

**DIABLO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS
REGULAR MEETING MINUTES
DIABLO COUNTRY CLUB RED HORSE TAVERN TOO
DECEMBER 11, 2023, 6:00 P.M.**

CALL TO ORDER: President Kathy Urbelis called the meeting to order at 6:00 pm.

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, Lorenz, Slavonia

Directors absent: Chartier

OFFICIALS PRESENT:

Martin de los Angeles (of Best, Best, & Krieger LLP, General Counsel)

Cameron Collins (Supervisor Anderson's Liaison)

Hank Salvo (Diablo Country Club Liaison)

Kathy Torru (General Manager)

PUBLIC COMMENTS:

Jeff Eorio read aloud the attached comments.

Tony Geisler disagreed with Jeff Eorio's comments and stated that no easement exists at the Alameda Diablo-Mt Diablo Scenic Blvd cut through, providing his perspective as to why.

BOARD/STAFF COMMUNICATION AND ACTIONS:

CONSENT CALENDAR:

On motion by Director Slavonia and second by Director Cox the Board approved the consent calendar. Motion passed 4-0.

ADMINISTRATIVE:

On motion by Director Cox and second by Director Lorenz the Board directed the General Manager to communicate the District's Encroachment Ordinance (Ordinance No 2023-01) to Diablo property owners. Motion passed 4-0.

ROADS:

Director Cox reported that the District has received the full amount of the FEMA 2022-23 Winter Storm damage financial assistance application. The amount received is \$312,450.

On motion by Director Lorenz and second by Director Urbelis, the Board authorized Director Cox and General Manager Torru to negotiate a contract with Marshall Brothers Enterprise Inc for the repair of Casa Nuestra, in an amount not to exceed \$37,000. Motion passed 4-0.

SECURTY:

Director Slavonia reported that 3 of the 4 license plate reader cameras had been installed and that the 4th camera would be installed in the next couple of weeks.

Director Slavonia reported that the District has no additional information on the residential burglary that occurred last month. The sheriff's department is investigating.

REPORTS:

CONTRA COSTA COUNTY: Cameron Collins reported that Supervisor Candace Andersen will be Diablo's Supervisor for the next 5 years as no candidate filed papers opposing Supervisor Andersen in the 2024 general election.

DIABLO PROPERTY OWNERS' REPORT: No report.

DIABLO COUNTRY CLUB: Hank Salvo stated that there was nothing to report.

DIRECTOR COMMENTS: None

FUTURE AGENDA ITEMS: None

CALL OF NEXT MEETING/ADJOURNMENT:

President Urbelis called the next meeting for January 8, 2024 at 6:00 pm at Diablo Country Club. There being no further business, the meeting was adjourned at 6:15 p.m.

Diablo Community Services District by

Kathy Torru, General Manager

December 2023 DCSD Public Comment by Jeff Eorio

Happy Holidays and Merry Christmas Neighbors

I am happy to see this encroachment ordinance come back for approval so quickly and here I thought this too would become a contentious issue. Now, bring back the 3' setback request to the County and the records retention policy just as quickly. There are now six new homes within 1000' of my property and so far we are OK with the 3' set backs, but who knows what plans there are for the three construction sites that are either just starting or only 50% completed. We need the 3' setback and you have the votes to approve! Please move this forward!

I am distributing a history of the upper Alameda Diablo Easement that has been in continuous use for over 100 years as access to Mt. Diablo State Park and Mt. Diablo Scenic Blvd. The history I am providing reviews both the time that Alameda Diablo was THE primary access road to Mt. Diablo and after the 1979 subdivision. I have provided copies for the Board and several for interested parties.

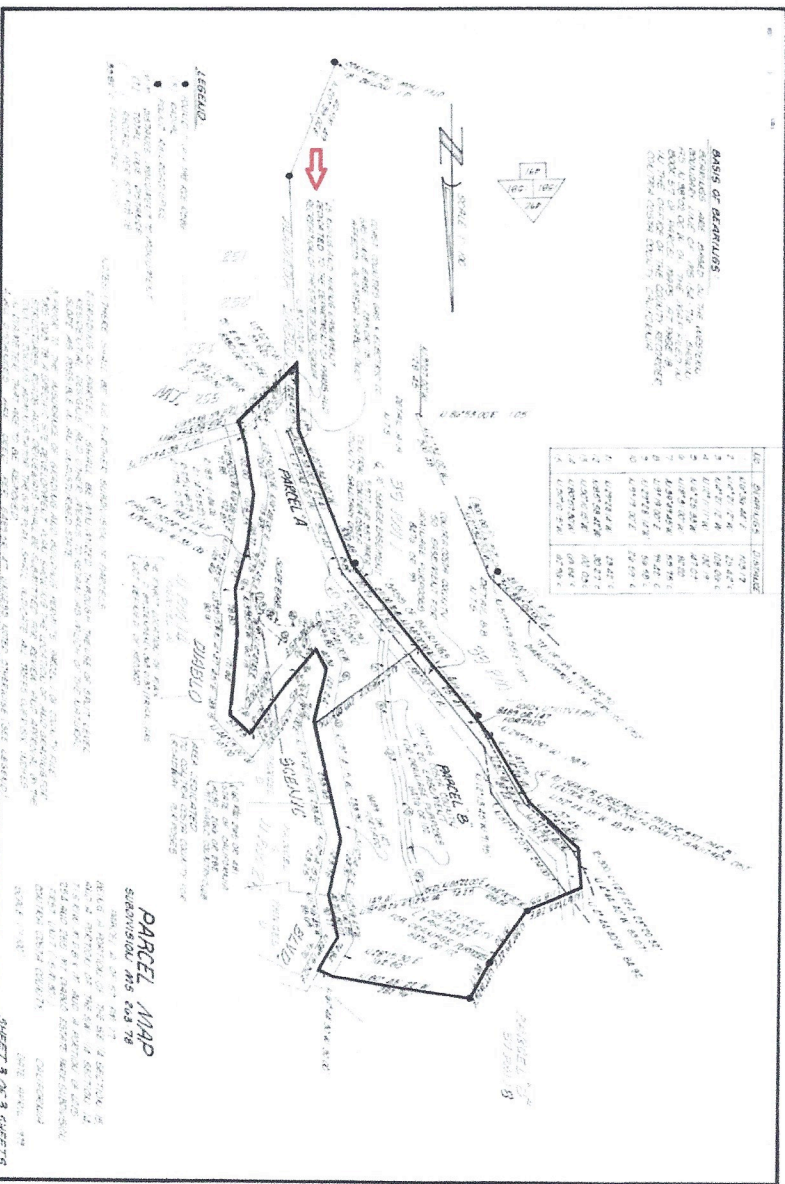
Associated with the Easement Issue, for your information, is the new GoFundMe campaign to raise funds for the legal team to fight the blockage of the easement back in September which has of today, has raided over \$12,000 since it launched late last week with the support of \$1,000 to \$5,000 donations from Diablo Residents and over 30 donations from impacted citizens, plus the declarations of about 50 Diablo residents supporting the permeant re-opening of the easement in the legal filing just a month ago.

I have provided copies of the GoFundMe campaign as well.

I would appreciate both the written history and the GOFundMe campaign be included in the written minutes.

Thank you

Jeff Eorio, Alameda Diablo Resident of 44 years.



An **express dedication** in a recorded public document is a contract offer and acceptance of such an offer can be made in this case by the State of California or its designee or by **widespread and continuous use of the easement by the public in the manner intended!** In this situation, Diablo residents and the general public have accepted the easement through riding and hiking by all types of user groups for the past 44 years!

While someone could parse the word **riding** to imply horse but not bike or parse the word **public** to define Diablo residents as opposed to the general public, these are fine points easily handled by the courts. **The overriding consideration here is the acceptance by widespread and continuous public use of an expressly dedicated easement.**

But what about prior to 1979? The actual property line between the Bahrami/US Bank property and the vacant Wooten parcel is the **same exact location of the centerline of the original 1916 Mount Diablo Scenic Blvd Toll Road.** This roadway easement was recorded as 60-foot wide starting at the centerline of Alameda Diablo. The Mt. Diablo Scenic Blvd. Toll Road became Camino Tassajara and then later in the 1950's was renamed Alameda Diablo. From 1916 until the State Park was created in 1931, this road was the only Southern access to the upper parts of Mount Diablo. To be clear, 30 feet of original roadway easement was on the vacant Wooten parcel and 30 feet was on the Bahrami/US Bank parcel. Asphalt still remains under the gravel that exists on the easement to this day.

There are 4 solid metal posts still cemented in the ground spanning both the US Bank and the vacant Wooten parcels showing the location of the original road, before it was closed to vehicle traffic when Scenic was rerouted in the early 1930s. The posts and the braided wire rope remind all users that this location had never changed prior to 1979. The trail or pathway spanned two adjacent parcels until it was rededicated as a new easement in 1979.



To recap, from 1916 until 1931 there was a 60-foot-wide roadway spanning two parcels. From 1931 through 1979, the trail connector continued to be used by all user groups to access Mt. Diablo as marked by four solid metal posts. When this trail connector was threatened by development (Diablo Lakes) in the late 1970's, the County was asked to protect it.

The Diablo Hiking and Horseback Committee of the Diablo Property Owner's Association and the East Bay Area Trails Council representing 10 public agencies and 40 different public user groups both cited the need for this widely used trail access to Mt. Diablo to be protected in large part for safety reasons. They asked that it be included as part of the State Park Trails System and the County responded by creating the new dedicated easement in 1979. Again, this property has been in continual use since 1916 for public access to the then privately held Mt. Diablo and then, in 1931, to the newly created Mt. Diablo State Park.

As early users have stated, "That trail was just always there." Public easement protections have been in place at the same location for over 100 years. To say that it is now "private property" is just plain wrong and the current litigation (Contra Costa County Superior Court Case # C23-02578) is supported by over 50 current Diablo residents which will more than likely re-establish the easement for use by everyone for the next 100 years!

Provided by Jeff Eorio, Diabo resident for 44 years.

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” or “DCSD”) provides security and road maintenance services to the Diablo community pursuant to the Community Services District Law (Gov. Code, § 61000 *et seq.*); and

WHEREAS, the District is empowered by Government Code Section 61060(b) to adopt, by ordinance, and enforce rules and regulations for the administration, operation, and use and maintenance of the facilities and services listed in Government Code Section 61100, including the maintenance of streets, roads, and public rights-of-way (Gov. Code, § 61100(*l*)); and

WHEREAS, pursuant to Government Code Section 61103, a district that maintains roadways and public rights-of-way, such as the District, shall have certain powers that are otherwise granted to cities and counties by the Streets & Highways Code and Vehicle Code, which include the authority to manage stormwater and encroachments, as defined herein, and to remove encroachments and recover the costs associated with removal of encroachments (see Streets & Highways Code, §§ 964, 1480 – 1496); and

WHEREAS, the District adopted an encroachment ordinance in 2001 which is now over 22 years old; and

WHEREAS, the streets maintained by the District are narrow, there are no sidewalks adjacent to the streets, and the streets 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 DCSD-Maintained Street 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, this ordinance was introduced at the District’s April 11, 2023 meeting and reintroduced with further amendments at its November 13, 2023 meeting; 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 BOARD OF DIRECTORS OF THE DIABLO COMMUNITY SERVICES 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: The Board of Directors finds the adoption of this Ordinance 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.

SECTION 4: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This Board of Directors hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 5: 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 December 11, 2023 by the following vote:

AYES: Urbelis, Cox, Lorenz, Slavonia

NOES:

ABSTAIN:

ATTEST:

Kathy Urbelis, Board President

EXHIBIT A

Chapter 6-6 ENCROACHMENT ORDINANCE

6-6-1 Authority.

- a. The District provides security and road maintenance services to the Diablo community pursuant to the Community Services District Law (Gov. Code, § 61000 *et seq.*).
- b. The District is empowered by Government Code Section 61060(b) to adopt, by ordinance, and enforce rules and regulations for the administration, operation, and use and maintenance of the facilities and services listed in Government Code Section 61100, including the maintenance of streets, roads, and public rights-of-way (Gov. Code, § 61100(l)).
- c. Pursuant to Government Code Section 61103, a district that maintains roadways and public rights-of-way, such as the District, shall have certain powers that are otherwise granted to cities and counties by the Streets & Highways Code and Vehicle Code, which include the authority to manage stormwater and encroachments, as defined herein, and to remove encroachments and recover the costs associated with removal of encroachments (see Streets & Highways Code, §§ 964, 1480 –1496).

6-6-2 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.

6-6-3 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, walls, or guardrails; 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 within three feet of the DCSD-Maintained Street.

- 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.

6-6-4 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 10 days. The 10-day period to remove the encroachment may be reduced to 5 days if, after notice, the property owner does not dispute the existence of the encroachment but still fails to remove it. 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.
- c. Notwithstanding any other provision of this ordinance to the contrary, the District hereby adopts the provisions of California Streets and Highways Code Sections 1480 through 1496 relating to the removal of encroachments, and the District's ability to impose penalties or forfeitures and recover the costs associated with removal of encroachments.