

2014-18143

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SAN DIEGO, CALIF

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4 San Diego, CA 92101  
5 Tel: 619-696-3600

6 Attorney for Petitioner:  
7 BANKERS HILL/PARK WEST COMMUNITY  
8 ASSOCIATION, an unincorporated association

COPY TO: CITY ATTORNEY ✓  
RISK MANAGEMENT ✓  
DATE 12/15/14  
DCC NAME SCD

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

11  
12 BANKERS HILL/PARK WEST  
13 COMMUNITY ASSOCIATION,  
14 an unincorporated association,

15 Petitioner,

16 vs.

17 CITY OF SAN DIEGO, A PUBLIC ENTITY,

18 and DOES 1-10,

19 Respondents.

Case No.: \_\_\_\_\_

VERIFIED PETITION FOR WRIT UNDER  
THE CALIFORNIA ENVIROMENTAL  
QUALITY ACT (CCP SECTION 1094.5)

20 Date: \_\_\_\_\_

21 Time: \_\_\_\_\_

22 Dept: \_\_\_\_\_

23 Judge: \_\_\_\_\_

24 *Scanned signature as ORIGINAL*

25 Petitioner, BANKERS HILL/ PARK WEST COMMUNITY ASSOCIATION (hereinafter  
26 "Petitioner") allege the following:  
27

1 Parties

2 1. Petitioner, Bankers Hill/Park West Community Association  
3 (hereinafter "BHPWCA"), which is a non-profit community organization, which has been  
4 in existence for over a decade. A major focus of the organization has been advocating  
5 for better pedestrian infrastructure and traffic calming in the Bankers Hill community of  
6 the City of San Diego. In 2006, the BHPWCA presented the City of San Diego with  
7 petitions containing the signatures of approximately 500 local residents and businesses  
8 requesting stop signs be placed at three intersections along both Fourth Avenue and Fifth  
9 Avenue, including the section of Fifth Avenue which is the subject of this Petition.  
10 Installation of the stop signs resulted in an approximately 70% to 80% reduction in  
11 vehicular accidents. While advocating for traffic safety measures, the BHPWCA also  
12 recognizes the need for a balanced approach in addressing traffic-related issues, to  
13 assure that the adjacent western residential areas, where a substantial majority of  
14 Bankers Hill residents reside, are not adversely impacted.

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17  
18 2. Leo Wilson (hereinafter "Wilson") is the Co-Chair of the BHPWCA,  
19 and has a long involvement in the Banker's Hill Community, and have full authorization  
20 to sign on the Association behalf as the Petitioner in the above-entitled proceeding.

21  
22 3. Respondent, City of San Diego, is a charter city, and is a local  
23 government and subdivision of the State of California, and operates as specified in the  
24 California Constitution and under the laws of the State of California. Respondents are  
25 authorized and required by law to comply with, and make findings in accordance with, the  
26 California Environmental Quality Act ("CEQA").



1           7.     In October 2014, the City of San Diego's Third District City Council  
2 Office sent certain Bankers Hill community leaders an E-mail message stating that the  
3 City of San Diego intended to remove an entire traffic lane on Fifth Avenue from Laurel  
4 Street to Upas Street, when the street was planned to be resurfaced and re-stripped upon  
5 the completion of a water main/pipeline replacement project (hereinafter "Lane Reduction  
6 Project"). A bicycle lane would be installed in the center of the removed traffic lane. There  
7 was no formal public notice of the Lane Reduction Project submittal to the City of San  
8 Diego; instead the Third City Council Office indicated the City of San Diego has the right  
9 to restripe Fifth Avenue, and remove a traffic lane without any required CEQA or other  
10 form of notice or public review. The Lane Reduction Project was stated by a  
11 representative of the Third City Council Office to be a "road diet."

14           8.     On or about October 16, 2014, Bankers Hill community leaders met  
15 with Brian Genovese, the City of San Diego Senior Traffic Engineer in charge of the Lane  
16 Reduction Project (hereinafter "Genovese"), to discuss the Lane Reduction Project.  
17 Questions were raised regarding compliance with CEQA and whether there had been  
18 actual traffic counts conducted by the City of San Diego along the Fifth Avenue Corridor.  
19 Genovese stated that the Lane Reduction Project qualified under an exception to CEQA  
20 that provides for bicycle projects in adopted bicycle plans. One of the attendees, Wilson,  
21 pointed out the Bike Plan's Project Number 4 on Fifth Avenue involved only narrowing of  
22 traffic lanes and parking spaces, not lane reductions. Genovese responded that the City  
23 of San Diego's Master Plan general provisions provided the City of San Diego broad  
24 discretion in implementing bicycle-related projects beyond those in the Bike Plan.  
25  
26  
27

1           9.     On or about November 13, 2014, the Petitioner were informed by the  
2 Third City Council Office, that restriping and lane removal contemplated by the Land  
3 Reduction Plan would commence on November 20, 2014. In a letter dated November 15,  
4 2014, the BHPWCA objected to the arbitrary nature of the placement of the proposed  
5 Lane Reduction Project, the unreasonably short notice provided, and lack of actual traffic  
6 studies. (See **Exhibit #1**; attached and incorporated by reference herein). It was also  
7 pointed out that sections of Fifth Avenue between Laurel Street and Upas Street were  
8 scheduled to have other construction projects commence in 2015, which would require  
9 temporary closure of additional traffic lanes that would last at least a year. Actual traffic  
10 counts conducted in 2012 showed there were then an average of 12,000 vehicle trips per  
11 day along the Fifth Avenue Corridor; reducing sections of the Fifth Avenue Corridor to  
12 one lane would result in serious traffic congestion, with a strong likelihood of diverting  
13 traffic into the western areas of Bankers Hill.

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17                           **Exhaustion of Administrative Remedies**

18           10.    The decision to remove a traffic lane from the Fifth Avenue Corridor  
19 pursuant to the Lane Reduction Project was arbitrarily made, with no public notice or  
20 hearing process. The intended traffic lane removal was added to a repaving and  
21 restriping of Fifth Avenue that would take place as a result of Water Group Job 945 Project  
22 (hereinafter "Water Pipeline Replacement Project"), which had previously caused major  
23 sections of Fifth Avenue to be trenched and excavated. The CEQA compliance  
24 documentation for the Water Pipeline Replacement Project makes no mention of reducing  
25 traffic lanes along Fifth Avenue when the street was contemplated to be repaved and re-  
26 striped.  
27

1           11. Despite the arbitrary nature of the City of San Diego's actions, with  
 2 no formal public notice or hearing, Petitioner made both oral and written objections to the  
 3 Lane Reduction Project, and meet with both the City of San Diego's (now former) Planning  
 4 Director Bill Fulton and Genovese to voice objections to the Lane Reduction Project.  
 5 Petitioner also invited City of San Diego representatives to a meeting of Fifth Avenue  
 6 residents and property owners scheduled for December 8, 2014, to discuss the Lane  
 7 Reduction Project. It was only after receiving the short notice on November 13, 2014,  
 8 that the Lane Reduction Project would commence on November 20, 2014; that Petitioner  
 9 were left with only the option of filing this Petition pursuant to Government Code Section  
 10 54960.1 (a).  
 11

12           12. Petitioner have no plain, speedy and adequate remedy in the  
 13 ordinary course of law, as BHPWCA's members and other members of the public will  
 14 suffer irreparable harm as a result of Respondent's violation of CEQA, and applicable  
 15 sections of the City of San Diego Municipal Code.  
 16

17  
 18                               Venue and Jurisdiction

19           13. Petitioner are interested parties within the meaning of California  
 20 Government Code Section 54960.1. Venue and jurisdiction in this Court are proper  
 21 pursuant to the California Code of Civil Procedure, for a matter relating to subject property  
 22 located within, and discretionary, quasi-legislative and administrative actions, that are  
 23 within this Court's jurisdiction. Petitioner allege that the City of San Diego failed to proceed  
 24 in a manner required by law, and failed to conduct necessary CEQA review, and that  
 25 these actions and inactions constitutes a prejudicial abuse of discretion.  
 26

27                               FIRST CAUSE OF ACTION

(Violation of CEQA)

1  
2 14. Petitioner incorporate by reference each of the allegations set forth  
3 in this Petition as if set forth herein in full.

4  
5 15. At all times relevant to this action, the City of San Diego was the  
6 "Lead Agency" responsible for the review and approval of the Lane Reduction Project  
7 under California Public Resources Code section 21067.

8 16. The City of San Diego has failed to comply with CEQA, in that it did  
9 not conduct any environmental review of the Lane Reduction Project, despite there being  
10 substantial evidence to support a fair argument that the Lane Reduction Project will have  
11 significant impacts upon the environment. The removal of an entire traffic lane on Fifth  
12 Avenue, which has approximately 12,000 daily vehicle trips, has a strong possibility of  
13 diverting traffic onto adjacent residential streets, including First Avenue. Increased traffic  
14 along primarily residential streets such as First Avenue, with a large number of driveways,  
15 creates a foreseeable adverse traffic and public safety impact, which should be subject  
16 to CEQA review. The City of San Diego also did not study the impacts a lane reduction  
17 on Fifth Avenue would have on the vehicular traffic on Sixth Avenue; actual traffic counts  
18 for which show the average daily vehicular trips to be approximately 18,900 at the  
19 intersection of Sixth Avenue and Quince Street. Already Sixth Avenue has serious traffic  
20 flow problems, evidenced by a high rate of reported traffic accidents. Removing a traffic  
21 lane on Fifth Avenue, without mitigation measures, will substantially exacerbate the  
22 known existing problems with traffic flow on Sixth Avenue, as well as First Avenue.

23  
24 17. There is substantial evidence to support a fair argument that the  
25 Lane Reduction Project will have significant cumulative impacts on vehicular traffic flow

1 throughout Bankers Hill and Uptown. Presently, the Uptown Community Plan (hereinafter  
2 "Community Plan Update") is being updated. As part of the Community Plan Update, the  
3 City of San Diego is required to have an updated "Mobility Element", based on  
4 comprehensive traffic analysis of traffic volumes and circulation throughout Uptown,  
5 including Bankers Hill. The Mobility Element will make recommendations that take into  
6 account the impacts of proposed changes to vehicular traffic flow and traffic lanes upon  
7 Bankers Hill and the entire Uptown community. As part of the Community Plan update,  
8 the Mobility Element will be subject to CEQA and formal public review. The Lane  
9 Reduction Project constitutes an improper segmenting of a project without any CEQA  
10 review; because it should have been included in the Community Plan Update process.  
11

### 12 SECOND CAUSE OF ACTION

#### 13 (Reliance on Non-Applicable CEQA Exception)

14 18. Petitioner incorporate by reference each of the allegations set forth  
15 in this Petition as if set forth herein in full.  
16

17 19. At all times relevant to this action, the City was the "Lead Agency"  
18 responsible for the review and approval of the Lane Reduction Project under California  
19 Public Resources Code section 21067.  
20

21 20. The removal of a vehicular traffic lane on Fifth Avenue conflicts with  
22 Priority Project Number 4 contained in the Bike Plan, which states that existing traffic  
23 lanes and parking spaces should be narrowed to accommodate a Class II bicycle lane.  
24 When this inconsistency was pointed out to City of San Diego staff; they responded that  
25 the general provisions of the Bike Plan allowed them broad discretion to install projects  
26 without CEQA review, relying on an exception to CEQA in California law.  
27



1           21.     Senate Bill 417, which amended California Public Resources Code  
2 section 21080.20, provides that a project which consists of re-striping of streets and  
3 highway for bicycle lanes in urban areas is exempt from CEQA approval if the project is  
4 "consistent with the approved bicycle transportation plan." As indicated herein, the re-  
5 striping lane reduction on Fifth Avenue conflicts with the Priority Project 4 contained in  
6 the approved Bike Plan, which calls for only narrowing traffic lanes and installing a class  
7 II bicycle lane.  
8

9           22.     Furthermore, there was no compliance with the other conditions of  
10 Senate Bill 417; there was no noticed public hearing; the traffic counts relied on by the  
11 City of San Diego to justify the Lane Reduction Plan were only unsubstantiated estimates  
12 and not actual traffic counts, and no written mobility or traffic impact assessment was  
13 prepared of traffic and pedestrian safety impacts of the Lane Reduction Project.  
14

15           23.     The CEQA exemption provided for in Senate Bill 417 is clearly not  
16 applicable to the Lane Reduction Project, and the Lane Reduction Project should be  
17 subject to CEQA review.  
18

19  
20 PRAYER FOR RELIEF

21           WHEREFORE, Petitioner respectfully prays:

22           1.     That this Court find that the City of San Diego did not proceed in a  
23 manner required by law/ and or its actions and inactions were not supported by substantial  
24 evidence;  
25

26           2.     That this Court issue a peremptory writ of mandate declaring that  
27 the City of San Diego's action in attempting to remove a traffic lane from Fifth Avenue,  
28

1 without CEQA review, is null and void; and that the traffic lane be immediately restored  
2 on Fifth Avenue by restriping;

3  
4 3. That the City of San Diego refrain from granting any additional  
5 permits, entitlements, or other approvals related to the Lane Reduction Project, or  
6 approving any other ministerial action, until there has been compliance with CEQA;

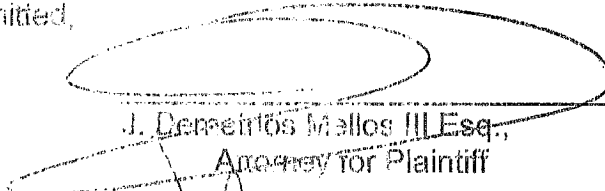
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8 4. That Petitioner be awarded the reasonable costs incurred in this  
9 action;

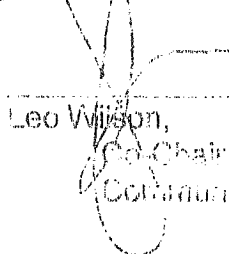
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11 5. That Petitioner be awarded reasonable attorney's fees pursuant to  
12 California Code of Civil Procedure Section 1021.5; and

13  
14 6. For such other legal or equitable relief that this Court deems just and  
15 proper.

16 Dated: December 9, 2014

17 Respectfully Submitted,

18   
19 J. Demetrios Mallos III Esq.,  
20 Attorney for Plaintiff

21   
22 Leo Wilson,  
23 Co-Chair of Bankers Hill/Park West  
24 Community Association

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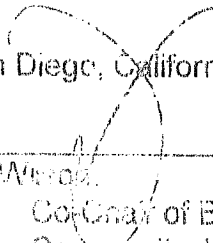
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VERIFICATION

I, LEO WILSON, am the Co-Chair of the Bankers Hill/Park West Community Association, and have full authorization to sign on the Association behalf as the Petitioner in the above-entitled proceeding. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, we believe it to be true.

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

Executed on December 9, 2014 in San Diego, California.

  
\_\_\_\_\_  
Leo Wilson.

Co-Chair of Bankers Hill/Park West  
Community Association

*Bankers Hill/Park West  
Community Association*

*P.O. Box 635201  
San Diego, California 92163-5201*

November 15, 2014

Adriana Martinez  
Council Representative  
Office of Council President Todd Gloria  
Third District, City of San Diego  
202 C Street, MS 10A  
San Diego, CA 92101

Dear Ms. Martinez:

Thank you for forwarding what is a very short notice. There are now no options for impacted Bankers Hill/Park West community stakeholders other than filing a lawsuit to remove the paint and restore the traffic lanes. I expect the lawsuit to be filed by the beginning of December. Although it will likely fall on deaf ears, I would request the traffic lanes not be reduced on Fifth Avenue north of Laurel Street until the court hearing. The traffic lanes can be restriped, but proposed bicycle lane striping should be delayed until the court makes a determination.

Want to emphasis that those involved in this lawsuit, and other community stakeholders, are not necessarily opposed to the future removal of traffic lanes on Fourth and Fifth Avenues. In fact, the Metro San Diego Community Development Corporation passed a motion at its October 13, 2014 meeting supporting making the west lane of Fourth Avenue a buffered, two-way bicycle lane through Bankers Hill/Park West. It would be similar to a two-way "green line" bicycle lane in downtown Seattle.

What we are opposed to is the arbitrary nature of this project: removing traffic lanes on Fourth and Fifth Avenue has not been subject to the appropriate environment review, nor have there been actual traffic studies which indicate the impact of the lane reductions on adjacent communities. City staff is relying on a clearly not applicable exception to CEQA in state law to implement this project as a component of the City's of San Diego's Bicycle Plan. Actually, we would very much welcome implementation of the approved project contained in the City of San Diego's adopted bicycle plan. Instead, Bankers Hill/Park West is being subject to what amounts

to bait and switch. Also, City staff's claim the City Bicycle Plan gives them broad discretion to basically do whatever it wants is completely false. Why adopt a City-wide bicycle plan if you are not going to implement it? – The lawsuit being filed is partially about protecting the integrity of the adopted San Diego Bicycle Plan.

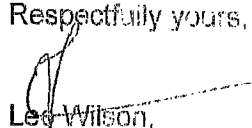
A particular concern is the impacts of the project on First Avenue, as it often absorbs the "overflow" traffic from temporary traffic lane reductions on Fourth, Fifth and Sixth Avenues in Bankers Hill/Park West. A substantial majority of the population of Bankers Hill lives in western Bankers Hill/Park West, and utilizes First Avenue for travel. How will this project impact them? The Uptown Community Plan is now being updated; this project should be analyzed and reviewed as part of the community plan update process; so that any potential negative impacts can be mitigated on an Uptown community-wide basis.

I also need to point out that Mr. Genovese, the City's traffic engineer coordinating the project, likely provided only estimated traffic volume numbers at a meeting on October 16, 2014, when he claimed that, based on SANDAG studies, the traffic flow on Fifth Avenue north of Laurel Street was only 8,000 average vehicle trips per day. The numbers that Mr. Genovese claimed appear on the SANDAG website, and are stated to be "estimated" average daily trips.

By contrast I have actual, verifiable traffic counts from a traffic study conducted in 2012, which indicate there were 11,700 average daily vehicle trips at Fifth Street/Quince Street; and 12,000 average daily vehicle trips at Fifth Avenue/Natung Street. These numbers are very similar to a previous 2005 traffic study, which indicated there were 12,000 average daily vehicle trips on Fifth Avenue, from Quince Street to Redwood Street. If the SANDAG studies that the City is relying on were in fact estimates, then they should be disclosed.

Finally, you claim in your E-mail that the City will maintain "at least two travel lanes on 5<sup>th</sup> will not reduce to one travel lane in any area, including through the construction zones." This is not correct; the City has chalked out bicycle lanes on Fifth Avenue between Olive Street and Palm Street. In the first months of 2015, the Fifth Avenue Medical Center will be demolished and a new project built, this is all but certain to require the loss of the east traffic lane – so that section of Fifth Avenue becomes one lane for an extensive period of time; a similar situation will exist for a block-long entitled project on the east side of Fifth Avenue between Palm Street and Quince Street when construction begins.

Respectfully yours,

  
Lee Wilson,  
Bankers Hill/Park West Community Association

Cc, Mayor Kevin Faulconer,

*Bankers Hill/Park West  
Community Association*

*P.O. Box 635201  
San Diego, California 92163-5201*

December 15, 2014

City of San Diego  
Hon. Mayor Kevin Faulconer and City Council  
C/o City Clerk Elizabeth Maland  
202 C Street, Second Floor  
San Diego, CA 92101

Re: NOTICE OF INTENT TO FILE CEQA PETITION  
Water Group Job 945; Removal of Vehicular Traffic Lane on Fifth Avenue

Mayor Faulconer and Honorable Members of the City Council:

NOTICE IS HEREBY GIVE pursuant to the California Public Resources Code Section 21167.50 that petitioner BANKERS HILL/PARK WEST COMMUNITY ASSOCIATION intends to file a petition under the provisions of the California Environmental Quality Act (CEQA) against respondent CITY OF SAN DIEGO challenging and seeking to set aside the removal of a vehicular traffic lane on Fifth Avenue between Laurel Street and Upas Street, in the City of San Diego. This petition is based on allegations that the City in implementing the action failed to comply with CEQA, and that the action is defective and not supported by fact or law.

If you have any questions pertaining to this notice, please contact me at the above address or a telephone number 619-822-5103.

Respectfully yours,

  
Leo Wilson,  
Bankers Hill/Park West Community Association

Cc. J. Demetrios Mellos, III, Esq.

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