

**DIABLO COMMUNITY SERVICES DISTRICT  
BOARD OF DIRECTORS  
REGULAR MEETING AGENDA<sup>1</sup>  
DIABLO COUNTRY CLUB RED HORSE TAVERN TOO  
MONDAY, DECEMBER 11, 2023, 6:00 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. BOARD/STAFF COMMUNICATION AND ACTIONS**

**ADMINISTRATIVE:** Director Urbelis

- a) Direct the General Manager to communicate the District's Encroachment Ordinance (Ordinance No 2023-01) to Diablo property owners and send separate letters to those with compromised creek property.

**ROADS:** Director Cox

- a) Update the Board on the status of the FEMA application for 2022-23 Winter Storm damage financial assistance.
- b) Authorize Director Cox and General Manager Torru to negotiate a contract with Marshall Brothers Inc for the repair of Casa Nuestra, for an amount not to exceed \$37,000.

**SECURITY:** Director Slavonia

- a) Provide a security update since the last meeting.

**2. CONSENT CALENDAR**

- a) Approve the minutes of the November 13, 2023, Regular Meeting.
- b) Waive second reading and adopt Ordinance No. 2023-01, Repealing and Replacing Ordinance No. 2002-01 and Ordinance Code Chapter 6-6 - Encroachments.

**3. REPORTS**

**CONTRA COSTA COUNTY:**

Cameron Collins

**DIABLO PROPERTY OWNERS ASSOC:**

Leslie Keane

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

**DIABLO COUNTRY CLUB:**

Hank Salvo

4. **DIRECTOR COMMENTS**
5. **FUTURE AGENDA ITEM ANNOUNCEMENT**
6. **CALL OF NEXT MEETING & ADJOURNMENT**

The next DCSD Regular Board meeting is scheduled for January 8, 2024, at 6:00 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>.

## STAFF REPORT

**DATE:** December 11, 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 2023 meeting that the Board discuss the District's options for responding to emergency tree and creek-related incidents affecting DCSD-Maintained Streets.

DCSD-Maintained Streets 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. DCSD-Maintained Streets are the only access for emergency vehicles to service property and persons within Diablo so any "encroachment" on or damage to a DCSD-Maintained Street 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 an "encroachment" as the existence of almost any unauthorized activity or item in the DCSD-Maintained Street and generally (1) prohibits any person from allowing an encroachment to exist on a street, and (2) requires payment to the District for the cost of removal of the encroachment if the District must 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 costs of removal, in accordance with state law. However, the proposed version more clearly defines what an encroachment is (any obstruction that prevents full or partial access to a DCSD-Maintained Street 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 ordinance 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 associated with the removal of the encroachment.

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 a future Regular Board Meeting for reading and adoption.

At the May 9, 2023 meeting, the Board received public comment concerning the proposed ordinance and decided to bring back the ordinance for a new first reading to make minor clarifications. This ordinance was reintroduced at the November 13, 2023 meeting with additional clarifying edits, including: referencing the District's authority under the Community Services District Law and relevant state law provisions to 1) adopt, by ordinance, and enforce rules and regulations for the maintenance of streets, roads, and public rights-of-way within the District's boundaries; 2) remove encroachments affecting DCSD-Maintained Streets; and 3) recover costs associated with removal of encroachments.

At the November 13, 2023 meeting the Directors present unanimously voted to waive the first reading and reintroduce Ordinance 2023-01 with minor edits to the definition of encroachment, Section 6-6-3 a. second paragraph.

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**

Waive second reading and adopt 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” 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 \_\_\_\_\_, 2023 by the following vote:

AYES:

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.



**DIABLO COMMUNITY SERVICES DISTRICT  
BOARD OF DIRECTORS  
SPECIAL MEETING MINUTES  
DIABLO COUNTRY CLUB RED HORSE TAVERN TOO  
NOVEMBER 13, 2023, 6:00 P.M.**

**CALL TO ORDER:** President Kathy Urbelis called the meeting to order at 6:01 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**

**WELCOME OFFICIALS:**

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:**

Nicola Place read aloud the attached 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 and that the Intervenors were defending the community against a resident lawsuit.

Maryann Cella disagreed with Jeff Eorio's comments and stated that the DCSD election last fall was based on facts and the slate put forward was voted in by the residents of Diablo.

Alan Bonny read aloud Ray Brant's attached comments.

Don Nejedly stated that he enjoyed walking through the cut-through for over 20 years until the fence was erected and that the fence and the cyclist restriction is an embarrassment to this community.

Jeff Mini stated that he is not embarrassed limiting cyclists through Diablo and that the San Ramon Valley High School cyclist team needs to ride somewhere else. The roads in Diablo are too narrow to handle the cyclist traffic and that the cut through creates a safety issue on Mt Diablo Scenic Blvd.

Bob Beratta stated that he has lived in Diablo for 50 years and does not believe the cyclists have a right to ride on our private roads. The City of Danville needs to build a cyclist path on Diablo Road.

Julie Nejedly expressed her disappointment in the Intervenors who have disrupted her way of life, her daily walk through the cut through by putting a fence across the cut through.

Dee Geisler stated that the cut through is on private property and that the public does not have a right to cut through private property.

Ann Coleman stated that she loves walking the streets of Diablo and respects private property.

Alice White expressed her support for the rights of private property owners.

Jerry Davis emailed comments are attached.

## **BOARD/STAFF COMMUNICATION AND ACTIONS:**

### **ADMINISTRATIVE:**

Directors Lorenz and Cox presented Ordinance 2023-01, Repealing and Replacing Ordinance No. 2002-01 and Ordinance Chapter 6-6-Encroachments. On motion by Director Cox and a second by Director Urbelis the Board waived the reading and reintroduced Ordinance No. 2023-01, Repealing and Replacing Ordinance No. 2002-01 and Ordinance Chapter 6-6-Encroachments subject to the minor language edits to the last 3 sentences of Section 6-6-3 a. Motion passed 4-0.

Director Lorenz presented the DCSD Financial Report for the first 3 months of fiscal year 2023-24. A copy of the Financial Report is available on the DCSD website under the Documents tab.

President Urbelis presented for Board consideration changing the Regular Meeting date to the second Monday of the month. The change is due to the lack of meeting space on Tuesday evenings. On motion by Director Lorenz and a second by Director Slavonia the Board approved the Regular Meeting Date change to the second Monday of the month at 6:00 pm. Motion passed 4-0.

President Urbelis informed the Board that the President and General Manager attended a meeting in May with Town, County and Davidon representatives to review draft plans of the traffic light to be installed at the intersection of Mount Diablo Scenic Blvd and Diablo Road. The installation of the traffic light at the intersection is a building permit condition. At the meeting President Urbelis expressed concern about the increased speed of vehicles on Diablo Road passing Avenida Nueva when the light is green and the impact that will have on residents that live on Diablo Road and Diablo residents' ability to exit Diablo from Avenida Nueva safely during commute times. President Urbelis requested that the County install traffic calming measures at Avenida Nueva. The traffic light is expected to be installed in the spring/summer of 2025. The DCSD will continue to monitor the project and communicate the District's safety concerns to the County. Maryann Cella expressed concern that the plans did not include pedestrian crosswalks.

### **SECURITY:**

Director Slavonia reported that there were no crimes reported last month and that there was a vehicle vs pedestrian accident with minor injuries on Diablo Road. The Deputy issues 16 vehicle citations and 10 warnings.

### **CONSENT CALENDAR:**

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

### **REPORTS:**

**CONTRA COSTA COUNTY:** Cameron Collins stated that there was nothing to report.

**DIABLO PROPERTY OWNERS' REPORT:** No report.

**DIABLO COUNTRY CLUB:** Hank Salvo reported that the Club House project is on schedule and that the budget overrun member assessment vote in October yielded an 87% turnout and 83% approval for the \$11,550 assessment.

**DIRECTOR COMMENTS:** None

**FUTURE AGENDA ITEMS:**

Second reading and adoption of Ordinance 2023-01, Repealing and Replacing Ordinance No. 2002-01 and Ordinance Chapter 6-6-Encroachments.

**CALL OF NEXT MEETING/ADJOURNMENT:**

President Urbelis called the next meeting for December 11, 2023 at 6:00 pm at Diablo Country Club. There being no further business, the meeting was adjourned at 6:57 p.m.

Diablo Community Services District by

Kathy Torru, General Manager

Good evening.

My name is Nicola Place and I live on Mt. Diablo Scenic Blvd. I live on the narrow upper portion of Scenic, the area we call "The Danger Zone."

I have spoken at many DCSD meetings since 1998. I almost always talk about the same topic: SAFETY, and tonight is no exception.

You have heard me say many times that Mt. Diablo Scenic holds the unwanted and sad title of being the only road in Diablo that has had a fatality. In 2019, a cyclist and a motor vehicle collided on Scenic, with tragic consequences for the cyclist.

What you likely do not know is that Scenic has actually had TWO fatalities.

The previous fatality was sometime in the 1980's when a motorcyclist, riding down from the Park, encountered a vehicle at the top of the crest near Hsiu-li Cheng's and Hal Seibert's homes (2439 and 2421 respectively), and was struck and killed.

Several years ago, based on reports from long-time residents, we contacted the CHP to verify this but they had "purged their records" from that time period.

But I recently had lunch with Hsiu-li "Sho-li" Cheng and she again verified this report. She also provided the following short testimony about what happened: I quote:

I can't remember what year it happened when the motorcyclist collided with a car on Scenic Blvd. (but) It happened in the daytime when both my husband and I were at work, sometime in the mid-1980s. The day after the accident, the young man's girlfriend came to the site of the accident, it's right at the border of Hal and my driveway on the road. The victim was going uphill toward Diablo Road. His girlfriend came in the early morning crying and grieving her loss. We hugged and I offered kindness and support, she never called me back.

I believe that the area near my driveway has always been a dangerous spot. I was always very careful watching the vehicles that came from both coming down and going up. There was an accident on the big turn below Peter's house, a high school boy drove too fast, his car plunged into my property, damaged my balustrade, his father came to apologize, my insurance helped take care of the damage, it happened around 1988.

(end quote)

And recently, according to Deputy Stoffels report in the October DCSD Minutes, there was a vehicular rollover on Scenic.

**Safety continues to be a REAL, not a hypothetical, problem on Upper Scenic.**

So, what is a simple, fast, inexpensive way make Scenic safer?

Based on observed and documented experience, DOUBLE YELLOW STRIPING works. Why? Most drivers on Scenic are headed to the Park and are new to the area. And when drivers are new to a road, and especially a narrow, twisting, shaded road, we have seen firsthand that these drivers STAY IN THEIR LANES and, in order to do so, they SLOW DOWN.

Unfortunately, last winter's storm debris scrubbed most of the striping off. It needs repainting.

So, I once again ask for the Board to please apply some of our DCSD fees to making Scenic safer: Re-stripe the double yellow line through the Danger Zone on Scenic.

Thank you,

Nicola Place and 25 of the owners and residents of Upper Scenic:

Steve and Wendy Moore  
Sketch and Marti Sketchley  
Paul and Hannah Craddick  
Chris Beeson  
Brian Moore  
Emily Kevorkian  
Grace and Randy Su  
Colleen and Winston Cervantes

Jenny and Lloyd Lee  
Peter and Mayra Hypnar  
Becca Makarova  
Ivan Makarov  
Nancy and Hal Seibert  
Leslie Forman  
Laurie Bain  
Gun Johnston

November DCSD Meeting Public Comment

Jeff Eorio, Alameda Diablo resident for closing in on 44 years

At the October meeting, after I spoke for my allotted three minutes, this Board allowed a member of the public who supposedly didn't use her entire 3 minutes, another opportunity to speak in public comment. Never in my 36 years working in local government have I witness such an action by a public body. Each person is given the opportunity to speak under public comment up to three minutes and a second "rebuttal" should not be allowed!

And as for what Ms. Cella stated in her second opportunity to speak is again, an outright lie. This about what transpired in the District Board elections last November and I have never advocated for a fourth "vehicular access" to Diablo and neither did Bart Hobden. But Ms. Cella and the people running against Bart and I all stated that this was my position, which is an outright lie. I supported the access for the public to ride and walk on the contested easement, and that is all that I have ever advocated!

I would also like to address the matter of re-doing the entrance signage to Diablo. Based on the recommendation of our new legal counsel, our new signs will state something to the effect that permission to pass will be permitted by "OWNERS" and not by the DCSD. I would like to hear from our legal counsel what owners will be permitting people to enter Diablo? Based on our District Formation Document, while our roads are privately held, they are subject to a "public right of way," and are maintained by public taxes, therefore no one has the ability to restrict anyone from using our roads. I would appreciate an explanation from our new legal counsel on this matter.

I was hoping to see a records retention and digitization policy brought before this Board and action to move forward with the 3' set back proposal, you have the votes necessary to get this done.

With regards to the public easement on upper Alameda Diablo, a counter lawsuit was filed today against US Bank, the owner of the Barami property, and Mr. Wooten, to declare the easement public and to remove the fence that the intervenors paid for. This lawsuit has been supported by 29 Diablo property owners who filed declarations in support of this new lawsuit who have utilized

that easement for many decades, even prior to 1979 when the easement was recorded with the County. This goes to my contention that we here in Diablo are have been constrained by a tyranny of the minority as there are only 17 intervenors who paid for the fence and 29 Diablo residents who strongly oppose this tyrannical minority and their actions.

This tyranny of the minority includes a couple of current Board members along with community members who have bought into their rhetoric. This hateful and dishonest rhetoric has been on full display at several previous DCSD meetings whereby simple, needed new policies and procedures have become a war of words, with lies, fabrications and ignorance of the powers of a special California district such as our DCSD.

In closing, this Board needs to act on a records retention policy and the 3' set back proposal as soon as possible and again, I am disgusted, angry and sad for our community due to the actions of a small group of mean-spirited people here in Diablo.

Jeff Eorio

Alameda Diablo Resident since 1979

Ray Brant  
Palma Vista

November 11, 2023

DCSD Board of Directors

I am asking this letter be entered into the meeting record.

Two weekends ago someone opened the DCSD/DMAC Post Office bulletin case without permission-I assume- to post 2 non DCSD/DMAC information.

This action is vandalism and/ or trespassing.

**Even though the bulletin case is not secure THIS POSTING IS NOT ACCEPTABLE.**

I am requesting that the DCSD work with the Post Master to find out who did this. Secondly the case must be secured.

Your Agenda items:

**a. Do not pass this at this meeting for the following reasons:**

It seemed very clear to me at the special meetings regarding the Encroachment Ordinance issue.

- a. The setback should include hedges as they block the areas to escape traffic.
- b. Existing violations must be grandfathered. Because the old ordinance was not enforced. The majority of the residences are out of compliance. i.e. (board member and general manager)
- d. The intersection of Mount Diablo Scenic and Diablo Road is very dangerous. It is not acceptable that an intersection adjacent to a **SCHOOL** not have cross walks and it must also have provisions for cyclist.

Thank you for your community service,  
Ray Brant



Ladies and Gentlemen of the Board and General Manager,

Thank you for your service on behalf of the citizens of Diablo. I'm Jerry Davis; Frances and I have lived on Casa Nuestra since 1975

There are four issues, which seem to be drawing large crowds, contributing to high passions, and dividing neighbors.

The first, easily solved, involves accusations that the board has been "insufficiently transparent".

There being no evidence that the board is conspiring, solutions were offered at the last meeting. Email all notifications and ordinance changes to the community for timely discussion prior to implementation. 21st century communications should resolve the issue. I don't recall that the community voted on previous ordinance updates. Voting is fine as long as the vote excludes those ordinances mandated by the county, state, or federal government.

The second issue involves cyclists using the "private roads of Diablo". In my view, this issue spawned the remaining two issues, which are (A) How private are the roads of Diablo and (B) Robert Tiernans lawsuit against his neighbors, the Community Service District and Diablo Country Club.

I confess that large numbers of cyclists do not ride past my house. I have heard that these dreadful people ride in packs and block the road (Calle arroyo); that they shout and curse; that they exceed the speed limit and present a danger to the citizens of Diablo; and worst of all, they talk when passing the 16th hole when keen eared and easily distracted golfers such as me might be putting.

I have also heard, anecdotally of a cyclist running into a car as the driver was backing out of his or her driveway. The Diablo resident was sued for a million dollars. This is called - A TRAFFIC ACCIDENT. Do we think that only outside cyclists would bring a suit, if injured? Am I to conclude that if one of our Diablo children from 6 to 18, or one of our tax paying, bike riding neighbors had been injured that a lawsuit might not follow by the parents or the involved adult?

Packs of cyclists are not all unemployed.

By necessity, they must come through early morning and late afternoon. This is traffic enforcement. Our sheriff should be able to enforce the vehicle codes at those hours. Single or double file. A few stops and the word will get out. Three days ago, I found myself behind a "pack", returning home from the 9th hole. They were four or 5 abreast and were not able to match the speed of my cart. Trembling with fear, I overtook them. They immediately single filed; I passed them; they smiled and waved. Guess I was just lucky. Suggestions are afoot to replace speed bumps with gravel strips like runaway truck ramps, making the roads bicycle unfriendly. So, our own children and cycling neighbors would either take falls along with the outsiders or maybe we fit locals with flags or other ID so they can divert around the pits. Any volunteers for that committee?

Privacy, the third issue. The formation document for the service district is dated 1965. That document was signed by Robert Tiernan the Litigants father. I quote: "With few exceptions, the roads within the proposed district are PRIVATE IN NATURE, BUT SUBJECT TO A RIGHT OF WAY RESERVED TO THE PUBLIC" BTW, the posted speed limit at that time was 25 miles per hour. So, no matter how many times the word "private" was used in the 1993 ordinance, the

reality is unchanged. Pursue totally private roads and lose our post office, as well as achieving unwanted notoriety far and above that already elicited by Tiernan's suit

BUT PRIVATE ROADS, though a fiction, is a very desirable fiction that has served Diablo well for 50 Years. Hello Tiernan, we are NOT the 17 Mile Drive.

The Board should do everything in their power to maintain our 50 year fiction. Putting the word private in our ordinances is ok, but NOT how the public began to perceive Diablo as "private" How? Simply maintain highly visible authoritative signage at our entrances and along our roads, so that privacy is strongly implied, as we have done for the last 50 years. True privacy to me means your gardener with his two cycle leaf blower is excluded but mine, without a leaf blower is not. Same for your remodelers and their trucks, but mine are A-OK for access.

Lastly, Tiernan's suit.

In 43 years, aside from a member suing the club on a financial matter, I can recall no such occurrence. He seems to be motivated by the constant cyclist atrocities which I discussed above, and a passion for legalistic privacy as opposed to workaday compromise and pragmatism. Compromise, pragmatism, and problem solving are and have been Diablo characteristics which have made living here and bringing my children up here such a great privilege. I find his lawsuit offensive to me and my community in the extreme. I find even more offensive and presumptuous his recent mailer extolling the virtues of one Dominic V Signorotti. It was a promo from Mr Signorotti's law firm. Don't know whether it was to inform me of his talents in case I ever had to engage in business or franchise litigation or whether it was to strike fear in the Board and defendant's lawyer. I think it very poor form.

I apologize for being gone for the summer. I would dearly love to have spoken these words myself. I appreciate the boards indulgence in letting Jeff Eorio read my comments. Any beefs from my comments, direct at me, not Jeff. I'm home on 7 September and will accept beefs on the 8th.

Thanks for your attention. Let's work for solutions.

## 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 \_\_\_\_\_, 2023 by the following vote:

AYES:

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.

Diablo Community Services District  
Financial Report  
September 30, 2023

	July	August	September	Actual YTD	Budget YTD
<b>Beginning Cash</b>	504,843	434,909	402,418	504,843	504,843
<b>Revenue</b>					
Tax revenue	-	-	-	-	-
Other revenue	3	43	2	48	-
Total Income	3	43	2	48	-
<b>Expenses</b>					
Sheriff services	31,196	28,244	29,250	88,690	119,046
Road/bridge/culvert/trail	5,915	1,028	4,076	11,019	40,000
Professional services	8,906	10,675	14,100	33,681	16,302
Insurance	40,239	-	-	40,239	41,015
Administrative	-	15	1,542	1,557	1,750
Total Expenses	86,256	39,962	48,968	175,186	218,113
Net Income	(86,253)	(39,919)	(48,966)	(175,138)	(218,113)
Incr/(decr) in payable/prepaid	16,319	7,428	6,068	29,815	0
<b>Ending Cash</b>	434,909	402,418	359,520	359,520	286,730

**Other Financial Data**

Prepaid/deposit					
Reserves (bridge/culvert)*	765,928	770,928	775,928		
Accounts payable	63,715	71,142	77,212		
Accrued expense					

**Notes**

\* reserves are unfunded