

**DIABLO MUNICIPAL ADVISORY COUNCIL
REGULAR MEETING AGENDA¹
DIABLO COUNTRY CLUB RED HORSE TAVERN TOO
TUESDAY, SEPTEMBER 12, 2023, 6:05 P.M.
(IMMEDIATELY FOLLOWING DCSD MEETING)**

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. ADMINISTRATIVE COMMUNICATION AND ACTIONS: None

2. LAND USE COMMUNICATION AND ACTIONS:

- a) Directors Cox and Lorenz to provide an update on comments received at the August 22, 2023, Town Hall concerning the draft County 3-foot Setback ordinance and propose a motion to direct the General Manager to instruct the County to table any further action on the draft 3-foot Setback ordinance to allow DMAC to further investigate follow-up items from the Town Hall.

3. CONSENT CALENDAR

- a) Approve the minutes of the June 13, 2023, Regular Meeting.

4. CALL OF NEXT MEETING/ADJOURNMENT:

The next DMAC Regular Board meeting is scheduled for October 10, 2023, following the DCSD meeting which begins at 6:00 p.m.

Diablo Municipal Advisory Council by,
Kathy Torru, General Manager

DMAC Board Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to 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 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>.

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

**DIABLO MUNICIPAL ADVISORY COUNCIL
REGULAR MEETING
MINUTES
DIABLO COUNTRY CLUB RED HORSE TAVERN TOO
JUNE 13, 2023, 7:35 P.M.
(IMMEDIATELY FOLLOWING DCSD MEETING)**

CALL TO ORDER: President Kathy Urbelis called the meeting to order at 8:08 p.m.

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

ROLL CALL: Secretary Chartier called the roll as follows:

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

Directors absent: None

PUBLIC COMMENTS:

Maryann Cella, see attached letter.

Charlie Merrill requested that the DMAC withdraw its request for a County 3-foot Setback Ordinance for Diablo.

Harry Baggett expressed concern that the proposed County 3-foot Setback Ordinance would diminish DCSD's and DMAC's authority over Diablo's roads and asked that DMAC withdraw its request for the ordinance.

Ray Brant, see attached letter.

Alan Bonny, see attached letter.

Nicola Place, see attached letter.

Jeff Eorio expressed support for the proposed County 3-foot Setback Ordinance.

Tony Geisler stated his objection to the proposed County 3-foot Setback Ordinance.

Jeff Mini stated his objection to the proposed County 3-foot Setback Ordinance.

ADMINISTRATIVE COMMUNICATION AND ACTIONS: None

LAND USE COMMUNICATION AND ACTIONS:

Directors Cox and Lorenz thanked those in attendance for their comments and acknowledged the need for more community education to address the concerns identified by residents. On motion of Director Lorenz, second by Director Cox, General Manager Torru was directed to ask the County to delay the Planning Commission's discussion of the proposed 3-foot Setback Ordinance until November 8, 2023, and to set up a Diablo Town Hall meeting in late August to address resident concerns and questions. County principal planner and general counsel will be asked to participate in the discussion.

CONSENT CALENDAR


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

CALL OF NEXT MEETING/ADJOURNMENT:

President Urbelis called the next meeting for August 8, 2023. The meeting will be conducted at the Diablo Country Club following the DCSD meeting which begins at 6:00 pm. There being no further business, the meeting was adjourned at 8:37 p.m

Diablo Municipal Advisory Council by,

Kathy Torru, General Manager

From: Maryann Cella maryann.cella@gmail.com 
Subject: COMMENTS ON COUNTY SETBACK ORDINANCES ON THE DMAC AGENDA TONIGHT



Date: June 13, 2023 at 9:57 AM

To: Christine Chartier cchartier@diablocsd.org, Greg Lorenz glorenz@diablocsd.org, Jerry Slavonia jslavonia@diablocsd.org, Matthew Cox mcox@diablocsd.org, Kathy Urbelis kurbelis@diablocsd.org

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 JUNE 13TH, 2023 DMAC MEETING

Regarding the County's proposed encroachment ordinance and the private road clearance combining district ordinance that will overlay the encroachment ordinance onto all R-20 and R-40 zoned parcels in Diablo:

Directors, **please vote to ask the County to withdraw this ill-conceived ordinance that was requested by the previous DMAC Board to be adopted by the County for Diablo.** Here are just some of the reasons why this ordinance is harmful to our residents:

1. The "Staff Report" for this meeting states that "So, permanent structures like walls and fences that exist today would not be impacted by the County's 3-foot Setback Ordinance." That statement is not correct.

In fact, the ordinances will subject all property owners in Diablo zoned R-20 and R-40 to the requirement that they obtain a **variance permit to change, repair, or rebuild any existing walls or fences within 3 feet of the edge or pavement.** For example, if a tree falls on a wall and it must be repaired or replaced, a variance permit will be needed.

Variance permits are costly, time-consuming, and will require the applicant to document when the wall or fence was built to prove that it was not originally built in violation of the ordinance. Anyone, not just Diablo residents, can **challenge a variance application.** The granting of a variance permit is not a guarantee and in fact may be unlikely.

2. The ordinances will subject property owners **to investigations by County Code enforcement** should a complaint about a wall or a fence be filed. The onus is then on the property owner to prove that the wall or fence is grandfathered. As time goes on and properties change owners, that may be difficult to prove.

Moreover, anyone, not just Diablo residents, can file a complaint with County Code Enforcement. Although our roads are private with no public easements, our residents do not in general restrict use of our roads by non-resident pedestrians, bicyclists, and motorists. Thus, many non-residents are given access to notice where walls and fences do not meet the County's 3-foot setback rule.

In addition, the ordinances make a statement that existing walls and fences are deemed by the County to be such a threat to public safety that the County had to step in and regulate our private roads. It is not a good thing to give non-residents the right to complain to County Code Enforcement about our property owners. Activist groups may be motivated to bring attention to non-conforming walls and fences by making Code Enforcement complaints or using news or social media to complain about their perceived threats to public safety.

3. The ordinances are not limited to DCSD-maintained roads and streets, but include all the private cul-de-sacs not even subject to DCSD or DMAC regulation. Those private cul-de-sacs will lose their ability to gate off their private roads if the ordinances are adopted. It is not right for DMAC to subject property owners not even within DMAC's purview to the proposed ordinances.

4. The roads have been widened every time the DCSD has done a new overlay. Walls and fences that used to be 3 feet away from road edges are no longer. Over time, more walls and fences will be subject to the ordinances.

5. In 2002, DCSD has pursuant to its roads and public safety authority, asserted jurisdiction over the 3 feet from the edge of the road. DMAC does not have the right to diminish DCSD's authority by subjecting DCSD to a County overlay encroachment ordinance. DCSD should not be relinquishing authority to the County. Local control was the very reason our citizens petitioned the County to form DCSD.

6. The private owners of Diablo's roads and the 3 feet therefrom have not asked for the County to regulate those areas, and have not given DMAC the authorization to do that. Silence from the community regarding a minimally-publicized September 2022 DMAC meeting does not constitute consent.

In 1999-2000, DMAC considered a petition by 70% of households to ask the County to establish a floor-area ratio ordinance for Diablo properties. DMAC asked the County for a public mail-in advisory vote by Diablo voters conducted by the County Elections Department to determine whether the community wanted the additional County regulation. Even with the petition showing overwhelming support, DMAC did not merely hold a minimally-noticed meeting to consider recommending that the ordinance be adopted by the County, but asked for a legal advisory vote in a public election.

Official public elections are expensive. I endorse Ray Brant's suggestion that a mail-in ballot election be conducted by DMAC/DCSD if DMAC continues to believe these ordinances are appropriate for our residents, which they are not.

7. The ordinances may prevent DCSD from ever closing off any roads with a gate or barricades. The County ordinance explicitly overrules any DCSD ordinances or actions. Thus, closing of Avenida Nueva during the recent 3-week time period during the Diablo Road closure would have been questionable without County approval.

For public safety sake, DCSD must not relinquish to the County the power to close any roads within the community.

8. The ordinance is not limited to paved roads. Thus private paths could be considered "roads" under the ordinance and be subjected to the prohibition that no fences or walls could ever block them.

Inviting the County to regulate our private roads with no public easements is opening a Pandora's box of issues, some that only will become apparent in time. For example, will the County choose to expand road regulations within our community? In the last iteration of the County ordinances, hedges and shrubs and similar material were added to the material prohibited within the three-foot setback area. Who asked that those items be added and who asked that they be removed in the current iteration of the ordinances?


DMAC should vote to withdraw its request that the County adopt a setback ordinance for Diablo properties.

The answer to perceived problems with walls and fences being built too close to the roads is for DCSD to spend time figuring out how to better enforce its 2002 setback/encroachment ordinance, not inviting the County to step in and regulate our private roads, opening a Pandora's box of potential problems for our residents.

Thank you for your consideration and your volunteer service for our residents. Remember that your first responsibility is to do no harm.

Sincerely,

Maryann Cella
Resident at 1896 Alameda Diablo since 1991

From: Nicola nicola.place@gmail.com 
Subject: Re: Diablo Encroachment Q&A with DCSD/DMAC Directors Cox and Lorenz on June 8th
Date: June 6, 2023 at 8:44 AM
To:



External (nicola.place@gmail.com)

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Dear DCSD,

Unfortunately I cannot attend this meeting but, as a long-time safety advocate, I would like to be on record as being very much in favor of having a 3 ft setback consistently required by both DCSD and County ordinances.

It is no exaggeration to say that if this had been the case in 2019 we would not have had the fatality we had on Mount Diablo Scenic.

Why do I say that? In 2008 a fence was built, literally, on top of the asphalt, reducing the road width by more than 18" (see attached photos).

This structure violated the existing DCSD setback requirement. This was brought to the attention of the DCSD Board but nothing was done.

In addition, sprinkler lines were installed, also resting on top of existing asphalt, which, over time, has caused even more encroachment in the form of plants and accumulated soil being washed down and settling during storms.

Later, a new layer of asphalt was put down - but because of the wall and the plants and accumulated dirt, the new pavement was 2-3 feet NARROWER (see photos), making this section of Scenic the narrowest section anywhere along the road and, tragically but unsurprisingly, the exact spot where Maayan Jones was killed.


In summary, I believe that having both setbacks consistent, which would have kept the fence 3 feet back and preserved the original, wider road width, would have prevented this fatality.

Please include this email and photos in any meeting minutes and in any tallies regarding support.

Thank you,

Nicola Place



From: Ray Brant r_abrant@sbcglobal.net 
Subject: Re: Proposed County Ordinance
Date: June 13, 2023 at 10:32 AM
To:



External (r_abrant@sbcglobal.net)

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PLEASE ENTER THESE COMMENTS INTO THE RECORD FOR THE JUNE 13TH, 2023 DMAC MEETING

On Jun 13, 2023, at 9:08 AM, Ray Brant <r_abrant@sbcglobal.net> wrote:

DMAC-DCSD Board

June 12,2023

I respectfully request that the Diablo Property Owners vote on item 2 on the DMAC agenda. This is not a simple Diablo Ordinance. You are requiring the Diablo Property Owners to be subject to a New Contra Costa County Ordinance.


I do not believe that you have 51% approval of the Diablo Property Owners.

The election would show good faith on your part. The voting should be 1 vote per Diablo Parcel. This can be a mail in ballot similar to an HOA election formal and honest.

Thank you for your service to the Diablo Community,

Ray Brant

Resident since 1995

From: Bonny, Alan alan_bonny@bmc.com 
Subject: Request for public comment to be read into the record for the DCSD meeting June 13, 2023, Thank you
Date: June 12, 2023 at 6:46 AM
To:



Cc:

External (alan_bonny@bmc.com)

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Dear Diablo CSD Board

First, we would like to express huge appreciation for the informal meeting which was held this past Thursday, June 8, to discuss 2 proposed ordinances and to thank Greg Lorenz, Matt Cox and Kathy Torru for hearing out those from our Diablo Community who attended.

This informal meeting was extremely informative and a powerful communication strategy to engage and hear from our DCSD community.

Secondly, as I will be out of town on business travel and cannot attend the meeting on June 13th, I would like to respectfully request that the comment below be read into your minutes:

Comment: "That Diablo CSD should not allow the existence of a County Private Road Clearance Combining District. This could result in some very unfortunate consequences for Diablo private property and road owners. The definition of the word "private road" is quite vague. it could be extended to a driveway like Ranchitos Del Sol or even plain dirt if the County deems it a private road. If a County District should be established, which we hope does not happen, it should be specifically limited to "DCSD maintained paved roads."

Again, we thank you all for your guidance and service to our Diablo Community.

Best regards

Alan Bonny

Diablo Resident for 3.7 years