

Appendix NOP

Notice of Preparation (NOP) and NOP Comment Letters

AMENDED NOTICE OF PREPARATION of a Draft Environmental Impact Report

Date:	January 4, 2022
To:	State Clearinghouse and interested parties and organizations
Project Title:	City of Orinda Downtown Precise Plan, Housing Element Update and Safety Element Update ("Plan Orinda")
Lead Agency:	City of Orinda Planning Department 22 Orinda Way Orinda, California 94563
Contact:	Winnie Mui, Associate Planner, Planning Department
Original Date of Public Notice:	January 4, 2022
Amended Date of Public Notice:	January 25, 2022
Extended Public Review Period:	January 25, 2022 to February 24, 2022, in accordance with CEQA Guidelines Section 15082

This amended Notice extends the public comment period to February 24, 2022.

Purpose of the Notice

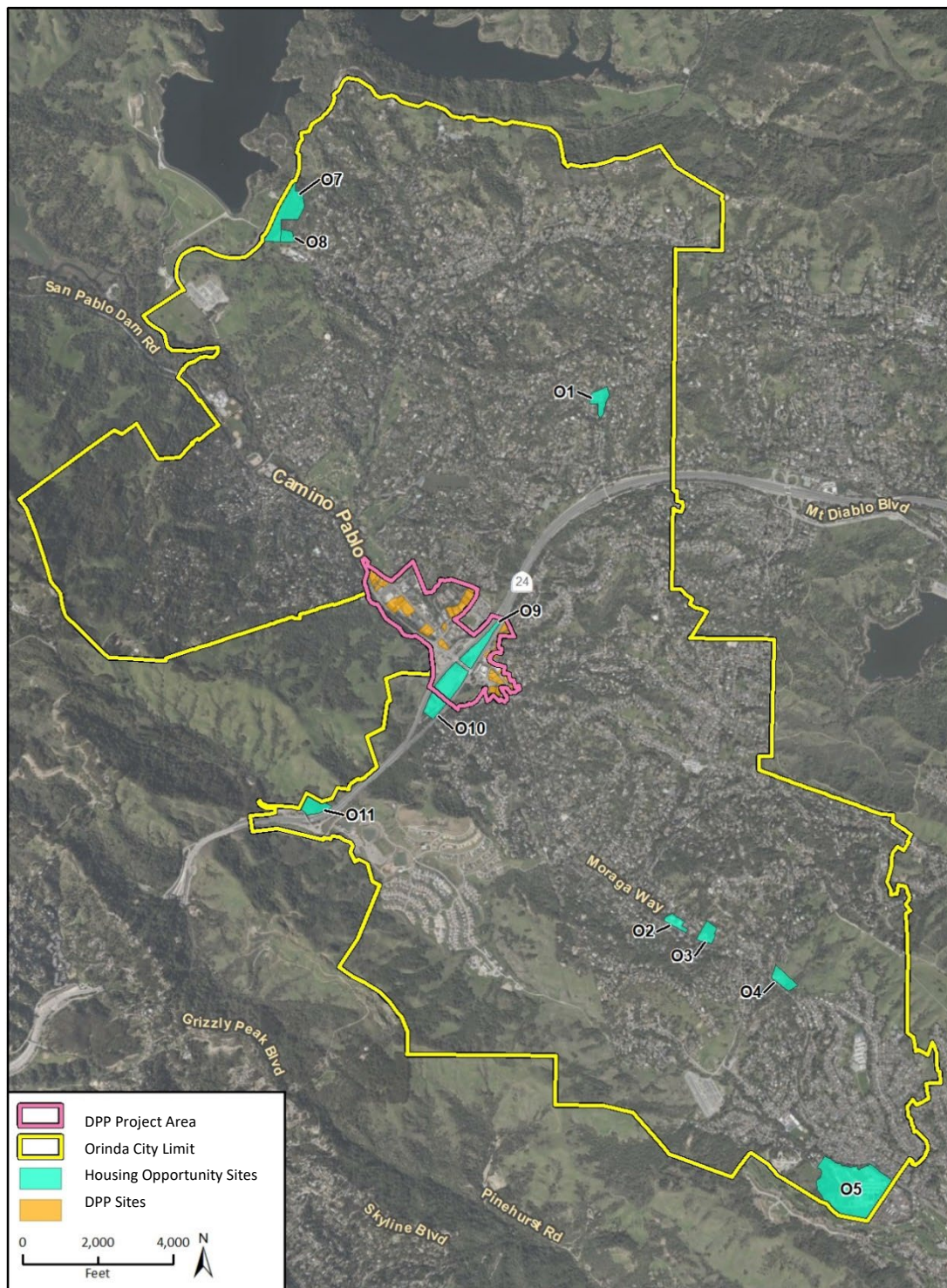
The intent of this Notice of Preparation (NOP) is to inform agencies and interested parties that the City of Orinda will prepare a programmatic-level Draft Environmental Impact Report (EIR) for the proposed Downtown Precise Plan (DPP), Housing Element Update, and all affected/related General Plan elements (collectively known as Plan Orinda) in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15082. This NOP provides information about the project and preliminary scope of the EIR, which examines potential development throughout the planning area at a programmatic level that does not include specific project components or proposals. Comments from interested agencies are requested as to the scope and content of the environmental information pertinent to each agency's statutory responsibilities in connection with the proposed project. Comments from individuals and organizations are also welcome during the 30-day scoping process, during which commenters can present their questions about environmental topics related to the General Plan update, the 2023-2031 Housing Element, and the DPP. The project locations and development descriptions are summarized below.

Project Location

The 2023-2031 Housing Element affects the entire city of Orinda and includes sites in the DPP as well as elsewhere in the city (See Figure 1 and Figure 2). The DPP area would span approximately 146.3 acres in the center of Orinda. The DPP plan area is bounded by the Orinda Way and El Toyonal intersection at the north, Camino Encinas at the south, single-family residences to the east, and Siesta Valley Recreation Area to the west. Figure 1 shows the proposed DPP plan area in its neighborhood context. The second part includes parcels outside the DPP plan area, including 10 Housing Opportunity Sites, as

depicted in Figure 2. Among others, the Housing Opportunity Sites include parcels near or adjacent to the Orinda Bay Area Rapid Transit (BART) station, some of which are under the jurisdiction of the California Department of Transportation (Caltrans). The combined DPP plan area and the Housing Opportunity sites throughout the rest of the city comprise the Plan Orinda Planning Area.

Figure 1 Housing Element Update and DPP Planning Area with Housing Opportunity Sites



Imagery provided by Microsoft Bing and its licensors © 2021.
Additional data provided by City of Orinda, 2020.

Fig 2-4 Housing Opportunity Sites

Project Description

Plan Orinda would provide a vision and planning framework for future growth and development in the city with an emphasis on intensifying land uses in a way that meets future housing needs in response to the Association of Bay Area Governments (ABAG) Regional Housing Needs Assessment (RHNA) allocation.

Downtown Precise Plan

The DPP would focus on the City's downtown area as shown in Figure 1. The City's downtown zoning and development standards would be intended to revitalize the Theatre and Village districts to encourage mixed-use and higher density residential development downtown. The planning horizon for the DPP is roughly 27 years and extends from 2023 to 2050. Under the DPP, two new downtown mixed-use zones, the Downtown Core and the Downtown General zones, would be established to replace the existing Downtown Commercial and Downtown Office zones to allow a mix of uses, including residential, commercial, and office. Zoning standards under these two new zones would allow development up to 85 dwelling units per acre that could be up to 55 feet tall with 5-foot parapets and rooftop screening projections. These rezoning actions would facilitate mixed-use development on the rezoned parcels but would likely not apply to development that may occur at 2 Theatre Square. In addition to the zoning changes, the DPP would include guiding principles, design concepts, objective design standards that streamline housing development, a description of existing conditions, recommendations for land uses in the DPP plan area, development standards, and a discussion of utilities and infrastructure improvements needed to accommodate future growth. It will also include a framework discussion regarding restoration of San Pablo creek as well as development standards pertaining to properties that front San Pablo creek.

2023 to 2031 Housing Element

The City is updating its Housing Element to address its 6th Cycle RHNA and meet its projected housing demand. During the previous, 5th Cycle RHNA, the City was allocated 227 units that were accommodated in the 2015-2023 Housing Element. For the 6th RHNA Cycle, the City was allocated 1,359 dwelling units plus an approximately 25 percent buffer that would ensure "no net loss" if preferred sites are found not suitable for development during specific project approval. This results in approximately 1,700 total potential dwelling units under the 2023-2031 Housing Element. Depending on existing and future zoning on the identified Housing Opportunity Sites, potential densities and heights could increase. For example, on Housing Opportunity Sites 01 through 05, 07, and 08 (Figure 1), up to 20 du/ac are proposed, with up to 27-foot building heights. On the BART sites (labeled 09 and 010 in Figure 1), densities of up to 75 dwelling units per acre (du/ac) could occur, with up to 50-foot building heights possible. On the Caltrans Gateway site (011), 40 du/ac is proposed, with buildings up to 40 feet in height.

The 2023-2031 Housing Element will discuss the feasibility of meeting the City's RHNA by revitalizing the existing Housing Element goals, objectives, policies, and implementation actions to promote housing across a range of affordability, in accord with the latest State legislation. The planning horizon for the 2023-2031 Housing Element is the eight-year period from 2023 to 2031. Through the 2023-2031 Housing Element update process, the City will identify approximately 1,700 potential Housing Opportunity Sites on undeveloped and underutilized sites and determine parcels that can be rezoned to accommodate increased housing density to ensure the City will meet the RHNA allocation plus the no net loss provision (approximately 25 percent). The rezoning needed to meet the RHNA allocation would occur concurrently with the 2023-2031 Housing Element update and will be analyzed in the DPP and Housing Element Update EIR.

Safety Element and Other General Plan Elements

The City's Safety Element, which is in the General Plan under Chapter 4, *Environmental Resources*, was adopted in 1987 and last amended in 2011 to incorporate policies in the Local Hazard Mitigation Plan. Pursuant to Government Code Section 65302(g)(3), the City is required to update its Safety Element concurrently with updates to the Housing Element. For this project, the Safety Element update would revise existing policies and establish new policies related to future development to minimize the risk of personal injury, loss of life, property damage, and environmental damage associated with natural and man-made hazards, in accord with the latest State legislation. The Safety Element would support the guiding principles established for the Housing Element and General Plan, while ensuring wildfire, climate change, evacuation plans, and other current topics are addressed. These updates would be in line with the longer planning horizon associated with the DPP (2023 to 2050).

Depending upon the goals and policies identified in the Housing Element Update, the Land Use and Circulation Element may also be updated to include the rezoning efforts and other details. For more information about the project, please visit the City's website: <https://www.planorinda.com/>

Environmental Analysis

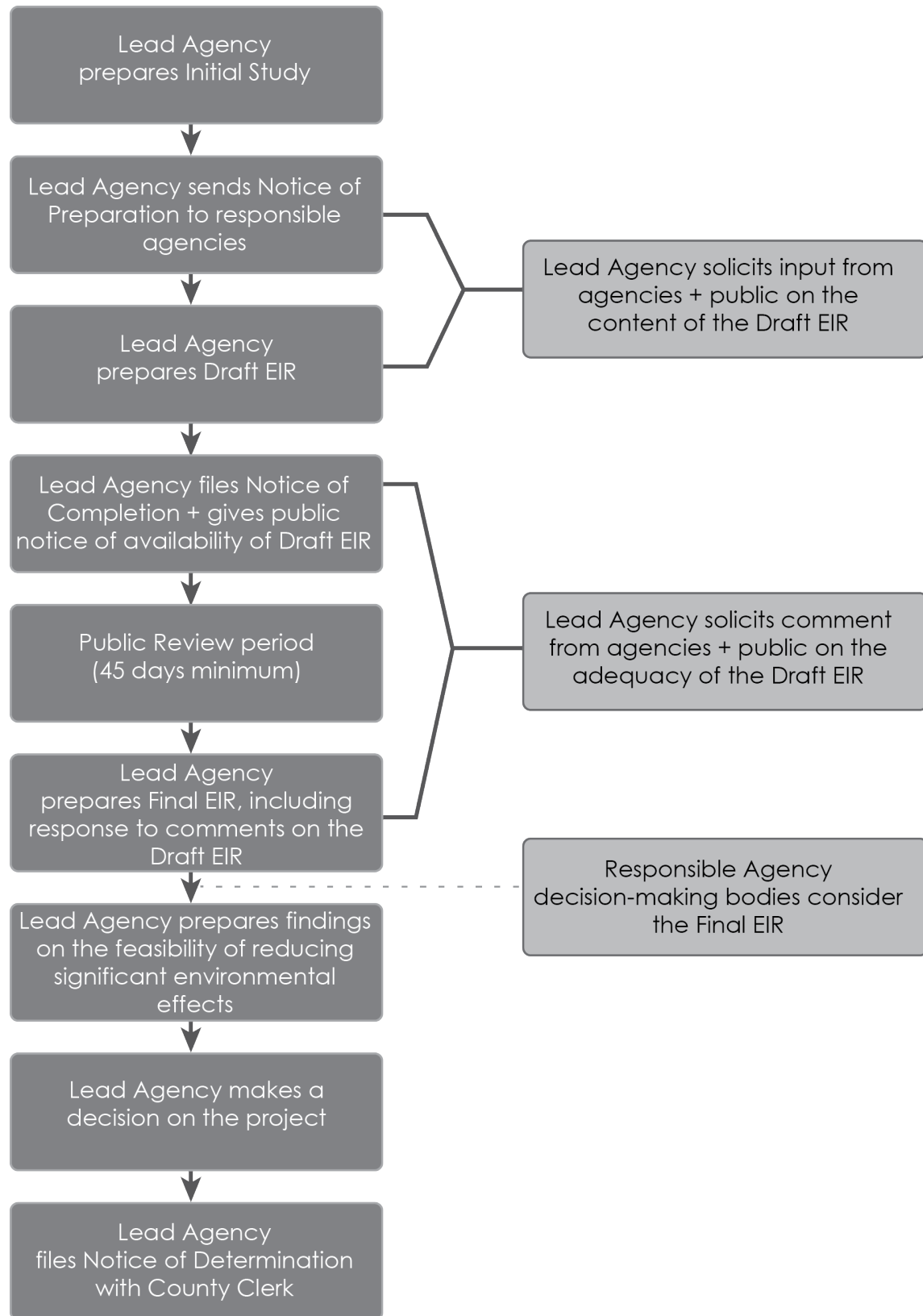
The City determined an EIR was the appropriate level of CEQA review, following a preliminary review of the project. Pursuant to CEQA Guidelines Section 15063(a), because an EIR is needed, an initial study has not been prepared. Therefore, this programmatic EIR presumes potential impacts for many required CEQA topics and will analyze them in full. The following environmental issues are anticipated to be analyzed in detail in the EIR:

- | | |
|---------------------------------|-----------------------------------|
| ▪ Aesthetics | ▪ Air Quality |
| ▪ Biological Resources | ▪ Cultural Resources |
| ▪ Greenhouse Gas Emissions | ▪ Hazards and Hazardous Materials |
| ▪ Land Use and Planning | ▪ Noise |
| ▪ Population and Housing | ▪ Public Services and Recreation |
| ▪ Transportation | ▪ Tribal Cultural Resources |
| ▪ Utilities and Service Systems | ▪ Wildfire |

Other environmental topics, including agriculture and forestry resources, energy, geology and soils, hydrology and water quality, and mineral resources, are anticipated to be less than significant as projects would be subject to existing review requirements and regulatory stipulations. Thus, they will be discussed in the EIR in a limited analysis. The environmental review process is depicted graphically in Figure 2.

Alternatives to the project will be defined and analyzed in the EIR based on their potential to reduce or eliminate significant environmental impacts associated with the proposed project. The specific alternatives to be evaluated in the EIR may include, but are not limited to, the "No Project" alternative as required by CEQA and a reduced intensity development alternative.

Figure 2 Environmental Review Process



Providing Comments on the Environmental Review Process

At this time, the City solicits comments regarding the scope and content of the EIR from all interested parties requesting notice, responsible agencies, agencies with jurisdiction by law, trustee agencies, and involved agencies. This information will be considered when preparing the Draft EIR discussion of environmental impacts, mitigation measures, and alternatives. Because of time limits mandated by State law, comments must be received no later than 30 days after receipt of this notice.

Comments may be submitted by U.S. mail or by email prior to the close of the scoping period.

Mail comments to:

Winnie Mui, Associate Planner
Planning Department
City of Orinda
22 Orinda Way
Orinda, California 94563

Email comments to Winnie Mui at WMui@cityoforinda.org

For comments submitted via email, please include "Scoping Comments: Plan Orinda" in the subject line and the name and physical address of the commenter in the body of the email.

All comments on environmental issues received during the public scoping period will be considered in the Draft EIR, which is anticipated to be available for public review in mid-2022. This NOP and other public review documents for this project will be available for viewing online at <https://www.planorinda.com/>. Due to the COVID-19 pandemic, paper copies will be mailed upon request rather than accessible to the public at a physical location. If you need a paper copy of the NOP or any of the documents referenced therein, please contact Winnie Mui, Associate Planner, at WMui@cityoforinda.org or (925) 253-4210, and she will mail one to you at no cost.

Public Scoping Meeting

Due to the COVID-19 pandemic, the City will hold a virtual scoping meeting to provide an opportunity for agency staff and interested members of the public to submit comments, either written or verbal, on the scope of the environmental issues to be addressed in the EIR. The scoping meeting was held on Thursday, January 20, 2022 at 4:30 p.m. during the regularly scheduled Downtown Planning & Housing Element Subcommittee Meeting hearing. Please contact the City if you wish to obtain access to a recording of the meeting. Written scoping comments are welcome through the extended date of February 24, 2022.

If you have any questions about the environmental review process, please contact Winnie Mui at the contact information provided above.



Winnie Mui, Associate Planner
Planning Department
City of Orinda



NATIVE AMERICAN HERITAGE COMMISSION

January 26, 2022

Winnie Mui
City of Orinda
22 Orinda Way
Orinda, CA 94563

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

PARLIAMENTARIAN
Russell Attebery
Karuk

COMMISSIONER
William Mungary
Paiute/White Mountain
Apache

COMMISSIONER
Isaac Bojorquez
Ojibwe-Costanoan

COMMISSIONER
Sara Dutschke
Miwok

COMMISSIONER
Buffy McQuillen
Yokayo Pomo, Yuki,
Nomlaki

COMMISSIONER
Wayne Nelson
Luiseño

COMMISSIONER
Stanley Rodriguez
Kumeyaay

EXECUTIVE SECRETARY
Christina Snider
Pomo

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

**Re: 2022010392, Plan Orinda (Downtown Precise Plan and Housing Element Update) Project,
Contra Costa County**

Dear Ms. Mui:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines § 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
- b. The lead agency contact information.
- c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:

A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.
- d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- Avoidance and preservation of the resources in place, including, but not limited to:
 - Planning and construction to avoid the resources and protect the cultural and natural context.
 - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - Protecting the cultural character and integrity of the resource.
 - Protecting the traditional use of the resource.
 - Protecting the confidentiality of the resource.
 - Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.
3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.

- b.** The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.
- 3.** Contact the NAHC for:
- a.** A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b.** A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
- 4.** Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
- a.** Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b.** Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c.** Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
Andrew.Green@nahc.ca.gov.

Sincerely,



Andrew Green
Cultural Resources Analyst

cc: State Clearinghouse



February 7, 2022

Winnie Mui, Associate Planner
Planning Department
City of Orinda
22 Orinda Way
Orinda, CA 94563

Re: Notice of Preparation of a Draft Environmental Impact Report for the City of Orinda
Downtown Precise Plan, Housing Element Update and Safety Element Update Plan
Orinda, Orinda

Dear Ms. Mui:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the City of Orinda Downtown Precise Plan, Housing Element Update and Safety Element Update (Plan Orinda), which encompasses the entirety of the City of Orinda (City). EBMUD has the following comments.

WATER SERVICE

Effective January 1, 2018, water service for new multi-unit structures shall be individually metered or sub-metered in compliance with California State Senate Bill 7 (SB-7). SB-7 encourages conservation of water in multi-family residential, mixed-use multi-family and commercial buildings through metering infrastructure for each dwelling unit, including appropriate water billing safeguards for both tenants and landlords. EBMUD water services shall be conditioned for all development projects within the Plan Orinda that are subject to SB-7 requirements and will be released only after the project sponsor has satisfied all requirements and provided evidence of conformance with SB-7.

Main extensions that may be required to serve any specific developments within the Plan Orinda to provide adequate domestic water supply, fire flows, and system redundancy will be at the project sponsors' expense. Pipeline and fire hydrant relocations and replacements due to modifications of existing streets, and off-site pipeline improvements, also at the project sponsors' expense, may be required depending on EBMUD metering requirements and fire flow requirements set by the local fire department. When the development plans are finalized for individual projects within the Plan Orinda, project sponsors should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions of providing water service to the development. Engineering and installation of new and relocated pipelines and services requires substantial lead-time, which should be provided for in the project sponsors' development schedule.

Project sponsors for individual projects within the Plan Orinda should be aware that EBMUD will not install piping or services in contaminated soil or groundwater (if groundwater is present

375 ELEVENTH STREET, OAKLAND, CA 94607-4240, TOLL FREE 1-866-40-EBMUD

at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may be hazardous to the health and safety of construction and maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping or services in areas where groundwater contaminant concentrations exceed specified limits for discharge to the sanitary sewer system and sewage treatment plants. The project sponsors must submit copies to EBMUD of all known information regarding soil and groundwater quality within or adjacent to the project boundary and a legally sufficient, complete, and specific written remediation plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of contaminated soil and groundwater.

EBMUD will not design piping or services until soil and groundwater quality data and remediation plans have been received and reviewed and will not start underground work until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists, or the information supplied by the project sponsors is insufficient, EBMUD may require the project sponsors to perform sampling and analysis to characterize the soil and groundwater that may be encountered during excavation, or EBMUD may perform such sampling and analysis at the project sponsors' expense. If evidence of contamination is discovered during EBMUD work on the project site, work may be suspended until such contamination is adequately characterized and remediated to EBMUD standards.

WATER CONSERVATION

Individual projects within the Plan Orinda presents an opportunity to incorporate water conservation measures. EBMUD requests that the City include in its conditions of approval a requirement that the project sponsors comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance," (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsors should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsors' expense.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,



David J. Rehnstrom
Manager of Water Distribution Planning

California Department of Transportation

DISTRICT 4
OFFICE OF TRANSIT AND COMMUNITY PLANNING
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660
www.dot.ca.gov



February 23, 2022

SCH #: 2022010392
GTS #: 04-CC-2022-00526
GTS ID: 25371
Co/Rt/Pm: CC/24/2.49

Winnie Mui, Associate Planner
City of Orinda
22 Orinda Way
Orinda, CA 94563

Re: City of Orinda Downtown Precise Plan, Housing Element Update and Safety Element Update Notice of Preparation (NOP)

Dear Winnie Mui:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the City of Orinda Downtown Precise Plan, Housing Element Update and Safety Element Update Project (Plan). We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the January 2022 NOP.

Project Understanding

The Plan includes the development/update of the Downtown Precise Plan (DPP), Housing Element Update, and all affected General Plan elements, collectively known as Plan Orinda. In addition, the City of Orinda (City) will prepare a Draft Environmental Impact Report (DEIR) for Plan Orinda. The DEIR will examine potential development throughout the planning area at a programmatic level, not including specific project components or proposals. Plan Orinda would provide a vision and planning framework for future growth and development in the City with an emphasis on intensifying land uses in a way that meets future housing needs in response to Regional Housing Needs Assessment (RHNA) allocation. The project encompasses the entire City and is located along segments of State Route (SR)-24 which passes through the middle of the City in an east-west direction.

Travel Demand Analysis

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide (TISG, [link](#)). Please note that current and future land use projects proposed near and adjacent to the State Transportation Network (STN) shall be assessed, in part, through the TISG.

Additionally, Caltrans requests the City determine that the City of Orinda's Plan Orinda is consistent with California Government Code Section 65088-65089.10 Congestion Management.

The City is requested to gain a determination of conformity from the Contra Costa Transportation Authority to determine that the Plan is consistent with and conforms to the Regional Transportation Plan Consistency Requirements of the County's Congestion Management Plan (CMP).

Transportation Impact Fees

We encourage a sufficient allocation of fair share contributions toward multimodal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT. Caltrans welcomes the opportunity to work with the City and local partners to secure the funding for needed mitigation. Traffic mitigation- or cooperative agreements are examples of such measures.

If proposed projects within the Plan are determined to have significant impacts on State facilities, travel modes, or programs, Caltrans suggests the following Regional Transportation Plan (Plan Bay Area 2050) project for fair share contributions:

RTP ID	Project Description
21-T06-033	This program includes funding to implement SR-24 interchange improvements at Camino Pablo and a new eastbound auxiliary lane between Wilder Road and Camino Pablo.

Equitable Access

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, or for future notifications and requests for review of new projects, please email LDR-D4@dot.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Mark Leong". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

MARK LEONG
District Branch Chief
Local Development Review

c: State Clearinghouse

Darcy Kremin

From: April Durham
Sent: Friday, February 25, 2022 1:43 PM
To: Darcy Kremin
Subject: FW: [EXT] Downtown Precise Plan and Housing Element Update EIR (SCH# 2022010392)

fyi

April L. Durham, PhD, Environmental Planner and Project Manager

Rincon Consultants, Inc.

805.947.4839

805.648.2921 (Mobile)

adurham@rinconconsultants.com



Ranked 2021 "Best Environmental Services Firm to Work For" by Zweig Group

From: Chambers, Andrew@Wildlife <Andrew.Chambers@Wildlife.ca.gov>
Sent: Friday, February 25, 2022 1:29 PM
To: wmui@cityoforinda.org; April Durham <adurham@rinconconsultants.com>
Cc: Battaglia, Michelle@Wildlife <Michelle.Battaglia@wildlife.ca.gov>
Subject: [EXT] Downtown Precise Plan and Housing Element Update EIR (SCH# 2022010392)

CAUTION: This email originated from outside of Rincon Consultants. Be cautious before clicking on any links, or opening any attachments, until you are confident that the content is safe .

Good afternoon Winnie and April,

In preparation of the DEIR, CDFW's Habitat Conservation Unit wanted to provide the following recommendations. Whereas the NOP includes the project area outline, these recommendations below are mainly focused, yet not limited to, housing opportunity site numbers O2, O3, O4, O5, O7, O8, and O11.

CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands (e.g. Northern Maritime Chaparral near Briones Reservoir, oak woodlands and open grasslands, and other areas found in the NOP's map), including all rare, threatened, or endangered species (CEQA Guidelines, §15380). Fully protected, threatened or endangered, candidate, and other special-status species are known to occur, or have the potential to occur in or near the project boundary. The assessed areas should include not only the footprint of potential construction, yet also the staging areas and haul routes related to the project areas.

Habitat descriptions and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDB). Based on the data and information from the habitat assessments, the CEQA document can then adequately provide for which special-status species are likely to occur in the Project vicinity. CDFW recommends that prior to Project implementation, surveys be conducted for special-status

species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols>.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming and/ identification period for all sensitive plant species potentially occurring within, or adjacent to and affected by, the Project area and require the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§15126.2) necessitate that the draft EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. This includes evaluating and describing impacts such as, but not limited to:

- Potential for “take” of special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, due to changes in grade, changes in canopy cover, and other associated adjacent impacts caused by the building of housing and occupation thereof;
- Permanent and temporary habitat disturbances associated with ground disturbance, noise (both during construction and later occupancy), artificial light, reflection, air pollution, increased traffic or human presence; and
- Obstruction of movement corridors, loss of open ground, or access to other core habitat features.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species [CEQA §§ 21001(c), 21083, & CEQA Guidelines §§ 15380, 15064, 15065]. Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code § 2080.

Streambed Alteration Agreement

CDFW will require notification of stream alteration, pursuant to Fish and Game Code §§ 1600 et. seq. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final Streambed Alteration Agreement until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the responsible agency.

If any questions arise during the drafting of the EIR in regard to this email, don’t hesitate to contact me as needed.

Thank you,

-Andy

Andrew O. Chambers

Environmental Scientist

Bay Delta Region, Habitat Conservation Unit

2825 Cordelia Road, Suite 100

Fairfield, CA 94534

(707) 266-2878



Leslie Trejo

From: Nick Waranoff <waranoff@comcast.net>
Sent: Friday, January 14, 2022 1:32 PM
To: Inga Miller; Nick Kosla
Cc: Sheri Smith; Dennis Fay; Amy Worth; Darlene Gee; David Biggs; Drummond Buckley; Winnie Mui
Subject: Comments re scoping meeting to be held January 20, 2022
Attachments: affordable housing analysis v.7.xlsx

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

The scope of the EIR should include greater densities on what are identified as Housing Opportunity Sites.

On page 3 of the NOP, it states: “Depending on existing and future zoning on the identified Housing Opportunity Sites, potential densities and heights could increase. For example, on Housing Opportunity Sites 01 through 05, 07, and 08 (Figure 1), up to 20 du/ac are proposed, with up to 27-foot building heights. On the BART sites (labeled 09 and 010 in Figure 1), densities of up to 75 dwelling units per acre (du/ac) could occur, with up to 50-foot building heights possible. On the Caltrans Gateway site (011), 40 du/ac is proposed, with buildings up to 40 feet in height.”

The EIR should analyze greater densities and heights on these sites, in the event (acknowledged in the quote above) that potential densities and heights increase on those sites. Otherwise, a new EIR will be required.

There is at least as much reason to analyze greater densities on these sites, which include the churches, as on Theater Square, which staff says is unlikely to be redeveloped. By contrast, the churches have expressed an interest in affordable housing, and have sufficient acreage to accommodate the entire low income RHNA. For example, at the same 80 d.u./acre staff proposes for downtown, or even at 60 d.u./acre, the churches could accommodate 100% of the low income and moderate income RHNA, including the 25% proposed buffer. See attached spreadsheet. At only 30 d.u./acre, the churches could accommodate 100% of the low income (but not moderate income) RHNA, including the 25% proposed buffer. Again, see spreadsheet.

Accordingly, staff, by arbitrarily limiting the EIR for the church sites to only 20 d.u./acre is improperly pre-empting the role of the Council to decide densities and height limits.

Similarly, by arbitrarily density and height on the Caltrans Gateway site, staff is improperly pre-empting the role of the Council.

The Church and Caltrans sites should be evaluated at the same maximum densities as the downtown sites, to cover the reasonable possibility that the Council will approve such greater densities and avoid the need for a supplemental EIR.

Nick Waranoff

	A	B	C	D
1	Capacities of 4 Church sites for Affordable Housing			
2	By: Nick Waranoff			
3	Version 7 12/26/2021		notes	
4				
5	RHNA PLUS BUFFER:	units needed	PER PRESENTATION 11-16-2021 SLIDE 28	
6	low income	734		
7	moderate	269	household income up to \$150,000 or two Orinda teachers	
8	above moderate	696		
9				
10	Site	total acres		
11	Holy Shepherd	3.218	has not confirmed interest	
12	St. Marks	4.477		
13	St John	4.943	adjacent to Orinda Oaks Park	
14	St. Stephens	5.48		
15				
16	total acres	18.118		
17				
18	densities proposed			
19	per acre by Nick W.		80	60 35
20				
21	total units at each	1449.44	1087.08	634.13
22	density proposed by Nick W.			
23				
24	RHNA	w/25% buffer at 80 d.u./acre	w/25% buffer at 60 d.u./acre	w/25% buffer at 35 d.u./acre
25				
26	very low and low	734	734	734
27				
28	current capacity			
29	(per staff report)	64	64	64
30				
31	pending			
32	(per staff report)	38	38	38
33				
34	net needed	632	632	632
35				
36	total units at each	1449.44	1087.08	634.13

	A	B	C	D
37	density proposed by Nick W.			
38				
39	surplus			
40	units after			
41	accommodating			
42	low income	817.44	455.08	2.13
43				
44	moderate income	269	269	269
45				
46				
47	surplus available	548.44	186.08	-266.87
48	for above moderate			
49	(negative-shortage)			
50				
51				
52	CONCLUSIONS			
53	1. Entire low income RHNA+BUFFER can be accommodated at 4 church sites at 35 d.u./acre (cell D42)			
54	2. Entire low and mod income RHNA +BUFFER can be accomodated at 4 church sites at 60 d.u./acre (cell C42)			
55	3			

Leslie Trejo

From: Sheri Smith
Sent: Tuesday, January 18, 2022 8:42 AM
To: Drummond Buckley; Winnie Mui; David Biggs
Subject: FW: EIR scoping

From: Nick Waranoff [mailto:waranoff@comcast.net]
Sent: Saturday, January 15, 2022 11:21 AM
To: Inga Miller <IMiller@cityoforinda.org>; Nick Kosla <nkosla@cityoforinda.org>
Cc: Sheri Smith <:ssmith@cityoforinda.org>; Dennis Fay <dfay@cityoforinda.org>; Amy Worth <AWorth@cityoforinda.org>; Darlene Gee <Dgee@cityoforinda.org>
Subject: EIR scoping

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

Please DO NOT include Theater Square in the scope of the EIR. The Theater needs to be preserved. There is no good reason to change to mixed use. We don't need that land for housing. The RHNA can easily be met elsewhere.

Nick Waranoff

Leslie Trejo

From: Nick Waranoff <waranoff@comcast.net>
Sent: Tuesday, January 18, 2022 5:30 PM
To: Inga Miller; Nick Kosla
Cc: Sheri Smith; Dennis Fay; Amy Worth; Darlene Gee; David Biggs; Drummond Buckley; Winnie Mui; Osa Wolff; Michele Jacobsen; CHARLES PORGES; Owen Murphy; Brandyn Iverson; Orinda Planning
Subject: Scoping meeting Jan 20, 2022

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

Any densities proposed by staff need to be increased by the amounts allowed by the density bonus law. Bear in mind that the EPS study determined that only projects that avail themselves of a density bonus are feasible. See table 6 on page 13 here

https://link.edgepilot.com/s/ee456daa/nifbORiFFU2CroliEI_wMg?u=https://cityoforinda.app.box.com/v/DPPFeasibilityMemo

Nick

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Leslie Trejo

From: Nick Waranoff <waranoff@comcast.net>
Sent: Tuesday, January 25, 2022 9:30 PM
To: Dennis Fay; Inga Miller; Amy Worth; Darlene Gee; Nick Kosla; Winnie Mui
Cc: David Biggs; Drummond Buckley; Darcy Kremin (Rincon Consultatns); April Durham (Rincon Consultants); John Smith; Ann Parnigoni; Robert Hubner; Brandyn Iverson; Marian Jelinek; Lina Lee; Willy Mautner; 'CHARLES PORGES'; 1207michele@gmail.com; 'Owen Murphy'
Subject: RE: Your are making a serious error, based on a misunderstanding of the law. Scoping Comment

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

In case I was not clear, here is another example. At a given location, the EIR will consider the impact of a 55 foot tall building. With the density bonus, a project may be 85 feet tall. The additional impact of the additional three stories will NOT be subject to environmental review.

From: Nick Waranoff <waranoff@comcast.net>
Sent: Tuesday, January 25, 2022 8:16 PM
To: 'Dennis Fay' <dfay@cityoforinda.org>; 'Inga Miller' <imiller@cityoforinda.org>; Amy Worth <aworth@cityoforinda.org>; 'Darlene Gee' <dgee@cityoforinda.org>; Nick Kosla <nkosla@cityoforinda.org>; 'Winnie Mui' <wmui@cityoforinda.org>
Cc: 'David Biggs' <DBiggs@cityoforinda.org>; 'Drummond Buckley' <dbuckley@cityoforinda.org>; Darcy Kremin (Rincon Consultatns) <dkremin@rinconconsultants.com>; April Durham (Rincon Consultants) <adurham@rinconconsultants.com>; 'jsmith@cityoforinda.org' <jsmith@cityoforinda.org>; 'aparnigoni@cityoforinda.org' <aparnigoni@cityoforinda.org>; 'rhubner@cityoforinda.org' <rhubner@cityoforinda.org>; 'biverson@cityoforinda.org' <biverson@cityoforinda.org>; 'Marian Jelinek' <mjelinek@cityoforinda.org>; 'llee@cityoforinda.org' <llee@cityoforinda.org>; 'wmautner@cityoforinda.org' <wmautner@cityoforinda.org>; 'CHARLES PORGES' <aporges186@sbcglobal.net>; 1207michele@gmail.com; 'Owen Murphy' <owen.murphy30@gmail.com>
Subject: Your are making a serious error, based on a misunderstanding of the law. Scoping Comment

Someone – Kosla or Buckley – commented at the recent Subcommittee meeting that the Council had instructed that the EIR not consider the density bonus law. Others have previously asserted that any future project that falls within the “envelope” of the Program EIR will be covered by the Program EIR. And that any project that falls outside that envelope will need further environmental review.

It is that last sentence that is false. Here’s why.

A density bonus project within one-half mile of the BART will be exempt for CEQA. See Guideline 15195. <https://link.edgepilot.com/s/28cfb18b/kfuy3YFEO0uUn-sNOgqZlw?u=https://casetext.com/regulation/california-code-of-regulations/title-14-natural-resources/division-6-resources-agency/chapter-3-guidelines-for-implementation-of-the-california-environmental-quality-act/article-125-exemptions-for-agricultural-housing-affordable-housing-and-residential-infill-projects/section-15195-residential-infill-exemption>

Most if not all of both downtowns is within one-half mile of the BART station. I don't think this is disputed; Drummond has publicly acknowledged this. And there is a recent law that changed the starting point of the measurement to the exterior of the parking lot.

Here is the scenario that will evade environmental review: The EIR assumes a certain density and height limit. It determines the impacts and mitigations for that density and height. Then, along comes a developer who proposes a density bonus project. The developer gets additional density and as many as an additional three stories of height as a result of waivers, incentives and concessions that the city will not be able to deny.

You may think that this additional density and height will put the project outside the "envelope" considered by the Program EIR and that therefore this additional density and height will be subject to further environmental review. THAT IS NOT THE LAW. Under 15195, above, the project will be EXEMPT FROM CEQA.

The way to address this is to have the scope of the EIR consider the proposed densities and height limits as they may be augmented by the Density Bonus Law. In other words, assume for example a certain height limit and then consider the effect of three additional stories. Same re density.

Nick Waranoff

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Leslie Trejo

From: Nick Waranoff <waranoff@comcast.net>
Sent: Friday, January 28, 2022 9:28 AM
To: Winnie Mui
Subject: scoping comment
Attachments: In California a New Fight to Stop Building in the Path of Fire - The New York Times.pdf

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

See attached article

The New York Times | <https://www.nytimes.com/2022/01/26/us/wildfire-development-california-legal.html>

In California, a New Fight to Stop Building in the Path of Fire

A proposed luxury development in hills already scarred by wildfire is raising questions about the continued push to build in areas at highest risk.

By **Sophie Kasakove**

Jan. 26, 2022

MIDDLETOWN, Calif. — When Pat Donley learned about the proposed 16,000-acre luxury development that would border her ranch in the burn-scarred hills of Northern California, her mind raced back to the terrifying hour she spent in bumper-to-bumper traffic while fleeing the Valley fire in 2015, as a barrage of flames advanced down either side of the road.

After that narrow escape, Ms. Donley and her husband moved from their gated subdivision to a place that at least offered a less crowded escape: a remote ranch off a windy, narrow road in the hilly outskirts of Middletown, Calif.

So the news five years later that as many as 4,000 new people could be living along that two-lane canyon road seemed to her like a plan destined for disaster.

“If they put all those people on the road, there’d just be no way we could get out — we probably couldn’t even get on the road,” Ms. Donley said. “We’d be trapped.”

In rural Lake County, an area north of the famed Napa and Sonoma Valleys that is known less for tourism than for poverty and unemployment, the new Guenoc Valley development — five resort hotels, a golf course, spas, polo fields and hundreds of villas arrayed around a historic vineyard — promised jobs and tax dollars.

It also promised more people in an area likely to see wildfire again, and soon. The development site has burned three times in the past seven years; at least two other fires have threatened nearby communities since 2019. Ms. Donley evacuated her new home in 2020, when the L.N.U. Lightning Complex fire tore through the Guenoc Valley project site, leaving patches of charred, leafless trees.

But critics of new development in wildfire-prone areas of California scored an important victory this month when a Superior Court judge blocked the Guenoc Valley development, concluding that thousands of new residents in the area could contribute to a deadly bottleneck during an evacuation.



The proposed Guenoc Valley development has burned three times in the past seven years; at least two other fires have threatened nearby communities since 2019. Bryan Meltz for The New York Times

The decision is the latest in a series of groundbreaking new legal rulings that are putting the brakes on development in the more remote areas of a state that has seen the two most destructive fires in its recorded history in the past five years.

In October, a San Diego judge struck down the approval of a community of more than 1,000 homes and businesses in that county's dry eastern scrublands because of wildfire risk. In April, a Los Angeles judge overruled the county's approval of a 19,300-home community in the fire-prone Tehachapi Mountains.

Wildfire Tracker The latest updates on fires and danger zones in the West, delivered twice a week. [Get it sent to your inbox.](#)

The successful legal challenges have emerged as a powerful new tactic for state government to control development in wildfire-prone areas — places where building decisions are typically made by local officials who also face pressure to provide affordable housing, economic development and tax revenues.

“A lot of people are wishing and hoping that wildfire risk wasn’t the new reality and haven’t quite adapted to the fact that it is,” said Attorney General Rob Bonta, whose office joined private environmental organizations in two wildfire lawsuits in San Diego County, as well as the challenge in Lake County. Developers “are building projects based on planning and thinking that was cemented and used well before wildfire risk became so prevalent and so common and so real,” he said.

The lawsuits came after a change in 2018 to the California Environmental Quality Act that emphasized wildfire as a factor that must be considered during environmental reviews.

“We’re at a kind of inflection point between the legacy of the 20th century and the imperatives of the 21st century,” said Stephanie Pincetl, director of the California Center for Sustainable Communities at U.C.L.A. “No, you can’t just develop whatever you want to because you want to — that’s over. There’s no accountability in that over the long term.”

Despite the growing number of wildfires worsened by climate change in recent years, development in fire-prone areas has continued largely unabated, and not just in California. Across the United States, an estimated 99 million people in 2010 lived in areas where development runs up against wild land, according to the Agriculture Department.



Middletown, like many rural communities in Lake County, has struggled to bounce back from the economic devastation of repeated wildfires. Bryan Meltz for The New York Times

That number has most likely grown since then, as high housing costs and Covid-19 risks have pushed more people into rural areas. The risks of such encroachment were put on disastrous display in Colorado in December, when fires destroyed hundreds of homes in the suburban sprawl near Boulder.

Despite the risks, most regulation has involved requirements for fire-safe construction and vegetation clearing. In California, those codes — among the strictest in the country — have been broadly successful: A home built after the state updated its wildfire standards in 2008 is 40 percent less likely to be destroyed than a 1990 home with the same exposure, according to a December study from the National Bureau of Economic Research.

But those protections are not always a match for the high-speed fires that have torn through Northern California in recent years. During the Camp fire, which swept through the small town of Paradise in 2018, homes built before and after the code came into effect were destroyed at roughly similar rates: 37 percent of homes built between 1997 and 2008 survived, while 44 percent of homes built between 2008 and 2018 did, according to a study by the U.S. Forest Service.

The fires now sweeping through the state with staggering regularity are leading some to wonder whether some places are simply too dangerous to build in at all.

“I think we have to be open to that possibility and look at the data and the science,” Mr. Bonta said, “and if it’s worth it in terms of loss of life and loss of property and loss of health. There might be some places where we shouldn’t build.”

The state’s legal challenge does not necessarily mean that Middletown is one of them, Mr. Bonta said, noting that his office would support new development there if the developer and county could address the evacuation concerns.

For some in Middletown, the state intervention threatens the community’s attempt to bounce back from the economic devastation of repeated wildfires.

All over town, address markers sit in front of vacant lots where houses destroyed by the Valley fire once stood. Many residents never returned; others have lived in recreational vehicles on charred properties ever since. Real estate offices received a surge of interest during the pandemic from people hoping to escape the San Francisco Bay Area, but there were few houses to offer.

“Rural communities like those in Lake County may increasingly become ghost towns, as residents leave to find work,” Moke Simon, a Lake County supervisor, warned recently.



Anderson Springs, which is just outside Middletown, lost 90 percent of its homes in the Valley fire in 2015. Bryan Meltz for The New York Times

The environmental advocates opposing the Guenoc Valley project argue that its benefits will not be felt by existing residents. “There are no houses here for firefighters and nurses and schoolteachers — this is luxury resorts and luxury low-density homes,” said Peter Broderick, a lawyer with the Center for Biological Diversity, which brought the lawsuit.

But many Middletown residents, like Rosemary Cordova, see a benefit to bringing in new people to help revive a town whose inhabitants have been drawn closer by disaster. “We rely on each other — the interdependence is nourished by the community,” she said.

That was what prompted her to rebuild in Middletown, she said, after the Valley fire destroyed part of her home and burned a property she owns next door to the ground.

She has been persuaded by presentations from the Guenoc Valley developer, Lotusland Investment Holdings, that showed its plans to build its own fire station, clear vegetation and put utilities underground.

The county declined to comment on the litigation and did not say whether it planned to appeal the judge’s ruling, but Mr. Simon, whose district includes the Guenoc Valley site, said the county would “continue to welcome any future opportunities to partner with Lotusland and others to promote thoughtful development.”

Chris Meredith, one of the development partners, said they were reviewing the court ruling and “remain committed to working alongside the Lake County community and fire safety experts to ensure this project is built in the right way to improve wildfire detection, prevention and response throughout the region.”

Local fire officials agree that fire risks in outlying areas can be minimized by building carefully and maintaining rigorously.

Mike Wink, a chief for the state firefighting department, Cal Fire, lives in Middletown, where his family goes back four generations. As he drives around town, he can easily identify the structures that survived the Valley fire, and those that would be likely to survive another blaze.

“The folks and the places that do the maintenance and keep the noncombustible area around the home,” he said, “the probability of more of those new homes surviving is significant.”



New development in outlying areas can provide firefighters with access roads and more eyes on the ground to help put out wildland blazes more quickly. Bryan Meltz for The New York Times

One argument in favor of new development in outlying areas is that it can provide firefighters with access roads and more eyes on the ground to help put out wildland blazes more quickly.

But those arguments are not necessarily winning the day in court challenges.

The developers should have considered how many more people would be trying to escape during a wildfire, Judge J. David Markham wrote in the Guenoc Valley case. “The additional people competing for the same limited routes can cause congestion and delay in evacuation, resulting in increased wildfire-related deaths.”

The state’s environmental quality act requires state and local agencies to assess and disclose environmental impacts, but it does not dictate what decisions they should make after their assessments.

Last year, legislation was introduced to prohibit all new building in very high-fire-hazard areas. But the building industry argued that it would make it even harder to address the state’s housing shortage, and the bill failed to make it out of committee.

Without stricter prohibitions, Mr. Broderick said, new tract homes and cul-de-sacs will continue to push up into the brushy hills, and towns will be left to try to mitigate the danger.

It is a strategy full of risk, he said.

“Prevention is better than mitigation,” he said. “When you’re mitigating impacts, then you’re already one step behind.”

Mike Baker contributed reporting.

Sophie Kasakove is a 2021-2022 reporting fellow for the National desk. @sophie_kasakove

A version of this article appears in print on , Section A, Page 12 of the New York edition with the headline: California Acts to Keep New Homes From Sprouting in Fires’ Path

Leslie Trejo

From: Nick Waranoff <waranoff@comcast.net>
Sent: Tuesday, February 22, 2022 11:41 AM
To: Winnie Mui
Cc: Drummond Buckley; Dennis Fay; Inga Miller; Darlene Gee; Amy Worth; Nick Kosla; Ann Parnigoni; Robert Hubner; Brandyn Iverson; Marian Jelinek; Lina Lee; Willy Mautner; CHARLES PORGES; 1207michele@gmail.com
Subject: scoping comments for EIR for DPP and Housing Element

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

My comments are numbered for convenience.

- 1) The “no project” alternative to the Downtown Precise Plan (“DPP”) should be considered separately from the Housing Element. The Housing Element is legally required. The DPP is not. The “no project” alternative can only be considered for the DPP.
- 2) The scope of the EIR should include greater densities and heights on all sites:
 - a) Housing Opportunity Sites: the churches and government sites – staff has arbitrarily limited the reasonably probable capacity by limiting the acres and density and height.
 - b) DPP sites. Consideration of the greater density and taller heights allowable under the density bonus law is needed because the EPS study concluded that a density bonus project was the only kind of project even possibly feasible. See Figure 6 on page 13 in this report: https://link.edgepilot.com/s/71e7083f/UQFYNaUxvUaV9i3H0X_3Hw?u=https://cit.yoforinda.app.box.com/v/DPPFeasibilityMemo If a density bonus project goes beyond the “envelope” examined in the EIR, it may escape environmental review due to an exception in the DB law: a density bonus project within one-half mile of BART will be exempt from CEQA. See Guideline 15195. <https://link.edgepilot.com/s/26a584ad/r6ZOfe4J50yFrs07nKT9SA?u=https://casetext.com/regulation/california-code-of-regulations/title-14-natural-resources/division-6-resources-agency/chapter-3-guidelines-for-implementation-of-the-california-environmental-quality-act/article-125-exemptions-for-agricultural-housing-affordable-housing-and-residential-infill-projects/section-15195-residential-infill-exemption>
 - c) The Planning Director has said this includes all of both downtowns.
 - d) The assumption of several councilmembers, that anything outside the “envelope” studied in the EIR will be subject to further environmental review, is simply wrong in the case of some DB projects, especially downtown.
- 3) Impact on view. Setbacks and stepbacks cannot be relied upon to preserve views. A recent court decision held that such requirements are subject to waivers and concessions under the density bonus law. https://link.edgepilot.com/s/7a831b0b/nIRnyO6hI02Mi_CF7PDYvw?u=https://www.courtlistener.com/opinion/5449819/bankers-hill-150-v-city-of-san-diego-ca41/ Therefore, lack of setbacks and stepbacks must be considered.
- 4) VMT: Orinda’s downtowns consist largely of service businesses such as drug stores, dry cleaners, banks, casual restaurants, post office, UPS store, bike shop, etc. Redeveloped

downtown, as envisioned by the DPP, will demolish all of those and replace them with mixed use. Given the cost of buying out the existing businesses, the cost of land, and the cost of demolition and construction, it is unlikely that the existing or even similar businesses will be able to afford retail or restaurant space in the new buildings. This will cause local residents to travel further to obtain these services, resulting in additional VMT.

Nick Waranoff

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Leslie Trejo

From: Nick Waranoff <waranoff@comcast.net>
Sent: Friday, February 25, 2022 11:17 AM
To: Winnie Mui
Cc: Drummond Buckley; Dennis Fay; Inga Miller; Darlene Gee; Amy Worth; Nick Kosla; Ann Parnigoni; Robert Hubner; Brandyn Iverson; Marian Jelinek; Lina Lee; Willy Mautner; CHARLES PORGES; 1207michele@gmail.com
Subject: RE: scoping comments for EIR for DPP and Housing Element - supplement

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

Supplementing item 2a below re church sites: staff has arbitrarily limited density, height, and most importantly, available acreage. Staff has limited the available acreage, at least to some extent, to raw land. In fact, residential development could proceed above the existing church parking lots. Or some of the existing parking lots could be build on from the ground up. There has been no analysis of the actual maximum usage of those lots. And if they do fill up on Sundays, the city has a substantial sum of money in the bank (with more expected from the development of 25A Orinda Way, and still more projected in the EPS study) from in lieu parking fees which is legally earmarked for parking. That in lieu money could be used to replace any parking the churches lose. For this reason, the environmental impacts greater density, height, and number of units need to be considered in the EIR.

From: Nick Waranoff <waranoff@comcast.net>
Sent: Tuesday, February 22, 2022 11:41 AM
To: 'wmui@cityoforinda.org' <wmui@cityoforinda.org>
Cc: 'Drummond Buckley' <dbuckley@cityoforinda.org>; 'Dennis Fay' <dfay@cityoforinda.org>; 'Inga Miller' <IMiller@cityoforinda.org>; 'Darlene Gee' <Dgee@cityoforinda.org>; Amy Worth <aworth@cityoforinda.org>; Nick Kosla <nkosla@cityoforinda.org>; 'aparnigoni@cityoforinda.org' <aparnigoni@cityoforinda.org>; 'rhubner@cityoforinda.org' <rhubner@cityoforinda.org>; 'biverson@cityoforinda.org' <biverson@cityoforinda.org>; 'Marian Jelinek' <mjelinek@cityoforinda.org>; 'llee@cityoforinda.org' <llee@cityoforinda.org>; 'wmautner@cityoforinda.org' <wmautner@cityoforinda.org>; CHARLES PORGES <aporges186@sbcglobal.net>; 1207michele@gmail.com
Subject: scoping comments for EIR for DPP and Housing Element

My comments are numbered for convenience.

- 1) The “no project” alternative to the Downtown Precise Plan (“DPP”) should be considered separately from the Housing Element. The Housing Element is legally required. The DPP is not. The “no project” alternative can only be considered for the DPP.
- 2) The scope of the EIR should include greater densities and heights on all sites:
 - a) Housing Opportunity Sites: the churches and government sites – staff has arbitrarily limited the reasonably probable capacity by limiting the acres and density and height.
 - b) DPP sites. Consideration of the greater density and taller heights allowable under the density bonus law is needed because the EPS study concluded that a density bonus project was the only kind of project even possibly feasible. See Figure 6 on page 13 in this report: <https://link.edgepilot.com/s/14cc6ce1/IHnsDAbqtUK5U0ljprJqGA?u=https://cityoforinda.app.box.com/v/DPPFeasibilityMemo> If a density bonus project goes beyond the

“envelope” examined in the EIR, it may escape environmental review due to an exception in the DB law: a density bonus project within one-half mile of BART will be exempt from CEQA. See Guideline

15195. <https://link.edgepilot.com/s/4c4ff4c7/vQCfEcCobEOme1CIUGEFog?u=https://casetext.com/regulation/california-code-of-regulations/title-14-natural-resources/division-6-resources-agency/chapter-3-guidelines-for-implementation-of-the-california-environmental-quality-act/article-125-exemptions-for-agricultural-housing-affordable-housing-and-residential-infill-projects/section-15195-residential-infill-exemption>

- c) The Planning Director has said this includes all of both downtowns.
- d) The assumption of several councilmembers, that anything outside the “envelope” studied in the EIR will be subject to further environmental review, is simply wrong in the case of some DB projects, especially downtown.
- 3) Impact on view. Setbacks and stepbacks cannot be relied upon to preserve views. A recent court decision held that such requirements are subject to waivers and concessions under the density bonus law. <https://link.edgepilot.com/s/734aad85/bgYgXf8vq0qCDIZoInoYxw?u=https://www.courtlistener.com/opinion/5449819/bankers-hill-150-v-city-of-san-diego-ca41/> Therefore, lack of setbacks and stepbacks must be considered.
- 4) VMT: Orinda’s downtowns consist largely of service businesses such as drug stores, dry cleaners, banks, casual restaurants, post office, UPS store, bike shop, etc. Redeveloped downtown, as envisioned by the DPP, will demolish all of those and replace them with mixed use. Given the cost of buying out the existing businesses, the cost of land, and the cost of demolition and construction, it is unlikely that the existing or even similar businesses will be able to afford retail or restaurant space in the new buildings. This will cause local residents to travel further to obtain these services, resulting in additional VMT.

Nick Waranoff

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Comment on the EIR scope
agenda item C1 of the DOWNTOWN PLANNING & HOUSING ELEMENT CITY COUNCIL
SUBCOMMITTEE MEETING

Dear Councilmembers,

Let me start by saying that I am concerned about the height and mass of future buildings on our narrow downtown streets.

I am interested in what could be developed downtown. I studied the EPS report very carefully. I concluded that even with an increased density and height limit downtown mixed use development faces significant economic difficulties. The EPS report indicated that with a "Density Bonus" projects could be "likely feasible", but probably not otherwise. I then researched Density Bonus (DB). What I discovered was that with DB projects ALL city constraints can be eliminated with "waivers" and "concessions". These include height limits, parking and setback requirements, objective design standards and essentially everything else, so the city would have NO control over the building design.

Public parking is also an issue. Please study the EPS development at BevMo. It provides 196 parking places for 206 residents, with no in lieu fee, and eliminates all public parking at the BevMo and Wells Fargo lots. Where will the store customers park?

The EPS report also says that they cannot account for the economic impact of well developed shopping and residential areas nearby (such as Lafayette, Moraga and Berkeley where we often shop). EPS says that without all of their assumptions, development downtown is unlikely.

In contrast, churches and schools have indicated an interest in building housing. The churches are likely to build low income housing and the schools are likely to build moderate income housing. I suggest that the allowed density for both churches and school lots should be increased to at least 50 du/a and the height increased to at least 45' to allow more units to be built. This should be accurately evaluated by PlaceWorks, taking into account the existing structures and topography. Santa Maria with over 9 acres should also be re-zoned the same way and included. This will satisfy most if not all of our low and moderate income housing RHNA requirements. Both have been historically lacking.

We are about to develop an EIR for all the proposed zoning changes throughout Orinda. The more areas get zoning changes the more complex the EIR and the more costly it becomes. My proposal would greatly reduce the scope and the cost of the EIR. I propose retaining the current zoning for downtown, including the DO and DC areas which may inhibit DB projects and allow the city to retain some control over what gets built. I know this is not what you want but bear with me. Mixed use can already be accommodated in the DC area with the current zoning.

Using Google Earth and CCMAP I estimated, independently of Mr Waranoff, the number of units that could be accommodated by churches re-zoned at 50 du/a with two (three at St. John's and St Marks) story buildings, tailored to the particulars of the lot, proximity to adjacent homes and

roads. I estimated the available building space and even calculated the average unit size. See Fig 1. I know PlaceWorks can do this more accurately.

I concluded that using church and school land, with the addition of the government-owned lot at Gateway it will be possible to generate a certifiable Housing Element solution for all income levels.

If the Council wants to selectively enable some “revitalization” projects to be built downtown, it can pass an ordinance that explicitly allows a density overlay provided that certain Objective Design Standards and other affordability conditions are met.

I do not want 55’-65’ buildings downtown. We need our public parking. We do not need more expensive housing. We do not need to satisfy RHNA by changing downtown zoning.

I request that this option be evaluated and discussed. Please. It would greatly simplify the entire Housing Element process. It might even help retain the village character of our downtown, our main asset compared to Lafayette.

I also request that the city hold a town hall meeting. I think that the community needs to be informed of the downsides and the risks of downtown “revitalization” as currently proposed. I think a presentation, including the consequences of current legislation, followed by discussion is in order.

Thank you
Charles Porges

P.S.

I have not added up the total acres of undeveloped vacant residential private land outside of downtown. I see that there are 600 such lots.

The Housing Element tool assumes 50% development capacity or 300 lots. Since each lot can have two to possibly eight units, please clarify how the 405 unit vacant residential lot capacity was obtained.

Fig 1

	A	B	C	D	E	F	G	H	I	
1			Assumptions made by planning							
2		Lot acres	% buildable	Building Sq Ft	# units	Stories	Avg unit SF @ 80%	actual du/a	allowed du/a	
3	St Stevens	5.48	25	59677	27	1	1768	4.9	20	
4	Holy Shepherd	3.218	33	46258	21	1	1762	6.5	20	
5	St Marks	4.477	50	97509	45	1	1733	10.1	20	
6	St John orth	4.943	33	71055	33	1	1723	6.7	20	
7	Santa Maria	9.35	33	134404	62	1	1734	6.6	20	
8	Total acres	27.47			188	total units				
9										
10			Assumptions made by Charles							
11									50du/a + 20%	
12	St Stephens	5.48	70	167096	240	2	1114	43.8	60	
13	Holy Shepherd	3.218	40	56070	80	2	1121	24.9	60	
14	St Marks	4.477	75	146264	265	3	1325	59.2	60	
15	St John orth	4.943	75	161488	295	3	1314	59.7	60	
16	Santa Maria	9.35	55	224007	325	2	1103	34.8	60	
17					1205	total units				
18			Low RHNA +25% =		734					
19			excess =		471					

I can provide this xls if you wish.
Charles

Leslie Trejo

From: Sheri Smith
Sent: Tuesday, January 18, 2022 8:40 AM
To: Inga Miller; Nick Kosla
Cc: Drummond Buckley; Winnie Mui; David Biggs
Subject: FW: EIR and proposed redevelopment of Theater Square

From: Lisa D [mailto:lisajeandyson@gmail.com]
Sent: Saturday, January 15, 2022 10:41 AM
To: Sheri Smith <ssmith@cityoforinda.org>
Subject: EIR and proposed redevelopment of Theater Square

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

I am contacting you to request that you please exclude Theater Square from the EIR. I understand the city's desire to provide additional housing and commercial space, which would add tax revenue, but this is already a very compact and congested part of Orinda, and further development would only increase the congestion. Taking into consideration the size of that space, no way to expand it, and the very narrow roads, I don't see how there would be adequate infrastructure.

--

Lisa Dyson
lisajeandyson@gmail.com

Leslie Trejo

From: Sheri Smith
Sent: Tuesday, January 18, 2022 8:43 AM
To: Inga Miller; Nick Kosla
Cc: Drummond Buckley; Winnie Mui; David Biggs
Subject: FW: Please remove Theater Square from the EIR.

From: Noel Benkman [mailto:noelbenkman@gmail.com]
Sent: Saturday, January 15, 2022 11:31 AM
To: Sheri Smith <:ssmith@cityoforinda.org>
Subject: Please remove Theater Square from the EIR.

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

We are against redevelopment in the Orinda Theatre Square. And for that matter, the greater Theatre Square area. Thank you.

Noel & Valerie Benkman
221 Overhill Road
Orinda

Leslie Trejo

From: Sheri Smith
Sent: Tuesday, January 18, 2022 8:49 AM
To: Inga Miller; Nick Kosla
Cc: Drummond Buckley; Winnie Mui; David Biggs
Subject: FW: For City Council subcommittee meeting Jan 20

From: Tish Gleason [mailto:tish_gleason@yahoo.com]
Sent: Saturday, January 15, 2022 7:47 PM
To: Sheri Smith <:ssmith@cityoforinda.org>
Subject: For City Council subcommittee meeting Jan 20

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

Please exclude Theater Square from the EIR.
Thanks for listening!
Patricia Gleason

Sent from my iPad

Leslie Trejo

From: Sheri Smith
Sent: Tuesday, January 18, 2022 8:51 AM
To: Inga Miller; Nick Kosla
Cc: Drummond Buckley; Winnie Mui; David Biggs
Subject: FW: Please exclude the Theater redevelopment plans

From: Hedy Veverka [mailto:hedy@hedyveverka.com]
Sent: Sunday, January 16, 2022 9:17 AM
To: Sheri Smith <:ssmith@cityoforinda.org>
Subject: Please exclude the Theater redevelopment plans

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

To whom it may concern

In regards to upcoming January 20 EIR review Please exclude Theater Square from the EIR Thank you

Hedy Veverka
415-613-5813

Leslie Trejo

From: Michele Jacobson <1207michele@gmail.com>
Sent: Tuesday, January 18, 2022 4:58 PM
To: Amy Worth; Dennis Fay; Inga Miller; Darlene Gee; Nick Kosla; Winnie Mui
Cc: Drummond Buckley; John Smith; aparnagoni@cityoforinda.org; Robert Hubner; Brandyn Iverson; Marian Jelinek; Lina Lee; Willy Mautner; Sheri Smith
Subject: Scoping Comments. Plan Orinda

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

Dear Mayor Worth, City Council members, and City Planning Commissioners,

Following are my comments regarding the scope and content of the EIR for Orinda's Downtown Precise Plan, Housing Element and Safety Element.

- Wildfires are listed in the staff report as a potential issue for inclusion in the EIR, but in addition to wildfires, any impacts related to Climate Change in general such as flooding, land slides and heat, should not only be addressed in the Safety Element, but specific policies should be part of the Safety Element. The final DPP should include or reference the policies of the Safety Element as updated. As an example, as temperatures rise, the provision of shade will continue to increase in importance. The EIR should describe the potential impacts of temperature rise as a result of Climate Change and determine if the Safety Element and DPP both include specific policies and standards to ensure that new development will preserve shade trees and increase the amount of structural shade downtown.
- The EIR should evaluate potentially significant impacts on emergency evacuations and traffic flow alterations required for various reasons (wildfire, land slides, flooding, etc.) or that may require alternative routes.
- For purposes of the EIR, the possible density allowed at Housing Opportunity Sites 1 through 5, and 7 and 8 should be increased from 20 du/acre.
- The EIR's consideration of likely impacts from the DPP's proposed densities, heights, objective design standards, etc, needs to also include the impacts of increases of same should streamlined reviews and the maximum bonus density benefits be applied. For example, according to State laws designed to increase the affordable housing supply, an applicant is allowed an additional three stories beyond the zoning regulations if the project includes a sufficient percentage of affordable housing units. Given the proximity to BART and major bus stops, the applicant qualifying for density bonus in Orinda's downtown can also increase the residential density beyond what is allowed without constraint and is required to provide little if any parking. Finally, concessions and waivers allow the same applicant to ignore zoning requirements related to set backs, step backs, public open space, etc. Impacts from developments with these parameters will be significantly greater than the parameters included in the basic DPP regulations. Since these increases are established by State law and can apply currently to any development proposal that might come to Orinda, this should be an extension of the project description and would not be considered as an alternative.
- As part of the evaluation of impacts on Greenhouse Gas Emissions, the program EIR should consider the effect that the build-out of downtown with the benefits of the Bonus Density rules (as described above) will have on the use of downtown by Orinda's existing residents. Unlike most other communities, Orinda's topography and road system mean that the large majority of residents have no choice but to drive to downtown. The DPP doesn't include plans for public parking, and reduction of street parking is expected. If they can't park their car,

Orindans will be forced to drive longer distances to other communities for goods and services. How much would such increases in trip length impact the community's contribution to greenhouse gas emissions?

Thank you,

Sincerely,
Michele Jacobson
990 N Rancho Rd
El Sobrante

Sent from my iPad

Leslie Trejo

From: Michele Jacobson <1207michele@gmail.com>
Sent: Thursday, February 10, 2022 2:46 PM
To: Dennis Fay; Inga Miller; Amy Worth; Darlene Gee; Nick Kosla; John Smith; Ann Parnigoni; Robert Hubner; Brandyn Iverson; Marian Jelinek; Lina Lee; Willy Mautner
Cc: Winnie Mui; Drummond Buckley
Subject: Comments on NOP for PEIR
Attachments: Comments to NOP for PEIR.pdf

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

To Mayor Fay and members of the City Council and Planning Commission,

The attached is being submitted in response to the PEIR Notice of Preparation request for comments. The first section specifically addresses the intersection of the State Density Bonus Laws and the project description for the PEIR. I believe that clarification from the City Council is needed. The second section expands on proposed changes to the DPP, which, if adopted, would then also impact the focus of the PEIR.

Thank you,
Michele Jacobson
202-641-8447

To Mayor Fay, City Council members and Planning Commissioners,

The following is being submitted in response to the PEIR Notice of Preparation request for comments. The first section specifically addresses the intersection of the State Density Bonus Laws and the project description for the PEIR. I believe that clarification from the City Council is needed. The second section expands on proposed changes to the DPP, which, if adopted, would then also impact the focus of the PEIR.

The extensive ramifications of the Density Bonus Laws are being absorbed at the same time that City staff and consultants are preparing several fundamental planning documents, including the PEIR. As a result, we don't have the luxury of taking these issues sequentially, overlap is unavoidable, and flexibility is critical. One change can have a ripple effect that may alter several of the documents. I've tried to clarify how the following comments relate to each other, but I apologize in advance for any confusion. If you have questions, I would be happy to try and answer them.

Section 1 - State Density Bonus Law, the DPP and the PEIR Project Description

.
Fact #1 - EPS determined that assuming downtown Orinda retains its commercial character, without utilization of the State Density Bonus Law (SDBL) incentives, a new housing development would not be economically feasible. They determined that the only economically feasible housing developments in the properties currently zoned as Downtown Commercial would be those that took advantage of the various incentives contained in the SDBL. (Source: Memo from EPS dated April 2, 2021; Development Feasibility shown in Figure 6, page13
<https://cityoforinda.app.box.com/v/DPPFeasibilityMemo>)

Fact #2 - To take advantage of the incentives in the SDBL, the State requires the project to include a minimum percentage of affordable units. Per the SDBL, affordable housing projects within ½ mile of a major transit stop (a condition applying to all of downtown Orinda) qualify for larger incentives and fewer restrictions than other projects.

Fact #3 - The City Council has indicated they intend for the City to strive to meet its RHNA obligations, including the allocations for affordable units, and that they believe it is reasonably foreseeable that future housing development proposals will take advantage of the SDBL. (Source: Nov. 17, 2021, City Council and Planning Commission joint workshop)

Given the EPS conclusions, the influence of the SDBL and the need for Orinda to meet its RHNA numbers for low and moderate income housing, it seems prudent to assume that future developments will be encouraged by the City to take advantage of the SDBL and therefore the DPP should reflect that position. Further, the Project Description for the Programmatic Environmental Impact Report (PEIR) should assume future downtown housing developments will take advantage of the SDBL. To not do so would risk an inadequate evaluation of impacts from approval of the DPP, the Housing and Safety Element Updates, and the eventual re-zoning. This last point becomes more critical since, based on the SDBL, it will likely be the only opportunity for environmental review of future residential developments contemplated in the DPP. The SDBL waive the requirement for environmental review of certain infill housing projects - a position that would apply to most if not all affordable housing projects in downtown Orinda.

Response to NOP for the PEIR: The increased building height and other potential changes resulting from incentives, waivers and concessions included in the SDBL, such as no setbacks or step backs, higher density, little to no parking, no required public space, etc., should be assumed in the Project Description and the resulting parameters evaluated in the PEIR.

Further clarification is needed on building height assumptions from the City Council. If the DPP proposes retaining the currently allowed maximum building height of 35 feet, then the maximum height for purposes of the PEIR would be 35 feet + 33 feet (the maximum 3 added floors per the SDBL) or a total maximum building height of 68 feet (not 55 feet). If the DPP proposes a new maximum building height of 55 feet, then the maximum height for purposes of the PEIR would be 55 feet + 33 feet (3 added floors per the SDBL) or a total maximum building height of 88 feet. Based on the conversation at the November 17, 202, joint workshop, I believe the intention was to assume the former condition of an allowed height of 35 feet for projects subject to discretionary review and the maximum possible building height of 68 feet for an SDBL-qualifying project.

Since future downtown housing projects that do not take advantage of the SDBL could also be proposed, some could be included in the Project Description. (See South of Market Community Action Network v. City and County of San Francisco (2019) 33 Cal. App. 5th 321

<https://ceqaportal.org/summaries/1915/South%20of%20Market%20Community%20Action%20Network%20v.%20City%20and%20County%20of%20San%20Francisco%20.pdf>). The proportions could be whatever is deemed to be reasonably foreseeable. This would not be considered an alternative since it represents a

potential outcome of the same regulations applied to the same properties as for the SDBL projects (This point was confirmed in my recent conversation with the Governor's Office of Planning and Research).

Section 2 - Expansion of Proposed Adjustments to the Draft DPP

Building Height

Under the assumption that future housing projects downtown will take advantage of the SDBL, do not increase the City's allowed maximum building height in the DPP to 55 feet. Instead, keep the currently allowed maximum building height. The SDBLs support the addition of up to three floors above what is allowed. Those added floors would effectively change the allowable building height in downtown Orinda from the current 35 feet to a new maximum of 68 feet (per SDBL). For non-density bonus residential projects subject to discretionary review, consider allowing additional height where the topography warrants it and in exchange for a Community Benefit such as a pedestrian plaza.

Residential Density

Instead of increasing the allowable housing density downtown from 10 du/acre to 85 du/acre, increase the allowable density from 10 du/acre to 20 du/acre to enable it to be considered as multi-family. If SDBL is applied, that density can increase by 50% to 30 du/acre or higher, depending on other factors. For instance, my understanding is that if the project is 100% affordable and close to a major transit stop, SDBL prohibits a limit on density.

Application of the SDBL to what is expected to be the majority of downtown housing projects will provide the opportunity for higher densities by right, depending on the percentage of affordable residential units in the project. For purposes of the PEIR, a density nearing what would be the maximum allowable under the SDBL should be assumed, applied to a reasonably foreseeable mix of development.

Other Parameters

Other regulated development parameters affected by the SDBL include, but are not limited to, setbacks, public space, and the number of parking spaces. These should also be spelled out in the Project Description of the PEIR. For instance, depending on proximity to the BART station and on the percentage of units that are affordable in an SDBL project, parking requirements under SDBL can range from 0 parking spaces per unit to an allowed maximum of ½ space per unit.

Replace the Mixed-use Zone

The primary focus of the DPP is to achieve the following:

- Enable and encourage construction of a variety of housing units downtown
- Create a robust commercial center for the use and enjoyment of existing and future Orinda residents and businesses.

Not surprisingly, the SDBL support achievement of the first, but they do nothing to ensure the second. In fact, the SDBL provide very strong tools to sacrifice other uses in support of residential development. Even without the use of SDBL, any development in the Downtown Mixed-Use General as defined now in the draft DPP could be entirely residential by right since there is no requirement that commercial uses be included in each project and no way to regulate some form of balance between uses. On properties proposed to be zoned Downtown Core, an SDBL development could be entirely residential by right despite the zone's intent that the buildings provide "neighborhood and community-serving commercial, retail, entertainment, civic and institutional uses at the ground floor." The applicant using SDBL need only provide evidence that adherence to that zoning regulation would impair their ability to achieve the affordable housing numbers and the regulation could be overridden.

To protect future commercial uses in downtown, the DPP should include additional zones that focus on either multi-family housing only or non-housing uses only. The advantages of a non-housing zone would mean that

1. retail and office uses are no longer subject to being subsumed by residential development through application of the SDBL, and
2. other zoning regulations such as minimum setbacks, lower building heights, and parking requirements can be relied upon as tools to support a scaled-down but robust and pedestrian-scale commercial center once the residential component is removed.

Separating commercial from residential also protects the residential uses, since, as now proposed, the mixed-use zone does nothing to stop residential uses from being subsumed by retail and office uses - especially in the Downtown General zone. While the primary demand these days is for housing, thirty years ago it was for office space. The uses desired for the community's long term benefit need to be protected through specificity in the General Plan and Zoning Ordinance.

Although EPS concluded that non-SDBL residential projects would not be economically feasible, the analysis assumed the requirement of mixed-uses on all properties - a mix of housing and commercial. By including multi-family housing only zones in the downtown, it is possible that

1. the economics could improve enough to make more housing projects economically feasible, and
2. the housing densities could be reduced from the EPS assumption of 86 du/acre while still having an economically feasible project.

Finally, replacing portions of the mixed-use zone with a purely multi-family residential zone will double Orinda's RHNA credit by the California Department of Housing and Community Development (HCD) on those parcels (per statement from consultant Placeworks at City Council meeting of November 16, 2021). The DPP and modifications to the General Plan are the opportunity for Orinda to decide how the community wants its small but valuable downtown area to be developed for existing and future residents.

Footnote: In its Development Feasibility analysis and shown in Figure 2 of the April 2, 2021, memo, EPS assumed high amounts of required parking for the 50% Density Bonus Scenario. However, the SDBL mandate little to no parking for some affordable housing projects and instead they set a maximum on the number of spaces that can be required. Given the high cost of parking, it seems that an adjustment to that assumption might improve the estimated residual value of the bonus density scenario.

Leslie Trejo

From: Sheri Smith
Sent: Thursday, January 20, 2022 11:09 AM
To: Inga Miller; Nick Kosla
Cc: Drummond Buckley; Winnie Mui; David Biggs
Subject: FW: Housing Policy Recommendations for Climate Resilience
Attachments: Orinda Housing Element Policy Recommendation Letter.docx; ATT00001.htm

From: Karen Rosenberg [mailto:karen.santos.rosenberg@gmail.com]
Sent: Thursday, January 20, 2022 11:08 AM
To: Sheri Smith <ssmith@cityoforinda.org>
Subject: Housing Policy Recommendations for Climate Resilience

CAUTION: This email is from an external source. Be careful when clicking links or opening attachments!

Hello,

Prior to today's City Council meeting we would like to share the following letter which outlines our vision for a climate resilient and equitable Orinda.

This is a once in a decade moment for Orinda to make pivotal progress on climate change by modernizing local policies to build more housing in the right places and protect open spaces. The challenge of building enough housing to bridge the gap also brings opportunity for Orinda to incorporate climate policies into their Housing Element by building the right kind of housing in the right places while protecting our valuable open spaces and irreplaceable farmland.

To achieve the growth our region needs while protecting open spaces, biodiversity, and current and future residents, Greenbelt Alliance and our partners have developed three main strategies for Orinda to base their policies and actions around: increasing density within existing communities in non-high fire severity zones and away from flood zones, ensuring fair and inclusive zoning policies that make housing accessible to everyone, and requiring nature-based solutions for climate resilience in future developments.

To further support our vision for Orinda, Greenbelt Alliance and other partnering organizations have crafted a go-to guide for accelerating equitable adaptation to the climate crisis; [The Resilience Playbook](#). The Playbook brings together curated strategies, recommendations, and tools to support local decision makers and community leaders wherever they are in their journey.

We look forward to participating in the Housing Element process.

Regards,

Karen Rosenberg

Links contained in this email have been replaced. If you click on a link in the email above, the link will be

analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.



January 20, 2022

RE: Housing Policy Recommendations for Climate Resilience

Dear Board of Supervisors, Planning Commission and Planning Staff,

The undersigned organizations and individuals are excited to participate in Orinda's Housing Element process. We write to offer guidance to Orinda in meeting its Regional Housing Needs Allocation (RHNA) goals during the upcoming Housing Element cycle that we believe will make room for more families to enjoy everything Orinda has to offer while ensuring that it is deemed compliant. **This is a once in a decade moment for Orinda to make pivotal progress on climate change by modernizing local policies to build more housing in the right places and protect open spaces.** The challenge of building enough housing to bridge the gap also brings opportunity for Orinda to incorporate climate policies into their Housing Element by building the right kind of housing in the right places while protecting our valuable open spaces and irreplaceable farmland.

The Housing Element is an excellent opportunity for Orinda to mitigate climate change and negative environmental impacts in Orinda. In California, about 40% of climate pollution comes from transportation, the bulk of that from gasoline- and diesel-burning vehicles on our roads. Building more of the right housing in the right places can mitigate climate impacts and reduce housing costs and inequities. But in order to do this we need to change the way we build: as we encourage and engage in equitable, fire-safe infill development, it is imperative that we think about how we can really maximize the benefits that we're getting from our land. We need to build more infill housing in existing urban areas and that infill housing — and all housing — needs to include a healthy amount of green infrastructure like bioswales, carbon sequestering trees that provide canopy cover and can mitigate the urban heat island effect, native plants that can provide habitat, and other nature-based solutions to climate risks.

We believe that by adjusting zoning and development standards strategically, Orinda can exercise maximum control over its future while also reducing greenhouse gas (GHG) emissions and addressing our climate, housing, and equity crises. By considering the feasibility of proposed housing sites, Orinda can ensure the Department of Housing and Community Development (HCD) deems the new housing element legally compliant and accepts Orinda's housing element.

As Orinda begins their update process, we would like to offer three priorities to base Orinda's policies and actions around.

1. **Increase density within existing communities in non-high fire severity zones and away from flood zones.** We must build more housing in existing communities to create healthy, resilient, and affordable housing and protect our open spaces to provide climate benefits. Concentrating growth in places with low or even moderate wildfire hazard risk and outside of anticipated flood zones is necessary to address the need for building more homes while avoiding unnecessary pressure for sprawl and unsustainable shoreline development.
 - a. Orinda has many commercial sites that could be strengthened through the addition of mixed-income or affordable housing. Large parking lots and setbacks of legacy office development represent opportunities to create mixed-uses that lower greenhouse gas emissions, create vitality and increase walkability.
 - b. Increase heights and remove restrictions on density in non-fire or flood severity areas where existing or new high-capacity transit is planned to encourage housing and the creation of mixed-use corridors.
2. **Ensure fair and inclusive zoning policies that make housing accessible to everyone.** The compounding crises of climate change and housing affordability disproportionately impact low-income and communities of color. In order to address our housing, climate, and equity crises, we need to change the stigma around multifamily home structures. Furthermore, current housing policies have resulted in people being unable to afford to live where they work, creating long unsustainable commutes—both for the environment and for our social fabric. Cities need to actively plan for diverse housing options that are accessible to people of all backgrounds and income levels using the principles of Fair Housing.
 - a. **Affordable Housing** - Sites to meet Orinda’s low and very low-income RHNA should focus on feasibility. This means identifying good locations near transit, schools and jobs. Such sites will ensure that affordable housing developers seeking will be competitive in applying for funding. Pleasanton also should try to align such the densities of these opportunity sites with affordable housing finance mechanisms. Typical Low-Income Housing Tax Credit affordable housing developments contain between 40 and 75 units. The density yields of sites should reflect this rather than simply reverting to the statutory minimum density of 30 dwelling units per acre for low-income and very low-income housing under RHNA (the so-called Mullin Densities) regardless of the size of the site.
 - b. **Missing Middle** – Orinda should also focus on creating opportunities for “missing middle” housing like townhouses and duplexes. In Orinda, **65.9%** of housing is owner occupied, the majority of which is single-family homes. Multifamily housing provides housing opportunities for families who cannot afford to buy or rent single-family homes in Orinda.
3. **Require nature-based solutions for climate resilience in future developments.** To ensure that Orinda’s current and future homes are resilient to climate risks like wildfire and flooding, Orinda must be better equipped to help communities struck by natural disasters rebuild and respond rapidly and inclusively. Orinda should require developers to integrate green infrastructure into development and the public right-of-way adjacent to developments at a level that exceeds water quality mandates and ensures that the community has an opportunity to provide input. New infill development has the opportunity to rejuvenate parts of Orinda that currently contribute negatively to GHG emissions, urban heat islands and pose fire and flood risks.

- a. Implement nature-based adaptation - or consider relocating - critical public assets threatened by sea-level rise or rising groundwater.
- b. Require and incentivize green infrastructure in future developments and when possible, use green infrastructure as a preferred alternative.
- c. Consider permit streamlining for new housing that exceeds current green infrastructure requirements.
- d. Reduce mandatory parking minimums to encourage environmentally friendly transit modes like walking, cycling, taking public transit, and purchasing fewer cars.

To support our vision for Orinda, Greenbelt Alliance and other partnering organizations have crafted a go-to guide for accelerating equitable adaptation to the climate crisis; [The Resilience Playbook](#). The Playbook brings together curated strategies, recommendations, and tools to support local decision makers and community leaders wherever they are in their journey.

We look forward to continuing to engage with Orinda and the community on how this vital work can move forward in the new year.

Sincerely,

Zoe Siegel

Director of Climate Resilience,
Greenbelt Alliance

Peri Lindeman
Youth Environmentalist,
Antioch

Selam Asfaw

Youth Environmentalist,
Brentwood

Karen Rosenberg
Resilience Fellow, Greenbelt
Alliance

Abigail Stofer
Youth Environmentalist,
Walnut Creek

Diana Salazar
Youth Environmentalist,
Brentwood

Derek Sagehorn
Housing Element Coordinator,
East Bay for Everyone

Stella Lin
Youth Environmentalist, San
Ramon

Gabriel Vitan
Youth Environmentalist,
Brentwood

Laura deTar
Executive Director, Fresh
Approach

Olivia Johnson
Youth Environmentalist,
Brentwood

Xaylee Minchey
Youth Environmentalist,
Brentwood

Tina Neuhasel
President and CEO,
Sustainable Contra Costa

Ian Cohen
Youth Environmentalist,
Brentwood

Rachel Kimball,
Youth Environmentalist,
Antioch

Alexi Lindeman
Chair, Sustainable Leaders In
Action

Kyle Suen
Youth Environmentalist,
Walnut Creek

Orinda, a thankful, lively, flourishing community

Please, we do not need a five-story hotel building obscuring the verdant green of the Orinda Country Club and causing more traffic.

Our distinction should not be luxurious condominiums, specialty stores and restaurants and more traffic. Let's give Orinda what we need, not buildings by BART. Give us a grocery store, perhaps like Trader's Joes, with parking.

Let's have open spaces, nature, no fear of becoming like Lafayette and downtown Walnut Creek. Don't take away our gift to our children. Let us enjoy our park, tennis court, library, walking on our Main Street & places of meeting. No more buildings. Builders we have enough.

Tiffany Lee,

Orinda Resident