

**From:** [Nick Waranoff](#)  
**To:** [Holbrook, Marcia](#)  
**Cc:** "[Craig Jorgens](#)"; [Roemer, Mike](#); [councilmembers@cityoforinda.org](mailto:councilmembers@cityoforinda.org)  
**Subject:** Public Comment for Board Meeting June 18, 2025 - request for action re SB 79  
**Date:** Wednesday, June 11, 2025 4:58:31 PM  
**Attachments:** [Letter to Asm. Bauer-Kahan re SB 79.pdf](#)  
[Waranoff's brief amicus curiae in Opp to Mo Discharge final.pdf](#)  
[Cal Fire commentsAR011210.pdf](#)

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Members of the Board: For the reasons set forth in the my letter to Asm. Bauer-Kahan, and overlay enclosed with it, I am formally requesting that the MOFD advise our local Assemblymember, Rebecca Bauer-Kahan, to oppose SB 79. The bill has passed the Senate and is now in the Assembly.

In a nutshell, my request is based on the following: Orinda is facing an existential threat in SB 79 because it would require ministerial approval of high density housing downtown. The Village half of downtown is in a very high fire hazard severity zone. The "prohibition" referenced in the bill is illusory, as I explain here: <https://marinpost.org/blog/2025/6/8/sb-79-falsely-claims-it-exempts-fire-high-fire-hazard-severity-zones-it-does-not...> The Theater District is in moderate and high fire hazard severity zones.

The EIR for the housing element found that most Orinda residents will need to evacuate thru downtown. and that adding housing downtown will have a "significant and unavoidable" impact on emergency evacuation in the event of a wildfire. Even under existing, pre-development conditions, the EIR found that the critical intersections and on-ramps to State Route 24 downtown are "severely constrained." Many Moraga residents will need to try to evacuate through downtown Orinda as well.

Supporting documents:

Orinda Revised EIR: [https://files.ceqanet.lci.ca.gov/275619-5/attachment/WhKGFMLoyLHliVNNxcWz1ansICDIIfVkvwGx0ebi67QOG9\\_mQBEYoTsltCVARURjQhnTK-j1J4UcIITA0](https://files.ceqanet.lci.ca.gov/275619-5/attachment/WhKGFMLoyLHliVNNxcWz1ansICDIIfVkvwGx0ebi67QOG9_mQBEYoTsltCVARURjQhnTK-j1J4UcIITA0) See page 4.14-34 *et seq.*

I have also attached my Brief Amicus Curiae, which the Superior Court allowed me to file over the City's opposition. The brief explains why the City should commit not to approve housing downtown beyond the amount required by the State Housing Mandate. To date, the City has only approved zoning for new housing consistent with the State Mandate; it did not re-adopt the Downtown Precise Plan which would have more than doubled that amount. The lawsuit continues over whether the City should be required to make that a

permanent mitigation commitment.

Cal Fire recommended that the City adopt a policy “that specifically addresses avoiding or minimizing new residential development in the VHFHSZ’s.” Copy attached. See first row on p. 011216. SB 79 would over-ride the policy that the City of Orinda adopted when it adopted its Housing Element.

Unfortunately, SB 79 would triple or quadruple (compared to the state mandate) the amount of housing that would have to be approved downtown.

For the foregoing reasons, I formally request that the MOFD send a letter to Asm. Bauer-Kahan, asking her to oppose SB 79 in the interest of fire safety and safe emergency evacuation.

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Hon. Rebecca Bauer-Kahan  
[assemblymember.bauer-kahan@assembly.ca.gov](mailto:assemblymember.bauer-kahan@assembly.ca.gov)

Re: Please OPPOSE to SB 79 (Wiener)

Dear Asm. Bauer-Kahan:

Please OPPOSE SB 79 (Wiener), which just passed the Senate by one vote and will soon be voted on by the Assembly. This bill is an existential threat to Orinda.

### **Summary**

The bill would authorize high density development, subject to streamlined ministerial approval, within one-half mile of Orinda's BART station, an area that includes most of downtown Orinda – at densities much higher than those in Orinda's approved housing Element. It would allow two to three times the amount of housing Orinda is required to zone for under the state mandate.

The bill presents an existential threat to the residents of the City of Orinda because, in the event of an evacuation due to wildfire, the added housing downtown will severely exacerbate what is already a “significant and unavoidable” impact on emergency evacuation, due to the state housing mandate.

Notably, although the bill provides that it has a “prohibition” against its application to very high fire hazard severity zones, in fact the prohibition is illusory. And much of downtown Orinda is in a very high fire hazard severity zone.

The bill would also override years of effort by planning commissioners, city councilmembers, staff, and residents, that culminated in a Housing Element

that was certified by the Department of Housing and Community Development.

The extremely high densities will also make daily traffic and parking a nightmare.

### **Wildfire evacuation danger in Orinda**

“In 2019, a Stanford researcher identified the Orinda-Moraga area alongside Pacific Palisades as two areas at risk of an especially expensive fire disaster. In the East Bay community, like Pacific Palisades, the hills, weather and overgrown vegetation could birth a fire that could burn many homes quickly. Narrow roads could make it difficult for firefighters to reach the flames.”

<https://www.sfchronicle.com/politics/article/housing-development-fire-california-20136604.php> Some residents trying to evacuate the recent fire in Pacific Palisades died; some faced “gridlock.”

<https://www.latimes.com/9ysu-m0m1jk-123> A little over six years earlier, the Camp Fire destroyed the city of Paradise, where planning decisions worsened evacuation; a four-lane main evacuation road was narrowed to two lanes and people burned to death trying to escape.

<https://www.latimes.com/local/california/la-me-ln-paradise-evacuation-road-20181120-story.html> Similar tragedies happened in 2023 Maui fire (over 100 lives lost) and in the 1991 Tunnel Fire in the East Bay hills (25 lives lost).

Development in fire hazard severity zones with limited evacuation routes thus creates a risk to human life in Orinda and elsewhere because it makes emergency evacuation more difficult. Although the new residents may be close to the freeway, they will block evacuation by those further away.

### **Orinda’s EIR and Revised EIR Found that Adding Housing Downtown Would Have a “Significant and Unavoidable” Impact on Emergency Evacuation**

Adoption of Orinda’s Housing Element was preceded by an EIR. A group, Orindans For Safe Emergency Evacuation sued, complaining about safe emergency evacuation, and won.

Thereafter the City adopted a partially revised EIR. Of relevance here, the revised EIR, as did its predecessor, concluded that “adding housing would

have a ‘significant and unavoidable’ impact on emergency evacuation due to ‘severely constrained’ evacuation routes.” (Orinda’s Final Return to Writ of Mandate [ [here](#) ], Revised Findings, etc., p. 61 of pdf file; p. 49 of numbers centered at page bottoms.)

Most evacuating residents will need to travel through downtown to reach SR 24. Thus, limiting downtown development to the state mandate is vital to safe emergency evacuation.

The Orinda City Council had to override the CEQA finding in order to meet its RHNA and comply with the state housing mandate, and did so by re-adopting its Housing Element. That decision is not challenged here.

**Orinda’s Downtown is largely within one-half mile of its BART station and largely within a very high fire hazard severity zone.**

SB 79 applies to sites within one-half mile from a BART station. I have enclosed an overlay map showing that most of downtown Orinda north of Highway 24 is within a very high fire hazard severity zone, and that much of downtown south of Highway 24 is also within fire hazard severity zones.

**Orinda has complied with the state housing mandate.**

Orinda was required to comply with the state housing mandate by adopting a Housing Element, notwithstanding the significant and unavoidable impact on evacuation, and Orinda has done so; Orinda’s Housing Element was approved by HCD and thus Orinda is “in compliance” with the mandate.

<https://www.hcd.ca.gov/planning-and-community-development/housing-element-review-and-compliance-report>

Years of hard work by Orinda’s councils, staff and residents went into producing its Housing Element. Orinda’s Housing Element identifies specific sites and densities that would add 698 new housing units downtown. See Housing Element, Table 5-5A, p. 137

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

The remainder of its RHNA plus buffer will be satisfied elsewhere in Orinda.

**SB 79 Would Authorize Much Higher Densities than in Orinda’s Housing Element**

Orinda's Housing Element includes sites with a maximum density of 55 dwelling units per acre. SB 79 would authorize much higher density: 100 or 120 units per acre. Buildings five to nine stories (with the three story density bonus) would be allowed by ministerial approval and hence exempt from CEQA.

### **SB 79 Applies to Very High Fire Hazard Severity Zones; There is no Prohibition for Such Zones**

SB 79 falsely states that it contains a prohibition against a site in a very high fire hazard severity zone. There is no such prohibition.

The bill adds:

#### ***Government Code section 65912.159.***

*(a) A housing development project proposed pursuant to Section 65912.157 shall be eligible for streamlined ministerial approval pursuant to Section 65913.4 in accordance with all of the following:*

...

*(3) The proposed project shall comply with all other requirements of Section 65913.4, including, but not limited to, the **prohibition** against a site that is within a very high fire hazard severity zone, pursuant to subparagraph (D) of paragraph (6) of subdivision (a) of Section 65913.4. (Emphasis added.)*

There is no "prohibition against a site that is within a very high fire hazard severity zone, pursuant to subparagraph (D) of paragraph (6) of subdivision (a) of Section 65913.4" because the prohibition is negated by other language in subparagraph (D).

Subparagraph (D) requires that the site is not:

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. **This subparagraph does not apply** to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation

measures pursuant to existing building standards or state fire mitigation measures applicable to the development. (Emphasis added.)

Note the second/final sentence: “This subparagraph does not apply to sites ... that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.”

This carve-out from the apparent prohibition entirely negates the prohibition because **all new residential construction in all fire hazard severity zones is subject to fire hazard mitigation measures** in the form of building standards and state fire mitigation measures. The term “fire hazard mitigation measures” is not defined.

Building standards for new construction are contained in Chapter 7A of the statewide building code, which requires that all new construction in fire hazard severity zones include fire hazard mitigation measures.

As Cal Fire explains:

### **New Construction CBC Chapter 7A Materials and Construction Methods for Exterior Wildfire Exposure**

#### **What is the purpose?**

The purpose of the California Wildland-Urban Interface Code is to establish minimum standards for the protection of life and property by increasing the ability of a building to resist the intrusion of flames or burning embers projected by a vegetation fire and contributes to a systematic reduction in conflagration losses. The California Wildland Urban Interface Codes can be found in the [California Building Code, Chapter 7A — Materials and Construction Methods for Exterior Wildfire Exposure](#).[External Link](#)

#### **Application Date and Where Required?**

The California Wildland-Urban Interface Code applies to all new buildings for which an application for a building permit is submitted on or after July 1, 2008 and are located in the following areas:

All unincorporated lands designated by the State Board of Forestry and Fire Protection as State Responsibility Area (SRA) including:

- Moderate Fire Hazard Severity Zones.
- High Fire Hazard Severity Zones.
- Very-High Fire Hazard Severity Zones.

Land designated as Very-High Fire Hazard Severity Zone by cities and other local agencies.

Land designated as Wildland Interface Fire Area by cities and other local agencies. Always consult your local building official to determine the California Wildland-Urban Interface Code requirements for your area. For additional information on CAL FIRE's [Fire Hazard Severity Zones \(FHSZ\)](#) or additional information on where the [California Wildland-Urban Interface Codes External Link](#) apply.

### **Vegetation Management Compliance**

The California Wildland-Urban-Interface Code requires prior to a building permit final approval, that the property must be in compliance with required vegetation management requirements. For more information see [Code Vegetation Management Compliance External Link](#) or [Defensible Space](#).

### **Ignition Resistant Building Standards**

Minimum building standards were established for the protection of life and property to resist the intrusion of flames or burning embers. Each section outlines the codes requirements for new construction in the FHSZ or Wildland Interface.

[CBC Chapter 7A Materials and Construction Methods for Exterior Wildfire Exposure](#)

Source of quote: <https://www.fire.ca.gov/osfm/what-we-do/community-wildfire-preparedness-and-mitigation/building-in-the-wildland>

Thus, the “prohibition” for sites in fire hazard severity zones has an “exception” allowing development of “sites ... that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development” – an exception that applies to every site.

As a side note, the Legislature a few sessions ago did acknowledge an issue with development in fire hazard severity zones. In particular, AB 1445 (Levine 2022) reflects wildfire concerns, including evacuation, could be considered in making RHNA allocations. This bill “authorize[s] [HCD], as applicable, to additionally consider among these factors emergency evacuation route capacity, wildfire risk.”

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1445](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1445) Although this law technically became effective Jan. 1, 2025, the reality is that it won't come into play until the 7<sup>th</sup> Cycle Housing Element in 2031.

Consistent with AB 1445, SB 79 should not apply to any fire hazard severity zone, but it applies to all of them.

### **SB 79 Would Undo Years of Planning and Worsen Traffic and Parking**

SB 79 would undo years of work by Orinda city councils, staff, and residents, who worked together to prepare and timely submit a Housing Element that was approved (certified) by the State – the Department of Housing and Community Development (HCD).

Also, on a daily basis, it would worsen traffic downtown, which would cause backups on the two roads that lead to downtown and to freeway access.

### **Conclusion**

For the foregoing reasons, I respectfully request that you OPPOSE SB 79. At a minimum, it should be amended to unconditionally exempt sites in any fire hazard severity zone, or at least in very high fire hazard severity zones.

Respectfully submitted,

*/s/ Nicholas B. Waranoff*

Encl. Overlay of fire hazard severity zones map with downtown Orinda

cc: Orinda City Council  
Orinda City Manager  
Orinda Planning Director  
Lafayette Mayor

**PS: Who am I?**

I am a retired commercial real estate litigation attorney. I have lived in Orinda for 22 years.

I graduated from Cornell University in 1967 and graduated *cum laude* from NYU Law School in 1971. I was on the Board of Editors of the Law Review (in those days, admission to the Law Review was based strictly on merit) and Order of the Coif (top students). I held an Arthur Garfield Hays Civil Liberties Fellowship and worked directly with the late Prof. Norman Dorsen, who at that time was either president of or general counsel to the ACLU.

After graduation, I worked briefly for the ACLU and then clerked for two years for a United States District Judge in the Southern District of NY. I then moved to California and was a Teaching Fellow at Stanford Law School during the 1973-74 academic year.

From 1974 to 2013, I was a lawyer in private practice at major SF law firms. I received extensive peer recognition, which included being named to the Best Lawyers in America list, the Superlawyers list, and receiving a Martindale Hubbell rating of AV Preeminent (highest ability and ethics).

I spent a significant amount of time doing *pro bono* work. I was on the team of lawyers representing the victims of the May 4, 1970 National Guard shooting at Kent State University. Also, working as a cooperating attorney for the ACLU, I won a religious discrimination (failure to make reasonable accommodation) case brought by a school bus driver, for whom after a trial I obtained reinstatement and back pay. I was lead attorney in the leading California case limiting the use of deadly force by police against suspects fleeing from non-violent felonies (a decision later described by the United States Court of Appeals for the Ninth Circuit as “a leading California case dealing with the use of lethal force by police officers”).

I am perhaps most proud of my 35 years’ *pro bono* work defending people facing eviction and homelessness in SF; I organized and supervised a team to do that work with me.

Since my retirement in 2013, I have been active as a private citizen studying and working on various civic matters, learned housing law, and have advocated for affordable housing. I have also been one of the most active

Orinda resident fighting to maximize safe emergency evacuation in Orinda, although I am not a part of the organization called Orindans for Safe Emergency Evacuation, which won its EIR lawsuit against the City of Orinda.

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4 In pro per  
5 As Amicus Curiae

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF CONTRA COSTA

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11 ORINDANS FOR SAFE EMERGENCY  
EVACUATION,

12 Petitioner,

13 vs.

14 CITY OF ORINDA,

15 Respondent.

Case No. N23-0579

Hearing Date: July 24, 2025

Time: 9:00 a.m.

Dept: 39

Judge: Hon. Edward G. Weil

Case Filed: March 3, 2023

**BRIEF AMICUS CURIAE OF  
NICHOLAS B. WARANOFF IN  
OPPOSITION RESPONDENT'S  
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## INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns the life-or-death issue of whether Orinda must mitigate the impact of optional new housing on the ability of residents to be able to evacuate in the event of a wildfire.

Orinda created “Plan Orinda,” consisting of a state-mandated Housing Element (“HE”) that would add 698 new housing units downtown, and an optional Downtown Precise Plan (“DPP”) that would add an additional 920 housing units downtown. Residents’ principal evacuation routes are through downtown. The City certified the initial EIR for the Plan Orinda “project” and adopted the HE and DPP in January 2023. The program EIR found that adding housing would have a “significant and unavoidable” impact on emergency evacuation due to “severely constrained” evacuation routes. Much of the optional DPP housing would be built in Very High Fire Hazard Severity Zones (Waranoff RJN, Exs. A, B and C), where Cal Fire recommended that the City adopt a policy “that specifically addresses avoiding or minimizing new residential development in the VHFHSZ’s.” (AR 049841, 049847.)

This lawsuit was filed challenging the EIR and related actions approving Plan Orinda. Judge Treat ruled for Petitioner, and issued a Writ of Mandate, requiring decertification of the EIR, rescission of the adoption of the DPP, and changes to the MMRP. In response, the City revised the EIR without changing the definition of the “project,” but did not re-approve the entire project. Instead, it only re-approved the HE and issued a revised MMRP that is expressly limited to the approved HE. (Plan Orinda also includes a state-mandated Safety Element (“SE”) that is not at issue here.) The number of housing units approved in the HE is 43% of the total number of housing units downtown in Plan Orinda. Although the Council did not re-approve the optional DPP, which contains the remaining 57%, the Council expressly “opted to pursue” potential revisions to the DPP prior to any re-adoption, but has not committed to mitigate the impacts of the DPP, if it is re-adopted. The City contends

1 that this piecemeal approach to approval of the project rendered it unnecessary to  
2 adopt mitigation of the impacts of the DPP. Although the City resolved that it  
3 would adopt a second Statement of Overriding Considerations if it re-adopts the  
4 DPP, it has made no commitment to adopt mitigations of the impact of the DPP if  
5 re-adopted, and there is no legal way to require mitigation later should the DPP be  
6 re-adopted.

7 The state housing mandate required Orinda, like all cities, to adopt an HE  
8 specifying how it will upzone sufficient sites at sufficient densities to meet its  
9 Regional Housing Needs Allocation (“RHNA”). Orinda has done so and is in  
10 compliance. That fact is undisputed, and approval of the mandated HE and its  
11 upzoning plan is not challenged. The state housing mandate was a “legal” reason for  
12 overriding the significant and unavoidable impact of the HE. (Pub. Res. Code §  
13 21081(a)(3) & (b).)

14 The DPP presents a different story. Rather than adopt a mitigation  
15 committing not to proceed with the optional DPP so as to avoid worsening the  
16 impact on evacuation of the state-mandated housing, the City has “opted to pursue”  
17 the DPP to “encourage a mix of uses including employment opportunities, housing,  
18 recreational and cultural uses.” The DPP would more than double the amount of  
19 new housing downtown, through which most evacuating residents will need to travel  
20 to reach SR 24 and evacuate.

21 But in certifying the revised EIR, the City expressly decided not to provide  
22 any mitigation for the DPP because the DPP was not adopted despite being analyzed  
23 in the EIR; only mitigation of the adopted HE was included in the EIR and MMRP.

24 The decision not to include in the EIR and/or in the MMRP any mitigation of  
25 the DPP’s impacts is a prejudicial abuse of discretion because it is a failure to follow  
26 CEQA (Pub. Res. Code § 21081). Approval of the HE portion of the “project”  
27 constitutes approval or carrying out of the “project” and thus mitigation of the entire  
28 “project” (including the DPP) must be included in the EIR.

1 For this reason, the motion to discharge the writ should be denied.

## 2 **STATEMENT OF FACTS**

### 3 **A. Orinda is In Compliance with the State Housing Mandate**

4 It is undisputed that Orinda was required to comply with the state housing  
5 mandate by adopting a HE, notwithstanding the significant and unavoidable impact  
6 on evacuation; that Orinda has done so; and that Orinda’s HE was approved by  
7 HCD and thus Orinda is “in compliance” with the mandate.

8 Orinda’s HE identifies specific sites and densities that would add 698 new  
9 housing units downtown. (See HE, Table 5-5A, p. 137 [AR 016492 at 16641].) The  
10 remainder of its RHNA plus buffer will be satisfied elsewhere in Orinda.

### 11 **B. The EIR Analyzed The Entire “Project” But Did Not Analyze 12 Limiting Housing to the State Housing Mandate**

13 The EIR analyzed the entire “project” defined as Plan Orinda: the HE and the  
14 DPP (plus the SE). (Final Return filed 3/20/2025 [“FR”], p.2, footnote 1.) A Draft  
15 EIR was issued in Sept. 2022. (FR, p.2, n.1; DEIR, p. 2-1 [AR 000124, 000191.]  
16 The “project” definition remains unchanged to this day.

17 The downtown HE sites are located in the larger DPP as shown in Figure 5-2  
18 and Figure 5-3 of the HE. (AR 16636, 16645.) Some definitions and designations  
19 of DPP and HE sites changed between the issuance of the Draft EIR in Sept. 2022,  
20 and certification on January 31, 2023. The “DPP” includes the HE sites downtown  
21 as well as the rest of downtown that is within the boundary of the proposed DPP.  
22 The decision not to re-adopt the DPP does not affect the HE sites within it.

23 The DEIR determined that 1,618 new housing units could be built downtown  
24 under the HE and DPP. (DEIR, p. 2-17 [AR 000124, 000207].) The initial Final  
25 EIR (“FEIR”) acknowledged that the figure of 1,618 new housing units downtown  
26 might increase by 50% to 100% under the State Density Bonus Law. (Initial FEIR,  
27 p. 3 [AR 000811 at 000818].) The 698 HE units are 43% of the 1,618 downtown  
28 total. The focus is on downtown Orinda because it is a “pinch point” (AR015893)

1 for evacuation; most evacuating residents will need to pass through downtown  
2 Orinda to get to SR 24. (Orig. Evac. Analysis, AR 016880, 016896 [“the fastest  
3 route for most Orinda residents from their home to safety is towards SR-24  
4 westbound towards the Caldecott Tunnel, particularly to the westbound on-ramps  
5 from Camino Pablo” in downtown Orinda].)

6 The EIR did not analyze the “alternative” of limiting housing downtown to  
7 the HE sites; the so-called “No DPP” alternative concentrated downtown housing at  
8 BART rather than distributed throughout the DPP. (DEIR, p. ES-3 [AR000124,  
9 143, 527 et seq.], FREIR Resp. 9.15 City’s RJN p. 591].)

### 10 **C. Judge Treat Ruled that the City Violated CEQA**

11 Petitioner OSEE timely filed suit, and the Court (Judge Treat) ruled in a Feb.  
12 22, 2024 Minute Order that the City had violated CEQA. Subsequently, the Court  
13 issued a Writ of Mandate requiring that the EIR be revised; that adoption of the DPP  
14 be rescinded and reconsidered; that the Statement of Overriding Considerations be  
15 revised; and that the mitigation plan be revised to apply to the entire project. A key  
16 provision of the Writ is this: “Revise the EIR, including but not limited to chapters  
17 4.14 and 6, to correct the deficiencies identified in the Court's February 22, 2024  
18 Minute Order ("Order").” (Writ, ¶ 2a.) Among those deficiencies was the City’s  
19 failure

20 “to comply with CEQA in that the City determined in Wildfire  
21 Impact WFR-1 that the Project as a whole significantly impairs  
22 evacuation, but the City included mitigation only as to HE-4 and  
23 HE-5, without an explanation of why mitigation is not required for  
24 the impacts of the Project as a whole rather than only those two  
25 sites, and without attempting to mitigate impacts of the Project on  
26 evacuation from the remainder of the Project areas.” (Minute  
27 Order, p. 10.)

### 28 **D. The City Approved Part of the Project and Opted to Pursue the Balance of the Project Later**

In response to the Writ, the City prepared a draft Partially Revised EIR  
 (“PREIA” or “PREIR”). After receiving and responding to comments, the City

1 issued a Final Revised EIR (“FREIR”), with mitigations expressly limited to the HE.  
2 On March 18, 2025, “The City certified the Revised Final EIR as adequate under  
3 CEQA for the **entirety** of Plan Orinda. However, at this time, the City is not  
4 approving one component of Plan Orinda: the DPP.” (Intro. to Rev. CEQA  
5 Findings and Statement of Overriding Considerations [FR, Ex. B, p. 9 (pdf p. 21)].<sup>1</sup>  
6 Emphasis added.) Resolution 13-25 states, “The EIR has concluded that the  
7 development of the proposed project would result in significant and unavoidable  
8 adverse impacts in all or portions of the following environmental subject areas:  
9 ...Wildfire.” (FR, Ex. B, Res. 13-25, p. 5, Section 2, ¶ F [pdf p. 17].)

10 Concurrently, the City approved what it calls the “Approved Project,” which  
11 is Plan Orinda minus the DPP. The City explained,

12 “As noted above, at this time, the City is not reapproving the DPP.  
13 The 2023-2031 (6th Cycle) Housing Element Update and Safety  
14 Element Update were approved by the City in January 2023. The  
15 Court did not require the City to rescind its approval of these two  
16 components of Plan Orinda, but did require the City to revise its  
17 CEQA Findings and Statement of Overriding Consideration.  
18 Throughout these findings, the 2023-2031 (6th Cycle) Housing  
19 Element Update and Safety Element Update are referred to as the  
20 ‘Approved Project.’” (Revised CEQA Findings and Statement of  
21 Overriding Considerations, Section 2.4 [“Approved Project”],  
22 [FR, Ex. B, p. 21 (pdf p. 33)].)

23 The City “opted to pursue potential revisions to the DPP prior to any re-  
24 adoption and directed staff that any DPP revisions should comply with state housing  
25 laws and also reflect wildfire evacuation concerns.” (FR, p. 5:6-8 [pdf p. 5].)

26 Significantly, the definition of the Plan Orinda “project” (including the DPP)  
27 analyzed in the various iterations of the EIR remained unchanged, but mitigation of  
28 the DPP – part of the “project” -- was not included in the PREIR or RFEIR or  
MMRP. The Approved Project (the HE) consists of upzoning for 698 of the 1,618  
units downtown—43% of the downtown housing units in the Project.

<sup>1</sup> Exhibit B to the Final Return appears to have consecutive page numbers in the bottom center of each page. I have added “pdf” page numbers as a parallel citation in the event the reader has such numbers on his or her screen.

1 A revised Statement of Overriding Considerations was issued, but only as to  
2 adoption of the HE. (Revised Statement of Overriding Considerations [FR, Ex. B,  
3 p. 58 et seq. (pdf pp. 70 et seq.)].) The City admits the

4 “Revised Statement of Overriding Considerations **refers only to**  
5 the benefits of the Housing Element and Safety Element Updates  
6 (the Approved Project) that outweigh the unavoidable adverse  
7 environmental effects identified in the EIR. If the City approves  
8 the DPP component of Plan Orinda (with or without revisions) in  
the future, the City will comply with CEQA’s requirements  
regarding CEQA findings and override findings for the DPP at  
that time.” (Revised SOC p. 58 [FR, Ex. B, p. 58 [pdf p. 70)].  
Emphasis added.)

9 In other words, the City has decided that if it re-adopts the DPP, it will  
10 override the “significant and unavoidable” impact that adding such housing will  
11 have on evacuation, even though the DPP would more than double the amount of  
12 housing being added by the HE and even though the City would not adopt any new  
13 mitigations.

#### 14 **E. Orinda’s Evacuation Routes are “Severely Constrained”**

15 The Supplemental Evacuation Analysis in the PREIA “concludes that Plan  
16 Orinda would measurably worsen the already-constrained evacuation condition in  
17 Orinda due to the addition of more evacuees needing to travel through already  
18 congested intersections along their evacuation routes.” (City’s RJN, Ex. A, p. 50.)<sup>2</sup>

19 “In 2019, a Stanford researcher identified the Orinda-Moraga area alongside  
20 Pacific Palisades as two areas at risk of an especially expensive fire disaster. In the  
21 East Bay community, like Pacific Palisades, the hills, weather and overgrown  
22 vegetation could birth a fire that could burn many homes quickly. Narrow roads  
23 could make it difficult for firefighters to reach the flames.”

24 [https://www.sfchronicle.com/politics/article/housing-development-fire-california-](https://www.sfchronicle.com/politics/article/housing-development-fire-california-20136604.php)  
25 [20136604.php](https://www.sfchronicle.com/politics/article/housing-development-fire-california-20136604.php) Some residents trying to evacuate the recent fire in Pacific Palisades  
26 died; some faced “gridlock.” <https://www.latimes.com/9ysu-m0m1jk-123> A little

27  
28 <sup>2</sup> Pages in the different exhibits to the City’s RJN (other than Ex. A) appear to be numbered  
consecutively and to continue from one exhibit to the next and are the same as the pdf page #.

1 over six years earlier, the Camp Fire destroyed the city of Paradise, where planning  
2 decisions worsened evacuation; a four lane main evacuation road was narrowed to  
3 two lanes and people burned to death trying to escape.

4 [https://www.latimes.com/local/california/la-me-ln-paradise-evacuation-road-](https://www.latimes.com/local/california/la-me-ln-paradise-evacuation-road-20181120-story.html)  
5 [20181120-story.html](https://www.latimes.com/local/california/la-me-ln-paradise-evacuation-road-20181120-story.html) Similar tragedies happened in 2023 Maui fire (over 100 lives  
6 lost) and in the 1991 Tunnel Fire in the East Bay hills (25 lives lost).

#### 7 **F. Adding Housing Increases Evacuation Constraints**

8 In certifying the FREIR and approving the “Approved Project,” the Council  
9 found:

10 “Development facilitated by the Approved Project would be in  
11 and near a Wildland Urban Interface (WUI) or Very High Fire  
12 Hazard Severity Zone. **By adding additional residents to  
13 already constrained evacuation routes, the Approved Project  
14 would substantially increase evacuation constraints.** This  
15 conclusion is supported by the additional evacuation constraint  
16 analysis performed by PlaceWorks and attached as Attachment 1  
17 to the Response to Comments document in the Revised Final EIR.

18 “While implementation of Safety Element policies and Mitigation  
19 WFR-1 and WFR-4 through WFR-14 would help reduce this  
20 impact, the impact would remain significant and unavoidable.”  
21 (FR, Ex. B, Rev. Findings etc. p. 49 [pdf page 61]. Bold added.)

22 The DPP would authorize 920 additional housing units downtown in addition  
23 to the 698 in the Approved Project (the HE) (1,618 minus 698 equals 920); these  
24 920 units are not needed to satisfy the state mandate and will make an already bad  
25 situation materially worse. Where, as here, the impact is caused by “adding  
26 residents to already constrained evacuation routes,” the most logical mitigation  
27 would be to limit the number of added housing units downtown to the amount  
28 required by the state housing mandate (Orinda’s RHNA plus buffer). The new  
29 Follow Up Evacuation Analysis in the FREIR confirmed the obvious conclusion  
30 that limiting housing to the Housing Element sites (698 units) would materially  
31 reduce the adverse impact on evacuation, compared to the full downtown  
32 development of Plan Orinda (1,618 units). (FREIR [City’s RJN, Ex. B, pp. 671, 688  
33 (compare columns labelled “Plan Orinda Buildout” and “Plan Orinda: HE sites

1 only” in rows labelled “WB on-ramp...”].)

2 **G. The EIR Only Mitigates the Wildfire Impacts of the “Approved**  
3 **Project” Rather Than of the “Entire Project”**

4 The Orinda City Council improperly decided to address wildfire mitigation in  
5 a piecemeal fashion, mitigating only the impact of the Approved Project, not the  
6 impact of the entire Plan Orinda project (including the DPP) analyzed in the EIR,  
7 even though Judge Treat ruled that the City had failed to provide mitigation for the  
8 entire project. (Minute Order, p. 10.) The City explained its position as follows:

9 “Here, because the City is pursuing potential revisions to the DPP  
10 component of Plan Orinda, not re-approving it at this time, these  
11 revised CEQA Findings and Statement of Overriding  
12 Considerations apply to the Approved Project only. If the City  
13 proceeds to re-approving the DPP (with potential revisions) in the  
14 future, it will adopt separate CEQA Findings and Statement of  
15 Overriding Consideration at that time.” (Revised Findings etc.  
16 [FR, Ex. B, p. 16 (pdf p. 28)].)

17 The City’s position is that “the DPP is not part of the Approved Project, the  
18 Approved Project does not require upzoning portions of the downtown area above  
19 and beyond what is required to meet the City’s RHNA (plus a buffer), and the City  
20 is not reapproving the DPP at this time. Thus, the commenter’s suggestion  
21 [eliminating the provisions of the DPP that call for upzoning portions of the  
22 downtown area above and beyond what is required to meet the City’s RHNA] would  
23 not “mitigate” any impacts of the Approved Project, and therefore is infeasible.”  
24 (FR, Ex. B, p. 52 [pdf p. 64].)

25 **H. A Proposed Mitigation to Limit New Housing to the Amount Required**  
26 **by the State Mandate Was Rejected**

27 Waranoff proposed a mitigation to limit new housing to the state mandate,  
28 unless and until adding additional housing will not worsen evacuation. (FREIR,  
29 City’s RJN Ex. B, p. 311 et seq. at Points I(E) & V) but the FREIR and Council  
30 rejected that proposal. (*See id.* at Response 9.19, Ex. B, pp. 592-93, referring to  
31 Topical Response 6 at p. 201.; *see also* Rev. Findings, pp. 52-53 [FR, pdf pp. 64-

1 65].) Waranoff also objected to the deferred mitigations as lacking performance  
2 standards, but his objection was rejected. (City’s RJN, Ex. B, pp. 311, 339  
3 [comment and annotation by City referencing Resp. 9.20]; 593 [Response 9.20].)

## 4 ARGUMENT

### 5 **ORINDA COMMITTED A PREJUDICIAL ABUSE OF DISCRETION** 6 **BY REJECTING A MITIGATION LIMITING NEW HOUSING TO** 7 **THE STATE MANDATE**

#### 8 **A. Standard of Review**

9 A prejudicial abuse of discretion exists when a city has not proceeded in the  
10 manner required by law or its findings are not supported by the evidence (*Banning*  
11 *Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935.) The  
12 courts “determine de novo whether the agency has employed the correct procedures,  
13 scrupulously enforc[ing] all legislatively mandated CEQA requirements.” (*Id.*  
14 Citation and internal quotation marks omitted. See Pub. Resources Code § 21168.5)  
15 If CEQA has not been complied with, certification of the EIR and related actions  
16 must be set aside. (*Environmental Protection Information Center v. California*  
17 *Department of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 485.) A project  
18 should not be approved "if there are feasible alternatives or feasible mitigation  
19 measures available which would substantially lessen ... significant environmental  
20 effects...." (Pub. Res. Code §21002.)

#### 21 **B. Mitigation of the *Entire* Project’s Impacts, not just of the *Approved*** 22 ***Project’s* Impacts, must be Adopted.**

23 All feasible mitigations must be adopted where, as here, there is a “significant  
24 and unavoidable” impact. (*King & Gardiner Farms, LLC v. County of Kern* (2020)  
25 45 Cal.App.5th 814; *Woodward Park Homeowners Assn, Inc. v. City of Fresno*  
26 (2007) 150 Cal.App.4th 683, 723.)

27 The City has approved the HE, which will upzone for 698 additional units  
28 downtown (43% of the total of 1,618 Plan Orinda downtown housing units), and has

1 “opted to pursue potential revisions to the DPP prior to any re-adoption and directed  
2 staff that any DPP revisions should comply with state housing laws and also reflect  
3 wildfire evacuation concerns.” (FR, p. 5:6-8 [pdf p. 5].) It has thereby decided to  
4 “approve or carry out” the project called Plan Orinda (HE plus DPP), under Pub.  
5 Res. Code § 21081. This triggers the mitigation requirement under Pub. Res. Code  
6 § 21081.6.

7 Here, the “project” has been “approved or [is being] carried out” because the  
8 “Approved Project” approved 43% of the new housing. Therefore mitigation of the  
9 entire “project” – not just of the “Approved Project” -- are required.

10 “While it might be argued that not building a portion of the project is the  
11 ultimate mitigation, it must be borne in mind that the EIR must address the project  
12 and assumes the project will be built.” (*Vineyard Area Citizens for Responsible  
13 Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 429.)

14 The conclusion that approval of 43% of the “project” defined in the EIR  
15 constitutes “approv[al] or carry[ing] out” of the “project” triggering a requirement  
16 for adoption of a mitigation program for the entire project is confirmed by  
17 *RiverWatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, in which  
18 the court, interpreting a provision of CEQA with the same wording, held that an  
19 agency “is a ‘responsible agency’ under CEQA because it proposes to carry out  
20 and/or approved *part* of the ... project.” (*Id.* at 1206. Emphasis in original.) In  
21 other words, a decision to approve or carry out part constitutes an approval or  
22 carrying out of the project.

23 Here, the EIR analyzed a “project” that includes the DPP; the City is  
24 proceeding with part of the “project” that it calls the “Approved Project;” although  
25 the Council has not re-adopted the DPP at this time, it has “opted to pursue potential  
26 revisions to the DPP prior to any re-adoption and directed staff that any DPP  
27 revisions should comply with state housing laws and also reflect wildfire evacuation  
28 concerns” (FR, p. 5:6-8 [pdf p. 5 ]); and “If the City approves the DPP component of

1 Plan Orinda (with or without revisions) in the future, the City will comply with  
2 CEQA’s requirements regarding CEQA findings and override findings for the DPP  
3 at that time.” (FR, Ex. B, Rev. Findings etc., p. 58 [pdf p. 70].) No mention of  
4 additional mitigations.

5 The City was legally required to comply with the state housing mandate by  
6 adopting the HE, and thus had to override the impact on evacuation that the HE will  
7 cause.

8 By contrast, the City may not find that a not-legally-required DPP could  
9 outweigh the additional risk to life that the DPP would create. “CEQA does not  
10 authorize an agency to proceed with a project that will have significant, unmitigated  
11 effects on the environment, based simply on a weighing of those effects against the  
12 project’s benefits, unless the measures necessary to mitigate those effects are truly  
13 infeasible.” (*City of Marina v. Board of Trustees of California State University*  
14 (2006) 39 Cal.4<sup>th</sup> 341, 368-69. *Accord, Uphold Our Heritage v. Town of Woodside*  
15 (2007) 147 Cal.App.4<sup>th</sup> 587.)

16 An MMRP is therefore required for the entire “project” including the DPP.

17 It is particularly important that adoption of a mitigation program be required  
18 **now** because there may not be any future time to require mitigation. There is no  
19 commitment by the City to conduct any new CEQA analysis, or adopt any  
20 additional mitigation, should the DPP be re-adopted, which is unsurprising because  
21 the impact of the DPP was analyzed in the various iterations of the EIR. It is likely  
22 that no future CEQA analysis would be required. (Pub. Res. Code § 21166.) Judge  
23 Treat indicated as much. (Minute Order, p. 24.)

24 There also may not be any future CEQA analysis at all because existing (e.g.,  
25 SB 423 (Wiener 2023); AB 2243 (Wicks 2024)) and/or pending (e.g., SB 79  
26 (Wiener 2025); AB 609 (Wicks 2025); AB 647 (Gonzalez 2025)) housing laws may  
27 make new projects subject only to ministerial review and hence exempt from CEQA  
28 (Pub. Res. Code § 21080(a); Guidelines, § 15268). Thus, there may not be any

1 future opportunity to argue that CEQA requires mitigation of the DPP or other even  
2 more intense and dense upzoning beyond the HE.

3 Interpreting section 21081 to require adoption of a mitigation program now  
4 would be consistent with “The chief goal of CEQA [which is] is mitigation or  
5 avoidance of environmental harm.” (*Laurel Heights Improvement Assn. v. Regents*  
6 *of University of California* (1988) 47 Cal.3d 376, 403.) Given the reasonable  
7 possibility of no CEQA review of future upzoning, and the lack of any commitment  
8 by Orinda to mitigate the DPP if adopted in the future, it should be required now.

9 By analyzing the impacts of the DPP in the EIR but not mitigating those  
10 impacts, the City is proceeding in a piecemeal manner that violates the rule that a  
11 city cannot legally “effectively preclude” mitigation measures. (*Save Tara v. City of*  
12 *West Hollywood* (2008) 45 Cal.4th 11, 139. Citations omitted.)

13 **C. Limiting New Housing to the Housing Element, Unless It Won’t**  
14 **Worsen Evacuation, Would Mitigate the Impact of the Project**

15 Mitigation measures are “feasible changes in any or all activities involved in  
16 the project in order to substantially lessen or avoid significant effects on the  
17 environment.” (Guidelines, § 15041(a).) A “mitigation” includes “(a) Avoiding the  
18 impact altogether by not taking a certain action or parts of an action [or]  
19 (b) Minimizing impacts by limiting the degree or magnitude of the action and its  
20 implementation.” (Guidelines, § 15370.) “[M]itigation measures include[] the ‘no  
21 project’ alternative.” (*Concerned McCloud Citizens v. McCloud Community*  
22 *Services Dist.* (2007) 147 Cal.App.4th 181, 196. *Accord, People ex rel. Bonta v.*  
23 *County of Lake* (2024) 105 Cal.App.5th 1222 n. 6.)

24 The impact of the “project” (Plan Orinda) can be minimized by reducing its  
25 “magnitude” -- i.e., by adopting a mitigation not to upzone downtown beyond the  
26 specific sites included in the HE per the state mandate –unless doing so will not  
27 worsen emergency evacuation.

28 Additionally, the recent fire hazard zone maps referenced in the FREIR

1 (City’s RJN, Ex. B, p. 210) show that the DPP north of State Route 24 is in a Very  
2 High Fire Hazard Severity Zone, and in a high or moderate zone south of State  
3 Route 24. (Waranoff’s RJN, Exs. A, B and C.) CalFire’s comment on the initial  
4 draft EIR recommended that the City “Establish a Goal and Policy that specifically  
5 addresses avoiding or minimizing new residential development in the VHFHSZ’s.”  
6 (AR 049841, 847.) The City has not done so.

7 The RFEIR includes a new evacuation analysis called the Follow Up  
8 Evacuation Analysis that compares vehicle counts for just the HE with vehicle  
9 counts including the DPP and shows fewer vehicles per hour at the critical on-ramps  
10 to WB SR 24 if only the HE is built. (*Ante*, p. 11:23-12:1.)

11 Limiting new housing downtown is therefore a “mitigation” because it would  
12 reduce the impact of adding new housing downtown. It is an important one because  
13 it would mitigate congestion at downtown pinch points.

14 This issue was raised in the comments to the DEIR (Minute Order p.9), but  
15 Petitioner did not raise this issue as an “alternative” to be considered. (*Id.* at 11.)  
16 Judge Treat did, however, sustain the challenges to the sufficiency of mitigation.  
17 The City now contends it has complied with this ruling (Resp. MPA, Point II) but  
18 incorrectly asserts that the adopted mitigations apply to the “Project as a whole”  
19 (MPA, at 17:11-12) when in fact the City’s express position is that it only had to  
20 mitigate “any impacts of the Approved Project...” (FR, Ex. B, p. 52 [pdf p. 64].)

21 **D. It is Feasible to Limit New Housing to the Housing Element**

22 “Under the CEQA statute and guidelines a mitigation measure is ‘feasible’ if  
23 it is ‘capable of being accomplished in a successful manner within a reasonable  
24 period of time, taking into account economic, environmental, social, and  
25 technological factors.’” (*League to Save Lake Tahoe*, 75 Cal.App.5th at 160.)  
26 Limiting new housing to the state mandate is clearly feasible because no “economic,  
27 environmental, social, and technological factors” render it infeasible.  
28

1           **E. The City’s Legal Arguments Against a Mitigation that Would Limit**  
2           **Housing to the State Mandate Unless It Won’t Worsen Evacuation,**  
3           **Are Without Merit**

4           First, the City argues:

5           “The commenter [Waranoff] suggests this could be either a  
6           “mitigation measure” or an “alternative.” However, the DPP is not  
7           part of the Approved Project, the Approved Project does not  
8           require upzoning portions of the downtown area above and  
9           beyond what is required to meet the City’s RHNA (plus a buffer),  
          and the City is not reapproving the DPP at this time. Thus, the  
          commenter’s suggestion would not “mitigate” any impacts of the  
          Approved Project, and therefore is infeasible.” (FR, Ex. B,  
          Revised Findings etc., p. 52 [pdf p. 64].)

10           This argument lacks merit because the EIR analyzed a “project” that included  
11           the entire “Plan Orinda (which includes ... the Downtown Precise Plan.)” (FR, pdf  
12           p. 15, Resolution 13-25, para. I.) The Approved Project is a part of the “project”  
13           analyzed in the EIR that the City has decided to proceed with at this time. It follows  
14           that the EIR must consider all feasible mitigations of the impacts of the “project,”  
15           which includes the DPP, not just the Approved Project.

16           Second, the City found “any such ‘mitigation measure’ or ‘alternative’ would  
17           conflict with the Project Objectives of the DPP...and thus is infeasible.” (FR, Ex.  
18           B, Revised Findings etc., p. 52 [pdf p. 64]; City’s RJN, Ex. B (RFEIR), p. 201 (“The  
19           purpose of these additional upzones is to achieve Project objectives other than  
20           meeting the City’s RHNA obligations. See, e.g., original EIR at ES-2 (objective for  
21           DPP include ‘encourage a mix of uses including employment opportunities,  
22           housing, recreational and cultural uses’”).) The DPP, however, was not re-adopted,  
23           and hence its objectives should not be considered. The City certainly cannot rely on  
24           DPP objectives and fail to mitigate its impacts. The vague, cursory reference to the  
25           Project Objectives is inadequate because it does not provide even a “brief  
26           explanation of the rationale” for finding that worsening the risk of death in an  
27           emergency evacuation is outweighed by those objectives. (*See* Guidelines, §  
28           15091.) Alternatives must be considered if “most [not all] of the basic objectives of

1 the project” can be achieved (*See* Guidelines, § 15126.6(a)) and the same is true of  
2 mitigations, because “alternatives and mitigation measures have the same function --  
3 diminishing or avoiding adverse environmental effects.” (*Laurel Heights*, 47 Cal.3d  
4 at 403.) The evidence in the record shows that the 698 new housing units in the  
5 HE/RHNA housing is more than sufficient to achieve the City’s downtown  
6 objectives. (City’s RJN, Ex. B, pp. 441, 465.) There is no evidence additional  
7 upzoning beyond the state mandate is needed to achieve these objectives.

8 Third, the City incorrectly argued, “Lastly, the City cannot prohibit future  
9 City Councils from upzoning other downtown parcels for additional residential  
10 development. Doing so would violate blackletter law prohibiting one legislative  
11 body from ‘tying the hands’ of its future members.” (FR, pdf p. 64.) Were the rule  
12 as asserted by the City, no continuing mitigation obligation would be legal, yet the  
13 City’s own MMRP commits future councils to do and refrain from doing things.

14 In fact, although broad statements about not “tying the hands” of a future  
15 legislative body can be found in some cases, the actual “blackletter law” is much  
16 narrower: a council cannot divest a later council of its power to act. That is not the  
17 case here. And an MMRP can include a “substitution clause” and be amended.  
18 (*Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 524.)

### 19 CONCLUSION

20 The certification of the FREIR was a prejudicial abuse of discretion because  
21 the City did not proceed as required by law; the FREIR does not include mitigation  
22 of the entire “project.” The City’s motion to discharge the Writ of Mandate must  
23 therefore be denied, and the City should be ordered to decertify the FREIR and  
24 adopt mitigation of the impact of the “project” by committing not to re-adopt the  
25 DPP or otherwise add optional housing downtown unless doing so will not worsen  
26 evacuation.

27 Dated: May 7, 2025

28 Respectfully submitted,  
/s/Nicholas B. Waranoff  
In pro per as amicus curiae

# General Plan Safety Element Assessment

## Board of Forestry and Fire Protection



Orinda 2022

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## Purpose and Background

Upon the next revision of the housing element on or after January 1, 2014, the safety element is required to be reviewed and updated as necessary to address the risk of fire for land classified as state responsibility areas and land classified as very high fire hazard severity zones. (Gov. Code, § 65302, subd. (g)(3).)

The safety element is required to include:

- Fire hazard severity zone maps available from the Department of Forestry and Fire Protection.
- Any historical data on wildfires available from local agencies or a reference to where the data can be found.
- Information about wildfire hazard areas that may be available from the United States Geological Survey.
- The general location and distribution of existing and planned uses of land in very high fire hazard severity zones (VHFHSZs) and in state responsibility areas (SRAs), including structures, roads, utilities, and essential public facilities. The location and distribution of planned uses of land shall not require defensible space compliance measures required by state law or local ordinance to occur on publicly owned lands or open space designations of homeowner associations.
- The local, state, and federal agencies with responsibility for fire protection, including special districts and local offices of emergency services. (Gov. Code, § 65302, subd. (g)(3)(A).)

Based on that information, the safety element shall include goals, policies, and objectives that protect the community from the unreasonable risk of wildfire. (Gov. Code, § 65302, subd. (g)(3)(B).) To carry out those goals, policies, and objectives, feasible implementation measures shall be included in the safety element, which include but are not limited to:

- Avoiding or minimizing the wildfire hazards associated with new uses of land.
- Locating, when feasible, new essential public facilities outside of high fire risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in the SRA or VHFHSZ.
- Designing adequate infrastructure if a new development is located in the SRA or VHFHSZ, including safe access for emergency response vehicles, visible street signs, and water supplies for structural fire suppression.
- Working cooperatively with public agencies with responsibility for fire protection. (Gov. Code, § 65302, subd. (g)(3)(C).)

The safety element shall also attach or reference any fire safety plans or other documents adopted by the city or county that fulfill the goals and objectives or contains the information required above. (Gov. Code, § 65302, subd. (g)(3)(D).) This might include Local Hazard Mitigation Plans, Unit Fire Plans, Community Wildfire Protection Plans, or other plans.

There are several reference documents developed by state agencies to assist local jurisdictions in updating their safety elements to include wildfire safety. The Fire Hazard Planning, General Plan Technical Advice Series from the Governor's Office of Planning and Research (OPR), referenced in Government Code section 65302, subdivision (g)(3) and available at

1400 Tenth Street  
Sacramento, CA 95814  
Phone: (916) 322-2318

The Technical Advice Series is also available from the OPR website ([Technical Advice Series link](#)).<sup>\*</sup> The Technical Advice Series provides policy guidance, information resources, and fire hazard planning examples from around California that shall be considered by local jurisdictions when reviewing the safety element of its general plan.

The Board of Forestry and Fire Protection (Board) utilizes this Safety Element Assessment in the Board's review of safety elements under Government Code section 65302.5. At least 90 days prior to the adoption or amendment of their safety element, counties that contain SRAs and cities or counties that contain VHFHSZs shall submit their safety element to the Board. (Gov. Code, § 65302.5, subd. (b).) The Board shall review the safety element and respond to the city or county with its findings regarding the uses of land and policies in SRAs or VHFHSZs that will protect life, property, and natural resources from

1 \* [https://www.opr.ca.gov/docs/Final\\_6.26.15.pdf](https://www.opr.ca.gov/docs/Final_6.26.15.pdf)

unreasonable risks associated with wildfires, and the methods and strategies for wildfire risk reduction and prevention within SRAs or VHFHSZs. (Gov. Code, § 65302.5, subd. (b)(3).)

The CAL FIRE Land Use Planning team provides expert fire protection assistance to local jurisdictions statewide. Fire captains are available to work with cities and counties to revise their safety elements and enhance their strategic fire protection planning.

## **Methodology for Review and Recommendations**

Utilizing staff from the CAL FIRE Land Use Planning team, the Board has established a standardized method to review the safety element of general plans. The methodology includes

- 1) reviewing the safety element for the requirements in Government Code section 65302, subdivision (g)(3)(A),
- 2) examining the safety element for goals, policies, objectives, and implementation measures that mitigate the wildfire risk in the planning area (Gov. Code, § 65302, subd. (g)(3)(B) & (C)), and
- 3) making recommendations for methods and strategies that would reduce the risk of wildfires (Gov. Code, § 65302.5, subd. (b)(3)(B)).

The safety element will be evaluated against the attached Assessment, which contains questions to determine if a safety element meets the fire safety planning requirements outlined in Government Code, section 65302. The reviewer will answer whether or not a submitted safety element addresses the required information, and will recommend changes to the safety element that will reduce the wildfire risk in the planning area. These recommended changes may come from the list of sample goals, policies, objectives, and implementation measures that is included in this document after the Assessment, or may be based on the reviewer's knowledge of the jurisdiction in question and their specific wildfire risk. By answering the questions in the Assessment, the reviewer will determine if the jurisdiction's safety element has adequately addressed and mitigated their wildfire risk. If it hasn't, any specific recommendations from the reviewer will assist the jurisdiction in revising the safety element so that it does.

Once completed, the Assessment should provide clear guidance to a city or county regarding any areas of deficiency in the safety element as well as specific goals, policies, objectives, and implementation measures the Board recommends adopting in order to mitigate or reduce the wildfire threat in the planning area.

## General Plan Safety Element Assessment

Jurisdiction: City of Orinda	Notes: Informal Review	CAL FIRE Unit:	Date Received: 11-2-22
County: Contra Costa County	LUPP Reviewer: Shane Vargas	UNIT CONTACT:	Date Reviewed: 11-7-22

### BACKGROUND INFORMATION SUMMARY

The safety element must contain specific background information about fire hazards in each jurisdiction.

*Instructions for this table: Indicate whether the safety element includes the specified information. If YES, indicate in the comments where that information can be found; if NO, provide recommendations to the jurisdiction regarding how best to include that information in their revised safety element.*

Required Information	Yes or No	Comments and Recommendations
Are Fire Hazard Severity Zones Identified? <i>CAL FIRE or Locally Adopted Maps</i>	Partial	SE, Figure 8, p. 39, <i>Wildfire Hazard Severity Zones</i>  Recommendation: Include language in your "source" to reference most current maps from CAL FIRE FRAP. This way when the maps update the SE will remain current and valid.
Is historical data on wildfires or a reference to where the data can be found, and information about wildfire hazard areas that may be available from the United States Geological Survey, included?	Yes	SE, p. 41, Past Occurrences & SE, Figure 10, p. 42, <i>Historic Wildfire Burned Areas</i>
Has the general location and distribution of existing and planned uses of land in very high fire hazard severity zones (VHFHSZs) and in state responsibility areas (SRAs), including structures, roads, utilities, and essential public facilities, been identified?	Partial	SE, p. 9, Community Profile & SE, p. 38, Fire Hazard Zones & SE, p. 43, Potential Changes to Fire Risk in Future Years  Recommendation: Do you have anything within the Land Use Element (maps are good) that better depict the location and distribution of existing and planned uses of land in the VHFHSZ? If so, can you identify where it is located (roadmap to the information)?
Have local, state, and federal agencies with responsibility for fire protection, including special districts and local offices of emergency services, been identified?	Yes	SE, p. 2, 1.2 Moraga-Orinda Fire District Responsibility for Fire Protection in Orinda & SE, p. 41, Fire Protection
Are other fire protection plans, such as Community Wildfire Protection Plans, Local Hazard Mitigation Plans, CAL FIRE Unit or Contract County Fire Plans, referenced or incorporated into the Safety Element?	Yes	SE, p. 2 thru 4, 1.3 Relationship to Other Local Plans and Codes & SE, Policy S-2, p. 52

Required Information	Yes or No	Comments and Recommendations <sup>01</sup>
<u>Are residential developments in fire hazard areas that do not have at least two emergency evacuation routes identified?</u>	Yes	SE, p. 15, Emergency Evacuation & SE, Figure 1, p.16, <i>Residential Parcels with Evacuation Constraints</i>
<u>Have evacuation routes and their capacity, safety, and viability under a range of emergency scenarios been identified?</u>	No	This needs to be addressed with in the Safety Element or can be accomplished in other Planning Documents that are referenced within the SE.  Recommendation: Insert a Policy and plan to conduct this work and it will fulfill the needs of this review and then complete the work before your next SE update.

Is there any other information in the Safety Element regarding fire hazards in SRAs or VHFHSZs?
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## GOALS, POLICIES, OBJECTIVES, AND FEASIBLE IMPLEMENTATION MEASURES

The safety element must contain a set of goals, policies, and objectives based on the above information to protect the community from unreasonable risk of wildfire and implementation measures to accomplish those stated goals, policies, and objectives.

*Instructions for this table: Critically examine the submitted safety element and determine if it is adequate to address the jurisdiction's unique fire hazard. Answer YES or NO appropriately for each question below. If the recommendation is irrelevant or unrelated to the jurisdiction's fire hazard, answer N/A. For NO, provide information in the Comments/Recommendations section to help the jurisdiction incorporate that change into their safety element revision. This information may utilize example recommendations from Sample Safety Element Recommendations and Fire Hazard Planning in Other Elements of the General Plan below, may indicate how high of a priority this recommendation is for a jurisdiction, or may include other jurisdiction-specific information or recommendations.*

### Section 1 Avoiding or minimizing the wildfire hazards associated with new uses of land

Questions	Yes or No	Comments and Recommendations
Does local ordinance require development standards that meet or exceed title 14, CCR, division 1.5, chapter 7, subchapter 2, articles 1-5 (commencing with section 1270) ( <b>SRA Fire Safe Regulations</b> ) and title 14, CCR, division 1.5, chapter 7, subchapter 3, article 3 (commencing with section 1299.01) ( <b>Fire Hazard Reduction Around Buildings and Structures Regulations</b> ) for SRAs and/or VHFHSZs?	Yes	SE, p.5 & 6, Fire Codes & Fuels Mitigation and Fire Prevention & SE, Policy S-26, p. 56 & SE, Policy S-27, p. 56 & SE, Policy S-33, p. 57 & SE, Policy S-35, p. 57 & SE, Implementation Action IA-15, p. 64 & SE, Implementation Action IA-16, p. 64

Questions	Yes or No	Comments and Recommendations <span style="float: right;">01</span>
Are there goals and policies to avoid or minimize new residential development in VHFHSZs?	<b>No</b>	<b>Recommendation: Establish a Goal and Policy that specifically addresses avoiding or minimizing new residential development in the VHFHSZ's</b>
Has fire safe design been incorporated into future development requirements?	Yes.	SE, p. 5, Fire Codes & SE, p. 6, Fuels Mitigation and Fire Prevention & SE, Policy S-26, p. 56 & SE, Policy S-27, p. 56 & SE, Policy S-29, p. 56 & SE, Policy S-33, p. 57 & SE, Policy S-35, p. 57 & SE, Implementation Action IA-15, p. 64 & SE, Implementation Action IA-16, p. 64
Are new essential public facilities located outside high fire risk areas, such as VHFHSZs, when feasible?	Yes.	SE, Policy S-9, p. 53 &
Are there plans or actions identified to mitigate existing non-conforming development to contemporary fire safe standards, in terms of road standards and vegetative hazard?	Yes.	SE, Policy S-36, p. 57 & SE, Implementation Action IA-15, p. 64
Does the plan include policies to evaluate re-development after a large fire?	Yes.	SE, Policy S-28, p. 56
Is fuel modification around homes and subdivisions required for new development in SRAs or VHFHSZs?	Yes.	SE, Policy S-25, p. 56 & SE, Policy S-26, p. 56 & SE, Policy S-27, p. 56 & SE, Policy S-30, p. 56 & SE, Policy S-33, p. 57 & SE, Policy S-36, p. 57 & SE, Policy S-38, p. 57 & SE, Implementation Action IA-15, p. 64
Are fire protection plans required for new development in VHFHSZs?	<b>Partial</b>	SE, Policy S-27, p. 56 & SE, Policy S-30, p. 56  <b>Recommendation: Include specific policies about requiring Fire Protection Plans:</b> <b>FIRE PROTECTION PLANS</b>  <b>Possible Language</b> Several of the components of a Fire Protection Plan have been identified in the SE already. It is important to conduct a thorough evaluation

Questions	Yes or No	Comments and Recommendations <span style="float: right;">01</span>
		<p>of new subdivisions within the VHFHSZ and address these items. It is preferred that you include language to require Fire Protection Plans within the VHFHSZ.</p> <p><b>Main components to a Fire Protection Plan:</b></p> <ol style="list-style-type: none"> <li>1.) Risk Analysis</li> <li>2.) Fire Response Capabilities</li> <li>3.) Fire Safety Requirements – Defensible Space, Infrastructure, and Building Ignition Resistance</li> <li>4.) Mitigation Measures and Design Considerations for Non-Conforming Fuel Modification</li> <li>5.) Wildfire Education Maintenance and Limitations</li> </ol>
Does the plan address long term maintenance of fire hazard reduction projects, including community fire breaks and private road and public road clearance?	Yes.	SE, Policy S-26, p. 56 & SE, Policy S-36, p. 57
Is there adequate access (ingress, egress) to new development in VHFHSZs?	Partial	SE, Policy S-26, p. 56 & SE, Policy S-30, p. 56 & SE, Policy S-35, p. 57  Recommendation: Add language or reference to the standard in which these access routes will be constructed to. Fire Safe Regulations are the minimum standard in the VHFHSZ.
Are minimum standards for evacuation of residential areas in VHFHSZs defined?	Partial	SE, Policy S-30, p. 56 & SE, Policy S-35, p. 57 & SE, Policy S-36, p. 57  Recommendation: Add language or reference to the standard in which these access routes will be constructed to. Fire Safe Regulations are the minimum standard in the VHFHSZ.
If areas exist with inadequate access/evacuation routes, are they identified? Are mitigation measures or improvement plans identified?	Partial	SE, Figure #1, p. 16 & SE, Policy S-35, p. 57 &

Questions	Yes or No	Comments and Recommendations <span style="float: right;">01</span>
		SE, Policy S-36, p. 57  Recommendation: Add language or reference to the standard in which these access routes will be constructed to. Fire Safe Regulations are the minimum standard in the VHFHSZ.
Are there policies or programs promoting public outreach about defensible space or evacuation routes? Are there specific plans to reach at-risk populations?	Partial	SE, Policy S-10, p. 53 & SE, Implementation Action IA-14, p. 64  Recommendation: Add language to include defensible space and at-risk populations.
Does the plan identify future water supply for fire suppression needs?	Partial	SE, Policy S-31, p. 57 & SE, Policy S-47, p. 59 & SE, Implementation Action IA-17, p. 65  Recommendation: Add language to Policy S-31 and S-47 to include "for fire suppression needs".
Does new development have adequate fire protection?	Yes	SE, Policy S-25, p. 56 & SE, Policy S-29, p. 56

## Section 2 Develop adequate infrastructure if a new development is located in SRAs or VHFHSZs.

Does the plan identify adequate infrastructure for new development related to:	Yes or No	Comments and Recommendations
Water supply and fire flow?	Partial	SE, Policy S-30, p. 56 & SE, Policy S-31, p. 57 & SE, Policy S-49, p. 59  Recommendation: Add language to Policy S-31 and S-49 to include "for fire suppression needs" or "fire flow".
Location of anticipated water supply?	No	SE, Policy S-30, p. 56  Recommendation: Add language about "location of anticipated water supply" or new policy to address this.

Does the plan identify adequate infrastructure for new development related to:	Yes or No	Comments and Recommendations <span style="float: right;">01</span>
Maintenance and long-term integrity of water supplies?	No	SE, Policy S-30, p. 56  Recommendation: Add Goals and Policies to work with local water providers to ensure maintenance and long-term integrity of water supplies.
Evacuation and emergency vehicle access?	Partial	SE, Policy S-30, p. 56 & SE, Policy S-32, p. 57 & SE, Policy S-34, p. 57 & SE, Policy S-35, p. 57 & SE, Policy S-36, p. 57  Recommendation: Add language or reference to the standard in which these access routes will be constructed to. Fire Safe Regulations are the minimum standard in the VHFHSZ.
Fuel modification and defensible space?	Partial	SE, Policy S-30, p. 56 & SE, Policy S-33, p. 57 & SE, Policy S-36, p. 57 & SE, Policy S-38, p. 57  Recommendation: Add language or Policies to specifically address Defensible Space requirements for new development.
Vegetation clearance maintenance on public and private roads?	Yes.	SE, Policy S-36, p. 57 & SE, Policy S-38, p. 57 & SE, Implementation Action IA-15, p. 64
Visible home and street addressing and signage?	Partial	SE, Policy S-32, p. 57  Recommendation: Include the standard (Fire Code?) in which the street addressing, and signing will conform to.
Community fire breaks? Is there a discussion of how those fire breaks will be maintained?	Yes.	SE, Policy S-26, p. 56 & SE, Implementation Action IA-15, p. 64

### Section 3 Working cooperatively with public agencies responsible for fire protection.

Question	Yes or No	Comments and Recommendations
Is there a map or description of existing emergency service facilities and areas lacking service, specifically noting any areas in SRAs or VHFHSZs?	Partial	SE, Figure 8, p. 39 & SE Figure 9, p. 40  Recommendation: Identify areas lacking service and place them on a map. If there are no areas lacking service, then state this somewhere.
Does the plan include an assessment and projection of future emergency service needs?	Partial	SE, Policy S-4, p. 52  Recommendation: Add language addressing an assessment and projection of future emergency service needs.
Are goals or standards for emergency services training described?	No	Recommendation: Add Goals and Policies to address Goals and Standards for emergency services training. This may already be located in another planning document such as the LHMP.
Does the plan outline inter-agency preparedness coordination and mutual aid multi-agency agreements?	Partial	SE, Policy S-1, p. 52 & SE, Policy S-3, p. 52 & SE, Policy S-4, p. 52 & SE, Policy S-5, p. 53  Recommendation: If this is outlined in the current LHMP, then create a roadmap to where this is located.

## Sample Safety Element Recommendations

These are examples of specific policies, objectives, or implementation measures that may be used to meet the intent of Government Code sections 65302, subdivision (g)(3) and 65302.5, subdivision (b). Safety element reviewers may make recommendations that are not included here.

### A. MAPS, PLANS AND HISTORICAL INFORMATION

1. Include or reference CAL FIRE Fire Hazard Severity Zone maps or locally adopted wildfire hazard zones.
2. Include or reference the location of historical information on wildfires in the planning area.
3. Include a map or description of the location of existing and planned land uses in SRAs and VHFHSZs, particularly habitable structures, roads, utilities, and essential public facilities.
4. Identify or reference a fire plan that is relevant to the geographic scope of the general plan, including the Unit/Contract County Fire Plan, Local Hazard Mitigation Plan, and any applicable Community Wildfire Protection Plans.
5. Align the goals, policies, objectives, and implementation measures for fire hazard mitigation in the safety element with those in existing fire plans, or make plans to update fire plans to match the safety element.
6. Create a fire plan for the planning area.

### B. LAND USE

1. Develop fire safe development codes to use as standards for fire protection for new development in SRAs or VHFHSZs that meet or exceed the statewide minimums in the SRA Fire Safe Regulations.
2. Adopt and have certified by the Board of Forestry and Fire Protection local ordinances which meet or exceed the minimum statewide standards in the SRA Fire Safe Regulations.
3. Identify existing development that do not meet or exceed the SRA Fire Safe Regulations or certified local ordinances.
4. Develop mitigation measures for existing development that does not meet or exceed the SRA Fire Safe Regulations or certified local ordinances or identify a policy to do so.

### C. FUEL MODIFICATION

1. Develop a policy to communicate vegetation clearance requirements to seasonal, absent, or vacation rental owners.
2. Identify a policy for the ongoing maintenance of vegetation clearance on public and private roads.
3. Include fuel breaks in the layout/siting of subdivisions.
4. Identify a policy for the ongoing maintenance of existing or proposed fuel breaks.
5. Identify and/or map existing development that does not conform to current state and/or locally adopted fire safety standards for access, water supply and fire flow, signing, and vegetation clearance in SRAs or VHFHSZs.
6. Identify plans and actions for existing non-conforming development to be improved or mitigated to meet current state and/or locally adopted fire safety standards for access, water supply and fire flow, signing, and vegetation clearance.

## D. ACCESS

1. Develop a policy that approval of parcel maps and tentative maps in SRAs or VHFHSZs is conditional based on meeting the SRA Fire Safe Regulations and the Fire Hazard Reduction Around Buildings and Structures Regulations, particularly those regarding road standards for ingress, egress, and fire equipment access. (See Gov. Code, § 66474.02.)
2. Develop a policy that development will be prioritized in areas with an adequate road network and associated infrastructure.
3. Identify multi-family housing, group homes, or other community housing in SRAs or VHFHSZs and develop a policy to create evacuation or shelter in place plans.
4. Include a policy to develop pre-plans for fire risk areas that address civilian evacuation and to effectively communicate those plans.
5. Identify road networks in SRAs or VHFHSZs that do not meet title 14, CCR, division 1.5, chapter 7, subchapter 2, articles 2 and 3 (commencing with section 1273.00) or certified local ordinance and develop a policy to examine possible mitigations.

## E. FIRE PROTECTION

1. Develop a policy that development will be prioritized in areas with adequate water supply infrastructure.
2. Plan for the ongoing maintenance and long-term integrity of planned and existing water supply infrastructure.
3. Map existing emergency service facilities and note any areas lacking service, especially in SRAs or VHFHSZs.
4. Project future emergency service needs for the planned land uses.
5. Include information about emergency service trainings or standards and plans to meet or maintain them.
6. Include information about inter-agency preparedness coordination or mutual aid agreements.

## **Fire Hazard Planning in Other Elements of the General Plan**

When updating the General Plan, here are some ways to incorporate fire hazard planning into other elements. Wildfire safety is best accomplished by holistic, strategic fire planning that takes advantage of opportunities to align priorities and implementation measures within and across plans.

### **LAND USE ELEMENT**

Goals and policies include mitigation of fire hazard for future development or limit development in very high fire hazard severity zones.

Disclose wildland urban-interface hazards, including fire hazard severity zones, and/or other vulnerable areas as determined by CAL FIRE or local fire agency.

Design and locate new development to provide adequate infrastructure for the safe ingress of emergency response vehicles and simultaneously allow citizen egress during emergencies.

Describe or map any Firewise Communities or other fire safe communities as determined by the National Fire Protection Association, Fire Safe Council, or other organization.

### **HOUSING ELEMENT**

Incorporation of current fire safe building codes.

Identify and mitigate substandard fire safe housing and neighborhoods relative to fire hazard severity zones.

Consider diverse occupancies and their effects on wildfire protection (group housing, seasonal populations, transit-dependent, etc).

### **OPEN SPACE AND CONSERVATION ELEMENTS**

Identify critical natural resource values relative to fire hazard severity zones.

Include resource management activities to enhance protection of open space and natural resource values.

Integrate open space into fire safety planning and effectiveness.

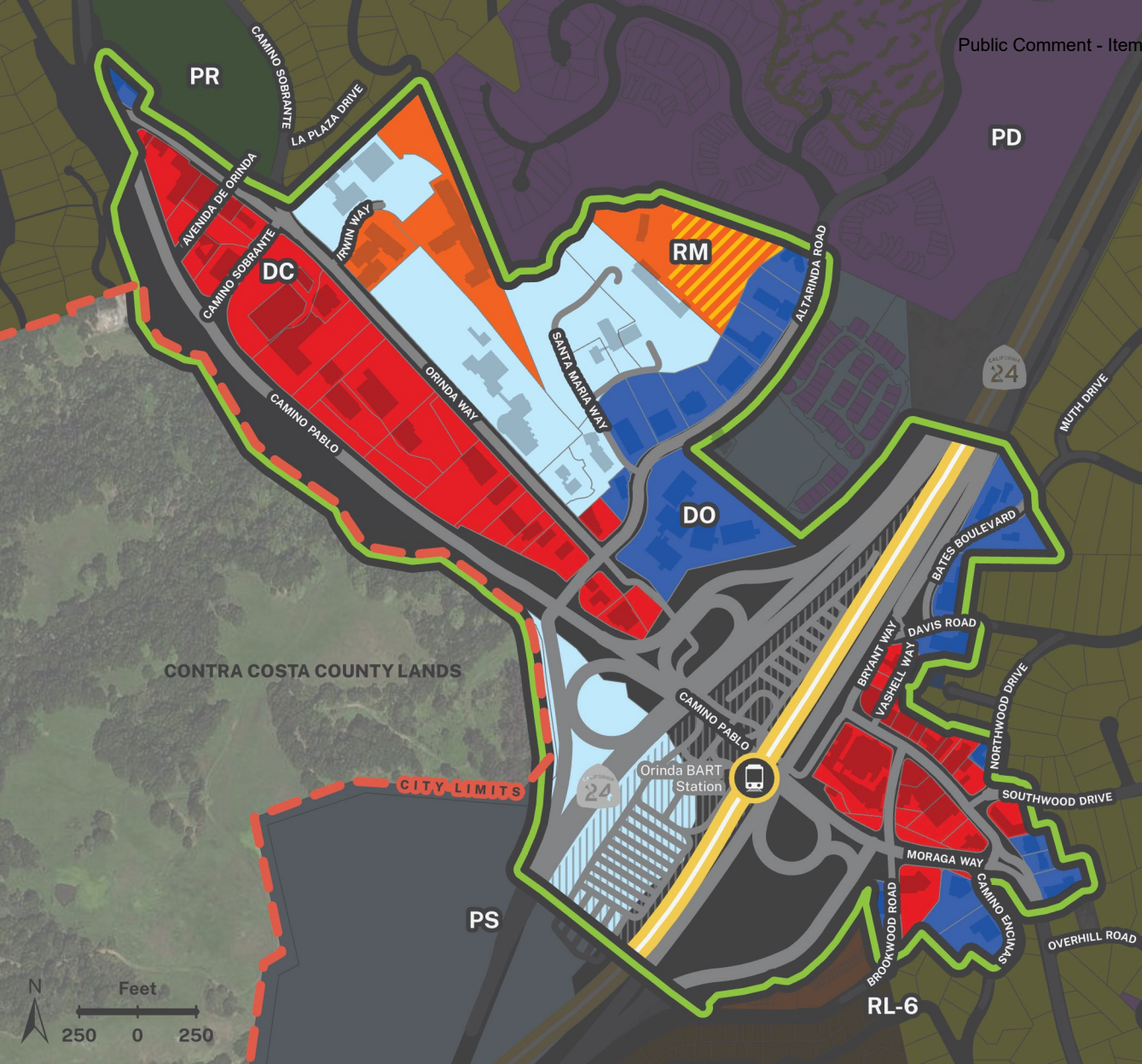
Mitigation for unique pest, disease and other forest health issues leading to hazardous situations.

### **CIRCULATION ELEMENT**

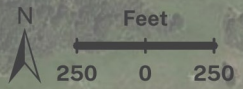
Provide adequate access to very high fire hazard severity zones.

Develop standards for evacuation of residential areas in very high fire hazard severity zones.

Incorporate a policy that provides for a fuel reduction maintenance program along roadways.



- Public Comment - Items Not on the Agenda  
06/18/2025
- City Limits Boundary
  - Contra Costa County Lands Boundary
  - Not Part of Project Area
  - High Density Overlay Zone
  - Downtown Commercial
  - Downtown Office
  - Parks and Recreation
  - Public and Semipublic
  - Planned Development
  - Residential: Medium Density



**From:** [Nick Waranoff](#)  
**To:** [Holbrook, Marcia](#)  
**Cc:** "[Craig Jorgens](#)"; [Roemer, Mike](#)  
**Subject:** SUPPLEMENTAL Public Comment for Board Meeting June 18, 2025 - request for action re SB 79  
**Date:** Thursday, June 12, 2025 9:11:33 PM  
**Attachments:** [Letter to Asm. Bauer-Kahan re SB 79.pdf](#)  
[Waranoff's brief amicus curiae in Opp to Mo Discharge final.pdf](#)  
[Cal Fire commentsAR011210.pdf](#)

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In addition to asking Asm. Bauer-Kahan to oppose, I request that MOFD submit written opposition when this bill is set for hearing in the Assembly. If you do not know how to use the official position letter portal, I can show it. It is easy.

Nick Waranoff

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**From:** Nick Waranoff <[waranoff@comcast.net](mailto:waranoff@comcast.net)>  
**Sent:** Wednesday, June 11, 2025 4:58 PM  
**To:** 'Holbrook, Marcia' <[mholbrook@mofd.org](mailto:mholbrook@mofd.org)>  
**Cc:** 'Craig Jorgens' <[Craig@TheJorgens.com](mailto:Craig@TheJorgens.com)>; 'Roemer, Mike' <[mroemer@mofd.org](mailto:mroemer@mofd.org)>; 'councilmembers@cityoforinda.org' <[councilmembers@cityoforinda.org](mailto:councilmembers@cityoforinda.org)>  
**Subject:** Public Comment for Board Meeting June 18, 2025 - request for action re SB 79

Members of the Board: For the reasons set forth in the my letter to Asm. Bauer-Kahan, and overlay enclosed with it, I am formally requesting that the MOFD advise our local Assemblymember, Rebecca Bauer-Kahan, to oppose SB 79. The bill has passed the Senate and is now in the Assembly.

In a nutshell, my request is based on the following: Orinda is facing an existential threat in SB 79 because it would require ministerial approval of high density housing downtown. The Village half of downtown is in a very high fire hazard severity zone. The "prohibition" referenced in the bill is illusory, as I explain here: <https://marinpost.org/blog/2025/6/8/sb-79-falsely-claims-it-exempts-fire-high-fire-hazard-severity-zones-it-does-not...> The Theater District is in moderate and high fire hazard severity zones.

The EIR for the housing element found that most Orinda residents will need to evacuate thru downtown. and that adding housing downtown will have a "significant and unavoidable" impact on emergency evacuation in the event of a wildfire. Even under existing, pre-development conditions, the EIR found that the critical intersections and on-ramps to State Route 24 downtown are "severely constrained." Many Moraga residents will need to try to evacuate through downtown Orinda as well.

Supporting documents:

Orinda Revised EIR: [https://files.ceqanet.lci.ca.gov/275619-5/attachment/WhKGFMLoyLHliVNNxcWz1ansICDI1fVkvwGx0ebi67QOG9\\_mQBEYoTsltCVARURjQhnTK-j1J4UcIITA0](https://files.ceqanet.lci.ca.gov/275619-5/attachment/WhKGFMLoyLHliVNNxcWz1ansICDI1fVkvwGx0ebi67QOG9_mQBEYoTsltCVARURjQhnTK-j1J4UcIITA0) See page 4.14-34 *et seq.*

I have also attached my Brief Amicus Curiae, which the Superior Court allowed me to file over the City's opposition. The brief explains why the City should commit not to approve housing downtown beyond the amount required by the State Housing Mandate. To date, the City has only approved zoning for new housing consistent with the State Mandate; it did not re-adopt the Downtown Precise Plan which would have more than doubled that amount. The lawsuit continues over whether the City should be required to make that a permanent mitigation commitment.

Cal Fire recommended that the City adopt a policy "that specifically addresses avoiding or minimizing new residential development in the VHFHSZ's." Copy attached. See first row on p. 011216. SB 79 would over-ride the policy that the City of Orinda adopted when it adopted its Housing Element.

Unfortunately, SB 79 would triple or quadruple (compared to the state mandate) the amount of housing that would have to be approved downtown.

For the foregoing reasons, I formally request that the MOFD send a letter to Asm. Bauer-Kahan, asking her to oppose SB 79 in the interest of fire safety and safe emergency evacuation.

*Nick Waranoff*