

Rebuttal to County Roads letter regarding repeal of prohibitions Action requested of the Board of Supervisors (see page 3)

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9/11/2024; Updated with new info, 03/16/2025

Update: County Supervisor Cindy Chavez, as Chair of VTA Board, referred my request to the VTA BPAC and this was placed on the agenda of VTA BPAC, on Nov. 13, 2024, agenda 5. The request for action is copied below. Unfortunately, County Roads prevented a vote by making this agenda action item a verbal staff report regarding a “public concern.” I was at the meeting and did not even recognize it as my request due to being so vague. County Roads, by coincidence at the same meeting, also prevented the VTA BPAC from voting on the draft ATP by placing the label “information item” onto that agenda. County Roads successfully killed both agenda items.

Unfortunately, Cindy Chavez resigned from her County and VTA offices which ended that. However, the HLEUT Committee of the BOS referred the draft ATP back to the VTA BPAC. The Chair made this an action item. This is now agendized for April 9, 2025.

The letter from County Roads Director Freitas is actually his response to my letters on three topics to three Supervisors, as follows:

Supervisor Lee: That BOS request cities to completely repeal all bicycle and pedestrian prohibitions on expressways.

Supervisor Chavez: Create paths at Capitol LRT and Eastridge stations. See more requests below.

Supervisor Ellenberg: Restore 2.1 miles of pedestrian paths destroyed by County Roads.

Director Freitas did not answer for 6 months, and then combined all the answers into two pages by denying all of my statements, despite that I proved my points with quotes of BOS policies, the County Expressway Plans, etc. He just ignored my proofs, and pretended that I am making all that up. Freitas continues to try to eliminate all requirements for bike lanes and sidewalks (usually on both sides) along expressways in his draft ATP.

Here is my rebuttal from 9/11/2024:

The County Roads Director, Mr. Freitas, responded [Link 1, below] to the request for comment from Supervisor Otto Lee regarding my request that “The BOS requests cities to *completely* repeal *all* remaining ordinances that prohibit bicyclists and/or pedestrians (including transit patrons) from using expressways.” This letter also gives a background and overview of this decades-long struggle. [LinkA]

Mr. Freitas, a former traffic engineer for San Jose, **did not oppose my request** that the County BOS request cities to repeal prohibitory ordinances. Instead, he states, “County Roads will **not be removing** any pedestrian restrictions [meaning “**Pedestrians Prohibited**” signs] on expressways where there are not existing pedestrian facilities, or **where** the surrounding incorporated **city has an ordinance prohibiting pedestrian access to expressways.**” Here is my response:

Rebuttal to Mr. Freitas' first clause, "not existing pedestrian facilities":

First, County Roads refuses to recognize that unpaved pedestrian paths are pedestrian facilities. The BOS ordered, and fully funded, unpaved paths in 1991. [Link6] The BOS-approved 2003 County Expressway Plan even has a photo of a pedestrian using an unpaved expressway path. [LinkA, page 13].

Second, County Roads refuses to recognize that "shoulder ... facilities can serve ... for occasional pedestrian use." That is BOS policy, quoted from the 2003 County Expressway Plan [LinkA, page 13]. The BOS also requires bike lanes, and the Vehicle Code (CVC 21966) allows pedestrians to walk in bike lanes where there is no "adjacent" sidewalk or path. Pedestrian use of a bike lane is only as an interim, until County Roads clears the shrubs to create paths, which is quick and inexpensive.

So, the facilities for pedestrian use, whether sidewalk, unpaved path or shoulder/bike lane, *already exist* almost everywhere along expressways. For the few locations where none of these exist, an unpaved path can be quickly created by removing shrubs.

Yet, County Roads has even opposed allowing use of *existing* bike lanes and *existing* sidewalks along expressways, for decades. (I, then Vice-President of the Modern Transit Society, became the leader of the repeal effort in 1987.) For example, in 2006, County Roads opposed allowing use of the *existing* sidewalks along Lawrence Expressway in the City of Santa Clara by faking "accident statistics" before the City Council. This is proven by the County Roads letter to the City Council, which I rebutted by marking it up in color. This marked-up letter is included in my article "County Roads Dept. opposed BOS policy, opposed sidewalks, and faked "accident statistics". [Link2.]

The City Manager subsequently acknowledged that County Roads faked the "60%" figure for pedestrian expressway fatalities caused by "roadway departure" — vehicle going off the road. The "60%" figure was actually for *motorist fatalities*, not pedestrian fatalities, and the data was for national freeways and highways. [See Epilog in Link2.]

The real reason that County Roads claims that sidewalks and bike lanes are dangerous is that County Roads wants to destroy these and use the right-of-way of the sidewalks and bike lanes for more car traffic, as quoted in a 2014 County Roads document. [See the quote at Link3, then scroll to page 2.]

Rebuttal to Mr. Freitas' second clause, that he will **not remove restrictions ["Pedestrians Prohibited" signs] where a "city has an ordinance prohibiting pedestrians":**

Mr. Freitas does not give an exception for where pedestrian facilities exist. Yet, the Modern Transit Society has repeatedly forced County Roads to remove signs prohibiting use of bus stops, paths, sidewalks, bike lanes, and walking access to transit stations, despite a city ordinance prohibiting use of the roadway except by motor vehicles. This was achieved by using State law that only authorized prohibiting pedestrians and bicyclists from freeways. Unfortunately, most ordinances are still "on the books," and are used by County Roads, to this day, as an excuse not to comply with BOS' policy, requirements, and Master Plans.

Description of items requested of the County Board of Supervisors

Item 1 requests cities to repeal prohibitory ordinances. Three cities prohibit bicycles and seven cities prohibit pedestrians (including transit patrons). [See Appendix for the list and city code numbers.] This

should logically cause the remaining items (2 thru 5) to automatically occur, by County Roads complying with *existing* BOS policies and the 2003 and 2008 County Expressway Plans. However, Mr. Freitas' statements show that he will try to avoid complying with these *existing* BOS policies and Plans, because he did not recognize *any* of them. In fact, he censored them (in March 2024) and stated (in August, 2024) that he will replace them by his own plan. This indicates more items are needed to achieve compliance with BOS' policies, requirements and the 2003, 2008 County Expressway Plans.

Item 2 solves the denial by Mr. Freitas, claiming County Roads did not destroy 2.1 miles of paths along San Tomas Expressway — despite my 16 before-and-after photos proving they did. [Link4.] Item 2 would restore these paths. County Roads destroyed these paths after a request to stop police ticketing of pedestrians using these paths. Destroying the paths was a violation of the 1991 BOS Policy "... to **not eliminate existing** sidewalks/pathways/**informal paths**."

Item 3 would achieve compliance with the BOS' path creation order of 1991, at locations shown, block-by-block, in the Sidewalk Maps of each expressway (which are separate pdf files) that are part of the 2008 County Expressway Plan. Mr. Freitas did acknowledge these two BOS-approved documents.

Item 4 gives highest priority to create paths (of item 3) for safer access to transit stations, by eliminating needless crossings of the expressway. Again, these were already approved by the BOS. [Note: Crossing expressways is, by far, the highest fatality risk to them.]

Item 5 solves Mr. Freitas' stated refusal to remove "pedestrians prohibited" signs and apparent refusal to construct BOS' required paths where a city prohibits pedestrians. County Roads has used this excuse to not comply with the BOS' path order (of 1991) for decades. It is a false excuse for two reasons:

- (a) None of the city prohibitory ordinances, which were enacted in 1960, prohibit sidewalks, paths, bus stops or bike lanes; they merely prohibit *people* from *using* these facilities.
- (b) The BOS enacted no exception to its path creation order, so the order must be complied with regardless of whether or not a prohibitory ordinance exists for that roadway. Action requested:

Action requested:

That the County Board of Supervisors (BOS) approve the following items as County policy:

1. The BOS requests cities to *completely* repeal *all* remaining ordinances that prohibit bicyclists and/or pedestrians (including transit patrons) from using expressways.
2. County Roads and Airports Department (County Roads) shall restore the 2.1 miles of destroyed paths on San Tomas Expressway that were plowed up by County Roads in 2007.
3. Where sidewalks are shown on the Sidewalk Maps of the BOS-approved 2008 County Expressway Plan — formally named "Comprehensive County Expressway Planning Study Implementation Plan, 2008 Update" — but where these sidewalks are not yet constructed, County Roads shall create paths by removing shrubs, which is the first phase of sidewalk construction.
4. The highest priority of item 3 is where transit patrons are forced to needlessly cross the expressway, sometimes twice, to access transit stations, where only one side of the expressway has a path or sidewalk.
5. County Roads shall stop using prohibitory ordinances as an excuse to refuse to comply with County policy approved by the County Board of Supervisors (BOS), including the 1991 BOS order to create paths along expressways — which the BOS fully funded — and the 2003 and 2008 County Expressway Plans. County Roads shall not destroy these BOS-approved facilities, which is already BOS policy from 1991.

Rebuttal to Mr Freitas' remaining claims:

Here are more quotes from Mr. Freitas' letter, in order of appearance, each followed by my rebuttal.

A: County Roads: "County may regulate its expressways under its police powers and that authority includes prohibiting pedestrian access."

Rebuttal: This is completely false. **The cities have both jurisdiction and the "police powers," not the County.** I have legal opinions from the County and a city which state that fact. These legal opinions contradict Mr. Freitas' claim. I will make copies upon request.

B: County Roads: "transportation plans ... are goals".

Rebuttal: These are more than just goals, these are also policy. The 1991 BOS requirements for pedestrian safety and facilities actually state that it is BOS "Policy." **The 2003 and 2008 County Expressway Plans are more than goals, more than policy. These are also Master Plans** of the County, as recognized by the Metropolitan Transportation Commission (MTC). These must be complied with in order to obtain State and federal transportation funding for the County. These cannot be replaced by Mr. Freitas' own plan without jeopardizing these funds.

C: County Roads: "County road crews provide regular periodic maintenance to expressway shoulders including clearing vegetation as needed."

Rebuttal: County Roads refuses to create paths "along the expressway system" that the BOS required and fully funded in 1991. The completion of the paths was estimated to be 1995, according to the 1991 County Roads' staff report to this BOS agenda item. **County Roads' interpretation of "as needed" is from the perspective of motorists-only.** The paths are not only needed for pedestrians, they are required by the BOS! (As stated above, County Roads has used city ordinances as their reason not to comply. However, no ordinance prohibits sidewalks, paths, bus stops or bike lanes. They merely prohibit *people* from *using* these facilities. Furthermore, the BOS order for path creation has no exception for a city ordinance.)

D: County Roads: "not ... under County jurisdiction (e.g., Caltrain Lawrence Station underpass)"

Rebuttal: I never mentioned the "Lawrence Caltrain Station underpass." **County Roads tries to confuse** this underpass — under the tracks — with the pedestrian underpass that is under Central Expressway along Lawrence Expressway. This is used by Caltrain patrons walking to industry. County Roads destroyed that in 1993, but it has since been reconstructed at my effort. Mr. Freitas also claims, falsely, that my "assertions" "may not" be under County design and maintenance control. In fact, all are.

E: County Roads: Claims I asserted that "location has no pedestrian facilities when there are facilities "

Rebuttal : County Roads needs to quote me (along with my stated location), instead of vaguely indicating that I asserted something. County Roads does mention (as an e.g.) sidewalks along Lawrence Expressway in Sunnyvale. **County Roads had destroyed the bicycle/pedestrian facilities here in 1993, including the pedestrian underpass under Central Expy,** and forced bicyclists, pedestrians and transit patrons to walk or bicycle in the 50 mph vehicular traffic lane. County Roads' action was truly dangerous! I was the person who forced County Roads to construct these sidewalks, restore the underpass, and restore the bike lanes. [A history is on page 7 of Link2.]

F: County Roads: Claims I asserted that "facilities were removed when they never existed"

Rebuttal: This is a **blanket denial that is absolutely false**. My letter to Supervisor Otto Lee lists many destructions of sidewalks, with exact locations. County Roads denies that without quoting me or stating the location. All I can say is that County Roads needs to re-read my letter to Supervisor Otto Lee, where I list bicycle and/or pedestrian facilities, many accessing transit stations, that County Roads destroyed.

G: County Roads: "County has not plowed ... "

Rebuttal: County Roads plowed up 2.1 continuous miles of existing paths on San Tomas Expressway, to destroy them. **I proved this using before-and-after photos (16 total)** and provided the link to that in my letter [Link4]. One photo shows the tire tracks of the plowing machine, which they denied using. Why should they be allowed to deny that? It is described in Appendix D in my letter to Supervisor Lee (LinkA), and the link to the 16 photos in in Link4.

This path destruction was done for a political purpose, after I requested the prohibitory signs be removed to prevent ticketing by police of pedestrians using these paths. Plowing created dirt clods that prevented pedestrians from using the path, and then caused weeds to grow. These paths need to be restored along with removal of "pedestrians prohibited" signs.

Background to Mr. Freitas letter:

The County Roads Director, Mr. Freitas, responded to the request for comment from Supervisor Otto Lee regarding my request [LinkA.] that prohibitory ordinances be repealed, after a 6 month needless delay. My letter to Supervisor Lee also included (in its Appendix G) the information that I sent to Supervisor Chavez — pedestrian paths are needed for safety on Capitol Expy. on both sides of the road. [LinkB.] My letter also included the information that I sent to Supervisor Ellenburg (in its Appendix D) that paths destroyed by County Roads on San Tomas Expressway need to be restored. [LinkC]

A consequence of my letter was that **County Roads censored the Sidewalks Maps for each expressway** (part of the 2008 County Expressway Plan) and **censored the Bicycle Accommodation document** (part of the 2003 County Expressway Plan) from the County website. This was an attempt to keep Supervisors and Aides from seeing and reading these documents, so County Roads could continue to violate them. After I spoke to the BOS (under public comment) and informed them of the censoring of these County documents [Link5], County Roads was forced to restore them and acknowledge that they were not "obsolete" as they had falsely claimed.

It took 6 months for County Roads to reply (by merely a two-page letter) to Supervisor Otto Lee's request for comment. Mr. Freitas waited until he announced his new plan so he could say to the BOS "Take no action now." In his letter, **Mr. Freitas ignored all BOS-approved Plans, policies and actions regarding bicyclists, pedestrians, transit patrons, and their facilities on expressways**. County Roads had fought against these, but lost all 7 out of 7 votes at the BOS on this topic. [See Timeline at Link7.]

Attempt of Mr. Freitas to eliminate all existing BOS expressway policy and Plans:

The 2003 and 2008 County Expressway Plans each had a two-year public input process, including votes of cities. A tremendous amount of work, and time, went into these Plans; for example, the block-by-block Sidewalk Maps for each expressway. These were approved by the Policy Advisory Board (PAB),

committees, cities with expressways, VTA, and BOS. These took a lot of people's time, and time of the public, giving their input. Mr. Freitas wants to trash all of the work that they put into the Plans, and substitute his own plan. County Roads announced (at the August 2024 meeting of VTA BPAC) that they will come up with a *new* plan, which they will not reveal until October (they said) and then bring to the BOS in "early 2025." This gives as little as 3 months for public input.

Yet, nothing more is needed than for County Roads to comply with what the BOS already approved. County Roads wants to re-fight the same fight that already occurred for the prior three Plans: T2010 in 1991, and the 2003 and 2008 County Expressway Plans. **For each of these, County Roads tried to eliminate people not using motor vehicles from these Plans, but lost the votes.** County Roads will try to eliminate them again, for the fourth time, as shown by these County Roads actions:

- a) statement that they will impose "prohibition ordinances," in letter of 2006 to the City Council of Santa Clara. [Link2, then see color blue markup on page two of the County Roads letter.],
- b) censoring of 2003 and 2008 County Expressway Plans in early 2024, which County Roads was forced to restore [Link5],
- c) statement (to VTA BPAC in August 2024) that County Roads will write a new plan to replace the 2003 and 2008 County Expressway Plans, with little time for public input.

Contact:

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Photo: Not only is the sidewalk prohibited, so is access to the Capitol Light Rail Station, further down the road. County Roads was forced to remove *all* these signs on Capitol Expressway, in 1997, because the signs violated State law. Yet, in order to avoid complying with the BOS' 1991 action, County Roads fought against removing them. The ordinance (at bottom) is still "on the books" and is used by County Roads, to this day, to refuse to comply with BOS' safety requirements. [Capitol Expressway at Snell Ave. in San Jose, circa 1995].



Links

This document: ModernTransit.org/2024/rebuttal.pdf

- LinkA: ModernTransit.org/2024/repeal.pdf Letter to Supervisor Otto Lee re: Repeal ordinances. **Background and overview. Has many photos.**
- LinkB: ModernTransit.org/2024/SupEllenburg.pdf Letter to Supervisor Ellenburg re: Restore paths.
- LinkC: ModernTransit.org/2024/SupChavez.pdf Letter to Supervisor Chavez re: Access to stations.
- Link1: ModernTransit.org/2024/Freitas.pdf Mr. Freitas' letter (County Roads).
- Link2: ModernTransit.org/2024/SCrepeal.pdf Article: County Roads Dept. opposed BOS policy, opposed sidewalks, and faked "accident statistics"
- Link3: ModernTransit.org/2024/Links.pdf Lawrence Expressway links page; The quote of County Roads is on page 2.
- Link4: ModernTransit.org/st/destroyed-paths/destroyed-paths.html **Before-and-after photos**
of 2.1 miles of paths that County Roads destroyed for a political purpose.
- Link5: ModernTransit.org/2024/speach2.pdf County Roads censored County documents.
Ten BOS policies and orders regarding pedestrians along expressways: See Link5, Page 2.
Photo of person walking on a dirt path in the 2003 County Expressway Plan: See LinkA, page 13.
- Link6: ModernTransit.org/Quote **Links to scans of County documents** to prove they exist.
County Roads effectively denies their existence because they fought against them, but then lost all votes — 7 out of 7 votes — at the BOS on this topic. See the green text "Victory at the BOS!" in Link7.
- Link7: ModernTransit.org/expy/#timeline Timeline of expressway events, sorted by County, cities.

Appendix: List of cities with prohibitory ordinances

Some ordinances use the word "freeway" rather than "expressway" because State Law only authorized (enabled) prohibiting from freeways. County Roads then claimed, falsely, that, "Expressways are freeways." There is no reason to keep any portion of any of these ordinances because:

- 1) All real freeways are in Caltrans jurisdiction, and remain so despite going thru a city. A city does not have jurisdiction to prohibit from real freeways, which some ordinances attempt to do.
- 2) Most ordinances prohibit this action: ... "drive livestock" onto the freeway or expressway. There are no more livestock and "Equestrians" [as stated on signs] near any County expressway.

Here are the city ordinances

(from south to north):

San Jose: 11.32.070

Campbell has two ordinances:

10.20.030 b and 10.16.050.

Prohibits bicycles and pedestrians.

Santa Clara: Resolution No. 5603

Milpitas: Municipal Code V-100-8.06 Prohibits bicycles and pedestrians.

Mountain View: SEC. 19.19;

Ord. 175.587; 1/25/1960.

Prohibits bicycles and pedestrians.

Los Altos: Resolution 80-32

Palo Alto: 10.32.050