



June 16, 2021

The Honorable Stephanie E. Hulsey
Judge of the Superior Court
c/o Office of the County Counsel
Attention: Sandra Ontiveros
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901

Re: 2020-2021 Monterey County Civil Grand Jury Final Report – “The North Fremont Bicycle and Pedestrian Improvements Project, A Bike to Nowhere?”

Dear Judge Hulsey:

This letter is in response to the 2020-2021 Monterey Civil Grand Jury Final Report - “*The North Fremont Bicycle and Pedestrian Improvements Project, A Bike to Nowhere?*” pursuant to Penal Code sections 933 and 933.05. The responses contained in this correspondence were approved by the City of Monterey City Council at its regular meeting of June 15th, 2021.

This letter serves as the collective response to the report from the Monterey City Council, Monterey City Mayor, and Monterey City Manager (collectively, the “City of Monterey”).

Our comments follow in the order that the report presents them. The actual report language is displayed in **bold** type for readability.

FINDINGS

F1. The City is to be commended for holding multiple meetings with the North Fremont Business Association and the local Neighborhood associations to inform them on the NFBPIP throughout the design and construction process.

Response: The City of Monterey agrees with this finding.

F2. The City is to be commended for creating two very informative websites relating to the NFBPIP.

Response: The City of Monterey agrees with this finding.

F3. The City did not hold any public hearings before the Architectural Review Committee for the design of the NFBPIP, which would have helped inform residents throughout the city of Monterey about the project.

Response: The City of Monterey agrees that it did not hold public hearings before the Architectural Review Committee for the design of the NFBPIP, but disagrees that it would have helped inform residents throughout the City of Monterey about the project. The City of Monterey (City) did not hold public hearings before the Architectural Review Committee (ARC) due to the fact that Public Works Projects are not typically subject to architectural review pursuant to the City's Municipal Code Section 38-188.A, and the City Council did not direct the ARC to review it.

The ARC plays a very critical role in reviewing new development and exterior alterations outside of the public right of way. The City Council and Planning Commission may request ARC review for any project. The City Council was presented with the concept design for the North Fremont Bike and Pedestrian Access and Safety Improvement Project on the City Council regular meeting held on October 17, 2017. The agenda report for Item 9, titled "Appropriate Regional Surface Transportation Program Grant Funds for the North Fremont Bicycle and Pedestrian Access and Safety Improvements Project" contained renderings and conceptual drawings for the project as well as the rail in Attachment 2. In addition, the City issued a press release to inform of the grant receipt and included a project description and link to project website. City Council meetings have a higher public attendance than ARC meetings. The City utilizes methods of informing Monterey residents when and where public meetings are held. Meetings are publicly noticed, advertised, and promoted to the public through print, in-person, and digital (website, social media) methods.

In 2017, the concepts were also presented to the Transportation Agency for Monterey County's (TAMC) Bike and Pedestrian Committee (comprising of representatives from various jurisdictions and organizations). Also during 2017, there were two articles published by the *Monterey Herald*, and an article on the Fall edition of the City's newsletter, *City Focus*. In addition, the City of Monterey held an Open House outreach meeting at the Monterey County Fairgrounds prior to start of construction in order to inform businesses and residents. The City made a significant effort to inform all residents, businesses and stakeholders.

The City disagrees that the Architectural Review Committee is the appropriate committee to review public works projects. Rather, the City Council has this broader responsibility as part of its funding decisions.

F4. The City did not hold any public hearings before the Architectural Review Committee which, given the expertise of the Committee members, could have improved on the railing design maintenance issues to help eliminate the significant maintenance needed.

Response: The City disagrees with this finding. There are several engineering design solutions for Class IV separated bike lanes. According to the California Department of Transportation (Caltrans) Design Bulletin number 89-01, "The separation may include, but is not limited to, grade separation, flexible posts, inflexible physical barriers, or on-street parking." The separated bike lane and the bike rail were a safety element to the project, as opposed to only adding bollards, to ensure that this Class IV bike lane would accommodate an inexperienced bicyclist, therefore accommodating users of all abilities. The "see through nature" of the rail was a request from the North Fremont Business District so that drivers could see the opposite side of the street and there were no visual obstructions. The designer also took into consideration the height of the rail in relationship to an adult riding a bicycle and that the rail would be rust resistant. It was not anticipated that pedestrians would damage the rail by jaywalking, which is a violation of the California Vehicle Code section 21955 that states: "Between adjacent intersections controlled by traffic control signal devices or by police officers, pedestrians shall not cross the roadway at any place except in a crosswalk." The ARC is a qualified and highly respected committee whose expertise lies within design features and elements of residential and commercial construction on private property. The City disagrees that the ARC members could have improved on the railing maintenance and unforeseen damage caused by jaywalking on a street with a posted speed of 35 miles per hour and four lanes of traffic.

F5. The City Council did not adopt a revised resolution changing the design description of the NFBPIP from Class 2 to Class 4 bike lanes, which would have helped inform more residents citywide and would have created an accurate record of action by the City Council for the NFBPIP.

Response: The City disagrees with this finding. The City Council approves plans and specifications through resolutions awarding construction contracts. The language is present at each construction award and states that the City Council adopts the resolution *"Approving the plans and specifications for the North Fremont Bike and Pedestrian Access and Safety Improvements Project ("Project") which are available in the Office of the City Engineer (Room 7), and granting the Public Works Director, or his designee, the authority to approve all amendments and addenda thereto as necessitated by conditions in the field."*

The City Council did have the opportunity to review the change in concept design from Class II bike lanes to Class IV bike lanes before awarding the construction contract on May 1, 2018. On September 28, 2017, the City of Monterey issued a press release that contained links to the comprehensive project website which included descriptions and concept plans. At its regular meeting on October 17, 2017, the City Council received an agenda report for Item 9, titled *"Appropriate Regional Surface Transportation Program Grant Funds for the North Fremont Bicycle and Pedestrian Access and Safety Improvements Project"* that contained renderings and conceptual drawings for the project as a Class IV bike lane in Attachment 2. Resolution No. 17-174 appropriates the Regional Surface Transportation Grant Funds and the associated agenda report describes the project as *"The North Fremont Bike and Pedestrian Access and Safety Improvements Project includes the construction of Class IV protected bicycle lanes (separated by a tall curb with a railing) adjacent to the medians of North Fremont, and will include bicycle signals and bike protected intersections at Casa Verde, Airport/Dela Vina, Ramona, and Casanova. Improvements to the intersections include: curb extensions to reduce pedestrian crossing length, increase pedestrian visibility, and provide protected areas for bicyclists entering and exiting the Class IV bike lanes. The curb extensions will also include Americans with Disabilities Act (ADA) compliant curb ramps and audible pedestrian signals."*

F6. The City's failure to have a specific maintenance plan in place for the NFBPIP, as recommended by Caltrans, has led to significant maintenance issues in the first 18 months of operation.

Response: The City partially agrees with this finding. The City has been in the close out phase of this project with the contractor and Caltrans. Once the final federal and state forms are submitted and accepted by Caltrans, the City will be able to take over maintenance of the project. Unfortunately, the COVID-19 pandemic has delayed this close out phase which is currently in progress. The rail will be maintained by the City's Streets Maintenance Division, and this maintenance plan includes keeping spare parts and the tightening/replacing of rail elements.

F7. To date, the City of Monterey has not held any public hearings before the Architectural Review Committee for the design of the Gap Project, thereby limiting the ability to inform and gain input from the residents of Monterey and missing out on possible improvements to the design by members of the ARC. This could result in more negative public opinion as well as a sub-standard design.

Response: As stated in the City's Response to Findings 3 and 4, the City disagrees that this project should have been brought before the ARC. The City has been working with an engineering design consulting firm to identify the best and most cost effective solution for the Gap Project. The bridge design has specific structural elements necessary for the integrity of the structure and cost is also a critical factor. Currently, there are no options identified as design choices to be presented so the

City has not had an outreach meeting regarding this project. However, this project is included in the City's "Have Your Say Monterey" public engagement website, and this site will include any updates to the project. The City will hold an outreach meeting to inform all residents and gather feedback on the project prior to August 1, 2021.

RECOMMENDATIONS

R1. For all City projects that contain design elements, the City should hold Public Hearings before the Architectural Review Committee. *This process should begin by August 1, 2021.*

Response: The recommendation will not be implemented because it is not warranted. As explained in the City's Response to Finding 3 and Finding 4. The City does not have the practice of holding public hearings before the Architectural Review Committee (ARC) due to the fact that Public Works Projects do not fall under the ARC typical review process. However, the City will continue the efforts to hold outreach meetings and provide project information that is easily accessible. The City will continue to issue press releases, City Focus articles, and engage with residents and stakeholders.

R2. On future City projects, the governing body of record should approve revised resolutions to document changes to a project. *This process should begin by August 1, 2021.*

Response: The recommendation will not be implemented because it is not warranted. Current City practice for the City Council to approve and document all changes to a Public Works projects. As noted above, the Public Works Director is delegated the authority to approve amendments to the plans and specifications that are triggered by field conditions. Altering this practice would create unnecessary delays to Public Works projects as well as increase costs. The City is committed to providing residents with project information and updates and will continue to make efforts to provide comprehensive project websites and outreach meetings for larger Public Works Projects. The City will continue to issue press releases, *City Focus* articles, updates on the "Have Your Say Monterey" web portal, and engage with residents and stakeholders.

R3. The City should begin holding Public Hearings before the Architectural Review Committee for their input on the Gap Project design. *This should begin by August 1, 2021.*

Response: The recommendation will not be implemented because it is not warranted, as explained in the City's Response to Findings 3 and 4, and Recommendation 1. However, the City will hold an outreach meeting to inform all residents and gather feedback on the project prior to August 1, 2021. The bridge design has specific structural elements necessary for the integrity of the structure and cost is also a critical factor. The design and project information can be found on the City's "Have Your Say Monterey" outreach website. This site will be kept up to date with any developments in the project.

R4. The City should create a maintenance plan addressing routine and log-term [sic] maintenance, as recommended by Caltrans. *This plan should be made available by September 1, 2021.*

Response: The recommendation will be implemented but a formal plan will not be prepared as it is not a requirement from Caltrans. Caltrans does not require a formal program or plan to be adopted. The City will maintain the rail as described in the response to Finding 6. This will include routine maintenance to the rail and this routine maintenance will be implemented as the project is closed out and prior to September 1, 2021.

In addition to the findings and recommendations, the Civil Grand Jury made the following statements that require responses.

Civil Grand Jury Report Statement: *"The original plan for the NFBPIP to run all the way to Canyon del Rey was modified because of budget overruns."* (Civil Grand Jury Report - page 2)

Response: The original plan was modified, but not due to budget overruns. The original plan as attached to the Council Agenda Report item nine from October 17, 2017, showed the design as the City intended it to be constructed. The design included an eastbound mixed bus queue jump lane/bike lane and a sidewalk from Casanova to Canyon Del Rey on the north side. The bus queue jump lane was a request from Monterey-Salinas Transit as the congestion on that block delays the Bus Rapid Transit during the p.m. peak time. In order to accommodate a new lane and a sidewalk, adjacent to an Environmentally Sensitive Habitat Area, large retaining walls were necessary. In addition to the cost of retaining walls, North Fremont Street had not seen any major improvements in over fifty years. Having a large improvement project in an area that had not been improved in such a long time also meant that critical infrastructure such as storm drains and especially traffic signals, would have to be addressed. The change from Class II to Class IV was based entirely on safety and the large number of conflict points that a user of a Class II facility would encounter along North Fremont Street such as parked cars, driveways, left and right turns. The City made every effort to fund this portion of the work (Casanova Avenue to Canyon Del Rey Boulevard), including getting a Regional Surface Transportation Grant. At the time, the consultant engineer had an estimate of construction costs that showed that the City would likely be able to build the entire project (Casa Verde Avenue to Canyon Del Rey Boulevard). The original design, which included the block between Casanova Avenue and Canyon Del Rey Boulevard, was part of the final plans and specifications that were advertised for competitive bidding on January 25, 2018.

Civil Grand Jury Report Statement: *"Based on the Civil Grand Jury's research into what other cities are doing with bike lane design, it is clear that the NFBPIP design is an innovative and creative way to separate bicyclists from the traffic to keep them as safe as possible."* (Civil Grand Jury Report - page 3)

Response: The City appreciates the Civil Grand Jury's research into current bike facility design best practices and the acknowledgement that a separated, protected bike lane is a safer design choice.

Civil Grand Jury Report Statement: *"Along the way, the project scope and design changed to what you see today, with Class 4 lanes located in the median, running from Casa Verde to Casanova, eliminating the final block between Casanova and Canyon Del Rey."* (Civil Grand Jury Report - page 4)

Response: The project scope and design, as shown in final plans and bid documents, has always included the final block between Casanova and Canyon Del Rey. The bid documents included the bus queue jump lane/mixed bike lane and the sidewalk. The bid schedule for this project was structured so that grant funds would be utilized whether the bids came in higher than expected or not. The change in scope occurred when the bids were received. The agenda report for the May 1st, 2018 regular City Council meeting Item No. 4: *"Award a Construction Contract for the North Fremont Bike and Pedestrian Access and Safety Improvements Project"* contained the following information: *"The Base bid includes all ADA upgrades to intersections and Class IV bike lanes from Casa Verde to Casanova. The sidewalk connecting the North side of North Fremont from Casanova to Canyon Del Rey as well as the eastbound Bike lane will not be awarded due to the high cost of the alternate items. Based on the lowest responsive bidder's price, constructing the improvements on that block would cost \$2.9 million dollars. The high cost of this work is due to the retaining walls necessary to build the sidewalk and the proximity to an Environmentally Sensitive Habitat Area."*

Civil Grand Jury Report Statement: *"According to the interviews and research undertaken by the Civil Grand Jury, it appears that this was the first time [reference to May 1, 2018, resolution awarding the construction contract], since the project was revised in 2016, that any City Council agenda packet contained the Class 4 bike lane description. However, the City Council never approved a revised resolution containing the Class 4 Bike Lane modification, thereby not creating an accurate record of action."* (Civil Grand Jury Report - page 7)

Response: The City approved the Class IV Bike Lane on October 17, 2017. The City Council agenda packet for the October 17, 2017, Item 9: *"Appropriate Regional Surface Transportation Program Grant Funds for the North Fremont Bicycle and Pedestrian Access and Safety Improvements Project"*, describes the project as:

"The North Fremont Bike and Pedestrian Access and Safety Improvements Project includes the construction of Class IV protected bicycle lanes (separated by a tall curb with a railing) adjacent to the medians of North Fremont, and will include bicycle signals and bike protected intersections at Casa Verde, Airport/Dela Vina, Ramona, and Casanova. Improvements to the intersections include: curb extensions to reduce pedestrian crossing length, increase pedestrian visibility, and provide protected areas for bicyclists entering and exiting the Class IV bike lanes. The curb extensions will also include Americans with Disabilities Act (ADA) compliant curb ramps and audible pedestrian signals."

The project also includes modifications to the median within the block of Casanova to Canyon Del Rey to accommodate a shared Bike/Bus Rapid Transit Queue jump lane and a new sidewalk on the north side."

The City of Monterey's City Council approved the plans and specifications through the resolution awarding the construction contract on May 1, 2018. This approval is consistent with all Public Works Projects and the following language is included in the resolution number 18-059 *"Approving the plans and specifications for the North Fremont Bike and Pedestrian Access and Safety Improvements Project ("Project") which are available in the Office of the City Engineer (Room 7), and granting the Public Works Director, or his designee, the authority to approve all amendments and addenda thereto as necessitated by conditions in the field;"*

Civil Grand Jury Report Statement: *"It was decided to delete a portion of the bike lane project stretching from Casanova Avenue to Canyon del Rey Boulevard. By removing this part of the NFBPIP, the project was now within budget. Paperwork was sent to Caltrans for approval. The public was not made aware at that time that a critical gap would be created leaving the bike lane as an unviable means of connecting with the FORTAG project."* (Civil Grand Jury Report - page 8)

Response: The agenda report for the May 1st, 2018 regular City Council meeting item four *"Award a Construction Contract for the North Fremont Bike and Pedestrian Access and Safety Improvements Project"* contained the following language to inform the public of what was being awarded for construction:

"Due to the rising costs of construction, the bid schedule was structured into a base bid and four (4) additive alternates. This gave the City the option to award additive alternatives based on available funding. The Engineer's estimate was based on current prices from the region, including the Bay area. The influx of SB1 funding and other regional and local funding has increased the amount of contracts available and increased bid prices. The City received high bids that prevented the award of the Grand Total Bid. Because of the "use it or lose it" funding constraints, the City must award this project by May 31st, 2018, in order to not lose the Active Transportation Program funding. The City has 3 (three) years to deliver the project in this construction phase which is more than sufficient time."

The agenda report also states: *"The Base bid includes all ADA upgrades to intersections and Class IV bike lanes from Casa Verde to Casanova. The sidewalk connecting the North side of North Fremont from Casanova to Canyon Del Rey as well as the eastbound Bike lane will not be awarded due to the high cost of the alternate items. Based on the lowest responsive bidder's price, constructing the improvements on that block would cost \$2.9 million dollars. The high cost of this work is due to the retaining walls necessary to build the sidewalk and the proximity to an Environmentally Sensitive Habitat Area. The City is working with the Transportation Agency for Monterey County (TAMC), City of Seaside, City of Del Rey Oaks and Monterey Salinas Transit in order to procure future funding for those improvements."*

The language contained in the agenda report was very clear in that the last block of the project exceeded the available funding because the cost of the retaining walls was higher than construction estimates. As the Civil Grand Jury report states *"only about 12% of the overall cost of this project is directly attributed to the construction of the bike lanes."* In conclusion, if the bike lanes had not been built, the City of Monterey would have not received the grant funding from the Caltrans' Active Transportation Program and would still not have the necessary funding to implement the \$2.9 million improvements on North Fremont Street between Casanova Avenue and Canyon Del Rey Boulevard. It was not the cost of the bike lanes or project that exceed the budget and estimates, it was the cost of that last block.

The *Monterey Herald* released an article two days after the City Council meeting, in that article it reads "[City Traffic Engineer Andrea] Renny did note that because a massive retaining wall would be needed for the section from Casanova to Highway 218 —part of the sidewalks and other project elements there would exceed \$3 million — this last part of the project will be pursued once additional grant funding is found." The City of Monterey has been working on a more cost effective solution for that block that only includes a Class I bike and pedestrian connection, unfortunately not including a bus queue jump lane, and has also applied for grants in conjunction with TAMC. Building the connection to FORTAG continues to be a priority.

Civil Grand Jury Report Statement: *"This project can be metaphorically thought of as an iceberg. The smaller portion of the project is visible while the bulk of the project is below the surface."* (Civil Grand Jury Report - page 8)

Response: The City appreciates the acknowledgement that this project replaced and improved critical infrastructure on North Fremont Street. By combining funding and utilizing grant funding, the City was able to "stretch" dollars to implement extensive ADA improvements, increased safety lighting at intersections, storm drain improvements to reduce flooding, pavement rehabilitation and significant repair and upgrades to a failing traffic signal system that was close to failure. Without these signal infrastructure repairs, it would not have been possible to install a traffic signal adaptive system on North Fremont that reduces greenhouse gas emissions as well as improves coordination. The project website listed all the improvements that were an important part of this infrastructure project.

Civil Grand Jury Report Statement: *"One major complaint that the Civil Grand Jury heard during the investigation was that most casual observers only rarely see bicyclists using the current North Fremont Class 4 bike lanes."* (Civil Grand Jury Report - page 12)

Response: This project has installed bike protected intersections and bike signals that not only benefit the users of the Class IV bike lane but also increase the safety for any bicyclist traveling north-south through the intersections. The video detection installed as part of this project also provides bike detection at all approaches to the intersection, whether on the bike lane or not. The

cross-bikes provide additional safety at intersections. The City of Monterey is working on obtaining counts utilizing the video detection software. The City of Monterey agrees that ridership will increase once the bike lanes are connected and FORTAG is built.

The City of Monterey appreciates the work of the Civil Grand Jury in preparing this report on this important project. We recognize members of the Civil Grand Jury for its many hours of work to make our community better. We hope that this information addresses the Grand Jury's findings and recommendations. Please contact us if you have further questions.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Roberson".

Clyde Roberson
Mayor

A handwritten signature in blue ink, appearing to read "Hans Uslar".

Hans Uslar
City Manager

CC: Monterey City Council
Nat Rojanasathira, Assistant City Manager
Chrissy Davi, City Attorney
Steve Wittry, Public Works Director
Andrea Renny, Traffic Engineer