

**DIABLO COMMUNITY SERVICES DISTRICT  
BOARD OF DIRECTORS  
SPECIAL MEETING AGENDA<sup>1</sup>  
DIABLO COUNTRY CLUB RED HORSE TAVERN TOO  
TUESDAY, JUNE 13, 2023, 6:30 P.M.**

**CALL TO ORDER:**

**President: Kathy Urbelis**

**ROLL CALL:**

**Secretary: Christine Chartier**

**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. **CLOSED SESSION:**

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION pursuant to Government Code Section 54956.9(d)(2) (Receipt of the attached letter pursuant to from counsel for the Citizens of Diablo For Transparency.)

2. **RECONVENE IN OPEN SESSION:** Report out of closed session, if any.

3. **ADJOURNMENT:** The next DCSD Regular Board meeting is scheduled for June 13, 2023, at 7:30 pm at the 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>.

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

# MEMO

**To:** DCSD, DMAC & Related Individuals  
**From:** Charlie Merrill  
**Re:** Sept. 2022 Roadway Encroachment Ordinance  
a/k/a Diablo 3 ft Setback (“Encroachment Ordinance”)  
**Date:** 6/7/23

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On behalf of the Citizens of Diablo For Transparency, I provided this memo to address the need for the encroachment ordinance, approved by DMAC in September of 2022, to be placed on the June 13, 2023 DCSD agenda so that the content can be reviewed and considered by the DCSD Board. The result of any logical consideration is for the Board to withdraw the proposed Ordinance.

Attached as Exhibit 1 is the Encroachment Ordinance passed by DCSD on 8/1/02. The 2002 Ordinance is currently valid and has simply been ignored for twenty years. It is much clearer than the proposed new Ordinance, easier to enforce and does not cede jurisdiction from DCSD to the County. (a) “Road” is properly defined; (b) “Encroachment” is better defined and easier to understand; and (c) It addresses a tree planted more than three feet from the roadway, but encroaches within three feet by growth.

If we ignored the old Ordinance, why create a new one that is less clear?

What percentage would now be grandfathered in, i.e. 90 percent, which means we have a new Ordinance, weaker than the one we did not enforce, to deal with ten percent of the remaining lots that could be more fully developed?

Who will document that currently grandfathered? Who will maintain same and what will the cost to document and monitor that currently grandfathered? The old Ordinance, as written, does not require such documentation.

Failure to place the September, 2022 Encroachment Ordinance on the June 13, 2023 agenda and allowing discussion of same will result in my filing a lawsuit which will include declaratory relief and other causes of action identified as follows:

A. Declaratory Relief

Violation of Article V of the By-Laws of DCSD for the failure to have the Encroachment Ordinance placed on the agenda despite the request that same be placed on the agenda by at least one member of the Board of Directors.

Clarification: Article V reads, “The President shall approve all items to be included in the meeting agendas. However, any Board member may place an item on the agenda.”

Explanation: The clear reading of Article V is the President is to approve all requests for items placed on the agenda excepting those requested by a Board member. By way of example, if a non-Board member asks that the September, 2022 Encroachment Ordinance be placed on the agenda, the decision as to whether or not to allow the issue on the agenda is subject to the President’s discretion. However, if a Board member so requests, the item must be placed on the agenda.

B. Declaratory Relief:

DMAC did not have jurisdiction to place the Ordinance in front of the County.

The current ordinance being reviewed by the County was never approved by DCSD, nor provided the recently elected Board members, despite Ms. Torru’s letter to the County on February 23, 2023 (Exhibit 2). Exhibit 2 had to be obtained by a Public Records Act request because it was not disseminated publicly.

Explanation: DMAC and DCSD are separate entities, although there is a commonality of Boards. Whatever power has been granted to an “Advisory Committee”, it does not include usurping or overruling the jurisdiction and power of DCSD. That submitted to the County was voted upon and submitted by DMAC and not DCSD. Roadways are within the jurisdiction of DCSD and not DMAC.

C. Declaratory Relief.

Termination of the Ordinance currently being considered by the County.

Explanation: What was voted on by DMAC, which did not include DCSD approval, was specific language that included a grandfather clause and did not include “(a) a hedge, shrub or similar planting. In fact, landscape vegetation and material were SPECIFICALLY excluded in the DMAC proposed Ordinance. (Exhibit 3) The County, either on their own or with input from someone involved with DMAC: (1) Eliminated the grandfather clause; and (2) Added hedge, shrub or similar planting (Exhibit 4) identified by the County as Ordinance No. 2023-XX).

Obviously, someone(s) is working behind the scenes with the County on this Ordinance as the proposed Ordinance No. 2023-XX continues to get new iterations. Attached as (Exhibit 5) is a more recent draft of the County’s proposed 2023-XX disseminated 6/1/23. Eliminated is the “hedge, shrub or similar planting”. What remains omitted is the “grandfather clause”.

How many newly-elected Board members were not provided with Exhibit 2 by DCSD? Ms. Torru’s letter to the County, which was acquired by a Public Records Act request, was sent on used expired letterhead. Exhibit 4, proposed County Ordinance 2023-XX which deleted the grandfather clause and added “hedge, shrub

or similar planting.” Exhibit 5? The rewrite of Exhibit 4 which continues to eliminate the grandfather clause?

The above is only a partial list of causes of action that will be pled if this Ordinance is not on the next DCSD meeting agenda.

IF THE ORDINANCE IS APPROVED BY DCSD AND SENT TO THE COUNTY, IT WILL ALSO BE SUBJECT TO LITIGATION.

The various formats of Ordinance that I have reviewed lack sufficient clarity to withstand judicial scrutiny/unambiguous interpretation. Terms such as “edge of the existing road” are virtually meaningless as the road changes every time it is repaved. “Established by use” is virtually meaningless because people are able to claim that the one or two feet of the edge of the road is never used. Equally ambiguous is “similar structure” or “similar planting”. Is it all structures or not? Is it all plants? Any change in wording from that DCSD approves, i.e. no grandfathering, will require the judge to void the Ordinance.

As a practical matter, are we really going to the expense of hiring a civil engineer to map our existing edge of the road established by use? Or the expense to photograph all properties and properly log same by address? All of these issues will be placed in front of a Contra Costa County Superior Court Judge. The County will also be named a defendant, as any ruling will directly effect the County.

In addition to the declaratory relief causes of action, which a judge will rule upon, the complaint will contain cases of action against individuals whose conduct includes negligent misrepresentation, intentional misrepresentation and breach of fiduciary duty. Intentional misrepresentation and breach of fiduciary duty allow for punitive damages.

Respectfully submitted,  
Charles Merrill

**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**

**Exhibit /**

**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 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*

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Richard J. Breitwieser  
Secretary  
Diablo Community Services District



**DIABLO COMMUNITY SERVICES DISTRICT  
DIABLO MUNICIPAL ADVISORY COUNCIL**

P.O. Box 321  
Diablo CA 94528

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February 23, 2023

Mr. Stan Muraoka  
Contra Costa County Department of Conservation and Development  
30 Muir Rd  
Martinez, CA 94553

*Sent via Email*

Dear Mr. Muraoka:

Diablo is an old historic community located at the foot of Mt. Diablo with narrow roads no sidewalks and no defined shoulders. Diablo is located in a Cal Fire "very high fire hazard severity zone" with only three entrances to serve its 1,100 residents, Diablo Country Club members and Diablo USPS facility visitors. To ensure that residents, Club members, USPS visitors and emergency response vehicles can safely evacuate Diablo in an emergency and can safely use Diablo's roads daily without obstructions or delays, the Diablo Community Services District ordinance code includes a section that requires a 3-foot setback from the paved road for all walls, fences, or similar structures.

The Contra Costa County Ordinance Code does not include a paved road 3-foot setback which presents an ordinance code enforcement problem for Diablo when the County issues a permit for a Diablo property owner to build a wall, fence, or similar structure at the edge of the paved road.

The Diablo Community Services District and Diablo Municipal Advisory Council request that the County Ordinance Code be amended to include the following 3-foot setback language when issuing permits in Diablo;

*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.*

The Diablo Community Services District and Diablo Municipal Advisory Council are responsible for educating Diablo residents, responding to inquiries and complaints, and enforcing the three 3-foot setback code. The County will not have any educational or code enforcement responsibilities.

Thank you for your assistance with this request.

Warm Regards,

*Katharine Torru*

Kathy Torru  
DMAC/DCSD General manager

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*Kathy Urbelis – President, Security Commissioner    Leonard Becker - Vice President  
Jeff Eorio – Secretary    Greg Isom – Finance Commissioner    Matthew Cox – Roads Commissioner  
Kathy Torru – General Manager    Christie Crowl – General Counsel*

**Exhibit 2**

**DIABLO MUNICIPAL ADVISORY COUNCIL  
BOARD OF DIRECTORS  
MINUTES  
TELECONFERENCE VIA THE APPLICATION ZOOM  
SEPTEMBER 13, 2022, 7:30 p.m.**

**CALL TO ORDER:** Vice President Leonard Becker called the meeting to order at 8:40 p.m.

Vice President Becker welcomed Directors and the public and explained the rules for public comment.

**ROLL CALL:** Secretary Jeff Eorio called the roll as follows:

**Directors present:** Becker, Eorio, Cox, Isom  
**Directors absent:** Urbelis

**PUBLIC COMMENTS:** None

**ADMINISTRATIVE COMMUNICATION AND ACTIONS:** None

**LAND USE COMMUNICATION AND ACTIONS:**

General manager Torru presented the proposed language to be added to the Contra Costa County Building Codes and Ordinances as a Diablo overlay.

*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 proposed Diablo overlay applies only to new projects and would have no impact on existing structures. Landscape vegetation and materials are excluded.

On motion of Director Eorio, second by Director Isom, the Directors in attendance unanimously approved the Diablo overlay language be recommended for addition to the Contra Costa County Building Codes & Ordinances.

**CONSENT CALENDAR:**

On motion of Director Eorio, second by Director Cox, the Directors in attendance unanimously approved the consent calendar.

**CALL OF NEXT MEETING/ADJOURNMENT:**

Vice President Becker called the next meeting for October 11, 2022. The meeting will be conducted via Zoom. There being no further business, the Vice President adjourned the meeting at 8:50 p.m.

Diablo Community Services District by,

Kathy Torru, General Manager

**Exhibit 3**



**SECTION III. EFFECTIVE DATE.** This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the Contra Costa Times, a newspaper published in this County.

PASSED on \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST: MONICA NINO,  
Clerk of the Board of Supervisors  
and County Administrator

\_\_\_\_\_  
Board Chair

By: \_\_\_\_\_  
Deputy

[SEAL]

KCK:  
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ORDINANCE NO. 2023-XX

PRIVATE ROAD CLEARANCE COMBINING DISTRICT

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

**SECTION I. SUMMARY.** This ordinance adds Chapter 84-90 to the County Ordinance Code to establish the Private Road Clearance (-PC) Combining District. The ordinance prohibits the establishment of certain obstructions within three feet of a private road.

**SECTION II.** Chapter 84-90 is added to the County Ordinance Code, to read:

**Chapter 84-90  
PRIVATE ROAD CLEARANCE (-PC) COMBINING DISTRICT**

**84-90.002 Private road clearance (-PC) combining district.** All land within a land use district combined with an private road clearance (-PC) combining district is subject to the additional regulations set forth in this chapter. (Ord. 2023-XX § 2).

**84-90.004 Applicability.** The -PC district may be combined with and made applicable to land in any residential land use district. (Ord. 2023-XX § 2).

**84-90.006 Obstructions prohibited.** A fence, retaining wall, or similar structure may not be established within three feet of any private road measured from the edge of the road. (Ord. 2023-XX § 2).

**84-90.008 Priority.** If there is any conflict between the regulations of this chapter and those of the underlying zoning district, the requirements of this chapter govern. (Ord. 2023-XX § 2).

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ORDINANCE NO. 2023-XX DRAFT

