

McDONOUGH HOLLAND & ALLEN PC

Exempt from Filing Fees per Gov. Code § 6103

Attorneys at Law

HARRIET A. STEINER (SBN 109436)

KARA K. UEDA (SBN 210044)

555 Capitol Mall, 9th Floor

Sacramento, CA 95814

Phone: 916.444.3900

Fax: 916.444.8334

MANUELA ALBUQUERQUE (SBN 67464)

City Attorney

ZACH COWAN (SBN 96372)

Assistant City Attorney

CITY OF BERKELEY

2180 Milvia Street, 4th Floor

Berkeley, California 94704

Phone: 510.981.6950

Fax: 510.981.6960

Attorneys for Petitioner/Plaintiff

City of Berkeley

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

CITY OF BERKELEY, a municipal corporation)

Case No.

Petitioner/Plaintiff,)

**DECLARATION OF DAVID ORTH IN
SUPPORT OF CITY OF BERKELEY'S
EX PARTE APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION**

v.)

UNIVERSITY OF CALIFORNIA,)
BERKELEY; REGENTS OF THE)
UNIVERSITY OF CALIFORNIA; and DOES 1)
THROUGH 50, inclusive)

Respondents/Defendants.)

Date: December 21, 2006

Time: 10:00 a.m.

Judge: Jo-Lynne Lee

Department: 518

Complaint filed: December 19, 2006

I, David Orth, declare:

1. I am the Deputy Fire Chief of the City of Berkeley. In that capacity I am responsible for Operations, Emergency Medical Services, Training, Fire Prevention and the Office of Emergency Services for the City of Berkeley. I have over 28 years of experience with the Berkeley Fire Department, and have worked as a Chief Officer in the department for over 14 years. I am the

MHA

McDonough Holland & Allen PC
Attorneys at Law

Declaration of David Orth

978473v1 80012/0025

1 I, David Orth, declare:

2 1. I am the Deputy Fire Chief of the City of Berkeley. In that capacity I am responsible for
3 Operations, Emergency Medical Services, Training, Fire Prevention and the Office of Emergency
4 Services for the City of Berkeley. I have over 28 years of experience with the Berkeley Fire
5 Department, and have worked as a Chief Officer in the department for over 14 years. I am the
6 primary representative for the Fire Department with the University of California on development
7 projects and response issues.

8 2. The Berkeley Fire Department provides emergency response protection for fire and life
9 safety to the University of Californian, Berkeley and the City of Berkeley.

10 3. In my opinion, the increase in activity at California Memorial Stadium (CMS) that is
11 proposed as part of the Southeast Campus Integrated Projects (SCIP) will have a significant impact
12 on the Fire Department's ability to provided adequate emergency services to the area around CMS,
13 particularly because of impacts on access and egress, both for CMS and the surrounding areas.

14 4. CMS is located at the bottom of Panoramic Hill, an area that includes parts of both Berkeley
15 and Oakland. The Panoramic Hill area has very limited road access and water pressure, both of
16 which significantly impair the cities' ability to fight fires in the areas. It is dependent on a single,
17 very narrow, access route. In order to travel to the top of Panoramic Hill it is necessary to negotiate
18 a number of switchbacks. Some of these are so sharp, and the road is so narrow, that vehicles larger
19 than automobiles, such as vans, cannot negotiate them without backing up.

20 5. As a result, the City of Berkeley has adopted very strict development controls for this area.
21 The Berkeley part of the Panoramic Hill area is in the "Hill Fire Hazard Area" identified in the
22 City's General Plan and is zoned Environmental Safety-Residential ("ES-R"). The ES-R
23 regulations impose a number of safety-related requirements not found in other residential zoning
24 districts, including: a larger minimum lot size; limitations on the size of structures (gross floor area,
25 building height, number of stories); increased side yards; increased parking requirements; and a
26 prohibition of accessory dwelling units. Similarly, the City's Building Code designates the ES-R
27 district as "Fire Zone Three", and imposes additional fire-safety related requirements on new
28 construction and alterations in the ES-R district.

1 6. While the overall proposal for CMS as proposed in the SCIP—i.e., all three phases of
2 improvements to CMS—would improve access and egress within CMS itself once construction is
3 complete, what will not be improved, and what continue to be the greatest issue, is the totally
4 inadequate access and egress from the area. In fact, the increased egress capability from CMS only
5 makes the situation worse. Nothing has been done or is planned for the egress management of the
6 CMS crowds out of the area and to allow for others in the area to also quickly and safely egress
7 from the area.

8 7. Increasing the number of full-capacity events at CMS will only increase the chances that a
9 disastrous event may occur. But this is only one part of the problem. The City currently views
10 events with as few as 10,000 attendees as problematic, because the street network in the area is not
11 capable of quickly moving either a walking or vehicle evacuation of the area. The area becomes
12 gridlocked. When the occupant load of the CMS is added to the existing residential evacuation load
13 the area will become impassible. Any evacuation from this area has only one real route, to the
14 south. The other possible routes are very restricted and easily blocked. This is also complicated
15 by multiple events in the area adding additional occupant loading and congestion. The gridlock
16 and possible impassible conditions mean access for emergency responders is impossible which
17 means a hazard cannot be mitigated. This results in an even greater need to evacuate an area during
18 an incident. The problem continues to get worse and grow in size.

19 8. Based on the SCIP EIR, however, it appears that the University intends to allow CMS to be
20 used for a significantly greater number of events than at present. The expectation that the City can
21 effectively deal with these major events during an emergency, especially without prior notification,
22 planning and staffing is a disaster waiting to happen. Adding the potential for other multiple large
23 events occurring in the area at the same time and again a disaster is in the making.

24 9. The location of the Stadium located on an active earthquake fault in a hazardous fire area
25 and listed by State and Federal officials as a high-risk target served by a limited and convoluted
26 road network makes no sense. To increase the activity at many levels at an already dangerous
27 location makes no sense. The expectation that crowds of thousands of people can be safely and
28 quickly egressed from this area whether on foot or in cars, which is worse, by the City Public Safety

1 agencies based on the planning and capacity in place makes no sense.

2 I declare under penalty of perjury that the foregoing is true and correct. Executed at
3 Berkeley, California, on December 18, 2006.

4 
5 David Orth
6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28