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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ALAMEDA**

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11
12 SAVE TIGHTWAD HILL!, an
13 unincorporated association;

14 Petitioner,

15 v.

16 UNIVERSITY OF CALIFORNIA,
17 BERKELEY, and REGENTS OF THE
18 UNIVERSITY OF CALIFORNIA;

19 Respondents.

Case No.

20
21
22 **PETITION FOR**
23 **WRIT OF MANDAMUS**

24 California Environmental Quality Act
25 [CEQA]

1 Petitioner alleges:

2 INTRODUCTION

3 1. *Save Tightwad Hill!* brings this mandamus action in the public interest to enforce the
4 California Environmental Quality Act vis-à-vis proposed alterations to the California Memorial
5 Stadium at the University of California at Berkeley. Substantial new seating approved on the
6 east side of the stadium would restrict views and thereby substantially alter the use of the unique
7 cultural landscape known as Tightwad Hill. The hill is located 100 feet above the stadium and
8 provides panoramic views of the football field. Generations of football fans since the mid-
9 1920's have congregated on Tightwad Hill to watch California Golden Bear football games.

10 In an article entitled "Fighting to Save the Really Cheap Seats," the *New York Times*
11 reported on December 4, 2006, that at a recent football game "more than 500 Cal fans crammed
12 the hillside ... with coolers of beer, school flags and binoculars. Fans perched on logs, sat in the
13 dirt and on the few patches of grass not torn up by generations of feet ... the sun was out, the
14 bands were loud, and [the] beloved University of California Bears beat their archrival Stanford
15 for the fifth straight year." The *Times* quoted a principal planner for the Berkeley campus who
16 predicted that the Tightwad Hill fans might have only "one more season up here" due to the
17 planned new two-story seating structure.

18 The UC Regents' approval of the east seating structure as part of the alteration of the
19 stadium in connection with its Southeast Campus Integrated Projects was based on
20 environmental review that failed to meet mandatory CEQA requirements. The certified
21 Environmental Impact Report does not adequately describe the environmental setting, does not
22 adequately analyze project impacts, and does not identify feasible mitigation measures that can
23 avoid significant effects on the views from Tightwad Hill while still fulfilling project objectives.

24 A peremptory writ should issue to require that the Regents comply with the mandates of
25 CEQA via adequate study and mitigation of the stadium project's impacts to Tightwad Hill.

26 JURISDICTION

27 2. This Court has jurisdiction under Public Resources Code section 21168.5 and Code of
28 Civil Procedure section 1085. The parties and the affected Tightwad Hill property are located in

1 Berkeley in Alameda County.

2
3 **PARTIES**

4 3. *Save Tightwad Hill!* is an unincorporated association formed in 2006 to advocate for
5 the preservation of the historic use of the cultural resource known as Tightwad Hill. Members of
6 *Save Tightwad Hill!* include many hundreds of community residents and concerned citizens who
7 enjoy and appreciate the cultural and historical use of Tightwad Hill. The group exhausted
8 administrative remedies via objections to approval of the stadium project’s east seating structure
9 in light of impacts to Tightwad Hill. The group brings this petition on behalf of others similarly
10 situated who are too numerous to be named and brought before this Court as petitioners.

11 4. Respondent lead agency University of California, Berkeley, through the Regents of the
12 University, certified the Southeast Campus Integrated Projects EIR and approved the first phase
13 of the stadium project.

14 5. The paragraphs below rely on information in documents that will be filed with this
15 Court as part of the record of proceedings and are here incorporated by reference.

16 **GENERAL ALLEGATIONS**

17 6. The California Memorial Stadium was built in Berkeley for the University of
18 California Golden Bears football program in 1923. Construction of the stadium involved
19 excavation into a hillside. A portion of the excavated hillside, known officially as Charter Hill
20 but commonly called Tightwad Hill, provided panoramic views of the stadium field. The hillside
21 quickly began serving as a vantage point used by scores of Berkeley residents and others to
22 congregate and view football games without paying for admission to the stadium. The use of
23 Tightwad Hill by spectators has now continued for over eight decades during the Cal football
24 season.

25 7. The Southeast Campus Integrated Projects at issue in this action propose new office
26 and academic space, parking garages, and Cal athletic program facilities. As part of the
27 Integrated Projects, the stadium is to be renovated and seismically strengthened. The first
28 stadium project phase involves construction of the Student Athlete High Performance Center.

1 The second phase includes construction of a new and expanded press box above the western rim
2 of the stadium, seismic upgrades to the stadium, and additional field lighting. The third phase
3 includes further seismic upgrades and a seating structure expanding above the east side rim.

4 8. The University circulated a Draft EIR for the Integrated Projects in 2006, tiering from
5 the program EIR that it had prepared for its 2020 Long Range Development Plan.

6 9. Among the commentors on the Integrated Projects Draft EIR was Daniel Sicular,
7 Ph.D., who a few months later became one of the organizing members of Petitioner *Save*
8 *Tightwad Hill!*. Dr. Sicular expressed no objections to the first two phases of the stadium
9 improvements, but urged against the phase three construction of the east seating structure that
10 would obstruct and diminish views from Tightwad Hill. He explained that the Draft EIR was
11 inadequate in its failure to analyze project impacts to the historic use of the hill:

12 Tightwad Hill is so-named because it affords a free view of the game. On any given game
13 day, from dozens to hundreds of people climb the steep slopes to the informally
14 designated seating areas, some of which provide good views of the entire field. The
15 relaxed atmosphere on ‘the Hill’ as it is often affectionately referred to, along with the
16 great view of the field, the Campus, downtown Berkeley, and the whole central Bay
17 Area, combined with the unbeatable price, combine to make watching games from
18 Tightwad Hill a cherished experience for many. The Draft EIR fails to mention this long-
19 standing use of Tightwad Hill, which probably dates back to the construction of the
20 Stadium, nor are the existing views from Tightwad Hill even mentioned in the Aesthetics
21 section of the document, let alone shown through photographs.

22 The Draft EIR is deficient in failing to characterize the visual resources, including
23 publicly-accessible scenic views, from Tightwad Hill. The Draft EIR is also deficient in
24 that it does not analyze the effects on these views of the proposed modifications to
25 Memorial Stadium, particularly the effects of the eastside seating structure. This structure
26 would rise ‘approximately 1 story’ above the level of the existing promenade above the
27 Cal Rooting Section. While it is unclear from the visual simulations provided, it appears
28 from Figure 4.1-19B that the proposed east seating structure would be high enough to
block some or all of the views of the field from the prime seating locations on Tightwad
Hill. The Draft EIR should analyze this effect of the proposed project. If views of the
field are blocked, this would ‘have a substantial adverse affect on a scenic vista’ and
would also ‘substantially degrade the existing character or quality of the site and its
surroundings’ and should therefore be identified as a significant impact. Feasible ways to
mitigate this impact would be to lower the height of the seating structure or to position it
so that it does not block views from Tightwad Hill.

1 The Draft EIR is also deficient in that it fails to recognize the historical and cultural
2 significance of Tightwad Hill. Watching football games from Tightwad Hill is a
3 cherished tradition on the Berkeley Campus and for the Berkeley Community. Yet the
4 Draft EIR in the Cultural Resources section completely fails to recognize the importance
5 of this tradition, and of the central role of the Hill itself in creating and maintaining it.
6 The EIR is deficient in that it fails to identify Tightwad Hill as an historical resource
7 pursuant to Public Resources Code Section 5024.1(c). The Draft EIR is further deficient
8 in that it fails to analyze the potential impact of the proposed project on this historical
9 resource; if views of the field from Tightwad Hill are blocked, or if Tightwad Hill is
10 made inaccessible, it will essentially destroy this important Berkeley tradition.

11 10. The Final EIR cursorily responded to comments regarding Tightwad Hill. The FEIR
12 acknowledged that the hill “may indeed be a historically significant landscape resource” and
13 admitted that “to varying degrees” the east side stadium improvements “may obscure portions of
14 the view of the stadium playing field from some places on Tightwad Hill.” The FEIR included
15 no substantive analysis or proposed mitigation of project impacts relating to blocked views of
16 the stadium, simply pronouncing that the field would remain within view “to a large degree.”
17 Since the new construction would not physically “alter” Tightwad Hill, the FEIR found no
18 significant environmental impacts.

19 11. In response to the Final EIR, Dr. Sicular explained on behalf of *Save Tightwad Hill!*
20 how and why the EIR’s treatment of Tightwad Hill remained unlawfully inadequate. Among
21 other things, Dr. Sicular noted the EIR’s failure to adequately respond to comments, its failure to
22 assess the historic significance and status of Tightwad Hill, its failure to note project
23 inconsistency with its goals and objectives, its failure to assess available mitigation measures for
24 impacts to Tightwad Hill, the inadequacy of conclusions regarding impacts to Tightwad Hill,
25 and its failure to provide information to the public to enable informed comment on the project.

26 12. The EIR was certified on December 6, 2007, by the University Regents’ Committee
27 on Grounds and Buildings, and phase one of the stadium project was approved on the same date.

28 13. A Notice of Determination for the Southeast Campus Integrated Projects was filed
with the State Clearinghouse on December 7, 2007. This action is timely pursuant to California
Code of Civil Procedure sections 12 and 13 subdivision (a), because the 30-day statute of

1 limitations ran on a Saturday, January 6, 2007. This action is being filed on Monday, January
2 8th, which is the next court day.

3 14. Petitioner *Save Tightwad Hill!* has given written notice of the commencement of this
4 action to the University and its Regents as required by Public Resources Code section 21167.5
5 and has provided a copy of this Petition to the California Attorney General as required by Public
6 Resources Code section 21167.7.

7 15. Petitioner *Save Tightwad Hill!* has no plain, speedy, and adequate remedy in the
8 ordinary course of law. Issuance of a writ is needed to avoid irreparable harm through
9 significant impacts to a cultural resource and a failure to comply with CEQA. The University
10 has the capacity to correct its violations of law but refuses to do so.

11 **VIOLATIONS OF THE CALIFORNIA**
12 **ENVIRONMENTAL QUALITY ACT**

13 16. Petitioner incorporates all previous paragraphs as if fully set forth.

14 17. The University, through its Regents, has abused its discretion and has failed to act in
15 the manner required by law in certifying the Southeast Campus Integrated Project EIR and
16 approving the first phase of the stadium project because, among other things:

17 a) The EIR's description of the environmental setting was inadequate because it
18 failed to describe and analyze the cultural and historic significance of the Tightwad Hill uses
19 and cultural landscape;

20 b) The EIR failed to identify or analyze the potentially significant environmental
21 impacts of the expanded stadium seating or other aspects of the stadium construction on the
22 historic views from and ongoing use of Tightwad Hill.

23 c) The EIR inadequately responded to public comments regarding stadium project
24 impacts to the use of Tightwad Hill;

25 d) The EIR failed to adequately analyze the stadium project's inconsistencies with
26 the delineated project goals and objectives;

27 e) The EIR requires recirculation;

28 f) The Regents approved a project with significant environmental impacts and

1 failed to adopt feasible alternatives and mitigation measures that would diminish or avoid
2 significant environmental impacts;

3 g) The conclusions of the EIR and the findings of the Regents in certifying the
4 EIR are inadequate, incomplete, and unsupported.

5
6 **WHEREFORE**, Petitioner prays:

7 1. That the Court issue a peremptory writ of mandamus ordering the Regents to set aside
8 and void the certification of the Southeast Campus Integrated Projects EIR and to refrain from
9 consideration of approval of the east stadium seating structure or other project components that
10 may impact views of the California Memorial Stadium field from Tightwad Hill until full
11 compliance with CEQA is achieved, including revision, recirculation, and certification of an
12 adequate EIR and adoption of feasible stadium project mitigations and alternatives based on
13 substantive findings supported by substantial evidence;

14 2. That the Court issue a stay order enjoining the University and its agents and employees
15 from engaging in any physical construction activities in furtherance of the east stadium seating
16 structure or other project components that may impact views from Tightwad Hill pending
17 determination of the merits of this Petition, and to permanently stay said construction after
18 granting the writ;

19 3. For Petitioner's costs and reasonable attorney's fees pursuant to Code of Civil
20 Procedure section 1021.5; and

21 4. For other and further relief as the Court finds proper.

22 Date: January 8, 2007

BRANDT-HAWLEY LAW GROUP

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24 by _____
25 Susan Brandt-Hawley
26 Attorney for Petitioner
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