

EAST BAY FOR EVERYONE



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Summary

- Caltrans Gateway parcel lacks amenities, is unsuitable for development, does not advance fair housing and should be removed.
- A number of vacant above moderate sites in single family homes are also unsuitable (slopes, transmission lines, small/narrow lots) and should be removed.
- Orinda violates state housing law by conditioning approval of housing development projects on subjective design criteria, exceeding deadlines specified in the Permit Streamlining Act, and also by banning ADU's on SB 9 lot split parcels.
- Examples of successful development in other jurisdictions at Orinda's downtown density include an office conversion (not broadly applicable) and a permit granted that failed to get built due to lack of financing.

Land Use Recommendations

We would be satisfied with:

- Increased densities downtown to 60 DUA and heights to 50 feet for all parcels in the downtown core.
- Reduce parking minimums on all parcels in the downtown core to max 1 space/unit.
- Rezone all single family parcels for 5 DUA. We welcome Orinda to retain the exact same rules regarding massing, off-street parking, FAR, and setbacks that currently govern single family homes, many of which have been quite large and expensive. This can be accomplished without environmental review thanks to SB 10.
- Adopt objective design guidelines for all "housing development projects" within 6 months and remove ADU ban for SB 9 urban lot splits, to comply with state law.

The following comments are out of numeric order because we tried to rank them by importance for HCD to review.

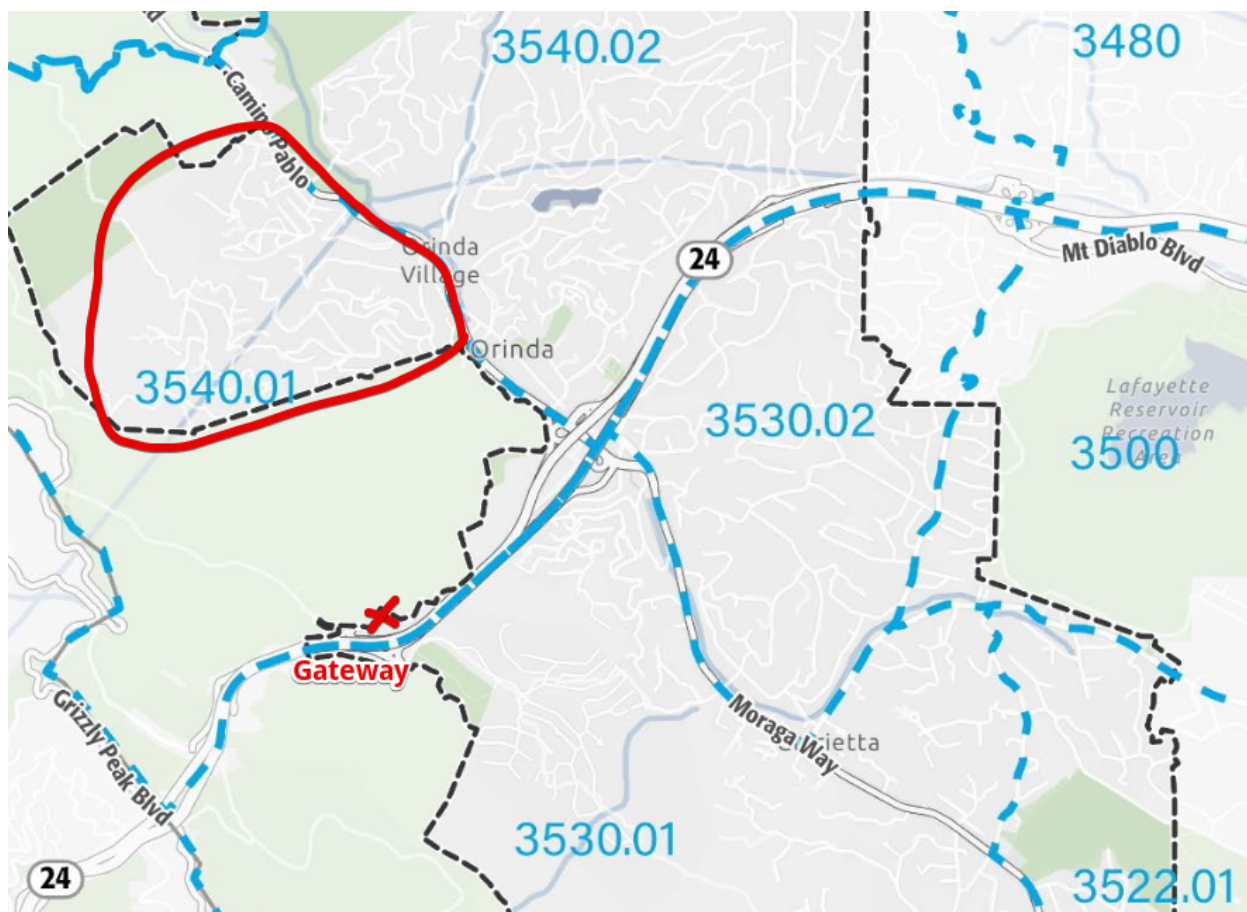
5.1 Sites Inventory

Caltrans Gateway parcel:

This would be Orinda's largest ever housing development and it is located in an extremely unsuitable location. We are concerned that the project does not advance fair housing goals, may not pencil, and will not advance a positive vision for Orinda's future or revitalized downtown.

Fair Housing

On page 106 Orinda uses the demographics of census tract 3540.01 to claim that the Gateway parcel is helping further fair housing. However the Gateway parcel is separated from every other residential parcel in the census tract by a large hillside.



It is not useful or accurate to lump them together for the purpose of evaluating fair housing. In addition it is misleading to use the EnviroScreen data for this census tract to evaluate the Gateway parcel, which is located directly next to the freeway in a fire zone.

Lack of amenities

The only access to this parcel is via Highway 24 and there are no amenities such as grocery stores, restaurants, other residential, or schools. It is impossible to, for example, walk or bike to school or

the grocery store. There is also no public transit so every child who lives in this development will have to be driven everywhere they want to go until the age of 16. This will necessitate a high number of trips by private car to and from the site.

Fire Hazards

This site is located directly adjacent to the freeway and the entire valley east of the Caldecott Tunnel is located in a Very High Fire Hazard Severity Zone. This presents significant health and safety hazards to residents, many of whom are assumed to be lower income.

Pollution

Like almost all of Orinda's lower income sites this parcel is directly adjacent to the freeway where residents will be breathing in toxic pollutants any time they want to play outside or open their window. We do not think this advances fair housing.

Parking

Because this site is not accessible by any method other than private car, the site will need a high number of parking spaces to accommodate cars, 480 parking spaces at the very least, which may require digging underground. This would increase cost, increase traffic congestion, increase the demand for parking in downtown Orinda, and increase pollution.

Summary

This site is a disaster for a vision of Orinda as an integrated, mixed income, walkable city, where residents can live free of air pollution. This site will not further fair housing and Orinda has not demonstrated demand for housing adjacent to a freeway without any amenities.

BART parking lot parcels

We are disappointed that Orinda is excluding these parcels in part because BART may insist on 75 DUA. We think that this density is appropriate on one of Orinda's few sites located adjacent to an infill transit station and within walking distance of many amenities. While development may not be possible by 2031, Orinda should at least try.

ADUs

48 out of 80 ADU's are assumed to be rented at Very Low or Low incomes. It is not appropriate for Orinda to use the ABAG estimates of ADU affordability, because Orinda is so much wealthier than the average ABAG community. HCD's recent letter to Atherton also expressed skepticism about similar low income ADU calculations:

<https://atherton.primegov.com/Portal/viewer?id=247&type=2> Orinda could for example cite current rental rates for ADU's in town to justify its conclusions.

5.1/Appendix 1, Table A-1, Moderate/Above Moderate Site Capacity

RL-6 sites

A cursory look suggests that many of the RL-6 sites are unsuitable to become housing.

- Multiple sites zoned RL-6 but presumed to support multiple units. To achieve the proposed density, parcels must be subdivided, but subdivisions require discretionary approval of the Planning Commission.
- Orinda should provide evidence that the Planning Commission routinely grants subdivision requests (and has not ever denied one), or introduce a program to allow by-right subdivisions on the RL-6 parcels included in the Sites Inventory.
- Given the value of land in Orinda, the default assumption should be there is some issue with sites that are still vacant in 2022 that is preventing development. Orinda should get a letter from the parcel owner indicating they are open to development

Here are some examples - we did not look at every site but most of the sites we looked at had issues.

Site 3 is extremely narrow, on a steep slope, abuts a retaining wall to State Route 24, and has transmission lines running overhead. Orinda suggests it will become 10 homes, which we think is extremely unlikely due to the parcel shape, slope, and the need for Planning Commission approval. Orinda should provide evidence from the site owner that they are interested in developing the site and believe that 10 homes are feasible there.



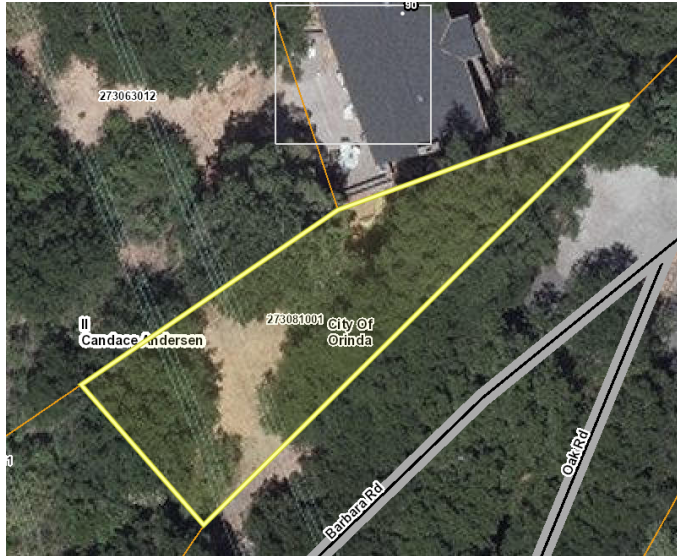
Site 9 is described as “unbuildable” in the county parcel database because overhead transmission lines cover the entire parcel. Orinda should provide evidence development is possible underneath transmission lines or a letter of interest from the property owner.

Site 31: Parcel is 0.02 acres and bounded by someone’s driveway, the road, and their front window. There is hardly room to meet Orinda’s off street parking requirements let alone setback rules. Please provide evidence from the parcel owner that there is interest in developing this property.



Site 45: Appears to be used as driveway/backyard for next door single family home, which is built right against the edge of this parcel. No evidence the property owner is interested.

Site 52: County property tax database describes this parcel as “unbuildable” likely due to the narrow lot, steep hillside, and the fact that the majority of the lot is directly underneath transmission lines.



Site 65: This must be a mistake because the parcel number (255240024) is listed as 0.01 acres but on the county database is an extremely large (>20 acre) government owned parcel. A 0.01 acre parcel would not be developable.

5.7.2 Project Examples

To demonstrate the densities in the downtown plan are feasible, Orinda gives examples of several projects. Unfortunately these projects are not realistic comparison points.

Project Example 1 was granted a permit in 2016 but *could not achieve financing at the proposed density*, and is now a proposal to build 60 townhomes at 23.5 DUA.

<https://sfyimby.com/2021/12/reduced-plans-for-2251-san-ramon-valley-boulevard-san-ramon.html>

Project Example 2 does not give an address, a project name, a photo, or any identifying details, and thus cannot be verified.

Project Example 3 is a conversion of existing office space to 1 bedroom units and studios. This project has a lower setback than Orinda's proposed standards. Given the extremely site-specific details involved in an office conversion, this is not appropriate to hold up as an example of what is feasible to build.

Orinda should affirm that projects are feasible with proposed or existing development standards in Orinda, and that the projects have actually broken ground. Absent this, and given increased interest rates and labor and materials costs, we believe that Orinda should target a minimum of 60 DUA in the downtown core.

6.2.3 Residential Development Standards

To demonstrate that setbacks are not a constraint on development, Orinda gives an example of a hypothetical 120x120 lot. This lot is assumed to be flat but almost all parcels in Orinda have a wide variation in grade, which may preclude the use of part of the lot. Combined with setback rules, this may make development infeasible even if the lot meets the standards.

Parking

Orinda's evidence that parking standards "are not a development constraint" is that their parking standards are similar to those in nearby cities. Lafayette and Walnut Creek both cited parking as governmental constraints in their draft Housing Element documents. Orinda's citation of those cities is not sufficient evidence that parking minimums do not present a constraint, as there is strong evidence that parking minimums are a constraint across most of the Bay, and these minimums are all higher than average.

1.75¹ parking spaces for a one bedroom apartment will cost anywhere from \$50,000 to \$157,000 to build, which gets tacked on to the price of purchasing a condo, and thus make it that much less affordable. Parking minimums also make it more difficult to include ground floor retail, and increase traffic and pollution.

Orinda should commit to reducing parking minimums to 1 space per unit throughout the downtown core and removing parking minimums altogether on the BART parking parcels.

6.2.5 Design Guidelines

Design review is mandatory for housing applications in Orinda. Orinda admits that it conditions approval of projects on subjective criteria such as "breaking up the mass," "articulation" and lists several subjective findings that are necessary to pass design review.

The Housing Accountability Act forbids conditioning the approval of a "housing development project" on subjective criteria; Orinda may only condition approval on objective criteria, such as the building height or FAR.

Orinda should immediately amend its design review program to **explain to all "housing development project" applicants that it is optional to comply with any subjective design criteria,** or recommendations from Design Review that are not described in objective language in the zoning code.

Senate Bill 9

Orinda illegally forbids the construction of ADU's or junior ADU's on parcels that have been created with a SB 9 urban lot split. HCD guidance is clear: "ADUs can be combined with primary units in a variety of ways to achieve the maximum unit counts provided for under SB 9," and later,

¹ 1.5 spaces for the one bedroom plus 0.25 spaces of guest parking.

“In this [lot split] situation, all three unit types (i.e., primary unit, ADU, and Junior ADU) count toward this two-unit limit.”

<https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf> (page 7)

It should be legal to construct a single family home and ADU on a parcel that has been constructed via a SB 9 lot split, but Orinda bans this practice, contrary to state law. Orinda does not note this constraint in the draft Element.

6.2.5 Local Processing and Permit Procedures

We believe Orinda’s local processing and permit procedures are an unreasonable constraint that can, and therefore must, be mitigated. As an example, Orinda’s housing element fails to analyze compliance with CEQA deadlines including PRC 21080.1 and 21080.2 and actually includes statements that imply non-compliance with said deadlines. PRC 21080.1 and 21080.2 require that Orinda’s lead agency issue determinations of CEQA-exemption (or indicate an environmental document will need to be prepared) within 30 days of completeness. However, the draft housing element implies that such environmental decisions are not made until the Planning Commission hearing, which the draft admits occurs beyond the deadline of PRC 21080.1 and 21080.2 (“On average, projects are considered by the Planning Commission within three months of submittal.) It is readily apparent that three months is longer than the allowed 30 days.

Please also note the technical assistance letter sent by HCD’s Shannan West to Berkeley on June 3rd, 2022 that relates to the deadlines of PRC 21080.1 and 21080.2. Shannan West’s letter confirms that the lead agency must issue CEQA exemption determinations within 30 days of completeness to satisfy PRC 21080.1 and 21080.2. We note that Orinda has not even claimed compliance with these specific laws.

<https://www.hcd.ca.gov/community-development/housing-element/docs/alaBerkeley-TA-060322.pdf>

7.2 Goals, Policies and Actions

Action 3.E: Objective standards are a requirement of the state Housing Accountability Act and must apply to all “housing development projects,” not just applications in the Downtown Precise Plan or Housing Opportunity Sites.

Orinda cannot condition approval of housing development projects on subjective criteria and is out of compliance with state law until this is complete. The timeline for this item should be within the next six months.

Action 3.F: Orinda should commit to implementing this policy, not just studying it.

Action 4.E: In addition to reducing parking standards to 1 unit for 1 bedroom apartments, Orinda should also commit to removing guest parking minimums (0.25/unit) and reducing 2+ bedroom

apartment minimums. We recommend 1 space per unit for all housing types; developers can exceed this if they wish.

4.11.3 Fair Housing

Educational Opportunities

The document fails to include recent context on racial bias in Orinda. From 2010 to 2015, the Orinda school district hired a private investigator to determine whether seven students lived in the school district or not. Of the seven students investigated, only two were White, despite Orinda being an overwhelmingly White area. Many suspected that the Orinda school district was investigating minority students based on their race. This is a constraint to diversifying Orinda and a reason why people of color may not want to move there.

<https://www.mercurynews.com/2015/01/09/orinda-school-district-hired-private-investigators-for-seven-residency-issues/>

Familial Status

Many Contra Costa County families struggle with the cost of childcare and the cost of paying rent or a mortgage. We are skeptical that Orinda can continue to be family-oriented if home prices continue to increase. Cities on the Peninsula and in the South Bay have seen school enrollment declines or have been forced to close schools because families cannot afford to live there anymore. This is a risk for Orinda.

Environmental Health

This section should discuss the impacts of placing so much of the Sites Inventory close to State Route 24, which is a significant source of pollution. Orinda uses census tracts to measure pollution, but two census tracts split the freeway, so the impact of pollution when measured this way is diluted.

Every day we learn something new and bad about the harmful impact of freeways - noise, rubber tire particulates, disk brake particulates - on stress levels, on infant birth weight, on student attendance and test scores, on chronic illness, emergency room visits, or longevity. Orinda should discuss how it plans to mitigate freeway pollution or plan for significant amounts of new housing outside of the immediate vicinity of the freeway.

Similarly, on page 104 we disagree with the assertion that “there are limited sources of pollutants within the city limits that would negatively impact long-term health,” State Route 24 is a significant source of pollutants that negatively impact long-term health.

See e.g. “Residential Traffic and Children’s Health,” a survey conducted in the East Bay that found increased rates of asthma and other respiratory problems for children living near freeways or arterials. <https://ehp.niehs.nih.gov/doi/full/10.1289/ehp.10735> or “Evaluation of the public health impacts of traffic congestion: a health risk assessment” which shows that traffic pollution increases mortality. <https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-9-65>

Fair Housing Recommendations

Orinda should permit 5 DUA on all single family parcels in town. This would help increase the number of options that are affordable to average families in neighborhoods that are very exclusionary.

Orinda clearly has no problem with large structures in these areas. 75 Adobe Lane is a home that was constructed recently in Orinda and has 4 beds, 4 baths, and over 4,000 square feet. It is only currently legal to build a home this size for only one family in Orinda.



We do not understand why homes this large are legal for one very wealthy family, but a structure of similar size would be illegal if it was built for two or three less wealthy families.

Orinda should permit 5 DUA on all single family parcels and use the same rules it currently applies to single family homes - setbacks, massing, etc - to govern construction.

4.5.5 Housing Condition

We disagree that Orinda's homes, 80% of which were built before 1979, are in "excellent condition." Homes built before 1979 have lead paint on the interior and the exterior, which is a latent health hazard. These homes are also more likely to burn down in a fire, since they are not built to modern fire codes, and more likely to fall over in an earthquake, since they are not built to modern seismic standards. The fact that the homes are well maintained does not mean they are invulnerable to poisoning their residents or collapsing in a natural disaster.

Single family homes and homes built before 1980 are also rarely ADA compliant which presents significant problems for an aging population. These are all excellent reasons to replace Orinda's aging housing stock with newer homes built to modern standards.

6.3.5 Construction Costs

The cited cost estimates of \$176-\$178 per square foot are about twice as low as any estimate we've heard within the last year. The cost of materials and labor has increased dramatically and Orinda also has a lengthy permitting timeline that includes multiple public hearings and design review.

Signed,
The 2500 members of East Bay for Everyone