to preserve and enhance open space, wetlands, parks, recreation, and other non-urban uses;

- (b) Continuing the California Land Conservation Act of 1965 (“**Williamson Act**”; Gov. Code, § 51200 *et seq.*) program to provide tax incentives for property owners who agree not to develop their land;
- (c) Encouraging lease of public land for agricultural activities such as grazing;
- (d) Encouraging and promoting enhanced ground water management for agriculture and rural use, including technical support for more efficient water application and cooperative groundwater management and extraction;
- (e) Encouraging and promoting enhanced marketing for locally-grown agricultural goods, including better connecting farmers to local markets;
- (f) Encouraging continuation and augmentation of the technical support available to farmers, especially in the areas of financing, weed abatement and management, soil conservation, and range management;
- (g) Exploring and pursuing a range of funding opportunities for agricultural enhancement and preservation of open space, wetlands, parks, recreation and other non-urban uses through activities such as grants, allocations from funding measures, and appropriations from density transfer programs and mitigation programs;
- (h) Cooperating with stakeholders to develop a shared vision for the future of the Tassajara Valley;
- (i) Encouraging public beautification projects, public signage, way-finding signage, and traffic regulations and improvements that enhance agricultural activities in the Tassajara Valley, or the rural character of the Tassajara Valley.

11. Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that the County is authorized, in its sole discretion, to find that this Agreement satisfies the requirements of Section 82-1.018(a)(3) of the County Ordinance Code, provided that the County, in its sole discretion as Lead Agency, (a) certifies an Environmental Impact Report (“**EIR**”) pursuant to CEQA and the CEQA Guidelines for the Tassajara Parks housing development project (“**Project**”), where the Project would be required to both (i) permanently preserve the Dedication Area, and (ii) provide an irrevocable contribution of at least \$4 million (“**Ag Contribution**”) to an agricultural enhancement fund established by the County (“**Fund**”) following Project approval.
12. If the County finds that this Agreement satisfies the requirements set forth in Section 11 of this Agreement and the Fund is established and funded with the Ag Contribution, the monies in the Fund shall not be commingled with other moneys held by the County. The County agrees to expend monies in the Fund solely for one or more of the purposes set forth in Section 10 of this Agreement. Subject to the County’s identification of willing sellers, the County will endeavor to dedicate up to approximately ninety percent (90%) of the Fund to the purchase, from willing sellers, (a) fee title to property, and (b) conservation easements in furtherance of one or more of the purposes set forth in Section 10 of this Agreement. Any interest income earned by monies in the Fund shall also be deposited into the Fund and shall be expended solely for one or more of the purposes set forth in Section 10 of this Agreement.
13. The County Administrator, or designee, shall administer the Fund consistent with the purposes of this Agreement.
14. When it makes or receives a proposal to expend the monies in the Fund, the County Administrator, or designee, will meet and consult with representatives from the Parties. The consultation will be considered concluded when the Parties’ representatives mutually agree on the expenditure of monies in the Fund, consistent with one or more of the purposes set forth in Section 10 of this Agreement, or when the County Administrator, or designee, determines that mutual agreement cannot be reached despite good faith efforts to reach mutual agreement and resolve the identified issues of disagreement.

15. The Parties agree that this Agreement is not intended to facilitate additional urban development within the Preservation and Enhancement Area or Dedication Area. The Parties agree that this Agreement is not intended to limit, and does not limit, the authority of the voters to elect to extend or not extend the life of the ULL. If the voters ever elect to not extend the life of the ULL, this Agreement shall only apply to the Dedication Area.
16. The Parties agree to cooperate in all matters relating to the interpretation and implementation of this Agreement.
17. The Parties intend that this Agreement be broadly construed to achieve its stated purposes.
18. The Parties do not intend for this Agreement to modify any existing laws, regulations, or policies regarding the Preservation and Enhancement Area nor to limit any jurisdiction's power conferred under Article 11, Section 7 of the California Constitution.
19. There are no third party beneficiaries of this Agreement.
20. If any provision or provisions of this Agreement shall be held in a judicial proceeding to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, provided that the purpose of this Agreement remains legal and enforceable.
21. This Agreement may be executed in multiple counterparts.

[Remainder of page left blank. Signatures on following pages.]

COUNTY OF CONTRA COSTA

By 
Chair, Board of Supervisors

APPROVED AS TO FORM

By 
County Counsel

CITY OF SAN RAMON

By _____
Mayor

APPROVED AS TO FORM

By _____
City Attorney

EAST BAY REGIONAL PARK DISTRICT

By _____
President

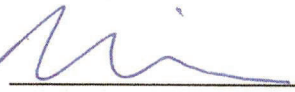
APPROVED AS TO FORM

By _____
District Counsel


COUNTY OF CONTRA COSTA

By _____
Chair, Board of Supervisors

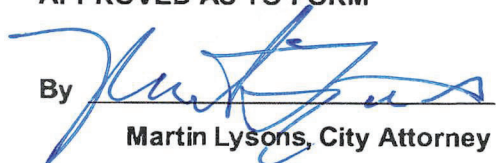
APPROVED AS TO FORM

By _____
County Counsel

CITY OF SAN RAMON

By _____
David Hudson, Mayor

APPROVED AS TO FORM

By _____
Martin Lysons, City Attorney

EAST BAY REGIONAL PARK DISTRICT

By _____
President

APPROVED AS TO FORM

By _____
District Counsel

COUNTY OF CONTRA COSTA

By _____
Chair, Board of Supervisors

APPROVED AS TO FORM

By _____
County Counsel


CITY OF SAN RAMON

By _____
Mayor

APPROVED AS TO FORM


By _____
City Attorney

EAST BAY REGIONAL PARK DISTRICT

By _____
Sabrina Landreth (Jun 13, 2022 15:42 PDT)
President GENERAL MANAGER

06/13/2022

APPROVED AS TO FORM

By _____
Jacob Rosenberg (Jun 13, 2022 11:15 PDT)
District Counsel

06/13/2022

Exhibit A: Proposed Preservation and Enhancement Area

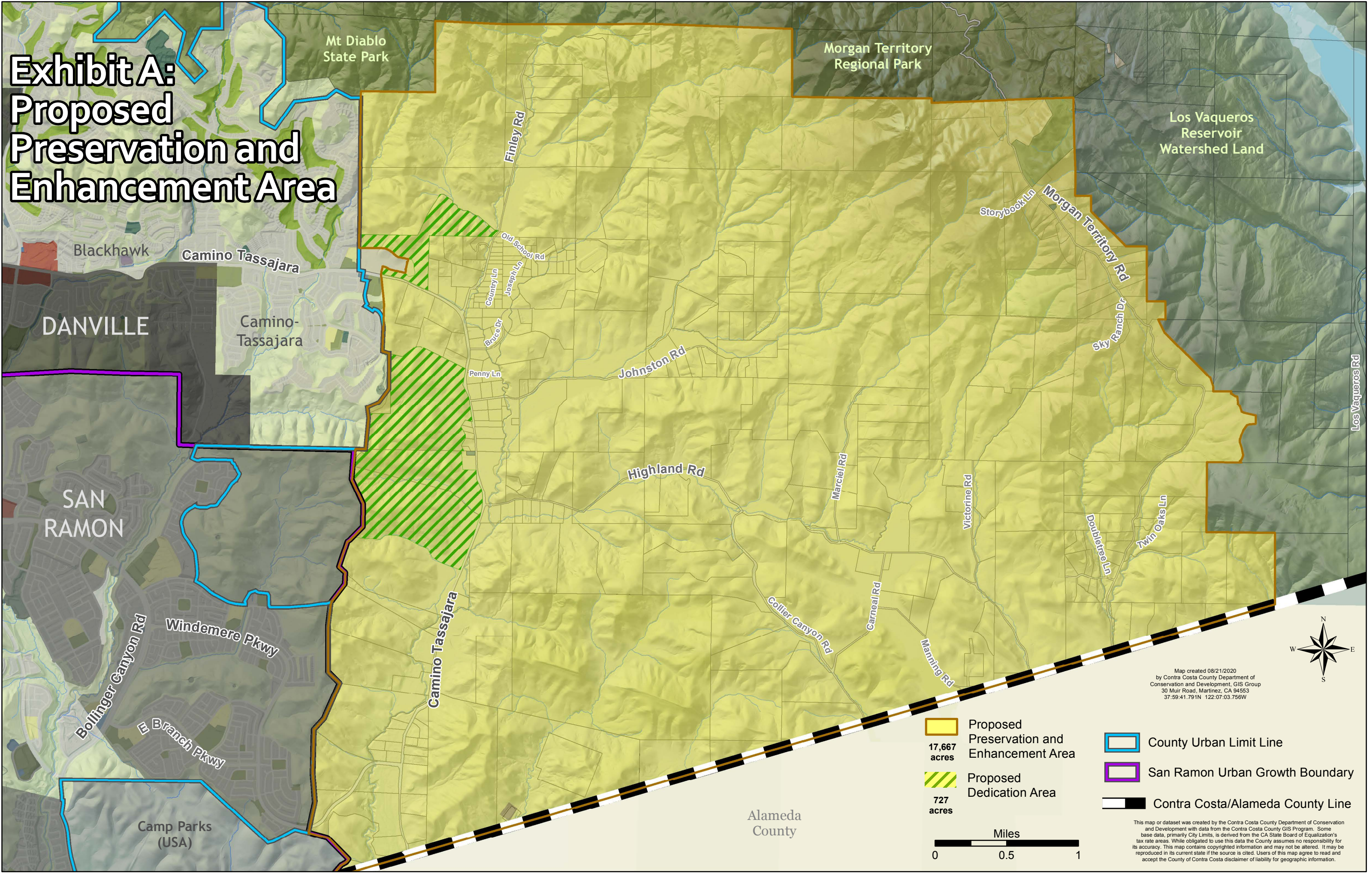
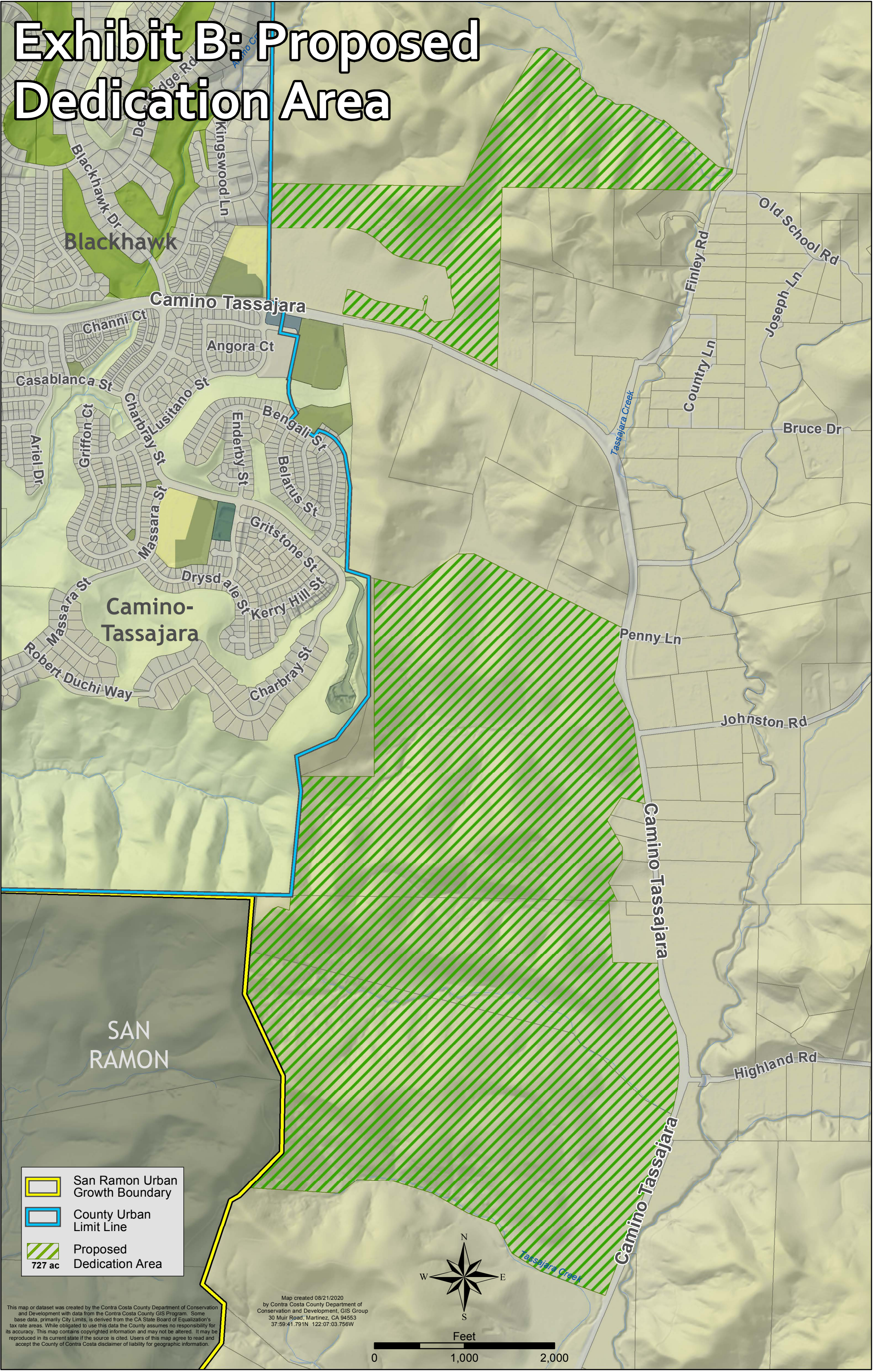


Exhibit B: Proposed Dedication Area



This map or dataset was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.

1 ARTHUR F. COON (Bar No. 124206)
MATTHEW C. HENDERSON (Bar No. 229259)
2 BRYAN W. WENTER (Bar No. 236257)
MILLER STARR REGALIA
3 A Professional Law Corporation
1331 N. California Blvd., Suite 600
4 Walnut Creek, California 94596
Telephone: 925 935 9400
5 Facsimile: 925 933 4126
Email: arthur.coon@msrlegal.com
6 matthew.henderson@msrlegal.com
bryan.wenter@msrlegal.com
7

Electronically Filed by
Superior Court of California
County of Contra Costa
2/23/2024
By: T. Jacobsen-Rios, Deputy

8 Attorneys for Real Parties in Interest FT LAND
LLC, MEACH LLC, BI LAND LLC and TH
9 LAND LLC

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF CONTRA COSTA

12 TOWN OF DANVILLE,
13 Petitioner,

14 v.

15 CONTRA COSTA COUNTY; CONTRA
COSTA COUNTY BOARD OF
16 SUPERVISORS, and DOES 1-10, inclusive,
17 Respondents.

18 FT LAND, LLC, MEACH, LLC, BI LAND
19 LLC; TH LAND LLC; EAST BAY
REGIONAL PARK DISTRICT; CITY OF
20 SAN RAMON, and DOES 11-20, inclusive,

21 Real Parties in Interest,

Case No. N21-1525
[Partially Consolidated Actions –
Nos. N21-1274 and N21-1509]

~~[PROPOSED]~~ ORDER DENYING TOWN
OF DANVILLE'S MOTION FOR
ATTORNEYS' FEES

Date: January 26, 2024
Time: 9:00 a.m.
Dept.: 18

ASSIGNED FOR ALL PURPOSES TO:
HON. DANIELLE K. DOUGLAS, DEPT. 18
(CEQA action)

Action Filed: August 12, 2021

22
23 On January 26, 2024, the Court heard the Motion for Attorneys' Fees filed by
24 Petitioner TOWN OF DANVILLE ("Petitioner") filed on October 12, 2023. Sabrina Teller
25 appeared on behalf of Petitioner. Matthew C. Henderson appeared on behalf of Real Parties in
26 Interest FT LAND LLC, MEACH LLC, BI LAND LLC and TH LAND LLC. Kurtis Keller of the
27 Office of the County Counsel appeared on behalf of Respondent COUNTY OF CONTRA
28 COSTA. The Honorable Danielle K. Douglas of Department 18 presided.

1 Having considered the papers filed in support of and opposition to the motion, as
2 well as the arguments of counsel, and good cause appearing therefor,

3 **NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

4 The Court adopts its tentative ruling denying Town of Danville's Motion for
5 Attorneys' Fees as set forth in Attachment A and incorporated herein by this reference.

6 

7 Hon. Danielle Douglas

8 Dated: 2/22/2024

9 HON. DANIELLE K. DOUGLAS
10 Judge of the Contra Costa County Superior Court

11 APPROVED AS TO FORM:

12 DATED: January 30, 2024

13 REMY MOOSE MANLEY LLP

14 By: 

15 Sabrina V. Teller
16 Attorneys for Petitioner TOWN OF
17 DANVILLE

ATTACHMENT A

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 18
JUDICIAL OFFICER: DANIELLE K DOUGLAS
HEARING DATE: 01/26/2024

15. 9:00 AM CASE NUMBER: MSN21-1525
CASE NAME: TOWN OF DANVILLE VS. CONTRA COSTA COUNTY
*HEARING ON MOTION IN RE: NOTICE OF MOTION AND MOTION OF PETITIONER TOWN OF
DANVILLES MOTION FOR ATTORNEYS FEES
FILED BY:

TENTATIVE RULING:

The Court denies the request for attorney fees. First, the Court finds the request is not reasonable. The Town of Danville seeks \$745,025 for attorney fees. EBMUD requested \$255,000 for attorney fees and Sierra Club requested \$218,834.75. There is no conceivable basis for which the Town of Danville's attorney fees should be 3 times the amount requested by either EBMUD or Sierra Club. The Town of Danville's attorney fees are almost twice as much as both EBMUD and Sierra Club combined. One

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 18
JUDICIAL OFFICER: DANIELLE K DOUGLAS
HEARING DATE: 01/26/2024

explanation for the Town of Danville's unreasonable attorney fees request may be the time period in which the Town of Danville is seeking attorney fees. The County Board filed and posted the NOD on its decision to certify the EIR and approve the project on July 16, 2021. However, the Town of Danville is seeking attorney fees beginning on May 31, 2016. Second, the Court finds the Town of Danville did not prevail in its primary objective. The theories advanced by the Town of Danville were rejected by the Court. The Court affirmed the expansion of the County's ULL and only remanded the matter for proper disclosure of the availability of water supply. Third, there was no public benefit. The contributions of Town of Danville were superfluous and duplicative. The Town of Danville concedes this point in acknowledging, "petitioners combined their skills and resources and coordinated their efforts like a singular litigant to strengthen all claims..." Here, the Town of Danville argues it acted as one litigant but then argues it should be paid as a separate individual litigant at three times the rate of the other two litigants.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1331 N. California Blvd., Suite 600, Walnut Creek, CA 94596.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[Handwritten signature]

Karen Wigylus

SERVICE LIST – Related Actions
Town of Danville v. Contra Costa County, et al., Case No. N21-1525
Sierra Club, et al. v. Contra Costa County, et al., Case No. N21-1509
EBMUD v. County of Contra Costa, et al., Case No. N21-1274

<p>Sabrina V. Teller Casey A. Shorrock Veronika S. Morrison Remy Moose Manley, LLP 555 Capitol Mall, Suite 800 Sacramento, CA 95814 Tel: 916.443.2745 Fax: 916.443.9017 steller@rmmenvirolaw.com cshorrock@rmmenvirolaw.com vmorrison@rmmenvirolaw.com</p> <p>Attorneys for Petitioner TOWN OF DANVILLE <i>Town of Danville (No. N21-1525) Via E-Service</i></p>	<p>Robert E. Ewing Town of Danville 510 La Gonda Way Danville, CA 94526-1742 Tel: 925.314.3383 Fax: 925.838.0548 rewing@danville.ca.gov</p> <p>Attorneys for Petitioner TOWN OF DANVILLE</p> <p><i>Town of Danville (No. N21-1525) Via E-Service</i></p>
<p>Jessica L. Blome Ariel Strauss Greenfire Law, PC P. O. Box 8055 Berkeley, CA 94707 Tel/Fax: 510.900.9502 jblome@greenfirelaw.com astrauss@greenfirelaw.com</p> <p>Attorneys for Petitioners SIERRA CLUB; GREENBELT ALLIANCE; JIM BLICKENSTAFF; DONNA GERBER <i>Sierra Club (No. N21-1509) Via E-Service</i></p>	<p>Mark R. Wolfe M.R. Wolfe & Associates, P.C. 580 California Street, Suite 1200 San Francisco, CA 94104 Tel: 415.369.9400 Fax: 415.369.9405 mrw@mrwolfeassociates.com</p> <p>Attorneys for Petitioners SIERRA CLUB; GREENBELT ALLIANCE; JIM BLICKENSTAFF; DONNA GERBER</p> <p><i>Sierra Club (No. N21-1509) Via E-Service</i></p>
<p>Derek McDonald Felicity Grisham Tim Kline Office of the General Counsel East Bay Municipal Utility District 375 Eleventh Street (MS 904) P.O. Box 24055 Oakland, CA 94623-1055 Tel: 510.287.0174 / Fax: 510.287.0162 derek.mcdonald@ebmud.com felicity.grisham@ebmud.com tim.kline@ebmud.com (anna.haynes@ebmud.com)</p> <p>Attorneys for Petitioner EAST BAY MUNICIPAL UTILITY DISTRICT <i>EBMUD (No. N21-1274) Via E-Service</i></p>	<p>Thomas L. Geiger, County Counsel Kurtis C. Keller, Deputy County Counsel County of Contra Costa 1025 Escobar Street, Third Floor Martinez, CA 94553 Tel: 925.655.2200 /Fax: 925.655.2263 thomas.geiger@cc.cccounty.us kurtis.keller@cc.cccounty.us</p> <p>Attorneys for Respondent CONTRA COSTA COUNTY and CONTRA COSTA COUNTY BOARD OF SUPERVISORS</p> <p><i>EBMUD (No. N21-1274); Sierra Club (No. N21-1509); Town of Danville (No. N21-1525) Via E-Service</i></p>