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SEP 14 2008

CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
DEPUTY

J. CEDILLO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY**

CITY OF MARINA,
Petitioner,

v.

BOARD OF TRUSTEES OF CALIFORNIA
STATE UNIVERSITY,
Respondents.

FORT ORD REUSE AUTHORITY,
Petitioner,

v.

BOARD OF TRUSTEES OF CALIFORNIA
STATE UNIVERSITY,
Respondents.

) **Case No. M 41781**
) (Consolidated with M 41795)

) **STIPULATION TO DISCHARGE**
) **PEREMPTORY WRIT OF**
) **MANDATE; [~~PROPOSED~~] ORDER**

) Assignment for all purposes:
) Honorable Robert O'Farrell

1 2. In the Fall 2008, CSUMB generated approximately 8,550 trips per day from off-
2 campus to on-campus and from on-campus to off-campus. This number was determined by a
3 combination of methodologies, including traffic tube counts and on-campus observational studies.
4 That number is the baseline traffic level against which future increases in campus traffic will be
5 measured.

6 3. In the event CSU determines, based on the CSUMB annual traffic reports, that
7 CSUMB trips will exceed the mitigation threshold of 4,361 additional trips within the upcoming
8 year, CSU will undertake further environmental review, consistent with the provisions of the
9 California Environmental Quality Act, Public Resources Code §21000 et seq., ("CEQA") to assess
10 the environmental impacts associated with such additional trips prior to exceeding said threshold.

11 4. Consistent with the Trustees resolution approving the CSUMB 2007 Campus
12 Master Plan, CSUMB will:

13 (i) Adopt a TDM plan referred to in section 1(iii) to reduce vehicle trips; report
14 annual traffic increases to the Chancellor, FORA, and Marina; and,

15 (ii) Seek approval from the Trustees to exceed the threshold of 4,361 additional
16 trips,

17 (iii) Report to the Chancellor, FORA, and Marina any measures or modifications
18 made to the TDM plan to address an increase in trip levels.

19 CSUMB's above commitment shall be construed as an enforceable mitigation measure
20 under Public Resources Code §21081.6.

21 5. Additional mitigation measure 11-5.1, adopted by the Trustees May 13, 2009, as
22 part of its approval of the 2007 CSUMB Campus Master Plan, does not preclude CSUMB from
23 making direct payments to Monterey Salinas Transit in connection with programs developed as
24 part of the TDM plan to be implemented pursuant to the MOU entered into between FORA and
25 CSU.

26 6. The Statement of Overriding Considerations ("SOC") adopted by the Trustees May
27 13, 2009 relative to its approval of the CSUMB 2007 Campus Master Plan applies to the
28 significant unavoidable impacts to: (i) on-campus roadways; (ii) off-campus transit facilities; and

1 (iii) off-campus water supply infrastructure facilities. The SOC does not apply to impacts relative
2 to off-campus traffic impacts. As previously noted, the Trustees determined that to the extent
3 CSUMB vehicle trips draw near (i.e., within 5% of) the 4,361 mitigation threshold, trip generation
4 shall be frozen below the threshold. As a result, the 2007 CSUMB Campus Master Plan will not
5 result in potentially significant impacts to off-campus roadways.

6 7. Prior to the commencement of development of Phase II of the North Campus
7 Faculty/Staff housing, CSU shall request from the Legislature through the state budget process its
8 fair-share of the costs to implement the Regional Urban Water Augmentation Project ("RUWAP"),
9 determined to be \$1,347,530. [See additional mitigation measure 7-2.2, adopted by the Trustees on
10 May 13, 2009]

11 If the Legislature denies CSU's initial funding request, CSU shall:

12 (i) Resubmit the request during the following CSU budget cycle, and

13 (ii) Continue to resubmit the request annually until the funding is appropriated
14 or until the Marina Coast Water District ("MCWD") commences construction of the
15 RUWAP (or its replacement project), whichever comes first.

16 If the Legislature has not funded CSUMB's \$1,347,530 fair-share costs when MCWD
17 commences construction of the RUWAP or its replacement project, CSUMB shall seek authority
18 from the Trustees to engage in discussions with representatives of FORA and Marina regarding the
19 availability of alternative funding sources, if any, for CSU's \$1,347,530 fair-share costs. CSUMB
20 may seek CSU authorization to engage in such discussions prior to the time of commencement of
21 construction of the RUWAP or its alternate project. The Parties acknowledge that the
22 determination of the availability of any such alternative funding sources shall be consistent with
23 state and federal law, the California Supreme Court's ruling in *City of Marina* and its progeny.

24 8. CSU shall request funding from the Legislature for its remaining fair-share of the
25 costs to prepare the Habitat Conservation Plan ("HCP") for the former Fort Ord. That sum is
26 expected to be \$47,800. The costs to manage the CSU Borderlands property are expected to be
27 \$4,784.91 annually. [See additional mitigation measure 8-1.1, adopted by the Trustees May 13,
28 2009].

1 If the Legislature denies CSU's initial funding request, CSU shall:

2 (i) Resubmit the request during the following CSU budget cycle, and

3 (ii) Continue to resubmit the request annually until the funding is appropriated
4 or until the HCP is completed and executed by all parties thereto, whichever comes first.

5 If the Legislature has not appropriated the funding at the time the HCP is executed, CSU
6 shall seek authority from the Trustees to engage in discussions with representatives of FORA and
7 Marina regarding the availability of alternative funding sources, if any, for CSU's one-time
8 payment of \$47,800 and its annual payments of \$4,784.91. The Parties acknowledge that the
9 determination of the availability of any such alternative funding sources shall be consistent with
10 state and federal laws, the *City of Marina* and its progeny.

11 9. The Parties request that the Court discharge the writ.

12 10. If any party or its legally recognized successor in interest contends that another
13 party has breached this Stipulation and Order, the party contending breach shall give the other
14 party/parties written notice thereof. Within thirty (30) days of delivery of such notice, the Parties
15 shall meet and confer in good faith to try to resolve the dispute. If the dispute is not resolved
16 through the meet and confer process within sixty (60) days of the initial written notice of breach,
17 the Parties shall submit the matter to non-binding mediation or some other form of non-binding
18 Alternative Dispute Resolution ("ADR"), to be agreed upon by all Parties. If the Parties are unable
19 to reach agreement on the appropriate ADR forum, the matter shall be submitted to non-binding
20 mediation. The mediator shall be selected by mutual agreement. If the dispute is not resolved
21 through ADR within nine (9) months of the initial written notice of breach, any party may file a
22 judicial proceeding in the Superior Court of California, County of Monterey, to enforce this
23 Stipulation. In that event, all parties waive discovery. The intent of the Parties in drafting this
24 provision is that any dispute arising under this Stipulation be resolved by the least expensive and
25 prompt means possible.

26 11. By executing this Stipulation, the signatories warrant that he or she has the legal
27 authority to do so.

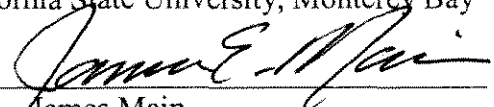
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For CSU

September 2, 2009

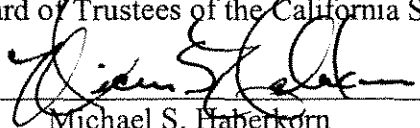
James Main
Vice President for Administration & Finance
California State University, Monterey Bay

By: 
James Main

Approved as to Form and Substance

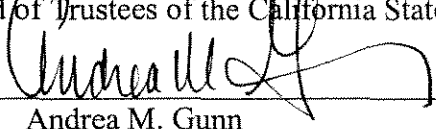
Michael S. Haberkorn
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Attorneys for Respondent
Board of Trustees of the California State University

By: 
Michael S. Haberkorn

Andrea M. Gunn
Office of General Counsel
The California State University, Office of the
Chancellor

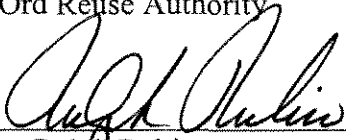
Attorneys for Respondent
Board of Trustees of the California State University

By: 
Andrea M. Gunn

For FORA

September 2, 2009

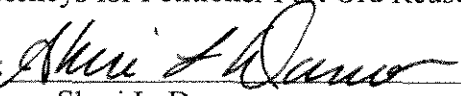
Ralph Rubio
Chair
Fort Ord Reuse Authority

By: 
Ralph Rubio

Approved as to Form and Substance

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Attorneys for Petitioner Fort Ord Reuse Authority

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For City of Marina
September 1, 2009


The Honorable Bruce Delgado
Mayor
City of Marina

By 
Bruce Delgado

Approved as to Form and Substance

Kenneth D. Buchert
Wellington Law Offices

Attorneys for Petitioner City of Marina

By 
Kenneth D. Buchert

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ORDER

In light of the stipulation entered into among the parties, and for good cause shown, the Court hereby orders that the peremptory writ of mandate issued May 11, 2007, be discharged.

Dated: SEP 14 2009

KAY KINGSLEY

Judge of the Monterey County Superior Court