

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

CITIZENS FOR THE REGENTS ROAD
BRIDGE, INC., a California public benefit
corporation,

Petitioner,

vs.

CITY OF SAN DIEGO; SAN DIEGO CITY
COUNCIL; and DOES 1 through 5, inclusive,

Respondents.

Case No. 37-2017-00000453-CU-TT-CTL

**SUPPLEMENTAL REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
PETITION FOR WRIT OF MANDATE**

Hearing Date: January 11, 2018

Time: 10:00 a.m.

Dept.: C-69

Assigned for All Purposes To:

The Hon. Katherine Bacal

Department: C-69

Complaint Filed: January 5, 2017

PDF Pages 2-17: 2017-01-03 CFTRRB Verified Petition for Writ of Mandate with Exhibit A (1)

PDF Pages 18-46: 2017-10-20 CFRRB Citizens' Opening Brief

PDF Pages 47-100: 2017-10-20 CFTRRB Request for Judicial Notice

PDF Pages 101-126: 2017-11-28 City's Response to Petition for Writ of Mandate

PDF Pages 127-139: 2017-12-15 CFTRRB Reply to City's Response to Petitioner's Opening Brief

PDF Pages 140-160: 2017-12-15 CFTRRB Supplemental Request for Judicial Notice ISO Petition for Writ of Mandate

PDF Pages 161-163 2018-01-11 Tentative Ruling Hearing

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CITIZENS FOR THE REGENTS ROAD BRIDGE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

CITIZENS FOR THE REGENTS ROAD BRIDGE,
INC., a California public benefit corporation,

Petitioner,

v.

CITY OF SAN DIEGO; SAN DIEGO CITY
COUNCIL; and DOES 1 through 5, inclusive,

Respondents.

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])

INTRODUCTION

1. This action challenges the decision of the City of San Diego ("City") and the San Diego City Council ("Council") (collectively, "Respondents") to: (a) certify the Final Program Environmental Impact Report for the University Community Plan Amendment, project number 480286; (2) implement the Project; (3) adopt findings and a statement of overriding considerations; and (4) adopt and initiate an amendment to delete the Regents Road Bridge and the Genesee Avenue Widening from the University Community Plan and the General Plan.

2. On September 29, 2014, following a lengthy public hearing where numerous objections and comments were submitted by the public, including objections to the factual premises of the Resolution, the Council passed Resolution Number R-309237 ("Resolution") (the final passage of which was dated October 14, 2014) to initiate an amendment to the University Community Plan

1 (“UCP”) (“Amendment”) and that the following issues shall be evaluated as part of the UCP
2 amendment process:

3 A. Implementation of General Plan Goals into the UCP, especially as they relate to the
4 vision, values and City of Villages strategy and the provision of public facilities.

5 B. Consideration that UCP amendments could provide additional community benefit and
6 public facilities towards achieving long term community goals.

7 C. Consideration of the impacts of removal of the Genesee Avenue Widening and
8 Regents Road Bridge projects from the UCP.

9 D. Consideration of any additional issues identified through the amendment process.

10 3. On December 2, 2015 the City, through its Planning Department, publicly issued a
11 Notice of Preparation of an Environmental Impact Report (“EIR”) (the “NOP”) and Scoping
12 Meeting scheduled to take place on December 16, 2015. The Petitioner and many other
13 commenters commented on the NOP and Scoping Meeting, both as to the content and as to the
14 timing of the Scoping Meeting during the Holiday period where many organizations and
15 individuals were not meeting during December, were out of town, or otherwise unable to
16 comment. Despite the numerous objections, the City refused to reschedule the Scoping Meeting.
17 It was later learned by the Petitioner, upon information and belief, that the City Planning
18 Department could not reschedule the Scoping Meeting as they had to maintain an inviolate
19 schedule for this EIR that would culminate with a vote by the City Council on the Amendment to
20 the UCP in early December, 2016, the last City Council meeting where District 1 City
21 Councilperson Sherri Lightner could vote before being termed out from the Council. The District
22 1 Councilperson had initiated the Resolution in 2014 to amend the UCP.

23 4. On June 17, 2016 the City, through its Planning Department, issued a Draft
24 Program Environmental Impact Report (PEIR), I.O. 21003841, in which the draft PEIR
25 concluded that the proposed project (removal of the Regents Road Bridge and Widening of
26 Genesee Avenue from the UCP – the “Project”) would result in significant and unmitigated
27 environmental impacts in the following areas: **Transportation/Circulation, Air Quality,**

1 **Greenhouse Gas Emissions, Noise, and Public Services and Facilities.** The EIR had now
2 changed into a PEIR, and the public was given the minimum of 45 days to submit comments to
3 the draft PEIR, a daunting task given that the draft PEIR was issued during the summer vacation
4 time for both organizations and individuals. The Petitioner and many other parties submitted
5 requests for additional time within which to comment on the draft PEIR, but the City refused to
6 extend the comment period so as to adhere to the inviolate schedule for the PEIR for an early
7 December, 2016 City Council vote on the Amendment to the UCP. The Petitioner and its Counsel
8 submitted comments concerning the numerous inadequacies of the draft PEIR and its violations
9 of the CEQA regulations, as did numerous other parties.

10 5. On October 10, 2016 the City, through its Planning Department, issued the final
11 PEIR. It still contained the numerous inadequacies of the draft PEIR and its violations of the
12 CEQA regulations.

13 6. On October 27, 2016, the Planning Commission ("Commission") of the City held
14 a Hearing to consider the proposed Amendment to the UCP related to the Resolution. The
15 Petitioner and many others submitted their written and oral comments and objections to the UCP
16 Amendment. Following many hours of testimony regarding the proposed Amendment, the
17 Commission voted 6-0 for the approval of a Motion to recommend to the City Council approval
18 of a resolution amending the University Community Plan and General Plan to adopt the
19 Construction of Regents Road Bridge and No Widening of Genesee Avenue Alternative (no
20 repurposing of Genesee Avenue Right of Way) and to design the Regents Road Bridge consistent
21 with Section 1.4.2 of the City of San Diego MSCP Subarea Plan. That recommendation was
22 forwarded to the City Council.

23 7. On November 16, 2016, the Smart Growth & Land Use Committee ("Committee")
24 of the City held a Hearing to consider the proposed Amendment to the UCP related to the
25 Resolution. The Petitioner and many others submitted their written and oral comments and
26 objections to the UCP Amendment. Following many hours of testimony regarding the proposed
27 Amendment, the Committee voted 3-0 to forward the UCP Amendment to the City Council

1 without a recommendation for approval or denial.

2 8. On December 5, 2016, the City Council held a Hearing to consider the proposed
3 Amendment to the UCP related to the Resolution. The Petitioner and many others submitted their
4 written and oral comments and objections to the UCP Amendment. Following many hours of
5 testimony regarding the proposed Amendment, the City Council voted 6-2 to adopt Resolutions
6 R-310813 and R-310813, which: (a) authorized implementation of the Project; (b) certified the
7 PEIR for the Project; (c) adopted findings and a Statement of Overriding Considerations; (d)
8 adopted the Mitigation, Monitoring and Reporting Program; and (e) initiated an amendment to the
9 UCP to delete the Regents Road Bridge and the Genesee Avenue Widening, an alternative
10 described in the PEIR, from the University Community Plan and that the amendments to the
11 General Plan and University City Community Plan Amendment are approved. The two Council
12 members, from Districts 2 and 6, who voted against the Amendment cited the failure of the City
13 to contact or consult with communities and neighborhoods adjacent to University City, including
14 their Districts, concerning the regional transportation issues raised by the fact that Regents Road
15 is a major arterial road impacting numerous communities and neighborhoods of San Diego
16 outside of University City, as major reasons for their votes against the Amendment.

17 9. Respondents' actions in certifying the PEIR for the Project and approving the
18 Project and related findings and Statement of Overriding Considerations violate CEQA and
19 CEQA's implementing regulations, the CEQA Guidelines, Title 14, California Code of
20 Regulations §§ 15000 et seq.

21 PARTIES

22 10. Petitioner Citizens for the Regents Road Bridge, Inc. ("CFRRB") is a California
23 nonprofit public benefit corporation dedicated to improve safety, relieve traffic congestion, and
24 improve multimodal transportation in the San Diego communities of University City (including
25 the University Towne Centre "UTC" area of University City), Clairemont, Mira Mesa, La Jolla,
26 Miramar, Kearny Mesa and Tierrasanta (the "Region") by promoting and educating the public
27 about the need for the construction of the Regents Road Bridge in University City. Supporters of
28

1 CFRRB, who number over 3,000, are residents and taxpayers of the City of San Diego who
2 would be negatively affected by the Project's adverse environmental impacts. The interests that
3 CFRRB seeks to further in this action are consistent with the purpose and goals of the
4 organization. Supporters of CFRRB have a direct and beneficial interest in the City's compliance
5 with CEQA and the CEQA Guidelines. These interests would be directly affected by the Project,
6 which violates provisions of law as set forth in this Petition and which would cause substantial
7 and irreversible harm to the natural environment. The maintenance and prosecution of this action
8 will confer a substantial benefit on the public by protecting the public from the environmental
9 harms alleged herein. CFRRB submitted comments to the Respondents objecting to and
10 commenting on the Project and the PEIR.

11 11. Respondent City of San Diego is a public agency under section 21063 of the
12 Public Resources Code. The City is responsible for regulating and controlling land use in the
13 City, including implementing and complying with the provisions of CEQA. Respondent City is
14 the lead agency for purposes of Public Resources Code section 21067, with principal
15 responsibility for conducting environmental review and approving the Project.

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

18 13. Petitioner does not know the true names and capacities, whether individual,
19 corporate, associate or otherwise, of Respondents DOE 1 through DOE 5, inclusive, and
20 therefore sues said Respondents under fictitious names. Petitioner will amend this Petition to
21 show their true names and capacities when the same have been ascertained. Each of the
22 Respondents is the agent and/or employee of each other Respondent, and each performed acts on
23 which this action is based within the course and scope of such Respondent's agency and/or
24 employment.

25 JURISDICTION AND VENUE

26 14. Pursuant to California Code of Civil Procedure section 1085 (alternatively section
27 1094.5) and Public Resources Code sections 21168.5 (alternatively section 21168) and 21168.9,

1 this Court has jurisdiction to issue a writ of mandate to set aside Respondents' decision to certify
2 the EIR for the Project and approve the Project and related findings and Statement of Overriding
3 Considerations.

4 15. Venue is proper in this Court because the causes of action alleged in this
5 Petition arose in the County of San Diego where the proposed Regents Road Bridge would be
6 located.

7 16. Petitioner has complied with the requirements of Public Resources Code section
8 21167.5 by serving a written notice of Petitioners' intention to commence this action on
9 Respondents on January 4, 2017. A copy of the written notice and proof of service by mail is
10 attached hereto as Exhibit A.

11 17. Petitioner will comply with the requirements of Public Resources Code section
12 21167.7 by sending a copy of this Petition to the California Attorney General within the time
13 required therein.

14 18. Petitioner will comply with the requirements of Public Resources Code section
15 21167.6 by concurrently filing a notice of their election to prepare the record of administrative
16 proceedings relating to this action.

17 19. Petitioner has performed any and all conditions precedent to filing the instant
18 action and has exhausted any and all available administrative remedies to the extent required by
19 law.

20 20. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
21 unless this Court grants the requested writ of mandate to require Respondents to set aside the
22 certification of the EIR for the Project and the approval of the Project and related findings and
23 Statement of Overriding Considerations. In the absence of such remedies, the City's approval will
24 remain in effect in violation of State law.

25 STATEMENT OF FACTS

26 Project Area

27 21. Rose Canyon ("Canyon") is an approximately three (3) mile long canyon, running
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1 East to West, through an area of the University City neighborhood of San Diego. During its
2 history, the Canyon has always been a “working canyon”, and not an untouched pristine
3 wilderness area. In its early history from the 1800’s through the 1960’s, the Canyon was the site
4 of a cattle, horse and mule ranch, a vineyard and tobacco farm, a tannery, a coal and clay mining
5 operation, a brick manufacturing plant, a saddlery and a railroad line. Many of the remnants of the
6 buildings and other structures used for the above-referenced operations remained in the Canyon
7 until the 1960’s. The Canyon is still a “working canyon” as the location of the Los Angeles – San
8 Diego (“LOS/SAN) rail lines – a double tracked line wherein all trains from points North to San
9 Diego must travel. Approximately 60 trains a day pass through the Canyon at high speed and
10 when the double tracking program from San Diego to Los Angeles is completed there will be
11 approximately 130 trains a day passing on the Canyon floor at 55 miles per hour. It is the 2nd
12 busiest rail corridor in the United States. It is also the site of a sewer trunk line of the City which
13 runs in the length of the Canyon with numerous elevated manholes at regular intervals dotting the
14 Canyon floor. It is the site of a high pressure natural gas line running through the Canyon. It is
15 also the site of High Voltage power lines running the length of the Canyon. It has a small creek
16 running through it – virtually dry at periods during the year, as well as a single main hiking trail
17 running its length.

18 22. In 1966, the City authorized and recorded a Right of Way Easement (“Easement”)
19 for the continuation of Regents Road through the Canyon. The Easement through the Canyon,
20 from the Southern edge of the Canyon to the Northern edge of the Canyon, was recorded in the
21 San Diego County Recorder’s Office on July 25, 1966, as File/Page no. 120636, Series 7 Book
22 1966. The clearly defined boundaries of the Easement exist to this day and have been honored by
23 all activity in the Canyon since its recordation.

24 23. In 1979, the City dedicated the land in the Canyon, by Ordinance #0-15073, dated
25 November 13, 1979, entitled "An Ordinance setting aside and dedicating certain lands in the City
26 of San Diego, California, for a public park and naming said park ‘Rose Canyon Open Space Park
27 Preserve’". A written legal description of the lands dedicated to the Park is attached to the
28

1 Ordinance along with maps showing that the land boundaries of the Park respected and excluded
2 the previously dedicated Easement Right of Way for the construction of the completion of
3 Regents Road.

4 24. The City designated the Canyon as part of the Multiple Habitat Planning Area
5 ("MHPA"), as identified in the City's Multiple Species Conservation Program ("MSCP") subarea
6 plan for habitat conservation. The Canyon is designated as Grassland in the area where the
7 Regents Road Bridge would be built. Upon information and belief, the United States Fish and
8 Wildlife Service ("USFWS") and the California Department of Fish and Game ("CDFG") are
9 signatories to the MHPA/MSCP documents for the City. Pursuant to the MHPA, at section 1.4.1,
10 Compatible Land Uses, one of the land uses considered conditionally compatible with the
11 biological objectives of the MSCP and thus allowed within the City's MHPA are utility lines and
12 roads in compliance with policies in section 1.4.2. Section 1.4.2 of the MHPA describes the
13 "Roads and Utilities - Construction and Maintenance Policies" for construction of roads in the
14 MHPA. Thus the construction of the Regents Road Bridge in and over the Canyon would be
15 considered compatible with the MHPA/MSCP program, to which the USFWS and the CDFG are
16 signatories.

17 25. The Canyon is the site of a restoration project funded in part by the California
18 Department of Parks and Recreation's Habitat Conservation Fund Program. In or around 1997,
19 the City applied for and received a State grant to remove invasive species from the Canyon and
20 plant native species. Upon information and belief, under the terms of the State grant, the City
21 must maintain the restored area in perpetuity, unless expressly authorized to change the use by an
22 act of the State Legislature. However, the City's plan map for the restoration work carefully
23 maps the expected footprint of the bridge construction pursuant to the Easement Right of Way of
24 1966 to ensure the restoration efforts did not encroach on the Easement. Any restoration work
25 performed under the State grant within the boundaries of the Easement Right of Way would be
26 outside the boundaries of the Park and not in compliance with the Grant. The City initiated

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restorations in the Park excluded work in the Easement Right of Way and therefore no approval would be necessary from the State for the construction of the Regents Road Bridge in the Easement Right of Way.

Project Approval

26. On December 5, 2016 the City Council held a public hearing on the Project. At that hearing, Petitioner and many others presented testimony reiterating their objections to the Project.

27. At the conclusion of the December 5, 2016 hearing, following many hours of testimony regarding the proposed Amendment and despite Petitioners' objections to the PEIR and the Project, the City Council adopted Resolutions R-310813 and R-310813, which: (a) authorized implementation of the Project; (b) certified the PEIR for the Project; (c) adopted findings and a Statement of Overriding Considerations; (d) adopted the Mitigation, Monitoring and Reporting Program; and (e) initiated an amendment to delete the Regents Road Bridge and the Genesee Avenue Widening, an alternative described in the PEIR, from the University Community Plan and that the amendments to the General Plan and University City Community Plan Amendment are approved.

28. On December 6, 2016, the City filed and recorded a Notice of Determination for the Project with the Recorder/County Clerk for the County of San Diego.

FIRST CAUSE OF ACTION

(Violations of CEQA; Inadequate PEIR)

29. Petitioner hereby re-alleges and incorporates paragraphs 1 through 28, inclusive.

30. Respondents violated CEQA by certifying a PEIR for the Project that is inadequate and fails to comply with the requirements of CEQA and the CEQA Guidelines. Among other things, Respondents:

a. Failed to adequately describe the setting for the Project and used inaccurate baselines to analyze the environmental impacts of the Project.

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- b. Failed to adequately disclose and analyze the Project's significant impacts on the environment, including, but not limited to, the Project's impacts on biological resources, water quality, traffic, noise, GHG emissions, VMT's, and fire, police and ambulance response times.
- c. Failed to adequately disclose and analyze the Project's cumulative impacts.
- d. Failed to adequately mitigate the significant impacts of the Project and improperly deferred development of mitigation measures.
- e. Failed to include an adequate analysis of alternatives, including, but not limited to, failure to properly identify the environmentally superior alternative.
- f. Failed to revise and re-circulate the EIR.
- g. Failed to respond adequately to comments of Petitioner and others.
- h. Failed to include an adequate analysis of the regional transportation issues required by the fact that Regents Road is a major arterial road impacting numerous communities and neighborhoods of San Diego outside of University City.
- i. Failed to contact or consult with communities and neighborhoods adjacent to University City concerning the regional transportation issues raised by the fact that Regents Road is a major arterial road impacting numerous communities and neighborhoods of San Diego outside of University City.
- j. Failed to adequately study the existing and future traffic impacts affecting the regional area in University City and communities and neighborhoods of San Diego outside of University City.
- k. Failed to adequately assess current and future development projects in University City and communities and neighborhoods of San Diego outside of University City and their impacts on traffic and intersections.
- l. Failed to adequately address the issues pertaining to Regents Road being an integral part of the City's Bicycle Master Plan or the City's "City of Villages" Plan.

31. As a result of the foregoing defects, Respondents prejudicially abused their

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1 discretion by certifying an EIR that does not comply with the requirements of CEQA, and
2 approving the Project in reliance thereon. Accordingly, Respondents' certification of the EIR and
3 approval of the Project must be set aside.

4 SECOND CAUSE OF ACTION

5 (Violations of CEQA; Inadequate Findings)

6 32. Petitioner hereby re-alleges and incorporates paragraphs 1 through 31,
7 inclusive.

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

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

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

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

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

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

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

26 36. As a result of the foregoing defects, Respondents prejudicially abused their
27 discretion by adopting findings and a Statement of Overriding Considerations that do not comply

1 with the requirements of CEQA, and approving the Project in reliance thereon. Accordingly, the
2 Respondents' certification of the PEIR, approval of the Project and related findings and Statement
3 of Overriding Considerations must be set aside.

4 PRAYER FOR RELIEF

5 WHEREFORE, Petitioner prays for judgment as follows:

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

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

15 3. For a permanent injunction restraining the City and its agents, servants, and
16 employees, and all others acting in concert with the City on its behalf, from taking any action to
17 implement the Project, or the amendment to the University Community Plan to delete the Regents
18 Road Bridge and the Genesee Avenue Widening project from the University Community Plan or
19 the General Plan, pending full compliance with the requirements of CEQA and the CEQA
20 Guidelines;


21 4. For costs of the suit and for attorneys' fees as authorized by Code of Civil
22 Procedure section 1021.5 and other provisions of law; and

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

24 DATED: January 3, 2017

LAW OFFICE OF GREGORY J. BARNES

26 By:


Gregory J. Barnes
Attorneys for Petitioner, CITIZENS FOR
THE REGENTS ROAD BRIDGE, INC.

1 VERIFICATION

2 I, Austin H. Speed, III, declare as follows:

3 I am a resident of the City of San Diego and the President of the Board of Directors of
4 Citizens for the Regents Road Bridge, Inc., the Petitioner in this action, and I am authorized
5 to execute this verification on Petitioners' behalf. I have read the foregoing Petition for Writ
6 of Mandate and know the contents thereof. All facts alleged in the above Petition, not
7 otherwise supported by exhibits or other documents, are true of my own knowledge, except
8 as to matters stated on information and belief, and as to those matters I believe them to be
9 true. I declare under penalty of perjury under the laws of the State of California that the
10 above is true and correct.

11 Executed this 3rd day of January, 2017 in San Diego, CA.

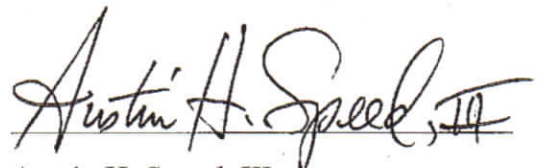
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15 Austin H. Speed, III
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EXHIBIT “A”

**LAW OFFICE OF
GREGORY J. BARNES**

*direct dial: 619.787.0302
direct fax: 619.609.0534
gjbarnes@earthlink.net*

January 4, 2017

Elizabeth Maland, City Clerk
City of San Diego
202 C Street
Second Floor
San Diego, CA 92101

Re: Notice of Intent to Commence CEQA Litigation

To Whom It May Concern:

This letter is to notify you that Citizens for the Regents Road Bridge, Inc. 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 December 5, 2016 decision to: (1) certify the Final Program Environmental Impact Report for the University Community Plan Amendment, Project Number 480286; (2) implement the Project; (3) adopt findings and a Statement of Overriding Considerations; and (4) initiate an amendment to delete the Regents Road Bridge and the Genesee Avenue Widening from the University Community Plan and the General Plan.

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

Very truly yours,
LAW OFFICE OF GREGORY J. BARNES


Gregory J. Barnes

GJB/cb

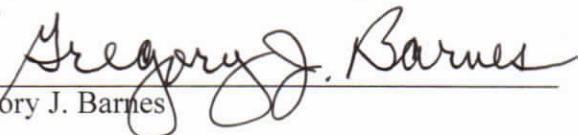
PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Gregory J. Barnes, Esq., Law Office of Gregory J. Barnes, 7165 Calabria Court, Suite D, San Diego, CA 92122. On January 4, 2017, I served the within documents:

NOTICE OF INTENT TO COMMENCE CEQA LITIGATION

- ☐ **BY FACSIMILE [Code Civ. Proc. §1013(e)]** by transmitting via facsimile number (858) 678-0677 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission confirmation report is attached hereto.
- ☒ **BY U.S. MAIL [Code Civ. Proc. §1013(a)]** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☐ **BY OVERNIGHT DELIVERY [Code Civ. Proc. §1013(d)]** by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 8895 Towne Centre Drive, Suite 105, San Diego, California 92122 in the ordinary course of business on the date of this declaration.
- ☐ **BY PERSONAL SERVICE [Code Civ. Proc. §1011]** by causing Knox Services to personally deliver the document(s) listed above to the person(s) at the address(es) set forth below
- ☒ *(State)* I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ *(Federal)* I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 4, 2017, at San Diego, California.



Gregory J. Barnes

SERVICE LIST

Elizabeth Maland, City Clerk
City of San Diego
202 C Street, Second Floor
San Diego, CA 92101

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO, CENTRAL DIVISION

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17 CITY OF SAN DIEGO; SAN DIEGO CITY
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19 Respondents.

Case No. 37-2017-00000453-CU-TT-CTL

**PETITIONER CITIZENS FOR THE
REGENTS ROAD BRIDGE, INC.'S
OPENING BRIEF IN SUPPORT OF
PETITION FOR WRIT OF MANDATE**

Assigned for All Purposes To:

The Hon. Katherine Bacal

Department: C-69

Complaint Filed: January 5, 2017

TABLE OF CONTENTS

Page

I.	INTRODUCTION	1
II.	THE DPEIR FAILED TO DISCUSS THE PROJECT'S INCONSISTENCY WITH THE RELEVANT GOALS OF THE GENERAL PLAN AND THE UNIVERSITY COMMUNITY PLAN, AND THE CITY FAILED TO PROVIDE THE REQUIRED GOOD FAITH REASONED ANALYSIS IN RESPONSE TO CITIZENS' COMMENTS REGARDING THOSE INCONSISTENCIES	3
A.	CEQA's Requirements for Discussion of a Project's Inconsistency with the General Plan and for Detailed, Good Faith Reasoned Analysis in Response to Comments	3
B.	The DPEIR's Analysis of the Project's Potential Conflicts with Goals of the General Plan and Community Plan Was Conclusory and Wholly Inadequate.....	4
C.	Citizens' Comments on the Project's Inconsistency with General Plan Goals.....	5
D.	Citizens' Comments on the Project's Inconsistency with UCP Goals	7
E.	The City's Responses to Citizens' Comments Regarding the DPEIR's Failure to Discuss Project Inconsistencies with the General Plan and the UCP Are Inadequate, and Provide Additional Proof that the DPEIR Failed to Discuss Those Inconsistencies.....	8
III.	THE REVISED PEIR SHOULD HAVE BEEN RECIRCULATED FOR PUBLIC COMMENT, BECAUSE SIGNIFICANT NEW INFORMATION WAS ADDED TO THE PEIR'S ANALYSIS OF ALTERNATIVES, WHICH SHOWED THAT THE DPEIR WAS SO FUNDAMENTALLY INADEQUATE AS TO PRECLUDE MEANINGFUL PUBLIC COMMENT.....	13
A.	Citizens Disputed the City's Assertion that Changes Made to the DPEIR by the FPEIR Did Not Include "Significant New Information" Requiring Recirculation.....	13
B.	As Shown by the Dramatic Changes to the DPEIR Made by the FPEIR's Analysis of Alternatives, the DPEIR's Analysis of Alternatives Was Fundamentally and Basically Inadequate	14
1.	The City Used the Wrong Legal Standard in the DPEIR in Comparing the Project's Impacts with Those of the Alternatives, and Corrected that Analysis in the FPEIR	14
2.	The DPEIR Identified Not One but TWO Alternatives as THE "Environmentally Superior Alternative"	17

1	IV.	THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE	
2		SELECTION OF EITHER THE PROJECT OR THE "NO	
3		CONSTRUCTION OF REGENTS ROAD BRIDGE AND	
4		RECONFIGURATION OF GENESEE AVENUE" ALTERNATIVE AS	
5		ENVIRONMENTALLY SUPERIOR TO THE NO PROJECT	
6		ALTERNATIVE	19
7	A.	The Record Fails to Support the Conclusion that the Project is	
8		Environmentally Superior to the No Project Alternative	19
9	B.	The Record Fails to Support the Conclusion that the Reconfiguration	
10		Alternative is the Environmentally Superior "Build" Alternative.....	21
11	V.	THE FINDINGS REGARDING THE NO PROJECT ALTERNATIVE'S	
12		AND THE RECONFIGURATION ALTERNATIVE'S	
13		NONCONFORMANCE WITH PROJECT OBJECTIVES ARE NOT	
14		SUPPORTED BY SUBSTANTIAL EVIDENCE	23
15	VI.	THE FINDINGS REJECTING THE ALTERNATIVES TO THE	
16		PROJECT FAIL TO ESTABLISH THAT THOSE ALTERNATIVES ARE	
17		"INFEASIBLE"	23
18	VII.	CONCLUSION	25

TABLE OF AUTHORITIES

Cases

Page

<i>Citizens of Goleta Valley v. Board of Supervisors</i> (1990) 52 Cal.3d 553	14, 17, 18
<i>City of Long Beach v. Los Angeles Unified School Dist.</i> (2009) 176 Cal.App.4 th 889	4, 12
<i>Families Unafraid to Uphold Rural El Dorado v. Board of Supervisors</i> (1998) 62 Cal.App.4 th 1332.....	4
<i>Laurel Heights Improvement Assn. v. Regents of University of California</i> (1993) 6 Cal.4 th 1112	13, 14
<i>Napa Citizens for Honest Government v. Napa County Board of Supervisors</i> (2001) 91 Cal.App.4 th 342.....	3, 4, 6, 7, 8, 9, 12
<i>San Diego Citizenry Group v. County of San Diego</i> (2013) 219 Cal.App.4 th 1	3, 11
<i>Save Our Peninsula Committee v. Monterey County Bd. of Supervisors</i> (2001) 87 Cal.App.4 th 99.....	17, 19
<i>Ukiah Citizens for Safety First v. City of Ukiah</i> (2016) 248 Cal.App.4 th 256.....	25

Statutes

Pub. Res. Code § 21002	15, 16
Pub. Res. Code §§ 21002.1(a)-(c)	21, 22
Pub. Res. Code § 21003.1(b).....	21, 22
Pub. Res. Code § 21004	21, 22
Pub. Res. Code § 21061.1	24
Pub. Res. Code § 21081(a)(3)	24, 25
Pub. Res. Code § 21092.1	13

Regulations

CEQA Guidelines § 15088(c)	4, 11, 12, 18
CEQA Guidelines § 15088.5	18
CEQA Guidelines § 15088.5(a)	13
CEQA Guidelines § 15088.5(a)(4).....	17
CEQA Guidelines § 15125(d)	3, 8, 11, 12
CEQA Guidelines § 15126.6(d)	14, 15
CEQA Guidelines § 15126.6(e)(2).....	17, 18, 19, 21

1 **I. INTRODUCTION**

2 This action challenges the decisions of the City of San Diego ("City") and the San Diego
3 City Council ("Council") (collectively, "Respondents") to: (a) certify the Final Program
4 Environmental Impact Report ("FPEIR") for the University Community Plan Amendment;
5 (2) implement the Project; (3) adopt Findings and a Statement of Overriding Considerations; and
6 (4) adopt and initiate an amendment to delete the Regents Road Bridge and the Genesee Avenue
7 Widening from the University Community Plan and the General Plan.

8 On September 29, 2014, following a lengthy public hearing where numerous objections
9 and comments were submitted by the public, including objections to the factual premises of the
10 Resolution, the Council adopted a resolution to initiate an amendment to the University
11 Community Plan ("UCP") ("Amendment") with the following issues to be evaluated as part of the
12 UCP amendment process:

- 13 A. Implementation of General Plan Goals into the UCP, especially as they relate to the
vision, values and City of Villages strategy and the provision of public facilities.
- 14 B. Consideration that UCP amendments could provide additional community benefit
and public facilities towards achieving long term community goals.
- 15 C. Consideration of the impacts of removal of the Genesee Avenue Widening and
Regents Road Bridge projects from the UCP.
- 16 D. Consideration of any additional issues identified through the amendment process.

17 AR-00003 – 00008.

18 On December 2, 2015 the City issued a Notice of Preparation of an Environmental Impact
19 Report ("EIR") (the "NOP") and Scoping Meeting scheduled to take place on December 16, 2015.
20 Citizens for the Regents Road Bridge, Inc. ("Citizens") and many others commented on the NOP
21 and Scoping Meeting. Despite numerous objections regarding the timing of the Scoping Meeting,
22 the City refused to reschedule the Scoping Meeting. It was later learned by the Petitioner, upon
23 information and belief, that the City Planning Department could not reschedule the Scoping
24 Meeting as they had to maintain an inviolate schedule for this EIR that would culminate with a
25 vote by the City Council on the Amendment to the UCP in early December, 2016, the last City
26 Council meeting where District 1 City Councilmember Sherri Lightner could vote before being
27 termed out of office.

28 On June 17, 2016, the City, through its Planning Department, issued a Draft Program

1 Environmental Impact Report ("DPEIR") (AR-000107-000845) which concluded that the
2 proposed project (removal of the Regents Road Bridge and Widening of Genesee Avenue from the
3 UCP – the "Project") would result in significant and unmitigated environmental impacts in the
4 following areas: **Transportation/Circulation, Air Quality, Greenhouse Gas Emissions, Noise,**
5 **and Public Services and Facilities.** The City gave the public the minimum of 45 days to submit
6 comments on the DPEIR. Petitioner and its Counsel submitted comments concerning the
7 numerous inadequacies of the DPEIR and its violations of the California Environmental Quality
8 Act ("CEQA"), as did numerous other parties.

9 The "Project" is unique in that, unlike most projects evaluated under CEQA, this Project
10 removes features already approved in an existing General Plan and Community Plan, rather than
11 authorizing additional development. The Project would take out two transportation features that
12 have been in the UCP since 1959. It is also unusual in that the "No Project Alternative" is actually
13 the principal "development alternative," to build the Regents Road Bridge and widen Genesee
14 Avenue.

15 On October 10, 2016 the City, through its Planning Department, issued a final PEIR
16 ("FPEIR"). AR-006782-007841.

17 On October 27, 2016, the Planning Commission ("Commission") of the City held a hearing
18 to consider the proposed Amendment to the UCP. The Commission voted 6-0-1 to recommend to
19 the City Council approval of a resolution amending the UCP and General Plan to adopt the
20 Construction of Regents Road Bridge and No Widening of Genesee Avenue Alternative (no
21 repurposing of Genesee Avenue Right of Way) and to design the Regents Road Bridge consistent
22 with Section 1.4.2 of the City of San Diego MSCP Subarea Plan. That recommendation was
23 forwarded to the City Council. AR-07955-07956); *see also* AR-008023-00827 (Minutes); AR-
24 008028-008219 (Transcript).

25 On November 16, 2016, the Smart Growth & Land Use Committee ("Committee") of the
26 City Council held a hearing to consider the proposed Amendment to the UCP related to the
27 Resolution. Petitioner and many others submitted their written and oral comments and objections
28 to the UCP Amendment. The Committee voted 3-0 to forward the UCP Amendment to the City

1 Council without a recommendation for approval or denial. AR-008220-008372.

2 On December 5, 2016, the City Council held a Hearing to consider the proposed
3 Amendment to the UCP related to the Resolution. The Petitioner and many others submitted their
4 written and oral comments and objections to the UCP Amendment. The City Council voted 6-2 to
5 adopt Resolutions R-310813 and R-310814 (which became effective December 16, 2016) (AR-
6 008220-008372 and AR 000063-000065 respectively), which: (a) authorized implementation of
7 the Project; (b) certified the FPEIR for the Project; (c) adopted Findings and a Statement of
8 Overriding Considerations; (d) adopted the Mitigation, Monitoring and Reporting Program; and
9 (e) initiated an amendment to the UCP to delete the Regents Road Bridge and the Genesee Avenue
10 Widening from the University Community Plan and to approve the amendments to the General
11 Plan and University City Community Plan Amendment. The City then recorded a Notice of
12 Determination with the San Diego County Clerk. AR-00001-00002.

13 Respondents' actions in certifying the PEIR for the Project and approving the Project and
14 related Findings violate CEQA and CEQA's implementing regulations (the CEQA Guidelines¹), in
15 numerous substantive and procedural ways, as presented below.

16 **II. THE DPEIR FAILED TO DISCUSS THE PROJECT'S INCONSISTENCY WITH**
17 **THE RELEVANT GOALS OF THE GENERAL PLAN AND THE UNIVERSITY**
18 **COMMUNITY PLAN, AND THE CITY FAILED TO PROVIDE THE REQUIRED**
GOOD FAITH REASONED ANALYSIS IN RESPONSE TO CITIZENS'
COMMENTS REGARDING THOSE INCONSISTENCIES

19 **A. CEQA's Requirements for Discussion of a Project's Inconsistency with the**
20 **General Plan and for Detailed, Good Faith Reasoned Analysis in Response to**
Comments

21 CEQA requires that an EIR "must identify and discuss any inconsistencies between a
22 proposed project and the governing general plan." *San Diego Citizenry Group v. County of*
23 *San Diego* (2013) 219 Cal.App.4th 1, 25 (citing *Napa Citizens for Honest Government v. Napa*
24 *County Board of Supervisors* (2001) 91 Cal.App.4th 342, 360-361 (citing Guidelines § 15125(d)²).
25 A project is consistent with the general plan if it will further the objectives and policies of the
26

27 ¹ All references to "Guidelines" are to the CEQA Guidelines, located in title 14 of the California Code
of Regulations beginning at Section 15000.

28 ² "The EIR shall discuss any inconsistencies between the proposed project and applicable general
plans, specific plans and regional plans...." Guidelines § 15125(d).

1 general plan and not obstruct their attainment. *Families Unafraid to Uphold Rural El Dorado v.*
2 *Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336. The *Napa Citizens* court found that the
3 case law does "not require an outright conflict between provisions [of a project and a General
4 Plan] before they can be found to be inconsistent." *Napa Citizens*, 91 Cal.App.4th at 379. Rather,
5 "[t]he proper question is whether development of the [project] is compatible with and will not
6 frustrate the General Plan's goals and policies. If the [project] will frustrate the General Plan's
7 goals and policies, it is inconsistent with the ... General Plan unless it also includes definite
8 affirmative commitments to mitigate the adverse effect or effects." *Id.* Here, Citizens raised the
9 inconsistency of the Project with numerous goals of the General Plan and of the UCP (which is a
10 component of the General Plan³) in its comments on the DPEIR. AR-06912; AR-06916-06919.

11 The FPEIR failed to respond to Citizens' comments regarding the Project's inconsistencies
12 with the General Plan and UCP goals either by adding an adequate discussion of those
13 inconsistencies in the text of the FPEIR, or by a satisfactory response to Citizens' comments on the
14 inconsistency. The CEQA Guidelines require that written response to comments address in detail
15 significant environmental issues raised when the lead agency's position varies with objections
16 raised by the comments. Guidelines § 15088(c). The response must give reasons why specific
17 comments and suggestions were not accepted. *Id.* The response must have a good faith, reasoned
18 analysis. *Id.* Conclusory statements unsupported by factual information will not suffice. *Id.* "The
19 requirement of a detailed written response to comments helps to ensure that the lead agency will
20 fully consider the environmental consequences of a decision before it is made, that the decision is
21 well informed and open to public scrutiny, and that public participation in the environmental
22 review process is meaningful." *City of Long Beach v. Los Angeles Unified School Dist.* (2009)
23 176 Cal.App.4th 889, 904.

24 **B. The DPEIR's Analysis of the Project's Potential Conflicts with Goals of the**
25 **General Plan and Community Plan Was Conclusory and Wholly Inadequate**

26 The FPEIR's only discussion of the Project's potential conflicts with goals of the General

27 ³ See AR-00064 (City Council Resolution, reciting that "an amendment to the University Community
28 Plan is an amendment to the General Plan because the Community Plan is a component of the General
Plan.").

1 Plan or UCP is found in Section 4.1, addressing "Land Use".⁴ In Section 4.1.4, the FPEIR
2 acknowledges that "policies applicable and relevant to the Project can be found in several General
3 Plan elements ..." including the Mobility Element. AR-07336. The discussion of impacts of the
4 Project does not, however, address any of the core goals and policies of the Mobility Element that
5 are relevant to the Project. Instead, it states only that "removal of the widening of Genesee
6 Avenue would not result in unsafe pedestrian routes, and existing parking..." AR-07337.
7 Similarly, with respect to the removal of the Regents Road Bridge, the FPEIR's only statement that
8 relates in any way to transportation goals is limited to "[t]he removal of the Regents Road Bridge
9 would not result in unsafe pedestrian routes." AR-07337-07338. The discussion of UCP goals
10 that might be relevant to the Project does not even mention transportation goals. *See id.*

11 Then, without any discussion of the Project's impacts on the core mobility goals of the
12 General Plan or the UCP, the FPEIR summarily concludes, with respect to each of the Project
13 elements – Removal of Genesee Avenue Widening and Removal of Regents Road Bridge – as
14 follows: "Because the Project would result in a community plan amendment, the Project would no
15 longer be inconsistent with the UCP and the UCP Transportation Element. Further, this portion of
16 the Project would not conflict with any goals, objectives and recommendations of the City of San
17 Diego General Plan, the North City LCP, or any coastal regulations...." AR-07338.⁵

18 **C. Citizens' Comments on the Project's Inconsistency with General Plan Goals**

19 Citizens commented extensively on the Project's conflict with two of the five overriding
20 goals for the street and freeway system set forth in the Mobility Element of the General Plan, and
21 several of the policies intended to implement those goals. AR-06916 - 06918. Those two goals
22 are (1) "[a]n interconnected street system that provides multiple linkages within and between
23 communities" and (2) "[v]ehicle congestion relief." AR-06916, citing page ME-21 of the General
24 Plan; *see* Request for Judicial Notice ("RJN") ¶ 1 and Exh. A thereto, page ME-21.) Citizens
25 noted that those two goals are reinforced by two policies stated in the Mobility Element: "Provide

26 _____
27 ⁴ The FPEIR made no changes to the DPEIR with respect to the discussion of conflicts with General
28 Plan or UCP goals and policies that were the subject of Citizens' comments on the DPEIR, and so
references are to the FPEIR.

⁵ The FPEIR does note, however, that removal of the Regents Road Bridge would conflict with the
City's Bicycle Master Plan. AR-07399.

adequate capacity and reduce congestion for all modes of transportation on the street and freeway system" and "Design an interconnected street network within and between communities" including "[i]dentify[ing] locations where the connectivity of the street network could be improved through the community plan update and amendment process" AR-06918, citing pages ME-23 and ME-24 of the General Plan; *see* RJN ¶ 1 and Exh. A, pages ME-23 and ME-24.

Citizens observed that the Project, by removing the construction of the Regents Road Bridge, would remove an important street segment linkage between the Central Subarea of the UCP and the South University Subarea of the UCP,⁶ and between the UCP community and the Clairemont community to the south. AR-06918.; *see* RJN ¶ 3 and Exh. C at page 11, Figure 4, pages 34, 49, Figures 9,10, 19 & 20 (depictions of Regents Road Bridge spanning Rose Canyon in the UCP). As such, Citizens established that the Project would "frustrate the General Plan's goals and policies" of providing linkages within and between communities, thereby establishing inconsistency between the Project and those General Plan goals and policies. *Napa Citizens*, 91 Cal.App.4th at 379.

Citizens additionally pointed to the Project's inconsistency with the General Plan goal of "[v]ehicle congestion relief." Citizens observed that the DPEIR admitted that the Project would result in significantly greater congestion than the No Project Alternative (construction of Regents Road Bridge spanning Rose Canyon and widening of Genesee Avenue): "Even with implementation of the mitigation measures, significant traffic impacts would still result and would present increased difficulty in accessing areas, due to poor traffic conditions, including long queues, crowded maneuvering conditions, slow speeds, and other traffic-related delays." AR-06918, AR-07398. Citizens also cited to the DPEIR's Table 4.2-10, which identified nine intersections that would operate at an *unacceptable* Level of Service ("LOS") (*i.e.*, LOS E or F) under the Project but which would operate at *acceptable* LOS under the No Project Alternative (*i.e.*, with construction of Regents Road Bridge and widening of Genesee Avenue), and 21

⁶ *See* RJN ¶ 2 and Exh B thereto (Report to City Council (Report No. 06-102), July 26, 2006, at page 3 (stating that City first adopted a Master Plan for the University Community in December 1959, and that Figure 3 of that Master Plan showed two connections across Rose Canyon along the general alignments of Regents Road and Genesee Avenue)).

1 intersections that would operate at LOS E or F under the No Project Alternative, but at which
2 operational conditions (measured by seconds of delay) would be significantly worse under the
3 Project (i.e., without construction of Regents Road Bridge and widening of Genesee Avenue).
4 (AR-06918; *see also* AR-00260-00263.) Citizens noted also that the DPEIR acknowledged that
5 even after incorporation of unfunded mitigation Measures TRA-1 and TRA-2, the Project would
6 result in significant negative impacts on 13 roadway segments. AR-06918; *see also* AR-00263,
7 AR-00285. Citizens thereby established that the Project would "frustrate the General Plan's goals
8 and policies" of providing "[v]ehicle congestion relief." *Napa Citizens*, 91 Cal.App.4th at 379.

9 Citizens concluded its comments regarding the Project's inconsistency with these General
10 Plan goals by noting that the DPEIR "says nothing about that conflict." AR-06918.

11 **D. Citizens' Comments on the Project's Inconsistency with UCP Goals**

12 Citizens also commented extensively on the Project's inconsistency with the UCP's
13 transportation goal of "[d]evelop[ing] a transportation system that will move people and goods
14 safely and efficiently, within the community, including linkages with other communities" AR-
15 06918; *see also* RJN ¶ 3 and Exh. C at page 18. Citizens cited the DPEIR's conclusions about the
16 adverse impacts on the transportation system the Project would have: "Even with implementation
17 of the mitigation measures, significant traffic impacts would still result and would present
18 increased difficulty in accessing areas, due to poor traffic conditions, including long queues,
19 crowded maneuvering conditions, slow speeds, and other traffic-related delays." AR-06918, AR-
20 07398. Moreover, Citizens noted that by removing the construction of the Regents Road Bridge,
21 the Project would be inconsistent with the UCP transportation goal to provide "linkages with other
22 communities," specifically, the linkage between the University Community Planning Area and the
23 Clairemont Community Planning Area to the south. AR-06918-06919. Thus, Citizens concluded,
24 the Project is inconsistent with the UCP's first-listed transportation goal, but the DPEIR failed to
25 discuss that inconsistency. *Id.*; *see also* RJN ¶ 3 and Exh. C at 16 (an "Overall Community Goal"
26 is to "[p]rovide a workable circulation system which accommodates anticipated traffic without
27 reducing the Level of Service below 'D'"; *see* AR-00260-00263 (identifying nine intersections
28 that would operate at an *unacceptable* LOS E or F under the Project but which would operate at

1 *acceptable* LOS under the No Project Alternative).

2 Citizens also noted that the Project would conflict with a "Community and Environmental
3 Goal" in the UCP, namely, "Limit traffic conditions which produce congestion and air pollution."
4 AR-06919; RJN ¶ 3 and Exh. C, at 19. Citizens cited the DPEIR's transportation analysis that
5 concluded that the Project would, even after mitigation, significantly contribute to "difficulty in
6 accessing areas due to poor traffic conditions, including long queues, crowded maneuvering
7 conditions, slow speeds and other traffic-related delays." AR-06919; AR-07398.

8 Thus, Citizens concluded, the Project is inconsistent with this UCP "Community and
9 Environmental Goal" as well as the first-listed "Transportation Goal" in the UCP, but the DPEIR
10 fails to discuss those conflicts. As the UCP is a component of the General Plan⁷, the Project would
11 "frustrate the General Plan's goals and policies". *Napa Citizens*, 91 Cal.App.4th at 379.

12 **E. The City's Responses to Citizens' Comments Regarding the DPEIR's Failure**
13 **to Discuss Project Inconsistencies with the General Plan and the UCP Are**
14 **Inadequate, and Provide Additional Proof that the DPEIR Failed to Discuss**
15 **Those Inconsistencies**

16 In response to Citizens' summary of its comments on the DPEIR's failure to discuss
17 inconsistencies of the Project with the General Plan and the UCP (which summary comment the
18 City refers to as "Citizens-2-1"), the City responded as follows:

19 As discussed in Section 4.1 Land Use, of the Draft PEIR, "the
20 determination of significance regarding any inconsistency with
21 development regulations or plan policies is evaluated in terms of
22 the potential for the inconsistency to result in physical changes to
23 the environment that could result in the creation of secondary
24 environmental impacts considered significant under CEQA."

25 AR-06912. While this sentence correctly quotes what appears in Section 4.1 (*see* AR-00196),
26 neither Section 4.1 nor the City's comment cites any authority in support of this statement. There
27 appears to be none.

28 The City's response to "Citizens-2-1" continues as follows:

Section 15125(d) requires that an EIR discuss inconsistencies with
applicable plans that the decision makers should address. A
project is considered consistent with the provisions of the

⁷ See n.3.

1 identified regional and local plan if it meets the general intent of
2 the plans, and would not preclude the attainment of the primary
3 intent of the land use plans or policy. If a project is determined to
4 be inconsistent with specific objectives and policies of a land use
5 plan, but is largely consistent with the land use goals of that plan
6 and would not preclude the attainment of the primary intent of the
land use plan, the project would not be considered inconsistent
with the plan. In addition, inconsistency with specific objectives
or policies of a land use plan does not necessarily mean that the
project would result in a significant impact on the physical
environment." [sic]

7 AR-06912. Although there is a close quotation mark at the end of this excerpt, there is no mark
8 beginning any quotation, nor is there any authority cited. Again, there appears to be none.
9 Citizens submits that the standard established in *Napa Citizens* applies, i.e., if a project "will
10 frustrate the General Plan's goals and policies, it is inconsistent with the...General Plan." *Napa*
11 *Citizens*, 91 Cal.App.4th at 379.

12 Furthermore, this excerpt of the City's response is entirely irrelevant and unresponsive to
13 Citizens' comments regarding the Project's inconsistency with the General Plan and the UCP for
14 two independent reasons: First, none of the inconsistencies Citizens cited concerned goals of the
15 **land use** element of either the General Plan or the UCP; and second, all of the inconsistencies
16 Citizens identified were with express **goals**, not merely specific objectives or policies, of the
17 Mobility Element of the General Plan and the "Transportation Goals" and "Community and
18 Environmental Goals" of the UCP.

19 The City's response to "Citizens-2-1" continues as follows:

20 As discussed in Section 4.1, Land Use, subsection 4.1.4, Impact
21 Analysis, the Project would not conflict with the environmental
22 goals, objectives, or guidelines of a General Plan or Community
23 Plan or other applicable land use plans. Relevant goals and
guidelines from the ... General Plan and the UCP were compared
against the compatibility of the goals of the Project.
Implementation of the Project would maintain existing conditions.

24 AR-06913. Again, with the exception of the UCP's goal to "Limit traffic conditions which
25 produce congestion and air pollution" – which was categorized as a "Community Environmental
26 Goal" but which at its essence is a transportation goal – this response is irrelevant to Citizens'
27 comments regarding the Project's inconsistencies with Mobility Goals of the General Plan and the
28 Transportation Goals of the UCP. Furthermore, the statement that "[i]mplementation of the

1 Project would maintain existing conditions" is ludicrous, given that (1) the Project removes
2 transportation elements of the UCP that have been in adopted plans since 1959,⁸ and (2) the
3 FPEIR and the Findings adopted by the City identify numerous significant, unmitigated impacts of
4 the Project. *See* AR-00022. Perhaps this section of the City's comments pertained to the land use
5 element, i.e., the Project would maintain existing *land use* conditions, but if so, the City's
6 comment is irrelevant and unresponsive to Citizens' comments regarding the Project's
7 inconsistency with General Plan and UCP ***mobility and transportation*** goals.

8 Moreover, a review of the DPEIR's selection of "Relevant Elements and Policies" of the
9 General Plan and UCP identified in subsection 4.1.4 referred to in the City's response shows that
10 the DPEIR did not even include the two goals of the Mobility Element with which Citizens
11 claimed the Project was inconsistent, viz., "Provide adequate capacity and reduce congestion for
12 all modes of transportation on the street and freeway system" (RJN ¶1 and Exh. A, at p. ME-23)
13 and "Design an interconnected street network within and between communities" including
14 "[i]dentify[ing] locations where the connectivity of the street network could be improved" (*id.*
15 at p. ME-24). *See* AR 00211; AR-06916. Nor did the "Relevant Elements and Policies" of the
16 UCP identified in subsection 4.1.4 include the transportation goals Citizens identified as being
17 inconsistent with the Project, viz., "Develop a transportation system designed to move people and
18 goods safely and efficiently, within the community, including linkages with other communities
19" and "Limit traffic conditions which produce congestion" *See* AR-00212-00213; AR-
20 06917-06918. Instead, the DPEIR selected as the "Relevant Goal" of the UCP's Transportation
21 Element, for purposes of determining whether the Project was inconsistent with the UCP, "Provide
22 a balanced public transportation system to link the entire community to all of its own activity areas
23 and to the San Diego Metropolitan area as a whole." AR-00212-00213. Stated differently, the
24 DPEIR ignored two highly relevant goals of the General Plan's Mobility Element in its
25 identification of "Relevant Elements and Policies" for purposes of its analysis of inconsistency.

26 But then the City's response to "Citizens-2-1" makes the following astonishing statement:
27

28 ⁸ *See* n.4.

1 "As discussed in Section 4.1.4.2, Significance of Impacts, *because the Project would result in a*
2 *community plan amendment, the Project would no longer be inconsistent with the UCP and the*
3 *UCP Transportation Element.*" AR-06913 (emphasis supplied). Boiled down to its essence, the
4 City's response is that, because the Project is a plan amendment, rather than, say, a project to
5 approve a new land use, the Project's inconsistency with the goals of the General Plan and of the
6 UCP does not matter, or need to be discussed pursuant to Guidelines Section 15125(d), because
7 the amendment will cure any inconsistency. But Guidelines Section 15125(d) allows for no such
8 exception to the requirement that "[t]he EIR shall discuss any inconsistencies between the
9 proposed project and applicable general plans"

10 In marked contrast to what the City did here is the County of San Diego's approach in an
11 analogous circumstance: The County amended its general plan and approved a project that, absent
12 the amendment, was inconsistent with the general plan, but only *after* "the FEIR identified and
13 discussed the asserted inconsistency." *San Diego Citizenry*, 219 Cal.App.4th at 25. The City's
14 response to Citizens' comments regarding the Project's inconsistencies with General Plan and
15 UCP goals makes a mockery of CEQA's requirement that "[t]he EIR shall discuss any
16 inconsistencies between the proposed project and the applicable general plan" Guidelines §
17 15125(d). It also makes a mockery of CEQA's requirement that a lead agency's response to
18 comments "must have a good faith reasoned analysis. Conclusory statements unsupported by
19 factual statements will not suffice." *Id.* § 15088(c).

20 In response to the detailed substance of Citizens' comments regarding the Project's
21 inconsistency with goals of the General Plan and the UCP (rather than the summary of them to
22 which "Citizens-2-1" responded), the City's responses were no more than an acknowledgement.
23 Specifically, the City's comment in response to "Citizens-2-10" (which discussed in detail the
24 Project's inconsistency with two goals of the Mobility Element of the General Plan) was nothing
25 more than an acknowledgement: "Comment acknowledged. The Project includes removal of the
26 Regents Road Bridge, which is identified as one of two north/south vehicular, bicycle and
27 pedestrian connections in the UCP. Mitigation Measures TRA-1 and TRA-2 include
28 improvements to the Genesee Avenue corridor to address vehicle congestion and improve existing

1 linkages for vehicle, bicycles, and pedestrians within the community." AR-06918. This is not a
2 good faith, reasoned analysis of Citizens' detailed comments, which cited provisions of the DPEIR
3 showing that the Project is inconsistent with the referenced goals of the Mobility Element. *Id.*
4 And reference to the Mitigation Measures might have been a reasonable response, if in fact those
5 Mitigation Measures addressed and resolved the inconsistencies.⁹ But, of course, they do not:
6 City Council, in certifying the FPEIR frankly acknowledged in its Findings that the Project will
7 have numerous significant unmitigated traffic impacts, after implementation of TRA-1 and TRA-
8 2, on roadways and intersections, circulation movements, and on alternative transportation modes
9 (bicycle and pedestrian modes), as well as significant unmitigated impacts on air quality,
10 greenhouse gas emissions and police and fire/emergency response times. AR-00025-AR-00037.
11 And in response to "Citizens-2-11" (which consisted of Citizens' comments on the Project's
12 inconsistency with the UCP), the City response was nothing more than "Please see responses to
13 comments Citizens-2-10 and Citizens-2-50."¹⁰ AR-06918.

14 In summary, the DPEIR failed to address the Project's inconsistency with (a) two General
15 Plan Mobility Element goals (b) one transportation-related goal of the UCP, and (c) an "Overall
16 Community Goal" of the UCP ("[p]rovide a workable circulation system which accommodates
17 anticipated traffic without reducing the Level of Service below 'D'")¹¹ in violation of CEQA's
18 requirement that "[t]he EIR shall discuss any inconsistencies between the proposed project and
19 applicable general plans ..." Guidelines § 15125(d). The City's responses to Citizens' comments
20 regarding such inconsistencies did not evidence the required good faith, reasoned analysis and
21 amounted to conclusory statements unsupported by factual information, thus rendering
22 meaningless Citizens' participation in the Project's environmental review. *Id.* § 15088(c); *City of*
23 *Long Beach*, 176 Cal.App.4th at 904 ("The requirement of a detailed written response to comments
24 helps to ensure that ... public participation in the environmental review process is meaningful.").

25 _____
26 ⁹ See *Napa Citizens*, 91 Cal.App.4th at 379 ("If the [project] will frustrate the General Plan's goals and
27 policies, it is inconsistent with the ... General Plan unless it also includes definitive affirmative
28 commitments to mitigate the adverse effect or effects.")

¹⁰ The City's response to "Citizens-2-50" addressed Citizens' comment that the DPEIR did not fully
evaluate impacts of the Project on energy use and consumption, because the DPEIR acknowledged that
the Project would result in a significant increase in vehicle miles traveled. See AR-06928.

¹¹ See RJN ¶ 3 and Exh. C at p. 16.

1 **III. THE REVISED PEIR SHOULD HAVE BEEN RECIRCULATED FOR PUBLIC**
2 **COMMENT, BECAUSE SIGNIFICANT NEW INFORMATION WAS ADDED TO**
3 **THE PEIR'S ANALYSIS OF ALTERNATIVES, WHICH SHOWED THAT THE**
4 **DPEIR WAS SO FUNDAMENTALLY INADEQUATE AS TO PRECLUDE**
5 **MEANINGFUL PUBLIC COMMENT**

6 **A. Citizens Disputed the City's Assertion that Changes Made to the DPEIR by**
7 **the FPEIR Did Not Include "Significant New Information" Requiring**
8 **Recirculation**

9 The City issued the FPEIR on October 10, 2016¹², in which it responded in some fashion
10 to 192 public and agency comments received on the DPEIR (AR-06082 – AR-06087),
11 summarized the changes it made to the DPEIR in a 39-page section entitled "Clarifications and
12 Modifications" (AR-07236 – AR-07274) and then included the remainder of the FPEIR in
13 "tracked changes" format to show, by underlining text added and striking text deleted, the changes
14 made to the body of the DPEIR (AR-07276 – AR-07821).

15 By issuing the section entitled "Clarifications and Modifications," the City took the
16 position that the changes made to the DPEIR by the FPEIR did not amount to "new information
17 that demonstrates that an EIR commented upon by the public was so fundamentally and basically
18 inadequate or conclusory in nature that public comment was in effect meaningless" thereby
19 triggering recirculation of all or part of the revised PEIR for another round of public review and
20 comment.¹³ *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6
21 Cal.4th 1112, 1129-1130; *see also* Pub. Res. Code § 21092.1¹⁴ and Guidelines § 15088.5(a).¹⁵
22 Citizens disagreed with that determination and submitted comments so stating. AR-11351-11352.

23 The most significant changes made to the DPEIR by the FPEIR were to Chapter 9 –
24 Alternatives Analysis. The magnitude, extent and significance of these changes had the effect of
25

26 ¹² See AR-07822.

27 ¹³ See AR-06923-06924 (City's response to Citizens' comment that recirculation was required,
28 concluding summarily that the changes were merely clarifications and modifications not requiring
recirculation); *see also* Section III.B.2 *infra* discussing the inadequacy of the City's response.

¹⁴ "When significant new information is added to an environmental impact report after notice has been
given pursuant to Section 21092 ... but prior to certification, the public agency shall give notice again
pursuant to Section 21092 ... before certifying the environmental impact report."

¹⁵ "A lead agency is required to recirculate an EIR when significant new information is added to the
EIR after public notice is given of the availability of the draft EIR for public review 'Information'
can include changes in the project or environmental setting as well as additional data or other
information....'Significant new information' includes, for example ... (4) The draft EIR was so
fundamentally and basically inadequate and conclusory in nature that meaningful public review and
comment were precluded."

1 rendering the DPEIR so fundamentally inadequate that failure to recirculate a revised DPEIR for
2 further public review and comment deprived the public of meaningful public review and comment.

3 **B. As Shown by the Dramatic Changes to the DPEIR Made by the FPEIR's**
4 **Analysis of Alternatives, the DPEIR's Analysis of Alternatives Was**
5 **Fundamentally and Basically Inadequate**

6 The "core of an EIR," the Supreme Court holds, is its analysis of alternatives. *Citizens of*
7 *Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564-565. The Guidelines require an
8 EIR to include "sufficient information about each alternative to allow meaningful evaluation,
9 analysis, and comparison with the proposed project. A matrix displaying the major characteristics
10 and significant environmental effects of each alternative may be used to summarize the
11 comparison...." Guidelines § 15126.6(d). Here, the City used such a matrix, Table 9-1, to
12 summarize the comparison of alternatives. A mere glance at the FPEIR's Table 9-1 shows that
13 with the exception of 12 cells, each of the remaining 84 cells in that matrix consist of complete
14 deletions of all of the prior text and addition of entirely new text. AR-07742 – 07743.

15 Moreover, the new information conveyed to the public summarizing the comparative
16 environmental impacts of the proposed Project and the five alternatives is not only large in amount
17 of print added and deleted, but significant in the substance. The text of the FPEIR, and the City's
18 responses to Citizens' comments on the alternatives analysis in the DPEIR, show that (1) the City
19 used the wrong legal standard in comparing the environmental impacts of the Project and the five
20 alternatives; and (2) the DPEIR was internally inconsistent, identifying *two* alternatives as THE
21 "environmentally superior alternative." Each of these major errors was purportedly corrected in
22 the FPEIR, and the City's corrections of its errors to the core of the DPEIR constitute significant
23 new information demonstrating that the DPEIR was so fundamentally and basically inadequate in
24 nature that public comment on the DPEIR's alternatives analysis was in effect meaningless.
25 *Laurel Heights*, 6 Cal.4th at 1130. Each of these major errors and the changes made to correct
26 them in the FPEIR is explored below.

27 **1. The City Used the Wrong Legal Standard in the DPEIR in Comparing the**
28 **Project's Impacts with Those of the Alternatives, and Corrected that Analysis**
in the FPEIR

As Citizens noted in its comments on the DPEIR, the comparative analysis of alternatives

1 was fundamentally flawed in that it did not assess whether the various environmental impacts of
2 the five alternatives alleged to be "greater" than the Project's impacts were "significant" under
3 CEQA. AR-06925. Citizens observed that CEQA is concerned only with *significant* impacts. *Id.*
4 The purpose of the required analysis of alternatives is to determine if there are feasible alternatives
5 which would "avoid or substantially lessen" the "*significant*" environmental effects of such
6 projects" *Id.* (quoting Pub. Res. Code § 21002 (emphasis supplied)). The Guidelines specify
7 that if a matrix is used to summarize the comparative analysis of the Project's environmental
8 impacts and those of the alternatives, it display "the major characteristics and *significant*
9 environmental effects of each alternative." Guidelines § 15126.6(d) (emphasis supplied). But,
10 Citizens noted, despite this clear mandate, the DPEIR failed to identify, either on Table 9.1 or
11 elsewhere in Chapter 9, whether the environmental impacts alleged to be "greater" than those of
12 the Project were *significant*. AR-06925.

13 In its response to "Citizens 2-24," the City agreed:

14 Chapter 9.0 Alternatives Analysis, of the Draft PEIR, including
15 Table 9.1 has been revised to reflect the magnitude of significance
16 (LS = less than significant, NS = no significant impacts, SU =
17 significant and unmitigated, or SM = significant but mitigable)
18 rather than 'Greater than Project' for impacts in the alternatives
19 analysis. The affected subsections are described in further detail in
20 the responses to comments Citizens 2-25 through Citizens-2-36
21 below.

22 AR-06925. However, the City has taken the position that all of the changes it made to Table 9.1
23 summarizing the comparative impacts of the Project and the five alternatives, and to Chapter 9
24 detailing that comparison, were nothing more than "Clarifications and Modifications" rather than
25 "significant new information."

26 But a review of the material added to and deleted from the DPEIR's Table 9.1 shows
27 otherwise. AR-07742 – 07743. And it should be kept in mind that many members of the public
28 who wanted information on what the Supreme Court has said is the "core of an EIR" and who
were too busy to read the entirety of the 52-page Chapter 9 would likely focus their review on

1 Table 9.1 of the DPEIR. But as shown by the FPEIR's revisions to the Table 9.1, the public was
2 seriously misinformed as to the environmental impacts of the alternatives as compared to the
3 Project. For example, reviewing how the DPEIR characterized the "No Project Alternative" (i.e.,
4 construction of the Regents Road Bridge and Widening of Genesee Avenue as has been included
5 in the UCP since 1959) compared to how the No Project Alternative was evaluated in the FPEIR
6 on Table 9.1 is instructive. Considering land use, the DPEIR had characterized the "Land Use"
7 impacts of the No Project Alternative as "Greater than Project", but the FPEIR characterized those
8 impacts as "SM", or "Significant but Mitigable." AR-07742. It should be noted that the phrase
9 "Significant but Mitigable" is not explained or defined in Chapter 9 of the FPEIR, although in
10 response to one of Citizens' comments, the City stated that "SM" ("significant but mitigable")
11 means that the impact is "*less than significant with mitigation*" implemented at the project level."
12 AR-06925 (emphasis supplied). This explanation as to what "SM" means is critical, because it
13 means that "SM" is, for purposes of CEQA, equivalent and indistinguishable from "NS", or no
14 significant impacts, because CEQA is concerned with significant impacts that remain after all
15 feasible mitigation measures are implemented. *See, e.g.*, Pub. Res. Code § 21002.¹⁶

16 Similarly, the DPEIR summarized the Air Quality impacts of the No Project Alternative as
17 "Greater than Project," but the FPEIR changed its summary to "Significant but Mitigable" for
18 construction impacts, but "Less than Significant" in terms of air quality plans and criteria
19 pollutants. AR-07742. As to Energy impacts, the DPEIR reported that the No Project Alternative
20 had "Greater than Project" impacts, but the FPEIR said that those impacts are "Less than
21 Significant." *Id.* As to Noise impacts, the DPEIR characterized the No Project Alternative as
22 having greater than Project impacts with respect to construction and operation, whereas the FPEIR
23 reported those impacts as "Less than Significant" and "Significant but Mitigable." *Id.* As to
24 impacts on Historical Resources, Biological Resources, Geological Conditions, and Public
25 Utilities, the DPEIR reported "Greater than Project" for the No Project Alternative, but the FPEIR

26
27 ¹⁶ Legislative finding that it is the policy of the state that public agencies should not approve projects
28 as proposed if there are feasible alternatives or feasible mitigation measures available that would avoid
or reduce the significant environmental effects of such projects.

1 reported them as "Significant but Mitigable." AR-07743. With respect to impacts to
2 Paleontological Resources and Hydrology and Water Quality, the DPEIR indicated that the No
3 Project Alternative had impacts "Greater than Project," while the FPEIR reported those impacts as
4 "Less than Significant." *Id.* Similar changes were made to the assessment of the impacts of the
5 other alternatives to the Project, as between the DPEIR and FPEIR. *See* AR-07742-AR-07743.

6 In summary, the DPEIR grossly misinformed the public as to the comparative
7 environmental effects of the Project vis-à-vis the five alternatives, because the City violated
8 CEQA's mandate that a matrix summarizing the alternatives' effects on the environment display
9 only "significant" environmental effects. Instead, the DPEIR reported that on most environmental
10 issues, the alternatives had "Greater than Project" impacts, regardless of whether those impacts
11 were *significant*. The City admitted its error in its response to Citizens' comments, and corrected
12 that serious error by changing the entire content of 87.5 percent of the cells comprising that
13 matrix. The City having made these massive and fundamental changes to the "core of an EIR"
14 (*Citizens of Goleta Valley*, 52 Cal.3d at 564) the conclusion is unavoidable that Chapter 9's revised
15 alternatives analysis was "significant new information" which showed that "[t]he draft EIR was so
16 fundamentally and basically inadequate ... that meaningful public review were precluded."
17 Guidelines § 15088.5(a)(4). "The revised environmental document must be subjected to the same
18 critical evaluation that occurs in the draft stage, so that the public is not denied an opportunity to
19 test, assess, and evaluate the data and make an informed judgment as to the validity of the
20 conclusions to be drawn therefrom." *Save Our Peninsula Committee v. Monterey County Bd. of*
21 *Supervisors* (2001) 87 Cal.App.4th 99, 131 (internal quotations and citation omitted).

22 ***2. The DPEIR Identified Not One but TWO Alternatives as THE***
23 ***"Environmentally Superior Alternative"***

24 Citizens noted that the DPEIR was flawed and internally inconsistent by identifying, in
25 Chapter 9's Alternative Analysis, not one but *two* alternatives as "the environmentally superior
26 alternative." AR-06923. The City admitted that Guidelines section 15126.6(e)(2) requires that an
27 EIR identify "an environmentally superior alternative." AR-07741. Citizens pointed out that near
28 the beginning of Chapter 9, the Project was identified as the "environmentally superior

1 alternative," but at the end of Chapter 9, the "No Construction of Regents Road Bridge and
2 Widening of Genesee Avenue" alternative was determined to be "environmentally superior." AR-
3 06923; AR-07741; AR-07786.

4 In its response to Citizens' comment ("Citizens-2-23"), the City acknowledged its validity
5 and noted that in the FPEIR, the inconsistency was resolved by changing Section 9.2 to identify
6 the "No Construction of Regents Road Bridge and Reconfiguration of Genesee Avenue" as the
7 environmentally superior alternative. AR-06923. But, the City rejected summarily Citizens'
8 contention that the City's correction of its error in the FPEIR was "significant new information"
9 requiring recirculation. All the City did in its response to Citizens' argument that the correction of
10 the City's error in identifying two rather than one alternative as "environmentally superior" was to
11 reproduce the text of Guidelines Section 15088.5 and then summarily conclude that "[n]one of the
12 clarifications or amplifications set forth herein change the significance conclusions presented in
13 the Draft PEIR of substantially alter the analysis presented for public review." AR-06923-06924.
14 This is not the sort of "good faith, reasoned analysis" that CEQA requires in a response to a
15 comment from the public. Guidelines § 15088(c). Rather, it was instead a "[c]onclusory
16 statement[] unsupported by factual information [that] will not suffice." *Id.*

17 Given CEQA's requirement that an EIR identify an environmentally superior alternative,¹⁷
18 the contradictory statements in the DPEIR identifying not one but *two* different alternatives as *the*
19 environmentally superior alternative rendered the DPEIR so fundamentally and basically
20 inadequate or conclusory in nature that public comment on the DPEIR was in effect meaningless.
21 Guidelines § 15088.5. The public has a right to review and comment upon a revised DPEIR that
22 eliminates the confusion created by the City's error. Given that the alternatives analysis is "the
23 core of an EIR" (*Citizens of Goleta Valley*, 52 Cal.3d at 564), without recirculation of a revised
24 DPEIR that makes that correction and eliminates the confusion, the public will have been denied
25 "an opportunity to test, assess and evaluate the data and make an informed judgment as to the
26

27 ¹⁷ See AR-07786 (citing Guidelines § 15126.6(e)(2)) and AR-06833 (City's response to comment
28 stating that because the Project is the environmentally superior alternative and resembles a "no project
alternative," an environmentally superior alternative was selected from among the "build"
alternatives).

1 validity of the conclusions to be drawn therefrom." *Save Our Peninsula*, 87 Cal.App.4th at 131.

2 **IV. THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE SELECTION OF**
3 **EITHER THE PROJECT OR THE "NO CONSTRUCTION OF REGENTS ROAD**
4 **BRIDGE AND RECONFIGURATION OF GENESEE AVENUE" ALTERNATIVE**
5 **AS ENVIRONMENTALLY SUPERIOR TO THE NO PROJECT ALTERNATIVE**

6 Responding to a comment similar to Citizens-2-23 discussed in Section III.B.2., the City
7 stated that the Project is the environmentally superior alternative and that because it resembles a
8 "no project alternative" in that it is a "no build" alternative, the City identified from among the
9 other alternatives an "environmentally superior alternative" as required by Guidelines Section
10 15126.6(e)(2).¹⁸ AR-06833. In extensive changes to Section 9.3 of the FPEIR, the City purported
11 to resolve the ambiguity created by its misleading identification of *two* alternatives as *the*
12 environmentally superior alternative in the DPEIR. AR-07786-07787. However, once the correct
13 standard is applied to evaluate alternatives – i.e., considering only *significant* impacts of the
14 Project and five alternatives – the analysis of alternatives in Chapter 9 fails to support the FPEIR's
15 conclusion that the Project is the environmentally superior alternative and that the "No
16 Construction of Regents Road Bridge and Reconfiguration of Genesee Avenue" Alternative
17 (hereinafter, "Reconfiguration Alternative") is environmentally superior to the other alternatives.
18 Nor is there substantial evidence in the record to support that conclusion, even if the analysis had
19 used the correct standard.

19 **A. The Record Fails to Support the Conclusion that the Project is**
20 **Environmentally Superior to the No Project Alternative**

21 The City concludes, in its response to a comment, that the Project is the "environmentally
22 superior alternative." AR-06833. The analysis in Chapter 9 fails to support that conclusion, nor is
23 there substantial evidence elsewhere in the record to support that conclusion.

24 The FPEIR establishes that the Project has the following significant and unmitigated
25 environmental impacts:

- 26 1. Transportation/Circulation
27 - Roadway Segments and Intersections (Issue 1)
28 - Freeway Segments and Ramps (Issue 2)

28 ¹⁸ "If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives."

- Existing or Planned Transportation Systems (Issue 3)
- Alternative Transportation Modes (Issue 5)
2. Air Quality
 - Conflict or Obstruct Implementation of Applicable Air Quality Plan (Issue 1)
 - Conflict with Air Quality Standards (Criteria Pollutant Emissions (Issue 2)
3. Greenhouse Gas Emissions
 - Increase of Greenhouse Gas Emissions (Issue 1)
 - Conflict with Greenhouse Gas Reduction Plan, Policy or Regulation (Issue 2)
4. Noise
 - Traffic Noise (Established Standards/Operation) (Issue 3)
5. Public Services and Facilities
 - Police and Fire/Emergency Service Response Times (Issue 1)

See AR-00022 (Findings).

By way of contrast, the No Project Alternative has fewer significant unmitigated impacts, as established by the analysis in Chapter 9. Specifically, as the City acknowledged in its Findings, "the No Project Alternative would eliminate two of the significant and unmitigated impacts (air quality and noise) associated with the proposed project" AR-00039. As to the three remaining significant unmitigated impacts of the No Project Alternative – Transportation/Circulation, Greenhouse Gas Emissions, and Public Services and Facilities – the Findings admit that those impacts "would be reduced compared to the Project." *Id.*

The Findings with respect to the No Project Alternative show that the FPEIR did not correct but rather perpetuates the error Citizens identified in the DPEIR's analysis of alternatives, namely, considering impacts that are ***not significant***. See Section III.B.1. Even though the City's response to Citizen's comment asserts that Chapter 9 (including Table 9-1) has been revised to reflect application of the correct standard, in fact the FPEIR perpetuates the DPEIR's error of considering impacts that are not significant when comparing the Project to the alternatives. Specifically, as set forth in the Findings, the City states that the No Project Alternative "would result in additional significant but mitigable impacts related to land use (Issue 2), visual effects and neighborhood character ..., air quality ... (construction), historical resources ..., biological resources ..., geological conditions ..., public utilities ... and health and safety issues ... (hazardous materials) that would not occur under the proposed project." AR-00039. The City made it clear, if not in the text of the FPEIR, in a response to one of Citizens' comments on the DPEIR that "significant but mitigable" means "***less than significant with mitigation*** at the project level." AR-06925 (emphasis supplied). Thus, despite the fact that CEQA is concerned only with

1 **significant** impacts [*see, e.g.*, Pub. Res. Code §§ 21002.1(a)-(c), 21003.1(b), 21004], the City has
2 improperly relied on impacts that are **less than significant** with mitigation for its conclusion that
3 the Project is environmentally superior to the No Project Alternative.

4 Excluding the less than significant impacts, then, we are left only with the Findings'
5 concession that "the No Project Alternative would eliminate two of the significant and unmitigated
6 impacts (air quality and noise) associated with the proposed project" and that as to the three
7 other significant unmitigated impacts of the No Project Alternative (Transportation/Circulation,
8 Greenhouse Gas Emissions, and Public Services and Facilities) those impacts "would be reduced
9 as compared to the Project." AR-00039. Accordingly, the FPEIR's conclusion that the Project is
10 the "environmentally superior alternative" is not supported by substantial evidence in the record.

11 **B. The Record Fails to Support the Conclusion that the Reconfiguration**
12 **Alternative is the Environmentally Superior "Build" Alternative**

13 The Findings with respect to the Reconfiguration Alternative show that, among the five
14 "build" alternatives, with the Project in effect representing the usual "no project alternative" in that
15 it is a "no-build" alternative,¹⁹ it is not the "environmentally superior alternative." The Findings
16 concede that the Reconfiguration Alternative has the following significant, unmitigated impacts:

- 17 • Transportation/Circulation (Issues 1 through 5)
- 18 • Air Quality (Issue 1)
- 19 • Greenhouse Gas Emissions (Issues 1 and 2)
- 20 • Public Services and Facilities (Issue 1)

21 AR-00041. Thus, compared to the No Project Alternative, the Reconfiguration Alternative would
22 have significant unmitigated impacts to Air Quality, whereas the No Project Alternative would
23 not: the No Project Alternative has significant unmitigated impacts only on Transportation
24 /Circulation, Greenhouse Gas Emissions, and Public Services and Facilities. AR-0039.

25 Moreover, the Findings state as follows with respect to the Reconfiguration Alternative:

26 Significant and unmitigated impacts under this alternative related
27 to transportation/circulation (Issues 1 and 2 – roadway segments,
28 freeway segments and ramps) and GHG emissions (Issues 1 and 2)
would be reduced compared to the proposed project; **while
significant and unmitigated impacts related to**

¹⁹ See AR-06833; *see also* Guidelines § 15126.6(e)(2).

1 *transportation/circulation (Issue 1-roadway segments and*
2 *intersections) would be more significant compared to the*
3 *proposed project*, especially within the short-term condition during
 construction of the grade separation at Genesee Avenue and
 Governor Drive.

4 AR-00041-AR-00042 (emphasis supplied). So in contrast to the No Project Alternative, which
5 would have less significant impacts on all five Transportation/Circulation issues as compared to
6 the Project, the Reconfiguration Alternative would have greater impacts as compared to the
7 Project as to at least one of the Transportation/Circulation issues.

8 In identifying the Reconfiguration Alternative as environmentally superior to other
9 alternatives, the FPEIR makes the same mistake that the DPEIR, and the FPEIR in evaluating the
10 Project and No Project Alternative as discussed above in Section IV.A., viz. considering impacts
11 that are not *significant*. Specifically, the FPEIR states that "the other proposed alternatives ...
12 would result in greater impacts to biological resources." AR-07787. But the other alternatives
13 would all result in "significant but mitigable" impacts on biological resources. In its response to
14 comments, the City made it clear that "significant but mitigable" means *less than significant* after
15 mitigation. AR-06925. Impacts that are less than significant are not cognizable under CEQA.
16 See § IV.A; Pub. Res. Code §§ 21002.1(a)-(c), 21003.1(b), 21004.

17 The FPEIR also states that the Reconfiguration Alternative is environmentally superior
18 "because it would reduce impacts compared to the other proposed alternatives that propose more
19 open space as it would not construct a bridge structure." AR-07786. This statement is
20 incomprehensible and seems to conflict with a statement on the following page: the "other
21 proposed alternatives, which would result in the construction of either Regents Road Bridge or a
22 Pedestrian Bike Bridge with Emergency Access, would preserve less open space" AR-07787.
23 Even if the two contradictory quoted statements were resolved in favor of the second one, the
24 statement is unsupported by any facts, discussion or analysis in Chapter 9 or elsewhere in the
25 FPEIR. There is no substantial evidence in the record to support the second-quoted statement.

26 As the Findings concede that the No Project Alternative would have reduced impacts on
27 Transportation/Circulation, Greenhouse Gas Emissions, and Public Services and Facilities as
28 compared to the Project, and as the Reconfiguration Alternative has significant impacts on Air

1 Quality whereas the No Project does not, it cannot be disputed that the record establishes that the
2 No Project Alternative has fewer and less significant impacts than the Reconfiguration
3 Alternative. Accordingly, as confirmed by the Findings, there is no substantial evidence in the
4 record supporting the FPEIR's conclusion that the Reconfiguration Alternative is environmentally
5 superior to the No Project Alternative and is the environmentally superior "build" alternative.

6 **V. THE FINDINGS REGARDING THE NO PROJECT ALTERNATIVE'S AND THE**
7 **RECONFIGURATION ALTERNATIVE'S NONCONFORMANCE WITH**
8 **PROJECT OBJECTIVES ARE NOT SUPPORTED BY SUBSTANTIAL**
9 **EVIDENCE**

10 The Findings regarding the project objectives that the No Project and the Reconfiguration
11 Alternatives would not achieve are erroneous and not supported by record evidence. As to the
12 former, the Findings state that with adoption of the No Project Alternative, the following objective
13 "would not be achieved ...: "Evaluate the environmental impacts of the removal of the planned
14 Genesee Avenue Widening and the Regents Road Bridge projects." AR-00039. But it is evident
15 that "evaluat[ion] of the environmental impacts of the removal of the planned Genesee Avenue
16 Widening and the Regents Road Bridge projects" was the entire purpose of the EIR. *See* AR-
17 07276 (Executive Summary, stating "This PEIR analyzes the impacts related to removal of the
18 planned Genesee Avenue Widening and the Regents Road Bridge projects from the UCP ...").

19 Similarly, with respect to the Reconfiguration Alternative, the Findings state that this
20 alternative would not achieve one of four project objectives: "Consider the effects of the Project
21 on the General Plan City of Villages strategies related to emergency access and multi-modal
22 transportation." AR-00042. Here again, the PEIR did not just "consider" the effects of the Project
23 (and each of the five alternatives) on those matters, but analyzed them in some depth. *See* AR-
24 07627-07629 (analyzing impact of Project on Fire and Emergency Services); AR-07399-07401
25 (analyzing impact of Project on policies supporting alternative transportation modes). According,
26 the referenced Findings are clearly erroneous as a matter of law and lack any supporting evidence.

27 **VI. THE FINDINGS REJECTING THE ALTERNATIVES TO THE PROJECT FAIL**
28 **TO ESTABLISH THAT THOSE ALTERNATIVES ARE "INFEASIBLE"**

Where a public agency approves a project for which an EIR identifies one or more

1 significant effects on the environment, CEQA requires findings for each significant effect on the
2 environment that "specific economic, legal, social, technological or other considerations ... make
3 infeasible the ... alternatives identified in the environmental impact report." Pub. Res. Code
4 §21081(a)(3). Here, the City's findings which purport to satisfy this requirement fail to establish
5 that the No Project Alternative or the Reconfiguration Alternative is "infeasible."

6 The City's "Rationale" for its Findings supporting rejection of the No Project Alternative
7 was as follows: "While the No Project Alternative would eliminate two of the significant and
8 unmitigated impacts (air quality and noise) associated with the proposed project, **it is rejected as**
9 **infeasible because it would not substantially reduce the significant impacts associated with**
10 **the proposed project.**" AR-00039 (emphasis supplied). Note that this sentence is internally
11 contradictory: it first admits that the No Project Alternative would **eliminate** two of the significant
12 and unmitigated impacts of the Project, but then concludes that the No Project Alternative would
13 not **substantially reduce** the significant impacts of the Project. But, as to the remaining three
14 impacts, the City admits that "they would be reduced compared to the Project." *Id.*

15 Similarly, as to the Reconfiguration Alternative, the City's "Rationale" for rejecting it was
16 **"it is rejected as infeasible because it would not substantially reduce the significant impacts**
17 **associated with the proposed project** related to transportation ..., air quality..., GHG emissions
18 ... and public services and facilities." *Id.* (emphasis supplied). This, despite the concession in the
19 Findings that the Reconfiguration Alternative would have one fewer significant unmitigated
20 impact than would the Project. AR-00022; AR-00041 (Project would have significant unmitigated
21 impact with respect to Traffic Noise, but the Reconfiguration Alternative would not have any
22 significant unmitigated impact with respect to Noise).

23 But the simple determination that an alternative would not substantially reduce the
24 significant impacts associated with a project does not make it "infeasible" under CEQA.
25 "Feasible" is defined as "capable of being accomplished in a successful manner within a
26 reasonable period of time, taking into account economic, environmental, social, and technological
27 factors." Pub. Res. Code § 21061.1. The Findings are silent as to what economic, environmental,
28 social and/or technological factors make the No Project Alternative and the Reconfiguration

Alternative incapable of being accomplished within a reasonable period of time. Accordingly, the Findings fail to comply with the requirements of CEQA. Pub. Res. Code §21081(a)(3).

VII. CONCLUSION

As the Court of Appeal recently held:

Noncompliance by a public agency with CEQA's substantive requirements or noncompliance with its information disclosure provisions that preclude relevant information from being presented to the public agency constitute[s] a prejudicial abuse of discretion within the meaning of [Code of Civil Procedure] sections 21168 and 21168.5 ..., regardless of whether a different outcome would have resulted if the public agency had complied with those provisions. In other words, when an agency fails to proceed as required by CEQA, harmless error analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decision making and informed public participation.


Ukiah Citizens for Safety First v. City of Ukiah (2016) 248 Cal.App.4th 256, 261.

Sections II and III above demonstrate that the City failed to comply with the information disclosure requirements of CEQA, and Sections IV, V and VI show that the City abused its discretion by failing to comply with several of CEQA's substantive requirements. Accordingly, if the Court finds in favor of Citizens on any one of those five arguments, Citizens respectfully concludes that the Court should issue a writ of mandate directing Respondents to set aside their certification of the FPEIR for the Project.

Dated: October 20, 2017

Respectfully submitted,

CGS3 LLP

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO, CENTRAL DIVISION

13 CITIZENS FOR THE REGENTS ROAD
BRIDGE, INC., a California public benefit
14 corporation,

15 Petitioner,

16 vs.

17 CITY OF SAN DIEGO; SAN DIEGO CITY
COUNCIL; and DOES 1 through 5, inclusive,
18

19 Respondents.
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26
27
28

Case No. 37-2017-00000453-CU-TT-CTL

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF PETITION FOR WRIT OF
MANDATE**

Assigned for All Purposes To:
The Hon. Katherine Bacal
Department: C-69

Complaint Filed: January 5, 2017

1 Petitioner, CITIZENS FOR THE REGENTS ROAD BRIDGE, INC. ("Petitioner") hereby
2 respectfully requests that the Court take judicial notice, pursuant to Evidence Code Sections 452
3 and 453, of the following documents in support of its Petition for Writ of Mandate:

- 4 1. Pursuant to Evidence Code sections 452(c) and (h) and attached as Exhibit A, excerpts from
5 the City of San Diego's General Plan as it appears on the City of San Diego's website as
6 amended through June 2015;
- 7 2. Pursuant to Evidence Code sections 453(c) and (h), and attached as Exhibit B, Report to City
8 Council of the City of San Diego, (Report No. 06-102), dated July 26, 2006, re University
9 City North/South Transportation Study; and
- 10 3. Pursuant to Evidence Code sections 452(c) and (h) and attached as Exhibit C, excerpts from
11 the City of San Diego's University Community Plan as amended through February 24, 2014.

12
13
14 Dated: October 20, 2017

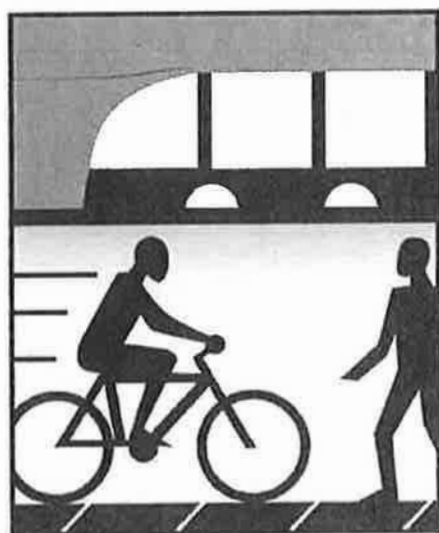
CGS3 LLP

By: 

Evelyn F. Heibelberg
Attorneys for Petitioner
CITIZENS FOR THE REGENTS ROAD
BRIDGE, INC.

EXHIBIT A

Mobility Element





Mobility Element

Purpose

To improve mobility through development of a balanced, multi-modal transportation network.

Introduction

An overall goal of the Mobility Element is to further the attainment of a balanced, multi-modal transportation network that gets us where we want to go and minimizes environmental and neighborhood impacts. A balanced network is one in which each mode, or type of transportation, is able to contribute to an efficient network of services meeting varied user needs. For example, the element contains policies that will help walking become more viable for short trips, and for transit to more efficiently link highly frequented destinations, while still preserving auto-mobility. In addition to addressing walking, streets, and transit, the Element also includes policies related to: regional collaboration, bicycling, parking, goods movement, and other components of our transportation system. Taken together, these policies advance a strategy for congestion relief and increased transportation choices in a manner that strengthens the City of Villages land use vision and helps achieve a clean and sustainable environment.



Mi Pueblo Pilot Village - Estudio Cruz



ME.B.10. Implement transit priority measures to help bypass congested areas. Priority measures include, but are not limited to, transit signal priority, queue jumpers, exclusive transit lanes, transit ways, use of freeway shoulders, and direct access ramps to freeway High Occupancy Vehicle (HOV) facilities.

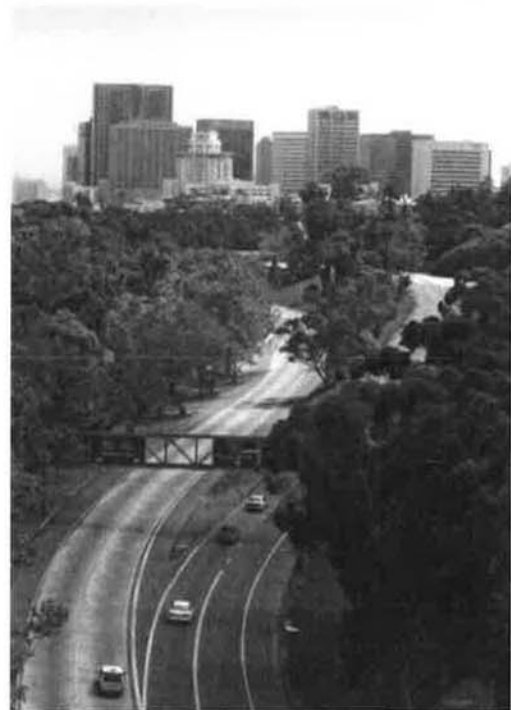
C. Street and Freeway System

Goals

- ◆ A street and freeway system that balances the needs of multiple users of the public right-of-way.
- ◆ An interconnected street system that provides multiple linkages within and between communities.
- ◆ Vehicle congestion relief.
- ◆ Safe and efficient street design that minimizes environmental and neighborhood impacts.
- ◆ Well maintained streets.

Discussion

Streets and freeways comprise the framework of our transportation system and play a major role in shaping the form of the City. The quality of the roadway system affects us whether we travel by automobile, transit, bicycle, or foot, and influences which mode of travel we choose.



State Route 163

Transportation System Planning

The Regional Transportation Plan (RTP) is a comprehensive plan for major transportation projects in the San Diego region. The RTP places a high priority on improvements to the freeways and state highways, transit services, and arterial roads that accommodate the largest volumes of regional trips. Freeway improvements are planned or underway for segments of Interstates 5, 15, and 805, State Routes 52, 54, 56,



Mobility Element

94, and 125, as well as the construction of Routes 905 and 11 along the U.S. - Mexico Border. The RTP includes an extensive Managed Lanes/High Occupancy Vehicle (HOV) network that provides priority access for Bus Rapid Transit and ride sharing. The California Department of Transportation (Caltrans) manages California's highway and freeway lanes among other responsibilities. Work on state freeways and highways is to be done in accordance with Caltrans standards. In addition to freeway construction, the RTP calls for efficiency improvements using system and transportation demand management strategies, transit service improvements, bicycling and walking infrastructure improvements, and support for transit-oriented design and development.

Streets and freeways within the City of San Diego are shown on the General Plan Land Use and Street System map (Land Use Element, Figure LU-2). This map includes the freeways, expressways, and arterial, major and collector streets needed to serve vehicular transportation demand resulting from the buildout of the City of San Diego in accordance with this General Plan. A finer level of street system details may be provided at the community plan level. As part of community plan updates, land use and street network alternatives are analyzed using transportation models and software to estimate traffic generation, forecast traffic volumes and evaluate levels of service on the transportation system for each alternative. Adopted community plans specify the planned system of classified streets within the local community.

Street Layout, Design, Operations and Maintenance

Street design (and redesign) affects how streets look and function in communities and in the City as a whole. The City of San Diego's Street Design Manual (2002) contains guidelines for the physical design of streets that consider the needs of all users of the public right-of-way. The manual includes provisions for street trees, traffic calming, and pedestrian design guidelines, and addresses how to create streets that are important public places. The Street Design Manual guidelines apply to newly developing areas and, as appropriate, to older areas undergoing redevelopment construction and whenever improvements are made to existing facilities. Opportunities for change exist when roadway improvement plans are designed to serve development projects (new growth, infill or redevelopment) and through capital improvement projects.

Travel choices and routes are affected by the connectivity of the overall street network, in addition to the design of individual streets. A high degree of connectivity is desirable as it allows for shorter travel distances between destinations and greater dispersal of traffic. Travelers benefit from shorter trips and multiple route options, and are more likely to walk or bicycle if distances are short.

While vehicle congestion relief is an overall goal of the Mobility Element, the degree of acceptable vehicle congestion will vary in different locations based on the function of the roadway and the desired community character. Decisions that must balance the



benefits and impacts of designing our transportation system for multiple modes of transportation will need to be made at the community plan or project level.

Maintenance of the City's circulation system is a critical City function that enhances safety, efficiency, and capacity of the circulation system thus enhancing mobility. Established industry metrics and benchmarking with similar municipalities, and regular assessment of system conditions form the basis for determining the level of City resources that are allocated to maintain baseline standards.

The quality of our traveling experience is also influenced by the scenic quality of the area traversed. San Diego enjoys many scenic vistas of our coastline, canyons, and other open spaces.

Scenic highways and routes provide an opportunity for people to experience these views while traveling through the City.

Policies

Transportation System Planning

- ME-C.1. Identify the general location and extent of streets, sidewalks, trails, and other transportation facilities and services needed to enhance mobility in community plans.
- a. Protect and seek dedication or reservation of right-of-way for planned transportation facilities through the planning and development review process.
 - b. Implement street improvements and multi-modal transportation improvements as needed with new development and as areas redevelop over time.
 - c. Identify streets or street segments where special design treatments are desired to achieve community goals.
 - d. Identify streets or street segments, if any, where higher levels of vehicle congestion are acceptable in order to achieve vibrant community centers, increase transit-orientation, preserve or create streetscape character, or support other community-specific objectives.
 - e. Increase public input in transportation decision-making, including seeking input from multiple communities where transportation issues cross community boundaries.
- ME-C.2. Provide adequate capacity and reduce congestion for all modes of transportation on the street and freeway system.
- a. Identify the City of San Diego's priorities for transportation infrastructure



- projects.
- b. Provide the City's identified priorities for transportation infrastructure projects to SANDAG and Caltrans for funding purposes.
 - c. Work with SANDAG and Caltrans towards the implementation of the City's identified priorities for transportation infrastructure projects (see also Public Facilities Element, Policy PF-B.3).
 - d. Collaborate with SANDAG and Caltrans to ensure that relevant General Plan policies and community plan-identified street networks are reflected in regional and state plans and programs.
 - e. Provide rights-of-way for designated HOV facilities and transit facilities on City streets where feasible.
 - f. Evaluate RTP proposals for new or redesigned streets and freeways on the basis of demonstrated need and consistency with General Plan policies and community plan facility recommendations.

Street Layout, Design and Operations

- ME-C.3. Design an interconnected street network within and between communities, which includes pedestrian and bicycle access, while minimizing landform and community character impacts.
- a. Identify locations where the connectivity of the street network could be improved through the community plan update and amendment process, the Regional Transportation Plan update process, and through discretionary project review (see also Urban Design Element, Policy UD-B.5).
 - b. Use local and collector streets to form a network of connections to disperse traffic and give people a choice of routes to neighborhood destinations such as schools, parks, and village centers. This network should also be designed to control traffic volumes and speeds through residential neighborhoods.
 - 1. In newly developing areas or in large-scale redevelopment/infill projects, strive for blocks along local and collector streets to have a maximum perimeter of 1,800 feet.
 - 2. When designing modifications/improvements to an existing street system, enhance street or pedestrian connections where possible.
 - c. Provide direct and multiple street and sidewalk connections within development projects, to neighboring projects, and to the community at large.



- d. Where possible, design or redesign the street network, so that wide arterial streets do not form barriers to pedestrian traffic and community cohesiveness.

ME-C.4. Improve operations and maintenance on City streets and sidewalks.

- a. Regularly optimize traffic signal timing and coordination to improve circulation. Implement new signal and intersection technologies that improve pedestrian, bicycle, and vehicular safety while improving overall circulation.
- b. Adequately maintain the transportation system through regular preventative maintenance and repair, and life cycle replacement.
- c. Encourage community participation in planning, assessing, and prioritizing the life cycle management of the circulation system.
- d. When new streets and sidewalks are built and as existing streets and sidewalks are modified - design, construct, operate, and maintain them to accommodate and balance service to all users/modes (including walking, bicycling, transit, high occupancy vehicles (HOVs), autos, trucks, automated waste and recycling collection vehicles, and emergency vehicles).
- e. Continue to pursue adequate maintenance of sidewalks by property owners and investigate new approaches to facilitate improved sidewalk maintenance citywide.

ME-C.5. Install traffic calming measures as appropriate in accordance with site-specific recommendations which may include, but are not limited to, those identified on Table ME-2, to increase the safety and enhance the livability of communities.

- a. Use traffic calming techniques in appropriate locations to reduce vehicle speeds or discourage shortcutting traffic.
- b. Choose traffic calming devices to best fit the situations for which they are intended.
- c. Place traffic-calming devices so that the full benefit of calming will be realized with little or no negative effect upon the overall safety or quality of the roadway.
- d. Design traffic calming devices appropriately, including consideration for: accessibility; drainage; underground utilities; adequate visibility; the needs of emergency, sanitation, and transit vehicles; and landscape.
- e. Weigh any potential undesired effects of traffic calming devices (such as



Mobility Element

increased travel times, emergency response times, noise, and traffic diversion) against their prescribed benefits.

ME-C.6. Locate and design new streets and freeways and, to the extent practicable, improve existing facilities to: respect the natural environment, scenic character, and community character of the area traversed; and to meet safety standards.

- a. Establish general road alignments and grades that respect the natural environment and scenic character of the area traversed. This could be accomplished through use of a modified or truncated grid system.
- b. Design roadways and road improvements to maintain and enhance neighborhood character.
- c. Design streets and highways that incorporate physical elements to improve the visual aspects of roadways.
- d. Provide adequate rights-of-way for scenic lookouts, and obtain scenic easements to ensure the preservation of scenic views.
- e. Preserve trees and other aesthetic and traffic calming features in the median and along the roadside.
- f. Avoid or minimize disturbances to natural landforms.
- g. Contour manufactured slopes to blend with the natural topography.
- h. Promptly replant exposed slopes and graded areas to avoid erosion.
- i. Employ landscaping to enhance or screen views as appropriate.
- j. Select landscape designs and materials on the basis of their aesthetic qualities, compatibility with the surrounding area, and low water demand and maintenance requirements.
- k. Utilize signs, lights, furniture, and other accessories suitable for the location.
- l. Place utility lines underground.
- m. Emphasize aesthetics and noise reduction in the design, improvement, and operation of streets and highways.



Greater North Park, interconnected street network



- n. Avoid frequent driveway curb cuts that create conflict points between autos and pedestrians.

ME-C.7. Preserve and protect scenic vistas along public roadways.

- a. Identify state highways where the City desires to preserve scenic qualities and work with Caltrans to pursue official scenic highway designation.
- b. Designate scenic routes along City streets to showcase scenic vistas and to link points of visitor interest.
- c. Adopt measures to protect aesthetic qualities within scenic highways and routes.

Project Review Considerations

ME-C.8. Implement Traffic Impact Study Guidelines that address site and community specific issues.

- a. Give consideration to the role of alternative modes of transportation and transportation demand management (TDM) plans in addressing development project traffic impacts.
- b. Consider the results of site-specific studies or reports that justify vehicle trip reductions (see also ME-E.7).
- c. Implement best practices for multi-modal quality/level of service analysis guidelines to evaluate potential transportation impacts and determine appropriate mitigation measures from a multi-modal perspective.

ME-C.9. Implement best practices for multi-modal quality/level of service analysis guidelines to evaluate potential transportation improvements from a multi-modal perspective in order to determine optimal improvements that balance the needs of all users of the right of way.

ME-C.10 Provide transportation facilities to serve new growth in accordance with Policies ME-K.4-K.6, and Public Facilities Element, Sections A-C.

EXHIBIT B



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: July 26, 2006 REPORT NO: 06-102

ATTENTION: Council President and City Council
Docket of Aug. 1, 2006

SUBJECT: University City North/South Transportation Study

REQUESTED ACTION:

Authorize the implementation of the Regents Road Bridge Alternative; and Certifying that the information contained in Project No. 27445 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Environmental Impact Report reflects the independent judgment of the City of San Diego as a Lead Agency; Stating for the record that the final EIR has been considered prior to selecting the Regents Road Bridge Alternatives; and Adopting the Findings and Statement of Overriding Considerations; and Adopting the Mitigation, Monitoring and Reporting Program for the Regents Road Bridge Alternative; and Initiating a community plan amendment to delete Genesee Avenue Widening Alternative from the University Community Plan.

MAYOR'S RECOMMENDATION:

Adopt the Resolutions

SUMMARY:

BASIS FOR RECOMMENDING REGENTS ROAD BRIDGE

On the basis of the evaluation of the various alternatives in the EIR, and in light of social and economic considerations, the Mayor is recommending that the City Council select the Regents Road Bridge Alternative and initiate an amendment to remove the Genesee Avenue widening from the University Community Plan. The merits of removing the Genesee Avenue widening would be examined during subsequent consideration of the amendment and associated CEQA review. Thus, this discussion focuses on the effects of constructing the Regents Road Bridge.

As noted previously, the Mayor is recommending moving forward with the bridge because of a number of social and economic benefits. These are described in the Findings and Statement of Overriding Considerations included as Attachments A and B to this report, and summarized below:

Improved Connectivity within University City. Connecting Regents Road would enable residents in the western portion of South University as well as the La Jolla Colony development to reach sources of everyday goods and services in the community more directly. The connection would also facilitate day-to-day automobile travel in the community, as well as

provide alternatives to the private automobile. Pedestrian and bicycle travel between South and North University would be encouraged with the bridge, which would be consistent with the Bike Master Plan. Transit vehicles could better serve the western portions of the community, by utilizing a route that currently does not exist.

Reduced Fire and Paramedic Response Time. The connection of Regents Road could reduce the emergency response time in the western portion of South University City. For example, at present, fire and paramedic vehicles from Fire Station 35, responding to an incident at Regents Road and Governor Drive covers a distance of 2.57 miles and (assuming no traffic delays) takes 4.2 minutes. With the connection of Regents Road, those emergency vehicles would have to travel only 1.5 miles and could arrive at the same location (again, assuming no traffic delays) in 2.5 minutes. Similarly, and again as an example, engines responding from Fire Station 27 in Clairemont have to cover 3.86 miles (taking 6.3 minutes) to respond to an incident at Regents Road and Arriba; with the Regents Road bridge, vehicles from Fire Station 27 travels only 2.57 miles and can arrive in 4.6 minutes. (Memorandum from Fire Chief Tracy Jarman, July 19, 2006).

Improved Emergency Access. Currently, Genesee Avenue is the only local roadway available for emergency access and/or evacuation between South and North University. Connecting Regents Road would provide an additional route for both emergency access and resident evacuation, thus reducing the congestion that would otherwise result on Genesee Avenue as the only avenue for ingress and egress in an emergency situation. Further, Regents Road would provide a critical alternative route for both emergency vehicles and residents/visitors to the community, in the event that Genesee Avenue were closed or highly congested during an emergency.

Improved Recreational Access to Rose Canyon. The Regents Road Bridge Alternative includes the construction of a paved parking lot and improved trail access for visitors to the Rose Canyon Open Space. The terminus of Regents Road on the south side of Rose Canyon has historically been used as a primary access point for the Rose Canyon open space because it avoids having to cross the railroad tracks. Currently, visitors park in the dirt at the end of the road. A 12-space parking lot including disabled-access spaces would be constructed on the west side of the roadway approaching the bridge. In addition, the upper portion of the trail would be reconstructed to better meet ADA requirements.

Construction Impacts. Construction of the Genesee Avenue Widening Alternative and the Grade Separation Alternative would be difficult and disruptive. Construction would need to be staged since traffic would have to be maintained on the facility. This constraint complicates the construction activity and worsens the length of time adjacent residents and businesses would be impacted.

Proportionate Distribution of Local Traffic. Currently, the vast majority of intra-community trips between South and North University City occur on Genesee Avenue. The connection of Regents Road would allow traffic to be distributed over two rather than one roadway.

BASIS FOR RECOMMENDING INITIATION OF AMENDMENT TO EXPLORE MERITS AND CONSEQUENCES OF REMOVING GENESEE AVENUE WIDENING FROM THE UCP

The Mayor's recommendation for initiating a community plan amendment to delete Genesee Avenue Widening Alternative from the University Community Plan, as noted above, would require subsequent consideration of the amendment and associated CEQA review. This is based on the following factors:

Neighborhood Character Impact along Genesee Avenue. As described in the EIR, widening Genesee Avenue would result in the loss of over 100 mature trees within the existing median and construction of retaining walls along much of the widened segment. This changes would have a significant impact on the character of the neighborhood along the widening. Changing the classification of Genesee Avenue from 6 to 4 lanes in the community plan would eliminate this impact.

Encroachment into Private Property along Genesee Avenue. As described in the EIR, widening Genesee Avenue would result in varying degrees of encroachment into residential as well as commercial property. This encroachment would have a financial impact on the City due to the cost of acquiring the necessary right of way. It would also have an impact on residents by diminishing their outdoor areas and bringing traffic noise closer to their homes. Businesses would be adversely affected by loss of property and the adverse affect on business during construction and modification of their existing operations to accommodate the widened roadway. Changing the classification of Genesee Avenue from 6 to 4 lanes in the community plan would eliminate this impact.

DISCUSSION

Historically, Regents Road has been planned to cross Rose Canyon to connect South and North University City. In December 1959, the City Council adopted the first Master Plan for the University Community to, "Assure that the area adjacent to the proposed site for UCSD can fully satisfy the requirements for the development of a compatible community and a local highway system for the service and convenience of a major campus." Figure 3 of this master plan showed two connections across Rose Canyon along the general alignments of Regents Road and Genesee Avenue.

In 1971, the circulation section of the UCP was updated to include the following statements: "The network of major streets proposed for the community will provide maximum auto accessibility to and from the various neighborhoods and the University. Particular attention has also been given to providing good access to the Town Center." The Circulation Figure showed the Regents Road connection over Rose Canyon. One of the proposals of this section was that, "Regents Road should be extended northerly from its present terminus at Governor Drive to Genesee Avenue as a four lane major street."

In the 1983 UCP, Regents Road was still identified as a circulation element road across Rose Canyon. This plan specifically identified development intensity based upon the anticipated circulation system which included the Regents Road bridge.

The current UC plan, adopted in 1987, continues to show Regents Road as a 4-lane facility connecting South and North University City across Rose Canyon.

In the early 1990's, the City initiated preliminary design and environmental studies for the connection of Regents Road in accordance with the Transportation Element. During this process, a number of community residents and environmental groups expressed concern over the impact of the bridge on the natural environment and recreational value of Rose Canyon. In addition, residents along the existing portions of Regents Road expressed concern over the increase in traffic volume resulting from connecting the two roadway segments. Concerns focused on safety issues related to children walking to school as well as noise impacts on nearby residents. The initial design efforts were subsequently placed on hold by the City.

In response to the concerns expressed by members of the community, the City initiated the University City North/South Transportation Corridor (UCNSTC) Study. This study included two principal elements: preliminary design and environmental review. In January 2003, the City undertook the UCNSTC Study to examine options available to improve traffic flow between the northern and southern portions of University City. This study was focused on examining a variety of potential solutions rather than concentrating solely on connecting Regents Road and widening Genesee Ave. The goal was to develop various combinations of roadway changes, referred to as "Alternatives", which could reduce traffic congestion on roadways connecting the southern and northern portions of the community.

To ensure that all potential alternatives were considered, the City hired a consultant team and selected a Public Working Committee (PWC) to advise the City on available options. The PWC had a membership of 30 people including residents, businesses and other stakeholders in the community. The PWC met regularly for six months in 2003. Initially, the PWC reviewed the nature of the traffic congestion facing the community and the reasons for the problems. Subsequently, the PWC evaluated a wide variety of transportation solutions identified by the City's consultant team and provided input regarding the desirability of the solutions.

Ultimately, the City in cooperation with the PWC identified the seven alternatives for improving traffic flow in the community. They are as follows:

Genesee Avenue Widening and Regents Road Bridge Alternative (also called the Community Plan Alternative). This alternative assumed implementation of the ultimate configuration of Genesee Avenue and Regents Road as identified in the UCP Transportation Element. This would include widening Genesee Avenue to six lanes and connection of Regents Road across Rose Canyon as a four lane roadway.

This alternative would include other modifications to the local roadways which were identified in the process of the UCNSTC study. Collectively, these modifications are referred to as "Limited Roadway Change" (LRC). Since these changes would benefit traffic flow regardless of Genesee Avenue Widening or the Regents Road Bridge, the LRC improvements were assumed to be a part of each alternative, except for the No Project Alternative. The three basic elements of the LRC are as follows:

- Adding a second left-turn lane along southbound Genesee Avenue to east bound SR-52;
- Adding a second left-turn lane from southbound Regents Road to east bound SR-52; and

- Adding a second westbound left-turn and an exclusive westbound right-turn lane at the intersection off Governor Drive and Genesee Avenue.

Genesee Avenue Widening Alternative. This alternative would involve adding a travel lane in each direction between SR-52 and Nobel Drive in an effort to increase the capacity of this roadway to carry anticipated traffic volumes. It would include all of the limited roadway changes described previously but would not include the Regents Road Bridge.

Regents Road Bridge Alternative. This alternative would involve construction of two separate, parallel, two-lane bridge structures across Rose Canyon to connect the existing ends of Regents Road. It would include all of the limited roadway changes described previously. Genesee Avenue would not be widened.

Grade Separation Alternative. This alternative would involve construction of a grade separation structure at the intersection of Genesee Avenue and Governor Drive. The two inside lanes of Genesee Avenue (one in each direction) would be lowered to pass under Governor Drive without signalization. It would include all of the limited roadway changes described earlier. This alternative would not include the Regents Road Bridge.

Grade Separation and Regents Road Bridge Alternative. This alternative would include the grade separation at the Genesee Avenue/Governor Drive and the bridge to connect Regents Road. It would include all of the limited roadway changes described below. None of the widening included in the Genesee Avenue Widening Alternative would be undertaken.

Limited Roadway Changes Alternative. This alternative would construct all of the limited roadway changes discussed earlier but would not widen Genesee Avenue, the Regents Road Bridge nor construct a grade separation at Genesee Avenue/Governor Drive.

No Project Alternative. The No Project Alternative assumes: (1) no widening would occur along Genesee Avenue, (2) no Regents Road Bridge across Rose Canyon and (3) no grade separation at the Genesee Avenue and Governor Drive intersection. In addition, none of the limited roadway changes would occur. However, the balance of the future roadway improvements included in the UCP Public Facilities Financing Plan as well as mass transit projects envisioned by the RTP prepared by SANDAG were assumed to occur.

Once these seven alternatives were identified and preliminary design completed for each, an EIR was prepared to evaluate the potential impacts of each of the alternatives. In deference to the broad range of opinions on the subject, the EIR did not identify a preferred project but evaluated each alternative equally. The primary goal of this approach was to allow the decision-makers to select an alternative based on a comparison of environmental consequences combined with social and economic factors associated with each alternative.

The EIR was circulated for public review between November 23, 2004 and April 16, 2005. During the public review period, a total of 373 comment letters, outlining over 3,000 individual comments, were received from public agencies, private organizations, and individuals. Volumes V.A and V.B of the Final EIR contain a list of those who commented and detailed responses to each of the comments.

The prospect of constructing Regents Road Bridge has deeply divided the University community for nearly two decades. Many members of the public have wanted the EIR to rank the alternatives considered in the UCNSTC Study on the basis of environmental issues. Such a ranking is problematic because different groups in the community assign different weights to different factors. Efforts to achieve compromise have been unsuccessful.

FISCAL CONSIDERATIONS:

Implementation of the Regents Road Bridge Alternative would require design and refinement of the preliminary estimates. The first stage of implementation would be design and would require future council action for a consultant agreement. A Community Plan Amendment to delete the Genesee Avenue Widening Alternative would likely be a General Fund supported activity to complete land use and other community plan level studies and process necessary to support the deletion action.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Consultant Agreement (R-297850) adopted April 21, 2003; First Amendment to Consultant Agreement (R-301102) adopted December 5, 2005.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Over the past three and a half years, the City has focused on providing residents, businesses and other interested parties with the most current and up-to-date information about the project. In addition to the creation of a Public Working Committee (referenced earlier in this report), a Web site was established and maintained, information materials were drafted and distributed, interested parties email and mailing databases were created for project information dissemination, and a scoping meeting and two public information sessions were held.

Study Web site. At the onset of the study process, an independent web site (www.ucnorthsouth.com) was established. The web site was updated on a regular basis with information and news. During the PWC process, the meeting agendas, summaries and presentations for each of the 10 meetings, along with the committee's final report were posted for public access. From this web site, questions, comments or concerns about the project could be emailed to the City. All emails were reviewed and responded to within one business day. In addition, there was a page where interested parties could sign up to receive email or mail updates. All contact information gathered through the web site was added to the study interested parties database.

Information Materials. One fact sheet and one "frequently asked questions" document were prepared to highlight the purpose and need of the study. These materials were posted on the project web site and made available at all PWC and public information meetings. Two study articles were also drafted for publication in local news publications and organization newsletters. These articles provided milestone updates about the study's progress and next steps. Another outreach mechanism utilized was a project-specific newsletter. Three editions of the newsletter were drafted, printed and distributed to all residents and businesses on the project database. Not only did these newsletters contain information about the study, they also noticed the scoping

meeting and public information sessions. News releases were also drafted and distributed to local media outlets with project announcements and updates.

Interested Parties Database. Over the course of the outreach efforts, contact information for residents, businesses, stakeholders and interested parties was gathered and assembled into one project database. This database was used for the newsletter distributions. Email addresses were also captured in this database. Several email announcements were drafted and distributed to the email database.

Scoping Meeting. A scoping meeting was held on Oct. 23, 2003 to provide an opportunity for community and business members to provide input on what issues should be evaluated in the draft EIR. Approximately 50 speakers were given two-minute intervals in which to provide their comments for consideration in the draft EIR process. Written comments were accepted as well and carried equal weight.

Information Sessions. Two public information sessions were held in the community to provide the public with background information on the project. Display boards and project team members were available to provide answers to questions and clarify information. The first information session was held prior to the formal scoping meeting at University City High School; 119 people attended the scoping meeting and information session. The second was held on Dec. 9, 2004 at the Doyle Park Community Center; 174 people attended.

KEY STAKEHOLDERS AND PROJECT IMPACTS:

KEY STAKEHOLDERS

As a City-initiated project, selection of the Regents Road Bridge Alternative no property owners, developers or businesses have a direct financial interest. However, as indicated by the 373 comment letters received on the EIR and the past controversy associated with the bridge, a number of individuals, businesses and organizations within the community are interested in the outcome of the Council's decision with respect to transportation improvements within the community and Rose Canyon, in particular.

It should be noted that the procurement advertising for the EIR preparation envisioned that the selected consultant would also prepare final engineering plans if any transportation improvements were to be ultimately selected by the Council.

PROJECT IMPACTS

The Final EIR concludes that implementation of the Regents Road Bridge Alternative would result in significant impacts related to land use and planning, biology, noise, neighborhood character/aesthetics, landform alteration, geology/soils, recreation, hydrology/water quality, cultural resources, paleontological resources, and human health and public safety. Unlike projects involving development, the Regents Road Alternative would not result in significant impacts with respect to traffic due to the fact that it would not generate trips and would allow traffic between South and North University City to travel two roadways rather than one. Therefore, traffic impacts are not considered significant.

The significant environmental impacts related to the Regents Road Bridge Alternative are summarized below. The ability of the mitigation measures contained in the Mitigation Monitoring and Reporting Plan (MMRP) to reduce these impacts is also discussed. The MMRP is included with this report as Attachment C.

To facilitate an overall comparison of the environmental consequences of the Regents Road Bridge Alternative with the other six alternatives, Table S-3 from the EIR is included with this report as Attachment D.

Neighborhood Character/Aesthetics. The Regents Road Bridge would result in the obstruction of vistas or scenic views from public viewing areas along the rim of the canyon as well as within the canyon floor along the hiking and biking trails. The introduction of a bridge spanning the canyon would significantly impact the aesthetic character of this portion of Rose Canyon by introducing a large, manmade concrete structure. The EIR concludes that no mitigation measures are available to reduce significant aesthetic impacts of the Regents Road bridge component to below a level of significance.

Landform Alteration. A ridge located in the approach to the south end of the Regents Road Bridge would be significantly altered. Cut slopes would approach 40 feet while fill slopes would reach a maximum height of 70 feet. The EIR concludes that no mitigation measures are available to reduce these significant landform alteration impacts to below a level of significance.

Recreation. The Regents Road Bridge would result in significant impacts to recreation activities within Rose Canyon. The Regents Road Bridge would permanently alter the existing noise environment and visual quality of the part of Rose Canyon crossed by the new bridge. The EIR concludes that no mitigation measures are available to reduce significant recreation impacts to below a level of significance.

Biological Impacts. While the bridge would minimize roadway impacts by spanning the canyon, construction of the bridge would impact 1.23 acres of wetlands as well as 3.93 acres of coastal sage scrub, 0.31 acres of oak woodland and 4.93 acres of non-native grasslands, each of which are considered sensitive biological resources. Construction could also impact two pairs of coastal California gnatcatchers by reducing potential habitat and/or interfering with nesting activities due to construction noise disruption.

Unlike impacts to aesthetics/neighborhood character, landform and recreation, the FEIR identifies mitigation measures which would reduce biological impacts to below a level of significance. Mitigation for wetlands would be achieved through a compensation program which would replace lost wetland at a ratio of 3:1. Upland vegetation impacts (e.g. coastal sage scrub, oak woodland and non-native grassland) would be achieved by preserving high quality biological resources within the Rose Canyon watershed.

Cultural Resources. The Regents Road Bridge could impact historic resources known to exist within the bridge alignment. However, implementation of the monitoring and data recovery measures required of the project would reduce cultural resource impacts to below a level of significance.

Paleontological Resources. The Regents Road Bridge Alternative could impact geologic formations with a moderate to high potential for significant fossils. However, implementation of the monitoring and resource recovery measures required of the project would reduce paleontological resource impacts to below a level of significance.

Noise Impacts. Connection of Regents Road between South and North University City would substantially increase traffic noise on this road between Governor Drive and Nobel Drive. The FEIR concludes that the traffic noise on this segment would increase by up to 12 decibels (dB(A)); an increase of 3 dB(A) is considered significant. The FEIR concludes that noise barriers (e.g. masonry or plexi-glass barriers) and/or architectural modifications (e.g. mechanical ventilation or dual-pane windows) would be able to reduce traffic noise impacts to below a level of significance, but only if the affected property owners permits the City to install the needed noise attenuation measures. Thus, the FEIR concludes that traffic noise impacts may not always be able to be reduced to below a level of significance.

Geology/Soils. The Regents Road Bridge Alternative would be located in areas subject to geologic hazards. As standard engineering design would assure that structural elements would be designed in accordance with seismic risks, significant geologic hazards would be avoided.

Human Health and Public Safety. Hazardous materials associated with the gas stations at the intersection of Governor Drive and Genesee Avenue could pose a public safety risk to construction workers. However, compliance with local, state and federal laws regulating hazardous waste would avoid significant impacts.

Hydrology/Water Quality. Implementation of the Regents Road Bridge Alternative is required to comply with the City of San Diego's Stormwater Regulations, as described in Chapter 4, Section 10. Compliance would avoid significant impacts to water quality.

Patti Bockamp
Director of Engineering & Capital Projects

R. F. Haas
Deputy Chief of Public Works

Attachments:

Attachment A: Candidate Findings
Attachment B: Statement of Overriding Considerations
Attachment C: Mitigation Monitoring and Reporting Plan
Attachment D: Table S-3: Comparison of Impacts of Alternatives
Attachment E: Memorandum from Fire Department dated 7/19/06

Due to the size of the attachments, they are available for viewing at the City Clerk's office located on the second floor of the City Administration Building, 202 C Street, San Diego, CA 92101.

EXHIBIT C



UNIVERSITY
COMMUNITY
PLAN

University

Community Plan

Prepared by

The University Community Planning Group

and

City of San Diego Planning Department

202 C Street, MS 4A
San Diego, CA 92101



Printed on recycled paper.

This information, or this document (or portions thereof), will be made available in alternative formats upon request.

UNIVERSITY COMMUNITY PLAN AMENDMENTS

The following amendments have been incorporated into this October 2014 posting of this plan:

Amendment	Date Approved by Planning Commission	Resolution Number	Date Adopted by City Council	Resolution Number
University Community Plan approved.	December 18, 1986		July 7, 1987	R-268789
Applied implementation of CPIOZ "B" and additional development guidelines for specific properties.			January 12, 1988	R-270138
Added Urban Design Element, miscellaneous consistency changes, and modifications to the 1987 community plan required by Coastal Commission.			January 16, 1990	R-274998
Added residential, office/commercial use and increased development intensity in Table 3, the Goodwin/Smith subarea 29 and reduced development intensity in Regents Park subarea 24			November 14, 2000	R-294148
Redesignated a portion of subarea 40 from commercial to multi-family residential and increased allowable development intensity			November 21, 2000	R-294273
Public safety services language amended	August 10, 2006		December 6, 2006	R-302145
Redesignated a portion of the Costa Verde subarea 47 from Visitor Commercial to High Density Residential			September 17, 2007	R-302997
Increased allowable development intensity on the University Towne Centre subarea 43 by 750,000 sf and a maximum 300 multi-family residential units			July 29, 2008	R-304023

Added MCAS Miramar ALUCP policy language and deleted references and maps to the NAS Miramar CLUP.	February 17, 2011		April 26, 2011	R-306737
Redesignated a 5 ac portion of Goodwin/Smith subarea 29 from Scientific Research to Business Park and increased allowable development intensity			Mar 13, 2012	R-307324
Redesignated a 7.93 ac site in La Jolla Crossroads subarea 40 from Scientific Research to High Density Residential			December 04, 2012	R-307935
Increased the allowable development intensity from 20,000 sf/ac to 35,000 sf/ac of Scientific Research use on a 7.076 ac site in subarea 31			January 29, 2013	R-307980
Increased allowed square footage for medical office use and redesignated a portion of Scripps Memorial Hospital subarea 4 from Commercial Office to Public Facilities-Institutional			September 10, 2013	R-308380
Removed residential land use from the La Jolla Commons subarea (Subarea 29) in Table 3 of the Development Intensity Element and allowed the option to build office, hotel or office and hotel uses.	January 30, 2014	4579-PC	February 24, 2014	R-308755
On August 14, 2014, amended the City of San Diego Local Coastal Program – Coastal Land Use Maps to include the North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program (NCC PWP/TREP) Project Overlay Map and Project Overlay Improvements Map.				PWP-6- NCC-13- 0203-1



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Table of Contents

PREFACE

Plan Organization.....	1
Framework of Existing Planning Documents.....	2

BACKGROUND

Regional Context	9
Planning Area Boundaries	9
General Area Setting.....	10
Planning and Development History	12
Overriding Plan Goals.....	14
Plan Summary	21

PLAN POLICY ELEMENTS

Urban Design Element.....	29
Transportation Element.....	135
Development Intensity Element.....	161
Housing/Residential Element.....	179
Commercial Element	193
Industrial Element.....	201
Public Facilities Element	209
Open Space and Recreation Element.....	217
Noise Element.....	233
Safety Element.....	241
Resource Management Element	251
General Plan Consistency Element.....	259

IMPLEMENTATION

Facilities Implementation.....	265
Development Controls	266

APPENDIX

Trip Generation Rates Summary	271
-------------------------------------	-----

List of Figures

Figure 1. Framework of Existing Planning Documents	3
NCC PWP/TREP Project Overlay	Map 1A
NCC PWP/TREP Project Overlay Improvements	Map 2B
Figure 2. Regional Location Map.....	8
Figure 3. Vicinity Map	11
Figure 4. Generalized Land Use Plan - 1989	20
Figure 5. Extent of Urbanization.....	30
Figure 6. Major Subareas	34
Figure 7. 1989 - UCSD Long Range Development Plan	36
Figure 8. Proposed Street Widening.....	49
Figure 9. Community Unifying Roads.....	66
Figure 10. Primary Pedestrian Network.....	75
Figure 11. Pedestrian Crossings	78
Figure 12. Urban Node.....	82
Figure 13. Torrey Pines Subarea #1	96
Figure 14. Central Subarea #2	110
Figure 15. Miramar Subarea #3.....	122
Figure 16. South University Subarea #4	128
Figure 17. Traffic Volumes 1985-1986.....	136
Figure 18. Existing Transit Service - September 1988	138
Figure 19. Projected Traffic Volumes.....	145
Figure 20. Recommended Street Network	146
Figure 21. Short Range Transit Plan	148
Figure 22. Proposed Light Rail Transit and Shuttle Loop	150
Figure 23. Bikeways.....	153
Figure 24. Bicycle Facilities Classifications	154
Figure 25. Bicycle Parking.....	157
Figure 26. Land Use and Development Intensity Subarea.....	163
Figure 27. Community Plan Implementation Overlay Zone Map.....	175
Figure 28. Existing Residential Development.....	180
Figure 29. Residential Densities.....	184
Figure 30. Residential Infill Parcels - South University	187
Figure 31. Single-Family Protection Map.....	189
Figure 32. Community Commercial Land Use Distribution By Use	194
Figure 33. Commercial Land Uses.....	198
Figure 34. Industrial Land Uses	205
Figure 35. School Sites.....	213
Figure 36. Developed and Undeveloped Park Sites	221
Figure 37. Open Space Proposals.....	224
Figure 38. Deleted	234
Figure 39. Deleted	235
Figure 40. Geologic Hazards.....	243
Figure 41. Deleted	244
Figure 42. Deleted	245

List of Tables

Table 1. University Community Plan Land Use Summary	23
Table 2. Bus Service Characteristics	137
Table 3. Land Use and Development Intensity	164
Table 4. Development Intensities - Restricted Industrial	169
Table 5. Existing Residential Densities	179
Table 6. Community Balance Indicators	181
Table 7. Proposed Residential Density	183
Table 8. Public School Facilities	209
Table 9. Existing Park Inventory	220
Table 10. Functions of Community Open Space Areas	230

Preface

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PLAN ORGANIZATION

The University Community Plan (Plan) is composed of four major sections. These sections proceed from providing general background information about the planning area through the formulation of a plan scheme, to the description of specific implementation procedures. Each of the sections has a separate, discrete function, which is abstracted in the following paragraphs.

I. PREFACE

This section briefly overviews the organization and framework within which the Plan has been drafted.

II. BACKGROUND

The purpose of this section is to briefly describe the planning area, its setting, regional context, and planning history.

III. PLAN ELEMENTS

The Plan Elements of the Plan are discussed in this section. A comprehensive **Urban Design Element** provides a vision of the future character of the community, and makes recommendations regarding transportation linkages and urban design criteria for development in four subareas: Torrey Pines, Central, Miramar and South University. The other Plan elements establish policies relating to land use, transportation, public facilities, etc.

IV. IMPLEMENTATION

Ongoing plan implementation programs effecting development review and the provision of public facilities are listed in this final section. (Implementation of the recommendations in the **Urban Design Element** is included therein.)

FRAMEWORK OF EXISTING PLANNING DOCUMENTS

Much of the organizational framework of the Plan comes from the several related documents which, along with the Plan, establish planning and development controls within the community (**Figure 1**). The Plan is not an isolated document; rather, it represents a refinement of citywide goals contained in the City's Progress Guide and General Plan (General Plan) and earlier community plans. The Plan can be thought of as one volume in a library of pertinent documents which includes the General Plan, as well as the North University City Public Facilities Financing Plan and Facilities Benefit Assessment, the Airport Land Use Compatibility Plan for Marine Corps Air Station (MCAS) Miramar (formerly Naval Air Station Miramar), the UCSD Long-Range Development Plan, the North City Local Coastal Program and the University Community Plan Environmental Impact Report.

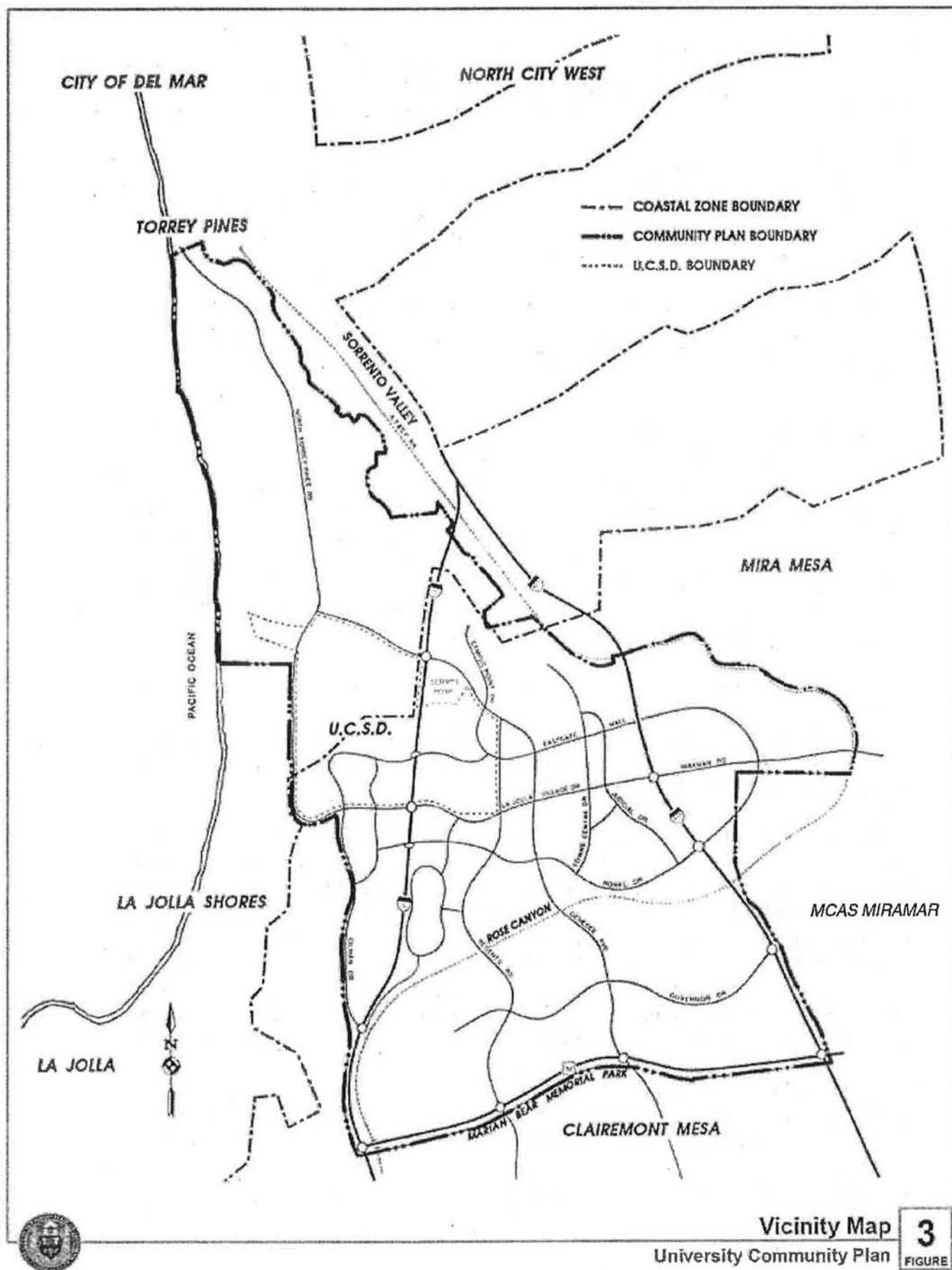
I. PROGRESS GUIDE AND GENERAL PLAN

The General Plan sets forth goals and objectives for the development of San Diego to the year 1995. It establishes the amount of land needed for various uses, and designates general locations for these uses while relating each to the other. It projects the transportation networks necessary to link all future facilities and to permit them to function efficiently. Finally, it enunciates recommendations and measures for achieving General Plan goals and objectives.

With respect to community planning areas, the General Plan establishes a framework for the development of more specific community plans by identifying and locating those facilities that possess citywide or inter-community importance. Moreover, the General Plan provides goals, standards and criteria relating to the need for, and the location of such essential intra-community facilities as neighborhood centers, neighborhood parks, and elementary schools. Within the framework of the General Plan, community plans such as this one are prepared. The Plan relies heavily on the goals and recommendations contained in the General Plan.

II. NORTH UNIVERSITY CITY PUBLIC FACILITIES PLAN AND FACILITIES BENEFIT ASSESSMENT

The General Plan recommends the division of the City into "Urbanized," "Planned Urbanizing" and "Future Urbanizing" areas. The North University portion of the University community is designated in the General Plan as a "Planned Urbanizing" area. City Council Policy 600-28 requires that a plan for the implementation of public facilities be prepared for such urbanizing areas. In order to fulfill the requirement of this policy, the North University City Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) (Financing Plan) has been prepared. This implementation program contains a development forecast and analysis, a summary of existing conditions with respect to public facilities, and a Capital Improvement Program (CIP) which lists needed facilities and an analysis of proposed and recommended financing sources. The Financing Plan also includes a development phasing plan to ensure



Vicinity Map
University Community Plan

3
FIGURE

2. Allocation of regional residential growth.
3. Provision for utility extensions (sewer and water).
4. Coordination of the major public improvement of special districts.
5. Location of regional, commercial and industrial centers.
6. Establishment of transportation systems.
7. Social, fiscal-economic and housing considerations.
8. Air and water quality decisions.

II. COMMUNITY GOALS

In the same fashion that the General Plan goals establish useful criteria for evaluating community plan alternatives in light of the external or regional context of the planning process, the following goals are particularly suited to the University community. These goals are also important guidelines in the selection of a community plan and the design of its unique features.

A. Overall Community Goals

1. Foster a sense of community identity by use of attractive entry monuments in private developments.
2. Create a physical, social and economic environment complementary to UCSD and its environs and the entire San Diego metropolitan area.
3. Develop the University area as a self-sufficient community offering a balance of housing, employment, business, cultural, educational and recreational opportunities.
4. Create an urban node with two relatively high-density, mixed-use core areas located in the University Towne Centre and La Jolla Village Square areas.
5. Develop an equitable allocation of development intensity among properties, based on the concept of the "urban node."
6. Provide a workable circulation system which accommodates anticipated traffic without reducing the Level of Service below "D."

B. Housing Goals

1. Provide a broad range of housing types and costs to accommodate various age groups, household sizes and compositions, tenure patterns (renter/owner-occupied) and income levels.
2. Encourage housing for students and employees of the University and life sciences-research facilities.
3. Locate higher density housing nearest the University, the Towne Centre core and La Jolla Village Square.
4. Provide affordable housing for low- and moderate-income households by encouraging the following efforts of the City of San Diego:
 - a. Utilization of selected City-owned properties for housing development;
 - b. Utilization of federal rental subsidy programs and state mortgage assistance programs; and
 - c. Stimulation of greater use of modular and other innovative cost-saving building techniques.
5. Encourage religious and other nonprofit organizations to develop and operate rental and cooperative housing for low- and moderate-income households.
6. Encourage a mixture of residential, commercial and professional office uses.
7. Encourage the provision of non-structured recreation areas such as open grassed playing fields.

C. Employment Goals

1. Promote job opportunities within the University community.
2. Encourage the development of life sciences-research facilities which maximize the resources of the University.

D. Commercial Goals

1. Provide a complete range of goods and services for the residents of the University community.
2. Concentrate community activities such as retail, professional, cultural, recreational and entertainment within the Towne Centre and La Jolla Village Square.

3. Accommodate professional offices and laboratory facilities and services to complement the University, the Towne Centre and the life sciences-research facilities.
4. Strategically locate neighborhood convenience centers throughout the residential areas.

E. Open Space Goals

1. Preserve the present amenities of San Clemente, Rose Canyon and other primary canyons within the community.
2. Preserve the natural environment including wildlife, vegetation and terrain.
3. Permit uses within canyons which are strictly compatible with the open space concept.
4. Ensure that all public improvements such as roads, drainage channels and utility services and all private lessee developments are compatible with the natural environment.

F. Public Facilities and Services Goal

Ensure that schools, parks, police and fire protection, sewer and water, library and other public facilities are available concurrently with the development which they are to serve.

G. Transportation Goals

1. Develop a transportation system designed to move people and goods safely and efficiently within the community, including linkages with other communities, and with due consideration for energy conservation.
2. Encourage the adequate provision of public transit between major activity areas such as the University, the Towne Centre and La Jolla Village Square.
3. Provide pedestrian paths and bikeways to accommodate the community and complement the citywide systems.
4. Encourage alternative modes of transportation by requiring developer participation in transit facility improvements, the Intra-Community Shuttle Loop and the Light Rail Transit (LRT) system.
5. Ensure implementation of City Council Policy 600-34, Transit Planning and Development.

LAND USE CATEGORIES

RESIDENTIAL

COMMERCIAL

INDUSTRIAL

BUSINESS PARK

PUBLIC/SEMI-PUBLIC

PARK

OPEN SPACE

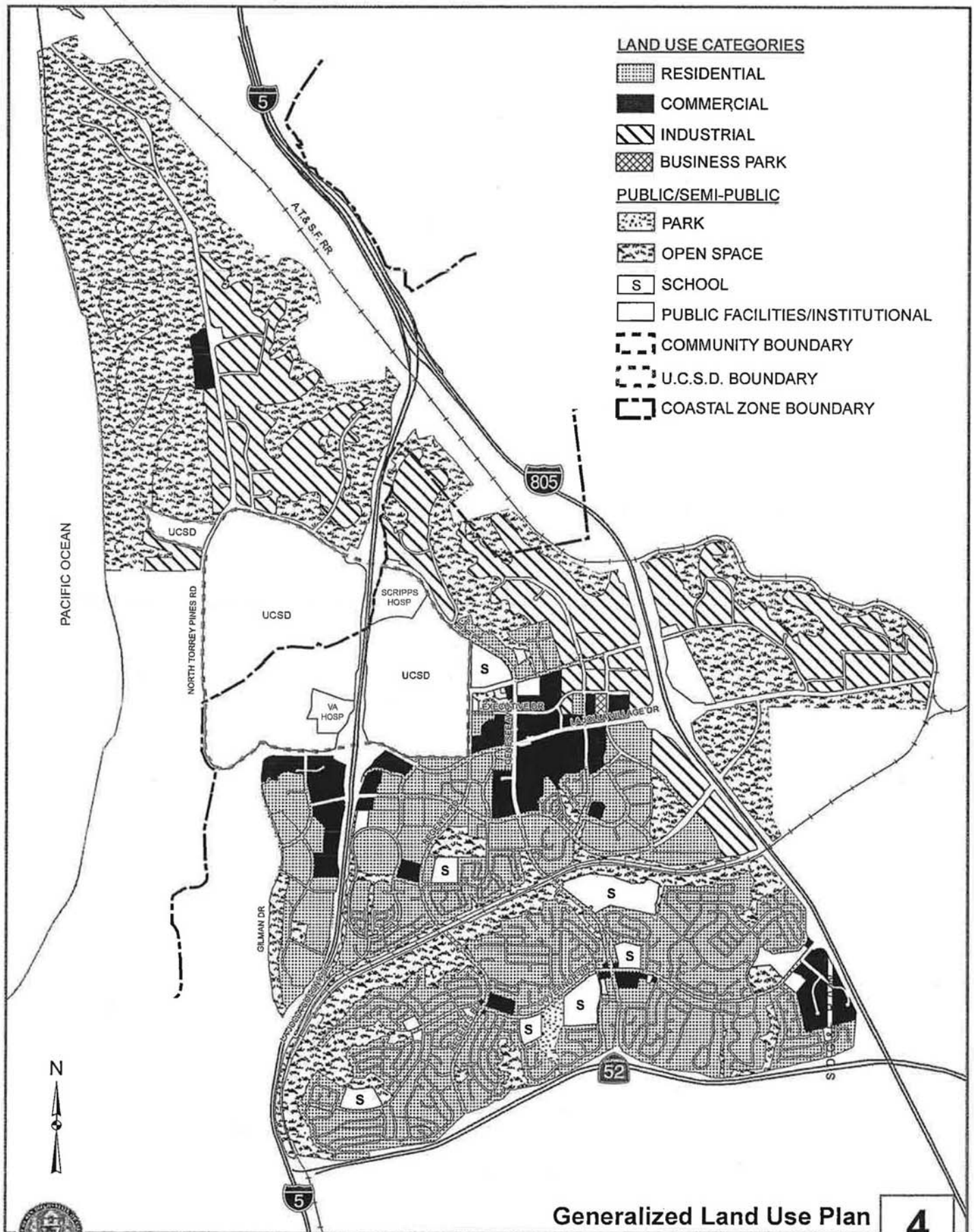
S SCHOOL

PUBLIC FACILITIES/INSTITUTIONAL

COMMUNITY BOUNDARY

U.C.S.D. BOUNDARY

COASTAL ZONE BOUNDARY



Generalized Land Use Plan
University Community Plan

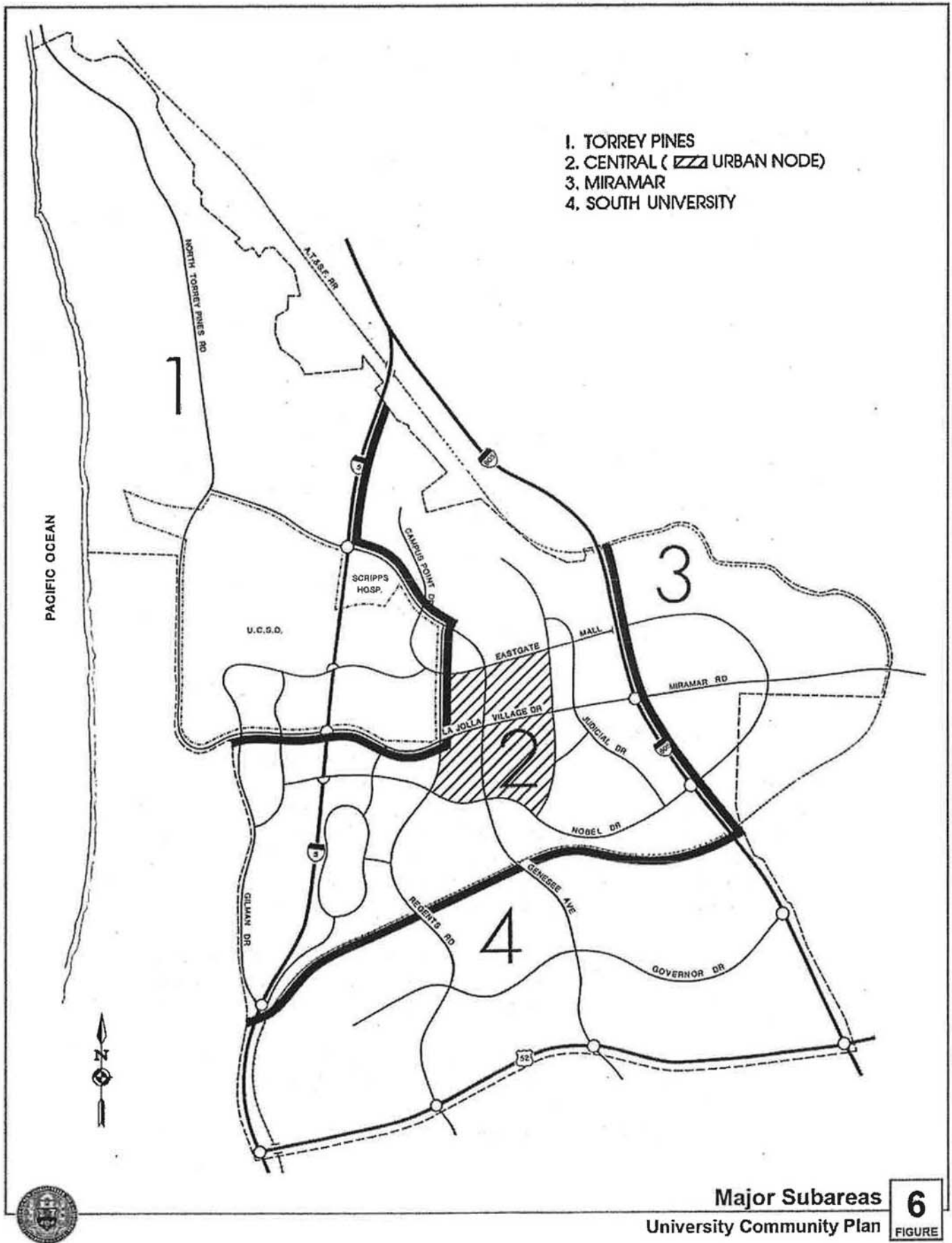
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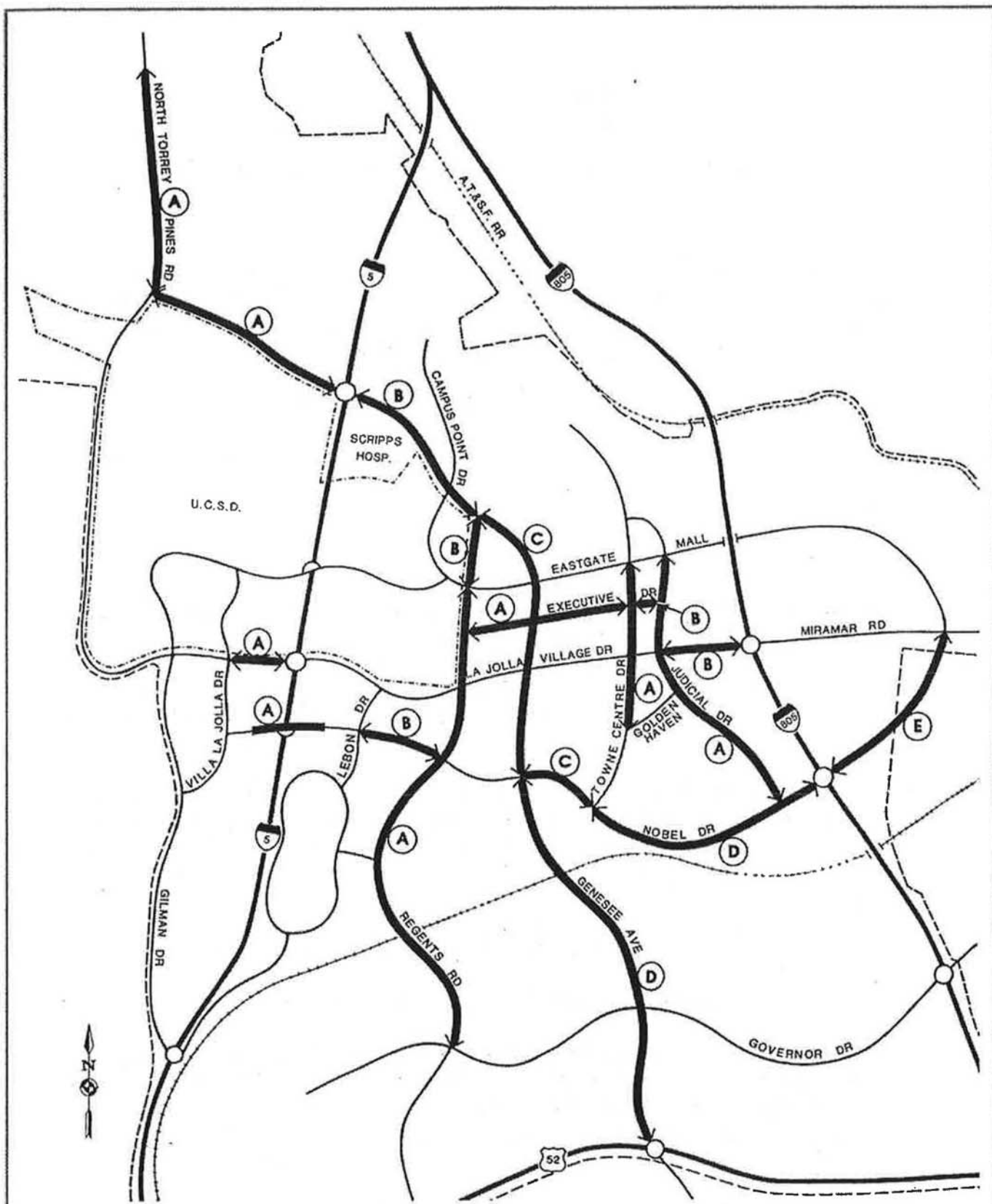
H. Community Environment Goals

1. Provide attractive community entryways.
2. Minimize the impact of aircraft noise and the consequences of potential aircraft accidents.
3. Foster individuality and identity of area throughout the community.
4. Ensure that the physical development of the community takes advantage of the site and terrain.
5. Encourage architectural styles and building forms suited to San Diego's landscape and climate.
6. Limit traffic conditions which produce congestion and air pollution.
7. Provide street and median trees along streets within the community.

I. Industrial Goals

Emphasize the citywide importance of and encourage the location of scientific research uses in the North University City area because of its proximity to UCSD.





Proposed Street Widenings (as per adopted University Community Plan)

University Community Plan

8

FIGURE

GENESEE AVENUE

Section A: Genesee Avenue: North Torrey Pines Road to I-5 (see Figure 8)

Street Classification: Six-lane primary arterial

Description of Existing/Proposed Improvements: This portion of Genesee is currently four-lanes with an 18-foot median. Steep topography characterizes both the north and south sides of the street. The widening is proposed to be accomplished within the existing right-of-way by narrowing the median to six feet. The components of this widening are to include:

- a. A landscaped median (eight feet minimum width).
- b. Contiguous sidewalks on the north side only.
- c. Class II bike lanes in both directions.
- d. No on-street parking.

Impact: Although widening within the right-of-way and the provision of a sidewalk on only one side causes little or no impact to the existing topography, the provision of a six-lane facility instead of the existing four-lane facility may preclude the landscaping of the median. (A minimum width of eight feet is needed to accommodate landscaping.) Median landscaping, however, would enhance the natural wooded character of the area and the entrance to the Torrey Pines area.

Mitigation(s): Given the topographical constraints of this road section, avoidance of this impact could be achieved by taking one foot from each side of the roadway to increase the median width to eight feet, thus enabling landscaping to be provided. This mitigation measure is strongly recommended.

Section B: Genesee Avenue: I-5 to Regents Road (see Figure 8)

Street Classification: Six-lane primary arterial with dual left-turn lanes

Description of Existing/Proposed Improvements: This portion of Genesee is a four-lane facility with an 18-foot median. The widening to six-lanes and construction of dual left-turn lanes are proposed to be located within the existing right-of-way by narrowing the median and removing existing on-street parking. The proposal calls for closing mid-block median breaks. Design components of the proposed widening are to include:

- a. A landscaped median (eight feet minimum width).
- b. Contiguous sidewalks.

- c. Provision of Class II bike lanes in both directions.
- d. No on-street parking.
- e. Retention of existing pine trees along Genesee Avenue.

Impact: The widening of this portion of Genesee and construction of dual left-turn lanes will require the narrowing of the median to a width unsuitable for landscaping and removal of on-street parking. There is not enough space for both the additional proposed lanes and a desired landscaped median.

Mitigation(s): It is recommended that a landscaped median be provided. Increased capacity should be achieved by narrowing travel lanes and removing on-street parking.

Section C: Genesee Avenue: Regents Road to Nobel Drive (see Figure 8)

Street Classification: Six-lane major with dual left-turn lanes

Description of Existing/Proposed Improvements: This portion of Genesee includes both four and six-lane sections with some parking and an 18-foot median. Improvements proposed include completion of the widening to a six-lane major and dual left-turn lanes. Design components are the same as those included in Section B (I-5 to Regents Road).

Impact: Same as Section B

Mitigation(s): It is recommended that the existing medians south of Eastgate Mall (where six lanes are provided) be landscaped. Also the pine trees along Genesee Avenue, north of Eastgate Mall, should be retained where possible.

Section D: Genesee Avenue: Nobel Drive to State Route 52 (see Figure 4)

Street Classification: Six-lane major between Nobel Drive Street and Decoro Street.
Six-lane primary arterial south of Decoro Street.

Description of Existing/Proposed Improvements: This portion of Genesee is currently a four-lane facility with an 18-foot median. The 1987 community plan proposes widening to a six-lane primary arterial. The widening of this part of Genesee is proposed to be accomplished within the existing right-of-way by narrowing the median. Components of this widening are to include:

- a. A median of at least eight feet in width.
- b. Retention of existing contiguous sidewalks.

- c. Class II bike lanes in both directions.
- d. No parking.

Impact: The widening of this portion of Genesee will require the narrowing of the 18-foot medians, portions of which are currently landscaped.

Mitigation(s): Widening is to be accomplished while maintaining a landscaped median.

REGENTS ROAD

Section A: Regents Road: Executive Drive to Governor Drive (see Figure 8)

Street Classification: Four-lane major

Description of Existing/Proposed Improvements: The Financing Plan includes the bridging of Rose Canyon to connect North and South University City. Components of these improvements are to include:

- a. Landscaping of medians including the median in Regents Road south of Nobel Drive. Median landscaping costs should be included in the North University City Public Facilities Financing Plan and Facilities Benefit Assessment.
- b. Contiguous sidewalks except on portion between Executive Drive and Nobel Drive (Urban Node) which should have non-contiguous sidewalks with landscaped parkways.
- c. Class II bike lanes in both directions.
- d. The bridge spanning Rose Canyon should include landscaping cascading down the sides to continue the vegetated character of the site.

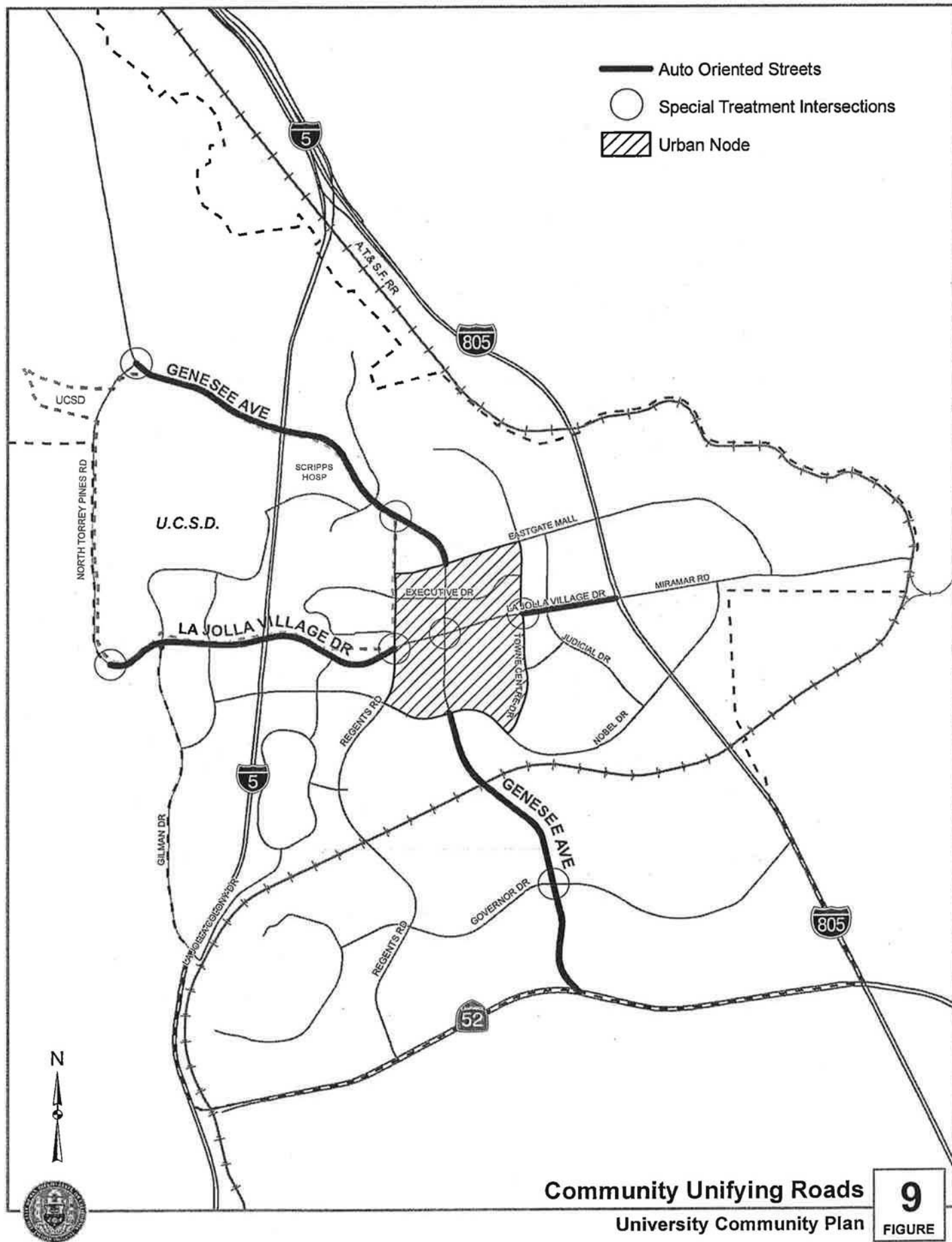
Impact: None identified.

Mitigation(s): None identified.

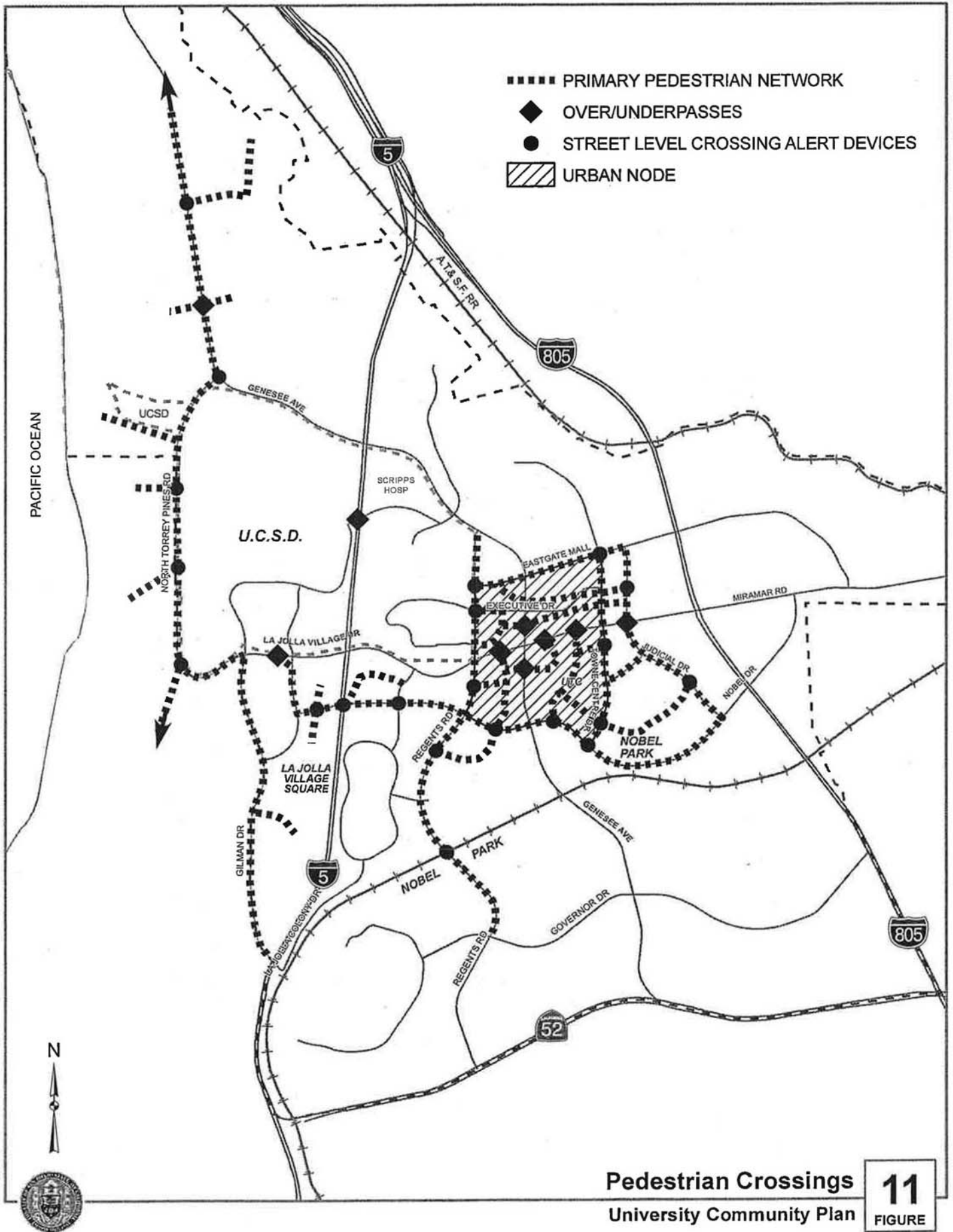
Section B: Regents Road: Genesee Avenue to Executive Drive (see Figure 8)

Street Classification: Four-lane major

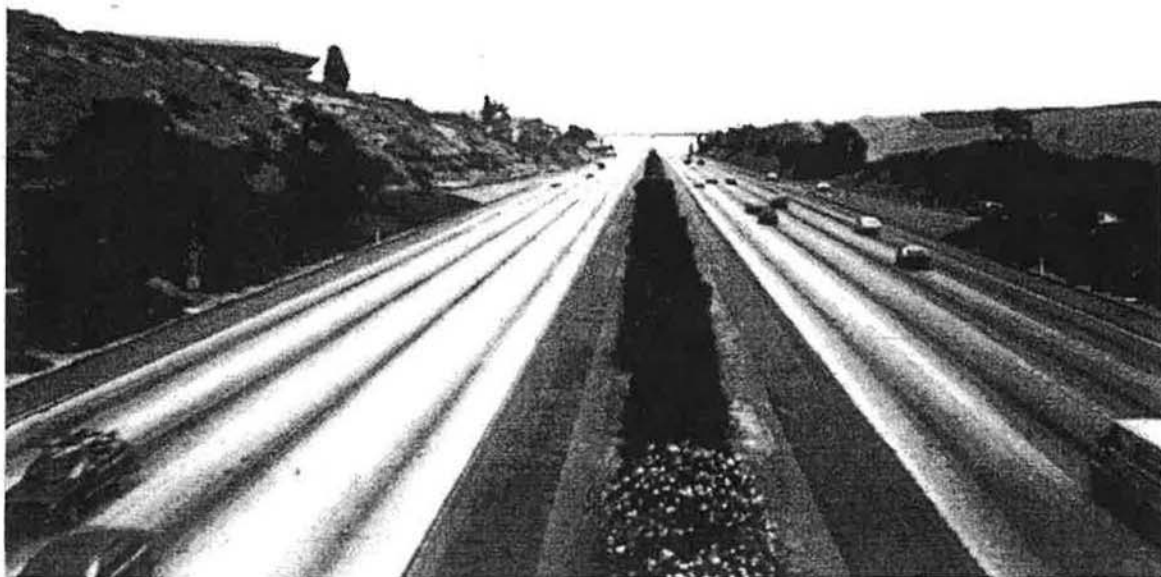
Description of Existing/Proposed Improvements: The Financing Plan provides for the widening of Regents Road between Genesee Avenue and Executive Drive from two lanes to four lanes. This part of Regents Road is adjacent to the UCSD campus and La Jolla Country Day School. Components of this widening are to include:



- PRIMARY PEDESTRIAN NETWORK
- ◆ OVER/UNDERPASSES
- STREET LEVEL CROSSING ALERT DEVICES
- ▨ URBAN NODE



Pedestrian Crossings
University Community Plan



Transportation Element

TRANSPORTATION ELEMENT

I. INTRODUCTION

The transportation of people in the University community, like all communities in the San Diego area, is highly dependent on the private automobile. The accommodation of these private automobile trips is the key constraint on development intensity in the community. Historically, the project application review process has emphasized the compatibility of proposed developments with traffic projections and anticipated street capacities. The relationship between generated traffic and available capacity has been, and will continue to be, a critical consideration in the development of the community.

While it is expected that the private car will continue to be the principal means of transportation, it is also true that the land uses proposed by this Plan are of an intensity which could support a wide variety of transportation alternatives. Therefore, this Plan element also attempts to consider the components of a viable, balanced transportation system. Provisions must be made for pedestrians, bicycles, mass transit and other systems within the community.

II. EXISTING CONDITIONS

A. Roads and Streets

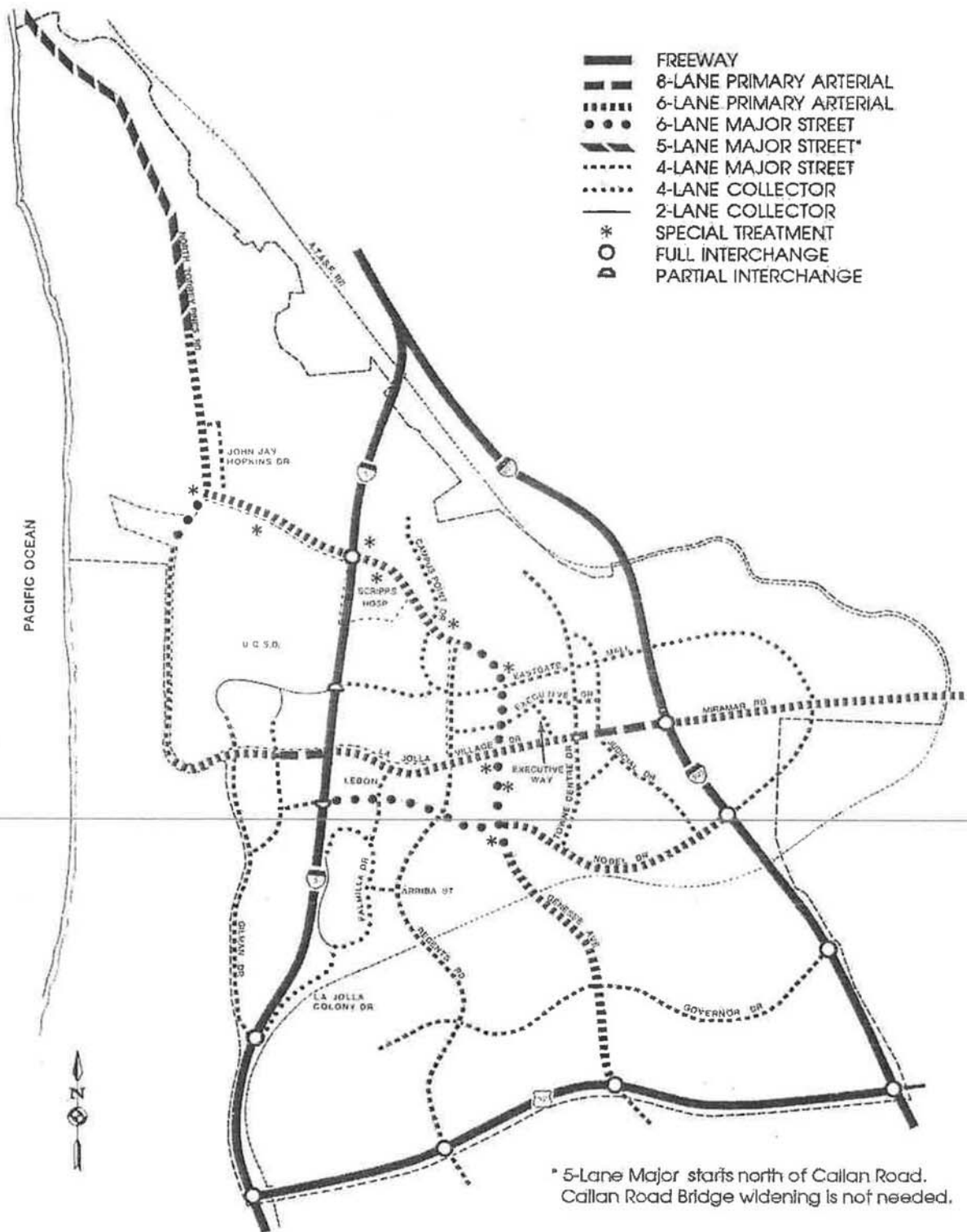
Figure 17 gives the location and daily volumes of the existing freeways and streets serving the University community. The existing system is operating adequately under current land use conditions. However, the presence of such regional generators as UCSD, the University Towne Centre and major medical-science-research centers, coupled with through traffic accessing the coast via La Jolla Village Drive and Genesee Avenue, has caused notable peak-hour congestion.

No current designated truck routes exist in the community, with the exception of the truck access gate provided by UCSD from Regents Road.

B. Mass Transit

1. Bus Service

Currently, bus service in the community is provided by five routes by San Diego Transit Corporation and one route by the North County Transit District, as indicated in **Figure 18**. The service characteristics and service areas of these routes are indicated in **Table 2**.



Recommended Street Network (Based on Community Plan Build-Out Land Uses/Development Intensities)

University Community Plan

20
FIGURE

Attorneys for Respondents City of San Diego
and San Diego City Council

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

I/C Judge: Hon. Katherine A. Bacal
Complaint filed: January 5, 2017

TABLE OF CONTENTS

	<u>Page(s)</u>
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	2
III. STANDARD OF REVIEW	3
IV. ARGUMENT	5
A. THE REMOVAL OF PROPOSED INFRASTRUCTURE IMPROVEMENTS FROM A COMMUNITY PLAN DOES NOT REQUIRE CEQA REVIEW	5
B. EVEN ASSUMING THE AMENDMENT IS A CEQA PROJECT, PETITIONER'S CLAIMS LACK MERIT	7
1. CEQA Did Not Require the EIR To Analyze the Amendment's Consistency With the General Plan, Or To Provide Detailed Responses to Petitioner's General Plan Consistency Arguments	8
2. The DEIR Was Not Required To Be Recirculated	11
(a) Only Significant New Information Requires Recirculation Of A Draft EIR	11
(b) Alteration of A Summary Table Did Not Require Re-Circulation Of The DEIR	12
(c) Clarification of the Environmentally Superior Alternative Was Not Significant New Information Requiring Re-Circulation	13
3. Substantial Evidence Supports the City's Conclusion the "Project" Is the Environmentally Superior Alternative	14
(a) Substantial Evidence In the Record Supports the City's Conclusion That The "Project" Is Environmentally Superior to the "No Project" Alternative	14
(b) Substantial Evidence In The Record Supports The City's Conclusion That The Reconfiguration Alternative Was the Environmentally Superior "Build" Alternative	17
4. Substantial Evidence Supports the City's Conclusion The Alternatives are Infeasible	18
V. CONCLUSION	19

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Bozung v. LAFCO</i> , 13 Cal.3d 263 (1975)	8
<i>California Native Plant Society v. City of Santa Cruz</i> , 177 Cal.App.4th 957 (2009).	18
<i>Citizens for East Shore Parks v. State Lands Com.</i> , 202 Cal.App.4th 549 (2011)	10
<i>Citizens for Responsible Equitable Environmental Development</i> <i>v. City of San Diego</i> , 196 Cal.App.4th 515 (2011)	8
<i>Citizens of Goleta Valley v. Board of Supervisors</i> , 52 Cal.3d 553 (1990)	4, 15, 16
<i>City of Irvine v. County of Orange</i> , 238 Cal.App.4th 526 (2015)	10
<i>City of Long Beach v. Los Angeles Unified School Dist.</i> 176 Cal.App.4th 889 (2009)	8
<i>Communities for a Better Environment</i> <i>v. South Coast Air Quality Management Dist.</i> , 48 Cal.4th 310 (2010)	7
<i>Del Cerro Mobile Estates v. City of Placentia</i> , 197 Cal.App.4th 173 (2011)	6, 7
<i>Environmental Planning & Information Council v. County of El Dorado</i> , 131 Cal.App.3d 350 (1982)	7, 8
<i>Lake County Energy Council v. County of Lake</i> , 70 Cal.App.3d 851 (1977)	6
<i>Laurel Heights Improvement Assn.</i> <i>v. Regents of University of California</i> , 47 Cal.3d 376 (1988)	4, 15
<i>Laurel Heights Improvement Assn.</i> <i>v. Regents of University of California</i> , 6 Cal.4th 1112 (1993)	4, 11, 13, 14, 15
<i>Local & Regional Monitor v. City of Los Angeles</i> , 12 Cal.App.4th 1773 (1993)	10
<i>Long Beach Sav. & Loan Assn. v. Long Beach Redevelopment Agency</i> , 188 Cal.App.3d 249 (1986)	8
<i>Marin Municipal Water District v. Kg Land Cal. Corp.</i> , 235 Cal.App.3d 1652 (1991)	15, 16

1	<i>Muzzy Ranch Co. v. Solano County Airport Land Use Com.,</i>	
2	41 Cal.4th 372 (2007)	5, 6
3	<i>Napa Citizens for Honest Government v. Napa County Bd. of Supervisors,</i>	
4	91 Cal.App.4th 342 (2001)	8
5	<i>Orange Citizens for Parks & Recreation v. Superior Court,</i>	
6	2 Cal.5th 141 (2016)	9
7	<i>Pfeiffer v. City of Sunnyvale City Council,</i>	
8	200 Cal.App.4th 1552 (2011)	8
9	<i>Residents Against Specific Plan 380 v. County of Riverside,</i>	
10	177 Cal.App.4th 957 (2017)	18
11	<i>San Diego Citizenry Group v. County of San Diego,</i>	
12	219 Cal.App.4th 1 (2013)	9
13	<i>Sierra Club v. City of Orange,</i>	
14	163 Cal.App.4th 523 (2008)	3
15	<i>State Water Resources Control Bd. Cases,</i>	
16	136 Cal.App.4th 674 (2006)	3
17	<i>The Highway 68 Coalition v. County of Monterey,</i>	
18	14 Cal.App.5th 883 (2017)	8, 9, 10
19	<i>Topanga Association for a Scenic Community v. County of Los Angeles,</i>	
20	11 Cal.3d 506 (1974)	13
21	<i>Union of Medical Marijuana Patients, Inc. v. City of San Diego,</i>	
22	4 Cal.App.5th 103 (2016),	5
23	<i>Vineyard Area Citizens for Responsible Growth, Inc.</i>	
24	<i>v. City of Rancho Cordova,</i> 40 Cal.4th 412 (2007)	4, 5, 11, 12
25	<i>Western Placer Citizens for an Agric. & Rural Env't v. County of Placer,</i>	
26	144 Cal.App.4th 890 (2006)	11
27	<i>Western States Petroleum Assn. v. Superior Court ,</i>	
28	9 Cal.4th 559 (1995)	4
	Statutes	
	Pub. Res. Code § 21065	5
	Pub. Res Code § 21092.1	11

1	Other Authorities	
2	CEQA Guidelines	
3	§ 15003.....	7
	§ 15003 (g).....	8
4	§ 15060(c) (2)	5
	§15088.....	10
5	§15088.5 (a)	12
	§ 15088.5(b).....	5, 12, 14
6	§ 15088(c).....	10
	§ 15091(a) (3)	18
7	§15105.....	3
	§ 15125.....	6, 8, 11
8	§ 15125(d).....	11
	§ 15126.6.....	6, 12
9	§ 15126.6(e)(1).....	6
	§ 15126.6(e) (2)	13
10	§ 15126.2.....	15
	§ 15378(a).....	5
11	§ 15384(a).....	13
12	Environmental Quality, section 21000 et. seq.....	2
13	Regulations	
14	California Code of Regulations, Title 14, Division 6, Chapter 3	2
15		
16		
17		
18		
19		
20		
21		
22		
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24		
25		
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1 **I. INTRODUCTION**

2 In this unusual lawsuit, Petitioner Citizens for the Regents Road Bridge, Inc. (Petitioner)
3 challenges the City of San Diego's (City) decision *not* to construct two massive parallel bridges
4 across environmentally sensitive open space in the City's Rose Canyon and *not* to expand four-
5 lane Genesee Avenue in the University area to six lanes. Petitioner claims the City's decision *not*
6 to undertake these roadway expansions, envisioned thirty year ago in the University City
7 Community Plan (Community Plan), violates the California Environmental Quality Act (CEQA).
8 The Amendment undertaken by the City to delete these elements from the Community Plan
9 recognizes these outdated roadway changes will never be built and, thus, should be removed
10 from the Community Plan. As a result of the City's decision, *the environmental status quo will*
11 *be preserved*, not impaired.

12 Therein lies the basic flaw fatal to Petitioner's lawsuit: the City's decision to remove the
13 roadway improvements from the Community Plan is not a "project" subject to CEQA because
14 the "Project" (the Amendment) will not result in a physical change to the existing environment.
15 Rather, the "Project" ensures the existing environmental circumstances — without a bridge and
16 with the existing road width — will continue. In the interest of a fully informed public evaluation
17 and discussion of its decision, the City went beyond what CEQA requires by preparing an
18 environmental impact report (EIR) for the Amendment to the Community Plan. Reflecting the
19 principle that no good deed goes unpunished, Petitioner now seeks to compel the City to do even
20 more analysis. CEQA does not require such a senseless undertaking.

21 Even if the City's decision to adopt the Amendment to the Community Plan was subject
22 to CEQA, Petitioner's unsubstantiated claims would never justify the court's issuance of a writ
23 to set aside the EIR. Petitioner's claim the City was obligated to show consistency with the
24 City's General Plan is misplaced as the exercise is not required by CEQA. So too, Petitioner's
25 claim the City should have endlessly recirculated the draft EIR for countless petty reasons is not
26 the law. And, Petitioner's quibble with the City over which "alternative" is "environmentally
27 superior" to the status quo fares no better.

At no point does Petitioner point to one “significant environmental impact” the City failed to present to the public. The City did more than CEQA requires by preparing an EIR, and nothing Petitioner has raised would justify sending the EIR back to the drawing board to provide still more analysis of a decision that serves only to protect the existing environmental status quo.

II. FACTUAL BACKGROUND

The University planning area of the City consists of approximately 8,500 acres of land bounded by Los Penasquitos Lagoon and Sorrento Valley to the north, Miramar Marine Corps Air Station (Miramar) and Interstate 805 to the east, and North Torrey Pines Road and the ocean to the west. AR: 17: 07296.¹ The area is often called the “Golden Triangle,” home to the University of California, San Diego (UCSD), Westfield University Town Center, Torrey Pines State Natural Reserve, as well as bio-tech businesses and residential communities. AR: 17: 07296 ¶2.1.2.

The Community Plan for this area was adopted thirty (30) years ago in 1987. The Transportation Element of the Community Plan was established on 30 year old traffic studies, last updated in 2012, based on 1997 modeling. AR:2:00003 ¶4-5, 17:07318 ¶3.1.1. The information was, therefore, outdated and did not reflect the most recent development in traffic patterns or mobility improvements. AR:17:07318 ¶3.1.1. To more accurately reflect the current conditions, on December 5, 2016, the San Diego City Council approved an Amendment to the Community Plan (Amendment), **removing** two previously envisioned, but now outdated, roadway improvements from the Community Plan: (1) the widening of Genesee Avenue from four to six lanes between State Route 52 and Nobel Drive (Road Widening); and (2) the construction of the Regents Road Bridge, consisting of two parallel two-lane bridges across Rose Canyon (Bridge). AR: 4:00063-65, 17:07288, 07291 ¶1.2, 07318.

¹ The City adopts the following abbreviations for purposes of its Respondent’s Brief: Administrative Record (AR)[followed by Tab, page and paragraph number], Petitioner’s Opening Brief (POB), Request for Judicial Notice (RJN), California Environmental Quality Act, California Public Resources Code, Division 13: Environmental Quality, section 21000 et. seq. (CEQA), California Code of Regulations, Title 14, Division 6, Chapter 3: Guidelines for Implementation of the California Environmental Quality Act, sections 15000-15387 (Guidelines).

1 Even though, as more fully discussed below, the Amendment removing the Road
2 Widening and the Bridge from the Community Plan does not qualify as a “project” for purposes
3 of CEQA, the City prepared an environmental impact report (EIR) for the Amendment as an
4 informational tool and to encourage public participation.² In December 2015, the City held a
5 scoping meeting. AR: 9:1538-1555, 17:07290. In June 2016, the City circulated a draft EIR
6 (DEIR) for 45 days. AR: 7:000107-000845, 17:07290.³ Over the next two months, the City
7 followed its land use review and public comment procedures, with hearings by the Planning
8 Commission and the Smart Growth & Land Use Committee. *See* AR: 23:008023-008027;
9 25:008220-008219. On December 5, 2016, the City certified the final EIR (FEIR); adopted a
10 statement of overriding considerations and mitigation monitoring and reporting program; and
11 approved the Amendment to the Community Plan preserving the actual environmental status
12 quo. AR: 3:00009-62; 4:000063-65.

13 On January 5, 2017, Petitioner sued the City alleging the FEIR was inadequate under
14 CEQA. Since an EIR was not required by law in the first place, all of Petitioner’s objections to it
15 are baseless. Further, as an informational document, all of the City’s conclusions in the FEIR are
16 fully supported by substantial evidence in the record. For all of these reasons, Petitioner’s request
17 for a writ must be denied.

18 **III. STANDARD OF REVIEW**

19 When an EIR is challenged as inadequate, the court must presume the public agency's
20 decision to certify an EIR is correct. *Sierra Club v. City of Orange*, 163 Cal.App.4th 523, 530
21 (2008). The party challenging the EIR must carry the burden of establishing otherwise. *Id.*, citing
22 *State Water Resources Control Bd. Cases*, 136 Cal.App.4th 674, 723 (2006). When reviewing an
23 agency's compliance with CEQA in the course of its legislative or quasi-legislative actions, as is
24 the case here, the courts' inquiry “extend[s] only to whether there was a prejudicial abuse of
25

26 ² The Amendment EIR tiers off the EIR prepared for the City’s General Plan in adopted in
2009. AR: 4:00063-65, 17:07288.

27 ³ Contrary to Petitioner’s contention (POB: 2), the minimum period for review is 30 days.
28 Guidelines §15105.

1 discretion.” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40
2 Cal.4th 412, 426 (2007) (*Vineyard*) citing Pub. Resources Code, § 21168.5. An abuse of
3 discretion can be established (1) if the agency has not proceeded in a manner required by law; or
4 (2) if the decision it made is not supported by substantial evidence. *Id.*, citing *Western States*
5 *Petroleum Assn. v. Superior Court*, 9 Cal.4th 559, 568 (1995), and *Laurel Heights Improvement*
6 *Assn. v. Regents of University of California*, 47 Cal.3d 376, 392-393 (1988) (*Laurel Heights I*).

7 Judicial review of these two types of alleged CEQA missteps differ significantly. When
8 determining if an agency has employed correct procedures, the court must carefully enforce all
9 legislatively mandated CEQA requirements. *Vineyard* 40 Cal. 4th at 435 citing *Citizens of*
10 *Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 564 (1990) (*Goleta*). However, when
11 determining whether an agency’s actions are supported by substantial evidence, the court must
12 accord great deference to the agency’s substantive factual conclusions and “may not set aside an
13 agency’s approval of an EIR on the ground that an opposite conclusion would have been equally
14 or more reasonable.” *Id.*, citing *Laurel Heights I*, 47 Cal. 3d at 393. The court’s task “is not to
15 weigh conflicting evidence and determine who has the better argument.” *Laurel Heights I*, 147
16 Cal.3d at 393. “The court does not pass upon the correctness of the EIR’s environmental
17 conclusions, but only upon its sufficiency as an informative document.” *Id.*, at 392.

18 Therefore, when evaluating an EIR for CEQA compliance, a reviewing court must adjust
19 its scrutiny to the nature of the alleged defect, depending on whether the claim is one of improper
20 procedure or a dispute over the facts. *Vineyard*, 40 Cal.4th at 435. Here, all of the alleged defects
21 identified by Petitioner are disputes over factual findings made by the City Council for a
22 document that was not strictly required under the law, and which can only be reviewed for
23 substantial evidence.

24 /////

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1 **IV. ARGUMENT**

2
3 **A. THE REMOVAL OF PROPOSED INFRASTRUCTURE**
4 **IMPROVEMENTS FROM A COMMUNITY PLAN DOES**
5 **NOT REQUIRE CEQA REVIEW.**

6 The City was not obligated to conduct a CEQA review for the Amendment because it is
7 not a “project” as that term is defined under CEQA. The Road Widening and the Bridge do not
8 exist. *The status quo of the environment is (1) no Road Widening and (2) no Bridge.* With the
9 deletion of both from the Community Plan neither infrastructure improvement will ever exist.
10 The Road Widening and the Bridge simply represent outdated planning concepts envisioned 30
11 years ago. The City’s purpose in preparing the EIR for the Amendment was as an informational
12 document for the public, not because it was required by CEQA.⁴

13 The first step in evaluating whether a public agency has complied with CEQA is to
14 determine whether the agency’s activity qualifies as a “project.” *Union of Medical Marijuana*
15 *Patients, Inc. v. City of San Diego*, 4 Cal.App.5th 103, 111 (2016), citing *Muzzy Ranch Co. v.*
16 *Solano County Airport Land Use Com.*, 41 Cal.4th 372, 380 (2007) (*Muzzy Ranch*). If an activity
17 is not a project, then CEQA does not apply. *Ibid.* The CEQA Guidelines define a “project” as
18 “the whole of an action, which has a potential for resulting in either a direct physical change in
19 the environment, or a reasonably foreseeable indirect physical change in the environment, and
20 that is any of the following: [¶] (1) . . . the adoption and amendment of local General Plans.”
21 CEQA Guidelines § 15378(a); see also Pub. Res. Code § 21065 [project “means an activity
22 which may cause either a direct physical change in the environment, or a reasonably foreseeable
23 indirect physical change in the environment”]; Guidelines § 15060(c) (2) [activity not subject to
24 CEQA if it does not create a change in the environment]. The term thus applies only to actions
25 that will result in a “physical change in the environment,” either directly or indirectly.⁵ *Muzzy*

26 ⁴ Indeed, Petitioner acknowledges how unusual the City’s preparation of the Amendment
27 was in a CEQA context. POB: 2 [appropriately referring to the “Project” in quotation marks].

28 ⁵ Although it specifically refers to General Plan amendments, the first clause of the
definition and the use of the conjunction “and” make clear that such amendments qualify as a
project only if they will result in physical environmental impacts. See *Union of Medical*
Marijuana Patients 4 Cal.App.5th at 115-16. 5

1 *Ranch*, 41 Cal.4th at 382. If the action involves no such change, it is not a project and is not
2 subject to CEQA. “Where future development is unspecified and uncertain, no purpose can be
3 served by requiring an EIR to engage in sheer speculation as to future environmental
4 consequences.” *Lake County Energy Council v. County of Lake* 70 Cal.App.3d 851-855 (1977).
5 “Whether an activity is a project is an issue of law. . . .” *Muzzy Ranch*, 41 Cal.4th at 382.

6 The City Council’s adoption of the Amendment to the Community Plan here will result in
7 no such physical environmental impacts. The Road Widening and Bridge removed from the
8 Community Plan were just that: **planned**. As a result, simply removing them from the
9 Community Plan will not cause any physical change to the environment; doing so simply
10 **preserves the existing environmental status quo**. Preserving the status quo creates no change in
11 the physical environment and, thus, cannot be a “project” subject to CEQA. The City cannot
12 have violated CEQA by certifying the EIR. See *Del Cerro Mobile Estates v. City of Placentia*,
13 197 Cal.App.4th 173, 181(2011) (*Del Cerro Mobile Estates*) [lead agency not required to defend
14 an EIR prepared for an activity that was not subject to CEQA].

15 By preparing an EIR, the City erred in favor of a more thorough explanation to the public
16 of the differences between the Community Plan **with** and **without** the previously planned
17 infrastructure. In doing so, the EIR compared the Amendment (no Road Widening and no
18 Bridge) with the existing Plan (future Road Widening and future Bridge). Thus, the “project”
19 here--the deletion of the Road Widening and the Bridge from the Community Plan—is **the status**
20 **quo** which will not change. See AR: 17:07319-7321; Guidelines § 15125. The EIR concluded
21 that, as compared with the existing Community Plan (future widening of the road and future
22 construction of the bridge) the Amendment (to never widen the road and never build the Bridge)
23 could, potentially, result in some traffic and other impacts. AR: 17:07726-07733.

24 But this exercise was not required by CEQA. The kind of environmental impacts that
25 trigger CEQA and can be considered “significant” are those impacts compared to the baseline
26 condition of **existing physical environmental conditions**. See CEQA Guidelines § 15126.6(e)(1)
27 [“The no project alternative analysis is not the baseline for determining whether the proposed
28 project’s environmental impacts may be significant”]. An existing plan, such as the

1 preexisting outdated Community Plan here, does not supply the baseline for CEQA purposes.
2 *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal.4th
3 310, 321 (2010), citing, among other cases, *Environmental Planning & Information Council v.*
4 *County of El Dorado*, 131 Cal.App.3d 350 (1982) (*EPIC*).

5 “CEQA nowhere calls for evaluation of the impacts of a proposed
6 project on an existing general plan; it concerns itself with the
7 impacts of the project *on the environment*, defined as the *existing*
8 *physical conditions* in the affected area. The legislation evinces no
9 interest in the effects of proposed general plan amendments on an
existing general plan, but instead has clearly expressed concern
with the effects of projects on the *actual environment* upon which
the proposal will operate.”

10 *EPIC*, 131 Cal.App.3d at 355, emphasis added.

11 The City therefore went above and beyond what CEQA required by preparing an EIR that
12 compared the Amendment with the existing Community Plan and revealed that, as compared
13 with a *hypothetical future condition*, the Amendment (removing the Road Widening and the
14 Bridge) *could have* impacts. CEQA did not require the City to provide that analysis, and,
15 therefore, CEQA provides no basis for invalidating the City’s approval of the Amendment. *See*
16 *Del Cerro Mobile Estates*, 197 Cal.App.4th at 181. The Court’s inquiry, thus, can end here.

17 **B. EVEN ASSUMING THE AMENDMENT IS A CEQA PROJECT,**
18 **PETITIONER’S CLAIMS LACK MERIT.**

19 Petitioner fails to identify any significant environmental impacts the Amendment will
20 cause or any failure in the EIR to evaluate such impacts. This is not surprising, since the
21 Amendment will do nothing to change the environmental status quo. Rather, Petitioner argues
22 the City made a variety of inconsequential errors in preparing the EIR—allegedly, an inadequate
23 discussion of General Plan consistency, inadequate responses to comments, failure to re-circulate
24 the DEIR, and inadequacy of alternatives findings. None of Petitioner’s contentions have merit.

25 To put Petitioner’s contentions in perspective, it is worth reiterating that the purpose of
26 CEQA is to ensure that public agencies fully consider the physical impacts of their projects on
27 the environment. CEQA Guidelines § 15003. The purpose of CEQA “‘is to inform government
28 decision makers and their constituency of the consequences of a given project, not to derail it in a

1 sea of administrative hearings and paperwork.” *Citizens for Responsible Equitable*
2 *Environmental Development v. City of San Diego*, 196 Cal.App.4th 515, 524 (2011), quoting
3 *Long Beach Sav. & Loan Assn. v. Long Beach Redevelopment Agency*, 188 Cal.App.3d 249, 263
4 (1986); accord Guidelines § 15003(g) [“The purpose of CEQA is not to generate paper, but to
5 compel government at all levels to make decisions with environmental consequences in mind.”],
6 citing *Bozung v. LAFCO*, 13 Cal.3d 263 (1975). None of Petitioner’s claims are rooted in a
7 failure of the EIR to adequately inform readers about “environmental consequences.”

8 1. **CEQA Did Not Require the EIR To Analyze the Amendment’s**
9 **Consistency With the General Plan, Or To Provide Detailed**
10 **Responses to Petitioner’s General Plan Consistency Arguments.**

11 Petitioner first argues that the EIR inadequately evaluated the consistency of the
12 Amendment with the General Plan. POB: 3-7. To the contrary, “CEQA does not require an
13 analysis of general plan consistency.” *The Highway 68 Coalition v. County of Monterey*, 14
14 Cal.App.5th 883, 896 (2017) (*Highway 68 Coalition*), citing *Pfeiffer v. City of Sunnyvale City*
15 *Council* 200 Cal.App.4th 1552, 1566 (2011); *see also Id.* at 893 [“We determine that the issue of
16 whether a proposed project is consistent with a . . . general plan is not a CEQA issue.”]; *City of*
17 *Long Beach v. Los Angeles Unified School Dist.* 176 Cal.App.4th 889, 918-19 (2009) [noting
18 “the lack of any obligation to discuss [general plan] inconsistencies” in the EIR]; *EPIC*, 131
19 Cal.App.3d at 354 [“CEQA nowhere calls for evaluation of the impacts of a proposed project on
20 an existing general plan”]. Rather, the EIR must disclose **inconsistencies** between the project and
21 the general plan if such inconsistencies exist. *Highway 68 Coalition*, 14 Cal.App.5th at 893-94,
22 896; Guidelines § 15125(d). Great deference is given to an agency’s determination of
23 consistency with its general plan. A government has broad discretion to construe its policies in
24 light of the plan’s purposes. *Napa Citizens for Honest Government v. Napa County Bd. of*
25 *Supervisors*, 91 Cal.App.4th 342, 386 (2001).

26 Accordingly, Petitioner’s contention that the EIR’s discussion was insufficient is
27 meritless. Petitioner can only prevail by showing that the City erred in concluding that the

28 /////

1 Amendment *is consistent* with the General Plan.⁶ It cannot.

2 The EIR concluded that the Amendment would be consistent with the General Plan.
3 To show that the conclusion was erroneous, Petitioners must show that *no reasonable person*
4 could have reached that conclusion. *See Highway 68 Coalition*, 14 Cal.App.5th at 896; see also
5 *Orange Citizens for Parks & Recreation v. Superior Court*, 2 Cal.5th 141, 155 (2016)
6 [“Reviewing courts must defer to a procedurally proper consistency finding unless no
7 reasonable person could have reached the same conclusion.”]. Indeed, *San Diego Citizenry*
8 *Group v. County of San Diego*, 219 Cal.App.4th 1, 25-26 (2013), upon which Petitioner relies
9 (POB: 3), recognizes that “[a] reviewing court accords ‘great deference’ to an agency’s
10 determination that a project is consistent with its own general plan, recognizing that ‘the body
11 which adopted the general plan policies in its legislative capacity has unique competence to
12 interpret those policies when applying them in its adjudicatory capacity.’” *Id.*, at 26. Petitioner
13 has not carried its burden to prove otherwise.

14 For example, the Amendment was found to be consistent with the General Plan City of
15 Villages Strategies (AR:6:00105), consistent with the General Plan Mobility Element, Public
16 Facilities, Services and Safety Element, the guidelines from the Conservation Element, the
17 Urban Design Element (AR:7:0213-14), and to impose no significant impacts on the areas of
18 agricultural and forestry resources, mineral resources, land use, visual effects and neighborhood
19 character, energy, noise, historical resources, biological resources, geologic conditions, public
20 services, public utilities, health and safety, and population and housing whatsoever. AR:
21 5:00073-75; see also AR: 17:06913, 06943, 07336-38, 07691, 07714, 07728.

22 Regarding Petitioner’s complaint that the removal of the Road Widening and Bridge
23 would “frustrate” the General Plan’s goals of providing transportation linkages (POB:6), the EIR
24 found because the Project would result in an Amendment to the Community Plan, the Project
25 would not conflict with any goals, objectives or recommendations of the General Plan, resulting

26 _____
27 ⁶ Notably, Petitioner *does not* seek a writ invalidating the Amendment as inconsistent
28 with the General Plan, but rather claim only that the City’s discussion of consistency in the EIR
violated CEQA. That decision is an implicit concession that they cannot meet the exacting
standard for such a challenge. *See infra*.

1 in no significant impacts. Other transportation improvements would remain consistent with the
2 relevant guidelines and goals of the General Plan. As such, no inconsistencies were identified,
3 and impacts were found to be less than significant. AR: 7:00216, 219, 17:07336-38. Petitioner
4 has failed to show that the City's conclusions were erroneous or that no reasonable person could
5 have reached that conclusion. *See Highway 68 Coalition*, 14 Cal.App.5th at 896.

6 Petitioner further argues, at length, that the FEIR failed to adequately respond to
7 Petitioners' comments on the General Plan consistency discussion in the DEIR. POB: 5-12. No
8 further responses were required. Because CEQA does not require a full analysis of a project's
9 consistency with the general plan, it follows that comments complaining about the lack of such
10 analysis do not merit a detailed response. *See Pfeiffer* 200 Cal.App.4th at 1566 [holding that
11 CEQA Guidelines section 15088, which requires responses to comments, and other cited
12 authorities "do not support [the petitioner's] argument that CEQA expressly requires a discussion
13 of general plan consistency *and responses to comments regarding general plan consistency*"],
14 emphasis added. Petitioner cannot create a legal obligation to provide that analysis simply by
15 complaining in comments about alleged inconsistencies.

16 Indeed, CEQA requires responses only to comments on "significant environmental
17 issues." *City of Irvine v. County of Orange*, 238 Cal.App.4th 526, 549, 553 (2015), citing CEQA
18 Guidelines § 15088(c); accord *Citizens for East Shore Parks v. State Lands Com.*, 202
19 Cal.App.4th 549, 568 (2011) ["[A] lead agency need not respond to each comment made during
20 the review process, however, it must specifically respond to the most significant environmental
21 questions presented."], quoting *A Local & Regional Monitor v. City of Los Angeles*, 12
22 Cal.App.4th 1773, 1808 (1993). CEQA Guidelines section 15088 governs responses to
23 comments on an EIR, and subsection (c) provides the standard for such responses:

24 "The written response shall describe the disposition of significant
25 environmental issues raised (e.g., revisions to the proposed project
26 to mitigate anticipated impacts or objections). In particular, the
27 major environmental issues raised when the lead agency's position
is at variance with recommendations and objections raised in the
comments must be addressed in detail giving reasons why specific
comments and suggestions were not accepted."

28 CEQA Guidelines § 15088(c), emphases added.

1 Because CEQA does not consider general plan inconsistency itself to be a significant
2 environmental impact, comments about that consistency cannot require detailed responses.⁷ The
3 City's responses to Petitioner's General Plan consistency comments were legally adequate, and
4 Petitioner has failed to prove otherwise.

5 **2. The DEIR Was Not Required To Be Recirculated.**

6 Petitioner next complains the City should have "recirculated" the DEIR after the City
7 responded to comments and issued "Clarifications and Modifications." POB: 13:12-19. An
8 agency's decision not to recirculate an EIR is given substantial deference and presumed to be
9 correct. *See Western Placer Citizens for an Agric. & Rural Env't v. County of Placer*, 144
10 Cal.App.4th 890, 903 (2006). Petitioner bears the burden of showing that substantial evidence
11 does not support the City's decision not to recirculate. *Id.* As the California Supreme Court
12 observed, "[r]ecirculation was intended to be an exception, rather than the general rule." *Laurel*
13 *Heights Improvement Assn. v. Regents of University of California*, 6 Cal.4th 1112, 1132 (1993)
14 (*Laurel Heights II*). CEQA requires recirculation only when new and significant information is
15 added to an EIR. Guidelines § 15088.5(a).

16 **(a) Only Significant New Information Requires**
17 **Recirculation Of A Draft EIR.**

18 First, Petitioner's position ignores the statutory mandate that only the addition of
19 **significant new information** triggers recirculation of a draft EIR. *Laurel Heights II*, 6 Cal.4th at
20 1134 citing Pub. Res Code § 21092.1. "Significant new information" means new information
21 that shows that the project will have new or more severe adverse effects not previously disclosed.
22 *Id.*, at 1126-27. New information is only "significant" within the meaning of CEQA if, due to
23 new information, "the EIR is changed in a way that deprives the public of a meaningful
24 opportunity to comment upon a substantial adverse environmental effect of the project or a
25

26 ⁷ The CEQA Guidelines require disclosure of inconsistencies with general plans as part
27 of the EIR's discussion of the environmental *setting*, not in its discussion of project *impacts*.
28 CEQA Guidelines § 15125(d).

feasible way to mitigate or avoid such an effect.” *Vineyard* 40 Cal.4th at 447, citing Guidelines §15088.5 (a). Recirculation is not mandated when new information simply clarifies or amplifies the previously circulated draft EIR, and does not reveal a new, or substantially increased impact on the environment. See *id*; Guidelines § 15088.5(b). A lead agency’s determination a newly disclosed impact is not “significant” is reviewed for substantial evidence. *Vineyard* 40 Cal 4th at 447.

(b) **Alteration of A Summary Table Did Not Require
Re-Circulation Of The DEIR.**

Second, Petitioner’s argument that because the City chose to use a table (“matrix”) as a summary tool, which it later refined in the FEIR, recirculation was required. This argument is also misguided.⁸ CEQA neither requires an EIR to include a summary table comparing the project to its alternatives, nor does it impose a “legal standard” or “mandate” that such a summary table must satisfy. Instead, CEQA broadly explains that “[t]he EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project,” and flexibly provides that “[a] matrix displaying the major characteristics and significant environmental effects of each alternative *may be used* to summarize the comparison.” CEQA Guidelines § 15126.6 [emphasis added].

In this case, consistent with CEQA’s grant of discretion to agencies, the City opted to use a comparison table, or “matrix” as a tool to distill, in snapshot form, the narrative content found in the bulk of the EIR. In the DEIR, Table 9-1 identified the environmental impacts of the “Project,” and summarized in lay terms the conclusion whether each alternative would have “greater” or “lesser” environmental impacts than the “Project.” See AR 7:00696-700. Consistent with Petitioner’s request, the City revised the Table in the FEIR to re-state those conclusions using alternate terminology [e.g., in the Greenhouse Gas Emissions (GHG) category, the DEIR concluded the No Project alternative would have impacts “Less than Project” while the FEIR re-

⁸ Petitioner contends deleting information in the matrix and replacing it with “new” information altered the EIR’s Chapter 9-Alternatives Analysis. POB: 13:20-21, 14:10-13.

1 stated that conclusion as “SU [Significant and Unmitigated] but slightly reduced GHG emissions
2 than Project”]. *See* AR: 17:07742-43.

3 The City’s conclusion that mere nomenclature changes in the EIR did not require re-
4 circulation is supported by substantial evidence in the record. While the City tinkered with the
5 presentation of its conclusions in the matrix, the underlying detailed information and analysis –
6 the heart of CEQA – did not materially change from the DEIR to the FEIR. *See* AR: 7: 00690-
7 00782; 17:07283-87, 07736-87. With the foundational information intact, the clarifications in the
8 summary chart did not deprive the public of a meaningful opportunity to comment upon either “a
9 substantial adverse environmental effect” of the Project, or “a feasible way to mitigate or avoid
10 such an effect” of the Project. Petitioner has failed to meet its burden to show that meaningful
11 public comment was thwarted by the City’s clarifications in an optional summary table. The
12 court is to determine whether the EIR is a sufficiently informative document supported by
13 enough relevant information that a fair argument can be made to support the City’s conclusions,
14 resolving reasonable doubts in favor of the City’s administrative findings and decision. *Laurel*
15 *Heights I*, 71 Cal. 3d at 393, citing *Topanga Association for a Scenic Community v. County of*
16 *Los Angeles*, 11 Cal.3d 506, 514 (1974) and Guidelines, § 15384 (a). Here, the City has met the
17 standard.

18 (c) **Clarification of the Environmentally Superior Alternative**
19 **Was Not Significant New Information Requiring**
20 **Re-Circulation.**

21 Petitioner further argues that because the FEIR explained the reason that the DEIR
22 identified two alternatives in Chapter 9’s Alternatives Analysis, as the “environmentally superior
23 alternative,” that “significant new information” was added to the FEIR requiring re-circulation.
24 POB: 17-18. This argument, too, falls short of the mark. CEQA requires an EIR to identify an
25 environmentally superior alternative. Further, “[i]f the environmentally superior alternative is the
26 ‘no project’ alternative, the EIR shall also identify an environmentally superior alternative
27 among the other [“build”] alternatives.” Guidelines § 15126.6(e) (2). Here, the DEIR concluded
28 the “project,” i.e., no Road Widening and no Bridge, was the environmentally superior

1 alternative. See AR: 7:00704; 17; 07741. Since the DEIR concluded the “Project,” rather than
2 the “No Project” alternative was the environmentally superior alternative, nothing more was
3 required under CEQA.

4 However, because the “Project” was to delete the Road Widening and the Bridge from
5 the Community Plan, in the spirit of Guideline section 15126.6(e)(2), the DEIR elected to also
6 identify which of the “build” alternatives was environmentally superior to all other “build”
7 alternatives. The DEIR identified the “No Construction of Regents Road Bridge and
8 Reconfiguration of Genesee Avenue” (Reconfiguration Alternative) as the environmentally
9 superior “build” alternative. See AR: 7:00781. The FEIR provided a more detailed explanation
10 of the City’s approach and confirmed the conclusion in the DEIR that the “Project” is the
11 environmentally superior alternative overall, while the Reconfiguration Alternative is the
12 environmentally superior “build” alternative. AR: 17:06833, 07767, 07741.

13 Petitioner acknowledged the City’s rationale for its approach and affirmed its basis under
14 CEQA (POB: 18 fn. 17), confirming that Petitioner’s feigned confusion is no more than a
15 contrivance. Any uncertainty Petitioner may have experienced between the two environmentally
16 superior alternatives did not deprive Petitioner of a meaningful opportunity to comment on the
17 substantial adverse impacts of the “Project” or feasible, but neglected, ways to mitigate such
18 impacts. See Guidelines § 15088.5(a); see *Laurel Heights Improvement Assn. v. Regents of Univ.*
19 *of Calif.*, 6 Cal.4th 1112, 1129 (1993) (*Laurel Heights*). Recirculation is not required where
20 information added to an EIR “clarifies and amplifies” the City’s logic in identifying
21 environmentally superior alternatives. See Guidelines § 15088.5(b). Petitioner has failed to carry
22 its burden on any of its “re-circulation” claims.

23 3. **Substantial Evidence Supports the City’s Conclusion the**
24 **“Project” Is the Environmentally Superior Alternative.**

25 (a) **Substantial Evidence In the Record Supports the**
26 **City’s Conclusion That The “Project” Is Environmentally**
27 **Superior to the “No Project” Alternative.**
28

1 Petitioner disagrees with the City's conclusion that the "Project," i.e., deletion of the
2 Road Widening and the Bridge from the Community Plan, thereby maintaining the existing
3 environmental status quo, is the environmentally superior alternative overall. POB: 19. Instead,
4 Petitioner takes the position that two major construction projects-- the Road Widening
5 (expanding four lane Genesee Avenue to six lanes) and the Bridge (building two massive two
6 lane parallel bridges across sensitive habitat and open space in Rose Canyon)-- would have fewer
7 significant unmitigated impacts than simply maintaining the status quo. POB: 20. The City's
8 conclusion is supported by substantial evidence and Petitioner's contrary view is not a sufficient
9 basis to overturn the City's reasoned conclusion.

10 Petitioner once again neglects to appreciate under CEQA, public agencies have broad
11 discretion to evaluate the environmental impacts of a project and its alternatives, and make
12 determinations based on that evidence. "A court may not set aside an agency's approval of an
13 EIR on the ground that an opposite conclusion would have been equally or more reasonable. A
14 court's task is not to weigh conflicting evidence and determine who has the better argument...."
15 *Laurel Heights I*, 47 Cal.3d at 390, 393. The court's task is to "assess[] only the sufficiency of an
16 EIR as an informative document, not the correctness of its environmental conclusions; [the court]
17 may not set aside an agency's approval of an EIR on the ground that a different conclusion would
18 have been equally or more reasonable." *Marin Municipal Water District v. Kg Land Cal. Corp.*,
19 235 Cal.App.3d 1652, 1660 (1991) (*KG Land*), citing *Goleta* 52 Cal.3d at 564. When applying
20 the substantial evidence standard to the agency's determination, the reviewing court must resolve
21 reasonable doubts in favor of the administrative finding and decision. *KG Land*, 235 Cal.App.3d
22 at 1660, citing *Laurel Heights I*, 47 Cal.3d at 392-393 and fn. 5.

23 CEQA requires an EIR to "identify and focus on the significant environmental effects of
24 the proposed project." Guidelines § 15126.2. Contrary to Petitioner's suggestion, the requirement
25 to "focus" on the significant impacts of a project does not translate to a prohibition on the
26 agency's discretion to identify, compare, weigh, and balance the impacts of a project and its
27 alternatives. "The wisdom of approving . . . any . . . project, a delicate task which requires a
28

balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions." *Goleta* 52 Cal.3d at 576.

Here, the City used sound judgment supported by substantial evidence to conclude the "Project," which maintains the status quo is the environmentally superior alternative overall to the "No Project" alternative, which would require massive infrastructure building projects that undeniably would have substantial effects on the environment. One of the main underlying purpose of the "Project" was to minimize the impacts to the sensitive biological resources found in Rose Canyon. AR: 17:07737. The EIR found with the No Project alternative, building the Bridge across Rose Canyon would result in a loss of significant biological habitat, and widening the Road would result in loss of biological habitat as well. AR: 17:07741, 07752:¶9.2.1.9. The "Project" is the only alternative where there would be "no significant impacts" to biological resources; for all the other alternatives, the impacts would be "significant but mitigable" or "less than significant."

Related to traffic, the EIR found that with the No Project alternative, despite operational roadway improvements, traffic and circulation impacts would remain significant and unmitigated under the No Project alternative similar to those found with the "Project." AR: 17:07748. The EIR also determined the No Project alternative would result in greater visual impacts due to the obstruction of scenic views (AR 17:007749: ¶9.2.1.3), reduced air quality (AR: 17:07749:9.2.1.4), greater energy demand (AR: 17: 07750: ¶9.2.1.6), greater noise impacts (AR: 17:07750: ¶9.2.1.7), greater impact on historical resources (AR:17:07752: ¶9.2.1.8), greater impacts to geological conditions (AR: 17:07753: ¶9.2.1.10), greater impacts on paleontological resources (AR: 17:0775: ¶9.2.1.11), greater impacts on hydrology and water quality (AR: 17:07753: ¶9.2.1.12), greater impacts on public utilities (AR: 17:07755: ¶9.2.1.14), and greater impact on overall health and safety (AR: 17:07756: ¶9.2.1.15). Based on this evidence, the City reasonably concluded the "Project" it is environmentally superior to the No Project alternative.

Petitioner's disagreement with the City's choice of the "Project" as the environmentally superior alternative is similar to the petitioner's position in the *KG Land* case. In *KG Land*, a water district (District) considered options to respond to a serious water shortage. The District

1 identified the “project” (a moratorium on new development), as well as a no project alternative
2 and an alternative that would have imposed a mandatory reduction in water usage for all existing
3 customers. *Id.* at 1664-66. The District’s DEIR concluded none of the three alternatives would
4 have a direct effect on the natural environment, but identified the District’s “project” (the
5 moratorium) as the environmentally superior alternative. Like here, the petitioner disagreed with
6 the District’s conclusion. *Id.* at 1666. However, as should be the result here, the court sustained
7 the District’s environmentally superior alternative (the moratorium), explaining the court’s
8 limited role is “only to assess the sufficiency of the EIR as an informative document, not the
9 correctness of its environmental conclusions.” *Id.* at 1666. The identical situation is presented
10 here.

11 (b) **Substantial Evidence In The Record Supports The City’s**
12 **Conclusion That The Reconfiguration Alternative Was the**
13 **Environmentally Superior “Build” Alternative.**

14 Next, Petitioner complains that among the five “build” alternatives the City considered,
15 the Reconfiguration Alternative is not environmentally superior. POB: 21:13-16. However,
16 Petitioner is simply protesting the City erred in reaching a conclusion it was not legally required
17 to make. As explained above, because the City concluded the “Project” was the environmentally
18 superior alternative (rather than the No Project alternative), CEQA did not require the City to
19 also identify a “build” alternative as environmentally superior. The City elected to do so in an
20 effort to provide the decision makers and public with more information. That discretionary
21 effort cannot now be used by Petitioner as the basis to overturn the City’s certification of the
22 FEIR and approval of the Amendment.

23 Regardless, the City used sound judgment in concluding that the Reconfiguration
24 Alternative is the environmentally superior “build” alternative because it would result in similar
25 impacts to those resulting from the “Project.” AR: 17:07766: ¶9.2.3.1. With the Reconfiguration
26 Alternative, all proposed roadway improvements would be within the existing right of way,
27 therefore impacts to vegetation communities in Rose Canyon and fringe habitats would not be
28

1 impacted. AR: 17:07766: ¶9.2.3.1. Impacts to freeway segments would remain significant and
2 unmitigated (AR: 17:07767), visual effects would be significant but mitigatable (AR: 17:07768),
3 there would be less than significant impacts to air quality (AR: 17:07769), noise would be
4 significant but mitigatable (AR: 17:07770), and most other impacts are the same, or similar to
5 the “Project.” See AR: 17:07771-74. Again, the court’s limited role here is only to assess the
6 sufficiency of the EIR as an informative document, not judge the correctness of the City’s
7 environmental conclusions.

8 **4. Substantial Evidence Supports the City’s Conclusion**
9 **The Alternatives are Infeasible.**

10 Last, Petitioner complains the City has failed to establish the No Project Alternative
11 (widening the Road and building the Bridge) or the Reconfiguration Alternative is infeasible.
12 POB: 24. CEQA provides that before a public agency approves a project that may have
13 significant environmental impacts, the agency must, among other things, find that economic,
14 legal, social, technological, or other considerations make project alternatives infeasible.
15 Guidelines § 15091(a) (3). Among the many reasons that an agency may conclude an alternative
16 is “infeasible” is that the alternative does not satisfy the objectives of the project, or is
17 “impractical or undesirable from a policy standpoint.” See *California Native Plant Society v. City*
18 *of Santa Cruz*, 177 Cal.App.4th 957, 1001 (2009). Courts explain that an agency’s decision to
19 reject alternatives as “infeasible” involves a balancing of various factors. *Id.* The court’s review
20 of the agency’s factual findings is “highly deferential.” *Residents Against Specific Plan 380 v.*
21 *County of Riverside*, 177 Cal.App.4th 957, 960 (2017).


22 Here, the City satisfied CEQA’s requirement to determine the feasibility of alternatives
23 by explaining the environmental impacts of each alternative (which, the City concluded, made
24 the alternatives inferior to the “Project”), and identifying whether the alternative failed to meet
25 the project objectives. AR: 17:06625-34, 07736-87. Further, substantial evidence in the record
26 demonstrates the City Council considered all alternatives, including the “No Project” alternative,
27 in detail, before adopting the Amendment to the Community Plan and certify the FEIR. See AR:
28 3:000009-62; 4:000063-65; 24:08526-544.

1 **V. CONCLUSION**

2 For all of the reasons stated above, the City respectfully submits Petitioner's request for a
3 writ must be denied. The FEIR for the Amendment to the Community Plan was a gratuitous
4 endeavor undertaken by the City as a means to fully inform the public of the potential effects of
5 the Amendment to the Community Plan. It was not required by CEQA, and so CEQA cannot
6 now be used as the basis to reverse the City's decision. In any event, the City complied with
7 CEQA. Petitioner's unsubstantiated and technical complaints about the FEIR and the City's
8 environmental conclusions do not overcome the City's reasoned decision supported by
9 substantial evidence to maintain the environmental status quo with no Road Widening and no
10 Bridge.

11 Dated: November 28, 2017

MARA W. ELLIOTT, City Attorney

12
13 By 
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

**DECLARATION OF
SERVICE**

Case Name: *Citizens for the Regents Road Bridge
v. City of San Diego, et al.*
Case No. 37-2017-0000453-CU-TT-CTL
Hearing Date: January 11, 2018 at 10:00 a.m.
Judge: Hon. Katherine Bacal Dept. C-69
[E-FILE]

I, the undersigned declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned service occurred. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

I served the following document(s):

**CITY OF SAN DIEGO'S RESPONSE TO PETITIONER CITIZENS FOR THE
REGENTS ROAD BRIDGE, INC.'S PETITION FOR WRIT OF MANDATE**

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business. I served the above document(s) in this action by placing the true copies thereof enclosed in a sealed envelope addressed as follows:

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[] **(BY MAIL)** I served the individual named by placing the documents in a sealed envelope. I then placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices.

PROOF OF SERVICE

1 ☐ (BY EMAIL) Pursuant to agreement between the parties, I served the above listed
2 documents by transmitting via email to the internet address listed above. I did not receive
3 within a reasonable period of time after the transmission any electronic message or other
4 indication that the transmission was unsuccessful.

5 ☒ (BY e-file/e-service) By submitting an electronic version of the document(s) to One
6 Legal, LLC, through the user interface at www.onelegal.com.

7 ☐ (BY FAX) On _____, I transmitted the above-described document by
8 facsimile machine to the listed fax number. The transmission originated from facsimile
9 phone number (619) 533-5856 and was reported as complete and without error. The
10 facsimile machine properly issued a transmission report, a copy of which is attached
11 hereto. [CCP section 1013(e); CRC Rule 2008].

12 ☐ (BY OVERNIGHT DELIVERY) I caused the envelope(s) to be delivered overnight
13 via an overnight delivery service in lieu of delivery by mail to the addressee(s).
14 [CCP section 1013]

15 ☐ (BY PERSONAL SERVICE) I served the individual named by personally
16 delivering the copies to the offices of the addressee.
17 Time of delivery: _____ a.m./p.m. Person served: _____

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct. Executed on November 29, 2017, at San Diego, California.

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO, CENTRAL DIVISION

13 CITIZENS FOR THE REGENTS ROAD
BRIDGE, INC., a California public benefit
14 corporation,

15 Petitioner,
vs.
16

17 CITY OF SAN DIEGO; SAN DIEGO CITY
COUNCIL; and DOES 1 through 5, inclusive,

18 Respondents.
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Case No. 37-2017-00000453-CU-TT-CTL

**REPLY TO CITY'S RESPONSE TO
PETITIONER'S OPENING BRIEF IN
SUPPORT OF PETITION FOR WRIT OF
MANDATE**

Hearing Date: January 11, 2018
Time: 10:00 a.m.
Dept: C-69

Assigned for All Purposes To:
The Hon. Katherine Bacal

Petition Filed: January 5, 2017

TABLE OF CONTENTS

Page

I.	THE AMENDMENT WAS A “PROJECT” BECAUSE IT INCLUDED “PLANNED MOBILITY PROJECTS THAT HAD BEEN APPROVED,” AND DID NOT CONSIST SOLELY OF REMOVAL OF THE BRIDGE AND THE ROAD WIDENING.....	1
II.	EVEN IF THE AMENDMENT HAD NOT INCORPORATED “PLANNED MOBILITY PROJECTS THAT HAD BEEN APPROVED,” THE CITY WOULD BE EQUITABLY ESTOPPED FROM ASSERTING THAT THE AMENDMENT WAS NOT A “PROJECT” SUBJECT TO CEQA	2
III.	CITY’S RESPONSE TO CITIZENS’ ARGUMENT THAT EIR FAILED TO DISCUSS INCONSISTENCIES BETWEEN THE PROJECT AND THE GENERAL PLAN ATTACKS A STRAW MAN, FAILS TO SHOW THAT THE PROJECT WAS CONSISTENT WITH THE MOBILITY AND TRANSPORTATION GOALS OF THE GENERAL PLAN AND THE UCP, AND FAILS TO SHOW THAT THE EIR DISCUSSED THE PROJECT’S INCONSISTENCIES WITH RELEVANT TRANSPORTATION GOALS OF THE GENERAL PLAN AND UCP	4
A.	City’s Response Attacks a Straw Man, Not Citizens’ Argument	4
B.	City’s Response Fails to Establish that the Project Is Consistent with the General Plan and UCP	5
C.	City Has Failed to Comply with CEQA’s Requirement To Discuss Inconsistencies Between the Project and Applicable Plans, and Would Have the Court Exempt Projects from Guidelines Section 15126(d)’s Mandate If They Require General Plan Amendments	6
IV.	CITY’S WHOLESALE REVISION TO THE DRAFT EIR’S ALTERNATIVES ANALYSIS RESULTED IN SIGNIFICANT NEW INFORMATION BEING ADDED BECAUSE THE DRAFT EIR USED THE WRONG LEGAL STANDARD AND THE SCOPE OF THE CHANGES MADE TO CORRECT THAT ERROR SHOWS THAT THE DRAFT EIR WAS SO FUNDAMENTALLY INADEQUATE AS TO PRECLUDE MEANINGFUL PUBLIC PARTICIPATION	8
V.	CITY HAS FAILED TO POINT TO SUBSTANTIAL EVIDENCE TO SUPPORT ITS CONCLUSION THAT THE ALTERNATIVES ARE INFEASIBLE	9
VI.	CONCLUSION	10

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Cal. Native Plant Soc. v. City of Santa Cruz</i> (2006) 177 Cal.App.4 th 957.....	10
<i>Citizens of Goleta Valley v. Bd. of Supervisors</i> (1990) 52 Cal.3d 553	9
<i>City of Long Beach v. Los Angeles Unified School Dist.</i> (2009) 176 Cal.App.4 th 889	5
<i>City of Long Beach v. Mansell</i> (1970) 3 Cal.3d 462	2, 4
<i>City of Marina v. Bd. of Trustees of the Cal. State Univ.</i> (2006) 39 Cal.4 th 341	10
<i>Del Cerro Mobile Estates v. City of Placentia</i> (2011) 197 Cal.App.4 th 173.....	3
<i>Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.</i> (1993) 6 Cal. 4 th 1112.....	9
<i>Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors</i> (2001) 91 Cal.App.4 th 342	8
<i>San Diego Citizenry v. County of San Diego</i> (2013) 219 Cal.App.4 th 1	8
<i>Santa Barbara County Flower and Nursery Growers Ass'n v. County of Santa Barbara</i> (2004) 121 Cal.App.4 th 864.....	3

Statutes

Pub.Res.Code §21081(a)(3)	10
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Regulations

CEQA Guidelines §15125(d)	4, 7, 8
CEQA Guidelines §15378(a)	1

1 **I. THE AMENDMENT WAS A “PROJECT” BECAUSE IT INCLUDED “PLANNED**
2 **MOBILITY PROJECTS THAT HAD BEEN APPROVED,” AND DID NOT CONSIST**
3 **SOLELY OF REMOVAL OF THE BRIDGE AND THE ROAD WIDENING**

4 City asserts that the Amendment was not a “Project” because removal of the Road Widening
5 and Bridge from the UCP cannot result in a direct or indirect physical change in the environment.
6 City’s Response (“CR”) at 5-7. City ignores that the “Project Description” in the FPEIR also
7 includes amendment of the UCP to “reflect planned mobility improvements that have been approved
8 ...”. AR-07276 (project description in FPEIR’s executive summary); AR-07318 (FPEIR’s statement
9 that “overarching goal of the Project is to amend the UCP ... in order to reflect *planned mobility*
10 *improvements that have been approved* ...”) (emphasis supplied); *see also* AR-00001 (Notice of
11 Determination (“NOD”) refers to Project as including “planned mobility improvements that have
12 been approved ...”); AR-00019 (“Project Description” in Findings adopted by Council includes
13 same language).

14 The “planned mobility improvements that have been approved” are identified in the “Notice
15 of Preparation of EIR” distributed on December 2, 2015 (“NOP”) as follows: the “amendment would
16 ... evaluate the impacts of the Caltrans North Coast Corridor Project, the Mid-coast Corridor
17 Project, and UCSD Circulation Improvements ...” AR-122920. Accordingly, the Amendment was
18 indeed a “project” under CEQA because the referenced “planned mobility improvements that have
19 been approved” were part of “the whole of an action, which has a potential for resulting in either a
20 direct physical change in the environment, or a reasonably foreseeable indirect change in the
21 environment ...”. Guidelines §15378(a). Those potential effects were presumably among the effects
22 that were the basis of the City’s determination in the NOP that the Project “will *require* the
23 preparation of an ...EIR ... in compliance with ... CEQA[.]” AR-122919 (emphasis supplied).

24 To conclude that the Amendment is not a “project” under CEQA, as City would have it, the
25 Court would have to ignore the plain language referencing these “planned mobility improvements
26 that have been approved” in the documents describing the Project from its inception in December
27 2015 with the issuance of the NOP, through the certification of the FPEIR and the Findings adopted
28 and the NOD filed in December 2016.

1 **II. EVEN IF THE AMENDMENT HAD NOT INCORPORATED “PLANNED**
2 **MOBILITY PROJECTS THAT HAD BEEN APPROVED,” THE CITY WOULD BE**
3 **EQUITABLY ESTOPPED FROM ASSERTING THAT THE AMENDMENT WAS**
4 **NOT A “PROJECT” SUBJECT TO CEQA**

5 Under the doctrine of equitable estoppel, a party cannot deny facts that it intentionally led
6 another to believe if the party asserting estoppel is ignorant of the true facts, and relied to its
7 detriment. *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-89 (“*Mansell*”). Here, City told
8 Citizens, and other members of the public, continuously from December 2, 2015 (distribution of the
9 NOP) through December 6, 2016, (filing of the NOD) that the Amendment was a “project” under
10 CEQA and that an EIR was prepared for that project pursuant to the provisions of CEQA.

11 Now, however, City disingenuously claims that its “purpose in preparing the EIR for the
12 Amendment was as an informational document for the public, and not because it was required by
13 CEQA.” CR, at 5:10-11. To the contrary, the record shows City told the public that an EIR was
14 *required* to be prepared under CEQA. The NOP states, “The City of San Diego ... has determined
15 that the project described below will *require* the preparation of an ... EIR[] in compliance with ...
16 CEQA[.]” AR-122919 (emphasis supplied). The NOD states, “An [EIR] was prepared for this
17 project and certified pursuant to the provisions of CEQA.” AR-00002.

18 City held a Scoping Meeting, inviting members of the public to attend and to submit
19 “comments regarding the scope and alternatives of the proposed EIR” (AR-122919), received
20 almost 800 pages of written responses to that request (AR-000846-001537), issued a 739-page
21 DPEIR (AR-000107-000845) plus thousands of pages of technical appendices (AR-001556-
22 004159) in June 2016, received 192 letters commenting on the DPEIR (listed at AR-6802-06807),
23 to which it responded pursuant to CEQA (AR-06808-07235), issued more than 2,500 pages of an
24 extensively revised Transportation Impact Study (AR-004160-006733), and issued a Final PEIR,
25 which City Council certified along with its Findings and a Statement of Overriding Considerations
26 on December 5, 2016, following a public hearing. City allocated an astonishing amount of public
27 money for the Amendment -- \$698,556.39 -- most of which was to be spent on the DPEIR, FPEIR
28 and related tasks. AR-12445-12457; *see also* AR-12049, -12065, -12075 (cost estimates of
AECOM, preparer of the EIR, amount to \$283,820, exclusive of transportation consultant’s work,

1 whose work was budgeted at \$99,818. *See* Supplemental Request for Judicial Notice, Exh. A. City
2 spent almost all of the amount allocated, \$647,946.40. *See id.*, Exh. B.

3 Consistently throughout the year-long process, City led Citizens, and other members of the
4 public, through the above-cited actions and documents, to believe that the Amendment was a
5 “Project” under CEQA and that an EIR was required to be prepared for the Project under CEQA.
6 At no time did the City even hint that the Amendment was not a “Project” under CEQA. On the
7 basis of the City’s consistent representations beginning in December 2015 that the Amendment was
8 a “Project” under CEQA for which an EIR was required, Citizens participated extensively in all
9 phases of the EIR process, retained counsel to represent its interests in the CEQA proceeding and
10 to file the instant action. Citizens had no reason to suspect that City would assert, for the first time
11 after more than a year of consistently representing that the Amendment was a “Project” under
12 CEQA, in its opposition to Citizens’ Opening Brief, that the Amendment is not a Project under
13 CEQA. It is indisputable that Citizens relied to its great detriment, both in terms of its members’
14 time, financial contributions and effort, on City’s intentional representations that the Amendment
15 was a “Project” under CEQA for which an EIR was **required**. AR-122919 (NOP).

16 The facts here are distinguishable from those in a case City has cited in which the court
17 rejected petitioner’s argument that by preparing and certifying an EIR, a city waived, and/or was
18 estopped from invoking, a statutory exemption from CEQA as a defense to a petition challenging
19 the adequacy of the EIR. In that case, the city invoked a statutory exemption as to the project in
20 question. *Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 179-182. The
21 court rejected petitioner’s argument because “[e]quitable estoppel ... turns on the facts surrounding
22 a party’s conduct rather than on the terms of a statute.” *Id.* at 182; *see also Santa Barbara County*
23 *Flower and Nursery Growers Ass’n v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 876
24 (rejecting estoppel argument where County invoked a different CEQA exemption, again because the
25 exemption was a statute, not a “fact”).

26 In contrast, here City did not invoke an overlooked exemption, statutory or otherwise, from
27 CEQA. Rather, City consistently represented a critical fact to Citizens and the public in general, viz.,
28 that the Amendment was a “Project” under CEQA and, as per the NOP, an EIR was **required** to be

1 prepared. AR-122919. City represented that fact with the intention that Citizens and other members
2 of the public rely on that representation and spend their time, effort and other resources participating
3 in the process applicable to preparation and approval of EIRs. And, indeed, Citizens did rely on that
4 factual representation: Citizens' representatives spoke at the December 16, 2015 Scoping meeting
5 [AR-001538-001555]; submitted written comments on the issue of the scope of the EIR [AR-00940-
6 00945]; retained a transportation consulting firm and legal counsel and submitted extensive
7 comments on the DPEIR [AR-06890-06909; AR-06912-06977]; testified at Planning Commission's
8 hearing on the Project [AR-08028-08029; AR-08078-08102]; submitted written comments on the
9 FPEIR [AR011351-011352]; testified at City Council's Smart Growth and Land Use Committee's
10 hearing on the Project [AR-08254-08262; AR-08309-08318]; and testified at City Council's public
11 hearing on December 5, 2016 [AR-08399-08421; AR-08513-08522], after which City certified the
12 FPEIR.

13 City's continuous representations to Citizens that the Amendment was a "Project" under
14 CEQA are facts, as distinguished from exemptions (which are laws) that could not be the basis of a
15 successful estoppel argument in *Del Cerro* and *Santa Barbara*. Here, City cannot deny that it made
16 that consistent representation to Citizens for more than a year, with the intent that Citizens rely on
17 that representation. Citizens had no knowledge that City would later claim, erroneously as set forth
18 in Section I, that the Amendment was not a "Project" under CEQA. City is accordingly estopped
19 from asserting that the Amendment is not a "Project". *Mansell*, 3 Cal.3d at 488-489.

20 **III. CITY'S RESPONSE TO CITIZENS' ARGUMENT THAT EIR FAILED TO DISCUSS**
21 **INCONSISTENCIES BETWEEN THE PROJECT AND THE GENERAL PLAN**
22 **ATTACKS A STRAW MAN, FAILS TO SHOW THAT THE PROJECT WAS**
23 **CONSISTENT WITH THE MOBILITY AND TRANSPORTATION GOALS OF THE**
24 **GENERAL PLAN AND THE UCP, AND FAILS TO SHOW THAT THE EIR**
25 **DISCUSSED THE PROJECT'S INCONSISTENCIES WITH RELEVANT**
26 **TRANSPORTATION GOALS OF THE GENERAL PLAN AND UCP**

27 **A. City's Response Attacks a Straw Man, Not Citizens' Argument**

28 Apparently because it cannot refute Citizens' argument that the EIR failed to satisfy the
mandate of Guidelines section 15125(d) – to "identify and discuss any *inconsistencies* between a
proposed project and the governing general plan" (emphasis supplied) – City first mischaracterizes
Citizens' argument as one requiring that the EIR discuss the Project's *consistency* with the general

1 plan. That City has attacked a straw man, and not Citizens’ actual argument, is evidenced by the
2 heading of City’s argument: “CEQA Did Not Require the EIR to Analyze the Amendment’s
3 **Consistency** with the General Plan, Or to Provide Detailed Responses to Petitioner’s General Plan
4 **Consistency** Arguments.” CR, at 8:8-10 (emphasis supplied).¹

5 **B. City’s Response Fails to Establish that the Project Is Consistent with the General**
6 **Plan and UCP**

7 City then adds to the confusion by arguing that the Project is **consistent** with the General
8 Plan – exactly what City says that CEQA does not require. “The EIR concluded that the Amendment
9 would be consistent with the General Plan.” CR at 9:2-3. Importantly, City fails to provide a citation
10 to the Administrative Record to support any such conclusion, however. *Id.*²

11 In fact, the EIR makes numerous statements to the contrary, indicating that the Project is
12 **inconsistent** with the General Plan, or other applicable plans. For example, the Project would result
13 in a significant conflict with the Bicycle Master Plan (AR-07730), would significantly conflict with
14 or obstruct implementation of the applicable air quality plan (AR-07731), would not be consistent
15 with the applicable plan for reducing greenhouse plan emissions (i.e., City’s Climate Action Plan).
16 AR-07732. Thus, given these admissions, it is apparent that the FPEIR **did not and could not have**
17 concluded that the Project was consistent with the General Plan, such that there would be no need to
18 discuss any inconsistencies under *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176
19 Cal.App.4th 889, 916-919.³ No reasonable person could reach the conclusion that City did in its

20
21 ¹ See also CR at 10:6-7 (“Petitioner further argues, at length, that the FEIR failed to adequately respond to
22 Petitioners’ comments on the General Plan **consistency** discussion in the DPEIR. POB: 5-12.”). Citizens’
23 comments did not address the DPEIR’s **consistency** discussion, except to note that it addressed only the
24 objective of not creating unsafe pedestrian routes or not removing existing parking, rather than the core goals
25 and policies of the Mobility Element. COB, at 5:1-10.

26 ² City seems to be relying on *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th
27 889 (“*Long Beach*”), where the court cited a secondary source as follows: “Because IERs [sic] are required
28 only to evaluate ‘any **inconsistencies**’ with plans, no analysis should be required if the project is **consistent**
with the relevant plans.” *Id.* at 918-919 (emphasis in original). *Long Beach* held that “because LAUSD
explained how the proposed school would **not** conflict with the Long Beach General Plan, and because the
school district exercised its exemption power with respect to any possible conflict with Long Beach’s zoning
code, no inconsistencies exist.” *Id.* at 919 (emphasis in original). But, in contrast to respondent’s showing
of no conflict with the general plan in *Long Beach*, City here has failed to point to anything in the record that
shows that the Project is consistent with the General Plan and UCP **mobility and transportation goals** as to
which Citizens asserts the Project is inconsistent. Moreover, as noted *infra*, the FPEIR admits numerous
inconsistencies between the Project and applicable plans.

³ See n.2.

1 Response, i.e., that the EIR found the Project was consistent with the General Plan.

2 Although City claims that the “Amendment was found to be ... consistent with the General
3 Plan Mobility Element ...” [CR 9:14-15], none of City’s citations to the record to support this
4 assertion address the *mobility and transportation goals* with which the Project is clearly inconsistent
5 and which were the subject of Citizens’ comments on the DPEIR. Instead, City’s citation is to AR-
6 00213-214, in the *Land Use* section of the DPEIR which begins at AR-00196, not the
7 *Transportation/Circulation* section, which begins at AR-00228. And although AR-00213 refers to
8 certain mobility-related goals (“Not widening Genesee Avenue would not remove safe pedestrian
9 routes, and existing parking would remain in place, which would be consistent with the City of San
10 Diego General Plan Mobility Element.”),⁴ those goals (pedestrian safety and parking) are *not* the
11 General Plan and UCP goals with which Citizens assert that the Project is inconsistent and which
12 inconsistencies were not discussed in the EIR. Rather, as set forth in its Opening Brief, Citizens’
13 comments on the DPEIR’s failure to discuss the Project’s inconsistency with General Plan mobility
14 goals focused on two of the five overriding goals for the street and freeway system, and several of
15 the policies intended to implement those goals: “[a]n interconnected street system that provides
16 multiple linkages within and between communities”; “[v]ehicle congestion relief; “Provide adequate
17 capacity and reduce congestion for all modes of transportation on the street and freeway system”; and
18 “Design an interconnected street network within and between communities” COB, at 5:18-7:10.

19 **C. City Has Failed to Comply with CEQA’s Requirement To Discuss Inconsistencies**
20 **Between the Project and Applicable Plans, and Would Have the Court Exempt**
21 **Projects from Guidelines Section 15126(d)’s Mandate If They Require General**
Plan Amendments

22 Notably, both City’s Response and the FPEIR are silent as to Citizens’ argument that the EIR
23 fails to analyze the Project’s inconsistencies with UCP goals.⁵ Removing construction of the Bridge
24 is clearly inconsistent with the UCP’s transportation goal of providing “linkages with other
25 communities”. COB 7:11-25. Moreover, City’s Response is silent as to Citizens’ argument that the
26 Project is inconsistent with an “Overall Community Goal” of the UCP, viz. “Provide a workable
27

28 ⁴ See also AR-0214 (“Not constructing the ... Bridge would not remove safe pedestrian routes ...”).

⁵ City’s Resolution adopting Project concedes UCP “is a component of the General Plan.” AR-00064.

1 circulation system which accommodates anticipated traffic without reducing the Level of Service
2 below 'D'". *Id.* 7:25-8:1. Citizens' comments on the DPEIR and its Opening Brief pointed to the
3 frank admission in the EIR that nine intersections that would operate at an *unacceptable* LOS E or F
4 under the Project would operate at an *acceptable* LOS under the No Project Alternative. COB, 7:11-
5 8:11. City's Response, and the FPEIR, utterly fail to address the obvious inconsistency between the
6 Project and this "Overall Community Goal" of the UCP.

7 In concluding its argument that it complied with Guidelines section 15125(d), City has the
8 temerity to assert that "no inconsistencies were identified, and *impacts were found to be less than*
9 *significant.*" CR, at 10:2-3 (emphasis supplied). This, despite the fact that the Findings admit that the
10 Project will result in significant unmitigated impacts to Transportation/Circulation. AR00022. City's
11 record citations in support of the quoted statement are, again, in the Land Use section of the EIR,
12 rather than in the Transportation/Circulation section, and merely (a) repeat that the Project will amend
13 the General Plan, so that "the Project would no longer be inconsistent with the UCP ..." (AR-07338)
14 and "[t]he majority of the proposed transportation improvements [in the UCP] would remain
15 consistent with the relevant ... goals of the ... General Plan" (AR-00216), (b) assert that the Project
16 would not conflict with applicable environmental plans (AR-00219), and (c) state that the Project
17 would not impede the UCP from complying with City's Land Use Guidelines or result in unsafe
18 pedestrian routes (AR-07336-38).

19 Finally, City's dismissive response to Citizens' argument that removal of the Road Widening
20 and Bridge would "frustrate" General Plan goals is "because the Project would result in an
21 Amendment to the Community Plan, the Project would not conflict with any goals, objectives or
22 recommendations of the General Plan" CR, at 9:22-25. Under this reasoning, no project that
23 requires a General Plan amendment could ever be inconsistent with the adopted General Plan, because
24 the amendment would cure the inconsistency. And, concomitantly, if a project requires a General
25 Plan amendment, the EIR for that project would be exempt from Guidelines section 15125(d)'s
26 requirement to "discuss any inconsistencies between the proposed project and applicable general
27 plans" City's response effectively reads out of CEQA the mandate of Guidelines section 15125(d).

28 City should have discussed in the FPEIR the inconsistencies between the Project and relevant

mobility and transportation goals of the General Plan and the UCP, as did the County in a case rejecting a CEQA challenge premised on that provision. *San Diego Citizenry v. County of San Diego* (2013) 219 Cal.App.4th 1, 25 (County approved a project that would have conflicted with the General Plan pre-amendment, but only after “the FEIR identified and discussed the asserted inconsistency.”). Here, it cannot be disputed that the Project would “frustrate the General Plan’s goals and policies” and is therefore “inconsistent with the ... General Plan unless it also includes definite affirmative commitments to mitigate the adverse effect or effects.” *Napa Citizens for Honest Gov’t v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 379. Here, City’s Findings and Statement of Overriding Considerations admit that the Project’s significant adverse effects on Transportation/Circulation cannot be mitigated. City’s Amendment fails to comply with Guidelines §15125(d) because the EIR failed to discuss the Project’s inconsistencies with numerous goals of the Mobility Element of the General Plan and of the UCP. AR-00022.

IV. CITY’S WHOLESALE REVISION TO THE DRAFT EIR’S ALTERNATIVES ANALYSIS RESULTED IN SIGNIFICANT NEW INFORMATION BEING ADDED BECAUSE THE DRAFT EIR USED THE WRONG LEGAL STANDARD AND THE SCOPE OF THE CHANGES MADE TO CORRECT THAT ERROR SHOWS THAT THE DRAFT EIR WAS SO FUNDAMENTALLY INADEQUATE AS TO PRECLUDE MEANINGFUL PUBLIC PARTICIPATION.

City’s Response mischaracterizes and trivializes Citizens’ argument, by asserting that “Alteration of a Summary Table Did Not Require Re-Circulation of the DEIR.” CB, at 7-8. The reason that the City extensively revised Chapter 9, the Alternatives Analysis, was because the DPEIR used the wrong legal standard in comparing the Project’s impacts with those of the alternatives. Instead of concerning itself only with “significant” impacts, the DPEIR’s Alternatives Analysis in Chapter 9, including but not limited to the summary matrix at Table 9-1, identified impacts of alternatives to the Project even if they were less than significant.⁶ In its response to Citizens’ comment on the DPEIR to that effect, City agreed. City stated, “Chapter 9.0 Alternatives Analysis, of the Draft PEIR, including Table 9.1 has been revised to reflect the magnitude of significance” AR-06925. So it is clear that it was not merely what the City now dismisses as a “Summary Table” that was

⁶ The Guidelines specify that if a matrix is used to summarize the comparative analysis of the Project’s environmental impacts, that matrix display “the major characteristics and *significant* environmental effects of each alternative.” Guidelines § 15126.6(d) (emphasis supplied).

1 revised, but the entirety of Chapter 9.0, the Alternatives Analysis – which the Supreme Court holds
2 is the “core of an EIR” – that was revised. *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52
3 Cal.3d 553, 564-565; *see* AR-07736-08027 (Chapter 9.0 in the FPEIR).

4 City tries to dismiss the significance of the changes made when the revised EIR applied the
5 correct standard as “mere nomenclature changes” and “tinker[ing] with the presentation of its
6 conclusions in the matrix.” CR, at 13:3-5. But review of the changes made to the substance of the 52-
7 page Chapter 9.0 shows otherwise. AR-07736-07787; *see* COB at 16:1-17:5 (summarizing numerous
8 changes to the comparative evaluation of the Project and the No Project Alternative, most of which
9 changed the assessment of the No Project Alternative’s impact from “Greater than Project” to either
10 “Less than Significant” or “Significant but Mitigable”); *see also* COB at 16:8-15 (explaining that the
11 FPEIR clarifies that “Significant but Mitigable” is indistinguishable from “Less than Significant”
12 under CEQA, which is concerned only with significant impacts).

13 That the distillation of the changes made to revised Chapter 9.0 in revised Table 9-1 resulted
14 in the wholesale deletion and replacement of all text in 84 of the 96 cells in that matrix highlights the
15 fundamental changes that were made in the “core of the EIR.” Members of the public, with busy
16 work and family lives, who might be interested in the subject matter of the DPEIR surely would have
17 reviewed the two-page Table 9-1, perhaps in lieu of reviewing the entirety of the 92-page chapter in
18 the DPEIR. *See* AR- 00690 – 00782. If so, they would have been grossly misinformed because Table
19 9-1 (as well as the entirety of Chapter 9.0) used the wrong legal standard to evaluate impacts of
20 alternatives as compared to those of the Project. The gross legal error in the DPEIR’s comparative
21 analysis of the alternatives rendered the “core of the EIR” “so fundamentally and basically inadequate
22 ... in nature that public comment was in effect meaningless,” thereby triggering the requirement for
23 recirculation of the revised DPEIR (or at least Chapter 9.0.) *Laurel Heights Improvement Assn. v.*
24 *Regents of Univ. of Cal.* (1993) 6 Cal. 4th 1112, 1129-30. Petitioner has met its burden of showing
25 that substantial evidence does not support the City’s decision not to recirculate revised Chapter 9.0.

26 **V. CITY HAS FAILED TO POINT TO SUBSTANTIAL EVIDENCE TO SUPPORT ITS**
27 **CONCLUSION THAT THE ALTERNATIVES ARE INFEASIBLE**

28 In its Opening Brief, Citizens contends that in rejecting the No Project Alternative, City’s

findings fail to satisfy CEQA's requirement "that specific economic, legal, social, technological or other considerations ... make infeasible ..." those alternatives. COB, at 23:26-25:2; Pub.Res.Code §21081(a)(3). City's sole "Rationale" for rejecting the No Project Alternative as infeasible was as follows: "While the No Project Alternative would eliminate two of the significant and unmitigated impacts (air quality and noise) associated with the proposed project, *it is rejected as infeasible because it would not substantially reduce the significant impacts associated with the proposed project.*" AR-00039 (emphasis supplied). But this finding is insufficient as a matter of law. As set forth in a case cited by City, "[f]or these purposes, rejected alternatives must be 'truly infeasible.'" *Cal. Native Plant Soc. v. City of Santa Cruz* (2006) 177 Cal.App.4th 957, 982 (quoting *City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 369). City fails to cite any economic, legal, social, technological or other considerations that make the No Project Alternative infeasible, let alone "truly infeasible."

VI. CONCLUSION

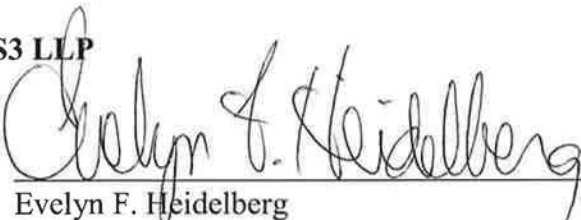
Space limitations preclude addressing City's Response to Citizens' other arguments as to why the Court should find that City failed to comply with numerous CEQA requirements. (See Sections IV. and V. of Citizens' Opening Brief.) City, in its response to those arguments, has failed to point to substantial evidence in the record to support City's selection of either the Project or the Reconfiguration Alternative as environmentally superior to the No Project Alternative, or City's finding that the No Project Alternative and the Reconfiguration Alternative do not conform to the Project's objectives.

Dated: December 15, 2017

Respectfully submitted,

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By:



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10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO, CENTRAL DIVISION

13 CITIZENS FOR THE REGENTS ROAD
BRIDGE, INC., a California public benefit
14 corporation,

15 Petitioner,

16 vs.

17 CITY OF SAN DIEGO; SAN DIEGO CITY
COUNCIL; and DOES 1 through 5, inclusive,
18

19 Respondents.
20

Case No. 37-2017-00000453-CU-TT-CTL

**SUPPLEMENTAL REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
PETITION FOR WRIT OF MANDATE**

Hearing Date: January 11, 2018
Time: 10:00 a.m.
Dept.: C-69

Assigned for All Purposes To:
The Hon. Katherine Bacal
Department: C-69

Complaint Filed: January 5, 2017

21 Petitioner, CITIZENS FOR THE REGENTS ROAD BRIDGE, INC. ("Petitioner") hereby
22 respectfully requests that the Court take judicial notice, pursuant to Evidence Code Sections 452
23 and 453, of the following documents in support of its Petition for Writ of Mandate:

24 1. Pursuant to Evidence Code sections 452(c) and (h) and attached as Exhibit A, City
25 of San Diego's Planning Department's Request for Mayoral Action, dated April 15, 2016, to
26 approve payment to Kimley-Horn and Associates in the amount of \$99,818 for traffic engineering
27 services related to Existing Conditions, in connection with University Community Plan
28 Amendment;

1 2. Pursuant to Evidence Code sections 453(h), and attached as Exhibit B, a compilation
2 of the following pages from the Administrative Record, which together comprised a spread sheet
3 but which as produced in the Administrative Record is difficult to comprehend:

- 4 a. On page 1 of Exhibit B:
- 5 AR-12445 (appearing at the upper left)
- 6 AR-12446 (appearing at the upper middle)
- 7 AR-12447 (appearing at the upper right)
- 8 AR-12448 (appearing at the lower left)
- 9 AR-12449 (appearing at the lower middle)
- 10 AR-12450 (appearing at the lower right)
- 11 b. On page 2 of Exhibit B:
- 12 AR-12451
- 13 c. On page 3 of Exhibit B:
- 14 AR-12452 (appearing at the upper left)
- 15 AR-12453 (appearing at the upper right)
- 16 AR-12454 (appearing at the lower left)
- 17 AR-12455 (appearing at the lower right)

18
19 Dated: December 15, 2017

Respectfully submitted,

CGS3 LLP

By: 

Evelyn F. Heidelberg
Attorneys for Petitioner
CITIZENS FOR THE REGENTS ROAD
BRIDGE, INC.

EXHIBIT A

CITY OF SAN DIEGO
REQUEST FOR
MAYORAL ACTION

TO: MAYOR	FROM: (ORIGINATING DEPT.) Planning Department	DATE: 4/15/15
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SUBJECT: University Community Plan Amendment Circulation Element Update

ACTION REQUESTED:
1. Approve the University Community Plan Amendment Circulation Element Update, Task Order #1-Existing Conditions for an amount not to exceed \$99,818.

SUPPORTING INFORMATION:

BACKGROUND:
The City of San Diego entered into an Agreement Between the City of San Diego and Kimley-Horn and Associates, Inc. for Traffic Engineering Services, approved on March 10, 2015. This task order for University City Community Plan Amendment related to the Existing Conditions will be in accordance with the Agreement, Document No. RR-309544-2.

FISCAL IMPACT: This task order will result in total compensation not to exceed \$99,818.

COUNCIL DISTRICT: 1

COMMUNITY PLAN AREA: University City

PLEASE ROUTE TO THE APPROPRIATE AUTHORITY

			ROUTING AND APPROVAL		
			APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE
ACCOUNTING INFORMATION	BUDGETED	UNBUDGETED	ORIGINATING DEPARTMENT	Tom Tomlinson	4/16/15
FUND	200636		CLEARING AUTHORITY (EOCP)	Harry Foster	4/17/15
FUNCTIONAL AREA			CLEARING AUTHORITY (DSD/EAS)	N/A	
COST CENTER	9913000011		FINANCIAL MANAGEMENT	Melissa Garcia	4/22/15
GENERAL LEDGER ACCT	512059		COMPTROLLER	Grace Athie Tina Gray	4/23/15
WBS or INTERNAL ORDER	13001801		ORIGINATING DEPARTMENT	Melissa Garcia	4/23/15
CAPITAL PROJECT NO.			Public Works	N/A	
FACILITY			CITY ATTORNEY	N/A	
AMOUNT	\$99,818				
ESTIMATED COST: \$99,818					
COMPTROLLER'S CERTIFICATE: (FOR COMPTROLLER'S USE ONLY) 3000007782					
FOR INFORMATION CONTACT:					
NAME: Melissa Garcia					
MAIL STATION: 413	TELEPHONE NUMBER: (619) 236-6173				

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

CC 3000007782
DEPT. NO.:

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____

Purpose: _____

Date: _____

By: _____

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$99,818.00

Vendor: Kimley-Horn and Associates, Inc

Purpose: Approve the University Community Plan Amendment Circulation Element Update, Task Order#1-Existing Conditions for an amount not to exceed \$99,818.

Date: April 23, 2015

By: Grace Alhie

Grace Alhie
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
001	200636		13001801	OTHR-00000000-GG	512059	9913	9913000011		\$99,818.00
TOTAL AMOUNT									\$99,818.00

FUND OVERRIDE ☐

CC 3000007782

MAYORAL ACTION SUPPORTING INFORMATION
CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:
FILE COPY
April 17, 2015

SUBJECT: University Community Plan Amendment Circulation Element Update (H156336)

GENERAL CONTRACT INFORMATION

Recommended Consultant: Kimley-Horn and Associates, Inc. (Not Certified, M – Cauc.)

Amount of this Action: \$ 99,818.00 (Task # 1)
Total Contract Amount: \$1,050,000.00 (Not to Exceed)

Funding Source: City of San Diego

Voluntary Goals: 20% Voluntary SLBE/ELBE

SUBCONSULTANT PARTICIPATION

	<u>This Action</u>	<u>Percent</u>	<u>Cumulative</u>	<u>Percent</u>
Stack Traffic Consulting Inc(WBE, F – Cauc.)	\$ 25,705.00	25.75%	\$ 25,705.00	25.75%
Accurate Video Counts (ELBE, M – Cauc.)	\$ 9,648.00	9.67%	\$ 9,648.00	9.67%
Evair Consulting (ELBE, M – Cauc.)	\$ 5,580.00	5.59%	\$ 5,580.00	5.59%
Baranek Consulting (ELBE, F – Cauc.)	\$ 0.00	0.00%	\$ 0.00	0.00%
Total Certified Participation	\$ 15,228.00	15.96%	\$ 34,000.00	15.96%
Total Non-Certified Participation	\$ 25,750.00	25.75%	\$ 36,533.50	25.75%
Total Subcontractor Participation	\$ 40,933.00	41.71%	\$ 40,933.00	41.71%

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity Required

Kimley-Horn and Associates, Inc. submitted a Work Force for their San Diego County employees dated January 23, 2015 indicating 91 employees. The Administrative Work Force indicates under representation in the following categories:

Hispanic and Female in Management & Financial
Asian and Filipino in A&E, Science, Computer
Filipino in Technical

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

H156336

TASK ORDER AUTHORIZATION FOR TRAFFIC ENGINEERING SERVICES [TASK ORDER]

Consultant: Kinley-Horn

Date: 4/15/15

Task Order No. 1

Agreement: As-Needed Consultant Services Agreement between the City and Kinley-Horn and Associates, Inc.

Project Name: University Community Plan Amendment Circulation Element Update

Task Order Title and No.: Existing Conditions #1

Pursuant to the Terms and Conditions of the Agreement referenced above and incorporated into this Task Order, Consultant hereby agrees to perform the Professional Services described below. The Consultant shall furnish all necessary facilities, materials, and professional, technical, and supporting personnel required by this Task Order.

Part A

Scope of Services

1.1

Professional Services rendered under this Task Order shall be performed in accordance with the Agreement. The Scope of Services shall be as set forth in Exhibit A of the Agreement and as more fully set forth in the attached project specific Scope of Services.

Part B

Task Order Compensation

City shall pay Consultant for the Professional Services required by this Task Order in accordance with Article III of the Agreement.

The not to exceed cost for the Scope of Services for this Task Order is \$ 99,818.

Part C

Personnel Commitment

The Scope of Services shall be performed by Consultant's personnel in the number and classifications required by City.

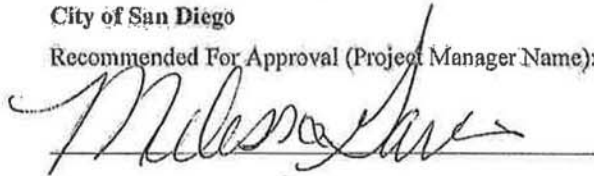
Part D

Time Sequence

All Professional Services to be performed under this Task Order shall be completed by August 30, 2015, and as set forth in the Task Order Scope of Services.

City of San Diego

Recommended For Approval (Project Manager Name):



Consultant

I hereby acknowledge receipt and acceptance of this

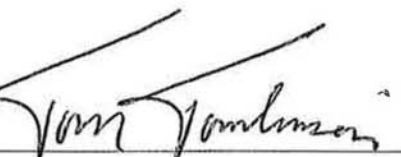
Task Order for:

By:



Approved By:

Signature:



Name: Tom Tomlinson / Nancy Bragado

Title: Interim Planning Director / Deputy Planning Director

Date:

4/16/15

SCOPE OF WORK

University Community Plan Amendment Circulation Element Update

This Scope of Work is for the **University Community Plan Amendment Circulation Element Update** and will be performed in accordance with the Agreement Between the City of San Diego and Kimley-Horn and Associates, Inc for Traffic Engineering Services, approved on March 10, 2015 Doc. No. RR-309544-2.

The Scope for this entire project is generally described below and authorization for each of the tasks described below will be defined as specific Task Orders are issued.

Task(s):

1. Public Outreach Strategy and Participation

Establish the road map of the public outreach process.

2. Process Mapping and Analyses Methodologies

Establish the road map of all the steps for completing the mobility analysis and defines the methodologies that will be used to conduct the analyses.

3. Research and Data Collection

The Consultant shall become familiar with relevant public and private plans, projects, and transportation studies in the vicinity of the planning area including the Regional Transportation Plan. Each document will be summarized to highlight conditions of approval related to transportation mitigation measures and describe why it is applicable to the community and key findings, and electronic files of the source document will be provided on a CD-ROM.

4. Existing Conditions and Mobility Assessment

Conduct a multi-modal mobility assessment of existing conditions.

5. Preliminary Circulation Element Concepts

Calibrate existing model and verify inputs within calibration area in the Series 12 Existing Base Year (Year 2008) SANDAG model are consistent with Year 2008 field conditions.

6. Circulation Element Alternatives Future Conditions Analysis

Evaluate future conditions and potential hot spots for each of the alternatives. Existing conditions information will not be updated or reiterated for these deliverables, but will be referenced to direct readers to the Existing Conditions Reports.

7. Amendment to Community Plan Circulation Element

Develop Mobility Element Policy Text, based on the existing and future conditions analyses develop policy language that addresses existing and future mobility deficiencies within the community.

TASK ORDER #1

UNIVERSITY COMMUNITY PLAN AMENDMENT CIRCULATION ELEMENT UPDATE

8. Traffic Impact Study

Prepare a traffic impact study report consistent with City of San Diego Traffic Impact Study Manual for use in the environmental review and document preparation process consistent with the City's California Environmental Quality Act (CEQA) Guidelines.

9. Attend Decision Making Hearings

Prepare for and attend the Planning Commission and City Council workshops and hearings.

TASK ORDER #1

UNIVERSITY COMMUNITY PLAN AMENDMENT CIRCULATION ELEMENT UPDATE

MOBILITY PLANNING AND ANALYSIS

The Consultant shall prepare a mobility study that evaluates the adequacy of the transportation system as a whole as well as along key corridors and intersections within the Community Plan update area for existing conditions and for community plan amendment mobility alternatives. The Consultant shall develop, analyze, and present specific multi-modal transportation improvement alternatives and recommendations for community consideration to provide a balanced multi-modal transportation system. The study shall be prepared in conformance with the City's Traffic Impact Study Manual and guidelines.

Time allocated for coordination and project discussion meetings, community meetings and project milestones/billings have been assumed and itemized within each task in which they occur. Project coordination and project discussion meetings with the City are assumed at about two week intervals while the project is active. In addition, up to four University Community Planning Group (UCPG) meetings have been assumed as noted in Tasks 5, 6 and 7. Project expenditures associated with the consulting efforts will be billed to respective active tasks.

1. PUBLIC OUTREACH STRATEGY AND PARTICIPATION

This task establishes the road map of the public outreach process. The consultant will prepare an outreach strategy to be used for gathering community input associated with this task order. A draft outreach plan, including key community meetings and expected outcomes, will be prepared. A meeting will be held with City staff to refine the plan. A final outreach plan will be prepared following this meeting.

DELIVERABLES:

- ✓ Draft Outreach Plan
- ✓ Meeting Minutes
- ✓ Final Outreach Plan

UNIVERSITY COMMUNITY PLAN AMENDMENT CIRCULATION ELEMENT
UPDATE

2. PROCESS MAPPING AND ANALYSES METHODOLOGIES

This task establishes the road map of all the steps for completing the mobility analysis and defines the methodologies that will be used to conduct the analyses. The consultant will hold weekly meetings or conference calls with the technical team from the Mobility Planning section and other divisions as needed to complete this effort. Topics to be covered include but are not limited to the following.

- a. Develop a process chart and narrative discussing the overall process for developing the University Community Plan circulation element update
- b. Pedestrian performance measures
- c. Bicycle performance measures
- d. Transit service performance measures
- e. Traffic circulation and regional accessibility performance measures
- f. Freeway and ramp performance measures
- g. Parking analysis
- h. Traffic model calibration tolerances (5/11/12 memo)
- i. Traffic model adjustments and turning movement volume computation
- j. Develop a new metric for assessing development impact fees
- k. Develop a Quality Review procedure and checklist

DELIVERABLES:

- ✓ Meeting Minutes covering discussion points and action items
- ✓ Process Chart
- ✓ Technical Memos

3. RESEARCH AND DATA COLLECTION

- a. Research: The Consultant shall become familiar with relevant public and private plans, projects, and transportation studies in the vicinity of the planning area including the Regional Transportation Plan. Each document will be summarized

TASK ORDER #1

UNIVERSITY COMMUNITY PLAN AMENDMENT CIRCULATION ELEMENT UPDATE

to highlight conditions of approval related to transportation mitigation measures and describe why it is applicable to the community and key findings, and electronic files of the source document will be provided on a CD-ROM.

Deliverable: Summary report of relevant research.

- b. Data Collection: Consultant shall compile and collect existing conditions data along the street network providing traffic circulation and regional access as well as identified pedestrian and bicycle routes and transit services and infrastructure. Specific information to be collected/compiled includes the latest available five years of traffic collision summaries from the TIMS database supplemented with more recent City records if available, average daily traffic (ADT) counts including vehicle classification information, morning and evening peak-period intersection turning movement counts including pedestrian and bicycle counts, mid-day peak-period intersection turning movement counts along La Jolla Village Drive and Genesee Avenue, street and lane widths, intersection lane configurations, traffic speed data along La Jolla Village Drive and Genesee Avenue, existing traffic signal timing data, transit service and ridership data, transit operations and infrastructure information, pedestrian and bike facilities information, private plans transportation conditions of approval, improvement projects included in University Public Facility Financing Plan, and parking information. Consultant team shall provide all necessary existing traffic counts determined in coordination with SANDAG staff to calibrate the traffic model.
- Roadway Segments – all Circulation Element roads and one segment beyond community planning area boundaries where not separated by freeways and natural barriers. (*approximately 65 roadway segments*)
 - Freeway Segments – all freeway segments within the CPA and one interchange beyond. (*approximately 11 freeway segments*)

TASK ORDER #1

UNIVERSITY COMMUNITY PLAN AMENDMENT CIRCULATION ELEMENT UPDATE

- Intersections – all of the ramp intersections that provide access to the community, intersections where both streets meet one of the conditions – 4 or more lanes, 3-lanes carries over 15,000 ADT, or 2-lanes carries over 10,000 ADT. (*approximately 60 intersections*)
- Traffic speed data – La Jolla Village Drive and Genesee Avenue only, collect 2 days of travel time runs during seven hours of the day, consistent with the peak-hour intersection volume hours.
- Queuing analysis will be conducted at all of the study area intersections. (*at each metered freeway on-ramp during peak hours*)
- Ramp Metering – all freeway on-ramps with metering that provide primary freeway outbound access for the community. (*rates obtained from Caltrans*)
- ILV – As per City staff's direction, no ILV analysis will be performed for this project.

DELIVERABLES:

- ✓ Count data sheets for all collected traffic count data
- ✓ Traffic count summary tables and figures

4. **EXISTING CONDITIONS MOBILITY ASSESSMENT:** The Consultant team shall conduct a multi-modal mobility assessment of existing conditions. Analysis of the subtasks below will be included in the Existing Conditions Reports as a stand-alone chapter and appendices, as needed. This task entails, but is not limited to, the following:

TASK ORDER #1

UNIVERSITY COMMUNITY PLAN AMENDMENT CIRCULATION ELEMENT UPDATE

- a. Pedestrian Facilities – Using performance measures defined in Task 1, evaluate pedestrian safety, ADA accessibility, connectivity, walkability and quality of service at key intersections and roadway segments along identified pedestrian routes selected in consultation with City staff. Refer to the Pedestrian Master Plan for relevant information.
- b. Bicycle Facilities - Using performance measures defined in Task 1, evaluate bicycle needs, accessibility, safety, connectivity, convenience and level of service at key intersections and key roadway segments along identified bicycle routes. Refer to the Bicycle Master Plan for relevant information.
- c. Transit Facilities – Using performance measures defined in Task 1 and ridership data, evaluate the effectiveness and level of service of transit serving infrastructure, transit service/s, and transit performance. Evaluate transit accessibility and transit/land use linkages.
- d. Traffic Circulation – Using performance measures define in Task 1, evaluate traffic circulation and regional accessibility and evaluate safety, capacity, efficiency, traffic control devices, and levels of service at key freeway segments, on-ramps, roadway segments and intersections along identified traffic circulation corridors for daily and morning, (limited) mid-day, and evening peak period conditions. The mid-day conditions will be evaluated along La Jolla Village Drive and Genesee Avenue only (optional evaluation for Nobel Drive and Regents Road). The analysis should include transportation system performance measures including arterial analysis for streets classified as a major or above; vehicle miles traveled, vehicle hours traveled, and mode split from information in the travel forecast models; and system and corridor delays, travel times, queuing, and stops. Travel time data collected on La Jolla Village Drive and Genesee Avenue will be used to calibrate arterial analyses along these roadways(optional evaluation for Nobel

TASK ORDER #1

UNIVERSITY COMMUNITY PLAN AMENDMENT CIRCULATION ELEMENT UPDATE

Drive and Regents Road).

- e. Goods Movement – Evaluate the transportation infrastructure serving truck traffic circulation and accessibility needs.
- f. Parking - Assess all types of on-street and public off-street parking demand and supply based on the policies set forth in the Mobility Element of the General Plan. The analysis should include an evaluation of costs associated with parking.
- g. Opportunities and Constraints: Identify opportunities and constraints with respect to pedestrian, bicycle and automobile modes, parking and truck access. Work with SANDAG and MTS to identify opportunities and constraints with respect to transit service.
- h. Prepare a draft Existing Conditions Mobility Assessment report
- i. Prepare a final Existing Conditions Mobility Assessment report

5

DELIVERABLES:

- ✓ Briefing paper(s) on existing conditions
- ✓ Draft and Final existing conditions mobility assessment report and maps illustrating transportation infrastructure deficiencies and levels of service

TASK ORDER #1

UNIVERSITY COMMUNITY PLAN AMENDMENT CIRCULATION ELEMENT UPDATE

COMPENSATION AND SUBTASK SCHEDULE

No.	Subtask Description	Consultant Staff Name	Job Title	Cost	Duration
1.	Public Outreach			\$ 3,000	2 months
2.	Define Process and Analysis Methodologies			\$ 14,660	1.5 months
3.	Research and Data Collection			\$ 38,223	1 months
4.	Existing Conditions and Mobility Assessment			\$43,935	2 months
Total				\$99,818	

Subconsultant Assignments

Subconsultant	Total TO Amount
Stack Traffic Consulting, Inc.	\$ 25,705
Accurate Video Counts	\$ 9,648
Evri Consulting	\$5,580
Baranek Consulting	\$ -

Duration

All work shall be complete no later than August 30, 2015.

The duration is measured from the date of issuance of the Purchase Order. Any consultant work performed prior to the issuance date will not be compensated.

Cost Deviation

If actual costs are deviating from identified costs, consultant shall notify the City Project Manager. A brief summary shall be submitted explaining the reason for deviation, identifying the revised cost estimate, and addressing the cost impacts to remaining tasks. The revised total cannot exceed the task order total, or a new task order will be needed.

Invoices

Consultant shall furnish monthly invoices in accordance with Article III Compensation, Section 3.2 Manner of Payment, of the As-Needed Consulting Agreement.

Reporting

Consultant shall furnish progress reports and information as requested by the City Project Manager.

City of
As-Needed Agreement with
Contract No
Subcontract

Task #	Task Title	Total Task Amount	Status (Awarded/Canceled)	Stack Traffic Consulting, Inc.	Accurate Video Counts	E
1	University City-Existing Conditions	\$ 99,818.00		\$ 25,705.00	\$ 9,648.00	
2		\$ -		\$ -	\$ -	
3		\$ -		\$ -	\$ -	
4		\$ -		\$ -	\$ -	
5		\$ -		\$ -	\$ -	
6		\$ -		\$ -	\$ -	
7		\$ -		\$ -	\$ -	
8		\$ -		\$ -	\$ -	
9		\$ -		\$ -	\$ -	
10		\$ -		\$ -	\$ -	
11		\$ -		\$ -	\$ -	
12		\$ -		\$ -	\$ -	
13		\$ -		\$ -	\$ -	
14		\$ -		\$ -	\$ -	
15		\$ -		\$ -	\$ -	
16		\$ -		\$ -	\$ -	
17		\$ -		\$ -	\$ -	
18		\$ -		\$ -	\$ -	
19		\$ -		\$ -	\$ -	
20		\$ -		\$ -	\$ -	
21		\$ -		\$ -	\$ -	
22		\$ -		\$ -	\$ -	
23		\$ -		\$ -	\$ -	
24		\$ -		\$ -	\$ -	
25		\$ -		\$ -	\$ -	
26		\$ -		\$ -	\$ -	
27		\$ -		\$ -	\$ -	
28		\$ -		\$ -	\$ -	
30		\$ -		\$ -	\$ -	
31		\$ -		\$ -	\$ -	
32		\$ -		\$ -	\$ -	
34		\$ -		\$ -	\$ -	
APPROVED TASKS [1-34] TOTAL FEES		\$ 99,818.00		\$ 25,705.00	\$ 9,648.00	
Percent of Total Fees - Approved Task Orders				26%	10%	

TASK # Special Notes/Comments:

#REF!

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

EXHIBIT B

	A	B	C	D	E
1					
2					
3	Total Amount Encumbered	\$ 46,223.39			
4					
5					
6	Task Order	Consultant	Amount	Amount Invoiced	Task Order End Date or Payment Date
7	SANDAG University Modeling	SANDAG	\$ 5,277.00	\$ 5,277.00	6/30/2016
8			\$ 11,371.19	\$ 11,371.19	4/7/2016
9			\$ 13,484.91	\$ 13,484.91	4/7/2016
10				\$ 8,000.00	estimate per SANDAG 4/7/16
11					
12				\$ -	
13					
14					
15					
16					
17					
18					
19					
20	Total Amount Invoiced		\$ 30,133.10	\$ 38,133.10	
21	Balance Available		\$ 8,090.29		
22					
23					
24					
25	PO can be closed after final invoice and funds released				

A	B	C	D	E
No.	Subtask Description	Cost	Proposed Amendment	
1				1
2	1 Project Management			2
3	Coordination & Management	\$7,440		3
4	Project Team Meetings	\$14,054		4
5				5
6	2 Preparation of the EIR			6
7	2.1 Summary	\$3,784		7
8	2.2 Alternatives	\$11,116		8
9	3 Environmental Analysis			9
10	3.1 Aesthetics/Neighbourhood Character	\$8,130		10
11	3.2 Biology	\$12,938	\$ 19,898	11
12	3.3 Greenhouse Gas	\$10,850	\$ 10,496	12
13	3.4 Land Use Planning	\$9,528		13
14	3.5 Noise	\$9,808	\$ 34,297	14
15	3.6 Population Housing	\$3,618		15
16	3.7 Transportation/Traffic	\$11,234		16
17	3.8 Cultural Resources	\$7,560		17
18	3.9 Hazards & Hazardous Materials	\$2,530		18
19	3.1 Public Services	\$9,766		19
20	3.11 Utilities/Service Systems	\$5,678		20
21	3.12 Air Quality	\$15,278		21
22	3.13 Geology/Soils	\$5,950		22
23	3.14 Hydrology/Water Quality	\$5,110		23
24	3.15 Other Required Sections	\$6,720		24
25	4 Revisions	\$34,232		25
26	5 Pre-Print Public Review Draft EIR	\$6,838	\$ 2,265	26
27	Native American Contact Program			27
28	6 Public Review Draft EIR	\$6,838		28
29	7 Final EIR and Response to Comments	\$23,260		29
30	8 Other Direct Costs			30
31	Printing and CD's	\$6,000		31
32	Communications/Postage/Delivery	\$100		32
33				33
34	Archaeological Record Search	\$1,000		34
35	Total	\$239,360	\$ 66,956	35
36				36
37				37
38	Task	Original Scope	Proposed Amendment	Total Scope Amount Original + Proposed Amendment
39	3.2 Biology	\$12,938	\$ 19,898	32,836
40	3.3 Greenhouse Gas	\$10,850	\$ 10,496	21,346
41				41
42	3.5 Noise	\$9,808	\$ 34,297	44,105
43	Native American Contact Program			43
44		Total	\$ 64,691	44
45				45
46			\$ 28	46

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - January 10, 2018

EVENT DATE: 01/11/2018

EVENT TIME: 10:00:00 AM

DEPT.: C-69

JUDICIAL OFFICER: Katherine Bacal

CASE NO.: 37-2017-00000453-CU-TT-CTL

CASE TITLE: CITIZENS FOR THE REGENTS ROAD BRIDGE INC VS CITY OF SAN DIEGO [E-FILE]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

The petition for writ of mandate, filed by petitioner Citizens for the Regents Road Bridge, Inc. ("Citizens"), is denied.

Preliminary Matters

Citizens' unopposed request for judicial notice is granted.

Background

In October 2014, respondent City of San Diego decided to evaluate whether several uncompleted transportation projects, including widening a section of Genesee Avenue ("Genesee Avenue Widening") and constructing a bridge across Rose Canyon to connect the north and south ends of Regents Road ("Regents Road Bridge") should be removed from the University Community Plan ("University Plan"). Administrative Record ("AR"), pp. 3-8, 19. The University Plan is a component of the General Plan. Before the City took its action, the Genesee Avenue Widening and Regents Road Bridge projects had been "on hold" due to technical, environmental, and community concerns. AR, p. 4.

The City reviewed the proposed amendments under the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 *et seq.*) and prepared draft and final environmental impact reports ("DEIR" and "FEIR"). On December 16, 2016, the City certified the FEIR and adopted the amendments to the General Plan and University Plan. AR, pp. 9-62 (Resolution R-310813) and pp. 63-65 (Resolution R-310814). The City concluded that although removing the Genesee Avenue Widening and Regents Road Bridge projects from the University Plan would result in certain "significant and unmitigable impacts," each of the stated benefits "serves as an independent basis" for overriding the impacts. AR, p. 48.

Citizens contends that the City's actions violate CEQA. Verified Pet'n at ¶ 9. Citizens seeks a writ of mandate directing the City to set aside its approval of the project and EIR. Citizens argues the DEIR fails to discuss the project's inconsistency with the General Plan, a revised EIR should have been recirculated because significant new information was added, and there is no substantial evidence to support the City's findings.

Discussion

In evaluating Citizens' claim that the City failed to observe the requirements of CEQA, the Court is guided by the terms and policy of the CEQA statute. That is made relatively easy by the fact that the Legislature announced its intent in the statute itself. The Legislature stated that all state agencies which regulate activities affecting the quality of the environment (which would include the City), "shall regulate such activities so that major consideration is given to preventing environmental damage...." Pub. Resources Code, § 21000(g). The Legislature further declared that it was the State's policy to, among other things, ensure that the long-term protection of the environment is "the guiding criterion in public decisions." Pub. Resources Code, § 21001(d). "[T]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." *Great Oaks Water Co. v. Santa Clara Valley Water Dist.* (2009) 170 Cal.App.4th 956, 966. "The law is intended 'to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.'" *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 503.

To achieve the Legislature's goal, as a "first step," there must be a determination as to whether the matter at issue is a "project," that is, "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" undertaken, supported, or approved by a public agency." *Save the Plastic Bag Coalition v. County of Marin* (2013) 218 Cal.App.4th 209, 219. "An activity that is not a 'project' as defined in the Public Resources Code (see § 21065) and the CEQA Guidelines (see § 15378) is not subject to CEQA." *Muzzy Ranch Co. v. Solano County Airport Land Use Com'n* (2007) 41 Cal.4th 372, 380 (explaining further that this "first tier" is jurisdictional).

Whether an activity constitutes a project under CEQA is a question of law. *Muzzy Ranch, supra*, at 381; *Creed-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 503; *Sustainable Transp. Advocates of Santa Barbara v. Santa Barbara County Ass'n of Governments* (2009) 179 Cal.App.4th 113, 119 (holding that a mechanism for funding that could be modified or not implemented did not qualify as a project under CEQA).

The Public Resources Code defines a "project" to mean "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," and which is, *inter alia*, an activity directly undertaken by any public agency. Pub. Resources Code, § 21065. The CEQA Guidelines further define a "project" to be "an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," and that is an activity undertaken by any public agency including the adoption and amendment of general plans. 14 CCR § 15378.[1] Thus, under the terms of both the Code and the Guidelines, there are two prongs to the question of whether an action is a "project" under CEQA: (1) the action of an agency, and (2) direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103, 115-116, *Rev. Granted* (1/11/17) 386 P.3d 795 (explaining that this "this the most reasonable way to harmonize" the CEQA statute's application to discretionary projects (§ 21080), which states "except as otherwise provided," with the definition of "project" (§ 21065), and further noting that this is the same interpretation set forth in the CEQA Guidelines).

Here, the City's proposed action -- to remove the Genesee Avenue Widening and the Regents Road Bridge from the University Community Plan and General Plan -- will not result in any direct physical change or a reasonably foreseeable indirect physical change in the environment. Instead, there will be no change in environment because the action ensures the maintenance of the status quo. Thus, the action is not a "project" for purposes of CEQA.

Citizens also argues that the City is equitably estopped from disputing that the plan amendment is a CEQA project because the City issued a Notice of Preparation of EIR and held public meetings to

discuss the project. "Under the doctrine of equitable estoppel, a party cannot deny *facts* that it intentionally led another to believe if the party asserting estoppel is ignorant of the true facts, and relied to its detriment." *Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 179. A public agency does not waive the right to invoke a potential exception to CEQA by preparing and certifying an EIR. *Id*; *Santa Barbara County Flower and Nursery Growers Ass'n, Inc. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 876. Whether a project is exempt from CEQA, as in *Del Cerro* and *Santa Barbara*, or does not fit within the statutory definition of a CEQA project, as here, does not matter. Estoppel does not apply.

As CEQA does not apply to the City's actions, Citizens cannot demonstrate the City violated CEQA. Accordingly, the petition is denied.

The minute order will be the order of the Court. The City is directed to serve notice on all parties within 2 court days of this ruling.

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[1] This same Guideline makes clear that "administrative activities of governments that will not result in direct or indirect physical changes in the environment" are not "projects." § 15378(b)(5).