

5. **COMMENTS BY DIRECTORS:**

- a) Acknowledge and thank the Diablo Property Owners Association for their participation with the District at the annual Holiday Open House.

6. **ADJOURNMENT.** The next DCSD Regular Board meeting is scheduled for February 11, 2020 at 7:30 pm in the Diablo Room of the Diablo Country Club.

Diablo Community Services District by

Jeff Eorio, Secretary

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS MEETING
DRAFT MINUTES
DIABLO COUNTRY CLUB
TUESDAY, NOVEMBER 12, 2019 7:30 p.m.**

CALL TO ORDER: **President:** **Ray Brant at 7:45 pm**

ROLL CALL: **Secretary:** **Jeff Eorio**
Directors Present: **Brant, Urbelis, Becker, Eorio**
Directors Absent: **Isom**

7. **PUBLIC COMMENTS.** *Comments from the audience on any subject including items on this agenda are limited to 3 minutes per person. Comments by the audience are not intended to result in a dialogue between members of the audience or between the audience and the Board. Please note that no member of the Board may engage in any discussion, other than a brief comment or request for clarification, of any item raised by any member of the audience unless that item is included as an agenda item. The reason is that this is a public Board subject to the Brown Act.*

Sue Raphel, Diablo resident, spoke about the Halloween event and the District decision to ban golf carts from the event this year. She stated that there were no issues over the past 35 years and why was the ban necessary? She recommended that a committee be formed to make formal recommendations to the Board. She did appreciate the new hours, from 6-8 pm, that the 9:00 pm closure was too late and the 8:00 pm cut off was an improvement.

Lt. Sliger of the Sheriff's office responded to Ms. Raphel's comment and explained that since the Sheriff had knowledge of people driving golf carts with alcohol, the Department could not look the other way. The Sheriff would not put their personnel in that situation. Deputy Buergi agreed with the golf cart ban because the Sheriff cannot ignore violations of the law.

President Brant stated that the DPOA could hire private security, pay for that service, and close Alameda Diablo for a block party instead of relying on DCSD to provide coverage by the Sheriffs Department.

District Counsel Crowl also clarified that the Board did not "vote" to ban golf carts, but instead deferred that public safety decision to the Sheriff.

Dave Watson, Diablo resident, stated that the District needed to weigh the liability issues with alcohol.

Director Becker stated that the Halloween could be construed as a private block party with private security and that might satisfy those who wanted to continue with the golf carts on Halloween.

Joe Raphel, Diablo resident, stated that there needed to be better notification to residents about decisions such as this in the future.

8. **ACTION ITEM.** Approve minutes of October 8, 2019 Regular Meeting Approved 4-0
 Approve minutes of October 8, 2019 Special Meeting Approved 4-0

9. **REPORTS.**

CONTRA COSTA COUNTY: Alicia Nuchols Not present

DIABLO COUNTRY CLUB: Hank Salvo Reported that the golf practice range is now open for member use and the golf course is on schedule to open in early 2020. The building construction should start in the spring of 2020.

DIABLO PROPERTY OWNERS: Dana Pingatore Reported that the Halloween event was very successful and that the DPOA is coordinating the Holiday Open House with the DCSD on December 5, 2019 beginning at 6:30 pm and both will be recognizing retiring UPS Driver Donna Fernandez for her 21 years of service to our community.

ROADS: Director Becker

- a) Informational item: Vegetation, sight distance and other landscaping issues on Mt. Diablo Scenic Blvd. Director Becker stated that the Board had received correspondence from a member of the public regarding safety and vegetation issues on Mt. Diablo Scenic Boulevard. For the benefit of the public, and for members of the Board who are still relatively new, Director Becker gave a brief overview of the District's authority with regard to Mt. Diablo Scenic and the District's current efforts to work with residents of that street as well as County and even State representatives despite the District's limited authority. He explained that Mt. Diablo Scenic was not originally part of Diablo or the District's boundaries and that most of Mt. Diablo Scenic was annexed into Diablo and the District in 2009. At that time, those residents wanted to have a Diablo address and obtain the associated property value benefits. The District was clear during the annexation process that Mt. Diablo Scenic does not meet County road standards and is burdened by a State easement, so the District could not undertake maintenance of this road. Moreover, a portion of Mt. Diablo Scenic actually remains outside the District boundaries and is therefore outside the District's authority entirely. Regardless, the District has historically worked with Scenic residents within its jurisdiction when vegetation and landscape issues arise -- that is, non-road maintenance issues. Mt. Diablo Scenic properties have historically received the same vegetation letters as other properties within the District whose landscaping is encroaching into the road. Director Becker reiterated that some of these properties lie outside District boundaries and the District has no power or authority to enforce any of its ordinance code provisions against them. For the properties within the District, the District has notified homeowners who may have vegetation or landscaping that could be problematic, and for the most part the residents have complied with those requests. But road maintenance for Scenic is the responsibility of the State Parks Dept., and the District cannot interfere with the State or its easement over the road or its maintenance of the road. Director Becker referred to Director Urbelis' comments at the September meeting, where she explained that she had approached the Parks Dept. and discussed the history of Scenic and past/future maintenance issues. She is working on getting a group of resident, county, state, and Athenian School representatives together to work toward good solutions for Scenic. Director Becker stressed that he wanted to provide a bit of background for the public and Board members who may not be aware of Scenic's history and the District's limited authority with regard to road maintenance in that area.

SECURITY:

Deputy Sheriff Dan Buergi

- b) Presentation of Security Report for October 2019 Reported again about the Halloween event. From his perspective, it went very well and it seemed that there was more foot traffic and there were no issues stemming from the event.

FINANCIAL:

Director Isom

President Brant reported on behalf of Director Isom and explained that pursuant to the proposed Resolution 19-3, the District will provide financial reports on a quarterly basis. He also stated that the District's new accountant is doing a great job in putting together the District financials and resolving issues between accounting software. Director Urbelis discussed how she has worked with our new accountant and the transition to QuickBooks and how the accountant is working on the annual audit material which should be completed for the January meeting.

- b) **ACTION ITEM:** Consider and adopt Resolution 19-3 establishing a District policy to publicly report District finances quarterly. Moved by Eorio, 2nd by Urbelis to adopt Resolution 19-3. Approved 4-0.
- c) Review financial reports from July, August, September, October 2019.
Directors Urbelis and Brant explained that the new accountant was still getting up to speed and completing the audit, so the regular monthly reports were not yet available. Per the District's newly adopted policy, the Board will receive the reports quarterly.

10. **A) ACTION ITEM.** Review and authorize Board President to execute amended agreement for general counsel services with Jarvis Fay & Gibson, LLP allowing interim general counsel services to be provided by Alexandra Barnhill during General Counsel Christie Crowl's maternity leave.

District Counsel Crowl explained that she would be going out on maternity leave in early 2020 and that Alexandra Barnhill from her office will be filling in for her during her leave, likely through the summer of 2020. Motion to approve amended agreement: Urbelis, 2nd, Brant. Approved 4-0.

B) ACTION ITEM: Review and authorize Board President to execute agreement with Bright View Tree Care and Landscape Services as the District's emergency tree removal and storm watch patrol.

President Brant explained the need for the new service provider as out old provider, MCE was going through some reorganization and cannot provide the necessary services at this time. Bright View can and will provide the necessary services to the District at a competitive rate. Director Eorio asked about BrightView providing the District with its insurance and liability coverage policies, which President Brant stated would be provided. Motion to approve: Becker, 2nd, Urbelis. Approved 4-0.

11. **COMMENTS BY DIRECTORS.** President Brant reported that the video of all culverts was completed and that Engeo Consulting Co. would provide recommendations to the District on how to repair the culverts in need of work. He also reported again about the DCSD/DPOA Holiday Open House on December 5, inviting all of Diablo to attend.
12. **ADJOURNMENT.** Adjourned at 8:10 pm to the next DCSD Regular Board meeting scheduled for January 14, 2020 at 7:30 pm in the Diablo Room of the Diablo Country Club.

Diablo Community Services District by

Jeff Eorio, Secretary

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS
SPECIAL MEETING
DRAFT MINUTES
DIABLO COUNTRY CLUB
TUESDAY, NOVEMBER 12, 6:30 p.m.**

CALL TO ORDER: President Ray Brant at 6:30 pm

ROLL CALL: Secretary Jeff Eorio:

 Directors Present: Brant, Urbelis, Becker, Eorio
 Directors Absent: Isom (until 6:35)

1. PUBLIC COMMENTS: *Comments from the audience on items on this agenda are limited to 3 minutes per person. Comments by the audience are not intended to result in a dialog between members of the audience or between the audience and the Board.*

- 2. CLOSED SESSION:** Director Isom called in at 6:35 for the closed session portion of the meeting.
- a. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION pursuant to Government Code Section 54956.9(d)(1) (Cervantes et al. v. Diablo Community Services District et al., Contra Costa County Superior Court Case No. C17-02529)
 - b. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION pursuant to Government Code Section 54956.9(d)(2) (1 case)
 - c. PUBLIC EMPLOYEE – EMPLOYMENT pursuant to Government Code Section 54957 (b) (general manager)

3. RECONVENE IN OPEN SESSION: President Brant stated that there were no actions to report.

4. CALL OF NEXT MEETING/ADJOURNMENT: Meeting adjourned at 7:30 pm. Adjourned to the regular meeting of the Diablo Community Services District, Tuesday, November 12, 2019 at 7:30 pm immediately following.

Diablo Community Services District by
Jeff Eorio, Secretary

STAFF REPORT

DATE: January 14, 2020
TO: DCSD Board Members
FROM: Ray Brant, Board President
RE: Proposed Resolution 20-01: Rescission of Resolution 19-01 (Concerning Continued provision of District services to Calle Arroyo) and Replacement with Nearly Identical Resolution 20-01

I. Introduction/Lawsuit Background

In December 2017, Plaintiffs Robert Tiernan and other residents of Calle Arroyo (“Plaintiffs”) initiated litigation against the Diablo Community Services District (“District”) and others (Tiernan et al. v. Diablo Community Services District et al., Contra Costa Superior Court, Case No. C17-02529). The Plaintiffs were seeking, among other things, a judgment quieting title to the Plaintiffs’ properties “such that as of the date each Plaintiff and Defendant who lives on Calle Arroyo purchased their property, the portion of Calle Arroyo road (sic) on their respective properties was private property, and remains private property, and that no non-homeowner Defendants, including the general public, have any rights, liens and/or interests whatsoever in said properties or in Calle Arroyo road (sic).”

On November 19, 2018, the Honorable Charles Treat granted Plaintiffs’ Motion for Summary Adjudication as to their quiet title cause of action. Judge Treat ruled that, as a matter of law, Calle Arroyo is a private street that is not subject to a public easement or right-of-way.

II. Lawsuit Settlement and Resolution 19-01

On June 11, 2019, the District entered into a Settlement Agreement (“Settlement Agreement”) with the Plaintiffs in the litigation. Thereafter, the District adopted Resolution 19-01: Resolution of the Diablo Community Services District Finding that Continued Provision of District Services to Calle Arroyo Serves a Primarily Public Purpose. Resolution 19-01 found, based on substantial evidence in the record including the District’s purpose and authorized powers as set forth in its formation documents and the California Community Services District Law, the historic use of Calle Arroyo, and the location of Calle Arroyo in relation to other roadways and various facilities within Diablo and the greater Diablo area, that the use of District funds to provide its services to Calle Arroyo serves a primarily public purpose and does not violate Article XVI, Section 6 of the California Constitution (i.e. the “Gift Clause”). In sum, adoption of Resolution 19-01 would allow the District to continue spending its public funds on services for Calle Arroyo even though no public right-of-way exists on Calle Arroyo.

Specifically, Resolution 19-01 provided a list of public purposes warranting such expenditures for Calle Arroyo. These purposes included ensuring that Calle Arroyo remains safe for its users, including but not limited to: (a) residents of Canada Via who must travel on Calle Arroyo to access their homes, (b) members of the public who travel on Calle Arroyo to access the Diablo Post Office, (c) members of the public who are forced to use Calle Arroyo if traffic is diverted through Diablo due to road closures or hazardous conditions, (d) first responders, (e) members of the public who use Calle Arroyo to access the Diablo Country Club (including members of the Club, members of the public who visit the Club for events, and employees/contractors of the Club), and (f) members of the public who may need to use Calle Arroyo to evacuate Diablo and/or the Diablo Road-Blackhawk-Road corridor in an emergency.

No public comments were received on the Board’s adoption of Resolution 19-01. At least one named Plaintiff was present at the meeting during which the District adopted Resolution 19-01, and did not provide any comments on it.

Nearly five months after adoption of Resolution 19-01, certain of the Plaintiffs contacted District Board members personally and through legal counsel to complain that one of the findings set forth in Resolution 19-01 had somehow

“allowed” use of Calle Arroyo by certain bicyclists purporting to have legitimate business with the Diablo Post Office. That assertion is untrue, as Resolution 19-01 merely found that the District’s expenditure of funds for services for Calle Arroyo would not violate the Gift Clause of the California Constitution. Neither Resolution 19-01 nor any of the findings made in Resolution 19-01 grants any right to any person or entity to use Calle Arroyo. Nonetheless, certain of the Plaintiffs have indicated that they specifically object to paragraph 3.b of Resolution 19-01 (“Finding 3.b”), which refers to use of Calle Arroyo by members of the public who access the Post Office.

III. Proposed Resolution 20-01

The District desires to avoid any additional litigation regarding Calle Arroyo. Each of the numerous findings in Resolution 19-01 serves as substantial evidence in support of, and is considered an independent basis for making, the District’s determination that expenditure of District funds for services for Calle Arroyo does not violate the Gift Clause, which is explained more fully in sections IV and V of this report. Therefore, adoption of Resolution 20-01, which simply eliminates Finding 3.b, does not affect this determination, nor does it affect the other substantial evidence that supports this determination. Further, and independently of Plaintiffs’ request to remove Finding 3.b, the District desires to remedy a scrivener’s error in Resolution 19-01.

Proposed Resolution 20-01 therefore accomplishes the following: (i) it establishes once again that continued expenditure of District funds on Calle Arroyo serves a primarily public purpose, (ii) it rescinds Resolution 19-01, and (iii) it avoids further litigation with Plaintiffs. Proposed Resolution 20-01 will only go into effect if Plaintiffs sign the attached waiver and release. If Plaintiffs fail to execute this release within 10 days of adoption of Resolution 20-01, then Resolution 20-01 will not go into effect and Resolution 19-01 will remain in effect.

IV. Continued Provision of District Funds for Services for Calle Arroyo Does not Violate the Gift Clause

Article XVI, Section 6, of the California Constitution provides that neither the state legislature nor any public agency can gift “any public money or thing of value to any individual, municipal, or other corporation” unless the expenditure serves a primarily public purpose (the “Gift Clause”). Generally, the Gift Clause prohibits the District – a public agency – from spending its public funds in a way that does not serve a primarily public purpose.

Historically, and pursuant to the authority granted by the District’s formation documents and state Community Service District Law,¹ the District has spent its public funds to secure and maintain Diablo roads.² Since the November 9, 2018 ruling, the District has received comments from the public regarding the District’s ability to continue to spend its public funds on Calle Arroyo – that is, the public has questioned whether the Gift Clause precludes the District from continuing to provide any of its services to Calle Arroyo and Calle Arroyo residents.

The Courts of Appeal have held that whether there exists an adequate public purpose for expenditures is primarily a matter of legislative discretion which will not be disturbed by the courts if it has a reasonable basis. (See, *e.g.*, *Redevelopment Agency of San Pablo v. Shepard* (1977) 75 Cal.App.3d 453). So, it is within the Board’s discretion to determine whether provision of services to Calle Arroyo serves a primarily public purpose and, accordingly, whether it is permissible to spend public funds on such services. Section V below describes how provision of services to Calle Arroyo serves a primarily public purposes.

V. Public Purposes for Calle Arroyo Expenditures

This report has been prepared to accompany proposed Resolution 20-01, which once again finds that the District’s provision of services to Calle Arroyo serves a primarily public purpose. Specifically, the use of District funds to provide its services to Calle Arroyo will ensure that Calle Arroyo remains safe for members of the public, persons providing

¹ Cal. Gov. Code sections 61000 et seq.

² There are certain roads (*e.g.*, Mt. Diablo Scenic) that are not maintained by the District.

public safety and public utility services, Diablo residents and their guests, and others, including but not limited to the following:

1. *Residents of Canada Via*

Canada Via is an offshoot of Calle Arroyo and does not connect to another street. Residents of Canada Via must travel on Calle Arroyo to access their homes. See the attached map of Calle Arroyo depicting Canada Via attached to this report as Exhibit A.

2. *Diverted Drivers*

Diablo residents and members of the public may be forced to use Calle Arroyo if traffic is diverted from Diablo Road through the Diablo community due to road closures or hazardous conditions. For example, in 2017, the Town of Danville diverted traffic from Diablo Road through the Diablo community for over 36 hours due to a fallen tree on Diablo Road. See the Press Release from the Town of Danville from that closure, attached to this report as Exhibit B.

3. *First Responders*

First responders, including but not limited to firefighters, ambulance drivers, and other emergency medical personnel may use Diablo's roads, including Calle Arroyo, to access residences in Diablo, Mt. Diablo, and nearby open space areas. As a main thoroughfare in Diablo, Calle Arroyo must be maintained in order to protect Diablo's residents and structures as well as the surrounding areas in the event of fire or other emergency.

4. *Country Club Visitors*

Members of the public use Calle Arroyo to access the Diablo Country Club, either as members of the Country Club or as members of the general public that visit the Country Club for events.

5. *Evacuated Drivers*

Members of the public may need to use Calle Arroyo to evacuate the highly congested Diablo Road-Blackhawk Road corridor in the event of an emergency.

Further, the use of District funds to provide security to all of Diablo serves the District's purpose of providing *public safety* to the entire community. The District contracts with the Contra Costa County Sheriff to provide security and police protection to all of Diablo. It is in the interest of the District, all Diablo residents, residents of the surrounding area, and the public at large to patrol all of Diablo. In order to provide effective security to Diablo, the Sheriff must be able to patrol the entire community.

Finally, the above demonstrates that provision of District services to Calle Arroyo serves a primarily public purpose. While there may be an incidental benefit to property owners on Calle Arroyo, the District provides services to Calle Arroyo to serve the primarily public purposes described in this report and Resolution 20-01.

VI. CEQA Compliance

Resolution 20-01 involves only the regular and continued operation, maintenance, and repair of existing District roads and involves no expansion of use and therefore its adoption will not have a significant effect on the environment and is exempt from the California Environmental Quality Act ("CEQA") pursuant to sections 15061(b)(3) and 15301 of the CEQA Guidelines.

RESOLUTION NO. 20-01

RESOLUTION OF THE DIABLO COMMUNITY SERVICES DISTRICT FINDING THAT CONTINUED PROVISION OF DISTRICT SERVICES TO CALLE ARROYO SERVES A PRIMARILY PUBLIC PURPOSE AND RESCINDING RESOLUTION 19-01

WHEREAS, in December 2017, Plaintiffs Robert Tiernan and other residents of Calle Arroyo (“Plaintiffs”) initiated litigation against the Diablo Community Services District (“District”) and others (*Tiernan et al. v. Diablo Community Services District et al.*, Contra Costa Superior Court, Case No. C17-02529), seeking, among other things, a judgment quieting title to the Plaintiffs’ properties “such that as of the date each Plaintiff and Defendant who lives on Calle Arroyo purchased their property, the portion of Calle Arroyo road (sic) on their respective properties was private property, and remains private property, and that no non-homeowner Defendants, including the general public, have any rights, liens and/or interests whatsoever in said properties or in Calle Arroyo road (sic)” and

WHEREAS, the District was not a party with respect to Plaintiffs’ quiet title cause of action; and

WHEREAS, on November 19, 2018, the Honorable Charles Treat granted Plaintiffs’ Motion for Summary Adjudication as to their quiet title cause of action, thereby ruling, as a matter of law, that Calle Arroyo is a private street that is not subject to a public easement or right-of-way; and

WHEREAS, pursuant to California Community Services District Law, Government Code section 61000 *et seq.*, the District’s formation documents grant the District the authority to provide certain services and describe the District’s functions and purposes; and

WHEREAS, the District’s main functions are to maintain roads and provide security within its boundaries; and

WHEREAS, Article XVI, Section 6, of the California Constitution provides that neither the state legislature nor any public agency can gift “any public money or thing of value to any individual, municipal, or other corporation” unless the expenditure serves a primarily public purpose (the “Gift Clause”) (see, *e.g.*, *Wine v. Boyar* (1963) 220 Cal.App.2d 375; *Redevelopment Agency of San Pablo v. Shepard* (1977) 75 Cal.App.3d 453); and

WHEREAS, certain members of the Diablo community and others questioned whether, in light of the Court's ruling and in conformance with the Gift Clause, the District can continue to use District funds to provide services on Calle Arroyo; and

WHEREAS, on June 11, 2019, the Board of Directors adopted Resolution 19-01, finding that the District's purpose and authorized powers as set forth in its formation documents and the California Community Services District Law, the historic use of Calle Arroyo, and the location of Calle Arroyo in relation to other roadways and various facilities within Diablo and the greater Diablo area, supported a determination that the use of District funds to continue to provide its services to Calle Arroyo benefits the public, would serve a primarily public purpose, and would not violate the Gift Clause of the California Constitution; and

WHEREAS, Plaintiffs personally and through legal counsel contacted the District and certain of its Board members, complaining that one of the findings set forth in Resolution 19-01 had given rise to the use of Calle Arroyo by one or more bicyclists purporting to have legitimate business with the Diablo Post Office, and demanded that Resolution 19-01 be amended to remove that particular finding; and

WHEREAS, Resolution 19-01 merely found the District's expenditure of funds for services for Calle Arroyo would not violate the Gift Clause of the California Constitution, and neither Resolution 19-01 nor any of the findings made in Resolution 19-01 grant or purport to grant any right to any person or entity to use Calle Arroyo; and

WHEREAS, each of the numerous findings in Resolution 19-01 serves as substantial evidence in support of, and is considered an independent basis for making, the District's determination that provision of services to Calle Arroyo does not violate the Gift Clause of the California Constitution; and

WHEREAS, the District desires to avoid any additional litigation regarding Calle Arroyo; and

WHEREAS, independently of the Plaintiffs' request for amendment of Resolution 19-01, the District desires to amend Resolution 19-01 to remedy a scrivener's error; and

WHEREAS, the District now desires to (i) determine once again that continued provision of services to Calle Arroyo serves a primarily public purpose, (ii) rescind Resolution 19-01 and adopt this Resolution 20-01 finding that continued expenditure of District funds for services for Calle Arroyo serves a primarily public purpose, and (iii) to avoid further litigation with Plaintiffs.

NOW, THEREFORE, BE IT RESOLVED:

1. The foregoing recitals and staff report accompanying this Resolution are true and correct and made a part of this Resolution.

2. Based on the substantial evidence before it, including but not limited to the facts and evidence contained in the staff report accompanying this Resolution, the Board of Directors hereby finds that the use of District funds to provide its services to Calle Arroyo road in Diablo, California, serves a primarily public purpose and does not violate the Gift Clause of the California Constitution.

3. Specifically, the District finds that the use of District funds to provide its services to Calle Arroyo, including but not limited to maintaining and repairing the roadway, lighting, culverts, and other facilities along Calle Arroyo, and providing security services along Calle Arroyo as a significant roadway within Diablo, will ensure that Calle Arroyo remains safe for members of the public, persons providing public safety and public utility services, Diablo residents and their guests, and others, including but not limited to:

- a. Residents of Canada Via who must travel on Calle Arroyo to access their homes;
- b. Members of the public who are forced to use Calle Arroyo if traffic is diverted from Diablo Road through the Diablo community due to road closures (e.g. in 2017, the Town of Danville diverted traffic from Diablo Road through the Diablo community for over 36 hours due to a fallen tree on Diablo Road);
- c. First responders, such as police and firefighters, who must use Diablo's roads to access Diablo to provide security and safety services in the community as well as potentially to the Mt. Diablo area and nearby open space areas in the event of residential or wildfires;
- d. Members of the public who use Calle Arroyo to access the Diablo Country Club, including members of the Country Club, members of the general public that visit the Country Club for events, and employees or contractors of the Country Club; and
- e. Members of the public who may need to use Calle Arroyo to evacuate Diablo and/or the highly congested Diablo Road-Blackhawk Road corridor in the event of an emergency or due to road closures.

4. Additionally, the use of District funds to provide security to all of Diablo serves the District's purpose of providing public safety to the entire community such that no portion is left unattended or unpatrolled.

5. Continued provision of District funds for services for Calle Arroyo involves only the regular operation, maintenance, and repair of existing District roads and involves no expansion of use and therefore will not have a significant effect on the environment and is exempt from the California Environmental Quality

Act ("CEQA") pursuant to sections 15061(b)(3) and 15301 of the CEQA Guidelines.

6. This Resolution 20-01 will not be in full force and effect (and Resolution 19-01 will remain in full force and effect) unless and until the Plaintiffs execute a release agreement that is in substantial form and compliance with the Release Agreement attached hereto as Exhibit A. Any such release agreement must be executed by all Plaintiffs within 10 days of the adoption of this Resolution 20-01 such that the effective date of this Resolution 20-01 is no later than January 24, 2020, if it ever becomes effective. Failure of the Plaintiffs to execute such a release agreement by 5:00 PM on January 24, 2020 will render this Resolution 20-01 null and void.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE DIABLO COMMUNITY SERVICES DISTRICT on this 14th day of January, 2020, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved: _____

Ray Brant, President

ATTEST: _____

Jeff Eorio, Secretary

RELEASE AGREEMENT

This Agreement (the “*Agreement*”) is made and entered into by and between Robert Tiernan; Robert Tiernan and Marilyn Tiernan, as Trustees of the Robert P. and Marilyn E. Tiernan Trust, dated July 3, 1990; Irvin D. Nicholas, Jr., as Trustee of the Irvin D. Nicholas, Jr. Revocable Trust Dated February 16, 2006; Michael P. Scarpelli and Janet L. Scarpelli, as Trustees of The Scarpelli Family Trust dated 8-14-09; Kathleen A. Nicholson, as Trustee of the Nicholson Family Trust Dated October 28, 2004 (collectively, “*Tiernan Group*”), and Diablo Community Services District (the “*DCSD*”). The above referenced parties are also referred to herein collectively as the “*Parties*,” or individually as a “*Party*”.

RECITALS

This Agreement is entered into with reference to the following facts:

- A. WHEREAS Plaintiffs filed a Verified Complaint for Quiet Title and Declaratory Relief on December 21, 2017 in Contra Costs to Superior Court Case No. MSC 17-02529 (the “*Action*”);
- B. WHEREAS, in June 2019, the parties resolved the remaining issues the Action by their written Settlement Agreement and the Judgment on the Complaint entered by the Court in the Action on July 11, 2019;
- C. WHEREAS the Court in the Action ruled that Calle Arroyo is a private road and is not subject to any public right-of-way;
- D. WHEREAS, at a public meeting of the DCSD Board of Directors (“Board”) on June 11, 2019, DCSD adopted Resolution 19-01 (the “Resolution”). The purpose of the Resolution was to establish, based upon certain findings, that use of DCSD funds to provide services to Calle Arroyo serves a public purpose, and that such use of public funds therefor does not violate the Gift Clause of the California Constitution;
- E. WHEREAS, in October 2019, Robert Tiernan, personally and through his legal counsel, contacted DCSD and certain of its Board members, complaining that one of the findings set forth in Resolution 19-01 had, in his view, given rise to the use of Calle Arroyo by one or more bicyclists purporting to have legitimate business with the Diablo Post Office, and demanded that the Resolution be amended to remove that particular finding (“Finding 3.b”);
 - i. WHEREAS DCSD desires to avoid any additional litigation regarding Calle Arroyo;
- F. WHEREAS, each of the numerous findings in Resolution 19-01 serve as substantial evidence in support of, and is considered an independent basis for making, the District’s determination that provision of services to Calle Arroyo does not violate the Gift Clause of the California Constitution.

NOW THEREFORE, in consideration of the covenants and promises hereinafter set forth, the Parties agree as follows:

1. In consideration of the Board's removal of Finding 3.b from Resolution 19-01 and adoption of a resolution replacing Resolution 19-01 (hereinafter "Resolution 20-01"), the Tiernan Group, and each member thereof, on behalf of him or herself and his or her heirs, spouses, partners, representatives, agents, employees, successors, predecessors, attorneys and all other persons acting on his or her behalf (collectively, "Releasors," and each a "Releasor"), hereby releases and forever discharges DCSD and its Board, Board Members, representatives, agents, attorneys, and all others acting on its behalf ("Releasees") from any and all claims, demands, and/or causes of action, whether known or unknown, existing on or before the effective date of Resolution 20-01 and arising out of or relating to Resolution 19-01 and/or 20-01 including, without limitation, any and all claims for declaratory relief, damages, costs, expenses, attorneys' fees, writ relief, injunctive relief or any other relief at law or in equity.

2. Waiver of Civil Code Section 1542:

Each Releasor specifically waives the benefit of the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Each Releasor further waives the benefit of any and all statutes, rules and doctrines of law, of any jurisdiction whatsoever, of like effect. Each Releasor understands, acknowledges, and agrees that it is possible that other injuries, damages, or claims arising between them the Releasees, not known now, may develop or be discovered, and each Releasor nevertheless intends that this General Release forever waives and releases any such unknown injuries, damages or claims.

3. General Provisions.

A. Compromise. This Agreement is a compromise and settlement of disputed and contested claims and nothing contained herein shall ever be construed as an admission by any Party of any liability of any kind to any other Party. The Parties each expressly dispute the claims and deny all allegations asserted against them or their property at any time by any other Party.

B. Governing Law. This Agreement and any other documents referred to herein shall be governed by, construed and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

C. Waiver. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement.

D. Entire Agreement. All agreements, covenants, representations and warranties, expressed and implied, oral and written, of the Parties concerning the subject matter of this Agreement are contained in this Agreement and its exhibits, which are incorporated into this Agreement by reference. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party to any other Party concerning the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged into this Agreement. This is a fully integrated Agreement, which may not be contradicted or modified by any prior or contemporaneous representation, draft, negotiation, agreement or statement of any Party.

E. Attorneys' Fees and Costs. The Parties shall bear their own attorneys' fees and costs incurred in connection with the Action and this Agreement.

F. Voluntary Agreement. The Parties, and each of them, represent and declare that they have read carefully this Agreement and know the contents thereof and that they sign the same freely and voluntarily. This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties acknowledge that they have had the opportunity to obtain the advice of the attorneys of their choice, that they have full, complete and total comprehension of the provisions hereof, and that they are in full agreement with each and every one of the terms, conditions and provisions of this Agreement.

H. Construction of Agreement. Each Party has participated in the drafting of this Agreement, and each Party agrees that this Agreement shall not be construed against any Party on the ground that said Party drafted this Agreement.

I. Captions and Recitals. Paragraph and Section titles or captions contained in this Agreement are used for convenience or reference only and are not intended to and shall not in any way enlarge, define, limit, extend or describe the rights or obligations of the Parties or affect the meaning or construction of this Agreement, or any provision hereof. The Recitals, however, are an integral part of this Agreement and are intended to be, and are, incorporated into the Parties' agreement.

J. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. Such counterparts, when taken together, shall constitute but one Agreement. Signatures to this Agreement that are delivered among the Parties by facsimile or e-mail shall have the same force and effect as original signatures.

K. Effective Date of this Agreement and Resolution 20-01. Resolution 20-01 will not become effective, if at all, unless and until Resolution 20-01 is adopted by the Board and the Parties execute

this Agreement in full. The Effective Date of this Agreement shall be identified after all signatures below and shall also be the effective date of Resolution 20-01; provided, however, that the Effective Date shall not be later than January 24, 2020 at 5:00 PM.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

Dated: _____

Robert Tiernan

Dated: _____

Robert Tiernan, Trustee of the Robert P. and Marilyn E. Tiernan Trust Dated July 3, 1990

(Signatures continued on next page)

Dated: _____

Marilyn Tiernan, Trustee of the Robert P. and Marilyn E. Tiernan Trust Dated July 3, 1990

Dated: _____

Irvin D. Nicholas, Jr., Trustee of the Irvin D. Nicholas, Jr. Revocable Trust Dated February 16, 2006

Dated: _____

Michael P. Scarpelli, Trustee of the Scarpelli Family Trust Dated 8-14-09

Dated: _____

Janet L. Scarpelli, Trustee of the Scarpelli Family Trust Dated 8-14-09

Dated: _____

Kathleen A. Nicholson, Trustee of the Nicholson Family Trust Dated October 28, 2004

Diablo Community Services District

Dated: _____

By:

Its:

Effective Date of Agreement (per section 3.K above): _____

SF #4820-8286-4815 v1

Google Maps Canada Via





510 La Gonda Way
Danville, CA 94526
Phone (925) 314-3388
Fax (925) 838-0548
<http://www.danville.ca.gov/>

Press Release

Contact: Jed Johnson
Phone: (925) 314-3450

FOR IMMEDIATE RELEASE
10:00 a.m. February 8, 2017

Diablo Rd Closed Due to Downed Tree Falling tree damaged power lines and pole

Motorists who use Diablo Road on their daily commute will need to seek alternate routes today, after an overnight incident has resulted in the closure of the roadway from Calle Arroyo to Avenida Nueva.

Sometime around 1:00 a.m. a large eucalyptus tree along Diablo Road fell into the roadway, causing damage to power lines and a power pole. PG&E crews have been on scene since early this morning and are expected to remain there throughout the day.

Due to the damage, several power poles along that stretch of road will need to be replaced, causing the road to remain closed at least until early evening. No set time has been given for the road to reopen.

Signs in the Diablo neighborhood have been posted stating that the area is Local Traffic Only. Through traffic is being turned back. Motorists are encouraged to use alternate routes until the road has reopened.

For maintenance information, contact Maintenance Services Director Jed Johnson at (925) 314-3450 or for emergency services information contact the Danville Police Duty Sergeant at (925) 314-3720.