

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS MEETING
MINUTES
DIABLO COUNTRY CLUB PARKING LOT
APRIL 11, 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: None

PUBLIC COMMENTS:

Maryann Cella, see attached correspondence regarding the DMAC 3-foot set back overlay.

Charlie Merrill, see attached correspondence regarding the DMAC 3-foot set back overlay.

Ray Brant, see attached correspondence regarding the DMAC 3-foot set back overlay.

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

Kay Batts requested that the Board inspect Kay's Trail for storm damage and prepare a maintenance plan.

Mugs Freeman thanked the Board for managing the traffic and keeping our roads safe during the Town of Danville Diablo Road Culvert Replacement project.

Jeff Eorio, see attached correspondence regarding multiple topics.

Elaine Marshall expressed disappointment with the Board's decision to close the Avenida Nueva entrance/exit to Diablo residents that live on Diablo Road and demanded that reasonable access be provided to those residents.

David Mackesey (read by Tony Geisler) expressed disagreement with the DMAC unanimous vote at the September 2022 regular meeting. David requests that the item be put back on the agenda.

Christine Chartier, DCSD Director, stated that Article V of the DCSD bylaws was violated when she was denied a request to add an agenda item to the April 2023 DCSD agenda.

Kathy Torru, DCSD General Manager, provided the following clarification in response to public comments concerning the September 2022 DMAC vote to recommend a County ordinance code amendment that would require county permitted fences and walls to be erected at least 3 feet off DCSD-maintained streets:

- The 3-foot set back agenda item was a DMAC agenda item, not a DCSD item, because the DCSD does not have land use authority. Only DMAC has land use authority as an advisory body to the county.
- This county ordinance request does not govern DCSD-maintained streets. It governs private property land used for building of structures.

- The proposed overly was introduced at the June 2022 DMAC meeting. An email was then sent to all Diablo residents on June 23 notifying them of the proposed overlay and inviting comments and questions. Only 2 comments were received, and both were considered in the final draft. At the September 2022 DMAC meeting, the proposed overlay was unanimously approved by the Directors present. No objections or comments were made by any Director or member of the public.

BOARD/STAFF COMMUNICATION AND ACTIONS:

ADMINISTRATIVE:

President Urbelis presented for discussion Resolution 2023-01, an amendment to Article V of the DCSD Bylaw that would change the election of board officers every two years.

On motion of President Urbelis, second by Director Cox, Resolution 2023-01 was adopted. The motion passed 5-0.

President Urbelis opened the discussion for the election of DCSD President.

On motion of Director Slavonia, second by Director Cox, Kathy Urbelis was elected DCSD President for a term of 2 years.

Ayes:	Urbelis, Cox, Lorenz, Slavonia
Nayes:	None
Abstain:	Chartier

President Urbelis opened the discussion for the election of DCSD Secretary.

On motion of Director Cox, second by Director Slavonia, Christine Chartier was elected DCSD Secretary. The motion passed 5-0.

Director Cox introduced Ordinance No. 2023-01, Repealing and Replacing Ordinance No. 2002-01 and Ordinance Chapter 6-6 – Encroachments, and requested GM Torru read aloud the staff report and ordinance. GM Torru read and introduced Ordinance No. 2023-01. A discussion amongst the Directors followed the reading.

On motion of Director Cox, second by Director Slavonia, Ordinance No. 2023-01 was introduced as written and will be included on the May 9, 2023, agenda for adoption consideration. The motion passed 5-0.

Director Chartier introduced the concept of a DCSD digital handbook, an education piece for Diablo residents to better understand DCSD's responsibilities and private property owner responsibilities. President Urbelis suggested Director Chartier work with the DPOA to leverage the information that already exists on the DPOA website.

ROADS:

General Manager Torru presented the updated status of the Town of Danville's Diablo Road Culvert Replacement Project: as of this meeting, completion of the project and the opening of Diablo Road has been delayed until Tuesday, April 18th. Consequently, the Avenida Nueva entrance/exit will continue to be closed until then. The project and the road closure have gone smoothly overall, and most residents appreciate the measures taken by the Board to keep the community safe.

General Manager Torru announced that the 2022-23 winter storm repairs are complete. The DCSD is working with FEMA to qualify for federal and/or state reimbursements for storm damage expenses.

Director Cox presented for discussion the proposal from Dryco Construction Inc. to repair a section of El Nido that is failing and in need of repair. On motion of Director Lorenz, second by President

Urbelis, the Board authorized Director Cox and GM Torru to negotiate a contract with Dryco Construction Inc. for the repair of El Nido located between 1828 and 1832 El Nido for an amount not to exceed \$35,000. The motion passed 5-0.

SECURITY:

Deputy Buergi stated that there were no incidents to report. Deputy Buergi announced that he will be retiring in June and that no replacement has been identified.

CONSENT CALENDAR:

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

REPORTS:

CONTRA COSTA COUNTY: None.

DIABLO PROPERTY OWNERS REPORT: Leslie Keane, DPOA President, reported on publication of its spring *Devil's Advocate* this past month, noted that a Spring Social sometime in May or June is being planned, and that flags will be on display for Memorial Day. The DPOA presented the Teichert Construction workers, the contractor performing the Diablo Road work, with girl scout cookies to show Diablo's appreciation for their work.

DIABLO COUNTRY CLUB: None

DIRECTOR COMMENTS:

President Urbelis, in response to Director Chartier's public comments, stated that the DCSD Bylaws do not apply to DMAC so there was no violation of the DCSD Bylaws. Therefore, the request from Director Chartier to add discussion of the 3-foot setback, which was passed by DMAC, was inappropriate for DCSD. Furthermore, without any justification for revisiting a unanimously approved prior DMAC Board decision, there was no reason to revisit the subject.

Director Chartier stated that concerns communicated to her from members of the community prompted her to make that agenda item request.

Director Slavonia stated his desire for the Board to review and update the outdated 1993 Ordinance Code and for the Board to develop a Records Retention Policy to organize the 50 years of DCSD documents currently filed in stacks of boxes in a storage unit.


FUTURE AGENDA ITEMS:

Review the 2023-24 Budget Draft.

CALL OF NEXT MEETING/ADJOURNMENT:

President Urbelis called the next meeting for May 9, 2023. The meeting will be conducted in-person at the Diablo Country Club. There being no further business, the meeting was adjourned at 9:00 p.m.

Diablo Community Services District by
Kathy Torru, General Manager

From: Maryann Cella maryann.cella@gmail.com 
Subject: Public comments to be read into the record for the DCSD meeting tonight

MC

To:

Cc: DCSD General Manager generalmanager@diablocsd.org

External (maryann.cella@gmail.com)

Please read aloud and enter this email into the DCSD record for the April 11th, 2023 regular DCSD meeting.

Good evening, Directors. We are out of town tonight with family members visiting for the Easter holiday and regretfully are unable to attend tonight's meeting.

We have several comments relevant to tonight's meeting.

1. Article 5 of the DCSD by-laws states in pertinent part that "[t]he President shall approve all items to be included in meeting agendas. **However, any Board member may place an item on the agenda.**" [bold and italics added]

In violation of that by-law, the DCSD Board President wrongly denied Director Chartier's timely request to put on tonight's meeting agenda an extremely important item with far-reaching ramifications----the County's proposed new and unprecedented zoning law and associated "Diablo Overlay Zoning District" for all "private roads established by use" in Diablo.

We ask that henceforth the Board President comply with DCSD by-laws and that the Board tonight set a date and time for a special public meeting of the DCSD to address the County's proposed new and unprecedented zoning ordinance regulating road setbacks for all Diablo walls and fences. The Board should provide every Diablo resident at least one week of notice of such meeting and, most importantly, provide a full explanation of the potential impact of this ordinance and associated Diablo Overlay District on individual properties, and how the County is purporting to exercise jurisdiction over our private roads with no public easements. The Board needs to also explain to residents why the current DCSD encroachment ordinance for walls and fences is insufficient and why the County cannot simply cooperate with DCSD in making residents aware of DCSD's ordinance.


DCSD has never considered this ordinance at a public meeting even though the ordinance purports to regulate every private road within DCSD's jurisdiction as well as every "private road established by use" within the entire community of Diablo. The full ramifications of the ordinance need to be fully vetted. For example, the ordinance would apply not only to DCSD-maintained roads but other Diablo roads such as Diablo Lakes Lane that have never been accepted into the DCSD. Also, the ordinance would require increasing setbacks from the road as roads are repaved and the width of the roads expands. The ordinance would apply to the DCSD itself and would potentially have prohibited, for example, temporarily blocking Avenida Nueva for the 3 weeks ending April 13th. The ordinance purports to "grandfather" existing walls and fences. What happens if existing walls and fences are torn down or destroyed or if an owner wishes to raise their height or alter their appearance?

DMAC apparently reviewed and recommended approval of the proposed ordinance in September 2022. Diablo residents that had objected to the proposed ordinance when it was first announced in late Spring 2022 were led by County staff to believe the ordinance would be on the **DCSD** agenda in September, not **DMAC's**, and therefore neither knew about nor participated in **DMAC's** review. The fact that DMAC reviewed the ordinance and recommended its approval is no reason for DCSD not to act in our community's best interests and allow a full public review of the ordinance for the first time. Whose interest would be served by DCSD not reviewing it and hearing about the community's concerns? Our community deserves a DCSD review.

2. DCSD must recommend tabling of the adoption tonight of a "Repeal and Replace" ordinance regarding encroachments. That immediate adoption with a mere 4 days' notice would be recommended (by whom?) for an ordinance that would impact every property owner in our community is beyond understanding. Whose interest is being served by the repeated use of "surprise" ordinances being on the DCSD agenda for immediate adoption? I ask that the DCSD staff and President cease and desist from attempting to railroad Board members (along with an unsuspecting community) into adopting items that require thoughtful consideration over several meetings and direct public notice to individual residents.

3. I applaud the adoption of an amendment to the current DCSD by-laws to clarify the exact term for Board officers and to hold immediate elections tonight for all such officers. The community and the Board are best served by having several Board members with experience in Officer positions, particularly that of the office of President.

Thank you for volunteering to serve on the DCSD Board. It is an important position that carries a fiduciary responsibility towards our residents.

From: Charlie Merrill CMerrill@merrillgrouplaw.com 
Subject: Please read this message at your meeting tonight or whenever you conduct your next meeting.
Date: April 11, 2023 at 4:15 PM
To: DCSD General Manager (generalmanager@diablocsd.org) generalmanager@diablocsd.org

CM

External (cmerrill@merrillgrouplaw.com)

I have reviewed the DMAC Minutes dated September 13, 2022 as to land use which includes an ordinance that is proposed to be sent the County for their adoption which reads: “ No fence, retaining wall or similar structure may be established within three feet of any private road measured from the edge of the road established by use. Existing fences and structures will be grandfathered.” The explanation that follows reads: The proposed Diablo overlay applies only to new projects and would have no impact on existing structures. Landscape vegetation and materials are excluded.

With all due respect, the proposed ordinance is seriously flawed, poorly written and is at best ambiguous with the ambiguity compounded by the explanation. I point out the following:

1. ‘road established by use’ is not clear, does not meet the proposed “intent to safe guard road travel’ and opens up an unknown phrase with no definition. Defining a road by use is nonsensical. If you want to include the existing roads, say so. Lots of choices are available such as “the roads as currently and historically paved with asphalt.” Use has nothing to do with roadway locations. Use is dogs running on the road, people putting out garbage cans, cars and trucks and bicycles riding the roads. I can’t believe we are creating an ordinance that could be interpreted that invited guest or those we have allowed use of our roads now have a right to use them because of historic or established use. Does Halloween evening on Alameda Diablo create an established use?
2. “similar structure” what does that mean? Do you mean ‘improvements’? or improvements comprised of man made materials, wood and ?. This is further confused by your explanation which reads: ...materials are excluded. Fences are made of materials. If you intended “rock “ to be allowed in the 3 foot area, aren’t many walls built with rock or stone? a. As an aside, if the goal is to allow free passage of motor vehicle, why would you allow someone to plant hedges that can grow large or trees with branches that will soon grow into the roadway?
3. “grandfathered” is not a term of art. If you desire existing structures be allowed to remain, say so. i.e. all existing structures, fences and retaining walls in existence when this ordinance is adopted are not subject to this ordinance and shall be allowed to remain. If you only want to allow the fences, etc. to remain that by now have acquired an easement, say so.

Thank you for taking to the time to listen to this message/memo.

Charlie Merrill



From: Ray Brant r_abrant@sbcglobal.net 📧
Subject: Proposed Ordinance-3-feet wall/fence road set back
Date: April 7, 2023 at 3:07 PM
To: DCSD General Manager generalmanager@diablocsd.org
Cc:

External (r_abrant@sbcglobal.net)

Kathy,

I am requesting that the proposed 3-foot wall/fenceroad set back ordinance be placed on a DCSD agenda for community input. After the community has a chance to see and discuss this it should be voted on by the DCSD & DMAC Board.

Please read this into the Board Minutes on Tuesday April 11th.

Regards,
Ray Brant
Past President DCSD

Good evening.

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

I have spoken at many DCSD meetings since 1998. I am largely 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.

As you likely recall, I spoke at the January DCSD meeting, representing all of the residents of upper Mt. Diablo Scenic Blvd. At that time, we requested that the DCSD use our fees to re-paint the double yellow lines on Upper Scenic. We asked that you respond to us in writing and that the work be completed by the end of February. We did not receive a reply, so we asked again in February. Again, we did not receive a reply (and the March meeting was cancelled), so we are now asking that this item be placed on the April DCSD Meeting Agenda.

I know we all have road-related problems to report – but Scenic is the only road in Diablo that has had a fatality. Further, in my personal view, this fatality was the direct consequence of the DCSD failing to enforce its own Ordinance Code, Chapter 6-6: Encroachments, one of the topics on today’s agenda.

We would very much appreciate your applying our DCSD funds to improving safety on Mt. Diablo Scenic by refreshing the double yellow line striping. We hope to see this on the April meeting agenda for timely action as the peak season for traffic on Scenic has begun.

Thank you,

Nicola Place and

Steve and Wendy Moore
Sketch and Marti Sketchley
Carol Mulcahy
Paul and Hannah Craddick
Brian Moore
Emily Kevorkian
Carol Berendsen
Grace and Randy Su

Colleen and Winston Cervantes
Hsiu-Li Cheng
Jenny and Lloyd Lee
Peter and Mayra Hypnar
Nancy and Hal Seibert
Leslie Forman
Laurie Bain
Gun Johnson

Tuesday, April 11, 2023

Public Comment, DCSD Board Meeting

Jeff Eorio, Diablo Resident

About your discussion tonight of the bylaws as requested last meeting, it is imperative for the good of the Diablo community and for the governing of our special district that Kathy Urbelis remain as President of the Board. Kathy has successfully led this District for the past several years through two expensive lawsuits that cost the district hundreds of thousands of taxpayer dollars and resulted in absolutely no change in how our publicly maintained streets are used and by whom. She also helped guide the District through this past winter storm damage which is still ongoing. There is no current Board member with the knowledge, skill, understanding of public law who is up to the challenge of leading our special district for the next couple of years. She has earned her position and must be retained without delay. Any effort to try to change our leadership at this time will be met by very strong community opposition. I can assure you that residents are ready willing and able to come out to support Kathy as your continuing President.

Additionally, I would ask, as was asked at the last Board meeting, for the District to assist in the re-striping Mt. Diablo Scenic Blvd. as a way to assure the residents of Mt. Diablo Scenic that they too are a part of our special district and that they are valued. It is an important public safety measure and it needs to be funded and hopefully agenized for a future meeting. I know you don't want to "touch" Mt. Diablo Scenic, but the District residents that reside on that road deserve your attention. Just purchase the paint, that way you won't have any responsibility beyond a receipt for paint!

The Board should be focusing it's time on road, culvert and creek safety and maintenance. It should also adopt a records retention policy to digitize District records for the ease of access to District records. This has been an agenda item for well over one year. Once the records have been digitized, the Board can determine what should be saved and what should be destroyed. The District spent tens of thousands of dollars to review, read, copy and provide documents during the Tiernan debacle, if the records had been digitized, the District could have save most of that money, instead, lost District proceeds due to poor record management. The "Safe and Secure Slate" made this an election issue, it is not a controversial issue, it is good government, pure and simple!

On another note, I requested at the last meeting and previous meetings that the members of the "safe and secure" slate tell me their source of where either I or Bart Hobden ever asked for a 4th vehicular entrance to Diablo. I will be asking this at again at every meeting until I get an answer as I know you all never heard it directly from me, from the meetings that you never attended or the minutes that you probably never read. So what was the source of your misinformation that you spread during the election cycle? Any number of Diablo residents would like to know your source?

Thank you. [og1] Jeff Eorio