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ENVIRONMENTAL GROUP, DEVELOPER IN WATER FIGHT SHAPELL HAS APPROVAL TO BUILD HOUSING ON A 165-ACRE PLOT, BUT SOME HOMEOWNERS SAY IT WILL DRY UP THEIR WELLS

Linda Davis

DANVILLE A grass-roots environmental group the same one that helped quash a 40-townhouse development near Blackhawk several years ago is facing off over water rights against developer giant Shapell.

Shapell has approval to build 272 units at Wendt Ranch, a 165-acre plot, about two-thirds of which will be open space. Wendt is just east of Danville's border.

The homeowners' group, Save Our Danville Creeks, alleges that Shapell's plan to divert water from Alamo Creek to dry it up in summer will affect downstream water users on Lawrence Road most of whom rely on wells for their water supply. They say they have just as much right to the water as upstream users. The residents also are concerned that diversions will affect their water quality, wetlands and protected species.

"Wendt is going to dry up a branch of Alamo Creek that goes across their property," said Lawrence Road resident Tom Flood, who lives on a 2 1/2-acre plot with barns, chickens and horses.

"The actions of Shapell will start drying up the wells and force us to hook up to East Bay Municipal Utility District," he added. "There are all kinds of questions, issues and laws."

Twenty-eight homeowners filed detailed complaints with the State Water Resources Control Board in Sacramento in late July. As a result, investigators from the board recently visited the Wendt site to review the group's allegations.

Save Our Danville Creeks, the Center for Biological Diversity and the Alameda Creek Alliance say they will file a civil suit alleging multiple violations of the Clean Water Act and the Endangered Species Act if the project is not modified.

Jamie Jefferson, an attorney for Portland-based Wild Earth Advocates representing the groups, said a letter was sent Aug. 19 putting the Army Corps of Engineers on notice.

Curt McCasland, a biologist for the U.S. Fish and Wildlife Service, said Shapell is between a rock and a hard place. If Shapell meets the requirements to satisfy the wildlife service, it draws the ire of Save Our Danville Creeks, and vice versa. The developer is wrangling with at least four governmental agencies, each of which has conflicting requirements for the project.

"It could be considered competing missions," McCasland said. "Landowners should not be caught in the crosshairs. We need to find a solution that deals with water rights and with conservation of species. We are discussing how we can proceed."

Linda Stone, a geologist for the state's water rights division, visited Wendt and found that Shapell needed to file an application with the state to divert water from the creeks. Shapell spokesman

Chris Truebridge said Shapell was not aware of the application until Stone's visit but that the developer has complied. It could take weeks to months for the water diversion issue to be resolved, Stone said.

Water rights are a complex issue. "The general public is not well-versed (in the subject)," she said. "Our approach is not to get punitive until we educate people."

Stone has to determine just how much the downstream water users will be affected by upstream flood control measures.

In 1997, Save Our Danville Creeks filed a lawsuit against the county alleging procedural irregularities surrounding Wendt's approval. The action was not successful, said Howard Siu, a retired physician who spearheads the group. Alamo Creek feeds a small lake on Siu's property just south of the Wendt project.

Two forks of East Alamo Creek converge at the south end of Wendt. The developer planned a drainage system and detention basin near the confluence of the two creek branches, just north of the Lawrence Road neighborhood. These measures would be taken to restore the creek to a more natural state, enhance the habitat for the federally threatened red-legged frog and provide flood control, McCasland said.

McCasland supports the plan because it discourages proliferation of the large non-native bullfrog, which eats the smaller red-legged frogs. Bullfrogs need more water to survive than their red-legged counterparts do.

On Friday, U.S. Fish and Wildlife bowed to a court order sought by environmentalists and designated more than 5 million acres as potential habitat for the threatened frog, including areas in Contra Costa and Alameda counties. The move dictates that federal biologists must be consulted when any federal permits are sought on lands considered to be red-legged frog habitat. Stone, McCasland and representatives from several other agencies are working to develop a solution for the water rights and other environmental concerns over Wendt.

In 1996, Save Our Danville Creeks successfully stopped the approved 40-unit Shadowhawk II townhouse development in eastern Danville. A referendum and subsequent election doomed the project, which supporters said violated aesthetic and environmental issues.

When Wendt was approved in 1996, Siu began eyeing the project.

"This project changed dramatically in ways that could not be anticipated by the conditions of approval," Siu said. "People believe once a project is passed by the supervisors it's a done deal. It's not a done deal. Supervisors only provide step one. You need to make sure a project is as touted."

Since that time, Siu and others have kept in contact with the regulatory agencies.

Save Our Danville Creeks also is suggesting that Shapell pay for Lawrence Road residents on wells to hook up to the new EBMUD service through their neighborhood.

The cost to hook up to the new water system along Lawrence Road would be about \$15,200 for each house, said EBMUD spokesman Charles Hardy. The price tag comes with the condition that the house is within 1,000 feet of the water main, he said. Flood estimates it would cost \$20,000 to get water from the street to his house.

"If the plan is to dry up the water in East Alamo Creek, we should be taken care of. Residents should not be asked to shoulder the burden of the entitlement the developer receives," Siu said.

Truebridge said Shapell is mulling over a new scheme to take water out of Alamo Creek, run it through a pipe and release it at the south end of the project into the creek, so water flow isn't reduced.

"This takes away the argument of Dr. Siu regarding the (creek) volume," Truebridge said.

But it also brings Shapell back to square one with frog habitat and wildlife issues, which are also being targeted by Save Our Danville Creeks.

"Wendt is particularly knotty," Truebridge said.

Work was scheduled to begin on Wendt in April, but it will probably run at least a year behind, he said.

Siu and Flood said they're not anti-growth, but watchdogs.

"We're just asking people to abide by the law; this is not a crusade to stop all development," Flood said.