

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS MEETING MINUTES
DIABLO COUNTRY CLUB RED HORSE TAVERN
MAY 9, 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:

Nicola Place spoke about upper Mt Diablo Scenic Blvd safety and asked the DCSD to fund the restriping of the road.

Alan Bonny asked that the DCSD consider a working session to discuss the proposed County 3-foot Setback Ordinance.

Ray Brant, see attached correspondence regarding the proposed County 3-foot Setback Ordinance.

Kay Batts expressed concern about the state of Kay's Trail and asked the Board to inspect Kay's Trail for storm damage and prepare a maintenance plan.

Jeff Eorio spoke in support of the proposed County 3-foot set back ordinance; asked the Board to consider restriping Mount Diablo Scenic Blvd; to assist the Mount Diablo Scenic property owners secure a road maintenance agreement with the Mt Diablo State Park; and to make records retention and the digitization of the District's records a priority.

Maryann Cella, see attached correspondence regarding multiple topics.

Mugs Freeman asked that the Board members work together on these important issues and expressed support for the comments made by Alan Bonny, Ray Brant and Maryann Cella.

Dee Geisler expressed concern about the County creating a Diablo overlay.

David Mackesey (read by Tony Geisler) thanked the Board for its emergency response and management of the 2022-23 winter storm damage and asked that adoption of the encroachment ordinance be postponed to a later date.

Tony Geisler expressed concern about the County proposed 3-foot Setback Ordinance.

BOARD/STAFF COMMUNICATION AND ACTIONS:

ADMINISTRATIVE:

Director Lorenz presented the DCSD 2023-24 Budget for discussion. Director Chartier expressed concern about the \$400k earmarked for the permanent fix of the creek bank on Alameda Diablo and

the need for the Directors to discuss where the District's financial responsibility ends, and the property owner's responsibility begins. The directors expressed concern about the financial impact of the 2022-23 winter storm on the District's cash reserves. Director Lorenz and General Manager Torru confirmed that the budget does not authorize expenditures, and that any future expenditures, including the creek bank fix, would return to the Board for a decision.

Director Lorenz asked that any additional questions about the budget be directed to him before the next meeting so that a final budget can be presented to the Board for adoption at the June 13, 2023 Regular Meeting.

General manager Torru presented the DCSD Q3 financial report, noting that the 2022-23 winter storm damage had a significant impact on the District's financial position. A copy of the report is available on the District's website.

Director Lorenz presented Resolution 2023-04, authorizing the Special Tax rate for 2023-24 and directing the County to collect the tax on behalf of the District. On motion of Director Lorenz, second by Director Slavonia Resolution 2023-04 was adopted. The motion passed 5-0. See exhibit A

Director Cox introduced for a second reading 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 Ordinance No. 2023-01 and included a proposed clarification to confirm that existing structures would be allowed to remain. A discussion amongst the Directors regarding the appropriate time to adopt the ordinance followed the reading with directors expressing that it may be prudent to wait until the County adopts its proposed overlay/rezoning related to encroachments in Diablo and that the proposed ordinance did not contain a "grandfather" clause. General counsel Crawl explained that due process afforded by the state and federal constitutions requires a newly adopted ordinance to apply going forward; it does not apply to past actions. So, permanent structures like walls and fences that exist today would not be impacted by the new encroachment ordinance. The Board decided to table the item to allow for edits and to bring the ordinance back to the Board next month for a new first reading after Director Cox makes additional edits and clarifications related to the reference to the proposed County 3-foot Setback Ordinance.

[Director Slavonia exited the meeting at 9:02 PM]

ROADS:

Director Cox and General Manager Torru requested authorization from the Board to spend up to \$10k to obtain bid proposals for the permanent repair of the compromised creek banks at 2121 and 2145 Alameda Diablo. On motion of Director Lorenz, second by Director Urbelis, the Board authorized the expenditure. The motion passed 4-0. Director Slavonia was not present for the vote.

General manager Torru reported that the DCSD continues to work with FEMA to qualify for federal and/or state reimbursements for storm damage expenses.

[Director Slavonia returned to the meeting at 9:09 PM]

SECURITY:

Deputy Buergi stated that there was one crime incident last month, a contractor's tools were taken from his truck although it was not confirmed that the crime occurred in Diablo. Deputy Buergi confirmed that he will be retiring in June and that no replacement has been identified.

CONSENT CALENDAR:

On motion of Director Lorenz, second by Director Urbelis, the Directors approved the consent calendar. The motion passed 5-0.

REPORTS:

CONTRA COSTA COUNTY: Cameron Collins, Supervisor Candace Andersen's liaison, had nothing to report.

DIABLO PROPERTY OWNERS' REPORT: None

DIABLO COUNTRY CLUB: Hank Salvo, Club liaison, reported that the clubhouse renovation is moving forward slowly.

DIRECTOR COMMENTS:

President Urbelis reported that the District had received the County's proposal for the 3-foot Setback Ordinance and that Directors Cox and Lorenz and general manager Torru were reviewing the language. The County proposal and Directors' Cox and Lorenz recommendations will be presented at the DMAC June 13, 2023 Regular Meeting. The County Planning Commission will review the 3-foot Setback Ordinance at their July 12, 2023 meeting.

Director Chartier expressed concern that a letter sent by the general manager to the County in February 2023 had incorrect Director's names listed at the bottom of the letterhead and that the current Board was unaware of the letter. General manager Torru explained that the County correspondence was authorized by DMAC at its September 13, 2022, meeting. Director Cox confirmed that the general manager's correspondence was authorized by the Board at the September 2022 meeting. Cameron Collins, Supervisor Candace Andersen liaison, also confirmed that the correspondence was the DMAC correspondence from September 2022, and that she had made the request that General Manager Torru re-send that correspondence addressed to a different department within the County in February 2023.

FUTURE AGENDA ITEMS:

Adopt the 2023-24 Budget Draft.

CALL OF NEXT MEETING/ADJOURNMENT:

President Urbelis called the next meeting for June 13, 2023. The meeting will be conducted in-person at the Diablo Country Club. There being no further business, the meeting was adjourned at 9:30 p.m.

Diablo Community Services District by

Kathy Torru, General Manager

Exhibit A

RESOLUTION NO. 2023-04

**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: Urbelis, Cox, Lorenz, Salvonia, Chartier

NOES:

ABSENT:

ABSTAIN:

Kathy Urbelis, President of the Board

Attest:

Katharine Torru

Kathy Torru, General Manager

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. However, I decided to take a slightly different approach tonight and so I've written a short poem to share with you. Without further ado, please enjoy!

There is a wonderful Diablo road called Scenic

Which is so narrow it's ischemic!

It's been unsafe for years,

We've shed many tears,

But we hope it will someday be idyllic!

It's a magical place to call home,

Hosting many people who roam!

On foot and by bike

Most of them we like!

But we still call it The Danger Zone.

In two thousand nineteen,

On an afternoon quite frightening,

Poor Maayan Jones

Collided with a driver unknown,

Resulting in a fatal death scream.

We've begged and we've pleaded,
We've said what is needed,
We hope you'll soon find,
The right state of mind
To help the faded striping get treated.

I hate to sound like I'm keeping score,
But as I've said many a time before:
We've **PAID** our DCSD dues!
So we're singing the blues
Because we don't get the services we paid for.

~

On behalf of the residents of upper Scenic, also known as The Danger Zone,
Thank you and we hope to hear from you soon!

Nicola Place and

Steve and Wendy Moore
Sketch and Marti Sketchley
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 Johnston

Please enter the following into the meeting minutes.
I will email the secretary copies of the following.

I sent the following email to the Board and General Manager.
I did not get the courtesy of a response as to why my request was not granted.

As past DCSD/DMAC president and a 28 year resident I am troubled by the your actions. This Board is elected to serve the residents of Diablo we are not here to serve you.

From: Ray Brant <r_abrant@sbcglobal.net>

Subject: DCSD/DMAC May 9th, 2023 Agenda Item regarding County's proposed setback ordinance

Date: May 3, 2023 at 2:57:40 PM PDT

Dear Board and General Manager,

I am requesting that the below proposed Ordinance be placed on the May 9th agenda for both the DCSD and DMAC.

I understand that The County's proposed Ordinance to establish a three-foot setback for certain Diablo properties is different from the one recommended to the County for approval by the previous DMAC Board in September 2022. It is necessary that this rewrite be presented and discussed by the present Board DCSD-DMAC and be made PUBLIC.

Thank you,
Ray Brant

Tonight I want an ironclad guarantee that the County's setback Ordinances for Diablo be on the June meeting agendas for a joint DCSD/DMAC meeting.

Thank you,
Ray Brant

Dear Supervisor Andersen:

In early April, members of the Diablo community and at least three of the five Directors of the Diablo CSD and the Diablo MAC were surprised to learn that the County had tentatively placed on the Planning Commission's May 10th agenda a County Setback Ordinance for Diablo and a related County Overlay District Ordinance for Diablo (the "Ordinances").

One of the blindsided Directors asked the DCSD President to place the Ordinances on the DCSD agenda for its regular April meeting. Her request was rejected.

Since then, we have learned through a Public Records Act request to the County that unbeknownst to most DCSD/DMAC Directors, the DCSD General Manager has been working since January 2023 with County officials and staff to write the Ordinances and develop a plan to obtain support within the Diablo community and its government for the Ordinances. A memorandum summarizing your January 30, 2023 meeting with County staff (copied below) stated that the "next steps" prior to passage of the Ordinances would include the General Manager implementing an educational outreach plan to the Diablo community and the General Manager "taking this [presumably the Ordinances and the outreach plan] to her Board".

In the last two weeks, more than one DCSD Director and several of the signers of this letter asked the DCSD President to place the Ordinances on the May 9th DCSD and/or DMAC regular meeting agendas. The President responded by posting the DCSD agenda without the Ordinances item and cancelling the DMAC meeting. Meanwhile, County Planner Stan Muraoka (responding to a request from a concerned Diablo resident) tentatively rescheduled the Planning Commission hearing on the Ordinances for July.


In that your January 30th twin directives of outreach to the Diablo community and Board approval have not occurred and there is only one regular meeting of the DCSD and the DMAC prior to July, **we respectfully request that you ask County planner Stan Muraoka to delay indefinitely the Planning Commission's and the Board of Supervisors' consideration of the Ordinances until such time as you have received a copy of DCSD and DMAC 2023 resolutions including the following:**

1. The DCSD and DMAC Boards' recommendations that the County Board of Supervisors approve the Ordinances (with the Boards' resolutions to include the exact language of the Ordinances as they are to be placed on the Planning Commission's agenda).
2. The Boards' assurances that the Diablo community has received education about the effect of the Ordinances and an opportunity to comment and object.

Please advise us whether you will implement our requests at your earliest convenience. Thank you for your attention to this important matter. We appreciate your service to our residents.

Respectfully,

Ray Brant, immediate past DCSD President (925 381 0172)
Maryann Cella
Dolores Geisler
Tony Geisler
Christopher Harney
David Mackesey
Jeff Mini

From: Maryann Cella maryann.cella@gmail.com 
Subject: Comments for the May 9, 2023 DCSD Board meeting
Date: May 9, 2023 at 5:44 PM
To:



Cc: DCSD General Manager generalmanager@diablocsd.org

External (maryann.cella@gmail.com)

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PLEASE ENTER THESE COMMENTS INTO THE RECORD FOR THE ABOVE MEETING:

Dear DCSD/DMAC Directors:

I have comments on several different matters tonight:

1. PLEASE TABLE THE REPEAL AND REPLACE ENCROACHMENT ORDINANCE.

As I did in my letter last month, I recommend tabling the adoption tonight of a "Repeal and Replace" ordinance regarding encroachments. Further study and community engagement is needed. Here are just a few reasons to vote to table:

- 1). **The ordinance is open-ended.** One of its provisions defines encroachment to include "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." No one knows exactly what those "Diablo Overlay provisions" say in that they haven't been adopted yet. It is poor governance to subject our community to an undefined, unadopted ordinance.
- 2). **There is no provision grandfathering existing walls, fences, trees, and shrubs.** If passed, the ordinance would require immediate removal work on most Diablo properties along DCSD-maintained streets. Most of the Directors and the General Manager would be in violation of the new ordinance as would most of the community. Do you think that is what the community wants? How do you know? DCSD has had an encroachment ordinance for over 20 years. Why hasn't it been enforced? I would like the current President, who has been on the Board many years, and the GM, a longtime Board member, to answer that question. Whatever new ordinance is adopted, it must be uniformly and consistently enforced, and not occasionally and subjectively.
- 3). **The definition of "encroachment" is vague, subjective, and open-ended.** It includes any "obstruction that prevents full or partial access to a DCSD-Maintained Street or threatens the integrity of the DCSD -Maintained Street." There is no distance from the road limiting a fence or wall or plant-material from being deemed an "encroachment". The definition needs to be improved.
- 4). Every time a street in Diablo is paved, it expands. **Thus, more and more private property would be developmentally constrained by the ordinance over time.** The width of the streets needs to be defined in the ordinance as what now exists, or else by a specific width for specific road segments. Better yet, the ordinance should make clear that the roads will not be widened without the permission of the neighboring homeowners.

Directors, unless you can explain to all your neighbors exactly how this ordinance will work and you agree with that, PLEASE VOTE TO TABLE IT.

2. THE BOARD SHOULD OPERATE BASED ON DEMOCRATIC, NOT AUTOCRATIC, PRINCIPLES. I recommend that the Board Directors emphasize tonight the responsibility and the ability of each Director to fulfill their roles as equals on the Board. Unfortunately, the Board President continues to falsely assert that she has the sole authority under the Board bylaws to veto agenda items proposed by other Directors. She is wrong about the bylaws and displays a troubling arrogance toward other Directors and members of our community in asserting such authority. **I call upon the Board majority to make clear for the good of our community that EACH Director, ELECTED by our community as an equal to the others, has the right to place items on the agenda.**

As an example, I note that the DCSD President has continually refused Directors' (and residents') requests to put the County's proposed encroachment ordinance on the DCSD agenda. She claims that that proposed ordinance is not in DCSD's purview and that she has sole authority to determine DCSD's agenda, including the power to veto such requests. Both her claims are false. Of course the County's proposed ordinance is in DCSD's purview. DCSD is considering adopting an encroachment ordinance tonight. So is that subject matter not within its purview? Moreover, the DCSD was explicitly required by the County to educate Diablo residents about the County's proposed ordinance prior to its adoption and to enforce the County's ordinance if and when it is adopted. Clearly, the DCSD would be acting within its purview to weigh in on the ordinance. Indeed, the GM in a letter to County staff claimed that DCSD supports the County's ordinance, even though the President has never afforded the DCSD Board the opportunity to consider it.

3. THE GENERAL MANAGER NEEDS TO INFORM THE ENTIRE BOARD OF HER COMMUNICATIONS WITH OTHER JURISDICTIONS. ON MULTIPLE OCCASIONS, THE BOARD HAS BEEN BLINDSIDED ABOUT IMPORTANT POLICY MATTERS BECAUSE THE GM HASN'T INFORMED THE BOARD ABOUT HER INTERACTIONS. The General Manager has repeatedly undertaken interactions with County officials and staff and the Town of Danville staff without prior Board of Directors' authorization or failed to inform the Board of important policy questions that the Board needed to know about and decide, such as those being discussed in her ongoing communications with County staff regarding the County's proposed encroachment ordinance. The Directors should not have to rely on Public Records Act requests to the County or Town of Danville to keep apprised of the GM's activities.

Directors, at a minimum, please require the GM to copy you on all her communications with other jurisdictions and obtain prior Board authorization/direction for each new or substantially different matter and/or when policy decisions are needed.

4. THE GM NEEDS TO INFORM THE BOARD THAT COUNTY REQUESTS FOR DMAC REVIEW OF SETBACK VARIANCE/OTHER BUILDING APPLICATIONS ARE BEING KEPT OFF THE DMAC AGENDA BECAUSE OF A POLICY THAT LETS THE PRESIDENT AND VICE-PRESIDENT DECIDE WHETHER THEY WILL BE ON AN AGENDA. Last week, I asked the GM about a County notice I received about a setback variance request by a neighbor and whether the item would be on a DMAC agenda. I had some questions. The GM said DMAC had "no comment" and that there was a "longtime policy" giving the DCSD President and the Vice-President sole authority to decide if such matters are on the DMAC agenda.

Shouldn't all the Directors be informed about such requests and have the opportunity to place them on an agenda? I think so. In the matter currently under County review, for example, had the variance request been on the DMAC agenda, DMAC would have had the opportunity to discuss the DCSD encroachment ordinance and condition its recommendations for approval on compliance therewith. That was a missed opportunity.

I recommend that the Board change the policy to have the GM send County requests for review to every Director, giving each the opportunity to place the matter on the DMAC agenda. Also, if a resident has questions about such a request, the item should be placed on the agenda. When I was DMAC President for 6 years, all County requests for review were automatically placed on the DMAC agenda. We felt that policy best served all our residents, including those making applications to the County.

Thank you for your service to our community.

Sincerely,

Maryann Cella
resident since 1991