

**From:** [Nick Waranoff](#)  
**To:** [Info](#)  
**Subject:** My comments on Orinda's Draft Partially Revised Environmental Impact Analysis  
**Date:** Tuesday, December 10, 2024 9:39:43 AM  
**Attachments:** [Comments of Nick Waranoff on PREIA.pdf](#)  
[SUPPLEMENTAL Comments of Nick Waranoff on Plan Orinda Partially Revised Environmental Impact Analysis.pdf](#)

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To the Board and to Chief Winnacker: Please see my attached comments and supplemental comments.

This is for your information. No action needed.

Nick Waranoff

Comments of Nick Waranoff on Plan Orinda Partially Revised Environmental  
Impact Analysis

Subject: Plan Orinda, SCH# 2022010392

To: [orindaplanning@cityoforinda.org](mailto:orindaplanning@cityoforinda.org)

Date: Dec. 5, 2024

Final

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## I. Introduction

### A. The PREIA Does Not Address the Important Questions

Let's not lose sight of the forest by excessively focusing on the trees.

The important questions are:

- How long will it take to evacuate Orinda?
- Will all residents be able to evacuate in time?

The original 2022-2023 evacuation analysis ("EA"), based on **existing conditions**, found it could take two hours to evacuate from parts of South Orinda. (See Follow Up or Supplemental Evacuation Analysis ("SEA"), which includes the original EA, pp. B-22 to B-23.) The SEA, which considered how the **buildout of Plan Orinda** would impact evacuation, "does not assess how long it would take residents to evacuate under different wildfire scenario assumptions." (Draft Partially Revised Evacuation Impact Analysis ("PREIA"), page 4.14-35. It claims such information might be misleading or misinterpreted. PREIA, page 4.14-35. The City's approach reminds one of a classic movie scene in A Few Good Men, when Colonel Jessup, played by Jack Nicholson, says to Lt. Kaffee, played by Tom Cruise: "you can't handle the truth". <https://www.youtube.com/watch?v=0-KA4ApfHNA>

Orinda residents are highly educated, and we can handle the truth. There is no CEQA exception for facts that the responsible agency deems might be misleading or misunderstood.

The PREIA confirms the conclusion of the original Environmental Impact ("EIR" or "DEIR" [draft] or "FEIR" [final]) that the impact of Plan Orinda on emergency evacuation in the event of a wildfire will be "significant and unavoidable" due to the new housing proposed downtown.

But the PREIA artfully obscures the seriousness of the problem, in two ways. First, the original EIR determined that the impact would be "significant and unavoidable" under current conditions. Notably, there isn't a more serious impact category than "significant" such as "worse than significant." We can't change CEQA but we can do our best to describe how much worse evacuation will be if Plan Orinda proceeds. The PREIA fails to do so.

Second, the quantitative impact in terms of traffic is obfuscated, in the same manner that re-use of the term “significant” obfuscates the fact that the impact on traffic will be worse, because existing conditions are already “severely constrained” at key intersections, and although the numbers generated by the consultant show increases, the category remains the same. But whereas CEQA is a law that mandates use of certain language (“significant”), the use and definition of “severely constrained” is a phrase that obscures the seriousness of the increase in congestion. Stated differently, due to the fact that existing conditions are already “severely constrained,” the SEA misleadingly makes it appear that existing conditions will not be worsened by Plan Orinda because after-build-out the conditions remain “severely constrained.” Likewise, no “constraint index points” (another artificial construct) are awarded where the “severe constraint” gets worse.

Where, as here, an impact is “significant and unavoidable,” CEQA requires that all feasible mitigation measures be adopted, to maximize the likelihood that all residents, employees of businesses, and visitors who are in town for shopping, dining, or otherwise, will be able to evacuate safely. The PREIA fails to do so.

Orinda is legally compelled to comply with the state housing mandate, and Orinda has done so with its approved Housing Element. The Housing Element will upzone downtown for 698 new housing units; with density bonuses, that figure could increase to 1,047 or even to 1,396 new housing units. I don’t contest compliance with the state mandate. But the upzoning under the Housing Element should be enough to achieve the stated goals of Plan Orinda. If it isn’t, more housing can be added in the future.

What I do contest is the additional upzoning proposed by the previously-adopted Downtown Precise Plan (“DPP”), which would upzone the rest of downtown (sites not included in the Housing Element) to add approximately another 1,000 new housing units that are NOT required by the state mandate. Density bonuses could increase the number of these not-legally-required units to 1,500 or 2,000. The PREIA fails to consider a mitigation or alternative that does upzone downtown beyond the state mandate. It fails to consider not readopting the upzoning provisions previously-adopted DPP. This is a fatal flaw.

A desire to add housing or “revitalize” (whatever that means) downtown Orinda does not trump CEQA.

**B. It is Undisputed that Adding Housing Will Worsen Evacuation. CEQA Requires that Orinda Limit the Amount of New Housing to the Minimum Legally Specified by the State Mandate.**

The PREIA confirms that the impact on evacuation from development of Plan Orinda will be “significant and unavoidable.”

“Impact WFR-1b DEVELOPMENT FACILITATED BY THE PROJECT WOULD BE IN AND NEAR A WUI OR VERY HIGH FHSZ. ***BY ADDING ADDITIONAL RESIDENTS TO ALREADY CONSTRAINED EVACUATION ROUTES, THE PROJECT WOULD SUBSTANTIALLY INCREASE EVACUATION CONSTRAINTS.*** WHILE IMPLEMENTATION OF SAFETY ELEMENT POLICIES AND OTHER MITIGATION WOULD HELP REDUCE THIS IMPACT, THE IMPACT WOULD REMAIN SIGNIFICANT AND UNAVOIDABLE.” Page 4.14-34. (Emphasis and italics added.)

Where, as here, the impact is caused by adding residents, the most logical mitigation would be to reduce the number of added residents; i.e., reduce the amount of new housing downtown to the minimum required by the state housing mandate (Orinda’s RHNA plus buffer). Yet the amount of new housing proposed in Plan Orinda for downtown development far exceeds the amount needed to meet Orinda’s RHNA, including the buffer. **Yet a reduction in the amount of additional housing downtown has not been considered as a mitigation. Nor have the required findings been made to reject that mitigation. Indeed, were any such finding made, it could not be supported by substantial evidence as required.**

**This is a fundamental failure of the PREIA and a violation of CEQA.**

As Planning Director Cross explained to the Council on October 9, 2024 (See slide # 5 from the Planning Director’s Presentation on October 9, 2024 here <https://cityoforinda.box.com/s/zjl26cfz2fhyzcsdtm24anu39qcy4siy>):

- Orinda’s RHNA is 1,359 new units
- Orinda’s RHNA plus buffer is 1,506 new units
- Existing capacity is 713
- Additional capacity needed (including buffer) is 793 (1,506 minus 713) new units
- This additional needed capacity is met by adding housing units downtown and at the “opportunity sites” outside of downtown, at the sites identified in

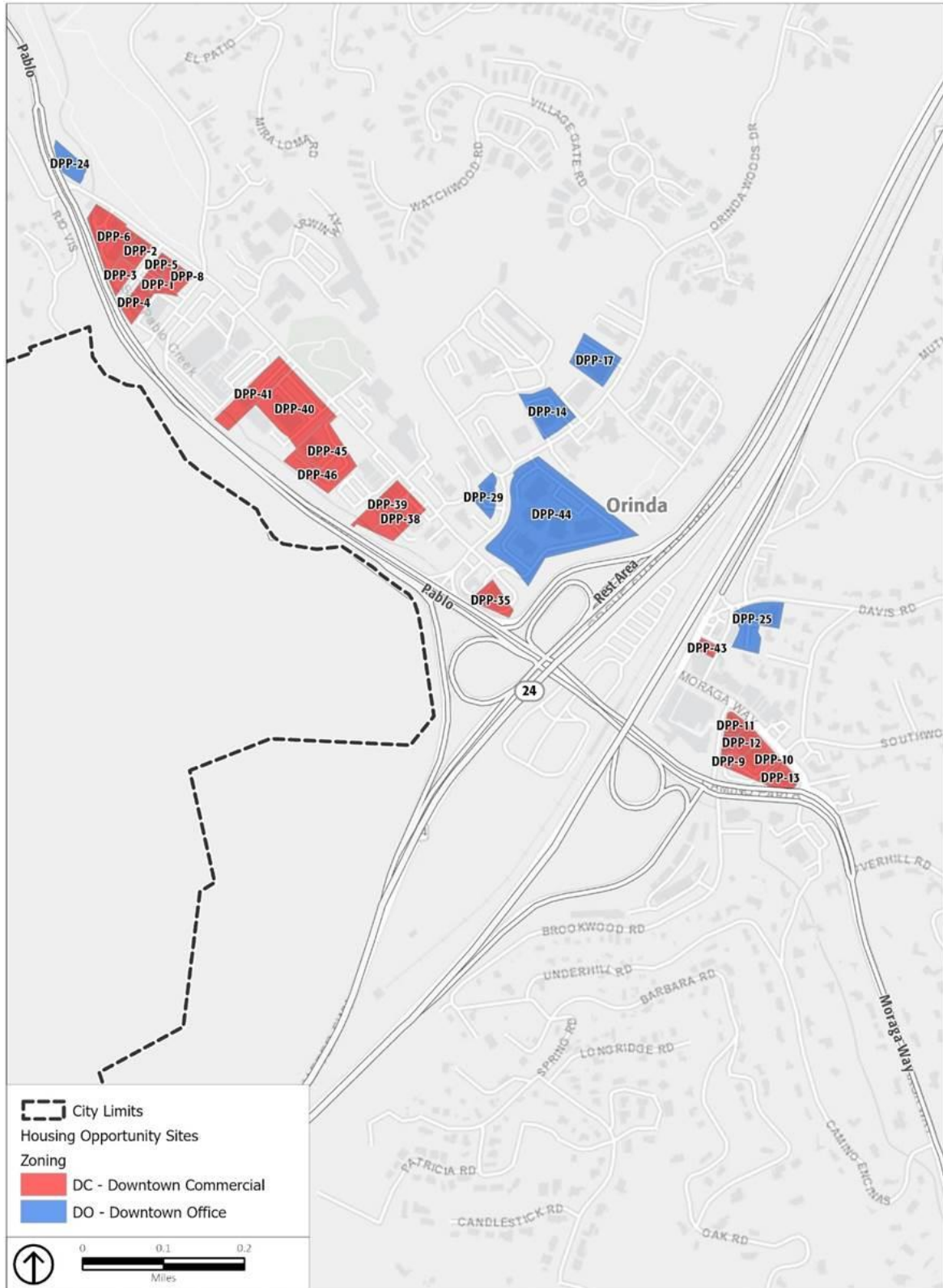
Section 5 of the Housing Element. Link to Housing Element:

<https://cityoforinda.app.box.com/v/6thCycleHEAdoptedCertified>

- The Housing Element counts towards Orinda’s RHNA 421 units on 46 sites downtown, described as the realistic capacity of those sites (60% of proposed new zoned capacity). The zoned capacity downtown for those sites is 698 units. See columns labeled “max capacity” and “realistic capacity” in table 5-5A, page 137 in Housing Element – the difference between the zoned capacity and the realistic capacity is effectively a second buffer) See Housing Element Table 5-5A entitled “DPP [Downtown Precise Plan] SITES TO MEET THE RHNA” at page 137 of the above link.
- The balance of Orinda’s RHNA will be achieved using “opportunity sites” outside of downtown. See “TABLE 5-7 OPPORTUNITY SITES TO MEET THE RHNA” found in the Housing Element on page 147.
- The Housing Element includes sites downtown as well as elsewhere in Orinda. The Housing Element sites downtown (the “DPP sites used to meet the RHNA”) are selected sites downtown in the larger DPP. By contrast to the Housing Element, the DPP is limited, as its name implies, to downtown, and includes but is not limited to the Housing Element sites needed for RHNA; the DPP includes many other sites. See Figures 5-2 (page 132) and 5-3 (page 141) in the Housing Element, reproduced on the following pages, which illustrate this.



Illustration showing that Housing Element sites downtown occupy only portions of downtown. Copy of Figure 5-3 from Housing Element, p. 141



Source: City of Orinda, PlaceWorks 2022

- The total proposed upzoning of the previously-adopted DPP, including the sites identified in the Housing Element, would allow 1,618 new units downtown. DEIR, p. 2-17. By contrast, the total capacity of the Housing Element sites downtown needed for the RHNA is 698, with a “realistic capacity” of 421; only the latter (421 units) was used for RHNA. See Housing Element Table 5-5A entitled “DPP SITES TO MEET THE RHNA” at page 137, columns entitled “max capacity” and “realistic capacity.” This establishes a second buffer of 277 units (698 minus 421).

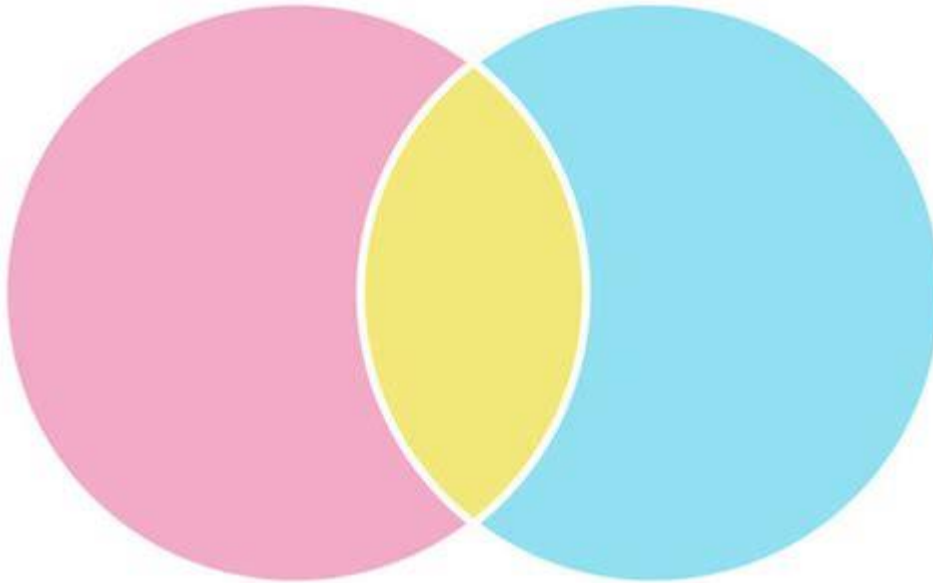
As Figures 5-2 and 5-3 (above) of the Housing Element make clear, the Housing Element sites occupy only a portion of downtown, whereas the DPP covers all or virtually all of downtown. Upzoning all of the DPP would add housing not legally required, and worsen evacuation.

**Note:** the Housing Element as described in the DEIR, released on September 15, 2022, was not the final version. It may have been the May 16, 2022 or the Aug. 2, 2022 version. Shortly after the DEIR was released, in response to comments from HCD and discussions with landowners, a revised draft of the Housing Element was released shortly thereafter September 22, 2022, which reduced the number of Housing Element sites downtown. See Table 5-5B, showing a max capacity of 629 units (down from 720) and a “realistic capacity” of 381 units here.

<https://cityoforinda.app.box.com/v/RevisedHE092022/file/1022797442502>

Further changes were made in November 2022 and the final Housing Element was adopted January 31, 2023, committing to upzoning for 698 new units downtown. See Housing Element Table 5-5A entitled “DPP SITES TO MEET THE RHNA” at page 137, columns entitled “max capacity” and “realistic capacity.”

It may be helpful to think of the Housing Element and DPP as non-concentric, partially overlapping circles, as shown in the following graphic, which is not to scale. The overlap is the portion of the DPP included in the Housing Element.



The pink on the left represents the DPP, whose area is limited to downtown. The blue circle on the right represents the area of the Housing Element (which includes non-contiguous sites, some of which are downtown and some outside downtown). The yellow area in the middle, where the circles overlap, represents the area of the Housing Element sites (although not all of which are contiguous to all of the rest) located downtown in the area covered by the DPP. This illustrates that much of the DPP consists of sites not in the Housing Element and thus not needed for RHNA.

Thus, simple arithmetic shows that the upzoning in the previously-adopted DPP would allow between 920 new units (1,618 minus 698) and 1,197 new units (1,618 minus 421) that are not included in Housing Element sites and thus are not legally required to meet Orinda's RHNA.

Plan Orinda more generally includes much more housing than is legally required to meet the state mandate. "Overall, the general plan and zoning amendments would allow residential development in the City that would potentially increase residential housing and density by adding up to 2,383 new housing units. The EIR anticipates the new housing could add 6,672 new residents overall, which includes an estimated 4,530 residents in the DPP Area." PREIA, page 1. Current population of Orinda is under 20,000.

As explained below, CEQA, the CEQA Guidelines, and the Judge's Minute Order all require that the City consider mitigations, and make findings supported by substantial evidence if the City does not adopt mitigations. Here, the best

mitigation to reduce Plan Orinda’s significant adverse impact on evacuation is to reduce the amount of housing added downtown to the amount required by RHNA and included in the Housing Element, which is legally required; the additional 920 units to 1,197 units that would be authorized under the zoning provisions of the previously-approved DPP are not required.

**Eliminating the not-legally-required units (totaling between 920 and 1,197 units) from Plan Orinda is the best, simplest, most effective mitigation of the evacuation constraints that will be caused by Plan Orinda.** This could be accomplished by declining to re-adopt the zoning provisions of the previously-adopted DPP.

This mitigation is required to have been considered, but it was not. None of the findings required by Guideline 15091(a) have been made that, if supported by substantial evidence, might justify a failure to consider and adopt this mitigation.

A flaw in the PREIA is that the deferred mitigations proposed in the PREIA are legally insufficient, because they lack a performance standard, which is legally required when mitigation is deferred. Proposals to study, consider and evaluate things are inadequate.

Don’t be fooled by the notion that residents will shelter-in-place. MOFD does not recommend that residents shelter-in-place. And the PREIA misleadingly compares new construction of multi-family housing downtown, which will require new “guidelines” conforming to vague criteria to be fire resistant, to existing shelter in place communities comprised of a small number of single family homes.

### **C. Plan Orinda Was Adopted Under Duress**

When Plan Orinda was presented to the City Council for approval on January 31, 2023, the four council members present (Councilmember Riley was absent) had no choice but to approve it and its constituent elements: notably the Housing Element, and the EIR required for the Housing Element. Because the EIR found “significant” and “unavoidable” impacts to emergency evacuation, the Council had to issue a Statement of Overriding Considerations to adopt them. Failure to approve that night would have led to possible loss of critical state fundings, and would have subjected the city to the dreaded Builder’s Remedy. This was specifically stated in the applicable resolution, and discussed at the meeting.

Now, however, no Sword of Damocles is hanging over the Council’s head. The Court’s Writ of Mandate includes a direction that the Council “**consider** whether

to pursue revisions to the 2023-2031 (6th Cycle) Housing Element Update...Safety Element Update...and/or DPP” (para. 3(f)-emphasis added). Upon such consideration, if approval from the Department of Housing and Community Development (HCD) is needed, it can be sought. There is no harm in seeking approval, if necessary, to reduce the amount of zoning for new housing to the amount actually required by law, in order to mitigate the significant impact on wildfire evacuation that full implementation of Plan Orinda would cause. This must be considered in good faith.

The City has greater flexibility than it had on January 31, 2023.

**D. The PREIA Understates the Scope of the Deficiencies in the EIR that Must be Corrected**

Contrary to what the PREIA states, the EIR was defective for more than “two limited reasons.” PREIA, p. 1. The Court identified numerous inadequacies, including an overall failure to consider the effect of Plan Orinda on emergency evacuation (the EIR instead looked at existing conditions) and a failure to consider adequate mitigations. “[T]here is no explanation in the DEIR or the FEIR with the City’s response to public comments as to how Mitigation Measure WFR-1 will mitigate the Project impacts in components of the Housing Element other than HE-4 and HE-5, another informational deficiency.” (Minute Order, pp. 28-29.) HE-4 as used in the DEIR was the Miramonte High School site (see DEIR, Figure 4.1-4, p. 4.1-3) and HE-5, as used in the DEIR, was the CalTrans Gateway site (see DEIR, Figure 4.1-5, p. 4.1-4).

The PREIA consists of a re-write and recirculation of sections 4 and 6, and an entirely new Follow Up Evacuation Analysis, called a Supplemental Evacuation Analysis (“SEA”), totaling 167 pages! Sadly, the erroneous description of the needed improvements to the analysis as “limited” epitomizes the City’s approach to the issue of emergency evacuation, which has been to commit to do as little as possible, and to improperly defer other possible mitigations for study and evaluation, without performance standards.

**E. The City Will Not be Able to Adopt a Statement of Overriding Considerations Unless It Mitigates the Significant and Unavoidable Impact of Plan Orinda By Limiting the Amount of New Housing to the Amount Required by the State Mandate**

For the reasons explained in the final point in this document, the City will not be able to adopt a Statement of Overriding Considerations, because the PREIA again finds that the impact of the new housing will be “significant and unavoidable,” yet

fails to consider and adopt all feasible mitigations. Limiting new housing to the amount required by the state mandate is feasible but not considered. The City must mitigate the significant adverse impact on evacuation that Plan Orinda will cause, by limiting the amount of new housing to the amount required by the state.

## **II. The Purpose of an EIR and the Legal Requirements**

The Court stated, “that the EIR has to include sufficient information to adequately explain whether the impact on the wildfire hazards are significant and how or why they are significant. (Minute Order, p. 19.)

On page 24 the Court further explains, “The ultimate inquiry, as the case law and the CEQA guidelines make clear, is whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project....'Noncompliance with substantive requirements of CEQA or *noncompliance with information disclosure provisions* "which precludes relevant information from being presented to the public agency ... may constitute prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5. (Italics in original; internal quotation marks omitted.)

Notably, “there is no explanation in the DEIR or the FEIR with the City’s response to public comments as to how Mitigation Measure WFR-1 will mitigate the Project impacts in components of the Housing Element other than HE-4 and HE-5, another informational deficiency.” (Minute Order, pp. 28-29.)

## **III. The Plan Orinda EIR, and Plan Orinda Partially Revised Environmental Impact Analysis, Do NOT Analyze Plan Orinda as Adopted. The Housing Element has Substantially Changed.**

The Plan Orinda DEIR was issued September 15, 2022, well before the Housing Element and DPP were finalized. The draft Evacuation Analysis had not even been issued, and would not be issued for another two months. Thereafter, the Housing Element changed, and the description and site numbering in the EIR is materially different from the Housing Element, adopted January 31, 2023.

Regardless of whether this is a legal deficiency or merely limits future use of the PREIA, the changes in the planning documents after preparation of the DEIR, ignored in the PREIA, can be VERY CONFUSING unless one understands that the plans described in the EIR differ significantly from the plans adopted.

### **A. A Program EIR for a Rezoning Requires a Project Description that Substantially Matches the Proposed Rezoning**

A “program EIR” evaluates the broad policy direction of a planning document, such as a general plan, but does not examine the potential site-specific impacts of the many individual projects that may be proposed in the future consistent with the plan. (Public Resources Code sections 21068.5, 21093; Guidelines, sections 15168, 15385.) Program EIRs play a key role in a “tiered” CEQA analysis. (Guidelines, section 15152(h).)

Amendment of zoning requires an EIR. (Guidelines section 15378(a)(1).)

An EIR must define the “project.” For a planning approval such as general plan amendment, the project description must include reasonably anticipated physical development that could occur in view of the approval. (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398.)

### **B. The Project Description and the Description of its Elements Have Changed Materially**

The “project” – Plan Orinda -- described in the DEIR is very different from the actual Plan Orinda (Housing Element, DPP, Safety Element with Evacuation Analysis) adopted on January 31, 2023. See DEIR, Executive Summary, page ES-1, and section 2.

Thus, the City cannot adopt a rezoning plan pursuant to the current Plan Orinda, without a proper supporting EIR. The Final EIR, and the Plan Orinda Partially Revised Environmental Impact Analysis, apply to a different proposed zoning plan or project, not to Plan Orinda.

It is vital to understand the different definitions and site numbers from the DEIR and PREIA, on the one hand, and Plan Orinda and the current Housing Element, on the other. Compare DEIR, section 2, with Housing Element, section 5 (describing Housing Element and DPP and, in Figure 5-3, showing differences).

As finally adopted on January 31, 2023, the Housing Element sites occupied a smaller portion of downtown, with the DPP covering the rest of downtown. See Figures 5-2 and 5-3 of Housing Element (above). The changes to the Housing Element are shown in what is essentially a “redline” on pages 152 to 158 of the September 23, 2022 DRAFT of the Housing Element.

<https://cityoforinda.app.box.com/v/RevisedHE092022/file/1022797442502>

The PREIA does not reflect these changes. the original Draft Environmental Impact Report (“DEIR”) was released September 14, 2022, before these changes were made.

### **C. The Names and Descriptions of the Alternatives are Misleading and Do Not Comply with CEQA**

The Writ of Mandate requires Section 6, entitled “Alternatives,” to be revised. (Writ of Mandate, para. 2(a).)

Section 6 of the PREIA is confusing because the names of the alternatives are inaccurate (as they were in the DEIR) and because the descriptions are inaccurate as well.

The first alternative discussed is the “no project” alternative. This can be ignored, because although required by CEQA, state law mandates that Orinda meet its RHNA, making this not legally feasible under current law.

Alternative 2 is called “DPP plus BART Sites.” See page 6-4. This can also be ignored, because after consulting with HCD and BART, use of the BART parking lots as a site for housing was no longer feasible. See page 6-4.

Alternative 3 is called “No DPP.” This is misleading for two reasons. First, it should have been named “BART sites but No DPP” for accuracy. “Alternative 3 analyzes all of the identified non-downtown Housing Element Sites (HE-1 through HE-5) along with housing on the two parking lots adjacent to the Orinda BART station (BART-A and BART-B).” DEIR, page 6-45. By putting a substantial amount of housing downtown, it would further constrain emergency evacuation in the event of a wildfire.

The key flaw in the DEIR, continued in the PREIA is that there was NEVER any consideration of a “no DPP **and no BART** sites, just Housing Element sites” Alternative, limiting development downtown to the Housing Element sites in the Adopted and Certified Housing Element, which would be zoned for 698 units.

There was no consideration of the separate effect of, or a mitigation consisting of, eliminating the upzoning of downtown as proposed in the DPP adopted Jan. 31, 2023 (exclusive of the Housing Element sites), and the upzoning for an additional 1,000 units not required by RHNA.

A second flaw is that there is no consideration of moving the highly impacted proposed 234 units of housing at Miramonte (HE-4) to the CalTrans site (HE-5) as a mitigation. Although HCD ultimately rejected the CalTrans site, the most likely reason is that the City proposed an isolated, low income only outpost without amenities, instead of a mixed income development with amenities.

#### **D. The Affordable Housing and High Road Jobs Act of 2022 Needs to Be Considered**

As a the result of the passage of AB 2011 (Wicks 2022) and AB 2243 (Wicks 2024) – the Affordable Housing and High Road Jobs Act of 2022 (as amended eff. 1-1-2025)

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB2243](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB2243) the Planning Director has determined that as many as 1,939 units could be built downtown.

<https://cityoforinda.box.com/s/zjl26cfz2fhyzcsdtm24anu39qcy4siy>

The EIR only considered 1,618 as the maximum. Neither figure takes into account any density bonuses.

The Affordable Housing and High Road Jobs Act of 2022 (as amended eff. 1-1-2025) results in an increase in the possible number of units downtown (not counting the density bonus law) of almost 20% -- which dramatically and adversely affects emergency response and evacuation worse than evaluated in the SEA.

#### **IV. The PREIA’s Description of the Scope of the Court’s Ruling is Incorrect and is Too Narrow**

The PREIA includes a “Reader’s Guide” at the beginning that incorrectly describes the scope of the Court’s Minute Order ruling and is too narrow.

##### **A. The City’s Erroneous Description is Too Narrow**

According to the Reader’s Guide:

“In February 2024, the court issued a Minute Order that held the EIR was inadequate for two limited reasons:

“1. Although the EIR had concluded that the Project’s wildfire evacuation impacts (Impact WFR-1, Section 4.14) would be significant and unavoidable, its analysis supporting that conclusion was insufficiently clear. In particular, the EIR had not specified which emergency response or evacuation plans would be impaired by the Project and had not provided

sufficient information to support the conclusion that the Project would exacerbate existing evacuation constraints.

“2. The EIR was ambiguous as to whether Mitigation Measure WFR-1, which required new development to adhere to “shelter-in-place” development standards and prepare a Wildfire Hazard Assessment and Plan, applied to development at all of the sites identified for development in the Housing Element Update (i.e., Housing Element Sites HE-1 through HE-5 and the DPP), or just a subset.” Reader’s Guide, p. 1.

### **B. The Deficiencies Identified by the Court in its Ruling That Must Be Corrected**

The above are not “limited reasons.” If they were, Reason #1 could have been handled with a list, and Reason #2 with a single sentence resolving the ambiguity. Instead, the PREIA consists of 167 pages! Plainly, there is more to the story.

Moreover, the City acknowledges “the Court’s finding that the EIR’s analysis of the Project’s impacts to wildfire evacuation was insufficiently clear.” (Reader’s Guide, page 3)

Further, “there is no explanation in the DEIR or the FEIR with the City’s response to public comments as to how Mitigation Measure WFR-1 will mitigate the Project impacts in components of the Housing Element other than HE-4 and HE-5, another informational deficiency.” (Minute Order, pp. 28-29.)

The city has revised parts of section 4, parts of section 6, and prepared an entirely new follow up evacuation analysis (called a supplemental evacuation analysis [SEA]) that are all properly the subject of comments. See Reader’s Guide, p. 2.

Indeed, the PREIA acknowledges that “comments should be limited to the revised portions of the Draft EIR being recirculated for public review and comment.” Page 3. The “portions ... being recirculated” include section 4 and section 6. My comments are limited to the recirculated portions, plus the new SEA.

Additionally, the Court ruled:

- “the EIR fails to provide a clear analysis and explanation, even on a qualitative basis, of how the Project as a whole will exacerbate the risks of wildfire hazards because it significantly impairs evacuation.” (Minute Order, p. 23)

- “Impact WFR-1 does not explain whether the fact some portions of the population with the Project will have to evacuate on narrow hillside roadways will impact evacuation by the Project as a whole everywhere, or whether the Project has significant impacts on evacuation City-wide simply by adding so much population to the City.” (Minute Order, p. 23)
- “The ultimate inquiry, as the case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.' [Citations omitted.]” “Whether an EIR has omitted essential information is a procedural question subject to de novo review. [Citations omitted.]” “Noncompliance with substantive requirements of CEQA or *noncompliance with information disclosure provisions* “which precludes relevant information from being presented to the public agency ... may constitute prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5” (Minute Order, p. 24)
- “The only reference to lessening the significant impact of the Project on evacuation is in relation to those who need evacuation assistance because of mobility issues or lack of a vehicle in WFR-1. ...Further, the City apparently does not take the position that implementation of the Safety Element Update is sufficient to mitigate the significant impacts of the Project as a whole, or that as a result of the adoption of the Safety Element Update, the Project impacts found in WFR-1 will be limited to HE-4 and HE-5 and that is why Mitigation Measure WFR-1 only addresses by its terms HE-4 and HE-5. Rather, the City seems to acknowledge that Mitigation Measure WFR-1 was intended to apply to the Project as a whole, not just HE-4 and HE-5, because that mitigation is needed to mitigate at least in part the significant adverse wildfire impacts described WFR-1, which as the City vigorously argues applies to the Project in its entirety. ...[T]he Court accepts the City's position that the City intended Mitigation Measure WFR-1 to apply to all Project locations, including all sites in the Housing Element and the DPP, as the City states in the EIR at AR 512. While that may have been the City's intent, that is not what the EIR states. This is a procedural failure under CEQA.... Further, assuming it was the City's intention that Mitigation Measure HE-4 and HE-5 apply to all Housing Element components including the DPP, **there is no explanation in the DEIR or the FEIR with the City's response to public comments as to how Mitigation Measure WFR-1 will mitigate the Project impacts in components of the Housing**

**Element other than HE-4 and HE-5, another informational deficiency.**  
(Minute Order, pp. 28-29. Emphasis added.)

Furthermore, recirculation was/is required when “A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.” Guideline 15088.5(a)(3).

Thus, a full discussion of mitigation, and comment on the adequacy or lack of adequacy of the mitigation and the SEA are appropriate. As is discussion of recirculated Section 6.

**C. The PREIA Discussion of *Res Judicata* is Irrelevant to My Comments**

The City’s argument that *res judicata* and *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296 (PREIA, page 2), bar claims regarding WFR-2 and WFR-3 is irrelevant to my comments, which are limited to WFR-1. Moreover, the holding in that case is that *res judicata* bars a second writ petition. We are not at the “second writ petition” stage.

The writ requires the City to file a return (Writ, para. 3(f)) and “Within twenty-one (21) days of filing the return to the writ, file either a motion to discharge the writ or, if Petitioner agrees that the writ should be discharged, a stipulation to discharge the writ Writ, para. 5).”

The Court writ provides in paragraph 6: “This Court shall retain jurisdiction over these proceedings pursuant to Public Resources Code section 21168.9(b) until the Court determines that Respondent has adequately complied with this writ.”

The City’s compliance with the writ can be challenged by challenging an objection to the City’s return on the writ, or by opposition to a motion to discharge the writ. As a recently published case explains, “Where the peremptory writ directs the public agency to take specific action and the return states that the court’s mandate has been carried out, the petitioner may challenge the validity of that claim by new or supplemental writ; but the petitioner is not required to proceed by writ and **may challenge the writ return as failing to demonstrate compliance with CEQA.**” *Save the Capitol, Save the Trees v. Department of General Services* (2024) 101 Cal. App. 5th 1237. Emphasis added.

## V. CEQA Requires Adoption of All Feasible Mitigation Measures Where There is a Significant Unavoidable Impact and Requires Relevant Findings Supported by Substantial Evidence

### A. CEQA Requires Consideration of Feasible Mitigations

The DEIR was required to analyze a mitigation of limiting upzoning for new housing downtown to the housing needed to satisfy the state housing mandate.

“The four primary components of an EIR are (1) the project description. This discloses the activity proposed for approval. ( [Cal. Code Regs., tit. 14, § 15124 \(Guidelines\)](#).) (2) A description of the project's local and regional environmental setting. This establishes a baseline for determining the significance of potential environmental impacts. (Guidelines, § 15125.) (3) Discussion and analysis of the project's potentially significant impacts to the physical environment, including cumulative impacts when considering the project's impacts in light of other pending or planned projects' impacts. (§ 21100, subd. (b); Guidelines, §§ 15126.2, subd. (a), 15130.) **(4) Discussion of feasible mitigation measures and project alternatives that could lessen or avoid the project's significant environmental effects.** (§ 21100, subd. (b)(3), (4); Guidelines, §§ 15126.4, subd. (a)(1), 15126.6; see Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed. CEB) § 11.2.)”

*League To Save Lake Tahoe Mountain Area Pres. Found. v. County of Placer* (2022) 75 Cal.App.5th 63, 83. Emphasis added.

"[A]n EIR need not analyze ‘ “ every *imaginable* alternative or mitigation measure; its concern is with *feasible* means of reducing environmental effects.’ ” ’ [Citation omitted] Under the CEQA statute and guidelines a mitigation measure is ‘feasible’ if it is ‘capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.’ (§ 21061.1; and see Guidelines, § 15364.)”

*League To Save Lake Tahoe Mountain Area Pres. Found. v. County of Placer* (2022) 75 Cal.App.5th 63, 160

Public Resources Code Section 21081 provides:

Pursuant to the policy stated in [Sections 21002](#) and [21002.1](#), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant

effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

Guidelines section 15088, subdivision (a), requires that there be a finding or findings for each significant effect and that each finding be written and be "accompanied by a statement of the facts supporting each finding." An explanation of the reasoning is required. (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022.)

“Where several mitigation measures are available to mitigate an impact, **each should be discussed** and the basis for selecting a particular measure should be identified.” (Guidelines, § 15126.4, subd. (a)(1)(B). Emphasis added.)

The Judge ruled, “As the California Supreme Court has explained, “if the County were to approve a project that did not include a feasible mitigation measure, such approval would amount to an abuse of discretion.” (Minute Order, p. 25 [citation omitted].)

As is explained in greater detail below, the most obvious, feasible mitigation – eliminating new housing planned downtown in excess of legal requirements – is not discussed. This is a flaw that must be corrected.

If the City believes that this mitigation – reducing the amount of new housing is infeasible -- it must make findings and explain why and support that determination with substantial evidence and reasons. (CEQA Guidelines, §§ 15091 and 15093.) There are no such findings. And there would be no substantial evidence to support any such finding.

Also, the mitigations that are discussed are mostly deferred; the city says there are mitigations it will “study” or “consider” or “evaluate.” But there are no performance standards for the deferred mitigations– a fatal defect.

**B. The Most Obvious Mitigation -- Reducing the Amount of New Housing Downtown – is Feasible and Should Have Been Considered as a Mitigation But Was Not**

**1. A Reduced Amount of New Housing Downtown Should Have Been Considered.**

The most obvious mitigation would be to reduce the amount of new housing downtown, to the extent it exceeds the legally-required state mandate (RHNA).

The Adopted and Certified Housing Element requires the City to upzone specified sites for 698 new housing units downtown, according to the City’s own Housing Element. See Table 5-5A, page 137 of the Housing Element. The City believes the “realistic capacity” of those sites is 421 units.

<https://cityoforinda.app.box.com/v/6thCycleHEAdoptedCertified>

The EIR states that Plan Orinda, which includes both the Housing Element and the DPP, could add 1,618 new housing units (before consideration of the density bonus law). Thus, ignoring the density bonus law, the DPP would add between 920 (1,618 minus 698) and 1,197 (1,618 minus 421) units to downtown alone – units not required by the state housing mandate as shown by them not being included in Table 5-5A. <https://cityoforinda.app.box.com/v/6thCycleHEAdoptedCertified>  
**Approximately 1,000 units not legally required.**

Thus, the substantial impact on emergency evacuation could be lessened by NOT rezoning downtown other than as required by state law as embodied in the Housing Element. A decision not to do the DPP rezoning (other than the Housing Element sites) would reduce the amount of new housing downtown, contemplated by Plan Orinda, by between 920 units and 1,197 units.

Orinda's Regional Housing Needs Assessment (RHNA) is the number of new housing units that the state has mandated Orinda zone for. According to the EIR:

"2.4.3 Population Projections. Plan Orinda envisions the development of additional housing that, if built, would result in an increase in population within the City of Orinda. ... As shown in Table 2-4 and Figure 2-5, within the DPP area, a maximum of 1,618 dwelling units would be developed, for a total of 2,383 new dwelling units under Plan Orinda buildout. The total estimated additional population within the City would be 6,6722. This analysis assumes that the identified sites are developed to the maximum extent feasible." The 6,6722 is obviously a typo and is intended to be 6,672. See footnote 2, page 2-17.  
<https://cityoforinda.app.box.com/v/PlanOrindaDraftEIR/file/1016078497119>

Current population is approximately 20,000. Plan Orinda thus contemplates a 30% increase in our population.

The State housing mandate requires Orinda (not just downtown) to rezone for 1,359 new housing units. Council's plan, called Plan Orinda, calls for 2,383 new units. Many more than required.

**2. There is No Finding that Limiting New Housing Downtown to the Amount Required by the State Mandate is Infeasible**

There is simply no finding that limiting the new housing downtown to the amount required by the state mandate is infeasible. And there is no evidence that could support any such finding.

**3. Additional Housing is not Needed for a Buffer**

The additional housing under the DPP is not needed as a buffer. The DPP would add approximately 1,000 units downtown that are not required by RHNA. Orinda already has a buffer in the Housing Element, approved by HCD.

Orinda has a second buffer resulting from the use of a "realistic capacity" of 60%. This results in zoning for 67% more housing units than are required by the RHNA plus buffer. It is simple arithmetic: 698 [zoned capacity] divided by 421[realistic capacity] = 1.67.

If a need arises under the "no net loss" rule to add units to the Housing Element, an upzoning of sufficient sites at sufficient densities can be enacted. There is a 180-day period within which to do so. <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-166-final.pdf>  
There is no legitimate reason to upzone for an unnecessary 1,000 units at this point in time (i.e., over the next several months) in anticipation of a much smaller problem that may never occur.

Plan Orinda would add approximately 1,000 housing units downtown **that are not legally required by Orinda's RHNA, and that are not needed as a buffer**. See Public Comment of Nick Waranoff, Sept. 3, 2024, pp.1-7 here.

<https://orindaca.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=1877&Inline=TRUE>

#### **4. The Density Bonus Law Makes Evacuation Even More Dire**

But wait – it gets worse. The state density bonus law could result in a density increase under Plan Orinda of up to 50%, or even 100%. The current population (July 1, 2023) population per the census was 19,364 and people per household 2.60. <https://www.census.gov/quickfacts/fact/table/orindacitycalifornia/PST045223>  
The small town Orinda we love will be destroyed, not revitalized.

Very important detail: these figures in the EIR DO NOT consider the effect of the density bonus law (see Final EIR, p. 3 here <https://cityoforinda.app.box.com/v/PlanOrindaFinalEIR/file/1113451323334> ), even though the city's economic consultant determined that ONLY projects using a density bonus are economically feasible. See Development Feasibility Memo here <https://cityoforinda.app.box.com/v/DPPFeasibilityMemo> A density bonus can be up to 50%, or for 100% affordable housing a 100% bonus (doubling the density) is available. Height limits, street level set backs and upper story step backs cannot be enforced against a density bonus project.

#### **5. Limiting New Housing to the Amount Legally Required is Consistent with the Objectives of Plan Orinda**

There is no evidence that more housing is needed to accomplish the objectives of Plan Orinda, than the amount required by the state mandate and included in the Housing Element.

##### ***a) Limiting New Housing to the State Mandate is Consistent with Project Objectives***

According to the DEIR:

#### **Project Objectives**

#### **Housing Element Update**

1. Meet the State required Regional Housing Needs Allocation (RHNA) for 6th Cycle Housing Element planning period of 2023-2031;
2. Bring the General Plan into conformance with recently enacted State law;
3. Identify housing policies and programs that enable the development of additional units and the preservation of existing units, that reduce

governmental constraints to building housing, and that affirmatively further fair housing across the board;

4. Identify housing sites with a collective capacity to meet the City’s RHNA, with buffer capacity;

and

5. Locate most housing sites in existing urban areas, near transit and commercial services.

### **Downtown Precise Plan**

1. To encourage a mix of uses including employment opportunities, housing, recreational and cultural uses

2. To increase open spaces and community gathering places to foster greater connections with nature

3. **To maintain the village “small town” character of downtown** while encouraging development that is compatible with existing uses, the pedestrian environment, and streetscape

4. To incorporate varying architectural building types with appropriate detailing

5. To develop the area with complimentary uses consistent with the current scale and size of surrounding development

DEIR, page ES-2. Emphasis added.

Notably, adding housing in excess of the state mandate would be **contrary** to objective #3: “maintain the village ‘small town’ character of downtown.”

#### ***b) There is no Evidence that More Housing than the State Requires is Needed to Encourage Development***

There is no substantial evidence that more housing than the state mandate requires is needed to encourage development; that state mandate (as shown in the approved Housing Element) consists of a “realistic capacity” of 421 new units; a zoned capacity of 698 units; and a possible 1,047 units if the state Density Bonus Law is invoked. There is no evidence that 421, 698 or 1,047 units would be insufficient to encourage development.

In fact, the evidence is to the contrary. In 2017 the City engaged an Urban Land Institute – Technical Assistance Panel. “The panel was composed of professionals from a wide variety of disciplines reflecting diverse perspectives, including market analysis, land use and design, retail consulting, architecture, finance and development strategies, governance and policy, and real estate development.” See p. 4 here <https://cityoforinda.app.box.com/s/ijrzdcoativ6h4hol8kgv2ehrcwqnc4el>

“The city asked the panel to help restart the “downtown conversation” with concrete and actionable next steps while also building on the research and previously gathered input.” See page 4 here

<https://cityoforinda.app.box.com/s/ijrzdcotiv6h4hol8kgv2ehrcwqnc4el>

“Over the two-day working session, the panelists were asked to provide recommendations based on the following questions:

1. Based on the interviews, what is the collective vision for downtown Orinda? Provide a draft mission statement for downtown.
2. Based on the community’s vision for downtown Orinda, what streetscape design concepts, if any, are recommended?
3. Based on the community’s vision for downtown Orinda, what are the restoration and planning recommendations, if any, for San Pablo Creek?
- 4. Based on the community’s vision for downtown Orinda, what changes, if any, are recommended to downtown development standards and allowable land uses?”**

*Id.* Emphasis added.

In terms of new housing, the recommended change was “Up to six 40-unit mixed-use residential projects could be allowed in the Village District. The panel recommends that such projects be allowed flexible height limits—35 to 55 feet—measured from the curb on Orinda Way. (Height limits are discussed further under Question 4.) The city could allow parcel owners to engage in higher-density residential development—while respecting the overall existing residential density for the Village—in exchange for dedicated creek right-of-way.” (*Id.* at page 24.)

Thus, the ULI-TAP recommended **240 units** – far less new housing than just the Housing Element will allow. Without adding additional housing under the DPP. More housing than the Housing Element authorizes is not needed to accomplish the Project’s objectives.

Surveys of residents show that wildfire evacuation is a high priority and that more housing downtown is not a high priority. A 2020 survey of Orinda residents found that new housing downtown ranked only FOURTH in terms of what residents want, supported by only 211 of the 728 respondents.

<https://theorindanews.com/2020/06/26/planning-department-survey-finds-discontent-with-downtown/>

By contrast, the most recent survey, concerning the Measure R sales tax, found 89% and 86% support for “Ensuring speedy emergency response” and “Wildfire prevention” respectively.

<https://www.cityoforinda.org/DocumentCenter/View/2794/Tax-Measure-Polling-Results-Summary?bidId=>

**6. There Are No Findings and No Substantial Evidence That Would Support a Finding That Limiting the Amount of New Housing Downtown to the Amount Legally Required is Infeasible**

Neither the DEIR nor the PREIA contain findings that limiting the amount of new housing to the amount legally required is not feasible. Moreover, even if there were such a finding, it would need to be supported by substantial evidence, but there is no such evidence. In fact, the evidence is to the contrary.

Guideline 15091 provides:

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

There are no findings that limiting the amount of housing to be added downtown, beyond the legal requirements in the Housing Element sites, is not feasible. Nor could there be such a finding, supported by substantial evidence.

### **C. Many Mitigations are Deferred and are Insufficient Due to the Lack of any Performance Standard**

Most of the mitigations that are included are deferred and insufficient because they lack any performance standard.

A recent case summarized the case law:

“Formulation of mitigation measures shall not be deferred until some future time.” (Guidelines, § 15126.4, subd. (a)(1)(B).) Thus, as a general rule, “it is inappropriate to postpone the formulation of mitigation measures.” However, the general rule is not absolute and “there are circumstances in which some aspects of mitigation may appropriately be deferred.” For instance, “measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.” (Guidelines, former § 15126.4, subd. (a)(1)(B).) In *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777 (*Endangered Habitats*), the Fourth District stated: “Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. [Citation.] On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report. [Citation.]” (*Defend the Bay v. City of Irvine* [(2004)] 119 Cal.App.4th 1261, 1275].) If mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them. [Citation.]”

“In *POET I*, we described the exception to the general rule against deferral by stating, “[T]he deferral of the formulation of mitigation measures requires the agency to *commit itself to specific performance criteria for evaluating the efficacy of the measures implemented.*” (*POET I, supra*, 218 Cal.App.4th 738, first italics added.) In *POET I*, we also recognized the distinction between stating a generalized goal and adopting specific performance criteria. (*Id.* at p. 740.) Simply stating a generalized goal for mitigating an impact does not allow the measure to qualify for the exception to the general rule against the deferred formulation of mitigation measures.

“In *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099 [85 Cal. Rptr. 3d 50] (*Gray*), the project proponent wished to develop a hard rock quarry and applied to the county for a conditional use permit. (*Id.* at p. 1105.) The EIR concluded the project could cause the water levels in adjacent private wells to decline during the operational life of the quarry. (*Id.* at p. 1112.) A mitigation measure required monitoring of the wells and, if an impact was found, the replacement of water for nonconsumptive use from existing wells on the proponent's property. As to consumptive use, the measure required the proponent to “provide the affected party, or parties, with bottled water or potable water from some other source that is verified to meet state and federal drinking water standards.” (*Ibid.*) On the question of improper deferral of the formulation of mitigation measures, the proponent argued the county had committed to a mitigation goal of remedying the decline in water levels in the private well and had listed various ways the problem could be addressed. (*Id.* at p. 1118.) **We concluded the county had not committed itself to a specific performance standard and, as a result, did not qualify for the exception to the general rule against deferral.** (*Id.* at p. 1119.) We stated that “the County has committed itself to a specific mitigation goal—the replacement of water lost by neighboring landowners because of mine operations” and concluded the goal was not a specific performance standard. (*Ibid.*)

“Here, we conclude the requirement that applicants shall increase or maximize their use of produced water and decrease or minimize their use of M&I water suffers from the same defect as the measures in *POET I and Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70 [108 Cal. Rptr. 3d 478] (*Better Environment-Richmond*). In *Better Environment-Richmond*, the “EIR merely proposes a generalized goal of no net *increase* in greenhouse gas emissions and then sets out a handful of cursorily described mitigation measures for future consideration.” (*Id.* at p. 93, italics added.)”

*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814.  
Emphasis added. Some citations omitted.

See also these more recent cases, which likewise require a performance standard for deferred mitigations: *Save Our Capitol! v. Department of General Services* (2022) 85 Cal.App.5th 1101, 1134; and *East Oakland Stadium Alliance, et al v. City of Oakland v. Athletics Investment Group* (2023) 89 Cal.App.5th 1226, 1274 (“Mitigation measures “need not include precise quantitative performance standards” [citation omitted], but [Section 15126.4](#) ’s reference to “specific”

performance standards implies a reasonably clear and objective measure of compliance.”)

Most of the policies, implementation actions, and recommendations in the DEIR and PREIA, even if viewed as mitigations, are deferred; they are not concrete or mandatory; in substance they provide that the City will “study” or “consider” or “evaluate” something. See PREIA, pp. 4.14-40 to 4.14-45. These include, “Coordinate with MOFD to develop fire safe standards as part of the Fire Code for new residential developments in constrained residential areas, such that sheltering in place is a viable alternative plan if evacuation routes become too congested to preclude timely evacuation during an emergency or if other circumstances prevent evacuation, as sheltering in place should only be considered if evacuation is not feasible.” PREIA, p. 4.14-44.

They are legally insufficient as mitigations because deferred mitigations must have a performance standard, which these lack.

The Safety Element doesn’t cure this problem; it suffers from the same deficiency:

TABLE 1 IMPLEMENTATION MEASURES

Action #	Implementation Action	Applicable Policy or Policies	Responsible Department or Agency	Time Frame	Funding Source
IA-4	The City shall evaluate, and as feasible enact, recommendations in the City of Orinda 2022 Evacuation Analysis and other pertinent analyses to improve safe evacuations in Orinda.	S-11 S-12 S-14	City Manager’s Office	By 2024	General Fund / Bond Funding / Sales Tax

Safety Element, p. 66.

The policies referred to are:

**Policy S-11** Coordinate with emergency responders, engineers, and Caltrans to identify and maintain additional potential evacuation routes to ensure adequate capacity, safety, and viability of those routes in the event of an emergency, including making improvements to existing roads to support safe evacuations as needed.

**Policy S-12** Explore expanding contra-flow lanes and red flag parking restrictions to support safe evacuations on critical roadways.

...

**Policy S-14** Continue to revise and improve the Evacuation Analysis and its recommendations as appropriate during future updates to the Safety Element and Hazard Mitigation Plan, including in coordination with surrounding jurisdictions.

Safety Element, p. 57.

The point is not a challenge to the Safety Element but rather that the Safety Element does not cure the problem with the DEIR.

As the Reader's Guide notes on page 2, "The writ also required the City to ... revise the mitigation monitoring and reporting program (MMRP)." Yet it has not been revised. The Mitigation Monitoring and Reporting Plan (<https://cityoforinda.app.box.com/v/CCResolution07-23ExhibitA-3>) regarding WFR-1 is, on its face, still limited to HE-4 and HE-5 (see pages 35-26 of pdf file; pages are not numbered). This is a flaw that must be corrected.

Moreover, the mitigations regarding wildfire evacuation in MMRP are defective because they are deferred to the future and lack performance standards.

## **VI. The Discussion of Shelter-in-Place is Meaningless and Misleading. Residents Downtown Will Not, and are Advised Not to, Shelter in Place**

The SEA discussed as a proposed mitigation that the new residents will be in fire resistant new buildings and may not need to or be able to evacuate; instead, they will shelter in place in their apartments. PREIA, page 4.14-22; See PREIA, pp. 4.14-40 to 4.14-45; 4.14-52.

Moreover, "the Board of Directors of the Moraga-Orinda Fire Protection District **advises residents to evacuate as the best option** in the event of a wildfire, even from recognized shelter in place communities." (*Id.*) "Shelter-in-place communities are still advised to evacuate if they have time and ability" PREIA, page 1.14-22 Emphasis added.

In addition, it is unrealistic to expect the new residents downtown to watch the other residents evacuate, and will thus stay out of the way of the fleeing residents. It defies human nature to believe that people will shelter in place in the face of an

approaching wildfire, hoping their home or apartment will prove to be fireproof. This is especially true of residents of new buildings downtown, because they are closest to the freeway and most likely won't face congestion, but their evacuation will cause congestion adversely imping those not living downtown who need to evacuate through downtown.

Indeed, the PREIA itself admits, "Thus, Mitigation Measure WFR-1 would not mean that residents would always shelter in place during a fire." (*Id.*) Further, "congestion ... may be reduced." (*Id.*) Or, it may NOT be reduced. "Congestion [due to sheltering-in-place]... **may** be reduced...." PREIA, page 4.14-52. Of course, it may not. It is not clear, in the SEA, what effect shelter-in-place construction will have on evacuation.

Thus, people may or may not shelter in place, and congestion may or may not be reduced. What if residents downtown do NOT shelter in place.

Unlike *League to Save Lake Tahoe v. County of Placer* (2022) 75 Cal.App.5th 63 (discussed in Minute Order, page 26), here it is unclear whether "shelter-in-place IS proposed as a **substitute** for an evacuation plan.

The references to J&J Ranch and Wilder, as shelter-in-place communities, implies a similarity that in fact is non-existent. J&J Ranch is a community of 13 single family homes. It was developed almost 10 years ago. Its EIR found wildfire or evacuation impacts less than significant. See page 2-15 here.

<https://cityoforinda.org/DocumentCenter/View/1085/J--J-Ranch-Draft-Environmental-Impact-Report-PDF>

Wilder is likewise a development of single family homes. It is adjacent to Highway 24 and if its residents choose to evacuate, there are not other residents whose access will be interfered with. Its development (originally called "Montanera") was reduced to 245 single family homes surrounded by substantial open space. By contrast, Plan Orinda would add multi-family housing downtown, consisting of 1,618 units containing 4,530 new residents, and the evacuation of those residents would significantly impact the many existing residents located outside downtown who need to evacuate through downtown.

## VII. The PREIA and SEA Do Not Comply with CEQA re Thresholds

### A. The PREIA and SEA Did Not Use the Legally Required Threshold

The PREIA states:

#### **“Significance Thresholds**

“The following thresholds of significance were used to evaluate impacts related to wildfire associated with implementation of the proposed project. These thresholds, **with the exception of** Threshold 1b, are based on the CEQA Guidelines Appendix G Checklist. For purposes of this EIR, since the project opportunity sites would be located near (within 2 miles of) an SRA and VHFHSZ, and WUI area, project implementation may have a significant adverse impact if it would do any of the following:

“1a. Substantially impair an adopted emergency response plan or emergency evacuation plan;

“1b. Substantially increase emergency evacuation constraints;

“2. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire;

“3. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment;

“4. Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes; or

**“5. Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires.”**

(PREIA, page 4.14, pp.4.14 -26 to 4.14-27. Emphasis added.)

The PREIA further states:

#### *“Evacuation Threshold*

“The City, as the Lead Agency under CEQA, has determined that a complete analysis of potential wildfire impacts requires an assessment of whether the project would substantially increase evacuation constraints, in addition to the standard CEQA Guidelines Appendix G thresholds, because a project can substantially increase evacuation constraints while still being consistent with

adopted emergency response and evacuation plans. As a result, **the EIR utilizes a separate threshold of significance (Threshold 1b) in addition to the Appendix G thresholds** to assess this impact.” PREIA, page 1.14-27. See also Reader’s Guide, page 3.

Thus, the PREIA admits that the most important one – “5. Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires” is IGNORED in Threshold 1b.

The admitted failure to consider the most important threshold in Appendix G (“5. Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires.”) is a legal flaw that invalidates the PREIA and SEA.

### **B. The SEA Fails to Determine Emergency Evacuation Times under Plan Orinda**

The failure to use the correct threshold is dramatically evident by the failure to determine evacuation times. How long will it take residents to evacuate (evacuation clearance time) and will they be able to do so?

The prior EA, included as Appendix B, contained estimated evacuation times. See, e.g., pp. B-22 to B-23.

The SEA does not. It explains, the SEA “does not assess how long it would take residents to evacuate under different wildfire scenario assumptions. Such analyses require numerous assumptions (e.g., wildfire point of origin, weather, vegetation, timing of evacuation) that can lead to speculation and render the analysis unrealistic or misleading. Moreover, some readers might interpret such analysis as guaranteeing them a certain amount of time to evacuate when, in fact, circumstances might require faster action. For these reasons, this EIR utilizes the evacuation constraint analysis in the EA and SEA rather than conducting a different kind of evacuation analysis.” PREIA, page 4.14-35.

There is no explanation of why the estimate of evacuation times in the original EA was OK but an estimate in the SEA would not be OK. The stated concern that such an analysis might be “misleading” flies in the face of data that 98.5% of Orinda residents age 25 and older are high school graduates or higher, and 86.3% also have a bachelor’s college degree or higher.

<https://www.census.gov/quickfacts/fact/table/orindacitycalifornia/PST045223> See also Housing Element, p. 72, describing Orinda residents as “highly educated.”

More importantly, CEQA doesn't contain an exception to disclosure where the City believes that its residents might find truthful data "misleading." The City's responsibility is to present the information clearly.

Although *League to Save Lake Tahoe v. County of Placer* (2022) 75 Cal.App.5th 63 did not require inclusion of evacuation times, they should be required here. Point of origin, weather, vegetation and time of evacuation are all considered in the PREIA. The paternalistic approach of the PREIA flies in the face of the original EA and analyses elsewhere. For example, in neighboring Lafayette, the evacuation analysis included times to evacuate from different areas under different scenarios. <https://www.lovelafayette.org/home/showpublisheddocument/7435/638291746964259552> , at pages 6-8.

Thus, the SEA presents less information than the original EA, and does not conform to law.

## **VIII. The PREIA and SEA Do Not Comply With AB 747 and AB 1409**

### **A. The Requirements of AB 747 and AB 1409**

"AB 747 and AB1409 (Gov. Code § 65302.15) require jurisdictions to identify evacuation routes and their "capacity, safety, and viability under various emergency scenarios." See page 2 here

[https://abag.ca.gov/sites/default/files/documents/2021-11/Resource\\_Guide\\_05\\_Evacuation\\_Considerations.pdf](https://abag.ca.gov/sites/default/files/documents/2021-11/Resource_Guide_05_Evacuation_Considerations.pdf)

### **B. The Failure to Model the Spread of a Wildfire Violates AB 747 and AB 1409**

By its own admission, the SEA "does not model wildfire behavior or make any assumptions about the potential timing of when evacuation routes would be impacted. It also does not assess how long it would take residents to evacuate under different wildfire scenario assumptions." Page 4.14-35. This is a fatal defect; it is a failure to determine the "capacity, safety and viability" of evacuation routes.

#### **1. Modeling Wildfire Spread is a Commonly Accepted Procedure**

One way to evaluate the "capacity, safety, and viability" of evacuation routes in the event of a wildfire, as required, is by modeling the spread of wildfire. In *The Claremont Canyon Conservancy v. Regents of the University of California* (2023)

92 Cal.App.5th 474, the court endorsed the Regents’ usage of fire models to predict fire behavior on the Hill Campus. “The modeling considered factors including flame length, rate of spread, crown fire activity, and maximum spotting distance, along with the vegetation in a particular location—e.g., oak-bay woodland, eucalyptus forest, and coniferous forest. The EIR contains figures showing vegetation and fuel distribution in the project areas and the predicted crown fire activity under certain weather conditions.”

## **2. The California Attorney General’s Office Recommends Modeling**

The California Attorney General’s office recommended the use of fire modeling, stating “To understand how a project may exacerbate the risk of wildfire, an EIR should qualitatively assess these variables and also use fire modeling and other spatial and statistical analyses to quantify the risks to the extent feasible. Experts should utilize fire models to account for various siting and design elements, as well as a variety of different fire scenarios. The modeling should include scenarios for fires that start in, near, and far from the project site, as well as extreme weather conditions that exacerbate fire spread.” See page 9

<https://oag.ca.gov/system/files/attachments/press-docs/Wildfire%20guidance%20final%20%283%29.pdf>

## **3. The Failure to Model Spread of Wildfire Is Inconsistent with Orinda’s Own Prior Statements that it Uses Updated Technology**

Failure to model the spread of wildfire is inconsistent with the city’s press release issued Oct. 7, 2024, after losing the case brought by OSEE, stated, “Before, during, and after this lawsuit, the City of Orinda, in partnership with MOFD and neighboring jurisdictions, has been at the forefront in leading evacuation planning efforts using updated technology and a regional approach.”

<https://cityoforinda.org/DocumentCenter/View/4728/City-of-Orinda-Media-Release-OSEE-Litigation?bidId=>

## **4. The Failure to Model Wildfire Spread is Inconsistent with MOFD Recommendations and with Orinda’s Statement that it Works in “Partnership” with MOFD**

Although the City’s press release regarding its loss of this lawsuit claims that the City has worked “in partnership” with MOFD, the fact is that MOFD has advocated for modeling the spread of wildfire. As the history detailed below demonstrates, Fire Chief Winnacker strongly advocated that the spread of wildfire be modeled, but former Planning Director Buckley suppressed Winnacker’s comments.

The emails quoted below can be found here. Emphasis has been added.  
<https://cityoforinda.box.com/s/hz1ornbsbprc7jy5awyvew827q39jk6h>

Here is the story. On October 21, 2022, at 2:11 p.m., then planning director Drummond Buckley emailed Fire Chief Dave Winnacker and Fire Marshal Jeff Isaacs: “Chief Winnacker and Fire Marshall Isaacs, “Attached please find a draft of the City of Orinda AB 747 evacuation analysis for your input/comment. We’re bringing this to the City Council for consideration on November 15.”

On Nov. 1, 2022, at 2:45 p.m., Chief Winnacker responded, “Drummond, “Please see MOFD’s comments attached. Two items stand out:  
“1. The fire scenarios do not appear to include modeled spread. In the absence of an understanding of both the spatial and temporal factors associated with a dynamic event, the analysis appears incomplete as it may not include impacts to the very evacuation routes that are being analyzed.  
“2. There are several references to building shelter-in-place neighborhoods with a pre-fire intent that these neighborhoods not be evacuated. This is inconsistent with both fire science and MOFD’s position as referenced in the report.”

On November 7, 2022 at 10:26 a.m., Mr. Buckley responded, “Dear Chief Winnacker and Fire Marshall Isaacs, Thank you for your comments on the draft City of Orinda evacuation study. The attached draft, which will be presented to the City Council on November 15, includes edits made in response to your feedback. No action will be taken on the 15th but we anticipate we’ll get feedback from the Council and the public. The study is proposed to be approved in conjunction with the Safety Element in January.”

That same day, Nov. 7, 2022, at 12:38 p.m., Chief Winnacker replied,

“Drummond, Is there an available list of edits made and answers to the questions we posed? A quick review of the updated report suggests several questions such as the conditions used for the wildfire scenarios do not appear to have been answered.

“I noted this caveat included on page 13: **“Because wildfire behavior is not modeled in this report, the analysis assumes that all intersections are fully operational during an evacuation.”** If this is correct, and the wildfire scenarios assume a fire limited to the triangle shown on the map, without

**regard to potential spread over time, I must reiterate my previous concern that the report does not faithfully represent what will likely occur during an actual fire. I would ask that MOFD’s concern regarding this gap be relayed to the council during your presentation.**

“Wildfire is very dynamic and when long range spotting is included (as referenced in the report) **it is very unlikely that a fire will remain in the area of origin. Further, if this were the case, there would be no need for evacuations.** Given the proximity of our major (and only) evacuation routes to areas of high fuel loading and the potential for Wx/topographical alignment as shown in the CWPP, **I am concerned that a report which does not consider wildfire spread may lead to assumptions of a roadway’s capacity to handle evacuation traffic levels which are simply not accurate. In addition to the spread of fire, as mentioned in my previous comments smoke and ember impacts on intersections during a Diablo fire event are likely to be significant.** In the absence of fire modeling, or even the weather parameters which were used for each scenario, it is not possible to answer these questions. Reference is made on page 27 to all evacuation routes being assumed to be in service during wildfire scenario 2. This does not appear to address my question of what modeling was used to confirm that such a fire did not impact Rheem.”

Planning Director Buckley did not honor Fire Chief Winnacker’s request that his comments be forwarded to the council, and didn’t tell the Council of the Chief’s criticism of the failure to model. Instead Mr. Buckley **misled** the Council by **falsely stating**, “The draft evacuation analysis was provided to the Moraga Orinda Fire District (MOFD) for review and feedback last month. The initial comments received from MOFD have been incorporated into the draft evacuation analysis that is attached to this staff report. Staff will continue to work with MOFD to ensure all their comments will be addressed prior to adoption of the Safety Element.” See Packet Pg. 56, 57 containing Staff Report to Council for meeting held Nov. 15, 2022.

<https://cityoforinda.app.box.com/v/citycouncilmeetings/file/1068044016590>

Emphasis added.

Contrary to what Mr. Buckley told the Council in the Staff Report – that “comments received from MOFD have been incorporated into the draft evacuation analysis-- the evacuation analysis did NOT include the comment that without modeling the spread of wildfire, the assumptions regarding roadway capacity (required by AB 747 and AB1409 (Gov. Code § 65302.15)) are simply not accurate.” See *id.* beginning at Packet Pg. 59.

## **5. Modeling Wildfire Spread and its Impact on Evacuation Routes was Recently Used With Dramatic Results Showing Longer Estimated Evacuation Times than Previously Believed**

In early September, 2024, an evacuation analysis was done for the North Lake Tahoe Region that included modeling the spread of wildfire and its effect on the limited evacuation routes. See SF Chronicle. “New Tahoe wildfire evacuation study quadruples time estimates” <https://www.sfchronicle.com/california-wildfires/article/tahoe-fire-evacuation-19723705.php>  
<https://nevadacurrent.com/2024/08/28/evacuating-tahoe-could-take-twice-as-long-as-projected-simulations-indicate/> The article about Tahoe is very relevant to Orinda because, like North Lake Tahoe, much of Orinda is in a Very Another article reports, “The AI-generated Placer [County] evacuation simulations reveal a nine to fourteen-plus hour evacuation time depending on road closure conditions. This is in stark contrast to the 2016 Placer County Environmental Impact Statement, which estimated evacuation time for the study area at 3.7 hours. Washoe Tahoe AI generated simulations include potential closures of SR28 at Stateline and Sand Harbor resulting in eight and nine hour wait times.”  
<https://www.sierrasun.com/news/an-independent-wildfire-evacuation-analysis-questions-safe-tahoe-evacuations/>

Thus, the statutory requirement that Orinda identify evacuation routes and their “capacity, safety, and viability under various emergency scenarios,” coupled with the general acceptance of modeling wildfire spread, coupled with the City’s statement that its acts “in partnership with MOFD and neighboring jurisdictions, has been at the forefront in leading evacuation planning efforts using updated technology,” the fact that MOFD strongly recommended modeling wildfire spread and harshly criticized the original evacuation analysis for failing to do so, and the dramatic results obtained when the effect on evacuation routes in the Lake Tahoe region was shown by modeling wildfire spread, compel the conclusion that wildfire spread must be modeled in the PREIA and SEA.

## **IX. A Plan Orinda Limiting Upzoning Downtown to the State Mandate Should Have Been Considered as an Alternative**

The recirculated PREIA includes Section 6 (Alternatives). The Court’s writ ordered that Section 6 be revised. CEQA requires consideration of feasible alternatives, just as it requires consideration of feasible mitigations. See Point V, above. The mitigation of limiting upzoning downtown to the state mandate should also have been considered as an Alternative, for the reasons described in Point V,

above. But it was not considered at all, and there are no findings to explain this failure to consider this alternative.

The mis-named “No DPP” (alternative 3) did not do this. See DEIR, p. 6-45 et seq. “Alternative 3 analyzes all of the identified Housing Element Sites (HE-1 through HE-5) along with two parking lots adjacent to the Orinda BART station (BART-A and BART-B).” DEIR, p. 6-45. It presents the same emergency evacuation issues as Plan Orinda including the DPP does, because although it removes the DPP sites, it adds the two BART parking lots. (*Id.*) It would put 325 units on the BART eastern lot and 764 on the BART western lot – a total of 1,089 new units downtown. See DEIR, p. 4-46, Table 6-7 (“Alternative 3 Details”).

This total of 1,089 units is 56% more units than the 698 new units authorized under the Housing Element. The so-called “no DPP” Alternative 3 is not a substitute for analyzing an alternative limiting new units downtown to the 698 required by the state mandate.

Nevertheless, Alternative 3 No DPP is instructive. It is a 33% reduction in housing units from the current 1,618. “Under Alternative 3, impacts involving wildfire would be significant and unavoidable but slightly decreased compared to the proposed project.” DEIR, p. 6-68. This shows that reducing housing downtown can reduce the impact of Plan Orinda.

## **X. The Quantitative Analysis in the SEA Does Not Serve the Purpose of an EIR Because the Numbers Obscure the Seriousness of the Impact**

An EIR should not require readers “to sift through obscure minutiae or appendices” to find important components of the analysis. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 659. Here, the quantitative analysis obscures the seriousness of the impact.

The PREIA admits: “The SEA concludes that Plan Orinda would measurably worsen the already-constrained evacuation condition in Orinda due to the addition of more evacuees needing to travel through already-congested intersections along their evacuation routes. This increase in evacuation constraints is portrayed in Appendix WFR Figures 1, 2, and 3 (included as Figure 4.14-3a, Figure 4.14-3b, Figure 4.14-4a, Figure 4.14-4b, Figure 4.14-5a, and Figure 4.14-5b below)...The SEA shows that the Project would cause 18 intersections to increase in constraint

category....Thus, the Project would substantially increase evacuation constraints.” (Page 4.14-35 to -36.)

But the PREIA substantially understates the seriousness of the worsening. Only careful study reveals the answer: For intersections through which vehicles evacuating must pass, “The extent to which each of these affected intersection’s expected vehicle load exceeds its capacity translates to the assigned constraint categories (LOS C, LOS D, LOS E, LOS F, Constrained, Very Constrained, and Severely Constrained)....” In other words, the categories “Constrained, Very Constrained, and Severely Constrained” are worse than the worst LOS (level of service): LOS F. **At LOS F, traffic is stopped and cars idle.** SEA, p. B-16. The category “Severely Constrained” is three categories of constraint worse than LOS F.

“The Partially Revised Environmental Impact Analysis (Wildfire) clarifies that the Project would have a significant impact under this threshold (i.e., the Project would substantially increase emergency evacuation constraints) if it would cause an increase in the level of service (LOS) constraint (e.g., from LOS D to LOS E, or from Constrained to Very Constrained) at one or more affected intersections utilized for evacuation. In this way, the supplemental evacuation analysis clarifies, confirms, and supports the EIR’s conclusion that the Project would have a significant impact on wildfire evacuation.” Page 3.

**Note how this approach conceals the seriousness of the problem:** If an intersection is already at the most constrained level – “severely constrained” – an increase in constraint is not counted!

If we look at the detail/table on page D-2, and scroll down to the third and fourth rows, we see that the two westbound on ramps to Highway 24 are “severely constrained” under Existing Conditions (2022). Because that is the worst (most constrained) category, the table shows that under Plan Orinda those intersections will likewise be “severely constrained,” implying no worsening of evacuation. And no “constraint index points” are added.

Another obfuscation of the seriousness of the problem is this: “same number of points (2 points) for all intersections found to be constrained over LOS F, regardless of whether they were found to be ‘very constrained’ or ‘severely constrained’ over LOS F.” SEA, p. 7. In other words, the seriousness of the additional constraint was not considered.

This is manifestly deceptive and misleading. How does the SEA accomplish this? Here is how:

“For the purposes of this EIR Wildfire analysis, the project would substantially increase evacuation constraints if it would cause an increase in the level of service (LOS) constraint (e.g., from LOS D to LOS E, or from Constrained to Very Constrained) at one or more affected intersections utilized for evacuation, such that additional constraint “index points” are assigned to residential parcels in the City (as described in Appendix D of Appendix WFR). According to the SEA, these additional constraint “index points” indicate that residents evacuating from those residential parcels will experience greater congestion at the affected intersections during an evacuation.” (PREIA, p. 4.14-27.)

In other words, the PREIA creates a category (“severely constrained”) such that existing conditions fall into it, and then determines that the addition of approximately 800 vehicles per hour does not worsen evacuation. And no “constraint index points” are added notwithstanding 800 additional vehicles per hour idling.

As stated elsewhere, the relevant criteria is the “evacuation clearance time”: how long will it take to evacuate Orinda and can that be made to happen? Those questions are not answered. Nor is there any statement of evacuation times from various parts of Orinda.

## **XI. The SEA Has Other Serious Flaws**

### **A. The SEA Erroneously Analyzed the On Ramps to WB Highway 24**

The SEA does not comply with AB 747 and AB1409 (Gov. Code § 65302.15) for the additional reason that it erroneously analyzed the on ramps to WB Highway 24.

Recall that LOS F means that traffic is stopped and idling, and that there are three levels of additional congestion: constrained, very constrained, and severely constrained. PREIA, p. 4.14-28. The SEA concludes that the two on-ramps (from SB and NB Camino Pablo) onto WB 24 are severely constrained. SEA, Appendix D, page D-2, third and fourth rows.

The SEA, however, greatly understated the number of vehicles, because the two on-ramps (from SB and NB Camino Pablo) onto WB 24 are separately considered.

SEA, Appendix D, page D-2, third and fourth rows. In fact, the four lanes of on ramps merge into one lane before joining SR-24.

<https://maps.app.goo.gl/A483vDpWG1fV1GoA6> location 37°52'36.0"N 122°11'14.6"W.

Thus, the separate vehicle counts need to be combined, which roughly doubles the vehicle counts, resulting in massive gridlock.

### **B. The Proposed Mitigation of Considering or Using Contraflow Lanes Fails to Discuss Effect on Emergency Response**

The discussion of impact on emergency response appears to be limited to whether Plan Orinda impairs a “plan.” But there should be discussion of how contra flow would impact emergency response; if both lanes of Miner Road, Camino Pable and Moraga Way are one-way toward Highway 24, how do emergency responders simultaneously go where they need to go – towards the wildfire?

### **C. The Role of BART Will Be Limited**

BART will not help significantly in an evacuation. BART advised the City, in the very email cited in the footnote on page 4.14-21, “provided that the wildfire event was not impacting BART’s system, BART should **continuing [sic] normal operation** and provide any other support to assist evacuating people.” AR010159-AR010160. Emphasis added. Thus, BART cannot be relied upon for assistance in an emergency evacuation.

People who are evacuating will need to drive their cars, which they will attempt to fill with valued belongings. They aren’t going to abandon their cars at BART and wait for a train.

## **XII. The City Will Not Be Able to Adopt a Statement of Overriding Considerations for a Plan That Includes More Housing than the State Mandate Requires**

The Writ of Mandate, para. 3(d), required the City to “Revise the Statement of Overriding Considerations adopted by Resolution 07-23.”

The City of Orinda will not be able to adopt a new Statement of Overriding Considerations for a plan that includes upzoning for more housing than is legally required, because limiting zoning to the legally required amount is not “infeasible” and there is no substantial evidence that could support a finding that limiting new housing to the amount required by the state is “infeasible.”

As explained in Point V above, a project with significant and unavoidable environmental impacts cannot be approved unless it includes all feasible mitigation measures. The adopted and certified Housing Element includes upzoning downtown for 698 units, which with density bonus could become 1,047 or even 1,396. There is no evidence that this is insufficient to accomplish the objectives of Plan Orinda.

Thus, the City will not be able to legally adopt a Statement of Overriding Considerations unless it finds that it is “infeasible” to limit new housing to the amount legally required, but there is no substantial evidence that could support such a finding. A desire to add housing or “revitalize” (whatever that means) downtown Orinda does NOT overcome the CEQA requirement to adopt all feasible mitigations where as here an impact is “significant.” Nothing less should be required where the Project creates a “significant risk of loss, injury or death involving wildland fires.”

SUPPLEMENTAL Comments of Nick Waranoff on Plan Orinda Partially Revised  
Environmental Impact Analysis

Subject: Plan Orinda, SCH# 2022010392

To: [orindaplanning@cityoforinda.org](mailto:orindaplanning@cityoforinda.org)

Date: Dec. 9, 2024

Please consider these supplemental comments **in addition to** my prior comments.

**Supplement section V:** CAL FIRE makes this “Recommendation: Establish a Goal and Policy that specifically addresses avoiding or minimizing new residential development in the VHFHSZ’s” AR 049841 at 049847, first row. Parts of the DPP are in a VHFHSZ; parts are adjacent to VHFHSZs; and the remainder is in a WUI designated by MOFD. See PREIA, Figure 4.14-1 (page 4.14-4) and Figure 4.14-2 (page 4.14-5). This is another reason not to add more housing than is legally required downtown; i.e., not to add more sites than those in the Housing Element.

Moreover, much of the DPP is in a flood plain. <https://msc.fema.gov/portal/search> Development in flood plains is discouraged. AR 019469-019470. “FEMA encourages communities to limit development in floodplains to the degree possible.” <https://www.fema.gov/floodplain-management/wildlife-conservation/consider-develop> This is yet another reason not to add more housing than is legally required downtown; i.e., not to add more sites than those in the Housing Element.

**Supplement sections VIII and IX:** Appendix D is fails to include vehicle counts on key intersections: EB on-ramp from Camino Pablo/Moraga Way NB/Bryant Way to EB SR 24 and EB on-ramp from Camino Pablo SB to EB SR 24. Travelling through those intersections to reach eastbound state route 24 as an evacuation route is mentioned several times in the body of the PREIA, but there are no vehicle counts in Appendix D or elsewhere. See, e.g., PREIA pp. 4.14-40 (para. 5), 4.14-43 (para. 2), B-32 (para. 5), and B-36 (para. 2).