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Summary

- Orinda did not significantly alter Caltrans Gateway commitments from the 3rd draft, our concerns remain.
- 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.

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.

Caltrans Gateway parcel

Orinda did not modify its commitments about the Gateway parcel. The most likely scenario is that Caltrans will decertify the Gateway parcel but Orinda won't be interested or able to find a bidder. If this occurs, Orinda will have effectively avoided its commitment to add homes for 200 low income families by 2031. The site will exist only on paper in the Housing Element. This would be a bad outcome for fair housing in Orinda.

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.”¹

East Bay Housing Organizations, an umbrella organization of nonprofit developers in Alameda and Contra Costa counties, submitted a letter stating based on their expertise, this site would not be competitive for Low Income Housing Tax Credits (LIHTC) due to the lack of nearby amenities.

Given this evidence, Orinda should provide evidence that at least one nonprofit developer would consider bidding on an RFP before including this site in the Housing Element. We’d like at least one housing developer to state that it would not reject the site outright.

Decertification is too low a standard for mid-cycle review

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.** If Caltrans decertifies but no bidders materialize, low income residents should not be left in the lurch.

Construction difficulty

The site is on a steep grade which will need to be excavated to fit 200 homes, in addition to at least 300 parking spaces, due to the lack of transit or pedestrian/bike access.



Orinda does not describe utility access to the site; we believe water and sewer would need to be pulled across the freeway and an active BART tunnel.

Contingencies

¹ We strongly encouraged them to submit a comment on the record but they were concerned about jeopardizing their relationships with city governments.

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.

The following conditions *should* be met:

3. The Wilder HOA developer agreement should be amended to require shuttle pick up at the Gateway site (or Orinda should commit to running a shuttle independently).
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, should 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.

Nick Waranoff, an interested community member, also made suggestions to do mixed income on this site, and/or increase the density to allow for onsite amenities and easier funding for a BART shuttle. We don’t think this site should be developed at all, but if it is, mixed income and/or onsite amenities would be better options than 200 purely low income homes.

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 walking, 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 to development at BART seem surmountable. "It is assumed that BART would request that both parking lots are considered together as one," for example, was not a

constraint mentioned in either BART letter to Orinda in January. This could also be resolved with a phone call or meeting with BART about what they'd find acceptable. Similarly, Orinda's 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.



Two BART letters submitted to Orinda make clear that BART is willing to work with Orinda, providing it rezones these parcels and dedicates staff time. The letters 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.²

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, and in fact, this rezoning and EIR *is the best time for Orinda to update its zoning on these 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.

² These should be in the Housing Element comment packet, ctrl+f "Tim Chan," contact us (info@eastbayforeveryone.org) or BART (kparks2@bart.gov) for a copy.

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 correspondence³ 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

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.

Since the January 12th determination letter, Orinda and HCD have also received at least 60 pieces of correspondence from interested community members opposing housing at Caltrans Gateway and asking for development at BART.

Downtown core

³ <http://orindaca.ig2.com/Citizens/FileOpen.aspx?Type=15&ID=1642&Inline=True>

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 are currently gas stations and 25-30 DUA. Gas stations require a costly amount of environmental remediation due to the high likelihood chemicals have leaked into the soil. These sites should receive a higher density (and lower parking minimums) in order to increase the chance of redevelopment (and help accelerate a climate transition, by encouraging redevelopment as a non-gasoline use).

ADUs

We appreciate Orinda changing the categorization of some ADU's, but remain skeptical that 40% of ADU's in Orinda, with median family income is \$324,649, *almost triple* the Contra Costa County median family income, will be affordable to families making Very Low or Low incomes. Orinda could for example cite current rental rates for ADU's in town to justify its conclusions.

HCD's letter to Hillsborough, a similarly wealthy Bay Area community, also asked for evidence to support the city's assumptions about ADU affordability.⁴

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. We regret that we do not have more time to go through the updated sites inventory. We estimate that 40-80 of the 300 homes listed are not feasible.

- **Unbuildable:** Orinda added an explanation that sites labeled "Unbuildable" may be feasible for housing. This does not mean that all sites labeled "Unbuildable" are feasible for housing; some of them really are too steep.

Orinda could for example use land values to justify its assumptions about site feasibility. A parcel that can support development of a single family home should have an assessed value of at least \$10,000. Orinda did not include this information in the inventory table.

- **Nonvacant sites:** A number of sites in our last pass were backyards of other homes, or had a driveway going through them, or evidence of other easements. These sites are not actually vacant and per HCD's sites inventory guidance memo, Orinda should provide evidence that the use will discontinue during the planning period.
- **Require Discretionary Subdivision Approval:** Every site on the list that contains more than one unit requires discretionary Planning Commission approval of a subdivision, or in one case, a General Plan amendment. Orinda does not describe the process for obtaining a subdivision or the likelihood that the Planning Commission will grant one to applicants.

⁴ <https://eastbayforeveryone.org/wp-content/uploads/2023/01/smtHillsboroughDraftOUT011023.pdf>

Orinda does not add a Program promising to amend its General Plan to permit housing on the open space site it's including. 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 84 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.⁵ 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.

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.

3 and 7 Rae Drive

The owner of these parcels asked for them to be included in the Housing Element.⁶ 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 rezone these parcels for 15 density units/acre.

These sites can be rezoned for additional housing without an environmental review thanks to Senate Bill 10. Orinda could add a program promising to rezone this site and other sites like it to permit the development of missing middle housing.

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, a city that has its origins in white flight, still has a much higher proportion of White residents than the County as a whole. Single family zoning in Orinda helps perpetuate existing race and wealth gaps.

⁵ Using the mortgage calculator on Bankrate.com, assuming 30 year fixed rate, 20% down and the best possible credit.

⁶ <http://orindaca.igmp2.com/Citizens/FileOpen.aspx?Type=15&ID=1721&Inline=True>

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.⁷ 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 not⁸. 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 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*.

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.

⁷ "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)

⁸

<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/>

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.⁹

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.¹⁰

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

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.¹¹ 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.

⁹ See checklist bullet 6 here:

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

¹⁰

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

¹¹ Page 6:

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

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.¹² 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
 The board members of San Ramon Valley Climate Coalition
 Greenbelt Alliance
 350ContraCostaAction

¹² For example, an easement could forbid the construction of a building above a certain height, or construction on a certain part of the lot.