

From: tony higgins <tony.higgins123@gmail.com>

Date: August 29, 2019 at 11:45:57 AM PDT

To: Michael.Jenkins@bbklaw.com, citycouncil@hermosabch.org

Cc: Robert Smith <wrzdmith@aol.com>

Subject: Fwd: CEQA initial-study for 27th street arterial truck route

Dear Mr Jenkins,

On August 19, 2019 the Supreme Court of California reversed and remanded, finding that changes capable of causing indirect physical changes in the environment such as construction and changes in citywide traffic patterns, should trigger a CEQA review on the potential environmental impacts.

I do not believe Mr. Robertson's statements saying that the city has taken no discretionary action on 27th and therefore there was no need for either a CEQA initial study, a Negative Declaration, or an EIR relating to the consequent change of 27th into a defacto downtown truck route was correct or founded in law.

The action does not have to be on 27th to affect 27th. Changes to citywide truck patterns can affect 27 significantly given the limited east/west routes.

Significant Changes to traffic patterns for heavy trucks must considered especially when the cumulative effects of multiple projects concentrate an impact like what is happening on 27th.

Can you PLEASE explain how items 1-3 in the attached email below ARE NOT discretionary actions (or projects) by the city that directly led to a material & unintended changes in heavy truck traffic patterns citywide AND in significant environmental impacts on 27th; by both **causing** and **allowing** 27th to be used as an arterial truck route instead of a local collector road.

A significant portion of these trucks are using 27th as an defacto truck route downtown and it's reasonable to assume a significant portion of the cause is the cities discretionary actions listed in 1-3 below

1. The Pier Avenue renovations that have made pier Ave more customer friendly but very unfriendly to trucks causing them to look for easier routes to Hermosa Ave and Plaza businesses. These has discouraged truck drivers arriving from North or East of the city from using the most direct route to Hermosa Ave and Plaza businesses, the Pier Ave Truck Route.

2. Large Trucks arriving from the South of the City or via 190th are impeded by the pinch point berms on the Hermosa side of the Border on Herondo (aka 190th) that restrict turning radius. The AVP tourney site manager said these berms prevent his large trucks from using Herondo to Hermosa Ave to access the central business district unless the heavy trucks drive over the berm. The Plaza hotel contractor said the same thing and if asked to use Herondo he would request the remove the berms. And our own Acting Police Chief Captain McKinnon raised the same concern about the Herondo berms preventing large busses supporting the Fiesta from using Herondo. yet when these berms were installed in Hermosa Beach the city failed to do any analysis of the potential impact on large trucks and the routes they used

3. Since the city has had zero enforcement of the direct route laws on 27th the city has both ALLOWED this arterial truck route on 27th going downtown and SANCTIONED it through a total lack of enforcement of the direct route laws

I don't believe Mr Robertson is qualified to speak to these legal issues and as a resident of Hermosa Beach who has spent considerable time on this issue I believe I am entitled to a response from the city attorney that directly addresses this issue.

The 9/24/18 letter from the city attorney did not address CEQA nor did it permit 27th to be used as a downtown truck route since it is not the most direct route.

Our neighborhood is being destroyed.

Our safety is being disregarded.

Our health is being impacted by both the near roadway air pollution and the excessive noise

Noise and vibration thresholds are being ignored.

Property values on 27th are being decimated.

The heavy truck traffic has increased from 1-4 per hour in 2015-16 per Captain McKinnon emails to one every 3-5 minutes many days.

See additional detail below.

Anthony Higgins

Begin forwarded message:

From: tony higgins <tony.higgins123@gmail.com>

Date: August 27, 2019 at 1:28:49 PM PDT

To: citycouncil@hermosabch.org

Cc: Robert Smith <wrzsmith@aol.com>, dpedersen@hermosabch.org

Subject: CEQA initial-study for 27th street arterial truck route

Dear City Council,

Mr Robertson contends there were no discretionary actions taken by the city that would or should trigger a CEQA study

Please! Look at item 1-3 in the attached email again.

It's just below the pictures.

The discretionary action does not need to occur **ON** 27th to trigger a CEQA study on the impact to 27th.

That's plain in the CEQA laws generally and especially relating to unintended consequences.

And it's just common sense.

Can you PLEASE explain how items 1-3 in the email below ARE NOT discretionary actions by the city that directly led to a material & unintended changes in the environmental impacts of heavy trucks on 27th; thereby both causing and allowing 27 to be used as an arterial truck route instead of a local collector road.

Our neighborhood is being destroyed.

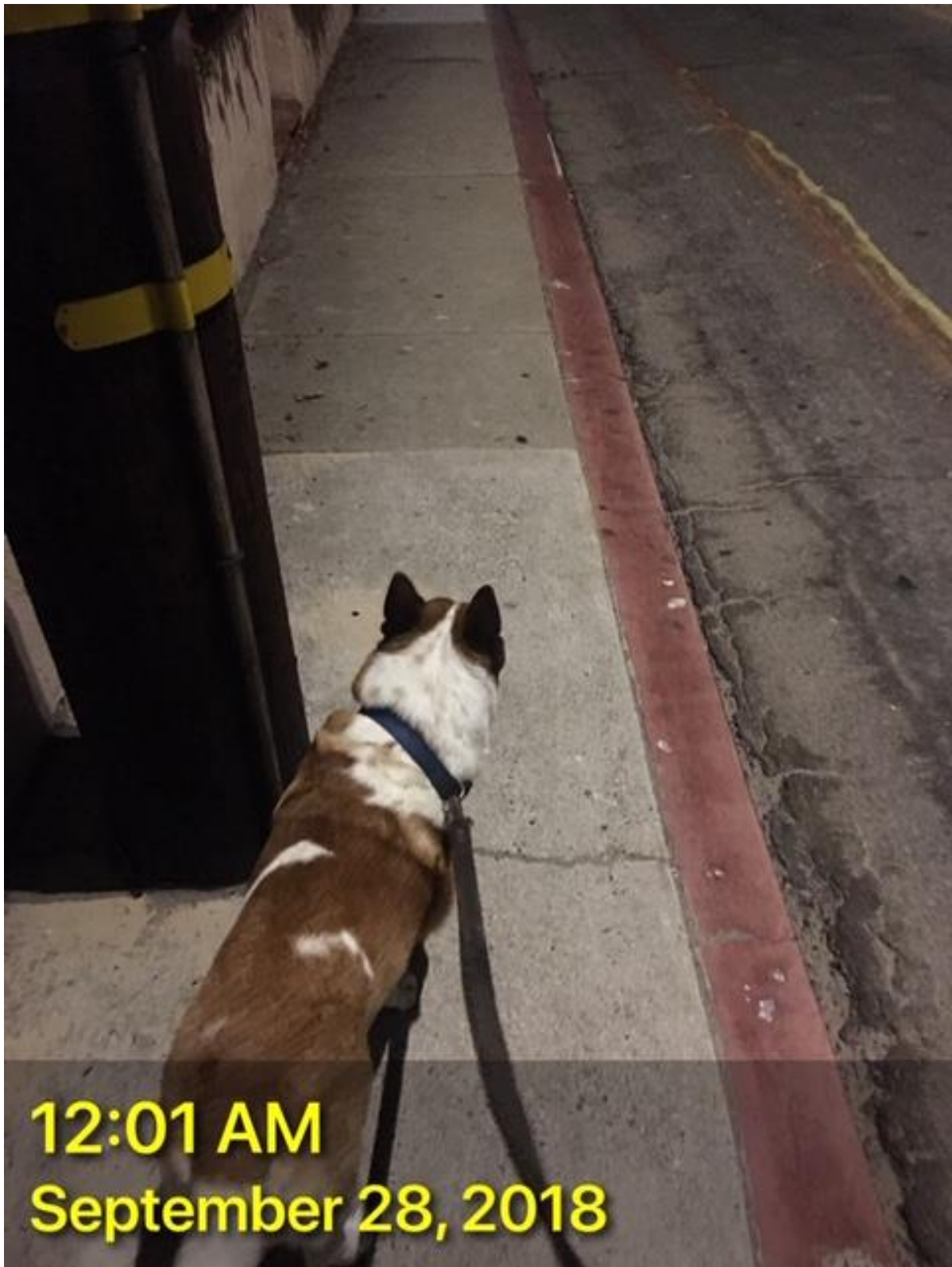
The noise levels are 4 times the recommended r2 zone and a serious safety hazard is being perpetrated. It's simply unlivable with trucks screaming up the westbound hill in first gear or slamming over the drainage divot every 3-5 minutes. And the North school project is going to bring an extra 3000 or so heavy trucks to this intersection over the next couple of years.

Houses are being sold at a in increased rate at rock bottom prices for NW Hermosa









12:01 AM
September 28, 2018

From: tony higgins [<mailto:tony.higgins123@gmail.com>]
Sent: Tuesday, August 27, 2019 2:45 AM
To: Bridges, Cody
Subject: Fwd: CEQA initial-study for 27th street arterial truck route

Our city knows it has created an arterial truck route on 27th street due to the unanticipated consequences including but not limited to the 3 factors listed below that were clearly under the cities control

1. The Pier Avenue renovations that have made pier Ave more customer friendly but very unfriendly to trucks causing them to look for easier routes to Hermosa Ave and Plaza businesses. These has discouraged truck drivers arriving from North or East of the city from using the most direct route to Hermosa Ave and Plaza businesses, the Pier Ave Truck Route.

2. Large Trucks arriving from the South of the City or via 190th are impeded by the pinch point berms on the Hermosa side of the Border on Herondo (aka 190th) that restrict turning radius. The AVP tourney site manager said these berms prevent his large trucks from using Herondo to Hermosa Ave to access the central business district unless the heavy trucks drive over the berm. The Plaza hotel contractor said the same thing and if asked to use Herondo he would request the remove the berms. And our own Acting Police Chief Captain McKinnon raised the same concern about the Herondo berms preventing large busses supporting the Fiesta from using Herondo. yet when these berms were installed in Hermosa Beach the city failed to do any analysis of the potential impact on large trucks and the routes they used

So from the North, East and the South the cities actions have had the unintended consequence of routing the ever increasing number (and size) of Heavy Trucks onto the remaining roadway, a local collector road on 27th intended only for truck traffic serving NW Hermosa.

Since there are no trucks arriving from the West these actions affect all trucks coming into the city.

3. Since the city has had zero enforcement of the direct route laws on 27th the city has both created this arterial truck route on 27th going downtown and sanctioned it through a total lack of enforcement of the direct route laws.

Yet Mr Robertson denies these discretionary actions have had any effect changing truck traffic patterns or causing 27 to be used in a manner it was not intended to be as an arterial truck route downtown instead of a local collector road that trucks may use to access Nw Hermosa locations.

This flies in the face of common sense.

[Anthony Higgins]

Begin forwarded message:

From: tony higgins <tony.higgins123@gmail.com>

Date: August 26, 2019 at 12:09:26 PM PDT

To: Ken Robertson <krobertson@hermosabch.org>

Subject: Re: CEQA initial-study for 27th street arterial truck route

Mr Robertson,

Your attached response REFUSING to consider a CEQA study on 27th leaves me no choice but to start with a freedom of information request for your job description and any ethics agreements you may have signed.

I will publicly present the obvious factual inaccuracies and misrepresentations in your attached email in due course.

Every resident on 27th who is here during the week knows 100's of trucks every week are using 27th illegally as a downtown truck route or route to a destination not in NW Hermosa. 27th is not the most direct route downtown. Pier Ave is the most direct route to the central business district by any reasonable measure or from nearly any entry point in the city.

Mr Robertson, do you really want to hitch your wagon to the argument that this is not true and that this is not decimating our quality of life on 27th and putting our safety at significant and increasing risk. ?

Do you want to pretend 27th is not an arterial truck route instead of a local collector road?

Once again do you really want to ignore the obvious safety, health and quality of life implications as you indicate in your attached denial?

If so this might be a lot easier than I thought.

You have no data to support your claim 27th is not being utilized as a downtown truck route and many residents have spoken to this growing problem.

You just sit in your ivory tower and pontificate your vision of what's best for the city without presenting any facts. That can't go unchallenged and that's the job of the city council and the planning commission.

I would be more than happy to provide you with a list of residents on 27th that share the belief that it's getting worse and is dangerous.

Generally now have heavy trucks running on 27th every 3-5 minutes all weekday long with a small break at noon.

One more point.

Ms Lowenthal in her denial that there was nothing inconsistent with the general plan happening on 27th street vis-a-vis heavy trucks failed to mention that the reason this was true.

There was no analysis in the general plan of the impact heavy truck growth on vulnerable roadways.

I guess if there is no analysis logically there can be no inconsistency.

Very clever but that's not leadership; it's denial.

Thank You,

Anthony Higgins



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2611

Irvine
(949) 263-2600

Los Angeles
(213) 617-8100

Ontario
(909) 989-8584

1230 Rosecrans Avenue, Suite 110, Manhattan Beach, CA 90266
Phone: (310) 643-8448 | Fax: (310) 643-8441 | www.bbklaw.com

Riverside
(951) 686-1450

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

John M. Natalizio
213-555-5552
John.Natalizio@bbklaw.com

September 25, 2018

VIA U.S. MAIL & EMAIL: TONY.HIGGINS123@GMAIL.COM

Anthony Higgins
2705 Morningside Drive,
Hermosa Beach, CA 90254

Dear Mr. Higgins:

This letter is in response to your correspondence with the Hermosa Beach City Attorney and other City staff contending that vehicles exceeding three tons may not use a restricted street unless making a pickup or delivery on that specific street. This letter supplements the City's recent response to your Public Records Act request.

You contend that Vehicle Code § 35703 and Hermosa Beach Municipal Code ("HBMC") § 10.24.040 only permit vehicles exceeding three tons to travel on a restricted street if the delivery or pickup is on that specific street. You further contend that the "direct-route provision" of these Codes only applies to "unrestricted" streets.

With all due respect, we do not agree with your reading and interpretation of these Codes. Our reading of Vehicle Code § 35703 and HBMC § 10.24.040 is that vehicles exceeding three tons heading to and coming from a truck route may use restricted streets, when necessary, as a direct route to make deliveries and pick-ups on the restricted streets, and/or to deliver materials to be used in repairs, alterations, remodeling, or construction on the restricted streets.

A. Truck Routes in Hermosa Beach

Presently, the established truck routes in Hermosa Beach are: (1) Pacific Coast Highway; (2) Artesia Boulevard; (3) Pier Avenue; (4) Valley Drive south of Pier Avenue; and, (5) Aviation Boulevard. All other streets have been designated as "restricted" streets.

B. Authority to Prohibit Use of Streets

California Vehicle Code § 21101 provides authority for cities to regulate use of local highways based on safety considerations and the weight and size of vehicles. Additionally, Vehicle Code § 35701(a) expressly permits cities to prohibit, by ordinance, the use of a street by any vehicle exceeding a maximum weight limit. The City of Hermosa Beach exercised its truck routes and weight limit authority by ordinance in 1986 when it adopted HBMC § 10.24.020 (formerly Section 19-109), which provides the following:

BBK
BEST BEST & KRIEGER
ATTORNEYS AT LAW

Anthony Higgins
September 25, 2018
Page 2

Those streets and parts of streets established by resolution of the city council are declared to be truck routes for the movement of vehicles exceeding a maximum gross weight of three tons.

C. Limitations on the City's Authority to Regulate Streets

Although the general rule is that cities may prohibit vehicle traffic based on vehicle weight, cities are not given blanket authority to prohibit any and all such traffic on every road. There are many exceptions, statutory and otherwise, to Vehicle Code § 35701. Germane to this letter is the exemption codified in Vehicle Code § 35703¹, which exempts vehicles over a certain weight limit coming to or from a truck route and having a destination or point of origin on a restricted street. Section 35703 provides:

No ordinance adopted pursuant to Section 35701 shall prohibit any commercial vehicles coming from an unrestricted street having ingress and egress by direct route to and from a restricted street when necessary for the purpose of making pickups or deliveries of goods, wares, and merchandise from or to any building or structure located on the restricted street or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling, or construction of any building or structure upon the restricted street for which a building permit has previously been obtained.

As provided in the plain language of the statute, a commercial vehicle exceeding the weight limit (in the City of Hermosa Beach it is three tons) may use restricted streets as a direct route when the vehicle is coming from or going to a truck route and is using the restricted streets for the purposes of making pickups or deliveries of goods on the restricted streets, and/or is delivering materials to be used in repairs, alterations, remodeling, or construction on the restricted streets.

This statute is interpreted broadly and, contrary to your interpretation, is not meant to limit commercial trucks to only use a restricted street if the delivery or pickup is on that specific restricted street. This is often impossible in Hermosa Beach and would result in most streets

¹ The City enacted its local exemption under HBMC § 10.24.040, which provides:

When any such truck route is established and designated by appropriate signs, the operator of any vehicle exceeding a maximum gross weight limit of three tons shall drive on such route and none other; except, that nothing in this section shall prohibit the operator of any vehicle exceeding a maximum gross weight of three tons coming from a truck route having ingress and egress by direct route to and from restricted streets when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on such restricted streets or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon such restricted streets for which a building permit has previously been obtained therefor.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Anthony Higgins
September 25, 2018
Page 3

never receiving deliveries or pickups. In fact, the courts have held that the “obvious intendment” of this section “confers an exemption on commercial vehicles making pickups or deliveries of goods on or along the city's streets.” *Ratkovich v. City of San Bruno* (1966) 245 Cal.App.2d 870, 888. The courts have also opined that “[i]t is obvious that the purpose of [Vehicle Code] sections 35701—35704 considered together is to authorize municipalities to prescribe regulations for business and commercial vehicles on city streets . . . but at the same time to see to it that such vehicles, while subject to restriction, can be used for their proper functions where the vehicles are necessarily in such use.” *Id.* at 888.

It is understandable why the law expressly requires the City to exempt vehicles that meet the above requirements. Hermosa Beach does not have an extensive truck route network, particularly in the northwestern region of the City. There are no designated truck routes west of Pacific Coast Highway and north of Pier Avenue. As such, there is a significant area of land where commercial and residential addresses are not near a designated truck route but still need deliveries and pickups by vehicles over three tons.

D. The Legislative History Supports Commercial Vehicle Use of Restricted Streets

The conclusion reached in this letter has been the City’s position since the enactment of truck routes in 1986. The issue of access to Hermosa Beach by commercial vehicles has been historically recognized as a problem for residents and businesses not living near a truck route but needing deliveries and pickups.

On June 24, 1986, the City Council approved Resolution No. 86-4954, which first established truck routes in Hermosa Beach and provided significant access to commercial vehicles throughout the City, including designated truck routes on major thoroughfares, such as Hermosa Avenue, Manhattan Avenue, Valley Drive, and Ardmore Avenue.

On December 16, 1986, after receiving resident complaints, the City Council adopted Resolution 86-4999, which then significantly reduced truck routes in Hermosa Beach by eliminating truck routes on Valley Drive, Ardmore Avenue, Hermosa Avenue, Manhattan Avenue, and Second Street. The City Council relied on the reasoning in the staff report, which justified removing these streets as truck routes by citing to HBMC § 10.24.040 (then Article 5, Section 19-111) and explaining the exemption to mean that “the designation of ‘Truck Routes’ does not prohibit delivery personnel/vehicles from using ‘restricted’ streets for the purpose of making deliveries and returning only.” The staff report justified removing Hermosa Avenue and Manhattan Avenue as truck routes because “if a street is not formally designated to be a ‘Truck Route’ this will not prohibit delivery vehicles from making their specific deliveries on these non-designated streets.”

The staff report also recognized the historical use of 27th Street by vehicles over three tons to access local deliveries in northwestern Hermosa Beach. The staff report noted that the “pattern of streets in Hermosa Beach, coupled with the location of commercial streets, makes it impossible



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Anthony Higgins
September 25, 2018
Page 4

not to have some trucks drive on a residential street to exit the area.” The staff report further noted that “trucks making deliveries to northwest Hermosa Beach must access these commercial businesses via Hermosa Avenue and/or Manhattan Avenue. Delivery trucks either: a) use streets of residential character (typically 27th St., 31 St., or Longfellow Ave.; b) exit via Manhattan Avenue, or c) make a u-turn on Hermosa Ave. or Manhattan Ave.”

The use of restricted streets by vehicles over three tons, particularly on 27th Street, is not new to the City and has been commonplace since at least 1986. The City has recognized that it is impossible for vehicles over three tons to not use residential streets. Additionally, the 1986 staff report specifically mentions that 27th Street has been a typical route that delivery vehicles take to make deliveries and pickups on the restricted streets in the northwestern part of the City. It provided “[d]elivery trucks . . . use streets of residential character (typically 27th St., 31 St., or Longfellow Ave.” As such, the present and continued use of 27th Street is consistent with longstanding policy and practice.

E. Current Efforts to Improve 27th Street

There are current plans in place to repair the trench near 346 27th Street, which is scheduled for October 3, 2018. This should help eliminate noise and vibration complaints from vehicles driving over this location. There are also future plans for a full paving of 27th Street by the end of the 2019-2020 fiscal year.

F. Conclusion

We hope that this explanation has answered your inquiries regarding this subject matter.

Sincerely,

A handwritten signature in blue ink that reads "John M. Natalizio". The signature is fluid and cursive, with the first name "John" and last name "Natalizio" clearly visible.

John M. Natalizio
Assistant City Attorney
City of Hermosa Beach