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

Friberg <p style="text-align: center;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> Bates <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG05230715</u> <p style="text-align: center;">Order</p> Motion for relief dismissal pursuant to CCP 473 (b) Granted
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The Motion of Plaintiffs/Petitioners Carl Friberg, Ann Wagley, Jim Sharp, and Dean Metzger ("Petitioners") For Relief From Dismissal Pursuant to C.C.P. section 473(b) came on regularly for hearing on March 30, 2006, in Department 518 of the above-entitled court, the Honorable Jo-Lynne Q. Lee presiding. Petitioners appeared by Stephan C. Volker. Respondents Tom Bates, Linda Maio, Darryl Moore, Maxwell Anderson, Laurie Capitelli, Gordon Wozniak, Phil Kamlarz, Manuela Albuquerque, and City of Berkeley ("Respondents") appeared by Zach Cowan. Real Parties in Interest University of California Berkeley and Regents of University of California appeared by Charles R. Olson.

The Court has considered all the papers filed on behalf of the parties, as well as the arguments presented at the hearing, and, good cause appearing,

IT IS HEREBY ORDERED as follows:

1. The Motion for Relief from Dismissal of Petitioners' First Cause of Action in this matter, arising from the California Environmental Quality Act ("CEQA") is GRANTED. The Court finds that given the unusual facts presented in this case, the Petitioners' failure to timely comply with Public Resources Code ("PRC") section 21167.4 was excusable mistake based on a good faith but faulty belief that the Court's setting a date for hearing on the CEQA claim, and Petitioners' service of the Court's notice of said hearing date on Respondents and Real Parties in Interest, was sufficient to satisfy the provisions of PRC section 21167.4 and relieved Petitioner from its affirmative duty to file a formal request for hearing under said statute. The Court further finds that Petitioners have acted diligently in proceeding with the action in all other respects and that the delayed filing and service of the request for hearing did not prejudice Respondents. Further, the See McCormick v. Board of Supervisors, (1988) 198 Cal. App. 3d 352, 358; Nacimiento Regional Water Management Advisory Committee v. Monterey (2004) 122 Cal.App.4th 961, 966.

2. Pursuant to Code of Civil Procedure §473, Petitioners are to pay Respondents and Real Parties in Interest all attorneys fees and costs reasonably resulting from Petitioners' failure to timely comply with PRC section 21167.4. Respondents and Real Parties in Interest are to submit a detailed accounting of the fees and costs expended in connection with Petitioners' failure to comply with PRC section 21167.4.

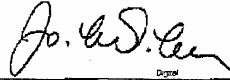
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verified by counsel, within 15 days of service of this Order.

3. In light of the above, the hearing on demurrer to the First Amended Complaint, currently set for April 7, 2006 in Department 31, is hereby continued to May 4, 2006, at 2:00 p.m., in Department 518. Parties may submit supplemental briefs in support of or opposition to the demurrer to address the impact, if any, of two recent appellate court decisions, 108 Holdings, Ltd. v. City of Rohnert Park (2006) 136 Cal.App.4th 186, and Trancas Property Owners Assoc. v. City of Malibu (March 30, 2006) 06 C.D.O.S. 2717, 2006 Cal. App. LEXIS 466. The supplemental briefs are to be no more than 5 pages in length, and are to be filed, with courtesy copies faxed to the Court at 510-670-5838, on or before April 20, 2006.

4. Also in light of the above, the Case Management Conference currently set for April 21, 2006 in Department 18, is vacated.

Dated: 04/04/2006



Judge Jo-Lynne Q. Lee

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SHORT TITLE: Friberg VS Bates	CASE NUMBER: RG05230715
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ADDITIONAL ADDRESSEES

-- Third Party --
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