



6566987

FILED
ALAMEDA COUNTY

JUL 22 2008

CLERK OF THE SUPERIOR COURT
By Debra K. [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

JUDGMENT

Having considered the issues framed by the operative pleadings, the administrative record, and briefs filed by the parties in these partially consolidated actions; having heard oral argument by counsel for all parties in these matters; and having issued on June 18, 2008 an Order Granting in Part and Denying in Part Petitions for Writ of Mandate ("Order"),

THE COURT HEREBY ORDERS, ADJUDGES AND DECREES that:

1. Insofar as petitioners' claims under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") are concerned, the Petitions for Writ of Mandate filed by petitioners Panoramic Hill Association, City of Berkeley and California Oak Foundation, et al. ("Petitioners") are granted solely on the ground that the record lacks support for findings and conclusions in the EIR that doubling the number of capacity events at the California Memorial Stadium ("CMS") as part of Phase 2 of the CMS Seismic Corrections and Program Improvements, which is one component of the Southeast Campus Integrated Projects (the "Project"), will cause significant environmental effects that are unavoidable. (Order, pp. 121-122.) In other respects, insofar as Petitioners' CEQA claims are concerned, the Petitions are denied and judgment is entered in favor of Respondents The Regents of the University of California, et al. ("The University").

2. Insofar as Petitioners' Claims under the Alquist-Priolo Earthquake Fault Zoning Act (Public Resources Code, § 2621 et seq.) ("Alquist-Priolo") are concerned, the Petitions are granted solely on the grounds that:

a. The University is not exempt from the requirements of Alquist-Priolo (Order, pp. 10-17);

b. The Student Athlete High Performance Center ("SAHPC") project includes the following alterations to the CMS within the meaning of Alquist-Priolo:

(i) a grade beam to be installed along the base of the CMS west wall;

(ii) alterations to two CMS staircases; and

(iii) "ground floor slab penetrations" in CMS proposed to facilitate the installation of the SAHPC telecommunications system; and

c. At the time it approved the SAHPC, the University had not determined the value of the foregoing alterations to CMS identified in Paragraph 2.b, above.

In all other respects, insofar as Petitioners' claims under Alquist-Priolo are concerned, the Petitions are denied and judgment is entered in favor of the University.

3. The Clerk of the Court shall issue the accompanying Peremptory Writ of Mandate, ordering the University to do the following:

a. suspend the approval of the SAHPC until the University demonstrates that the cost to construct the foregoing alterations to the CMS described above in Paragraph 2.b, is less than fifty percent of the value of the CMS, or removes such alterations to CMS from the SAHPC project; and

b. pursuant to Public Resources Code section 21168.9(c), refrain from approving CMS Phases 2 or 3 of the Integrated Projects until the University (i) withdraws the proposal to increase the number of capacity events at the CMS as part of the Project; or (ii) if the University chooses to retain them, until the University provides substantial evidence to support its findings and conclusions in

the EIR that doubling that doubling the number of capacity events at the California Memorial Stadium will cause significant environmental effects that are unavoidable.

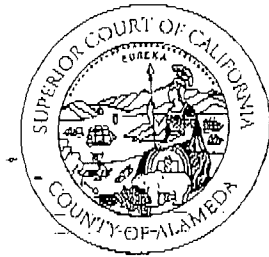
4. The court deems the University's Response, filed June 27, 2008, to the court's June 18, 2008 Order as a return to the Peremptory Writ of Mandate. The University's Response to the Order includes: (1) further environmental review of modifications to the Project and the SAHPC set forth in items (2) and (3) below in response to the court's Order, and modification of CEQA findings related thereto, including a subsequent finding superseding and effectively mooted the finding regarding unavoidable significant effects of increased capacity events; (2) removal from the Project of the additional capacity events referred to in Paragraph 1, above; and (3) removal of all alterations to the CMS included in the SAHPC project referred to in Paragraph 2.b. Such actions demonstrate compliance with the Peremptory Writ of Mandate.

5. In accordance with Code of Civil Procedure sections 1032(a)(4), 1084.5 and 1095, and consistent with the discretion that section 1032(a)(4) gives the court (see *Lincoln v. Schurgin* (1995) 39 Cal.App.4th 100, 105), the court apportions costs based on the degree to which the parties have prevailed in these partially consolidated proceedings. Because the University has prevailed on the bulk of Petitioners' claims, the court awards the University eighty-five percent of its costs, which shall be borne by Petitioners as follows: one-third by City of

Berkeley, one-third by Panoramic Hill Association and one-third by California Oak Foundation, et al. Costs are determined in accordance with the procedures set forth in Code of Civil Procedure sections 1032, 1033 and 1033.5, and the corresponding California Rules of Court. Any party wishing to seek attorney fees may do so by noticed motion.

Dated July 22, 2008

Barbara J. Miller
Barbara J. Miller
Judge of the Superior Court



*Superior Court of California,
County of Alameda, Hayward Hall of Justice*

24405 Amador Street, Hayward, CA 94544

Department 512
Judge Barbara J. Miller

FAX TRANSMISSION

Date: Tuesday July 22, 2008

Re: Action No. RG06-301644
Panoramic Hills Association vs. The Regents of The University

TO:	Harriet A. Steiner	916-444-8334
	Michael R. Lozeau	510-749-9103
	Stephan C. Volker	510-496-1366
	Charles R. Olson	415-693-9322
	John Sanger	415-693-9322
	Kelly Drumm	510-987-9757

RE: ORDER AFTER HEARING AND JUDGMENT

Any problems with transmission, please contact:
Jean Linzmeier, Clerk for Department 512
510-690-2854



FILED
ALAMEDA COUNTY

JUL 22 2008

CLERK OF THE SUPERIOR COURT
By *[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.

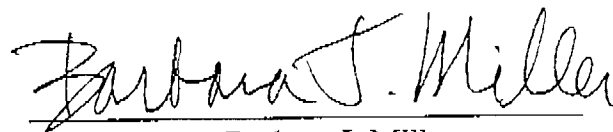
5. With respect to Alquist-Priolo compliance, the court finds that the University acted within its discretion to remove the design features identified in paragraph three in response to the court's Order and anticipated writ, and that appropriate campus officials acted within their authority to approve 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
Judge of the Superior Court



*Superior Court of California,
County of Alameda, Hayward Hall of Justice*

24405 Amador Street, Hayward, CA 94544

Department 512
Judge Barbara J. Miller

FAX TRANSMISSION

Date: Tuesday July 22, 2008

Re: Action No. RG06-301644

Panoramic Hills Association vs. The Regents of The University

TO:	Harriet A. Steiner	916-444-8334
	Michael R. Lozeau	510-749-9103
	Stephan C. Volker	510-496-1366
	Charles R. Olson	415-693-9322
	John Sanger	415-693-9322
	Kelly Drumm	510-987-9757

RE: ORDER AFTER HEARING AND JUDGMENT

Any problems with transmission, please contact:
Jean Linzmeier, Clerk for Department 512
510-690-2854