

**Jami Napier**

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**From:** Nick Waranoff <waranoff@comcast.net>  
**Sent:** Friday, June 7, 2019 1:33 PM  
**To:** Clerk of the Board  
**Subject:** FW: Opposition to Board of Supervisors Agenda June 11, 2019 Item C-7 - oppose Attachment A, line 7 (Ivy Drive and Miner Rd./Honeyhill Rd) only  
**Attachments:** CalTrans standard for shared use bike lane.pdf; Email exchange Nov. 15-16, 2018 with Larry Theis re shortage of funds.pdf; Email from David Libby to Orinda City Council.pdf

Members of the Board of Supervisors: I oppose a portion of Consent Item C-7, Resolution No. 2019/193, which would approve the submission of a claim to the Metropolitan Transportation Commission to seek Fiscal Year 2019/2020 Transportation Development Act funding for bicycle and pedestrian projects.

Specifically, I oppose the portion of the Resolution that would seek funding for the item listed in Attachment A, Item 7 -- funding for bike route signage in Orinda (the "Project") along Ivy Drive (on the south side of Orinda) and along a segment of Miner Road / Honeyhill Road (on the north side). The two segments are not connected.

As the Memo to the Board from Brian M. Balbas, Public Works Director/Chief Engineer, to you, states:

The City of Orinda received written opposition to their TDA, Article 3 Project Application prior to the City's January 8, 2019 City Council Meeting to consider this item. During the Public Forum on this item, the City Council received public testimony in opposition to the City's TDA, Article 3 Project Application. Following discussion by the City Council, the Council authorized the submittal of the TDA Article 3 Project Application with modifications to the application.

The modification he references is the correction of a false statement in the draft application that I called to the attention of Larry Theis, Orinda's Director of Public Works. It is immaterial to the issues presented here.

My concerns apply to the Miner Road/Honeyhill Road segment, which I drive daily. A member of Orinda's Traffic Safety Advisory Committee separately opposed the Ivy Drive segment, as I will explain below. The Orinda City Council rejected my request the two segments be separately considered, and the grant request is not allocated between the two segments. I therefore have no choice to but oppose Orinda's entire request for funding.

**Summary of Opposition to Miner Road Segment**

The Miner Road segment is too narrow (only 10 feet wide), curvy, and hilly, and lacking in shoulders, to be safe for bikes and motor vehicles to share. Bikes on this segment create a risk of a head-on collision that may occur, when a bike is moving uphill slowly, and is passed by a driver who must pull into the opposing lane of traffic to pass the bike. Due to the curves and hills, there is a lack of visibility to make this maneuver safely. This fact, plus the absence of a shoulder, creates a significant risk of a head-on collision. No amount of warning signage, or safe driving, can protect the driver who is unexpectedly confronted by an oncoming vehicle in his or her direction.

In seeking a grant for this Project, Orinda even disregarded its own Bicycle, Trails and Walkways Master Plan, which adopted the Caltrans recommendation that a lane of traffic shared with bikes be at least 14 feet wide. (Copy attached.)

The issue is not whether bikes have a right to use the road; they do. The issue is whether City, and the County of Contra Costa, should encourage bike riders to use this segment of road, especially between Lombardy Lane and Honey Hill Road, by installing signage announcing that it is "Bike Route," because it is dangerous.

Such signage encourages the use of bikes on the road, and fails to warn of the dangers. It creates liability for the City of Orinda and for the County of Contra Costa.

### **Community Input re Miner Road Segment**

Public comment at and in connection with the Orinda City Council hearing, at which this project was approved, opposed the designation of Miner Road as a bike route, as Mr. Balbas acknowledged in his Memo. No resident submitted anything orally or in writing favoring the designation, although the Traffic Safety Advisory Committee did approve it.

Jeffrey Kingston, an avid bike rider, posted on Nextdoor Miner Road, an online community bulletin board (Nextdoor describes itself as a "free private social network for your neighborhood community"):

I am a die hard bike rider. Ride every single day on Miner Road from Tarry to Camino Pablo. These ideas seem daft. What is the risk on the Miner Road route????? Potholes, cracks, missing pavement. For goodness sake fix those. I have been after the City for weeks to fix potholes on Miner that truly threaten me every day. If a rider were to hit them, serious injury or worse would be the result. Pretty little road signs saying "Bike Route" accomplish ZERO. A waste of time. Form over substance. And the "bikes use the whole road" is a wasted message. An Orinda Police officer stopped me for avoiding a pothole which put me well into the lane. He did not even know the vehicle code section that grants that right to riders. His advice "don't ride on Miner Road". The ONLY thing that will improve bike safety aside from a dedicated bike lane that is impossible without huge expense, is to FIX THE DEPLORABLE ROAD!

In a second post, Jeff wrote:

One more thing. Speed is not the enemy of bike riders. Passing bikes without at least 3 feet of clearance (mandated by the vehicle code) is far and away the larger risk. Cars pass bikes blindly assuming that no one is coming the other direction....

Another Orinda resident, Jerry Gilbert, posted on Nextdoor:

Miner Road is no place for bicycles. it's dangerous. adding signing, and enforcing speed limits will not make it safe.

The comments of Mr. Kingston and Mr. Gilbert were brought to the attention of the Council in my written opposition. At the hearing before the Council, another avid bike rider, Owen Murphy, agreed that Miner Road is not suitable for bikes.

## **The Miner Road Segment Does Not Meet the Eligibility Requirements of Chapter 1000 of the Highway Design Manual**

The Miner Road/Honey Hill Road portion of the proposed Project does not meet the eligibility requirements of Chapter 1000 of the California Highway Design Manual, for two reasons. First, it would encourage motorists to violate the rules of the road. Second, it has not and will not be adequately maintained, because, as Orinda admits, it lacks the money to do so.

Section 1002.1 states in part:

In selecting the proper facility, an overriding concern is to assure that the proposed facility will not encourage or require bicyclists or motorists to operate in a manner that is inconsistent with the rules of the road.

As explained above, bikes will be moving slowly on Miner Road, due to its hills, and motorists will pass slow moving bikes by crossing over into the opposing lane, because the ten foot lane width and lack of any shoulder prevents motorists from passing bikes without doing so. Accordingly, the Project does not meet the Caltrans minimum safety design criteria of Section 1002.1.

An additional reason why Chapter 1000 is not satisfied concerns the condition of the road. Section 1002.1 states in part:

As with bike lanes, designation of bike routes should indicate to bicyclists that there are particular advantages to using these routes as compared with alternative routes. This means that responsible agencies have taken actions to assure that these routes are suitable as shared routes and will be maintained in a manner consistent with the needs of bicyclists.

Section 1003.3 states in part:

Since bicyclists are permitted on all highways (except prohibited freeways), the decision to designate the route as a bikeway should be based on the advisability of encouraging bicycle travel on the route and other factors listed below.

...

(e) Surface imperfections or irregularities have been corrected (e.g., utility covers adjusted to grade, potholes filled, etc.).

(f) Maintenance of the route will be at a higher standard than that of other comparable streets (e.g., more frequent street sweeping).

The road's condition is poor, as noted by the comments above of Jeff Kingston, an avid bicyclist. The City lacks the funds to maintain its arterial and collector roads such as Miner Road, which explains the potholes and other issues Jeff observed. Recent bond measures only fund repair of residential streets, not arterial and collector roads. Larry Theis, Orinda's Director of Public Works, confirmed the lack of maintenance. He wrote to me on 11/16/2018 as follows:

We have a \$7-\$8 million deferred maintenance backlog of repairs to arterial and collector roads. This amount has been known since 2014, but it is not a surprise that we need funds for arterials

and collectors since all the bond proceeds and sales tax funds go to residential roads only. (Copy attached.)

In short, Miner Road is presently substandard and there are insufficient funds available to repair it or maintain it “in a manner consistent with the needs of bicyclists” as required by Section 1000-3 of the Highway Design Manual. There is no provision for additional street sweeping.

### **The Ivy Drive Segment of the Funding Request is Also Dangerous**

A member of Orinda’s Traffic Safety Advisory Committee, David Libby, separately opposed the Ivy Drive segment. In an email to the Orinda City Council (copy attached), he wrote:

Since I work out of my home on Ivy Drive I witness daily events of high school kids racing up the street after school between 1:05 and 2:30. Encouraging bicycles in the street will not only put them at danger but will also put the kids who walk home from school at risk.

I also want to suggest that TSAC not make these recommendations to the City. The members do no research. They don’t often live on the streets that they are voting on. They don’t encourage the City to run studies prior to application. There is no process for evaluation unlike TSAC’s program for traffic calming requests which is quite effective.

I am totally disgusted with my fellow commissioners that they would act so irresponsibly to make recommendations without a process and with no further study. I am also guilty of the same as I have in years past. But, in this recommendation, it’s possible that we could be putting a child’s life in harm’s way.

### **“Bike Route” Signage Exposes the City and the County to Liability**

By encouraging the use of bikes under unsafe conditions, the government increases its liability. “Bike Route” signage created a false sense of security by implying that the route is safe for bikes.

California cities have been held liable for substantial damages to bike riders injured while riding on substandard roads designated as bike routes. The LA Times reported on February 3, 2018 that in 2017 the City of Los Angeles paid out \$19.1 million. See <https://www.latimes.com/local/lanow/la-me-ln-bike-payouts-20180203-htmstory.html>

There are two aspects to this problem. One aspect is the designation of substandard roads as bike routes. The signage implies that the road is safe for bikes, without any warning that the road width is considered substandard by Caltrans, and hence dangerous. As a Los Angeles council member observed, the designation of a street as a “bike route” creates a false sense of security that the road is safe for bicyclists. He proposed that only streets that are safe for bikes be designated as bike routes. See <https://www.latimes.com/local/lanow/la-me-ln-bike-payouts-20180203-htmstory.html> . See also <https://sariolcycling.com/unsafe-streets-have-high-costs-for-its-cyclists/>

The second aspect of the problem is the poor condition of Orinda’s arterial and collector roads, including Miner Road and Honey Hill Road. These arterials and collectors have not been, are not being, and will not be repaired with the money raised by the two recent bond issues. As noted earlier, Larry Theis, Orinda’s Director of Public Works, stated in an email dated November 16, 2018, “We have a \$7-\$8 million deferred maintenance backlog

of repairs to arterial and collector roads. This amount has been known since 2014, but it is not a surprise that we need funds for arterials and collectors since all the bond proceeds and sales tax funds go to residential roads only.” Many of the successful claims against California cities have been based on the poor maintenance of streets designated as bike routes. See <https://www.latimes.com/local/lanow/la-me-ln-bike-payouts-20180203-htlmstory.html> See also <https://sariolcycling.com/unsafe-streets-have-high-costs-for-its-cyclists/>

“‘Dangerous condition’ means a condition of property that creates a substantial risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.” (Gov. Code Section 830 subd. (a).);

“Public property is in a dangerous condition within the meaning of section 835 if it is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself.” (*Cordova v. City of L.A.* (2015) 61 Cal. 4th 1099, 1105.);

Failure to post warning signs can be a basis for liability. (*Chowdhury v. City of L.A.* (1995) 38 Cal.App.4th 1187, 1196-1197.)

“Bike Route” signs are the opposite of warning signs because they imply that the route is safe for bikes.

## **Conclusion**

I live in Orinda and drive the Miner Road segment daily. As explained above, it is narrow, curvy, and hilly, and encouraging bikes by “Bike Route” signage makes it dangerous for both cars and bikes.

Ivy Drive is also unsuitable for bike route signage. As David Libby explained, “we could be putting a child’s life in harm’s way.”

For the foregoing reasons, please do not approve submission of a claim to MTC to fund Line 7 of Attachment A: additional “Bike Route” signage on Ivy Drive and Miner Road.

Respectfully submitted,

*Nick Waranoff*

29 Valley View Rd.  
Orinda  
925-253-5653