



February 1, 2021

**To: CAROL T. CHRIST, Office of Chancellor,
University of California Administration,
200 California Hall, #1500
Berkeley, CA 94720-1500**

Re: DEMAND of PEOPLE'S PARK COUNCIL Regarding Status and Protection of the Park.

Dear Ms. CHRIST:

This letter will serve to inform you that I have been engaged to represent your contractual and community counterpart, the Claimant PEOPLE'S PARK COUNCIL, on behalf of People's Park and its constituent community groups and individuals, with regard to the rights and interests of said PEOPLE'S PARK COUNCIL itself and of PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM, in the preservation, protection, and integrity of People's Park, Berkeley, California, as a user-developed and community-controlled open space.

Please be advised that this representation has been duly memorialized in a professional engagement agreement with my client, the PEOPLE'S PARK COUNCIL (hereinafter referred to as the "COUNCIL"). Accordingly, please direct all future communications, correspondence and compensation regarding this particular matter to me, as attorney for the said Claimant, at the office address and telephone number indicated above, and henceforth kindly refrain from contacting or communicating directly with the Claimant in reference to any of the specific legal issues herein addressed.

The COUNCIL is particularly concerned with the preservation of People's Park as such including, but not limited to, its inherent environmental, expressive, cultural, community, social, historical, horticultural and botanical values. This letter shall endeavor to raise and address the following serious issues of mutual concern:

1) Adherence to binding agreements between the University of California Berkeley campus administration (hereinafter referred to as U.C.) and responsible People's Park organizations; 2) Compliance with all statutory requirements of the California Environmental

Quality Act (“CEQA”) [California Public Resources Code, Sections 21000 – 21178]; 3) The furtherance of free expression and public education; and 4) The preservation of plants and wildlife, including the botanic and horticultural values and resources of People’s Park.

1. **AGREEMENTS:** As I’m sure you are well aware, the U.C. campus administration has perfected a number of solemn, lawful, and binding agreements, concluded in good faith, with the responsible People’s Park organizations, notably including the PEOPLE’S PARK COUNCIL and PEOPLE’S PARK PROJECT/NATIVE PLANT FORUM (PPP/NPF).

The first such binding agreement is the “Letter of Agreement” of May 8, 1978, executed by T. H. (“TED”) CHENOWETH, then “Associate Vice Chancellor for Business Affairs, UCB,” on behalf of U.C., and by three (3) responsible Coordinators and members of PEOPLE’S PARK PROJECT/ NATIVE PLANT FORUM (hereinafter referred to as “PPP/NPF”), on behalf of People’s Park. Section B of the Letter of Agreement states, in pertinent part, as follows:

“The Chancellor’s Office agrees to discuss with the PPP/NPF all matters relating to the use, maintenance and development of the People’s Park site and any tentative proposals for construction, public works, or other significant changes affecting the Park before the Chancellor’s Office makes a decision on these matters.

“The Chancellor’s Office agrees that the PPP/NPF will serve as a clearinghouse for discussion and resolution of issues on matters relating to People’s Park . . .” Letter of Agreement, § B. Communications, page 1.

A somewhat more elaborate memorialization of the agreed-upon working relationship between U.C. and PPP/NPF was set forth in the Letter of Understanding dated January 5, 1979, and fully-executed on February 9, 1979, by officers of the same parties as the Letter of Agreement. The Letter of Understanding set forth undertakings similar to the Letter of Agreement, reiterating verbatim, under the heading “Communications,” the same sentence that had previously appeared in the previous agreement, to wit:

“The Chancellor’s Office agrees to discuss with the PPP/NPF all matters relating to the use, maintenance and development of the People’s Park site and any tentative proposals for construction, public works, or other significant changes affecting the Park before the Chancellor’s Office makes a decision on these matters.” Letter of Understanding, Communications, page 2.

Section B of the Letter of Agreement goes on to declare that may request transfer of “the above functions” to “a broad-based People’s Park student community neighborhood association . . .” Letter of Agreement, § B. Communications. This latter reference anticipated the

coordinating role of the PEOPLE'S PARK COUNCIL, which was organized and founded very soon thereafter. PPP/NPF did in fact duly transfer its role as a "clearinghouse" for People's Park land-use planning and coordination to the PEOPLE'S PARK COUNCIL, an ongoing organization that is presently often referred to as the PEOPLE'S PARK COMMITTEE, or simply as "the COMMITTEE." Gardening and landscape-development activities and issues generally remained under the sound purview of and coordination by PEOPLE'S PARK PROJECT/NATIVE PLANT FORUM (PPP/NPF).

Said functions of these respective People's Park organizations, namely the PEOPLE'S PARK COUNCIL and PPP/NPF, were expressly recognized, acknowledged, and largely respected by the U.C. Campus Administration. Said recognition, and the working relationships thus created, were memorialized in a Letter from T. H. ("TED") CHENOWETH, as Associate Vice Chancellor for Business Affairs, to then Vice Chancellor ROBERT F. ("BOB") KERLEY, dated August 31, 1979.

The PEOPLE'S PARK COUNCIL, in cooperation with the U.C. Campus Administration, with PPP/NPF, and with other student and community groups, built the People's Stage on the West End of People's Park in 1979.

Specifically, Mr. CHENOWETH's Letter of August 31, 1979, opened by expressly recognizing PPP/NPF's "continuing agreement with the Chancellor's Office to conduct their urban gardening and native plant activities" in People's Park. Mr. CHENOWETH's Letter went on to acknowledge and express approval of the stage-use Guidelines developed by the PEOPLE'S PARK COUNCIL for scheduling and use of the People's Stage that it had erected that same year. Mr. CHENOWETH's Letter also expressly recognized the unique role of the PEOPLE'S PARK COUNCIL in scheduling of events and managing use of the Stage, as well as such scheduling, management, upkeep, planning, and improvement of People's Park in general.

This demand letter shall serve as due notice that U.C. has materially breached the solemn agreements, both written and verbal, that it has undertaken with both the PEOPLE'S PARK COUNCIL and PPP/NPF, including but not limited to those discussed above.

2. CEQA LAW: The U.C. campus administration has also recently violated the California Environmental Quality Act ("CEQA"), codified as California Public Resources Code, Sections 21000 – 21178.

The most recent incursions and depredations by or on behalf of U.C. have included fencing and drilling on portions of People's Park without due notice, discussion or environmental impact assessment. In so doing, U.C. has breached the various agreements described above, as well as the clear requirements of CEQA.

Among the severe and deleterious environmental impacts caused by U.C.'s recent activities are, without limitation, significant damage to native California trees and other valuable botanic resources established and growing in People's Park, pollution to the grounds of the Park, damage to the soil of the Park, disruption of land use, and disturbance of long-permitted community access to and reliance upon the site, thus creating secondary impacts throughout Berkeley and beyond, inconveniencing students and employees of the campus, park users, neighbors, and merchants, as well as many other individuals and the community generally. Such disruptions are especially significant and hazardous to public health in light of the ongoing the Covid-19 Pandemic.

Even prior to these most recent unilateral actions and resulting negative impacts, U.C. has conducted a purported planning process that has assiduously avoided any direct notification of, discussion with, or solicitation of input from the PEOPLE'S PARK COUNCIL or PPP/NPF, or for that matter, many other People's Park interest groups and stakeholders, students, neighbors, and community organizations and individuals. In this and other ways, said planning process, as such, has been violative of the requirements of CEQA.

It should be noted that in 1977, People's Park was listed on the State Historic Resources Inventory. The Park was deemed category "3S," appearing "eligible for NR [National Register] as individual property through survey evaluation." In 1984 the City of Berkeley Landmarks Preservation Commission designated People's Park a City of Berkeley Landmark.

Besides the historical and cultural status of People's Park, the values and interests of open space, recreation, botany, horticulture, urban density, Derby Creek restoration, water and air quality, carbon sequestration, land use, and traffic flow, among many other considerations, must all be fully recognized, weighed and assessed, pursuant to the terms of CEQA.

It is perhaps unnecessary to remind you that litigation in the early 1990s, involving a CEQA writ of mandate filed on behalf of the PEOPLE'S PARK COUNCIL led, directly or indirectly, to the modification, curtailment and abandonment of several specific harmful projects that U.C. had planned to impose on People's Park.

3. **FREE EXPRESSION:** People's Park has served as a Constitutionally-protected forum for free speech, assembly and public education continuously since 1974.

PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM (PPP/NPF) has conducted concerts, rallies, gardening classes, and public events in the park since April, 1974. It was with this specific

purpose in mind that the PEOPLE'S PARK COUNCIL and PPP/NPF, in close cooperation and consultation with other many groups and individuals, built the People's Stage in 1979.

Commencing in 1979, the PEOPLE'S PARK COUNCIL has managed, coordinated and scheduled all such public events in the Park, including concerts, celebrations, festivals, and rallies involving amplified speech, public assembly, music, poetry, and other expressive content, in cooperation with U.C. Campus administration, police, and the Associated Students (ASUC). Many if not most of these events have been conducted by the PEOPLE'S PARK COUNCIL directly. In addition, the PEOPLE'S PARK COUNCIL has diligently assisted many other groups and individuals to access and utilize the Park, the Stage, and other available facilities.

In 1987, PEOPLE'S PARK COUNCIL and PPP/NPF, together with four (4) individual Plaintiffs, successfully sued U.C. to guarantee unfettered free speech, both amplified and unamplified, on the Stage and in the Park. The Summary Judgment granted by Alameda Superior Court remains in place and must continue to be honored.

PEOPLE'S PARK COUNCIL has typically sponsored and coordinated anniversary celebrations in the spring, as well as several other similar event each year, since 1979. The only diminution in such public gatherings has occurred in just the past year as a result of restrictions associated with the Covid-19 Pandemic.

The free expressive and public educational uses and functions of People's Park have become a valuable community asset and inherent cultural resource.

4. PLANTS AND WILDLIFE: Some forty-four (44) distinct species of trees and shrubs thrive in People's Park, primarily to be found among the California native plant communities established on the East End of the Park and in landscaped areas and organic garden beds established on the West End of the Park. In addition, countless species of wildflowers, groundcovers, herbs, succulents, and fungi fill the interstices between the woody plants.

Since April, 1974, PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM (PPP/NPF) has created and maintained this verdant oasis, emphasizing California native plants. A few such specimen plantings may represent rare and endangered species or varieties, at least in this climate zone. PPP/NPF has also provided opportunities for individuals and groups to learn about and enjoy the rewards of community gardening and urban landscaping, always free of charge.

PPP/NPF sprang from a student-initiated field study in horticulture and urban ecosystems based in what was previously the Agriculture Department on the U.C. campus in Berkeley. Over the years, PPP/NPF and People's Park have greatly benefitted from the active

and contributions of U.C. Cooperative Extension, U.C. Botanical Garden, Regional Parks Botanic Garden, the Associated Students (ASUC), the Work-Study program, and numerous students and faculty members from the U.C. Berkeley campus and other institutions.

In so doing, the energy of many campus and community contributors has combined to create a verdant botanic oasis amidst the pavement and buildings that crowd our urban landscape in Berkeley, California. Attracted to the greenery and organisms present, many birds, in flocks and as individuals, both migratory and local, are attracted to and regularly visit People's Park. Squirrels and other small wildlife are likewise abundant.

These natural values and garden resources, including plants, birds and wildlife, should be treasured and preserved.

The unlawful and ill-considered actions of U.C., especially the recent attempted fencing and drilling activities, have violated the legitimate interests, concerns and values set forth above. People's Park must not be further desecrated, defaced, or damaged. All parties should learn from the recent desecration, defacement, and damage done to our U.S. Capitol in Washington, D.C. Such unlawful and destructive acts can never be condoned, in either location.

Please be advised that the ongoing course and pattern of wrongdoing on the part of U.C. has specifically violated binding agreements undertaken in good faith for mutual consideration (see Section 1 above), as well as CEQA and other pertinent provisions of applicable law (see Section 2 above).

Therefore, on behalf of my client, the PEOPLE'S PARK COUNCIL, I now respectfully insist and demand that U.C. cease and desist from any further violations of law, breach of contract, or other wrongful conduct in contravention of the values and interests described above.

Any and all disagreements or disputes among the parties concerning the nature and future of People's Park can and must solely be resolved lawfully, as agreed, through direct settlement negotiation or, if unsuccessful, through court adjudication.

The Claimant PEOPLE'S PARK COUNCIL has at all times acted in good faith and with due care in meeting its own obligations pursuant to the agreements and transactions in question. Said Claimant simply seeks full and immediate compliance with all agreements, undertakings, and pertinent provisions of State and Municipal law, including but not limited to CEQA.

Kindly respond to this letter at your earliest convenience, but in any event, no more than fifteen (15) days from the date of this letter. In the absence of an affirmative response by that time, any settlement offer herein expressed or implied will be withdrawn and deemed to

have expired by its own terms, without prejudice to further action in accordance with the rights and responsibilities of PEOPLE'S PARK COUNCIL and PPP/NPF.

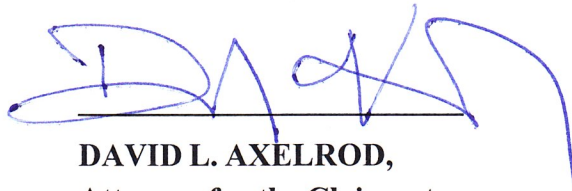
I look forward to working with you to promptly and reasonably address, evaluate, and resolve the lawful demands, interests, and claims herein asserted, in the hope of achieving an early, appropriate, and amicable resolution of this matter in good faith. If necessary, the parties might also consider the potential utilization of mediation, arbitration, or other similar remedies or alternative dispute resolution (ADR).

Please be assured that the COUNCIL is quite resolute, earnest, and determined in its intention to pursue this claim to a fair, adequate, and reasonable conclusion, whether in or out of court. However, my client sincerely desires to reach a fair and prompt settlement of its claim at this time and to uphold its just rights and interests, without the expense, inconvenience and inevitable delay of protracted court litigation or available administrative processes, if possible.

Should you have any questions or comments, please do not hesitate to contact this office directly, at your earliest opportunity.

I appreciate your anticipated courtesy and cooperation in working to address and resolve this claim swiftly, in good faith, and without undue delay.

Very truly yours,



DAVID L. AXELROD,
Attorney for the Claimant,
PEOPLE'S PARK COUNCIL

cc: PEOPLE'S PARK COUNCIL, client;
Gov. GAVIN NEWSOM; and
Pres. MICHAEL V. DRAKE, M.D.

COPIES TO:

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