



FILED  
ALAMEDA COUNTY

JUL 22 2008

CLERK OF THE SUPERIOR COURT  
By Dean J. [Signature]  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

PANORAMIC HILL ASSOCIATION,  
a non-profit corporation,

Plaintiff/Petitioner,

vs.

THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA, an  
agency of the State of California, et al.,

Defendants/Respondents.

AND CONSOLIDATED CASES

No. RG06-301644  
RG06-302934  
RG06-302967

ORDER AFTER HEARING

The Motion of Respondents The Regents of the University of California, the University of California Berkeley, and Edward J. Denton (collectively, "Respondents") to Modify Preliminary Injunction was heard in Department 512 of the above court on July 17, 2008, Judge Barbara J. Miller presiding. Respondents appeared at the hearing by their counsel, Charles R. Olson, of Sanger & Olson. Petitioner Panoramic Hill Association appeared by its counsel, Michael R. Lozeau,

of Lozeau Drury LLP. Petitioner City of Berkeley appeared by its counsel, Harriet A. Steiner, of McDonough Holland & Allen PC. Petitioners California Oak Foundation, et al., appeared by their counsel, Stephan C. Volker, of the Law Offices of Stephan C. Volker.

At the hearing on the Motion to Modify Preliminary Injunction, the court also heard argument on the following matters: (1) Respondents' "Response to June 18 Order in Anticipation of the Court's Intended Issuance of a Peremptory Writ of Mandate" and supporting documentation; (2) Respondents' Proposed Judgment; (3) Petitioners' Objections to Respondents' Proposed Judgment; (4) Petitioners' Proposed Judgment and Proposed Writ of Mandate; and (5) Respondents' Objections to Petitioners' Proposed Judgment and Proposed Writ of Mandate.

The court has considered Respondents' Motion to Modify Preliminary Injunction, the opposition thereto, and the other above-referenced documents, as well as the arguments presented at the hearing, and, good cause appearing, HEREBY ORDERS as follows:

1. The court will enter judgment forthwith in favor of Petitioners in part, and in favor of Respondents in part. The judgment shall become effective and enforceable seven calendar days after the date of entry of judgment. The purpose of this stay is to allow Petitioners, or any of them, a reasonable opportunity to pursue a stay or other remedy in the Court of Appeal. During this

period, the status quo shall be preserved. The preliminary injunction entered on February 9, 2007, shall remain in effect until seven calendar days after the date of entry of judgment. Therefore, until the judgment takes effect, the University shall not take any action to implement the Southeast Campus Integrated Projects (the "Project") if such action would result in a change in the physical environment within the Project boundaries.

2. Upon entry of judgment, the Clerk is directed to issue a Peremptory Writ of Mandate.

3. The court deems Respondents' "Response to June 18 Order..." and supporting documentation as constituting Respondents' return demonstrating compliance with the court's Peremptory Writ of Mandate, the Alquist-Priolo Earthquake Fault Zoning Act, Public Resources Code section 2621, et seq. ("Alquist-Priolo") and the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA"). The return demonstrates that the University has removed "additional capacity events" as an approved feature of the Project. The return likewise demonstrates that the University has approved modifications to the Project that would omit the following design features that the court found would constitute "alterations" to the California Memorial Stadium ("CMS") within the meaning of the Alquist-Priolo: (i) a grade beam to be installed along the base of the west wall of the CMS; (ii) the demolition of two staircases; and (iii) certain "ground floor slab penetrations" proposed to facilitate the

installation of a telecommunications system for the Student Athlete High Performance Center.

4. With respect to CEQA compliance, the court has considered Petitioners' arguments regarding the adequacy of Respondents' return and the propriety of accepting Respondents' return at this stage of the proceedings. As to Petitioners' contention that The Regents must approve project changes relating to deletion of the additional events, the Court finds that the University's documentation provides adequate foundation for the University's contention that the appropriate University officials took action in response to the court's Order. Petitioners' other contention is that accepting Respondents' return at this stage of the proceedings would deprive Petitioners of due process. However, Petitioners have not articulated the nature of the process they would be entitled to under the present circumstances, where the University has chosen to comply with the court's Order (and anticipated writ) by withdrawing the proposal to increase the number of capacity events at the CMS. Petitioners have not suggested that the withdrawal of these events will result in new significant environmental effects or an increase in the severity of any significant environmental effects previously identified. The University has submitted competent evidence that the design changes, and in particular the omission of the grade beam, will not result in safety risks. Therefore, it does not appear that any further process is required or would serve any useful purpose.

5. With respect to Alquist-Priolo compliance, the court finds that the University acted within its discretion to remove the design features identified in paragraph three in response to the court's Order and anticipated writ, and that appropriate campus officials acted within their authority to approve the changes. However, the court hereby authorizes the University, at its option, to file a supplemental return within 30 days of the date of this Order demonstrating that the cost to construct the grade beam (or other alterations) will not exceed fifty percent of the value of the CMS. If such a supplemental return is supported by a showing that any reasonable and appropriate measure of the CMS's value is more than double the cost of any alteration(s), then the court may not need to determine which measure is most appropriate or the exact value of CMS.

6. Respondents' Motion to Modify Preliminary Injunction is DROPPED as moot. The preliminary injunction will be dissolved when the judgment takes effect, seven calendar days after the date of entry of judgment.

IT IS SO ORDERED.

Dated July 22, 2008

Barbara J. Miller

Barbara J. Miller  
Judge of the Superior Court