

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS
REGULAR MEETING AGENDA¹
TELECONFERENCE VIA THE APPLICATION ZOOM
TUESDAY, FEBRUARY 14, 2023, 7:30 P.M.**

MEETING PROCEDURE

Pursuant to California Assembly Bill 361, the Diablo Community Services District is authorized to hold public meetings remotely and to make those meetings accessible to all members of the public seeking to observe and to address the Board by remote means. All members of the public seeking to observe and/or address the Board may participate in the meeting in the manner described below. This meeting can be viewed using the Zoom platform:

ZOOM WEBSITE: <https://zoom.us/j/4680449859>
MEETING ID: **468 044 9859**

FOR AUDIO PARTICIPATION ONLY: Call **(346) 248-7799** or **(669) 900-9128** and enter Meeting ID# 468 044 9859 followed by the pound (#) key.

To submit public comments before the meeting, email generalmanager@diablocsd.org before 12 pm on the day of the meeting.

CALL TO ORDER & ROLL CALL: **President: Kathy Urbelis**
 Directors: Urbelis, Cox, Chartier, Lorenz, Slavonia

PUBLIC COMMENTS: *Public comments will be taken on any subject including items on this agenda and are limited to 3 minutes per person when speaking in English, and 6 minutes per person when using a translator. 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 under Brown Act regulations, 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.*

1. BOARD/STAFF COMMUNICATION AND ACTIONS:

ADMINISTRATIVE: Director Urbelis

- a) Consider adoption of Resolution 2023-03, authorizing the General Manager and Roads Commissioner to engage ENGEEO Engineering to perform a Geological Hazard Abatement District (GHAD) feasibility study for the community of Diablo and to work with ENGEEO, the County, and any local GHADs, as necessary, to bring the results of ENGEEO's study back to the District.
- b) Present for discussion an amendment to DCSD Bylaw Article V Section 1.
- c) Present changes to state law and Governor's declaration of emergency requiring DCSD Regular Meetings to move from remote teleconference to in-person.

¹ Agenda attachments are available on the DCSD's website (www.diablocsd.org) home page under Upcoming Events.

FINANCE: Director Lorenz & General Manager

- a) Present the financial report for the 6-months ended Dec. 31, 2022.
- b) Present the 2022 State Financial Transaction Report.

ROADS: Director Cox & General Manager

- a) 2022-23 Winter Storm update.
- b) Present for discussion the District's existing and proposed encroachment procedures for tree and creek emergency response.

SECURITY: Deputy Sheriff Buergi

- a) Present security report for prior month and current month to date.

2. CONSENT CALENDAR:

- a) Approve the minutes of the January 9, 2023, Emergency Meeting.
- b) Approve the minutes of the January 10, 2023, Regular Meeting.

3. REPORTS:

CONTRA COSTA COUNTY:	Cameron Collins
DIABLO PROPERTY OWNERS ASSOC:	Leslie Keane
DIABLO COUNTRY CLUB:	Hank Salvo

4. DIRECTOR COMMENTS:

5. FUTURE AGENDA ITEM ANNOUNCEMENT:

- a) Present proposal for discussion of a digital DCSD handbook

6. CALL OF NEXT MEETING & ADJOURNMENT:

The next DCSD Regular Board meeting is scheduled for March 14, 2023, at 7:30 p.m. at Diablo Country Club.

Diablo Community Services District by
Kathy Torru, General Manager

DCSD Board Meetings are accessible to people with disabilities and others who need assistance. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to observe and/or participate in this meeting; or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet, or other writings that may be distributed at the meeting should contact the General Manager at least one working day before the meeting at (925) 683-4956 or generalmanager@diablocsd.org. Notification in advance of the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Public records that relate to any item on the open session agenda are available for public inspection by contacting the General Manager and on the District's website <http://diablocsd.org>.

STAFF REPORT

DATE: February 14, 2023
TO: DCSD Board Members
RE: ENGEO GHAD Feasibility Study

BACKGROUND/SUMMARY

The 2022-23 winter storm brought over 20 inches of rain to Diablo between December 30th and January 30th causing the Dan Cook Creek to flood twice at the intersections of Calle Arroyo and Club House Road and Calle Arroyo and Canada Via sending water into homes, down Calle Arroyo and over the 17th and 18th golf holes at Diablo Country Club. The swollen Dan Cook and Green Valley Creeks dislodged debris and mud from the creek beds and banks which caused the creek banks to erode, undermining the stability of the hillsides and adjacent infrastructure and buildings. The heavy rainfall also caused hillsides to fail, sending mud into residents' yards and pools.

Property owners are responsible for the upkeep and maintenance of their properties. All property maintenance that prevents flooding and damage to surrounding properties and the District's roads, including the stabilizing of failing hillsides and creek banks, are the responsibility of the property owner. Also, it is the responsibility of the property owner to properly maintain the section of creek passing over one's property. The Contra Cost County Public Works department has a website page dedicated to private creek maintenance to help property owners understand their responsibilities. The link is: <https://contracosta.ca.gov/5754/Private-Creek-Maintenance>.

The DCSD's authority is limited to maintaining the paved roads and bridges and the culverts located under those roads within Diablo and providing security to the Diablo community. The District has no authority to maintain or otherwise control hillsides, creeks, or drainage on private residential properties.

In response to the damage from these storms and inquiries from residents for guidance the District has been working with ENGEO Engineering. ENGEO has suggested that the Diablo community consider forming or annexing with a local GHAD (Geological Hazard Abatement District) to manage the hillsides and creeks within Diablo to ensure that maintenance of these areas occurs regularly and thereby reduce the potential for the types of impacts to District roads and culverts that occurred during the most recent storm. The District spent over \$400,000 on storm-related road and culvert repairs, so avoiding this type of expenditure in the future would be consistent with the District's purpose and within its authority.

ENGEO has presented to the DCSD for consideration a proposal for GHAD Consultation Services in the amount of \$23,000. The ENGEO services would include preparation of a feasibility analysis of a GHAD formation or annexation to an existing GHAD, the annual cost to property owners, and preparation of documents and attendance of 4 District meetings/ Community Town Halls to answer questions. The proposal is attached as Exhibit A.

What is a GHAD?

A GHAD is an independent public agency that oversees geologic hazard prevention, mitigation, abatement, and control. The GHAD provides an ongoing resource for managing geologic hazards that pose a threat to properties within the boundaries of the GHAD. Landslides are the most common identified geologic hazard leading to the formation of a GHAD, although any geologic hazard may be considered. GHADs operate under a Plan of Control which defines the specific geologic hazard covered and describes the GHAD's authority and limitations.

The GHAD is a separate legal entity and the Board of Directors generally consists of the Supervisors from the Contra Cost County Board of Supervisors (although sometimes individuals are appointed by the County Supervisors to sit on GHAD boards). ENGEEO Engineering provides management services for several local GHADs. DCSD would have no authority over or connection with the GHAD.

What are the benefits of a GHAD?

Each GHAD has a "Plan of Control" that is specifically designed to prevent damage resulting from earth movement by identifying and monitoring potential geologic hazards and undertaking improvements as appropriate. A GHAD can quickly respond to a geologic hazard if one occurs due to its funding capability and technical expertise through the Plan of Control. Finally, a GHAD assessment can be easily collected since the assessment can be collected along with the general property tax. This avoids requiring separate collection by a private entity.

Are there any local GHADs?

There are a few local GHADs: the Blackhawk GHAD, the Wiedemann Ranch GHAD, and the Wendt Ranch GHAD. Each GHAD has a website describing its services.

What are the next steps for the District?

If the District decides to engage ENGEEO Engineering, it will perform a feasibility study to determine whether the Diablo Community could or should form a GHAD or annex to an existing GHAD. Thereafter, ENGEEO will present the study and its findings to the Board.

How would a GHAD be formed or how would Diablo join an existing GHAD?

The District legally *cannot* form a GHAD or initiate annexation. The County must do that. The District may, however, fund the proposed feasibility study and work with ENGEEO, the County, and any identified local GHADs that ENGEEO may identify would be appropriate for annexation in order to determine whether GHAD formation could better protect the District-maintained roads and culverts. Once the District has the results of ENGEEO's study, the Board can determine whether to direct staff to take further action to assist the County with the formation or annexation process, which would necessarily include preparation of a Plan of Control, mapping of the GHAD, etc. If residents are supportive of the GHAD formation/annexation, the District would likely work with the County to do so. These steps may involve additional District funding. Ultimately, the County would hold public hearings before finally ordering formation/annexation.

RECOMMENDATION

Staff recommends the DCSD adopt the attached resolution engaging ENGEEO Engineering to perform a GHAD feasibility study for the Diablo Community and authorize the Roads Commissioner and the General Manger to work with ENGEEO, the County, and any local GHADs, as necessary.

February 1, 2023

Project No.
P22232.000.001

Ms. Kathy Torru
Diablo Community Services District
PO Box 321
Diablo, CA 94528

Subject: Diablo Community
Contra Costa County, California

PROPOSAL FOR GHAD CONSULTATION SERVICES

Dear Ms. Torru:

Thank you for your interest in receiving a proposal for consulting services regarding the feasibility of formation of, or annexation into, an existing Geologic Hazard Abatement District (GHAD) by the Diablo Community in Contra Costa County, California. Based on our discussions with you, we understand the portion of the Diablo Community being considered for GHAD consultation consists of approximately 300 residential parcels, open space slopes, and creek channels.

Our scope of services will include the following.

- Consultation and team meetings with Diablo Community Services District Staff.
- Feasibility analysis of GHAD formation or annexation into an existing GHAD for the Diablo Community.
- Document preparation and attendance at up to four Diablo Community Services District Board of Directors meetings.

FEE

We propose to provide the above-described scope of services for an estimated fee of **\$23,000**.

• Consultation and team meetings	\$10,000
• Feasibility analysis	\$5,000
• Document preparation and attendance at four Diablo Community Services District Board of Directors meetings	<u>\$8,000</u>
Total	\$23,000

AUTHORIZATION

If the above scope of services and fee are acceptable, please return an executed copy of the attached Professional Services Agreement. We are unable to commence with our services without prior receipt of an executed agreement. Upon receiving an executed copy of the Professional Services Agreement, we would be available to begin consulting with Diablo Community Services District staff promptly.

LIMITATIONS

ENGEO's liability for damage due to professional negligence, acts, errors, omissions, breach of contract and consequential damages will be limited by Client to an amount not to exceed an aggregate limit of one hundred thousand dollars or ENGEO's fee, whichever is greater, regardless of the legal theory under which such liability is imposed.

This proposal is related to preliminary consultation regarding general feasibility of a GHAD for the Diablo Community only. If it appears that the Diablo Community would be in favor of formation or annexation into an existing GHAD, we would be able to provide an additional proposal outlining the complete GHAD formation or annexation process.

We look forward to serving you on this project. If you have any questions on any portion of the scope of services, please call and we will be glad to discuss them with you.

Sincerely,

ENGEO Incorporated



Haley J. Ralston
Project Geologist



Uri Eliahi, GE
President

hjr/ue/ca

Attachment: Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT



2010 Crow Canyon Place, Suite 250
San Ramon, CA 94583-4634
(925) 866-9000 | FAX (888) 279-2698

Date: February 1, 2023

Project No.: P22232.000.001

Phase: 001

ENGEO Contact: Haley Ralston

Client: Diablo Community Services District

Client Contact: Ms. Kathy Torru

Billing Address: PO Box 321, Diablo, CA, 94528

Project Name and Location: Diablo Community GHAD Consultation, Contra Costa County, CA 94528

Scope of Services: In accordance with the attached proposal dated February 1, 2023.

Estimated Fees: \$23,000, in accordance with the attached proposal dated February 1, 2023.

TERMS AND CONDITIONS

1. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and ENGEO.
2. This agreement shall not be assigned by either Client or ENGEO without the prior written consent of the other.
3. This agreement contains the entire agreement between Client and ENGEO relating to the project(s) and the provision of services to the project(s). Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement or its referenced documents are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both Client and ENGEO.
4. ENGEO's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
5. If any term, condition, or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on Client and ENGEO.
6. This agreement shall be governed by and construed in accordance with the laws of the State of California.
7. ENGEO shall only act as an advisor in all governmental relations. ENGEO shall not be construed as an agent of Client.
8. ENGEO shall sign certifications only if ENGEO approves the form of such certifications prior to the commencement of services, and provided such certifications are limited to statements of professional opinion and do not constitute a warranty or guarantee, express or implied.
9. All reports, documents, drawings and other instruments of ENGEO's service, and copies thereof, created by ENGEO pursuant to this agreement, shall remain the property of ENGEO. Client agrees that the instruments of service provided to Client by ENGEO shall not be subject to unauthorized reuse, that is, reuse without written authorization of ENGEO. Such authorization is essential because it requires ENGEO to evaluate the documents' applicability given new circumstances, not the least of which is passage of time. Accordingly, Client agrees to waive any claim against ENGEO, and defend, indemnify and hold ENGEO harmless from any claim or liability for injury or loss allegedly arising from unauthorized reuse of ENGEO's instruments of service. Client further agrees to compensate ENGEO for any time spent or expenses incurred by ENGEO in defense of any such claim, in accordance with ENGEO's prevailing fee schedule and expense reimbursement policy.
10. Samples will be discarded immediately after testing. Those not tested will be discarded 30 days after sampling. Samples shall remain the property of Client, and Client shall be responsible for removal and lawful disposal of hazardous materials and containers.
11. Client shall not permit or authorize changes in the reports and documents prepared by ENGEO pursuant to this agreement. Client acknowledges that any changes and their effects are not the responsibility of ENGEO and Client agrees to release ENGEO from all liability arising from the use of such changes and further agrees to defend, indemnify and hold harmless ENGEO, its officers, directors, principals, agents and employees from and against all claims, demands, damages or costs arising from the changes and their effects.
12. Client acknowledges that its right to utilize the services and instruments of service provided pursuant to this agreement will continue only so long as Client is not in default pursuant to the terms and conditions of this agreement and Client has performed all obligations under this agreement. Client further acknowledges that ENGEO has the unrestricted right to use the services provided pursuant to this agreement as well as all instruments of service provided pursuant to this agreement.
13. Client is to furnish ENGEO free access to the project site in order to make the necessary borings, reconnaissance, or other explorations, whether invasive or noninvasive. ENGEO will exercise reasonable care; but some damage is unavoidable. Cost of repair is not included in the fee and is Client's responsibility.
14. Client shall furnish ENGEO the locations of all underground utilities or buried structures. ENGEO shall not be liable for damage to any utilities or structures which were not accurately defined and/or located by the Client.
15. ENGEO and Client agree that there are risks of earth movement and property damage inherent in field exploration, land development and repair; that ENGEO has not been authorized to perform the exhaustive and economically infeasible investigation necessary to eliminate such risks; and that ENGEO thus does not guarantee or warrant the results of its work.
16. Upon written request, Client shall execute and deliver, or cause to be executed and delivered, such additional instruments, documents, governmental fees and charges which are necessary for ENGEO to perform its obligations under this agreement.
17. Client agrees not to use or permit any other person to use reports or other instruments of service prepared by ENGEO, which reports or other instruments of service are not final and which are not signed, stamped or sealed by ENGEO. Client agrees to be liable and responsible for any such use of nonfinal reports, or other instruments of service not signed, stamped or sealed by ENGEO and waives liability against ENGEO for their use. Client further agrees that final reports or other instruments of service are for the exclusive use of Client and may be used by Client only for the project described on the face hereof.
18. ENGEO has a right to complete all services agreed to be rendered pursuant to this agreement. Either Client or ENGEO may terminate this agreement at any time before completion of all services by giving seven (7) days written notice thereof to the other. If terminated by Client, Client agrees to release ENGEO and hold ENGEO harmless from all liability for work performed.
19. ENGEO shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this agreement if Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with the final order or judgment issued by the Bankruptcy Court.
20. This agreement shall not be construed to alter, affect or waive any lien or stop notice right which ENGEO may have for the performance of services pursuant to this agreement. Client agrees to separately provide to ENGEO the present name and address of the record owner of the property on which the project is to be located. Client also agrees to separately provide ENGEO with the name and address of any and all lenders who would loan money on the project and who are entitled to receive a preliminary notice.
21. If payment for ENGEO's services is to be made on behalf of Client by a third-party lender, Client agrees that ENGEO shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition of receiving payment for services.
22. Charges not paid within thirty (30) days of invoice will accrue a late charge at a rate of 1.5 percent per month. If Client fails to pay ENGEO within thirty (30) days after invoices are rendered, Client agrees that ENGEO has the right to consider such nonpayment a material breach of this entire agreement, and, upon written notice, the duties, obligations, and responsibilities of ENGEO under this agreement are terminated. In such event, Client shall promptly pay ENGEO for all fees, charges, and services provided by ENGEO including collection costs and related attorneys' fees. Client agrees that all billings from ENGEO to Client are correct, conclusive, and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies ENGEO in writing of alleged inaccuracies, discrepancies, or errors in the billing.
23. If ENGEO, pursuant to this agreement, produces reports, or other documents and/or performs field work, and such reports, and other documents and/or field work are required by one or more governmental agency, and one or more such governmental agency changes its ordinances, policies, procedures or requirements after the date of this agreement, any additional office or field work thereby required shall be paid for by Client as extra work.

24. Client agrees that if Client requests services not specified pursuant to the scope of services description within this agreement, Client agrees to pay for all such additional services as extra work.
25. In the event all or any portion of the work prepared or partially prepared by ENGEO is suspended, abandoned, or terminated, Client shall pay ENGEO for all fees, charges, and services provided for the project, not to exceed any limit specified herein. Client acknowledges if the project work is suspended and restarts, there will be additional fees due to suspension of the work which shall be paid by Client as extra work.
26. ENGEO is not responsible for delay caused by factors beyond ENGEO's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of Client to furnish timely information or approve or disapprove ENGEO's work promptly, faulty performance by Client or other contractors or governmental agencies. When such delays occur, Client agrees that ENGEO is not responsible for damages nor shall ENGEO be deemed to be in default of this agreement.
27. ENGEO shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, or building permits.
28. Client agrees that in the event Client institutes litigation to enforce or interpret the provisions of this agreement, such litigation shall be brought and adjudicated in the appropriate court in the county in which ENGEO's principal place of business is located, and Client waives the right to bring, try or remove such litigation to any other county or judicial district.
29. Client acknowledges that ENGEO is not responsible for the performance or work by third parties including, but not limited to, the construction contractor and its subcontractors.
30. Client acknowledges that the work performed pursuant to this agreement is based upon field and other conditions discovered at the time of preparation of ENGEO's work. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications or other changes may be necessary to reflect changed field or other conditions. If the scope of services pursuant to this agreement does not include on-site construction observation, or if subsequent to this agreement Client retains other persons or entities to provide such services, Client acknowledges that such services will be performed by others and Client will defend, indemnify and hold ENGEO harmless from any and all claims arising from or resulting from the performance of such services by other persons or entities except claims caused by the sole negligence or willful misconduct of ENGEO; and from any and all claims arising from or resulting from clarifications, adjustments, modifications or other changes necessary to reflect changed field or other conditions, except claims caused by the sole negligence or willful misconduct of ENGEO.
31. In the event Client discovers or becomes aware of field or other conditions which necessitate clarifications, adjustments, modifications or other changes during the construction phase of the project, Client agrees to notify ENGEO and engage ENGEO to prepare the necessary clarifications, adjustments, modifications or other changes to ENGEO's work before construction activities commence or further activity proceeds. Further, Client agrees to have a provision in its construction contracts for the project which requires the contractor to notify Client of any changed field or other conditions so that Client may in turn notify ENGEO pursuant to the provisions of this paragraph.
32. Client agrees that the sole recourse for damages to Client arising from the services provided to Client by ENGEO under this agreement shall be against ENGEO and Client waives any claim against any employees, directors, officers, agents, or affiliates of ENGEO.
33. The fee(s) quoted in this contract is valid for 60 days from the contract date and unless stated otherwise, is approximate only.
34. ENGEO'S LIABILITY FOR DAMAGE DUE TO PROFESSIONAL NEGLIGENCE, ACTS, ERRORS, OMISSIONS, BREACH OF CONTRACT AND CONSEQUENTIAL DAMAGES WILL BE LIMITED BY CLIENT TO AN AMOUNT NOT TO EXCEED AN AGGREGATE LIMIT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) OR ENGEO'S FEE, WHICHEVER IS GREATER, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. In the event that Client does not wish to limit ENGEO's liability in accordance with the provisions stated herein, ENGEO agrees to waive this limitation upon written notice from the Client received within five (5) days after the date this agreement is fully executed, and Client agrees to pay Two Hundred Fifty Thousand Dollars, (\$250,000.00) or an additional sum equivalent to ten percent (10%) of the total fee, whichever is greater, said consideration to be called "Waiver of Limitation of Professional Liability Charge." This charge will in no way be construed as being a charge for insurance of any type, but will be increased consideration for the greater risk involved in performing work for which there is no limitation of liability. ENGEO and Client each agree that in no event will either hold the other liable for incidental or consequential damages in connection with any claim arising from or related to this agreement or ENGEO's services. Client further agrees to notify any contractor and subcontractor who may perform work in connection with any design, report or study prepared by ENGEO of such limitation of professional liability for design defects, errors, omissions, professional negligence, breach of contract and consequential damages, and to require as a condition precedent to their performing their work, a like limitation of liability on their part as against ENGEO.
35. Client agrees that in accordance with generally accepted construction practices, construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours, and Client further agrees to defend, indemnify and hold ENGEO harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting liability arising from the sole negligence of ENGEO.
36. Client acknowledges that ENGEO's scope of services for this project does not include removal or abatement of environmental contaminants. Should ENGEO or any other party encounter such materials on the job site, or should it in any other way become known that such materials are present or may be present on the job site or any nearby areas which may affect ENGEO's work, ENGEO may, at its option, terminate work on the project until such time as Client retains ENGEO to mitigate, abate and/or remove environmental contaminants. Client agrees that the discovery of unanticipated environmental contaminants may make it necessary for ENGEO to take immediate measures to protect health and safety. Client agrees to compensate ENGEO for all costs incident to the discovery of environmental contaminants.
37. Client recognizes that ENGEO's failure to detect the presence of environmental contaminants at a site, even though environmental contaminants may be assumed or expected to exist through the use of appropriate sampling techniques, does not guarantee that environmental contaminants do not exist at the site. Similarly, Client recognizes that ENGEO's subsurface explorations may not encounter environmental contaminants at a site, which may later be discovered. Client agrees to waive any claim against ENGEO and agrees to defend, indemnify and hold ENGEO harmless from claims or liability for injury or loss arising from ENGEO's failure to detect the presence of environmental contaminants through techniques commonly employed for the purpose.
38. Client agrees to save, indemnify, and hold harmless ENGEO against any and all liability, claims, judgments, or demands, arising from injuries or death of persons (Client's employees, subcontractors, and consultants included), damage to property, diminution in property value arising directly or indirectly out of the obligations herein undertaken or out of the services rendered by ENGEO, save and except claims or litigation arising through the sole negligence or sole willful misconduct of ENGEO, and will make good to and reimburse ENGEO for any expenditures, including reasonable attorneys fees, ENGEO may incur in such matters, and, if requested by ENGEO, will defend any such suits at the sole cost and expense of the Client.
39. Subject to any shorter period provided under applicable statutes of limitations, Client agrees that it will not assert any claim or action arising from or in any way related to ENGEO's services under this agreement later than three years following the Completion Date. This provision applies regardless of whether such claim or action alleges breach of contract, tort, indemnity, or any other legal theory, and regardless of whether it alleges any patent or latent deficiency in ENGEO's services. The Completion Date relating to the services performed under this agreement is the date of the last published technical document required under this agreement.

ENGEO INCORPORATED

CLIENT: Diablo Community Services District

By: _____ Date: _____

By: _____ Date: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Engineer's License No.: _____

RESOLUTION NO. 2023-03

**RESOLUTION OF THE DIABLO COMMUNITY SERVICES DISTRICT
AUTHORIZING THE GENERAL MANAGER AND THE BOARD ROADS
COMMISSIONER TO ENGAGE ENGEO ENGINEERING TO PERFORM A
GEOLOGICAL HAZARD ABATEMENT DISTRICT FEASIBILITY STUDY AND
TO WORK WITH ENGEO, CONTRA COSTA COUNTY, AND LOCAL
GEOLOGICAL HAZARD ABATEMENT DISTRICTS TO DETERMINE
WHETHER A GEOLOGICAL HAZARD ABATEMENT DISTRICT CAN BE
FORMED OR WHETHER THE DIABLO COMMUNITY CAN ANNEX INTO AN
EXISTING GEOLOGICAL HAZARD ABATEMENT DISTRICT**

WHEREAS, in December and January, the Bay Area endured a winter storm system known as an atmospheric river that inflicted severe damage to various properties within Diablo; and

WHEREAS, the storm system damaged a section of Alameda Diablo Road between Avenida Nueva and Calle Arroyo and the culverts within the District were breached as a result of mud and debris flowing from private residential properties into and through the creeks, causing more than \$400,000 in damage to District-maintained roads and culverts; and

WHEREAS, the District engaged qualified engineers and consultants to assess and evaluate the necessary repairs and those engineers have suggested that the District consider requesting that the County form a Geological Hazards Abatement District (“GHAD”) or annexing the Diablo area into an existing GHAD; and

WHEREAS, ENGEO Engineering has provided the District with an initial scope of work to prepare a feasibility study to determine whether the Diablo area would be appropriate for GHAD formation or for annexation to an existing GHAD in order to mitigate the mudslides and creek debris issues as well as prevent future damage to District-maintained roads and culverts; and

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1. The foregoing recitals are true and correct; the recitals are hereby incorporated by reference into each of the findings as though fully set forth therein.

Section 2. The Board hereby authorizes the General Manager to execute a contract with ENGEO Engineering in the amount of \$23,000 to perform a GHAD feasibility study for the Diablo Community and authorizes the Roads Commissioner and General Manager to work with ENGEO, the County, and any local GHADs, as necessary, to bring the results of ENGEO’s study back to the District.

Section 4. This Resolution shall take effect immediately.

* * * * *

The foregoing Resolution was adopted by the Board of Directors of the Diablo Community Services District on February 14, 2023.

Adopted by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

Kathy Urbelis, President of the Board

Kathy Torru, General Manager

STAFF REPORT

DATE: February 14, 2023
TO: DCSD Board Members
RE: Proposed amendment of DCSD Bylaws Article V

BACKGROUND/SUMMARY

At the January 10, 2023, DCSD Regular Board meeting, Directors Chartier and Slavonia indicated that they would like to discuss a Bylaw amendment, requiring more frequent election of Board officers.

The DCSD Bylaws currently state in Article V Section 1 that the President, Vice President, and Secretary:

...shall be elected by the Board of Directors and shall serve until he or she resigns from the position, leaves the Board or is unable to serve.

This clearly states that each officer, once elected by the sitting Board, remains in that role until he or she resigns from the position or is no longer on the Board. Historically, the Board has complied with Article V.

The Board consists of five volunteer members and typically seats one to three new members every 2-3 years through elections. Given the turnover (which can also include vacancies created if Board members leave or move away), the continuation of officers in their roles affords both consistency and efficiency of Board operations and requirements, and eases the needed knowledge transfer through time-in-job.

RECOMMENDATION

Given that Article V rules for officers have been in practice and worked successfully for many years, the recommendation is to leave the Bylaws regarding election of officers in place as is.

An alternative that could be considered is to reconfirm officers after they have served for a 4-year period. Anything less than 4 years would be disruptive for reasons noted above. If an officer chooses to continue in his or her role at the beginning of year 5, and it is the beginning of a year following elections, he/she can self-nominate, and the Board would vote to continue the Board member in that role. Should the Board reject the requested continuance, the floor would be open to other nominees and a vote. If the Board desires to amend the bylaws consistent with this alternative, staff requests the Board to direct that a resolution be brought back for its approval, and to direct that the resolution provide that the bylaws reflect such a change would go into effect in January 2025.

STAFF REPORT

DATE: February 14, 2023
TO: DCSD Board Members
RE: Return to in-person meetings under AB 2449 effective March 1, 2023

BACKGROUND/SUMMARY

Since March 2020, DCSD meetings have been held as teleconference (virtual) meetings. Several changes made during the COVID-19 pandemic, including the emergency teleconferencing regulations codified in AB 361, allowed Directors, staff, and members of the public to join the meetings virtually. Governor Newsom intends to terminate the State of Emergency on February 28, 2023, ending the ability to meet in a virtual-only format.

Given that the DCSD does not have access to both audio and visual technology to enable hybrid meetings, it will be returning to the traditional Brown Act Teleconferencing option which permits a board member to participate remotely provided rules are followed. For details see the right-hand column on the attached Table, Exhibit A, provided by the County.

Diablo Country Club has agreed to allow the DCSD to use its facility for meetings beginning March 1, 2023.

Exhibit A

Teleconference Meeting Participation Options

	AB 361- State of Emergency Teleconferencing (Gov. Code, §54953(e).)	AB 2449 Just Cause/Emergency Circumstances Teleconferencing (Gov. Code, § 54953(f); becomes (e) on 1/1/24.)	Traditional Teleconferencing (Gov. Code, §54953(b).)
Applicable Timeframe	<ul style="list-style-type: none"> ▪ Available until the state of emergency ends, currently scheduled for February 28, 2023. In no event may the AB 361 rules continue past December 31, 2023. 	<ul style="list-style-type: none"> ▪ Available beginning <u>January 1, 2023</u>, and ending <u>December 31, 2025</u>. 	<ul style="list-style-type: none"> ▪ Available anytime.
Who May Appear Remotely and Quorum Requirements	<ul style="list-style-type: none"> ▪ Any or all board members. 	<ul style="list-style-type: none"> ▪ Individual board members if: <ol style="list-style-type: none"> (1) a quorum of the members participates in person; and (2) the quorum meets in a single, physical location clearly identified on the agenda that is open to the public and situated within the agency’s jurisdiction. 	<ul style="list-style-type: none"> ▪ Individual board members, if at least a quorum of the members of the body participate from locations within the jurisdictional boundaries of the body.
Bases for Remote Appearance	<ul style="list-style-type: none"> ▪ Must be a proclaimed state of emergency; and either: <ol style="list-style-type: none"> (1) State or local officials have imposed or recommended measures to promote social distancing; (2) The body is holding a meeting to determine if meeting in person would present imminent risks to the health or safety of attendees; or (3) The body finds that meeting in person would present imminent risks to the health or safety of attendees. 	<ul style="list-style-type: none"> ▪ A member may appear remotely for “Just Cause” or “Emergency Circumstances”: <ul style="list-style-type: none"> ▶ “Just cause” is any of the following: <ol style="list-style-type: none"> (1) A need to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner; (2) A contagious illness that prevents a member from attending in person; (3) A need related to a physical or mental disability that is not otherwise accommodated for; or (4) Travel while on official business of the body or another state or local agency. ▶ “Emergency circumstances” is a physical or family medical emergency that prevents a member from attending in person. 	<ul style="list-style-type: none"> ▪ Applies when a board member is unable to attend in person.

Teleconference Meeting Participation Options

	AB 361- State of Emergency Teleconferencing (Gov. Code, §54953(e).)	AB 2449 Just Cause/Emergency Circumstances Teleconferencing (Gov. Code, § 54953(f); becomes (e) on 1/1/24.)	Traditional Teleconferencing (Gov. Code, § 54953(b).)
Notification and Approval Requirements	<ul style="list-style-type: none"> ▪ The body must reconsider the circumstances of the state of emergency every 30 days and find that the emergency continues to exist and either: <ol style="list-style-type: none"> (1) it continues to directly impact the ability of officials and members of the public to meet safely in person; or (2) state or local officials continue to impose or recommend measures to promote social distancing. 	<ul style="list-style-type: none"> ▪ To attend remotely for: <ul style="list-style-type: none"> ▶ “Just Cause” <ul style="list-style-type: none"> ▪ The member must notify the body at the earliest possible opportunity, including at the start of a regular meeting, of the need to participate remotely. ▪ The member must provide a general description of the circumstances necessitating the remote appearance. ▪ The body need not take action in response. ▶ “Emergency Circumstances” <ul style="list-style-type: none"> ▪ The member’s request to appear remotely must include a general description of the need to appear remotely, which need not exceed 20 words, and need not include any personal medical information. ▪ The member must make the request to participate remotely as soon as possible and must make a separate request for each meeting. ▪ The body must take action on the request at a public meeting. ▪ If there is insufficient time to include the item on a posted agenda, the body may take action at the beginning of the meeting. ▪ Approval must be by majority vote. 	<ul style="list-style-type: none"> ▪ No additional requirements.

Teleconference Meeting Participation Options

	AB 361- State of Emergency Teleconferencing (Gov. Code, §54953(e).)	AB 2449 Just Cause/Emergency Circumstances Teleconferencing (Gov. Code, § 54953(f); becomes (e) on 1/1/24.)	Traditional Teleconferencing (Gov. Code, §54953(b).)
Agenda and Public Access and Comment Requirements	<ul style="list-style-type: none"> ▪ The notice and agenda are required to state the means by which the public may access the meeting and provide public comment. ▪ The agenda does not need to be posted at each teleconference location or identify each teleconference location. ▪ The body is not required to provide a physical location from which the public may attend or comment. ▪ The body may not require public comments to be submitted in advance and must allow the public to address the body and comment in real time. ▪ An individual may be required to register for public comment before being allowed to comment, where the body uses a third-party platform (like Zoom) for the meeting. 	<ul style="list-style-type: none"> ▪ Must provide notice and post agendas as otherwise required under the Brown Act and must indicate on the notice how the public may access the meeting and offer comment. ▪ The agenda must include an opportunity for all persons to attend and address the body via a call-in option, an internet-based service option, and at the in-person location. ▪ The law does not require that the agency post an agenda at the remote location, include the address of the remote location, or provide for public access to the remote location. ▪ The body may not require public comments to be submitted in advance and must allow the public to address the body and comment in real time. ▪ An individual may be required to register for public comment before being allowed to comment, where the body uses a third-party platform (like Zoom) for the meeting. 	<ul style="list-style-type: none"> ▪ The teleconference location must be open to the public. ▪ The agenda must be posted at all meeting locations, including the teleconference location. ▪ The agenda must identify all meeting locations, including the teleconference location. ▪ The agenda must provide for public comment at all meeting locations, including the teleconference location.
Voting Requirements	<ul style="list-style-type: none"> ▪ Members must vote by roll call. 	<ul style="list-style-type: none"> ▪ Members must vote by roll call. 	<ul style="list-style-type: none"> ▪ Members must vote by roll call.

Teleconference Meeting Participation Options

	AB 361- State of Emergency Teleconferencing (Gov. Code, §54953(e).)	AB 2449 Just Cause/Emergency Circumstances Teleconferencing (Gov. Code, § 54953(f); becomes (e) on 1/1/24.)	Traditional Teleconferencing (Gov. Code, §54953(b).)
Technological Requirements	<ul style="list-style-type: none"> ▪ Members of the public must be able to attend via a call-in option or an internet-based service option. 	<ul style="list-style-type: none"> ▪ The public must be able to remotely hear and visually observe the meeting, and remotely address the body. Thus, the body must provide either: <ol style="list-style-type: none"> (1) a two-way audiovisual platform; or (2) a two-way telephonic service and a live webcasting of the meeting. 	
Other Requirements	<ul style="list-style-type: none"> ▪ If the broadcasting of the meeting to the public by phone or internet service is disrupted, or a disruption within the local agency’s control prevents members of the public from commenting using the phone or internet service, the body shall not take any action at the meeting, until public access to the meeting via the phone option or the internet service option is restored. Actions taken on agenda items during a disruption that prevents the body from broadcasting the meeting may be challenged pursuant to Section 54960.1. 	<ul style="list-style-type: none"> ▪ If a member participates remotely, the member must also: <ol style="list-style-type: none"> (1) Publicly disclose at the meeting before any action is taken, whether any other individuals 18 years or older are in the room at the remote location with the member and the general nature of the member’s relationship with such individuals; and (2) Participate through both audio and visual technology. ▪ If the broadcasting of the meeting to the public by phone or internet service is disrupted, or a disruption within the local agency’s control prevents members of the public from commenting using the phone or internet service, the body shall not take any action at the meeting, until public access to the meeting via the phone option or the internet service option is restored. Actions taken on agenda items during a disruption 	

Teleconference Meeting Participation Options

	AB 361- State of Emergency Teleconferencing (Gov. Code, §54953(e).)	AB 2449 Just Cause/Emergency Circumstances Teleconferencing (Gov. Code, § 54953(f); becomes (e) on 1/1/24.)	Traditional Teleconferencing (Gov. Code, §54953(b).)
		<p>that prevents the body from broadcasting the meeting may be challenged pursuant to Section 54960.1.</p> <ul style="list-style-type: none"> ▪ The body must have and implement a procedure for receiving and quickly resolving reasonable accommodation requests for individuals with disabilities. Any doubt should be resolved in favor of accessibility. 	
Limitations on Frequency of Remote Appearances	<ul style="list-style-type: none"> ▪ None. 	<ul style="list-style-type: none"> ▪ A member may participate remotely for “just cause” no more than two times per calendar year. ▪ A member may not participate remotely for more than three consecutive months or 20 percent of the regular meetings for the local agency within the calendar year, or more than two meetings if the body regularly meets less than 10 times per year. 	<ul style="list-style-type: none"> ▪ None.

Diablo Community Services District
Financial Report
December 31, 2022

	July	August	September	October	November	December	Actual YTD	Budget YTD
Beginning Cash	507,532	474,611	440,855	408,757	388,606	346,588	507,532	507,532
Revenue								
Tax revenue	-	-	-	13,422	-	470,269	483,691	468,191
Other revenue	4	3	3	3	2	4	19	750
Total Income	4	3	3	13,425	2	470,273	483,710	468,941
Expenses								
Sheriff services*	27,572	28,695	27,691	27,030	27,614	25,949	164,551	204,693
Road/bridge/culvert/trail	-	-	-	-	1,872	-	1,872	202,000
Professional services	5,485	4,529	4,880	14,330	2,210	2,175	33,609	36,352
Insurance	40,389	-	-	-	-	-	40,389	41,015
Administrative	-	1,548	-	-	-	-	1,548	4,300
Total Expenses	73,446	34,772	32,571	41,360	31,696	28,124	241,969	488,360
Net Income	(73,442)	(34,769)	(32,568)	(27,935)	(31,694)	442,149	241,741	(19,418)
Incr/(decr) in payable/prepaid	40,521	1,013	470	7,784	(10,324)	(2,989)	36,475	
Ending Cash	474,611	440,855	408,757	388,606	346,588	785,748	785,748	
Other Financial Data								
Prepaid/deposit								
Reserves (bridge/culvert)*	672,600	677,600	682,600	687,600	692,600	729,957		
Accounts payable	71,884	72,895	73,366	81,151	70,827	67,838		
Accrued expense								

Notes

* reserves are unfunded

SPECIAL DISTRICTS' FINANCIAL TRANSACTIONS REPORT COVER PAGE

Special District Name: Diablo Community Services District

Fiscal Year: **2022**

ID Number: **12050700600**

Certification:

I hereby certify that, to the best of my knowledge and belief, the report forms fairly reflect the financial transactions of the special district in accordance with the requirements as prescribed by the California State Controller.

Special District Fiscal Officer



Kathy Torru

Signature

General Manager

Title

Kathy Torru

Name (Please Print)

1/10/2023

Date

Per Government Code section 53891(a), this report is due within seven months after the close of the fiscal year or within the time prescribed by the Controller, whichever is later. The report shall contain underlying data from audited financial statements prepared in accordance with generally accepted accounting principles, if this data is available.

If submitted manually, please complete, sign, and mail this cover page to either address below:

Mailing Address:
State Controller's Office
Local Government Programs and Services Division
Local Government Reporting Section
P.O. Box 942850
Sacramento, CA 94250

Express Mailing Address:
State Controller's Office
Local Government Programs and Services Division
Local Government Reporting Section
3301 C Street, Suite 700
Sacramento, CA 95816

The Financial Transactions Report was successfully submitted to the State Controller's Office on 1/10/2023 11:03:04 AM

Special District Name: Diablo Community Services District
Special Districts' Financial Transactions Report
General Information

Fiscal Year: 2022

District Mailing Address

Street 1 Has Address Changed?
Street 2
City State Zip
Email

Members of the Governing Body

	First Name	M. I.	Last Name	Title
Member 1	<input type="text" value="Kathy"/>	<input type="text"/>	<input type="text" value="Urbelis"/>	<input type="text" value="President"/>
Member 2	<input type="text" value="Leonard"/>	<input type="text"/>	<input type="text" value="Becker"/>	<input type="text" value="Vice President"/>
Member 3	<input type="text" value="Greg"/>	<input type="text"/>	<input type="text" value="Isom"/>	<input type="text" value="Finance Commissioner"/>
Member 4	<input type="text" value="Matthew"/>	<input type="text"/>	<input type="text" value="Cox"/>	<input type="text" value="Roads Commissioner"/>
Member 5	<input type="text" value="Jeff"/>	<input type="text"/>	<input type="text" value="Eorio"/>	<input type="text" value="Secretary"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

District Fiscal Officers

	First Name	M. I.	Last Name	Title	Email
Official 1	<input type="text" value="Kathy"/>	<input type="text"/>	<input type="text" value="Torru"/>	<input type="text" value="General Manager"/>	<input type="text" value="generalmanager@diablocsd.org"/>
Official 2	<input type="text" value="Christie"/>	<input type="text"/>	<input type="text" value="Crowl"/>	<input type="text" value="General Counsel"/>	<input type="text" value="ccrowl@jarvisfay.com"/>
Officials	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Report Prepared By

First Name M. I. Last Name
Telephone Email

Independent Auditor

Firm Name
First Name M. I. Last Name
Telephone

1. Is this district a component unit of a City, County, or Special District (Choose one)? If "Yes", answer question 2. Yes No

2. Is this district a blended component unit (BCU) or a discretely presented component unit (DPCU) of a City, County, or Special District (Choose one)? Refer to the Financial Transactions Report (FTR) instructions for definitions of these terms. If the district is a BCU, answer questions 3 - 5.

BCU DPCU

3. Is financial data of this BCU included in the financial statements or Annual Comprehensive Financial Report (ACFR) of a City, County, or Special District (Choose one)?

City County Special District

4. In which City, County, or Special District financial statements or ACFR is the financial data of this BCU included?

City name:

County name:

Special District name:

5. Is financial data of this BCU included in the City, County, or Special District FTR (Choose one)? Yes No

Special District Name: Diablo Community Services District
Special Districts' Financial Transactions Report - Governmental Funds
Statement of Revenues, Expenditures, and Changes in Fund Balances

Fiscal Year: 2022

Activity: (1 of 1) (Record Completed)

Police Protection and Personal Safety

		General	Special Revenue	Debt Service	Capital Projects	Permanent	Total Governmental Funds
Revenues							
Taxes and Assessments							
R01.	Current Secured and Unsecured (1%)	531,399					531,399
R02.	Voter-Approved Taxes						
R03.	Pass-through and Residual Property Taxes (ABX1 26)						
R05.	Tax Increment						
R06.	Parcel Tax	308,993					308,993
R07.	Property Assessments						
R09.	Prior-Year Taxes and Assessments						
R10.	Penalties and Costs of Delinquent Taxes and Assessments						
R11.	Other Taxes and Assessments						
R12.	Total Taxes and Assessments	840,392	0	0	0	0	840,392
R13.	Licenses, Permits, and Franchises						
R14.	Fines, Forfeitures, and Penalties	881					881
Revenue from Use of Money and Property							
R15.	Investment Income	54					54
R16.	Rents, Leases, Concessions, and Royalties						
R17.	Other Revenue from Use of Money and Property						
R18.	Total Revenue from Use of Money and Property	54	0	0	0	0	54
Intergovernmental – Federal							
R19.	Aid for Construction						
R20.	Other Intergovernmental – Federal						
R21.	Total Intergovernmental – Federal	0	0	0	0	0	0
Intergovernmental – State							
R22.	Aid for Construction						
R23.	State Water Project						
R24.	Homeowners Property Tax Relief	0					0
R25.	Timber Yield						
R26.	Other Intergovernmental – State						
R27.	Total Intergovernmental – State	0	0	0	0	0	0
R28.	Intergovernmental – Other	7,020					7,020
R29.	Charges for Current Services						
R30.	Contributions from Property Owners						
Self-Insurance Only							
R31.	Member Contributions						
R32.	Claim Adjustments						
R33.	Total Self-Insurance Only	0	0	0	0	0	0
R34.	Other Revenues						
R35.	Total Revenues						

	\$848,347	\$0	\$0	\$0	\$0	\$848,347
Expenditures						
R36. Salaries and Wages						
R37. Employee Benefits						
R38. Services and Supplies	991,770					991,770
R39. Self-Insurance Only – Claims Paid						
R40. Contributions to Outside Agencies						
Debt Service						
R40.5 Lease Financing, Principal Payments						
R41. Other Principal Payments on Long-Term Debt						
R42. Interest Payments on Long-Term Debt						
R43. Principal and Interest on Short-Term Notes and Warrants						
R44. Other Debt Service						
R45. Total Debt Service	0	0	0	0	0	0
R46. Capital Outlay						
R47. Other Expenditures						
R48. Total Expenditures	\$991,770	\$0	\$0	\$0	\$0	\$991,770
R49. Excess (Deficiency) of Revenues Over (Under) Expenditures	\$-143,423	\$0	\$0	\$0	\$0	\$-143,423
Other Financing Sources (Uses)						
R49.5 Lease Financing						
R50. Long-Term Debt (Bonds, COPs, and Other Agency Debt)						
R51. Construction Financing and Other Long-Term Debt						
R51.6 Proceeds from Refinancing on Loans, Notes, and Other						
R51.7 Payments to Refinanced Loans, Notes, and Other						
R52. Refunding Bonds Proceeds						
R53. Premium on Bonds Issued						
R54. Discount on Bonds Issued						
R55. Payments to Refunded Bond Escrow Agent						
R56. Demand Bonds						
R57. Proceeds from Sale of Capital Assets						
R59. Insurance Recoveries						
R60. Transfers In						
R61. Transfers Out						
R61.5 Other Financing Sources (Uses) – Other						
R62. Total Other Financing Sources (Uses)	\$0	\$0	\$0	\$0	\$0	\$0
Special and Extraordinary Items						
R63. Special Item						
R64. Extraordinary Item						
R65. Total Special and Extraordinary Items	0	0	0	0	0	0
R66. Net Change in Fund Balances	\$-143,423	\$0	\$0	\$0	\$0	\$-143,423
R67. Fund Balances (Deficits), Beginning of Fiscal Year	\$619,593	\$0	\$0	\$0	\$0	\$619,593
R68. Adjustment						
R69. Reason for Adjustment						
R70. Fund Balances (Deficits), End of Fiscal Year	\$476,170	\$0	\$0	\$0	\$0	\$476,170

Special District Name: Diablo Community Services District
Special Districts' Financial Transactions Report
Balance Sheet
Governmental Funds

Fiscal Year: 2022

	General	Special Revenue	Debt Service	Capital Projects	Permanent	Total Governmen Funds
Assets						
R01. Cash and Investments	507,532					507,532
R02. Investments						
R03. Accounts Receivable (net)						
R04. Taxes Receivable						
R05. Interest Receivable (net)						
R07. Due from Other Funds						
R08. Due from Other Governments						
R09. Advances to Other Funds						
R10. Inventories						
R11. Prepaid Items	40,389					40,389
R12. Loans, Notes, and Contracts Receivable						
R13. Other Assets 1						
R14. Other Assets 2						
R15. Other Assets 3						
R16. Total Assets	\$547,921	\$0	\$0	\$0	\$0	\$547,921
R17. Deferred Outflows of Resources						
R18. Total Assets and Deferred Outflows of Resources	\$547,921	\$0	\$0	\$0	\$0	\$547,921
Liabilities						
R19. Accounts Payable	71,751					71,751
R20. Contracts and Retainage Payable						
R21. Interest Payable						
R22. Due to Other Funds						
R23. Due to Other Governments						
R24. Advances from Other Funds						
R25. Deposits and Advances						
R26. Loans and Notes Payable						
R27. Other Liabilities 1						
R28. Other Liabilities 2						
R29. Other Liabilities 3						
R30. Total Liabilities	\$71,751	\$0	\$0	\$0	\$0	\$71,751
R31. Deferred Inflows of Resources						
R32. Total Liabilities and Deferred Inflows of Resources	\$71,751	\$0	\$0	\$0	\$0	\$71,751

Fund Balances (Deficits)

R33. Nonspendable	40,389					40,389
R34. Restricted						
R35. Committed						
R36. Assigned						
R37. Unassigned	435,781					435,781
R38. Total Fund Balances (Deficits)	\$476,170	\$0	\$0	\$0	\$0	\$476,170
R39. Total Liabilities, Deferred Inflows of Resources, and Fund Balances (Deficits)	\$547,921	\$0	\$0	\$0	\$0	\$547,921

Special District Name: Diablo Community Services District
Special Districts' Financial Transactions Report
Noncurrent Assets, Deferred Outflows of Resources,
Noncurrent Liabilities, and Deferred Inflows of Resources
Governmental Funds

Fiscal Year: 2022

		Noncurrent Assets/Deferred Outflows of Resources	Noncurrent Liabilities/Deferred Inflows of Resources
Noncurrent Assets			
R00.5	Lease Receivable	[]	[]
Capital Assets			
R01.	Land	[]	[]
R02.	Buildings and Improvements	[]	[]
R03.	Equipment	2,500	[]
R04.	Infrastructure	[]	[]
R05.	Intangible Assets – Amortizable	[]	[]
R05.5	Lease Assets (Lessee)	[]	[]
R06.	Construction in Progress	[]	[]
R07.	Intangible Assets – Nonamortizable	[]	[]
R08.	Other Capital Assets	[]	[]
R09.	Less: Accumulated Depreciation/Amortization	-2,500	[]
R10	Net Pension Asset	[]	[]
R11	Net OPEB Asset	[]	[]
R12	Other Noncurrent Assets 1	[]	[]
R13	Other Noncurrent Assets 2	[]	[]
R14	Other Noncurrent Assets 3	[]	[]
R15.	Total Noncurrent Assets	\$0	[]
Deferred Outflows of Resources			
R16	Related to Pensions	[]	[]
R17	Related to OPEB	[]	[]
R18	Related to Debt Refunding	[]	[]
R19	Other Deferred Outflows of Resources	[]	[]
R20.	Total Deferred Outflows of Resources	\$0	[]
R21.	Total Noncurrent Assets and Deferred Outflows of Resources	\$0	[]

Noncurrent Liabilities

R22.	Deposits and Advances		
R23.	Compensated Absences		
R24.	General Obligation Bonds		
R25.	Revenue Bonds		
R26.	Certificates of Participation		
R27.	Other Bonds		
R28.	Loans (Other Long-Term Debt)		
R29.	Notes (Other Long-Term Debt)		
R30.	Other (Other Long-Term Debt)		
R31.	Construction Financing – Federal		
R32.	Construction Financing – State		
R32.5	Lease Liability		
R33.	Lease Obligations (Purchase Agreements)		
R34.	Net Pension Liability		0
R35.	Net OPEB Liability		
R36.	Other Noncurrent Liabilities 1		
R37.	Other Noncurrent Liabilities 2		
R38.	Other Noncurrent Liabilities 3		
R39.	Total Noncurrent Liabilities		\$0
Deferred Inflows of Resources			
R40.	Related to Pensions		
R41.	Related to OPEB		
R42.	Related to Debt Refunding		
R42.5	Related to Leases		
R43.	Other Deferred Inflows of Resources		
R44.	Total Deferred Inflows of Resources		\$0
R45.	Total Noncurrent Liabilities and Deferred Inflows of Resources		\$0

Special District Name: Diablo Community Services District
Special Districts' Financial Transactions Report
Appropriations Limit Information

Fiscal Year: 2022

R01. Appropriations Limit	<input type="text" value="0"/>
R02. Total Annual Appropriations Subject to the Limit	<input type="text" value="0"/>
R03. Revenues Received (Over) Under Appropriations Limit	<input type="text" value="\$0"/>

Special District Name: Diablo Community Services District
Special Districts' Financial Transactions Report
Summary

Fiscal Year: 2022

		Governmental Funds	Internal Service Fund	Enterprise Fund	Total
Governmental Revenues					
R01.	General	848,347			
R02.	Special Revenue				
R03.	Debt Service				
R04.	Capital Projects				
R05.	Permanent				
R06.	Transportation				
R07.	Total Governmental Revenues	\$848,347			
Internal Service Revenues					
R08.	Total Operating Revenues		\$0		
R09.	Total Non-Operating Revenues		\$0		
R10.	Total Internal Service Revenues		\$0		
Enterprise Revenues					
Operating Revenues					
R11.	Airport				
R12.	Electric				
R13.	Gas				
R14.	Harbor and Port				
R15.	Hospital				
R16.	Sewer				
R17.	Solid Waste				
R18.	Transit				
R19.	Water				
R20.	Other Enterprise				
R21.	Conduit				
R22.	Transportation				
R23.	Total Operating Revenues			\$0	
Non-Operating Revenues					
R24.	Airport				
R25.	Electric				
R26.	Gas				
R27.	Harbor and Port				
R28.	Hospital				
R29.	Sewer				
R30.	Solid Waste				
R31.	Transit				
R32.	Water				
R33.	Other Enterprise				
R34.	Conduit				
R35.	Transportation				

R36.	Total Non-Operating Revenues			\$0	
R36.5	Total Revenues	\$848,347	\$0	\$0	\$848,347
	Governmental Expenditures				
R37.	General	991,770			
R38.	Special Revenue				
R39.	Debt Service				
R40.	Capital Projects				
R41.	Permanent				
R42.	Transportation				
R43.	Total Governmental Expenditures	\$991,770			
	Internal Service Expenses				
R44.	Total Operating Expenses		\$0		
R45.	Total Non-Operating Expenses		\$0		
R46.	Total Internal Service Expenses		\$0		
	Enterprise Expenses				
	Operating Expenses				
R47.	Airport				
R48.	Electric				
R49.	Gas				
R50.	Harbor and Port				
R51.	Hospital				
R52.	Sewer				
R53.	Solid Waste				
R54.	Transit				
R55.	Water				
R56.	Other Enterprise				
R57.	Conduit				
R58.	Transportation				
R59.	Total Operating Expenses			\$0	
	Non-Operating Expenses				
R60.	Airport				
R61.	Electric				
R62.	Gas				
R63.	Harbor and Port				
R64.	Hospital				
R65.	Sewer				
R66.	Solid Waste				
R67.	Transit				
R68.	Water				
R69.	Other Enterprise				
R70.	Conduit				
R71.	Transportation				
R72.	Total Non-Operating Expenses			\$0	

R72.5	Total Expenditures/Expenses	\$991,770	\$0	\$0	\$991,770
R73.	Transfer In				
R74.	Transfer Out				
R75.	Change in Fund Balance/Net Position	\$-143,423	\$0	\$0	\$-143,423
R76.	Fund Balance/Net Position (Deficit), Beginning of Fiscal Year	\$619,593	\$0	\$0	\$619,593
R77.	Adjustments				
R78.	Fund Balance/Net Position (Deficit), End of Fiscal Year	\$476,170	\$0	\$0	\$476,170
	Assets				
R79.	Total Current Assets	547,921			547,921
R80.	Total Noncurrent Assets				
R81.	Total Assets	\$547,921	\$0	\$0	\$547,921
	Liabilities				
R82.	Total Current Liabilities	71,751			71,751
R83.	Total Noncurrent Liabilities				
R84.	Total Liabilities	\$71,751	\$0	\$0	\$71,751
R85.	Total Fund Balance/Net Position (Deficit)	\$476,170	\$0	\$0	\$476,170

Special District Name: Diablo Community Services District
Special Districts' Financial Transactions Report
Parcel Tax - Statistical Data
(To Be Completed by Levying Entity)

Fiscal Year: 2022

Parcel Tax Name (1 of 1) (Record Completed)

Measure B Special Tax

A. The Type and Rate of Parcel Tax Imposed

All Property Delete Type

Parcel Tax Rate		
Dollar Amount	Base	Notes
\$723.68	Parcel (Flat Rate)	Improved Parcels
\$139.94	Parcel (Flat Rate)	Unimproved Parcels
\$25,618.64	Parcel (Flat Rate)	Diablo Country Club
	Select	

Delete
Delete
Delete
Add

Select Add Type

- B. The Number of Parcels Subject to the Parcel Tax 420
- C. The Number of Parcels Exempt from the Parcel Tax
- D. The Sunset Date of the Parcel Tax, if any
- E. The Amount of Revenue Received from the Parcel Tax (Annually) 308,993

F. The Manner in Which the Revenue Received from the Parcel Tax is Being Used

(Please check all box(es) applicable or the box(es) with the closest description that apply.)

<input type="checkbox"/> Agriculture and Fair	<input type="checkbox"/> Library Services
<input type="checkbox"/> Air Quality and Pollution Control	<input type="checkbox"/> Lighting and Lighting Maintenance
<input type="checkbox"/> Airport Purpose	<input type="checkbox"/> Local and Regional Planning or Development
<input type="checkbox"/> Ambulance Service and Emergency Medical Services	<input type="checkbox"/> Memorial
<input type="checkbox"/> Amusement	<input type="checkbox"/> Museums and Cultural Facilities
<input type="checkbox"/> Animal Control	<input type="checkbox"/> Parking
<input type="checkbox"/> Broadband and Cable Services	<input type="checkbox"/> Pest Control, Mosquito Abatement and Vector Control
<input type="checkbox"/> Cemetery	<input checked="" type="checkbox"/> Police Protection, Personal Safety, and Public Safety
<input type="checkbox"/> Conduit Financing	<input checked="" type="checkbox"/> Recreation and Park, Open Space
<input type="checkbox"/> Drainage and Drainage Maintenance	<input type="checkbox"/> Resource Conservation
<input type="checkbox"/> Electric Purpose	<input type="checkbox"/> Snow Removal
<input type="checkbox"/> Erosion Control	<input checked="" type="checkbox"/> Streets, Roads, and Sidewalks
<input type="checkbox"/> Financing or Constructing Facilities	<input type="checkbox"/> Television Translator Station Facilities
<input type="checkbox"/> Fire Protection, Fire Prevention, and Fire Suppression	<input type="checkbox"/> Trade and Commerce
<input type="checkbox"/> Flood Control	<input type="checkbox"/> Transit
<input type="checkbox"/> Gas Purpose	<input type="checkbox"/> Transportation
<input type="checkbox"/> Graffiti Abatement	<input type="checkbox"/> Underground Electric and Communication Facilities
<input type="checkbox"/> Harbor and Port Purpose	<input type="checkbox"/> Veterans Buildings and Institutions
<input type="checkbox"/> Hazardous Material Emergency Response	<input type="checkbox"/> Water Conservation
<input type="checkbox"/> Health	<input type="checkbox"/> Waste Management
<input type="checkbox"/> Hospital Purpose	<input type="checkbox"/> Water Services and Irrigation
<input type="checkbox"/> Land Reclamation	<input type="checkbox"/> Weed Abatement

Landscaping

**Special District of Diablo Community Services District
Special District Financial Transactions Report
Footnotes**

Fiscal Year: 2022

FORM DESC	FIELD NAME	FOOTNOTES
RevenuesExpendituresChangesFundBalances	(R28)Gen-IntergovernmentalOther	(Police Protection and Personal Safety) The money represents a reimbursement from Contra Costa County for the survey of the property identifier monuments in Diablo.
BalanceSheetGovernmentalFunds	(R01)Gen-CashInvestments	Cash decreased during the year due to increased road maintenance expenditures
BalanceSheetGovernmentalFunds	(R16)Gen-TotalAssets	Decrease in assets due to increased spending on road maintenance during the ye
AppropriationsLimitInformation	(R01)AppropriationsLimit	The Diablo CSD is exempt from the appropriations limit requirement as it was formed in 1969.
AppropriationsLimitInformation	(R02)TotalAnnualAppropriationsSubjecttotheLimit	See Appropriation Limit footnote.
NoncurrentAssetsLiabilities	(R34)Liab-NetPensionLiability	The Diablo CSD does not have any employees.

Total Footnote

STAFF REPORT

DATE: February 14, 2023
TO: DCSD Board Members
RE: District Emergency Tree and Creek Responses

BACKGROUND/SUMMARY

Directors Lorenz and Cox requested at the January meeting that the Board discuss the District's options for responding to emergency tree and creek-related incidents affecting the District's roads.

The District-maintained roads are narrow, there are no sidewalks adjacent to the roads, and the roads are used by pedestrians, children, cyclists, golf carts and other mechanical and personal modes of transportation and play. The District-maintained roads are the only access for emergency vehicles to service property and persons within Diablo so any "encroachment" on or damage to a District-maintained road could result in inconvenience or dangerous conditions to Diablo residents, including but not limited to increased response times for emergency vehicles.

For this reason, in 2002, the District adopted Ordinance 2002-01 (the "Encroachment Ordinance"; attached hereto as Exhibit A), which added Chapter 6-6 to the District's Ordinance Code, the rest of which had been adopted in 1993. The Encroachment Ordinance broadly defines an "encroachment" as the existence of almost any unauthorized activity or item in the District-maintained road and generally (1) prohibits any person from allowing an encroachment to exist on a road, and (2) requires payment to the District for the cost of removal of the encroachment if the District has to remove it.

The Encroachment Ordinance suffers from internal inconsistencies, inconsistencies with the rest of the 1993 Ordinance Code, confusing definitions, and several odd provisions. For example, there are separate definitions of "road" and "right of way" which are arguably inconsistent with the rest of the Code. The Ordinance precludes a "person who resides on property in Diablo" from creating an encroachment, but then also separately defines a "person" as potentially a public agency or corporation. There is another provision that suggests that the District can "charge back" a tenant or owner for costs it spends to remove an encroachment, but the law does not allow the District to charge tenants. In short, it needs an overhaul.

For this reason, the District has been considering adoption of updated encroachment provisions as part of its Ordinance Code update. The attached revised encroachment provisions (Exhibit B) have been included in the proposed Ordinance Code update for the last few years. The District has held off on repealing and replacing the Ordinance Code for a variety of reasons, but this is one of the many provisions that would provide the District with clear guidance and authority to protect its roads.

SYNOPSIS OF DRAFT ENCROACHMENT ORDINANCE UPDATE

Generally, the proposed update to the encroachment ordinance serves the same purposes as the existing one: it prohibits encroachments and requires payment to the District for the cost of removal. However, the proposed version clearly defines what an encroachment is (any obstruction that prevents full or partial access to a District-maintained road including but not limited to structures and any kind of vegetation), who can violate the ordinance (property owners), and the

process by which the District can remove encroachments and charge property owners for specific, associated costs.

RECOMMENDATION

The Board should discuss whether the proposed update to the encroachment ordinance is acceptable. If so, the Board should instruct staff to prepare a repeal of the existing ordinance and replacement with the proposed ordinance for adoption at the March meeting.

Exhibit A

**DIABLO COMMUNITY SERVICES DISTRICT
ORDINANCE 2002-1.Ord**

**BE IT HEREBY ORDAINED BY THE BOARD OF DIRECTORS OF THE
DIABLO COMMUNITY SERVICE DISTRICT THAT CHAPTER 6-6 OF THE
ORDINANCE CODE OF DIABLO IS AMENDED BY DELETING THE ENTIRE
CHAPTER 6-6 AND SUBSTITUTING THE FOLLOWING THEREFORE.**

**CHAPTER 6-6
ENCROACHMENT ORDINANCE**

Article 6-6-2

General Provisions

Sections:

6-6-201

Common Name of Ordinance

6-6-202

Findings and purpose

6-6-203

Definitions

Article 6-6-4

Prohibitions

Sections:

6-6-401

Prohibitions

6-6-402

Additional Prohibitions

Article 6-6-6

Removal of Encroachment

Sections:

6-6-601

Persons authorized to remove an encroachment

6-6-602

Additional designated persons

Article 6-6-8

Sanctions

Sections:

6-6-801

Violation of this Ordinance is an Infraction

6.6.802

Charge back of costs of Repair and Removal of Encroachment

6.6.803

Remedies to be Cumulative

Article 6-6-10

Effective Date

Sections

6.6.1001

Effective Date

**ARTICLE 6-6-2
GENERAL PROVISIONS**

6-6-201 Common Name. This Ordinance may be referred to as the **Diablo Community Services District Encroachment Ordinance**

6-6-202 Findings and Purpose.

a. The Board of Directors of the Diablo Community Services District find that the roads in Diablo are narrow, there are no sidewalks adjacent to roads in Diablo and that Diablo roads are used by pedestrian including children, persons on bicycles and other mechanical and personal modes of transportation and play.

b. The roads in Diablo are the only access for emergency vehicles to service property and to service persons having a need for the emergency service within Diablo.

c. Any encroachment on a right of way is deemed to create an immediate danger to persons and property.

d. The lack of sidewalks and the narrow roads make it imperative that there be an unimpeded shoulder on each side of each road in Diablo.

6-6-203 Definitions. As used in this title the following words and phrases shall have the meaning given in this section:

a. "Road" means and shall include any road or roadway within the jurisdictional boundaries of the Diablo Community Services District which road or road way is maintained by the Diablo Community Services District.

b. "Right of Way" means all land or interest therein which by usage, leasehold, easement, dedication, deed, conveyance, agreement, or process of law is reserved for or dedicated to the use by Diablo residents and/or their guests, including members and guests of the Diablo County Club. The term "Right of way" shall include a distance of three (3') feet extending outward from the edge of the paved portion of any road or roadway as herein defined. Right of Way shall also include a distance of 13.5 feet in a vertical plane above the surface of any road or right of way. The term "Right of Way" shall include the term. "Road" in this ordinance.

c. "Encroach" or "Encroachment" means any of the following:

(1) Excavating or disturbing the surface of the right of way to a depth or rise of eight inches or more.

(2) Erecting or maintaining any post, sign, pole, fence, guardrail, wall, or any other structure on or over the right of way which extends more than eight inches up from the surface of the right of way.

(3) The existence of any tree, shrub, or growing material within the right of way. Provided however, growing material which is less than two inches in diameter and which is more than two feet from the paved portion of the road is not an encroachment

(4) District means the Diablo Community Service District.

(5) Person means and shall include any natural person, corporation, partnership, firm, company, utility, estate, personal representative of an estate, trust, trustee, association, public agency, political subdivision, municipal corporation, private and/or public association.

ARTICLE 6-6-4 PROHIBITIONS

6-6-401 Prohibition of resident or owner of land. No person to who resides on property in Diablo or owns property in Diablo shall permit an encroachment to exist on the right of way adjacent to, or which is a part of property owned by said person, or is on the property on which said person resides.

6-6-402 Additional Prohibitions. No person shall cause an encroachment to exist on a right of way in Diablo

ARTICLE 6-6-6 REMOVAL OF ENCROACHMENTS

6-6-601 Persons Authorized to Remove an Encroachment. The General Manager or any member of the Board of Directors of the Diablo Community Services District may immediately remove any encroachment on any right of way within Diablo.

6-6-602 Additional Authorized Persons. Any person listed in Section 6-6-601 may authorize any other person or persons from time to time to remove an encroachment and upon said authorization, said person shall have the same authority to remove an encroachment as any person named in 6-6-601. The authorization need not be in writing.

ARTICLE 6-6-8 SANCTION

6-6-801 Violation of this Ordinance is an Infraction. Any person who is in violation of this ordinance shall be guilty of an infraction.

6-6-802 Charge Back of Costs of Repair and Removal of Encroachment. The Diablo Community Services District shall be entitled to charge back all costs of repair and removal of any encroachment to the resident of, and/or to the owner of property on which the encroachment exists, and/or to the person who created the encroachment.

6-6-803 Remedies to Be Cumulative. The remedies set forth in this article shall be cumulative and the imposition of one remedy shall not preclude the imposition of the other

**ARTICLE 6-6-10
EFFECTIVE DATE**

6-6-1001 Effective Date. This ordinance shall apply to any encroachment created on or after August 1, 2002

This Ordinance was passed by the Diablo Community Services District Board of Directors on April 9, 2002. Voting for this ordinance were Directors Jeff Haug, James Aberer, Robert Nilssen, Marilee Headen, and Thomas Wander.

Certified to be true by Richard J. Breitwieser, Secretary, Diablo Community Services District . Dated this ninth day of April, 2002 at Diablo California

Richard J. Breitwieser
Secretary
Diablo Community Services District

Exhibit B

2021 DCSD Ordinance Code Draft

424 Encroachments on and Damage to DCSD-Maintained Streets.

- a. **Findings and Purpose.** The Board of Directors finds:
 1. That DCSD-Maintained Streets are narrow, there are no sidewalks adjacent to DCSD-Maintained Streets, and that DCSD-Maintained Streets are used by pedestrians, including children, and persons on bicycles and other mechanical and personal modes of transportation and play.
 2. DCSD-Maintained Streets are the only access for emergency vehicles to service property and persons within Diablo.
 3. Any encroachment on or damage to a DCSD-Maintained Street could result in dangerous conditions or severe inconvenience to Diablo residents, including but not limited to increased response times for emergency vehicles.
 4. It is the responsibility of a property owner to immediately remove or repair any encroachment on or damage to a DCSD-Maintained Street located on a property owner's property.
 5. DCSD does not have a Public Works Department and therefore it is necessary and convenient for DCSD to contract with independent contractors to remove or repair encroachments and damage, the cost of which shall be borne by the property owner.
- b. **Encroachments on DCSD-Maintained Streets.** No property owner shall permit any encroachment from his or her property to lie on a DCSD-Maintained Street. If a property owner's property contains an encroachment or a property owner is responsible for placement, accidental or otherwise, of an encroachment onto a DCSD-Maintained Street, the property owner shall remove the encroachment upon notification by any member of the Board of Directors, the General Manager, or the Sheriff. If an encroachment is deemed by the Board of Directors, the General Manager, or the Sheriff to impact public safety, it must be removed within four (4) hours or within a period of time deemed acceptable by the Sheriff. All other encroachments must be removed within a reasonable time not to exceed fifteen (15) days, unless otherwise authorized by the Board of Directors. See definition of Encroachment, section 112.
- c. **Damage to DCSD-Maintained Streets.** No property owner shall cause damage to a DCSD-Maintained Street. Damage includes, but is not limited to, damage caused by drainage from the property owner's property; damage caused by vegetation; damage caused by vehicles; damage caused by utility work; or damage caused by construction and construction vehicles. If damage is deemed by the Board of Directors, the General Manager, or the Sheriff to impact public safety, it must be removed or repaired within four (4) hours or within a period of time deemed acceptable by the Sheriff. All other damage must be removed or repaired within a reasonable time not to exceed fifteen (15) days, unless otherwise authorized by the Board of Directors. Damage repairs by property owner(s) must be approved and accepted by the Board of Directors.

- d. **Work on and/or in DCSD-Maintained Streets.** No DCSD-Maintained Street surface can be altered by a property owner, agency or third party without the prior express consent (i.e. permit) from the DCSD. After completion of the work, the street must be returned to its original condition and be certified by a DCSD contract engineer at the property owner's expense.

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS
EMERGENCY MEETING MINUTES
TELECONFERENCE VIA THE APPLICATION ZOOM
JANUARY 9, 2023, 2:00 p.m.**

CALL TO ORDER: President Kathy Urbelis called the meeting to order at 2:00 p.m.

President Urbelis welcomed the Directors.

ROLL CALL: President Urbelis called the roll as follows:

Directors present: Urbelis, Cox, Chartier, Lorenz, Slavonia

Directors absent:

PUBLIC COMMENTS: None

BOARD/STAFF COMMUNICATION AND ACTIONS:

ADMINISTRATIVE:

General Counsel Christie Crowl presented the process of declaring an emergency pursuant to Government Code sections 54956.5, 8558 and 8680.9.

On motion by Director Lorenz, second by Director Slavonia, the Board unanimously declared the existence of an emergency pursuant to Government Code section 54956.5 based on the ongoing storm and storm-related damage to District roads and facilities set forth in Resolution No. 2023-01 such that holding an emergency meeting of the Board is necessary and proper.

On motion by Director Lorenz, second by Director Slavonia the Board unanimously adopted Resolution No. 2023-02 proclaiming the existence of a local emergency and authorizing the General Manager and Roads Commissioner to apply for any and all emergency funding available from the County and/or State of California.

CALL OF NEXT MEETING/ADJOURNMENT:

President Urbelis called the next regular meeting for January 10, 2023. The meeting will be conducted via Zoom. There being no further business, the meeting was adjourned the at 2:07 p.m.

Diablo Community Services District by

Kathy Torru, General Manager

RESOLUTION NO. 2023-02

RESOLUTION OF THE DIABLO COMMUNITY SERVICES DISTRICT PROCLAIMING THE EXISTENCE OF A LOCAL EMERGENCY AND AUTHORIZING THE GENERAL MANAGER AND ROADS COMMISSIONER TO APPLY FOR ANY AND ALL EMERGENCY FUNDING AVAILABLE FROM THE COUNTY AND/OR STATE OF CALIFORNIA

WHEREAS, on December 31, 2022, the Bay Area endured a winter storm system known as an atmospheric river that inflicted severe damage to various properties within Diablo; and

WHEREAS, the storm system damaged a section of Alameda Diablo Road between Avenida Nueva and Calle Arroyo such that the road may be unsafe for vehicles, including emergency response vehicles; and

WHEREAS, the District has engaged qualified engineers and consultants to assess and evaluate the necessary repairs and has spent and/or will spend significant funds to make said repairs and ensure the safety of residents of the District and the public; and

WHEREAS, staff is of the opinion that the repairs need to be made as soon as possible in order to ensure the general health, safety, and welfare of the residents, guests, and emergency personnel; and

WHEREAS, there is substantial evidence, including evidence in the staff report prepared for District Resolution No. 2023-01 (declaring the need for an emergency meeting and authorizing emergency expenditure of funds), demonstrating that this local emergency exists; and

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1. Recitals. The foregoing recitals are true and correct; the recitals are hereby incorporated by reference into each of the findings as though fully set forth therein. The recitals and the information below constitute findings in this matter and serve as an adequate and appropriate evidentiary basis for the findings and actions set forth herein.

Section 2. Findings. The Board hereby further finds the following:

- A. A local emergency, as defined in Government Code sections 8558 and 8680.9, exists based on the following conditions within the District: On December 31, 2022, the District experienced flooding, mudslides, culvert breaches, and road failure due to a high volume of rain from an atmospheric river and high winds. This storm has required the District to retain contractors with specialized equipment and supplies to assist in the cleanup and emergency repair of the roads and culvert system, which is still ongoing.
- B. The National Weather Service has warned that a second atmospheric river will arrive in the San Francisco Bay Area this week, with the potential for additional heavy rainfall hitting the territory in the District.
- C. The storm of December 31 and the incoming, anticipated storm event have created the need for emergency services beyond the capabilities or resources of the District to handle by itself.

Section 3. Proclaimed. The Board hereby proclaims that a local emergency now exists within the District and that during the existence of this local emergency, the powers, functions, and duties of the General Manager and Board shall be those prescribed by state law, ordinances, and resolutions of the District. The Board further authorizes the General Manager and Roads Commissioner to work with Town of Danville, Contra Costa County, and/or State officials to obtain any and all emergency funding available to cover the District's expenses for this local emergency.

Section 4. Effective Date. This Resolution shall take effect immediately.

* * * * *

The foregoing Resolution was adopted by the Board of Directors of the Diablo Community Services District on January 9, 2023.

Adopted by the following votes:

AYES: Urbelis, Cox, Chartier, Lorenz, Slavonia

NOES:

ABSENT:

ABSTAIN:

Kathy Urbelis, President of the Board

Attest:

Katharine Torru

Kathy Torru, General Manager

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS MEETING
MINUTES
TELECONFERENCE VIA THE APPLICATION ZOOM
JANUARY 10, 2023, 7:30 p.m.**

CALL TO ORDER: President Kathy Urbelis called the meeting to order at 7:30 p.m.

President Urbelis welcomed Directors and the public and explained the rules for public comment.

ROLL CALL: President Urbelis called the roll as follows:

Directors present: Urbelis, Cox, Chartier, Lorenz, Slavonia

Directors absent:

PUBLIC COMMENTS:

Nicola Place, see attached correspondence regarding upper Mt Diablo Scenic Blvd safety.

Ray Brant asked the Board to consider hiring a hydrologist to study the Dan Cook and Green Valley creeks water flow through Diablo to determine if there are actions the District can take to mitigate flooding.

Jeff Eorio, see attached correspondence regarding the November election.

Maryann Cella asked that the 1993 Ordinance Code and the DCSD Bylaws be added to the District website and that the setting of future agendas be part of the Regular Meeting agenda.

BOARD/STAFF COMMUNICATION AND ACTIONS:

ADMINISTRATIVE:

President Urbelis welcomed new Directors Christine Chartier, Greg Lorenz and Jerry Slavonia.

President Urbelis nominated Matthew Cox for the position of Vice President. Director Chartier questioned why the President position was not included in the slate of officers being elected. General Counsel Crowl explained that the District's bylaws Article V Section 1 reads as follows:

"The President shall be elected by the Board of Directors and shall serve until he or she resigns from the position, leaves the Board or is unable to serve."

General Counsel Crowl further explained that if the Board wishes to change Article V Section 1 of the DCSD Bylaws an amendment to the Bylaws could be added as an agenda item at a future meeting. President Urbelis pointed out that the Bylaw section regarding officers serving until leaving the Board is clear in its meaning because of precedent and explained that no officer in place has ever been required to be re-elected to her knowledge.

Director Chartier made a motion to continue the election of officers until next month so that the Bylaws could be changed. Director Slavonia second the motion. Directors Chartier and Slavonia voted yes and Directors Urbelis, Cox and Lorenz voted no so the motion failed.

President Urbelis made a motion to elect Director Cox Vice President of the DCSD Board. Director Cox second the motion. Directors Urbelis, Cox and Lorenz affirmed the motion and Directors Chartier and Slavonia abstained. The motion passed 3-0 with two abstaining.

President Urbelis asked if a Director was interested in the Secretary position. No interest was expressed so the nomination of the position was continued to a future meeting.

President Urbelis appointed Director Lorenz Finance Commissioner, Director Chartier Community Liaison Commissioner and Director Slavonia Security Commissioner. Director Cox will remain Roads Commissioner.

ROADS:

Director Cox provided an update on the 2022-23 Winter Storm event that began on December 30, 2022 and continues today. Between December 30 and 31 Diablo received roughly 5.5 inches of rain in a 24-hour period, a record for the area. The extreme rain caused creek banks within Diablo to slide sending mud and debris down the creek to the Club House culvert and trash rack which caused the creek to breach its banks and send a river of water down Calle Arroyo. The extreme rain and debris also caused the culvert at the intersection of Calle Arroyo and Canada Via to breach its banks sending a river of water down Calle Arroyo and across the golf course. A mudslide at 2121 Alameda Diablo destabilized the hillside and threatened the integrity of a 27-foot-long section of Alameda Diablo. The District responded to the storm damage immediately with the hiring of engineers and contractors to monitor and clear the two culverts on Calle Arroyo, and to provide an emergency fix (1600 tons of riprap) to Alameda Diablo to prevent further creek bank erosion, the collapse of Alameda Diablo and the rupture of a gas line located less than 3 feet from the slide area. Director Cox further reported that contractors are performing daily storm patrols of Diablo to identify any new problem areas and keep the roads clear of water and debris. Deputy Buergi has altered his schedule to support the District and community during these unprecedented storm events.

General Manager Torru stated that the District had declared a “local emergency” at a DCSD Emergency Meeting held on January 9, 2023 and is working with the County to access federal and state disaster relief funds to offset the costs incurred by the District. State and Federal funds may be available to residents impacted by the storm. Jen Qualick, liaison for Supervisor Candace Andersen, stated that Contra Costa County declared a countywide emergency this afternoon that will be ratified by the Board of Supervisors next week.

Director Lorenz stated that the creek beds and banks in Diablo are private property and that it is the responsibility of the property owner to keep the creeks free of debris and maintain the health of the creek banks.

SECURITY:

Deputy Buergi stated that there were no incidents to report, and that weather and the related traffic are the biggest issues. Deputy Buergi expressed concern that residents are ignoring and removing the road closed barricades set up by the sheriff and the District. The barricades and detours are there to protect residents from harm and ignoring the barricades puts the car and other residents at risk. The barricades and detours established on Alameda Diablo last week were there to prevent residents from driving over a section of road that had been compromised by the mudslide which could have resulted in further erosion and road collapse from the weight and vibration of the car and could have resulted in a ruptured gas main and a 30-foot drop for the car and occupants if the 3 feet of road had in fact collapsed. The decision to close the road was made after engineers and contractors had toured the site to confirm that there was a risk to those using it. Diablo Country Club liaison Hank Salvo suggested that Deputy Buergi be more aggressive with tickets to encourage residents to obey the law.

CONSENT CALENDAR:

On motion of Director Chartier, second by Director Lorenz, the Directors unanimously approved the consent calendar 5-0.

REPORTS:

CONTRA COSTA COUNTY: Jen Qualick liaison for Supervisor Candace Andersen, stated that the County declared a “state of emergency” today and encouraged residents with creek property to familiarize themselves with creek maintenance guidance provided by County public works.

DIABLO PROPERTY OWNERS REPORT: Leslie Keane DPOA President, reported the DPOA is working on its 2023 contribution campaign and will be hosting a “Donuts with Deputy Dan” event at the post office on January 20th to give residents a chance to meet with Deputy Buergi. On February 7th a luncheon will be held to honor the residents who have lived in Diablo over 50 years.

DIABLO COUNTRY CLUB: Hank Salvo, Diablo Country Club liaison, reported that the Club will close January 15th for the remodel of the Clubhouse and that both the House project and the Water project were approved by the Club members.

DIRECTOR COMMENTS: None

FUTURE AGENDA ITEMS:

Director Chartier requested that an amendment of the DCSD Bylaws and a discussion of a digital DCSD resident handbook be added to the February agenda. President Urbelis stated that a discussion of in-person future meetings will also be included on the agenda. Director Cox requested that the District’s tree policy be added to the agenda and Director Lorenz asked to expand the tree policy discussion to include creek banks that abut District maintained roads.

CALL OF NEXT MEETING/ADJOURNMENT:

President Urbelis called the next meeting for February 14, 2023. The meeting will be conducted via Zoom. There being no further business, the meeting was adjourned the at 8:50 p.m.

Diablo Community Services District by

Kathy Torru, General Manager

DCSD Meeting 1.10.23

Remarks for the Public Comments section

Good evening. My name is Nicola Place and I live on Mt. Diablo Scenic Blvd.

Congratulations to the newly elected board members!

I have spoken at many DCSD meetings since 1998. I am pretty predictable: I almost always talk about the same topic: SAFETY. Tonight, I am once again talking about safety, on behalf of the residents of the upper portion of Mt. Diablo Scenic Blvd.

Since most of you are new to the board you are also likely new to the topic of the upper portion of Mt. Diablo Scenic Boulevard, what we call "Upper Scenic."

First a brief history:

- Since 2011, all of the properties on Upper Scenic have been part of the DCSD.
- We each pay the annual DCSD tax, currently \$745.39 per household.
- This means that since 2011, the DCSD has received tax revenue totaling \$67,686.96 - just from the residents of Upper Scenic alone.
- Unfortunately, none of that money has been used to improve the safety of Upper Scenic.

So what is the safety issue on Upper Scenic?

- Upper Scenic is narrow, winding, and has five blind turns. In other words, it's not safe. In fact, we often call it "The Danger Zone."
- Over the years there have been at least six bike-vehicle collisions resulting in serious injuries.
- In 2019 there was a fatality on Upper Scenic. Maayan Jones, husband, and father of three boys was tragically killed in 2019 while traveling thru the Danger Zone. (See photo.)

It is not an exaggeration to call upper Mt. Diablo Scenic "The Danger Zone."

- The purposes of the DCSD, per the formation documents and confirmed in your recent campaign platform, are safety and security.
- How can the DCSD help make Upper Scenic safer?
 - After the fatality in 2019, an anonymous group funded a pilot test of double yellow line road striping on Upper Scenic. Prior to this time there was no centerline striping of any kind.

- This striping has been phenomenally successful in making upper Scenic MUCH safer: Drivers and cyclists stay on their side of the road, drivers are much less likely to pass cyclists, dog-walkers, and hikers on the blind turns, and there have been no collisions - and no fatalities - since.
- But now that paint is fading. It's time for a fresh coat of paint.
- We would like the DCSD to fund the cost for a fresh coat of double yellow lines.
- We believe the cost would be under \$20,000 for the more durable "thermoplastic" paint, which is less than 30% of the \$67,000 we have paid in DCSD taxes since 2011.

We ask that you take this under consideration to be completed by the end of February.

We look forward to your written reply and assistance in making Upper Scenic safer.

I will forward a written copy of these remarks to the board and ask that they please be incorporated into the DCSD records.

Thank you,

Nicola Place and the residents of Upper Scenic
(Read the last names.)

Steve and Wendy Moore

Sketch and Marti Sketchley

Carol Mulcahey

Paul and Hannah Craddick

Grace and Randy Su

Colleen and Winston Cervantes

Hsiu-Li Cheng

Jenny and Lloyd Lee

Peter and Mayra Hypnar

Nancy and Hal Seibert



Maayan Jones and Family



Memorial Service on Scenic for Maayan Jones: His widow and sons.

DCSD Correspondence from Jeff Eorio, January 10, 2023

Jeff Eorio, Alameda Diablo Resident since 1979

I would like to personally thank every neighbor here in Diablo that voted for me in the recent election for the Diablo Community Services District. I appreciate your support and confidence in me, but unfortunately, I fell short of the votes needed to retain my seat on the Board.

I want to personally thank and commend our President, Kathy Urbelis, Board Member Matt Cox, our GM Kathy Torru and District Counsel Christie Crowl for their service and integrity throughout the election and on my tenure on the Board over the last several years. I hope they continue on successfully with the new Board members.

And a special shout out again to Kathy Torru for her continued and ongoing work to address the storm damage here in Diablo, she again, is such a great General Manager, I commend her for her work on behalf of all of us!

Going back to the election, I am obviously disheartened by the dirty tactics, lies and disinformation that was spread by the so called "Safe and Secure Slate," I never imagined that our very small special district would be the subject of such a dirty campaign! It's one thing to have a healthy debate on the issues, but to attack me personally, my integrity and honesty, I was dumfounded and frustrated by their campaign of dishonesty.

I wish we had a debate or forum where our residents could hear the various perspectives on issues here in Diablo but again, the "Safe and Secure Slate" would not debate or participate in the offered "forum." They also refused to talk with the reporter from the Times, why? What were they afraid of? Honesty? Integrity? What happened to those principals?

As far as conflict of interest, no one had a bigger conflict with this election than Mr. Slavonia, who participated in not one but two lawsuits against our District. First as a paying participant in the Tiernan litigation and second, with the easement, Cervantes suit which is still pending. Due to the excellent representation provided by our District Counsel, Christie Crowl, the District was successfully excused from both of those lawsuits at an extremely high cost, of over \$300,000 in legal fees. And if it were not for GM Kathy Torru's relentless pursuit of our insurance carrier, she successfully negotiated our taxpayers a refund of most of those costs. However, due to Mr. Slavonia and Mr. Tiernan lawsuits, those funds will be expended on 50% higher insurance premiums and within several years, that \$300,000 will be spent on higher premiums! All due to these frivolous lawsuits! And what came to all of that turbulent and difficult suit, absolutely nothing, a waste of taxpayer funds for no change in people utilizing our publicly maintained private roads!

Additionally, I will be asking at future meeting of the "Safe and Secure Slate," where and from whom did you hear that I or Garth Hobden ever advocated for a 4th entrance to Diablo, as you never attended or participated in a zoom meeting until a month prior to the election! So, what was your source of this false information. Will you ever divulge your source? Again, I will be asking until I get an honest answer from our newly elected public officials!

I also want to remind the newly elected members, that the Diablo Community Services District is a governmental agency, subject to the laws and statutes of the State of California. We are not an HOA, we are not Blackhawk. We cannot control who utilizes our publicly maintained roadways, whether it be Calle Arroyo or Alameda Diablo. Despite what MaryAnn Cella stated in

a campaign statement, we CANNOT legally control who comes and goes on our roads, on a bike, walking, joggings or driving. It's against the law, pure and simple. Deal with facts, not fallacies and conspiracy theories.

But moving on and looking to the future, I will and many Diablo residents as well will be keeping a keen eye on the District in the future to assure that this new majority on the Board of Directors follow the law and are being transparent, honest and forthright in their dealings with our public tax dollars. I am very concerned about the future of our District in the hands of the "Safe and Secure Slate!"

I am submitting this as written correspondence for inclusion into the pubic record. Thank you.

Jeff Eorio