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Summary

- Caltrans Gateway parcel would be 200 low-income homes more than a half mile from any other Orinda residential parcel. It does not advance fair housing and should be removed.
- Housing at BART is feasible if Orinda commits to the same level of effort it plans to put into development of the Gateway parcels. Orinda should listen to its residents, who also ask for BART TOD, and commit to adding housing on part of the BART parking lots.
- Orinda should adopt a missing middle program to permit some more affordable units in single family zones.
- A large percentage of RL-6 "opportunity sites" are incorrectly marked as vacant, or have questionable assumptions about affordability, and are not suitable sites for housing.

Honorable Members of the Orinda Planning Department and Orinda City Council:

We appreciate that you have incorporated our feedback on the last draft. We are still concerned that the draft contains a number of questionable sites and does not advance fair housing.

5.1 Sites Inventory

The Caltrans Gateway parcel is an inappropriate site for housing and especially low income housing. This parcel is separated from the rest of Orinda by a freeway and the next closest non-low-income home is over a half mile away. It is in a Very High Severity fire zone. The residents will breathe brake exhaust and tire particulates from 8 lanes of traffic. This site would have close to 100% of its trips to and from via private car.

Site will not be competitive for low-income funding

Funding applications for low income housing score sites based in part on their proximity to amenities. This site will not score well. This site has only one amenity (a park) across the freeway and everything else is at least a mile away. A Bay Area nonprofit housing developer we spoke with said, "we wouldn't touch this site in an RFP!"

Orinda should provide evidence that at least one nonprofit developer would consider bidding on an RFP before including this site in the Housing Element.

Orinda's comments on site access

Our last letter¹ noted that this parcel is only accessible via the freeway, which would require residents to have cars or pay for cabs to get around. In response, Orinda makes a number of very speculative arguments:²

- *Residents can ride their bikes on Highway 24:* There is no separation between the freeway shoulder and cars going 70mph. It is an uncomfortable, loud, and dangerous ride for the most experienced bike riders, let alone children under 16 or people who may not be able to afford or drive a car. The freeway shoulder also disappears on both Camino Pablo onramps.
- *Residents can walk or ride to Moraga Road:* This adds 2 miles and 300 feet elevation gain to any trip. There are no bike lanes on the route between Moraga Road and Gateway. The Safeway in Downtown Orinda is 1.1 miles as the crow flies, but 3.5 miles via this route, the only bike/ped route to downtown. It is not realistic to suggest people will use this for everyday trips.
- *Gateway site may have shuttle access:* The HOA across the freeway, for a community of 200 single family homes worth \$2-4m each, is supposed to offer a BART shuttle as part of the development agreement. The HOA is currently out of compliance on the developer agreement. It is speculative to suggest the HOA will agree to run 1) a shuttle, 2) a shuttle to the Gateway parcel. The HOA also has the right to cancel the shuttle after 18 months of operation.

Decertification is too low a standard for mid-cycle review

Orinda commits to a mid-cycle review of its low income housing inventory if Caltrans does not decertify the parcel by 2026.³ Caltrans has already told Orinda it has no plans for this parcel; decertification is the easy part of developing the site. If Caltrans decertifies the site but Orinda cannot attract developer interest or does not make any concrete plans to use the site, Orinda essentially gets to skip the need to site 200 low income apartments.

If this site remains in the inventory, **Orinda must use bids on an RFP (step 5) as the threshold for a mid-cycle review, instead of the much lower “decertification” threshold.** We believe affordable housing developers will share our concerns about this site and may not bid on an RFP. If that happens, low income residents should not be left in the lurch.

Site will not have community support

¹ <https://eastbayforeveryone.org/wp-content/uploads/2022/11/2022-11-10-orinda-second-draft.pdf>

² Page 158-159 via the on-page numbers, pages 170-171 of the PDF.

³ Page 159 by the on-page numbers, page 171 of the PDF.

While we advocate strongly for low-income housing on more feasible sites in Orinda and throughout the East Bay, we would likely not support an application for development on this location at the time of a Planning Commission or City Council vote. Given Orinda's lack of history developing low income projects of this size we are concerned that a certified Housing Element including this site will mean housing here exists only on paper.

Contingencies

The Gateway site does not advance fair housing and should not be in the inventory. One of our volunteers compared it to the creation of a new Marin City in 2023. However, if Orinda is committed to keeping it and HCD will certify a Housing Element that includes it, the following conditions *must* be met:

1. Change threshold for mid-cycle RHNA recycling from "Caltrans fails to decertify" (step 2 on page 159) to "RFP not submitted, or RFP exists and no bids received" (step 5).
2. At least one nonprofit developer telling the City of Orinda they would consider bidding on an RFP for this site
3. The Wilder HOA developer agreement should be amended to require shuttle pick up at the Gateway site.
4. Orinda should commit to operating the BART shuttle on an ongoing basis, ie. no shut down after 18 months.
5. The "Quarry House," a fitness center and pool currently open only to Wilder HOA residents, must permit access to Gateway residents. This is one of the only amenities within walking distance of the Gateway parcel, will help the application score better, and will help ensure low income residents are not segregated from the rest of Orinda's population.

Orinda should put housing at BART instead

On its BART parking lots, Orinda has a site that is much richer in amenities as well as an agency that is very interested in adding affordable housing. Compared with the Gateway parcel which would be almost 100% car mode share, a substantial number of trips from housing at BART would be expected to be completed by car, bike, or public transit. These would help Orinda reduce its average carbon footprint. *We are extremely disappointed that Orinda continues to discourage development of these parcels.*

For the Gateway site, Orinda is clearly interested in working with Caltrans and sponsoring decertification to make that site feasible. We are very confused why they are unwilling to put in the same amount of effort to work with Caltrans on decertifying the BART parking lots, which are a much more desirable housing site.

The objections raised by Orinda all seem surmountable. "It is assumed that BART would request that both parking lots are considered together as one" for example could be resolved with a phone call or meeting with BART about what they'd find acceptable. Similarly, concerns about parking

could be resolved by asking BART if they were willing to preserve some surface parking (for example north of Camino Pablo and under the power lines) at least for development that occurs this decade.



A BART letter submitted to Concord on the same topic - Housing Element inclusion - on July 25 makes clear that BART is willing to work with cities that are “committed to working closely with BART” and provide dedicated staff time. The letter did not mention anything about a requirement to develop the entire site all at once. What BART is asking for is a commitment similar in scope to what Orinda says it is prepared to do for the Gateway property.⁴

Orinda’s complaints about a lack of development standards precluding development at BART also ring hollow because *Orinda is concurrently updating its Downtown Precise Plan* which lays out a wide range of development standards for parcels on both sides of BART. The development standards could easily be extended to apply to the BART parcels. Orinda has discussed the possibility of BART TOD since at least 2012. We are concerned that failure to include BART will result in further talk and no action. Now is the time to take action on these parcels.

⁴ First comment available at

<https://stream.ci.concord.ca.us/OnBaseAgendaOnline/Documents/ViewDocument/Supporting%20Document%20for%20-%205%20-%20ATTACHMENT%205%20-%20PUBLIC%20COMMENTS%20SINCE%20JUNE%2025.pdf?meetingId=924&documentType=Agenda&itemId=15591&publishId=18272&isSection=false>

Whatever Orinda is saying in its Housing Element about the BART parcels, the “Guiding Policies” for its draft Downtown Precise Plan⁵ as of January 10, 2023 state that a “guiding policy” for the BART lots is “Limit development at the Orinda BART station to ground level and underground parking.” It could say, for example, “Pursue opportunities for housing at this site,” or “Come up with a plan to move/underground power lines,” but instead the plan precludes the possibility of development altogether.

Limit development at the Orinda BART station to ground level and underground parking. Encourage BART to develop additional ground level parking on off-site properties.	2.1.3C Downtown: Guiding Policies	Parking, BART
Maintain current boundaries between commercial and adjacent single-family residential areas as indicated on the Downtown Inset General Plan map. The Plan does not envision any expansion of the land area designated for commercial or office use.	2.1.3D Downtown: Guiding Policies	Commercial, Office
Site proximity to the BART terminal should not be used to justify a reduction in the standard requirement(s) for onsite parking, unless a Transportation System Management contract is made with the City.	2.1.3H Downtown: Guiding Policies	Parking, BART

By refusing to put housing at BART, Orinda is not listening to its community. At an April 19, 2022 City Council meeting, Orinda received about 80 items of public correspondence⁶ from residents, many of which asked Orinda to build housing at BART.

Comment 1 - BART is “the most rational” place for dense multifamily housing.

Comment 3 - Include BART in the Housing Element.

Comment 4 - Include BART in the Housing Element.

Comment 5 - Realtor. “The City Council should reconsider putting housing on the BART lots... We need to do it now.” “The demand for ‘walk to town and BART’ properties has become one of the top 5 requests from buyers.”

Comment 9 - Why isn’t BART included? That area “could be revitalized.”

Comment 11 - “There is plenty of land at Orinda BART.”

Comment 13 - “INCLUDE BART IN THE HOUSING ELEMENT”

Comment 14 - Include the BART parking lots in the Housing Element.

Comment 16 - “The BART property is the perfect location for concentrated housing.”

Comment 17 - “BART SHOULD BE INCLUDED IN THE HOUSING ELEMENT!”

Comment 18 - “We find it hard to understand why Orinda does not build high density housing near BART”

Comment 19 - “High-density housing makes sense at BART, where it is close to shopping and public transportation”

Comment 20 - “we need infill development, especially within walking distance (½ mile or less) to transit stations”

Comment 22 - “why would the City Council not put housing on BART parking like so many other cities are proposing.”

Comment 23 - Support for another commenter who asked to put BART in the Housing Element

Comment 24 - “Orinda Watch,” a neighborhood community group, wants to put BART in the Housing Element

⁵ <https://www.planorinda.com/downtown-precise-plan#DraftDPP>

⁶ <http://orindaca.ig2.com/Citizens/FileOpen.aspx?Type=15&ID=1642&Inline=True>

Comment 26 - “The BART parking lot and adjacent area would be excellent candidates [for housing]”

The non-summarized comments were about other topics (ie, not opposed to BART housing). There are 40 more comments also expressing support for BART housing. Orinda should listen to its residents and plan for dense housing at BART.

Downtown core

Orinda should rezone the entire downtown core for 55-60 DUA. We do not understand the rationale for some downtown sites to receive a 55 DUA density while adjacent parcels do not. In particular, three parcels that are currently gas stations and 25-30 DUA should receive a high density (and lower parking) in order to increase the chance of redevelopment (and help accelerate a climate transition, by encouraging redevelopment as a non-gasoline use).

ADUs

Orinda’s median family income is \$324,649, *almost triple* the Contra Costa County median family income. It is not appropriate for Orinda to use the ABAG estimates of ADU affordability (48 out of 80 ADU’s are assumed to be rented at Very Low or Low incomes), 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.⁷ 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

We remain skeptical about many of the RL-6 sites that Orinda is including in the Sites Inventory.

Every site that contains more than one unit requires discretionary Planning Commission approval of a subdivision. Orinda does not describe the process for obtaining a subdivision or the likelihood that the Planning Commission will grant one to applicants. These may hinder the ability to achieve the proposed densities.

New single family homes in Orinda are not affordable at “moderate” income levels

Orinda assumes 114 homes in RL-6 parcels will be affordable to residents making “moderate” incomes, which in Contra Costa County is around \$99,000. Using the Zillow search tool, we cannot find a single family home built in Orinda since 2017 that sold for less than \$1.9 million. The monthly mortgage payment on a \$1.9 million single family home would be about \$8,400 per month or \$100,800 per year.⁸ After making this mortgage payment a household making a “moderate” income would have negative \$1800 per year for all other necessities like food, utilities, and property tax payments.

⁷ <https://atherton.primegov.com/Portal/viewer?id=247&type=2>

⁸ Using the mortgage calculator on Bankrate.com, assuming 30 year fixed rate, 20% down and the best possible credit.

Orinda should provide justification for its “moderate” income assumption, evidence that new construction in the RL-6 zone is affordable to moderate incomes, or assume that all new RL-6 homes are affordable to “above moderate” incomes only.

Alternatively, Orinda could permit fourplexes in this zone, which likely *would* be affordable to moderate incomes.

Orinda says nonvacant sites are vacant and includes other infeasible sites

We did not have time to examine the whole list, but here is a sample of sites Orinda is including. None of these sites are feasible for inclusion.

Parcel 270470002 is described as "unbuildable" in the county parcel database. 99% of the parcel by land area is *located in Moraga*, which is why the acreage is reported as 0.00 acres. We don't understand how Orinda can count one home here.

Parcel 271020013: is described as "unbuildable" in the county parcel database, likely because it contains a driveway to an adjoining parcel. The remainder of this site is landscaped. It should not be described as "vacant" and Orinda should provide evidence the use will discontinue during the planning period.

Parcel 262043019: This site is not vacant, there is an existing single family home covering part of the structure. Orinda should include evidence the use will discontinue or that the existing owner has plans to build housing here.

Parcel 264130007: This 0.07 acre parcel is owned by Central Contra Costa Sanitary District. It appears to be occupied by some sort of utility facility so is not vacant. Orinda should describe the property owner's plans to discontinue the existing use and comply with the Surplus Land Act.

Parcel 264091006: Described as “unbuildable” in the County database, site has no road access, was acquired in 2022 for \$2000 which is far below the going rate for buildable single family lots.

Parcel 262042019: Appears to be being used as a backyard for the house up the hill, no evidence the use will discontinue.

Parcel 260012001: Triangle shaped, steep parcel described as “unbuildable” and is not vacant because it includes a tennis court. No evidence the use will discontinue or adjacent property owner is interested in adding a unit.

Parcel 267020005: 60 acre parcel marked as “agricultural preserve” in the County database, which means the owner receives tax benefits for preserving it under the Williamson Act. Has had same owner since 1981. No evidence that the owner is interested in building housing now.

We could easily go on, but we feel we have demonstrated the point. Likely 20-60% of the sites in this table are infeasible and/or are not actually vacant. Inclusion of sites marked as “unbuildable” or that are in other cities suggest that Orinda has not actually vetted the list of homes in this table.

3 and 7 Rae Drive

The owner of these parcels asked for them to be included in the Housing Element.⁹ This site is walking distance to a fitness club and parkland as well as elementary, middle and high schools. This is an ideal location for “missing middle” housing and Orinda should consider rezoning these parcels for 15 density units/acre.

4.11 Fair Housing

Orinda excludes all of its single family zones from the Housing Element. Orinda notes that many areas in the town were covered by racial covenants before 1968, but does not propose making housing more feasible or more affordable on any single family parcel that has racial covenants in the CC&R’s.

Orinda should adopt the missing middle program from San Ramon, which proposes rezoning several single family areas for 15 DUA with a goal of adding 50 units.¹⁰ It is currently legal to build very large homes throughout Orinda for one family only, but not legal for multiple, less wealthy families to share a building with the same footprint but 2/3/4 kitchens. Given existing race and wealth gaps in Contra Costa County, as well as Orinda’s past history of excluding nonwhite residents, a zoning code that permits mansions but not fourplexes does not advance 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 not¹¹. A seven-year-old daughter of a Latina live-in nanny was kicked out of Orinda schools and forced into school in Bay Point. Of the seven students investigated, only two were White, despite Orinda being an overwhelmingly White area. Many suspect 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.

6.2 Governmental Constraints

Parking

Mandatory parking minimums increase pollution, increase building heights, increase the cost of apartments by \$50k-150k per space, make ground floor retail less viable, and increase *driving*, which increases the risk of fatal collisions involving cyclists or pedestrians. Orinda should commit

⁹ <http://orindaca.ig2.com/Citizens/FileOpen.aspx?Type=15&ID=1721&Inline=True>

¹⁰ “Program 18” here:

[https://www.sanramon.ca.gov/UserFiles/Servers/Server_10826046/File/Our%20City/Departments/Community%20Development/Planning/General%20Plan%202040%20Update/Revised%20San%20Ramon%20HE%20\(December%202022\).pdf](https://www.sanramon.ca.gov/UserFiles/Servers/Server_10826046/File/Our%20City/Departments/Community%20Development/Planning/General%20Plan%202040%20Update/Revised%20San%20Ramon%20HE%20(December%202022).pdf)

¹¹

<https://www.mercurynews.com/2014/11/27/orinda-district-hires-private-investigator-kicks-live-in-nannys-daughter-out-of-school/>

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

to waiving parking minimums throughout the downtown core, which will help promote a walkable, bikeable city, the availability of ground floor retail, shorter buildings, and more affordable apartments. Developers can always choose to add parking, they just would no longer be *required to*.

At the time of writing Northern California is in the middle of a rain storm that has been brought on by unusual weather patterns from a warming climate. Statewide, one of the biggest obstacles to meeting our climate goals is achieving reductions in the amount of driving. Asking developers to subsidize the inclusion of new parking spaces does not help shift mode share away from cars and toward walking, scootering, cycling, or taking public transit.

HCD's letter asks Orinda to commit to specific parking revisions by a specific date. Orinda commits to reducing minimums for one bedroom apartments but should also specify reductions for 2-3 bedroom apartments and the downtown core.

Setbacks in RH-40 zone

Orinda commits to a 50 foot height limit in its new RH-40 zone, which we appreciate. Other development standards such as FAR and setbacks will also play a role in the feasibility of development. Orinda should specify its planned setback requirements for this zone (we think zero or 5 feet is good, especially in the downtown core). A zero front setback will encourage walking, which should reduce car dependence and reduce Orinda's impact on a warming climate.

SB 9 implementation on "small and narrow lots" is illegal

On "small and narrow lots," Orinda restricts SB 9 units to 200 square feet maximum.¹²

Orinda cannot find any basis in law for restricting SB 9 units to this size on these parcels. The rationale given in the planning code for this limitation is "to reflect Orinda's semi-rural character and the visual context of the neighborhood" which is neither an objective rationale nor a standard related to health and safety.¹³

Checklist bullet 7 requires the total lot area to be below a maximum FAR which again may preclude development of a 800 square foot unit under SB 9 rules and also cannot find any basis in state law.

Orinda should amend its SB 9 ordinance to remove these restrictions as part of its Housing Element.

Design Guidelines

¹² See checklist bullet 6 here:

<https://www.cityoforinda.org/DocumentCenter/View/3639/SB-9-Lot-Split-Application?bidId=>

¹³

https://library.municode.com/ca/orinda/codes/code_of_ordinances?nodeId=TIT17ZO_CH17.30DERE_17.30.8SPDEREMANALO

Orinda continues to list non-objective standards as mandatory design review findings, including “compatibility... with its surroundings,” “design elements are visually harmonious,” “balances the sensitivity of its design.” Orinda describes a process by which neighbors can request design review.

While we are encouraged that Orinda eliminated its Design Review Board, and limited the number of buildings subject to design review, these criteria are not legally enforceable on “housing development projects,” which include any application to build more than one unit.¹⁴ The Housing Accountability Act was passed because the housing crisis is an urgent matter of statewide concern, and requiring subjective findings is a way to stall, increase the cost of, or prevent the construction of new housing.

Orinda describes a program to adopt objective multifamily design standards for all housing development projects, which we appreciate.

Orinda should clarify whether any “housing development projects” are or could be subject to design review, or whether they are limited to like-for-like redesigns (teardowns, remodels, additions).

Disputes relating to light, air and views between neighboring properties are best resolved with the purchase (or non-purchase) of an easement, which could be purchased by a property owner to preserve views or light in situations where those infringe on a neighbor’s development rights.¹⁵ Neighbors frequently disagree over, and have private mechanisms for resolving, disputes over things like trees, runoff, trash, and animal waste. We do not understand why Orinda’s Design Review should get involved in a private dispute between neighbors.

7.2 Goals, Policies and Actions

Action 1.J: We do not understand why this will take three years to implement; this should be completed by the end of 2023.

Public Participation

We appreciate that the Orinda planning department read our previous letters and incorporated feedback from them. We look forward to continuing to engage with Orinda throughout the Housing Element process.

Signed,
The 2500 members of East Bay for Everyone

¹⁴ Page 6:

<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-me-mo-on-haa-final-sept2020.pdf>

¹⁵ For example, an easement could forbid the construction of a building above a certain height, or construction on a certain part of the lot.

The board members of San Ramon Valley Climate Coalition
Greenbelt Alliance