

1 RACHEL B. HOOPER (State Bar No. 098569)
DEBORAH L. KEETH (State Bar No. 233476)
2 SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
3 San Francisco, CA 94102
Telephone: (415) 552-7272
4 Facsimile: (415) 552-5816

5 MARCO GONZALEZ (State Bar No. 190832)
COAST LAW GROUP LLP
6 169 Saxony Road, Suite 204
Encinitas, CA 92024
7 Telephone: (760) 942-8505
Facsimile: (760) 942-8515

8 Attorneys for Petitioners
9 FRIENDS OF ROSE CANYON,
SAN DIEGO AUDUBON SOCIETY,
10 SAN DIEGO COASTKEEPER, and
ENDANGERED HABITATS LEAGUE

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO

14 FRIENDS OF ROSE CANYON, SAN
DIEGO AUDUBON SOCIETY, SAN
15 DIEGO COASTKEEPER, and
ENDANGERED HABITATS LEAGUE,

16 Petitioners,

17 v.

18 CITY OF SAN DIEGO, SAN DIEGO CITY
19 COUNCIL, and DOES 1 through 20,
inclusive,

20 Respondents.
21

) Case No.
) **VERIFIED PETITION FOR WRIT
OF MANDATE**
) (Code Civ. Proc. § 1085 [§ 1094.5];
California Environmental Quality Act
["CEQA"] Pub. Res. Code § 21168
[21168.5])

1 INTRODUCTION

2 1. This action challenges the decision of the City of San Diego (“City”) and
3 the San Diego City Council (collectively, “Respondents”) to: (a) certify the
4 Environmental Impact Report (“EIR”) for the University City North/South Transportation
5 Corridor Study, Project No. 27445 (“the Project”); (b) approve and implement the
6 Regents Road Bridge Alternative, CIP No. 53-044.0 (“Regents Road Bridge” or “the
7 Bridge Alternative”), one of seven alternatives considered in the EIR; (c) adopt findings
8 and a Statement of Overriding Considerations for the Project; and (d) initiate an
9 amendment to delete the Genesee Avenue Widening Alternative from the University
10 Community Plan.

11 2. The Bridge Alternative would construct a nearly 1600-foot, four-lane
12 thoroughfare across and through Rose Canyon, including the Rose Canyon Open Space
13 Preserve, a unique natural resource and recreational amenity in the otherwise largely
14 urbanized City. The Bridge Alternative would cut and fill approximately 6 acres of
15 undeveloped Rose Canyon in order to install new roadway leading to the Bridge. In the
16 1979 Ordinance setting aside and dedicating Rose Canyon Open Space Preserve, the City
17 explained its primary purpose was to “preserve” the Canyon. Moreover, as the City
18 explained to the State when it applied for state funds to restore sensitive habitat in Rose
19 Canyon, the Canyon is a “natural treasure” and “is recognized as one of the last natural
20 canyons in the area”

21 3. Federal, state, and regional resource agencies submitted strongly worded
22 comments notifying Respondents that the EIR for the Project was wholly inadequate.
23 These agencies warned the City that the Bridge Alternative would result in significant,
24 unmitigated and unacceptable impacts to water quality and important biological
25 resources. Some agencies recommended that the City remove the Bridge Alternative
26 from the City’s consideration altogether, given its especially egregious environmental
27 impacts. The City Attorney likewise warned the City that the EIR did not comply with
28 the California Environmental Quality Act (“CEQA”), Public Resources Code §§ 21000 et

1 seq., and incorporated by reference the serious concerns of the resource agencies and the
2 comments of a Petitioner in this litigation. Ignoring the advice of the expert resource
3 agencies and its own legal counsel, Respondent City Council nonetheless certified the
4 EIR and approved the Bridge Alternative.

5 4. Respondents' actions in certifying the EIR for the Project and approving the
6 Bridge Alternative and related findings and Statement of Overriding Considerations
7 violate CEQA and CEQA's implementing regulations, the CEQA Guidelines, Title 14,
8 California Code of Regulations §§ 15000 et seq.

9 PARTIES

10 5. Petitioner Friends of Rose Canyon ("FRC") is a California nonprofit public
11 benefit corporation dedicated to the protection, preservation and restoration of Rose
12 Canyon and the Rose Creek watershed, where the Bridge Alternative would be
13 constructed. FRC was founded in 2002 in response to the City's proposal to build a major
14 road, strikingly similar to the Bridge Alternative, through the middle of Rose Canyon.
15 Today, FRC supporters use and enjoy the natural, recreational and scenic resources of
16 Rose Canyon. FRC works with the City Park and Recreation Department to organize
17 nature walks and habitat restoration projects that bring hundreds of people a year from all
18 over the City of San Diego, including students, families, and scout groups, into Rose
19 Canyon. FRC also works with other Canyon "friends" groups and environmental
20 organizations on region-wide Canyon protection efforts, and with the Rose Creek
21 Watershed Alliance to address issues throughout the watershed. Supporters of FRC, who
22 number approximately 1600, are residents and taxpayers of the City of San Diego who
23 would be negatively affected by the Project's adverse environmental impacts. The
24 interests that FRC seeks to further in this action are consistent with the purpose and goals
25 of the organization. Supporters of FRC have a direct and beneficial interest in the City's
26 compliance with CEQA and the CEQA Guidelines. These interests would be directly
27 affected by the Project, which violates provisions of law as set forth in this Petition and
28 which would cause substantial and irreversible harm to the natural environment. The

1 maintenance and prosecution of this action will confer a substantial benefit on the public
2 by protecting the public from the environmental harms alleged herein. FRC submitted
3 comments to the City objecting to and commenting on the Project and the EIR.

4 6. Petitioner San Diego Audubon Society (“SDAS”) was formed in 1948 and
5 organized as a California nonprofit public benefit corporation in 1965. Currently, there
6 are approximately 2900 members of SDAS, located throughout the San Diego region.
7 The mission of SDAS is to foster the protection and appreciation of birds and other
8 wildlife, and their habitats, through study and education, and to advocate for a cleaner,
9 healthier environment. The activities of SDAS focus on wildlife and habitat
10 conservation, as well as a variety of educational and outreach programs to serve the San
11 Diego area. Among other conservation activities, SDAS works in collaboration with
12 dozens of government agencies, conservation organizations, and community groups to
13 advocate for land use planning that protects wildlife and open space areas for public use.
14 Members and supporters of SDAS use and enjoy the natural, scenic and recreational
15 resources of Rose Canyon. The interests that SDAS seeks to further in this action are
16 consistent with the mission and goals of the organization. Members and supporters of
17 SDAS have a direct and beneficial interest in the City’s compliance with CEQA and the
18 CEQA Guidelines. These interests would be directly affected by the Project, which
19 violates provisions of law as set forth in this Petition and which would cause substantial
20 and irreversible harm to the natural environment. The maintenance and prosecution of
21 this action will confer a substantial benefit on the public by protecting the public from the
22 environmental harms alleged herein. SDAS submitted comments to the City objecting to
23 and commenting on the Project and the EIR.

24 7. Petitioner San Diego Coastkeeper (“SDCK”) is a grassroots nonprofit
25 organization dedicated to protecting and restoring the San Diego region’s bays, coastal
26 waters, wetlands, rivers, watersheds, and tributary streams, such as the Rose Creek
27 drainage into Mission Bay, for the people and wildlife that depend on them. SDCK
28 implements its mission through outreach and education programs; community activism

1 and participation in government proceedings; and advocacy to prevent habitat degradation
2 and to ensure that San Diego's waters meet all substantive water quality standards
3 guaranteed by Federal, State and local statutes and regulations. Members and supporters
4 of SDCK use and enjoy the natural, scenic and recreational resources of Rose Canyon.
5 The interests that SDCK seeks to further in this action are consistent with the mission and
6 goals of the organization. Members of SDCK have a direct and beneficial interest in the
7 City's compliance with CEQA and the CEQA Guidelines. These interests would be
8 directly affected by the Project, which violates provisions of law as set forth in this
9 Petition and which would cause substantial and irreversible harm to the natural
10 environment. The maintenance and prosecution of this action will confer a substantial
11 benefit on the public by protecting the public from the environmental harms alleged
12 herein. SDCK submitted comments to the City objecting to and commenting on the
13 Project and the EIR.

14 8. Petitioner Endangered Habitats League ("EHL") is a nonprofit organization
15 dedicated to protecting the unique scenic, biological, and natural resources of Southern
16 California. Through participation in community and regional planning processes, EHL
17 promotes sustainable land use planning that both serves area residents and preserves
18 native landscapes. EHL and its members are directly affected by decisions that destroy
19 wildlife habitat, diminish recreational opportunities, increase traffic congestion, result in
20 water contamination, and generally threaten the environment and impair their
21 community's quality of life. Members and supporters of EHL use and enjoy the natural,
22 scenic and recreational resources of Rose Canyon. The interests that EHL seeks to
23 further in this action are within the purposes and goals of the organization. EHL and its
24 members and supporters have a direct and beneficial interest in the City's compliance
25 with laws bearing upon approval and construction of the Project. These interests would
26 be directly and adversely affected by the Project, which violates provisions of law as set
27 forth in this Petition and which would cause substantial and irreversible harm to the
28 natural environment. The maintenance and prosecution of this action will confer a

1 substantial benefit on the public by protecting the public from the environmental harms
2 alleged herein. EHL submitted comments to the City objecting to and commenting on the
3 Project and the EIR.

4 9. Respondent City of San Diego is a public agency under section 21063 of the
5 Public Resources Code. The City is responsible for regulating and controlling land use in
6 the City, including implementing and complying with the provisions of CEQA.

7 Respondent City is the lead agency for purposes of Public Resources Code section 21067,
8 with principal responsibility for conducting environmental review and approving the
9 Project.

10 10. Respondent San Diego City Council is the duly elected legislative body for
11 the City and is responsible for implementing the City's land use planning.

12 11. Petitioners do not know the true names and capacities, whether individual,
13 corporate, associate or otherwise, of Respondents DOE 1 through DOE 20, inclusive, and
14 therefore sues said Respondents under fictitious names. Petitioners will amend this
15 Petition to show their true names and capacities when the same have been ascertained.
16 Each of the Respondents is the agent and/or employee of each other Respondent, and
17 each performed acts on which this action is based within the course and scope of such
18 Respondent's agency and/or employment.

19 JURISDICTION AND VENUE

20 12. Pursuant to California Code of Civil Procedure section 1085 (alternatively
21 section 1094.5) and Public Resources Code sections 21168.5 (alternatively section 21168)
22 and 21168.9, this Court has jurisdiction to issue a writ of mandate to set aside
23 Respondents' decision to certify the EIR for the Project and approve the Bridge
24 Alternative and related findings and Statement of Overriding Considerations.

25 13. Venue is proper in this Court because the causes of action alleged in this
26 Petition arose in the County of San Diego where the proposed Regents Road Bridge
27 would be located.

28 14. Petitioners have complied with the requirements of Public Resources Code

1 section 21167.5 by serving a written notice of Petitioners' intention to commence this
2 action on Respondents on August 30, 2006. A copy of the written notice and proof of
3 service is attached hereto as Exhibit A.

4 15. Petitioners will comply with the requirements of Public Resources Code
5 section 21167.7 by concurrently sending a copy of this Petition to the California Attorney
6 General.

7 16. Petitioners will comply with the requirements of Public Resources Code
8 section 21167.6 by concurrently filing a notice of their election to prepare the record of
9 administrative proceedings relating to this action.

10 17. Petitioners have performed any and all conditions precedent to filing the
11 instant action and have exhausted any and all available administrative remedies to the
12 extent required by law.

13 18. Petitioners have no plain, speedy or adequate remedy in the course of
14 ordinary law unless this Court grants the requested writ of mandate to require
15 Respondents to set aside the certification of the EIR for the Project and the approval of
16 the Bridge Alternative and related findings and Statement of Overriding Considerations.
17 In the absence of such remedies, the City's approval will remain in effect in violation of
18 State law.

19 **STATEMENT OF FACTS**

20 **Project Area – Affected Environment**

21 19. Rose Canyon is a significant regional resource which, in addition to its
22 value as wildlife habitat, provides important recreational and educational opportunities
23 for the people of San Diego. The City recognizes that the Canyon is a "living museum"
24 and "natural classroom" which should be "maintained in that capacity along with its
25 recreational aspect for future generations to enjoy." Consisting of 411 acres of open
26 space and served by a park ranger, Rose Canyon Open Space Preserve lies within the
27 larger Rose Canyon and is designated as Open Space in the City's University Community
28 Plan. Rose Creek runs the length of the Canyon floor and the Canyon is part of the

1 watershed for Mission Bay.

2 20. Rose Canyon provides important habitat for numerous species, including
3 bobcat and the federally-listed threatened California gnatcatcher. Based on its value as
4 species habitat, the City designated Rose Canyon as an integral component of its Multiple
5 Habitat Planning Area (“MHPA”), as identified in the City’s Multiple Species
6 Conservation Program (“MSCP”) subarea plan for habitat conservation. The MHPA
7 contains those lands that provide the necessary habitat quantity, quality and connectivity
8 to support the future viability of San Diego’s unique biodiversity. The MHPA lands are
9 recognized as some of the most significant biological resources in San Diego County.

10 21. Rose Canyon is the site of a significant restoration project funded in part by
11 the California Department of Parks and Recreation’s Habitat Conservation Fund Program.
12 In or around 1997, the City applied for and received a State grant to remove invasive
13 species from Rose Canyon and plant native species. After more than 2,900 hours of
14 volunteer labor, the City completed the restoration effort in or around 2002. Under the
15 terms of the State grant, the City must maintain the restored area in perpetuity, unless
16 expressly authorized to change the use by an act of the State Legislature. The City
17 proposes to construct the Regents Road Bridge directly in the restoration area, thus
18 destroying the restoration area in contravention of the terms of the State grant and
19 squandering taxpayer resources. The Legislature has not authorized the City’s proposal.

20 **The Project and the Regents Road Bridge Alternative**

21 22. The Project at issue here evaluated seven proposed transportation
22 infrastructure alternatives, ostensibly designed to reduce traffic congestion between the
23 southern and northern portions of the University City community in northern City of San
24 Diego. The alternatives were: (1) Genesee Avenue Widening; (2) Regents Road Bridge
25 (“the Bridge Alternative”); (3) Genesee Avenue/Governor Drive Grade (“Grade
26 Separation”); (4) Regents Road Bridge and Genesee Avenue Widening; (5) Regents Road
27 Bridge and Grade Separation; (6) Limited Roadway Changes; and (7) No Project.
28 Alternatives 1 through 5 include the Limited Roadway Changes alternative.

1 23. The Bridge Alternative (and any other alternative that includes the Bridge)
2 would construct a nearly 1600-foot, four-lane thoroughfare across and through Rose
3 Canyon, connecting the existing termini of Regents Road on the north and south rims of
4 the Canyon. The Bridge component of the Alternative would be approximately 870 feet
5 long and approximately 94 feet wide. The height of the Bridge would reach up to 60 feet
6 from the Canyon floor. The Bridge would require construction of eight columns on the
7 Canyon floor to support the roadbed. The footprint of each column would be
8 approximately 128 square feet and would require drilling deep, wide holes in the Canyon
9 floor to install the bridge piles. The Bridge would also require two abutments,
10 constructed within the Canyon at either end of the Bridge.

11 24. In addition to construction of the Bridge itself, the Bridge Alternative
12 would cut and fill approximately six acres of undeveloped Rose Canyon in order to
13 construct a new, 700-foot long and 98-foot wide roadway. The impacted area includes a
14 tributary drainage to Rose Creek and coastal sage scrub that provides habitat for a pair of
15 federally-listed threatened California gnatcatcher. The Bridge Alternative would destroy
16 MHPA lands within the Canyon, which provide "necessary" habitat to maintain the City's
17 biodiversity. The tributary area that would be filled is up to 40 feet deep and 450 feet
18 wide; total fill for the Bridge Alternative is estimated to be 42,000 cubic yards. The road
19 cut into the side of the Canyon would be up to 30 feet deep and 250 feet wide; the total
20 cut is estimated to be 46,000 cubic yards. The Bridge Alternative would also widen 950
21 feet of existing roadway on the south rim of the Canyon, expanding some portions from
22 32 feet to 92 feet.

23 25. The EIR estimates that construction of the Bridge Alternative would take
24 place during a period of 18 months. Construction of the Bridge would require the use of
25 heavy equipment and vehicles, access routes for vehicles, and the staging of construction
26 materials in the Canyon. During the lengthy construction period, access to Rose Canyon
27 for hikers, bird watchers, and other recreationists would be limited. Those people who
28 continue to use the Canyon during the construction period could expect significant noise

1 and disruption of the scenic, recreational and aesthetic qualities of Rose Canyon.

2 **Environmental Review**

3 26. In November, 2005, the City circulated a Draft EIR (“DEIR”) for the
4 Project. The DEIR recognized that the Project, and the Bridge Alternative in particular,
5 would have numerous significant impacts on the environment. Although the DEIR
6 claimed that some significant impacts could be mitigated, it acknowledged that the Bridge
7 Alternative, and any other alternative that includes the Bridge, would result in significant
8 and unmitigated impacts to Neighborhood Character/Aesthetics, Landform Alteration,
9 and Recreation. Likewise, the DEIR recognized that significant noise impacts may be
10 unmitigatable. In February, 2005, the City released an Errata to the DEIR.

11 27. The DEIR stated that it was intended as a “project level” EIR, a term of art
12 under CEQA indicating that the EIR should describe the proposed Project in sufficient
13 detail, and analyze and mitigate all significant impacts of the proposed Project, such that
14 the lead agency could approve and implement the Project without performing additional
15 environmental review.

16 28. Numerous resources agencies, community and environmental organizations,
17 and members of the public commented on the Project. Many of these comments focused,
18 in particular, on the Bridge Alternative’s significant impacts to biological resources,
19 including wetlands and other significant habitat, and wildlife, including threatened
20 California gnatcatcher. For example, on or around April 14, 2005, the United States Fish
21 and Wildlife Service (“USFWS”) and the California Department of Fish and Game
22 (“CDFG”) submitted a joint comment letter detailing the agencies’ serious concerns
23 regarding the Bridge Alternative. Those agencies warned that the DEIR: (a) assumed,
24 without support, that the Bridge Alternative’s significant impacts to wetlands could be
25 mitigated within the Canyon area; (b) reached the wrong conclusion that the Bridge
26 Alternative would not affect a wildlife corridor and riparian woodland system; (c)
27 inappropriately deferred identifying specific wetland mitigation measures; (d) did not
28 adequately analyze the Bridge Alternative’s construction and operational impacts on

1 sensitive habitat for wildlife; (e) failed to appropriately describe and analyze the Bridge
2 Alternative's "edge" effects; (f) improperly concluded that noise and light from the
3 Bridge would not impact wildlife; and (g) proposed potentially inadequate mitigation for
4 the Bridge's significant impacts to protected raptors. The agencies concluded that
5 although they did not necessarily support the Genesee Avenue Widening Alternative, it
6 would have substantially fewer and less significant biological impacts than the Bridge
7 Alternative. For these reasons, USFWS and CDFG recommended that the City drop the
8 Bridge Alternative from further consideration.

9 29. In another example, on or around April 16, 2005, Petitioners EHL and FRC
10 submitted a joint comment letter describing the Bridge Alternative's inconsistency with
11 the MHPA and MSCP. Likewise, on or around April 18, 2005, Petitioner FRC submitted
12 a comment letter notifying the City that its cursory conclusion that the Bridge Alternative
13 would not result in cumulative biological impacts was not supportable.

14 30. Agencies and members of the public also raised concerns about the Bridge
15 Alternative's significant impacts to water quality. For example, on or around February
16 28, 2005, the California Regional Water Quality Control Board for the San Diego Region
17 ("RWQCB") submitted its comments on the DEIR, noting, among other things, that
18 although the City claimed it would implement Best Management Practices ("BMP") to
19 mitigate significant impacts to water quality, the DEIR failed to identify any proposed
20 BMPs or evaluate their effectiveness. RWQCB also commented that the DEIR
21 inaccurately described beneficial uses of waters in Rose Canyon, inappropriately deferred
22 identifying and analyzing the impacts of dewatering associated with the Bridge's
23 construction, and deferred identification and analysis of mitigation measures. RWQCB
24 found that the DEIR did not provide an adequate basis to conclude that there would not
25 be significant impacts to water quality or that such significant impacts could be mitigated.
26 On this basis, RWQCB expressly recommended that the City select an alternative that
27 avoids impacts to waters of the United States and State.

28 31. Commenters also described the fundamental flaws in the DEIR's analysis

1 and mitigation of traffic impacts. For example, Petitioner FRC submitted comments from
2 its expert traffic consultant demonstrating, among other things, that the DEIR's traffic
3 study was improperly designed and that the analysis was incorrect in material respects.
4 FRC's consultant proposed an alternative essentially consisting of a revision to the
5 DEIR's Limited Roadway Changes Alternative that could achieve many of the Project
6 objectives while resulting in fewer significant environmental impacts. On or about April
7 14, 2005, Petitioner SDAS submitted comments explaining that the DEIR failed to
8 analyze the Bridge Alternative's impacts to pedestrian safety.

9 32. Likewise, FRC submitted comments from its expert noise consultant
10 describing serious flaws in the DEIR's analysis and mitigation of noise impacts. For
11 example, FRC's expert determined that: (a) the DEIR's noise study did not correctly
12 assess the noise impact of the Bridge Alternative on people and wildlife in the Canyon;
13 (b) the proposed mitigation would not reduce noise impacts to a less-than-significant
14 level; and (c) the DEIR reached the wrong conclusion regarding the noise impact on
15 sensitive receptors.

16 33. On or about June 13, 2006, the City released its Responses to Comments
17 and other documents comprising the Final EIR (collectively, "FEIR") for the Project. The
18 FEIR provided no revisions to adequately address the specific and detailed concerns
19 regarding the DEIR. In particular, the responses provided no meaningful answers to the
20 stated concerns about the Bridge Alternative's project-specific and cumulative impacts on
21 biological resources, water quality, noise, and traffic.

22 34. On or about July 25, 2006, RWQCB informed the City that the FEIR did
23 not describe the Project in specific detail, answer questions regarding water quality and
24 biological impacts, or alleviate that resource agency's concerns about the significant and
25 unmitigated impacts of the Project. RWQCB unequivocally urged the City Council not to
26 certify the FEIR. Similarly, on August 1, 2006 Petitioner SDCK notified the City that,
27 among other flaws, the FEIR: (a) lacked sufficient detail to support the conclusions
28 regarding the Bridge's significant impacts to water quality; (b) failed to accurately

1 describe the environmental setting, resulting in a flawed determination of water quality
2 impacts; and (c) did not provide adequate detail regarding the proposed BMP mitigation
3 measure.

4 35. Likewise, on or around July 31, 2006, USFWS and CDFG notified
5 Respondents that the FEIR was wholly inadequate. The comments submitted by these
6 agencies echoed their earlier submission stating that the FEIR failed to implement
7 feasible mitigation measures proposed by USFWS and CDFG. They also stated that the
8 FEIR did not adequately respond to the issues and concerns raised by these expert
9 regulatory agencies. The agencies warned that the environmental review seriously
10 minimized the biological implications of the Bridge Alternative, and unequivocally
11 recommended that the City not approve the Bridge Alternative. The agencies also
12 expressed their doubt that the City Council could make the necessary findings under
13 CEQA to approve the Bridge Alternative, given the serious flaws in the FEIR.

14 36. On July 24 and August 1, 2006, Petitioner FRC submitted comments on the
15 FEIR and the City's draft findings. FRC noted, among other things, the following flaws:

16 a. The biological resources analysis in the FEIR was legally inadequate
17 because it: (i) drew biological survey boundaries too narrowly and did not accurately
18 describe the Bridge site's biological setting; (ii) inaccurately analyzed impacts to
19 biological resources that would occur from construction and operation of the Bridge
20 Alternative; and (iii) did not analyze the cumulative impacts of the Bridge Alternative and
21 other reasonably foreseeable and on-going projects in the region. Further, while the FEIR
22 proposed new measures to mitigate or avoid the destruction of the State-funded habitat
23 restoration area, the new proposal was vague, inadequate, and unauthorized by State law;
24 even worse, the FEIR failed altogether to analyze the efficacy or impacts of these belated
25 mitigation measures.

26 b. The FEIR's water quality analysis was legally inadequate because:
27 (i) the conclusions were not supported by evidence or analysis in the record; (ii) it failed
28 to analyze impacts to the Rose Creek watershed; (iii) it failed to identify the proposed

1 BMPs according to which it concluded that water quality impacts would be mitigated; and
2 (iv) it ignored cumulative water quality impacts.

3 c. The traffic analysis in the FEIR was legally inadequate because it: (i)
4 failed to consider reasonably foreseeable regional transportation projects that would
5 affect capacity; (ii) failed to recognize that the Bridge Alternative would not meet the
6 fundamental objective of the Project – reduction in traffic congestion; (iii) ignored the
7 Bridge Alternative’s impacts on public transit; (iv) did not analyze significant impacts to
8 pedestrian safety; and (v) did not adequately analyze cumulative traffic impacts because
9 the FEIR omitted any consideration of large-scale development projects in the region.

10 d. The FEIR’s noise analysis was legally inadequate because it: (i) used
11 the wrong baseline to analyze significant noise impacts of the Bridge Alternative; (ii)
12 used significance criteria that understated the significance of the Project’s noise impacts;
13 (iii) ignored the significant noise level increases that would occur along the Regents Road
14 corridor; (iv) proposed mitigation that was not fully enforceable; and (v) inappropriately
15 assumed that the noise impacts of each alternative would be identical, rather than
16 performing alternatives-specific analysis.

17 e. The Response to Comments did not provided well-reasoned
18 responses to the significant issues identified by the resource agencies and the public. For
19 example, the FEIR failed to consider the proposed alternative suggested by FRC’s traffic
20 consultant, providing no sufficient explanation for rejecting the proposed alternative.

21 f. Evidence in the record did not support the City Council’s findings
22 that environmentally-superior alternatives to the Bridge Alternative were infeasible.
23 Rather, the findings rejected the environmentally-superior alternatives by comparing
24 those alternatives to criteria wholly unrelated to the objectives of the Project as set out in
25 the EIR.

26 37. Despite the DEIR’s explicit designation as a “project-level” review
27 document, after the City released the FEIR the City suggested for the first time that the
28 document may be intended for “program-level” review. The City appeared to use this

1 tactic as a means to justify its cursory and inadequate analysis of the Bridge Alternative's
2 impacts and its failure to identify and analyze feasible mitigation measures. The City's
3 effort cannot succeed because: (a) there is no legal basis for re-designating an
4 environmental document at the end of the administrative process; and (b) under CEQA,
5 even a program-level EIR must provide complete and meaningful analysis of a project's
6 impacts and identify appropriate mitigation for those impacts.

7 **City Attorney Memorandum**

8 38. On July 31, 2006, the City Attorney's office released a memorandum
9 describing, among other things, its determination that the FEIR was fundamentally flawed
10 and could not support approval of any Project alternative. Notably, the City Attorney's
11 memo expressly incorporated by reference many of the concerns raised by the resource
12 agencies and Petitioner FRC in their comment letters. The City Attorney expressed its
13 concern that, among other things: (a) destruction of the State-funded restoration area
14 "would demonstrate . . . that the City is not capable of following through on its legally
15 binding obligations;" (b) new biological mitigation described for the first time in the
16 FEIR was a "significant modification" of the Bridge Alternative, requiring recirculation
17 of the DEIR; and (c) the boilerplate language the City used to respond to resource
18 agencies' comments could be seen as "callous" and "without due regard" for the role of
19 the agencies.

20 **Project Approval**

21 39. On August 1, 2006, the City Council held a public hearing on the Project.
22 At that hearing, Petitioners presented testimony reiterating their objections to the Project.

23 40. At the conclusion of the August 1, 2006 hearing, despite Petitioners'
24 objections to the EIR and the Bridge Alternative, the City Council adopted Resolution
25 R-301787, which: (a) authorized implementation of the Bridge Alternative; (b) certified
26 the EIR for the Project; (c) adopted findings and a Statement of Overriding
27 Considerations; (d) adopted the Mitigation, Monitoring and Reporting Program; and (e)
28 initiated an amendment to delete the Genesee Avenue Widening Alternative, an

1 alternative described in the EIR, from the University Community Plan.

2 41. On August 4, 2006, the City filed a Notice of Determination for the Project
3 with the County Clerk for the County of San Diego.

4 **FIRST CAUSE OF ACTION**
5 **(Violations of CEQA; Inadequate EIR)**

6 42. Petitioners hereby re-allege and incorporate paragraphs 1 through 41,
7 inclusive.

8 43. Respondents violated CEQA by certifying an EIR for the Project that is
9 inadequate and fails to comply with the requirements of CEQA and the CEQA
10 Guidelines. Among other things, Respondents:

11 a. Failed to adequately describe the setting for the Project and used an
12 inaccurate baseline to analyze the environmental impacts of the Project.

13 b. Failed to adequately disclose and analyze the Project's significant
14 impacts on the environment, including, but not limited to, the Project's impacts on
15 biological resources, water quality, traffic and noise.

16 c. Failed to adequately disclose and analyze the Project's cumulative
17 impacts.

18 d. Failed to adequately mitigate the significant impacts of the Project
19 and improperly deferred development of mitigation measures.

20 e. Failed to include an adequate analysis of alternatives, including, but
21 not limited to, failure to properly identify the environmentally superior alternative.

22 f. Failed to revise and re-circulate the EIR.

23 g. Failed to respond adequately to comments of Petitioners and others.

24 44. As a result of the foregoing defects, Respondents prejudicially abused their
25 discretion by certifying an EIR that does not comply with the requirements of CEQA, and
26 approving the Bridge Alternative in reliance thereon. Accordingly, Respondents'
27 certification of the EIR and approval of the Bridge Alternative must be set aside.

28 ///

**SECOND CAUSE OF ACTION
(Violations of CEQA; Inadequate Findings)**

45. Petitioners hereby re-allege and incorporate paragraphs 1 through 44, inclusive.

46. CEQA requires both (a) that an agency's findings for the approval of a project be supported by substantial evidence in the administrative record, and (b) that an agency provide an explanation of how the record evidence supports the conclusions it has reached.

47. Respondents violated CEQA by adopting findings and a Statement of Overriding Considerations that are inadequate as a matter of law in that they are not supported by substantial evidence in the record, including, but not limited to, the following:

a. The determination that certain impacts would be less than significant and/or that adopted mitigation measures would reduce the Project's significant impacts on the environment to a less than significant level;

b. The determination that alternatives to the Project that would avoid or lessen the significant impacts of the Project are infeasible or nonexistent;

c. The determination that various mitigation measures that would avoid or lessen the significant impacts of the Project are infeasible or nonexistent; and

d. The determination that the overriding economic, legal, social, technological, or other benefits of the Project outweigh its significant impacts on the environment.

48. Respondents further violated CEQA by adopting findings that do not provide the reasoning, or analytic route, from facts to conclusions as required by law.

49. As a result of the foregoing defects, Respondents prejudicially abused their discretion by adopting findings and a Statement of Overriding Considerations that do not comply with the requirements of CEQA, and approving the Bridge Alternative in reliance thereon. Accordingly, the Respondents' certification of the EIR, approval of the Bridge

1 Alternative and related findings and Statement of Overriding Considerations must be set
2 aside.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioners pray for judgment as follows:

5 1. For alternative and peremptory writs of mandate directing Respondents to
6 vacate and set aside their certification of the EIR for the Project; approval of the Bridge
7 Alternative; adoption of findings and a Statement of Overriding Consideration; and
8 initiation of amendment to the University Community Plan to eliminate the Genesee
9 Avenue Widening project from the Plan; and any actions taken by the City to implement
10 the Project, the Bridge Alternative or the University Community Plan amendment;

11 2. For alternative and peremptory writs of mandate directing Respondents to
12 comply with CEQA and the CEQA Guidelines, and to take any other action as required
13 by Public Resources Code section 21168.9;

14 3. For a temporary stay, temporary restraining order, and preliminary and
15 permanent injunctions restraining the City and its agent, servants, and employees, and all
16 others acting in concert with the City on its behalf, from taking any action to implement
17 the Project, the Bridge Alternative, or the amendment to the University Community Plan
18 to delete the Genesee Avenue Widening Alternative, pending full compliance with the
19 requirements of CEQA and the CEQA Guidelines;

20 4. For costs of the suit;

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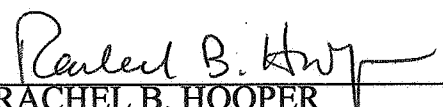
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5. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and other provisions of law; and

6. For such other and future relief as the Court deems just and proper.

Dated: August 31, 2006

SHUTE, MIHALY & WEINBERGER LLP

By: 
RACHEL B. HOOPER

By: 
DEBORAH L. KEETH

Attorneys for Petitioners FRIENDS OF ROSE CANYON, SAN DIEGO AUDUBON SOCIETY, SAN DIEGO COASTKEEPER, and ENDANGERED HABITATS LEAGUE

[P:\FRC\PETITION - FINAL.wpd]

VERIFICATION

I, Deborah Knight, declare as follows:

I am a resident of the City of San Diego and the President of the Board of Directors of Friends of Rose Canyon, one of the petitioners in this action, and am authorized to execute this verification on Petitioners' behalf. I have read the foregoing Petition for Writ of Mandate and know the contents thereof. All facts alleged in the above Petition, not otherwise supported by exhibits or other documents, are true of my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this ____ day of September, 2006, in San Diego, California.

Deborah Knight

CCP

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR. *
MARK I. WEINBERGER (1949-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER

*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
ANDREA RUIZ-ESQUIDE
SHERIDAN J. PAUKER

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

DAVID NAWI
ANDREW W. SCHWARTZ
OF COUNSEL

August 30, 2006

Via Facsimile and U.S. Mail

Mayor Jerry Sanders
and Members of the San Diego City Council
City Administration Building
202 C Street, 11th Floor
San Diego, CA 92101
Fax: (619) 236-7228

Re: Notice of Commencement of CEQA Litigation Challenging the University City North/South Corridor Transportation Study EIR and approval of the Regents Road Bridge Alternative

To Whom It May Concern:

This letter is to notify you that Friends of Rose Canyon, San Diego Audubon Society, San Diego Coastkeeper, and Endangered Habitats League will file suit against the City of San Diego and the San Diego City Council (collectively "City") for failure to observe the requirements of the California Environmental Quality Act, Public Resources Code §§ 21000 et seq., in the administrative process that culminated in the City's August 1, 2006 decision to: (1) certify the Environmental Impact Report for the University City North/South Transportation Corridor Study (Project No. 27445); (2) implement the Regents Road Bridge Alternative (CIP No. 53-044.0); (3) adopt findings and a statement of overriding considerations; and (4) initiate an amendment to delete the Genesee Avenue Widening Alternative from the University Community Plan.

Notice of Commencement of CEQA Litigation

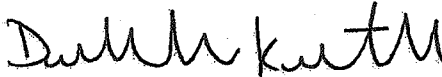
Page 2

August 30, 2006

This notice is given pursuant to Public Resources Code Section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Deborah L. Keeth

cc: Marco Gonzalez, Coast Law Group LLP

[P:\FRC\dk018 (notice to City).wpd]

DECLARATION OF SERVICE

I am a citizen of the United States; I am over the age of eighteen years and not a party to the within cause; I am employed in the City and County of San Francisco, California, with the law firm of Shute, Mihaly & Weinberger LLP, located at 396 Hayes Street, San Francisco, California 94102. On this date I served the following document,

Notice of Commencement of CEQA Litigation Challenging the University City North/South Corridor Transportation Study EIR and approval of the Regents Road Bridge Alternative

on the parties identified below, through their attorneys of record, in the following manner:

 X : **By First Class Mail** I am readily familiar with the practice of Shute, Mihaly & Weinberger LLP for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service on the same day such correspondence is collected. I placed true and correct copies of the document(s) listed above in sealed envelope(s) addressed as shown below and affixed with first class postage. I caused such envelope(s) to be collected for mailing with the United States Postal Service in accordance with the ordinary business practices of Shute, Mihaly & Weingerber LLP.

 X : **By Facsimile** Pursuant to agreement of the parties in the above-entitled action, at 4:52 , I caused the document(s) listed above to be transmitted via facsimile to the office of each addressee at the appropriate facsimile number shown below. The transmission was reported as complete and without error. A true and correct copy of the transmission report, which report was properly issued by the transmitting facsimile machine, is attached hereto.

Mayor Jerry Sanders and
Members of the San Diego City Council
City Administration Building
202 C Street, 11th Floor
San Diego, CA 92101
Fax: (619) 236-7228

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on August 30, 2006, at San Francisco, California.


Deborah L. Keeth

FILE NUMBER : 347

*** SUCCESSFUL TX NOTICE ***

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

306 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 552-7272
FACSIMILE (415) 552-5816
WWW.SMVLAW.COM

F A X C O V E R S H E E T

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(including cover sheet)
Original to Follow: YES Time Sent: _____

TO:

Mayor Jerry Sanders and
Members of the San Diego City
Council

Fax: (619) 236-7228

CC:

Marco Gonzalez

(760) 942-8515

FROM:

Deborah L. Keeth

Phone: 415/552-7272 Ext: 257
Fax: 415/552-5816

MESSAGE:

Attached: Notice of Commencement of CEQA Litigation

If there are any problems or questions related to this fax, please call our Receptionist at 415/552-7272

MULTI TRANSMISSION REPORT

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UNSUCCESSFUL

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