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July 9, 2012

Allen Jones, President
Navajo Community Planners, Inc.
H.G. FENTON COMPANY
7577 Mission Valley Rd., Ste. 200
San Diego, California 92108

Re: Objection to Raising Speed Limits
on City Streets Pursuant to Vehicle
Code Sections 40801 and 40802

Dear Mr. Jones:

I am writing to express my objection and provide background information on a matter that I understand has been agendized for the July 16, 2012 meeting of the Navajo Community Planners. Reference is made to two letters you received in May from Gary Pence, Senior Traffic Engineer for the City of San Diego, advising that speed limits are being increased on two San Carlos residential streets, Cowles Mountain Blvd. and Wandermere Dr. Photocopies of Mr. Pence's letters are attached for your convenient reference.

In his letters, Mr. Pence explains that in order to "keep our speed limits radar enforceable," California Vehicle Code section 40802 requires that the City survey the prevailing speeds on its classified streets every seven years; and as a result of a recent survey of Cowles Mountain Blvd. and Wandermere Dr., the speed limit for each must be increased by five miles per hour (mph). Apart from referring to the Vehicle Code, Mr. Pence did not explain exactly how the survey results were applied in order to compel the speed limit increases.

I have recently had several conversations with Mr. Pence as well as Biljana Dekic and Mariano Castro of his office. Everyone was very helpful in explaining the processes that led to the proposed speed limit increases. I have also reviewed and analyzed what has been generally called the California Speed Trap Law, Division 17 of the Vehicle Code and specifically, section 40802, as well as its legislative and legal history. My objective was to find a rational, public safety justification for what appeared at first impression to be an administrative process that increased speed limits by default rather than by a careful evaluation of all the relevant roadway and traffic factors.

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The legal and factual discussion that follows concludes that the Speed Trap Law, and specifically Vehicle Code section 40802, is an obsolete historical anachronism whose application in the present circumstances, not to mention statewide, does not serve any salutary public safety purpose, but instead is simply an economic burden on municipalities that causes speed limits to be increased by default rather than by a thorough, objective evaluation. As such, not only should the proposed increase of the speed limit on Cowles Mountain Blvd. and Wandermere Dr. be rejected, but in addition, a concerted effort should be made to amend Vehicle Code section 40802.

I. ANALYSIS OF THE SPEED TRAP LAW AND THE VEHICLE CODE.

California's Speed Trap Law is set forth at sections 40801 through 40808 of the Vehicle Code. Section 40801 prohibits the use of speed traps to arrest or prosecute speeding motorists. Section 40802, so far as herein relevant, defines a speed trap as a stretch of roadway where speed limit enforcement involves the use of radar or other electronic devices if an "engineering and traffic survey" (hereinafter "E&TS") has not been conducted within the past seven years. (Section 40802(c)(2)(B)(i)(I).)

In setting a speed limit following an E&TS, Vehicle Code section 21400(b) requires that the speed limit be rounded to the nearest five mph of the 85th percentile of the free-flowing traffic speed on the relevant section of roadway. A local authority is allowed to round down the speed limit to the lower five mph increment, but if it so chooses, then the speed limit may not be further lowered for any reason whatsoever. (Vehicle Code section 21400(b).)

To summarize the preceding law, motor vehicle speed limit enforcement using radar or other electronic devices is prohibited unless within the past seven years the local authority has conducted an E&TS and determined the driving speed of 85% of the drivers using that stretch of roadway. The speed limit must be set at that 85th percentile speed, rounding up to the nearest five mph increment, unless the authority chooses to round down, in which event the speed limit may not be reduced any further for any reason.

Since the City of San Diego relies almost exclusively upon radar or electronic devices to enforce the speed limit on its roadways, the practical effect of Vehicle Code sections 40801, 40802 and 21400 is that unless an E&TS has been conducted within the past seven years, the speed limit is simply not enforceable.

As a further result of these Vehicle Code sections, after conducting the E&TS, the City is, de facto, required to reset the speed

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limit to the 85th percentile speed, notwithstanding speed-mitigating conditions that would otherwise call for the maintenance of the existing speed limit. Not surprisingly, it is frequently the case that speed limits are being raised by default whenever an E&TS finds that 85% of the drivers are violating the existing speed limit.

II. HISTORY OF VEHICLE CODE SECTIONS 40802 AND 21400

The Speed Trap Law dates back to 1923 with the enactment of Vehicle Code sections 40800 through 40803. As originally written, the law prohibited speed limit enforcement through the use of unmarked police cars and also prohibited the speed-timing of a vehicle traveling between two points. (Fleming v. Superior Court (1925) 196 Cal. 344, 349.) The original Speed Trap Law was supposedly enacted to encourage police visibility and to prohibit the use of speed traps as a source of revenue for local authorities. (People v. Beamer (1955) 130 Cal.App.2d Supp. 874, 878.) In 1972, the legislature amended the Speed Trap Law so as to include radar enforcement.

In interpreting the Speed Trap Law, both trial courts and the courts of appeal have validated and affirmed the setting of speed limits at the speed driven by the 85th percentile of drivers, except under unusual traffic conditions. (People v. Goulet (1992) 13 Cal.App.4th Supp. 1.)

III. PRESENT APPLICATION OF SECTION 40802

With regard to the proposed speed limit increase for Cowles Mountain Blvd. between Navajo Road and Rainswept Way, Biljana Dekic of the traffic engineering department advises that the City's recent E&TS found that 85% of the drivers on that 1.2-mile stretch of roadway were driving at 43 mph, thereby exceeding the existing 35 mph speed limit by 8 mph or 23%. That stretch of Cowles Mountain Blvd. is residential in character, encompassing approximately 150 homes with back-out driveways; is extensively used for on-street parking of vehicles that obscure driveway site distance; has no bicycle lanes; and slopes downward for the southerly 0.8 mile stretch approaching the Navajo Road intersection.

In addition, there is substantial left turn crossing traffic at Tommy Drive, approximately 50 yards north of Navajo Road, due to the presence a synagogue and a private school. The traffic density is considerable on weekdays during commuting hours when drivers are hurrying to school or work. Apart from the fact that 85% of the drivers are exceeding the posted speed limit by 8 mph, there is absolutely no justification for increasing the speed limit above the currently posted 35 mph. Indeed, raising the speed limit to 40 mph

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as proposed means that we can logically expect the 85th percentile of drivers to speed along at 48 mph.

With regard to the proposed 5 mph speed limit increase for Wandermere Drive between Golfcrest Drive and Park Ridge Boulevard, Mariano Castro of the traffic engineering department advises that the City's recent E&TS found that 85% of the drivers on Wandermere Drive were traveling at 33 mph, thereby exceeding the existing 25 mph speed limit by 8 mph or 32%. This stretch of road runs for approximately 0.4 miles. On-street parking is permitted and there are no bike lanes. In addition, approximately one-third of the frontage is occupied by Green elementary school.

Predictably, traffic density is the greatest during weekday mornings and afternoons, when children are being driven to and from school. Furthermore, that stretch of Wandermere Dr. is used extensively by adolescent students driving to and from Patrick Henry High School, who have been observed exceeding the existing speed limit. Indeed, it is likely that school-related rush traffic accounts for a major portion of the E&TS results. Even after hours, Green elementary school's location increases the level of pedestrian activity. Apart from the fact that 85% of the drivers are exceeding the posted speed limit by 8 mph, there is absolutely no justification for increasing the speed limit above the currently posted 25 mph.

IV. CONCLUSION

The proposed increase in the speed limits on Cowles Mountain Blvd. and Wandermere Dr. should be rejected as objectively unjustified and contrary to the interest of public safety. Both of Mr. Pence's attached notification letters state that the speed limit ". . . must be raised. . . in order to remain radar enforceable." (Emphasis ours.) The public safety consequences of the proposed speed limit increases are not even mentioned. Instead, by what appears to be a slavish submission to a 90-year-old law, speed limits are being raised to accommodate the speeders. Such a policy, taken to its logical limit, would result in anarchy on our roadways.

With respect to Cowles Mountain Blvd. and Wandermere Dr., the points discussed above arguably raise a fact-based presumption that the existing speed limit is correct and should not be raised. If the present 35 mph Cowles Mountain Blvd. speed limit is being exceeded by 8 mph by 85% of the drivers, then raising the limit to 40 mph can be expected to result in 85% of the drivers traveling at nearly 50 mph in a residential zone!

Likewise, if the present 25 mph Wandermere Dr. speed limit is

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being exceeded by 8 mph by 85% of the drivers, then raising the limit to 30 mph can be expected to result in 85% of the drivers traveling at nearly 40 mph on a residential street passing an elementary school!

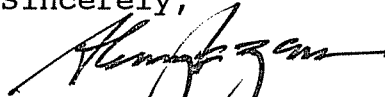
Before any existing speed limits are increased on any City streets, traffic engineers should identify and explain all conditions that may affect public safety, not just for the drivers, but also for the surrounding neighborhood. After all, that is the way the original speed limits were set.

If speed limits are to be increased, then any increase should be fact based, not simply compelled by the automatic application of an obsolete law. The Speed Trap Law, and specifically Vehicle Code sections 40802 and 21400, should be amended, so that roadway speed limits are no longer being raised by administrative default to the speeding 85th percentile.

Finally, if the Speed Trap Law is amended so that cities are no longer being forced to constantly perform traffic surveys just to enforce speed limits, consider the millions of dollars that will be saved over time.

I hope this letter is helpful to the board and look forward to addressing all the preceding issues at the upcoming July 16, 2012 meeting of the Navajo Community Planners, Inc.

Sincerely,



Stanley F. Zobel

SFZ:hal

Enclosures

PC: Gary Pence, Senior Traffic Engineer
John Pilch, San Carlos Area Council
Scott Lewis, Voice of San Diego



THE CITY OF SAN DIEGO

May 9, 2012

TR 323, 881

Navajo Community Planners, Inc.
Allen Jones, Chair
H.G. Fenton Company
7577 Mission Valley Road, Suite 200
San Diego, CA 92108

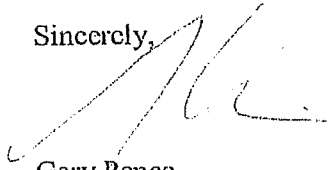
Dear Mr. Jones:

This is regarding the posted speed limit on Cowles Mountain Boulevard between Navajo Road and Rainswept Way. Local governments must follow the procedures set by the State of California when setting speed limits on public streets. The California Speed Trap Law (California Vehicle Code Section 40802) requires that the City survey the prevailing speeds on classified streets every seven years in order to keep our speed limits radar enforceable under the provisions of the law.

We have recently surveyed the above segment of Cowles Mountain Boulevard and the results of the study indicate that the existing posted speed limit of 35 mile per hour for northbound and southbound traffic must be raised to 40 miles per hour in order to remain radar enforceable. Therefore, we will be changing the speed limit from 35 miles per hour to 40 miles per hour for both directions.

It is our practice to notify the community planning groups before changing the speed limits. If you have any questions concerning this action please contact Biljana Dekic at (619) 533-4842.

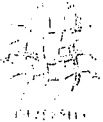
Sincerely,



Gary Pence
Senior Traffic Engineer

BD:sg

cc: Lieutenant Richard O'Hanlon, San Diego Police Department, Traffic Division
Ty Palusky, Associate Engineer – Transportation Engineering Operations Division



Transportation and Storm Water Department

1010 Second Avenue, Suite 800 • San Diego, CA 92101

Telephone (619) 533-3126 Fax (619) 533-3131

THE CITY OF SAN DIEGO

May 31, 2012

TR 323, 819

Allen Jones, Chair
Navajo Community Planners, Inc
H.G. Fenton Company
7577 Mission Valley Road, Suite 200
San Diego, CA 92108

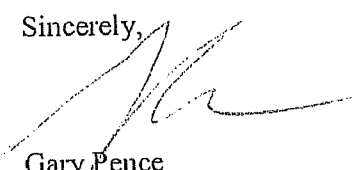
Dear Mr. Jones:

This is regarding the posted speed limit on Wandermere Drive between Park Ridge Boulevard and Golfcrest Drive in the community of Navajo. Local governments must follow the procedures set by the State of California when setting speed limits on public streets. The California Speed Trap Law (California Vehicle Code Section 40802) requires that the City survey the prevailing speeds on classified streets every seven years in order to keep our speed limits radar enforceable under the provisions of the law.

We have recently surveyed the above segment of Wandermere Drive and the results of the study indicate that the existing posted speed limit of 25 miles per hour for eastbound and westbound traffic must be raised to 30 miles per hour in order to remain radar enforceable. Therefore, we will be changing the posted speed limit from 25 miles per hour to 30 miles per hour along this segment of Wandermere Drive.

It is our practice to notify the community planning groups before changing the speed limit. If you have any questions concerning this action please contact Mariano Castro (619) 533-3869 within the next 30 days.

Sincerely,



Gary Pence
Senior Traffic Engineer

MC2:bd:sg

cc: Lieutenant Richard O'Hanlon, San Diego Police Department, Traffic Division
Ty Palusky, Associate Engineer- Transportation Engineering Operations Division

Transportation and Storm Water Department

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