

**DIABLO COMMUNITY SERVICES DISTRICT  
BOARD OF DIRECTORS  
REGULAR MEETING AGENDA<sup>1</sup>  
OUTSIDE DIABLO COUNTRY CLUB RED HORSE TAVERN TOO  
TUESDAY, MAY 9, 2023, 7:30 P.M.**

**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) Director Lorenz and GM Torru to present for discussion the draft 2023-24 Budget.
- b) Director Lorenz and GM Torru to present for discussion the DCSD Q3 2023 Financial Report.
- c) GM Torru to present for Board approval Resolution 2023-02, authorizing the Special Tax rate for 2023-24, approved by voters in 2018 as Measure B.
- d) Directors Cox and Lorenz to present Ordinance No. 2023-01, Repealing and Replacing Ordinance No. 2002-01 and Ordinance Code Chapter 6-6 – Encroachments, for second reading and adoption.

**ROADS:** Director Cox & General Manager

- a) Director Cox and GM Torru to request authorization to spend up to \$10k to obtain bid proposals for the permanent repair of the 2121 Alameda Diablo creek bank erosion and the repair of the 2145 Alameda Diablo creek bank erosion undermining Alameda Diablo road and bridge.
- b) GM Torru to update Board on FEMA application.

**SECURITY:** Deputy Sheriff Buergi

- a) Present security report since the last Board update.

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<sup>1</sup> Agenda attachments are available on the DCSD's website ([www.diablocsd.org](http://www.diablocsd.org)) home page under Upcoming Events.

2. **CONSENT CALENDAR**

- a) Approve the minutes of the April 11, 2023, Regular Meeting.

3. **REPORTS**

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

4. **DIRECTOR COMMENTS**

5. **FUTURE AGENDA ITEM ANNOUNCEMENT**

- a) Present the 2023-24 Budget for adoption.

6. **CALL OF NEXT MEETING & ADJOURNMENT**

The next DCSD Regular Board meeting is scheduled for June 13, 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](mailto: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>.

Diablo Community Services District  
FY 2023-24 Budget

FY-July thru June	Actual		2024 Budget					Forecast			
	2021-22	2022-23*	Q1	Q2	Q3	Q4	YTD	2025	2026	2027	2028
<b>Beginning Cash</b>	646,522	507,532	481,652	278,539	589,761	333,364	481,652	215,360	229,194	117,376	252,869
<b>Revenue</b>											
Ad valorem & special tax	840,392	869,326	-	493,218	-	403,542	896,760	923,663	951,373	979,914	1,009,312
Other	8,144	65	-	-	-	-	-	-	-	-	-
<b>Total Income</b>	<b>848,536</b>	<b>869,391</b>	<b>-</b>	<b>493,218</b>	<b>-</b>	<b>403,542</b>	<b>896,760</b>	<b>923,663</b>	<b>951,373</b>	<b>979,914</b>	<b>1,009,312</b>
<b>Expenses</b>											
Security	349,312	327,146	119,046	96,246	96,246	101,446	412,985	421,864	447,176	474,007	502,447
Roads/bridges/culverts	530,708	357,815	25,000	58,200	129,800	405,000	618,000	368,000	493,000	243,000	43,000
Professional	68,384	171,670	16,302	27,550	14,850	14,900	73,602	73,250	76,300	80,100	83,212
Insurance	41,015	40,389	41,015	-	-	-	41,015	41,015	41,015	41,015	41,015
Administrative	2,352	2,552	1,750	-	15,500	200	17,450	5,700	5,700	6,300	6,300
<b>Total Expenses</b>	<b>991,771</b>	<b>899,572</b>	<b>203,113</b>	<b>181,996</b>	<b>256,396</b>	<b>521,546</b>	<b>1,163,052</b>	<b>909,829</b>	<b>1,063,191</b>	<b>844,422</b>	<b>675,974</b>
Net Income	(143,235)	(30,181)	(203,113)	311,222	(256,396)	(118,004)	(266,292)	13,834	(111,818)	135,493	333,338
Incr/(decr) in AP/prepays	4,245	4,301									
<b>Ending Cash</b>	<b>507,532</b>	<b>481,652</b>	<b>278,539</b>	<b>589,761</b>	<b>333,364</b>	<b>215,360</b>	<b>215,360</b>	<b>229,194</b>	<b>117,376</b>	<b>252,869</b>	<b>586,207</b>
<b>Other Financial Data</b>											
Reserves (bridge/culvert) (Unfunded)	667,600	760,928					857,287	953,705	1,051,216	1,149,853	1,249,648

\* Actual thru Q3 plus Q4 Forecast

Diablo Community Services District  
Financial Report  
March 31, 2023

	July	August	September	October	November	December	January	February	March	Actual YTD	Budget YTD
<b>Beginning Cash</b>	507,532	474,611	440,855	408,757	388,606	346,588	785,748	755,966	457,175	507,532	507,532
<b>Revenue</b>											
Tax revenue	-	-	-	13,422	-	470,269	-	-	-	483,691	468,191
Other revenue	4	3	3	3	2	4	6	146	(115)	56	1,150
<b>Total Income</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>13,425</b>	<b>2</b>	<b>470,273</b>	<b>6</b>	<b>146</b>	<b>(115)</b>	<b>483,747</b>	<b>469,341</b>
<b>Expenses</b>											
Sheriff services*	27,572	28,695	27,691	27,030	27,614	25,949	27,541	27,394	26,660	246,146	295,639
Road/bridge/culvert/trail	-	-	-	-	1,872	-	255,969	60,584	(3,110)	315,315	204,000
Professional services	5,485	4,529	4,880	14,330	2,210	2,175	16,588	12,173	43,236	105,606	61,362
Insurance	40,389	-	-	-	-	-	-	-	-	40,389	41,015
Administrative	-	1,548	-	-	-	-	431	-	393	2,372	19,750
<b>Total Expenses</b>	<b>73,446</b>	<b>34,772</b>	<b>32,571</b>	<b>41,360</b>	<b>31,696</b>	<b>28,124</b>	<b>300,529</b>	<b>100,151</b>	<b>67,179</b>	<b>709,828</b>	<b>621,766</b>
Net Income	(73,442)	(34,769)	(32,568)	(27,935)	(31,694)	442,149	(300,523)	(100,005)	(67,294)	(226,081)	(152,425)
Incr/(decr) in payable/prepaid	40,521	1,013	470	7,784	(10,324)	(2,989)	270,741	(198,786)	(33,120)	75,310	
<b>Ending Cash</b>	<b>474,611</b>	<b>440,855</b>	<b>408,757</b>	<b>388,606</b>	<b>346,588</b>	<b>785,748</b>	<b>755,966</b>	<b>457,175</b>	<b>356,761</b>	<b>356,761</b>	
<b>Other Financial Data</b>											
Prepaid/deposit											
Reserves (bridge/culvert)*	672,600	677,600	682,600	687,600	692,600	730,928	735,928	740,928	745,928		
Accounts payable	71,884	72,895	73,366	81,151	70,827	67,838	338,578	112,399	106,674		
Accrued expense											

**Notes**

\* reserves are unfunded

## RESOLUTION NO. 2023-02

### RESOLUTION OF THE DIABLO COMMUNITY SERVICES DISTRICT CONFIRMING RESULTS OF MEASURE B SPECIAL TAX ELECTION AND DIRECTING COUNTY AUDITOR TO LEVY VOTER-APPROVED TAX

**WHEREAS**, at an election held on March 6, 2018, the Diablo Community Services District (“District”) was successful in obtaining more than two-thirds voter approval to levy a qualified special tax known as Measure B (the “Tax”), as evidenced by the letter from the Contra Costa County Clerk dated March 14, 2018 containing the Certificate of Election Results; and

**WHEREAS**, the Tax set the initial rates for Improved Parcels, Unimproved Parcels, and the Diablo Country Club at \$662.26, \$128.06, and \$23,444.68, respectively; and

**WHEREAS**, the Tax allows for an annual inflation adjustment, and the District has calculated the rates for Fiscal Year 2023-2024 to be \$767.74, \$148.46, and \$27,178.82 for Improved Parcels, Unimproved Parcels, and the Diablo Country Club, respectively; and

**WHEREAS**, the District desires at this time to request that the Contra Costa County Auditor enter the Tax on the tax roll for collection and distribution by the Contra Costa County Tax Collector for Fiscal Year 2023-24;

**NOW, THEREFORE, BE IT RESOLVED** as follows:

**Section 1.** **Recitals.** The foregoing recitals are true and correct.

**Section 2.** **Direction to County Auditor to Levy and Collect Tax for Fiscal Year 2023-24.** It is hereby certified that the proceedings in connection with the March 6, 2018 Tax election have been accomplished in accordance with law. As such, the Contra Costa County Auditor is directed to include the Tax on the tax rolls for Fiscal Year 2023-24 as follows: **\$767.74** for Improved Parcels, **\$148.46** for Unimproved Parcels, and **\$27,178.82** for the Diablo Country Club.

**Section 3.** **Not Special Benefit Assessment; No New Taxing Area.** The Tax is a special tax approved by more than two-thirds of the voters of the District voting on the measure, as authorized by California Constitution Article XIII A and 50075. The procedures applicable to special benefit assessments, fees and charges set forth in California Constitution Article XIII D do not apply to the Tax. In addition, the Tax shall be levied within the boundaries of the existing District. No new taxing area will be formed for purposes of the levy of the Tax.

**Section 4.** **Actions to Facilitate Levy of Tax.** The President of the Board of Directors is hereby authorized to take, for each fiscal year following 2023-2024, any such further actions as may be required to facilitate the successful levy and collection of the Tax in the District including, but not limited to, each year providing the County Auditor with a list of parcels upon which the Tax shall be levied, and to respond to any further requests of the County Auditor with respect to such Tax.

**Section 5.** **Collection.** The Tax shall be collected in the same manner as ordinary ad valorem taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in case of delinquency as is provided for ad valorem taxes, and the County

Auditory is hereby authorized to deduct reasonable administrative costs incurred in collecting any such special tax.

**Section 6.**    **Effective Date.** This Resolution shall take effect on and after its adoption.

\* \* \* \* \*

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

Adopted by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

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Kathy Urbelis, President of the Board

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Kathy Torru, General Manager

## STAFF REPORT

**DATE:** May 9, 2023  
**TO:** DCSD Board Members  
**RE:** Update to District Encroachment Ordinance

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### 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 and "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. 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.

At its February 14, 2023, meeting, the Board reviewed the existing and proposed encroachment ordinances and provided direction to staff to return with the proposed encroachment ordinance, which allows the District to remove encroachments if individual property owners fail to do so and indicates that those property owners are responsible for the District's costs to remove.

At the April 11, 2023, meeting, the Board reviewed the proposed encroachment ordinance and unanimously approved the document with instructions for the general manager to present the ordinance at the May 9<sup>th</sup> Regular Board Meeting for a second reading and adoption.

Please note that once the District eventually adopts a comprehensive update to its Ordinance Code, the proposed encroachment ordinance would remain part of the updated Code (although it may require minor revisions at that time to confirm all definitions align, etc.)

### **RECOMMENDATION**

The second reading and adoption of Ordinance 2023-01, Repealing and Replacing Ordinance No. 2002-01 and chapter 6-6.



**ORDINANCE NO. 2023-01**

**AN ORDINANCE OF THE DIABLO COMMUNITY SERVICES DISTRICT REPEALING AND REPLACING ORDINANCE NO. 2002-1 AND CHAPTER 6-6**

**WHEREAS**, the Diablo Community Services District (“District”) adopted an encroachment ordinance in 2001 which is now over 22 years old; and

**WHEREAS**, The roads maintained by the District 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, including emergency vehicles, so it is imperative that any “encroachment” on or damage to a District-maintained road is cleared away quickly because it could result in inconvenience or dangerous conditions to Diablo residents, including but not limited to increased response times for emergency vehicles; and

**WHEREAS**, the District desires to update the encroachment provisions in its ordinance code in order to clarify certain inconsistencies and the process for the District’s handling of encroachments; and

**WHEREAS**, the District held a study session at its February 14, 2023 meeting to obtain input from Directors and the public on proposed updates to the encroachment ordinance; and

**WHEREAS**, repealing and replacing Chapter 6-6 is not a “project” under the California Environmental Quality Act (“CEQA”) Guidelines section 15378(b)(2) and (b)(5) because it is an administrative and organizational activity that will not result in direct or indirect environmental impacts, and even if it is a “project,” it can be seen with certainty that it will not result in an impact to the environment pursuant to CEQA Guidelines section 15061(b)(3) because it does not involve or authorize any physical construction or other action that would impact the environment.

**NOW, THEREFORE, THE DISTRICT DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1: The above recitals are true and correct and are incorporated herein.

SECTION 2: Ordinance No. 2023-01 attached hereto as Exhibit A is hereby adopted, and Ordinance No. 2001-01 and Chapter 6-6 of the Ordinance Code of the Diablo Community Services District are hereby repealed. Exhibit A shall replace the existing Chapter 6-6 and shall be codified in the District’s Ordinance Code. No other sections of this Ordinance No. 2023-01 shall be codified.

SECTION 3: This Ordinance No. 2023-01 shall take effect and be in force 30 days from the date of its passage; and, before the expiration of 15 days after its passage, it or a summary of it shall be published in a newspaper of general circulation in Contra Costa County.

Passed, approved, and adopted by the Board of Directors of the Diablo Community Services District on this 9th day of May 2023 by the following vote:

AYES:

NOES:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
Kathy Urbelis, Board President

## EXHIBIT A

### Chapter 6-6 ENCROACHMENT ORDINANCE

#### 6-6-1 Findings and Purpose.

- a. That DCSD-Maintained Streets are narrow with no adjacent sidewalks, and are used by pedestrians, children, and cyclists and other mechanical and personal modes of transportation and play.
- b. DCSD-Maintained Streets are the only access for emergency vehicles to service property and persons within Diablo.
- c. Encroachments onto DCSD-Maintained Streets may result in dangerous conditions or severe inconvenience to property owners and residents, including but not limited to increased response times for emergency vehicles or the failure of a DCSD-Maintained Street.
- d. It is the responsibility of a property owner to remove any encroachment onto a DCSD-Maintained Street.
- e. Encroachments that pose a safety threat to persons or the integrity of DCSD-Maintained Streets or prevents emergency vehicle access will be immediately removed by the DCSD at the property owner's expense.
- f. DCSD does not have a Public Works Department and therefore it is necessary for DCSD to contract with independent contractors to remove encroachments should a property owner fail to do so, the cost of which shall be borne by the property owner.

#### 6-6-2 Definitions.

- a. **Encroachment** is an obstruction that prevents full or partial access to a DCSD-Maintained Street or threatens the integrity of the DCSD-Maintained Street. Encroachments include, but are not limited to, any structures such as signs, fences, guardrails, or walls; or any vegetation, such as trees, shrubs, or other growing materials; or landscape materials such as rocks, irrigation materials, or bark; or water or mud from a drainage system, failed creek bank, or hillside. Encroachment also includes any fences, walls and similar structures within 3 feet of the paved street as described in the "Diablo Overlay" provisions of the Contra Costa County Code, as such provisions may be amended from time to time.
- b. **DCSD-Maintained Streets** means those streets and bridges located within Diablo that are maintained and secured by DCSD pursuant to the DCSD 1969 Formation Resolution.

#### 6-6-3 Violations and Removal of Encroachment.

- a. No property owner shall permit an encroachment to lie on, damage or impede a DCSD-Maintained Street. If a property owner's property contains an encroachment or if 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, General Manager, or Sheriff within 15 days. The property owner is responsible for encroachment removal costs.

- b. If an encroachment poses a safety threat to persons or DCSD-Maintained Streets or prevents timely emergency vehicle access, as determined by the Board of Directors, General Manager, or Sheriff, the DCSD will immediately contact a third-party contractor to remove the encroachment and mitigate the threat to the DCSD-Maintained Street. The property owner is responsible for any and all costs associated with the encroachment removal and mitigation, which shall be paid to the District within 30 days of its removal of the encroachment.

**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 18<sup>th</sup>. 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)

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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-foot wall/fence road set back  
**Date:** April 7, 2023 at 3:07 PM  
**To:** DCSD General Manager generalmanager@diablocsd.org  
**Cc:**



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External (r\_abrant@sbcglobal.net)

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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 4<sup>th</sup> 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