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City Manager José Madrigal &
Durango City Council
Durango City Hall
949 E 2nd Avenue
Durango, CO 81301

County Manager Chuck Stevens &
Board of County Commissioners
La Plata County
1101 E 2nd Avenue
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September 28, 2022

SENT VIA E-MAIL: jose.madrigal@durangogov.org; CityCouncil@DurangoGov.org;
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Re: Displacement of Purple Cliffs Community

Dear City Manager Madrigal, Durango City Councilors, County Manager Stevens, and La Plata County Commissioners:

I write on behalf of the American Civil Liberties Union of Colorado (ACLU) and the National Homelessness Law Center (NHLC) regarding the impending closure of Purple Cliffs, which has for years provided a home to the expanding population of residents unable to access housing in the Durango region. We understand that La Plata County intends to move forward with its self-imposed deadline to shut down Purple Cliffs on September 30, 2022, notwithstanding that the City of Durango has failed to secure the alternative site it promised for the many unhoused residents that closure will displace.¹ We are deeply concerned by reports that the only plan local leadership has articulated for the aftermath of Purple Cliffs’ closure is the escalated criminalization of the very people your failure to act will have left without a safe and lawful place to live. We write to caution that

¹ Christian Burney, *With Purple Cliffs Closure Imminent, No Location Identified Yet for Managed Camp*, Durango Herald (Aug. 30, 2022), <https://www.durangoherald.com/articles/with-purple-cliffs-closure-imminent-no-location-identified-yet-for-managed-camp/>.

this “strategy” for addressing local houselessness is simply unacceptable as a matter of law, policy, and principle.

As you well know, this is not the first time the ACLU and NHLC have warned that it is unlawful to displace and criminalize unhoused Durango-area residents for whom no housing or indoor shelter is realistically available. In 2018, we wrote to express our grave concerns about the closure of the region’s only sanctioned encampment and our opposition to enforcement of anti-camping laws against the residents who would be left with nowhere to go as a result.² Then, as now, the forced closure of the existing community was premised on the availability of an alternate space where residents could go. Then, as now, the promise of a new site was retracted along the way. And then, as is scheduled to be the case on September 30th, residents were forced nevertheless to abandon their homes, with threat of criminal penalties for remaining there or moving into other public spaces.³ The Purple Cliffs site offered a temporary respite to unhoused residents in the wake of those conversations. Now that its long-anticipated closure is imminent, we are deeply discouraged that history appears to be repeating itself in Durango, this time against the backdrop of a much-worsened affordable housing crisis, an unprecedented pandemic, and the quickly approaching onset of winter.

We have received resounding reports of the City’s utter and unexplained failure in the interceding years to address even the short-term needs of its unhoused residents in a post-Purple Cliffs Durango despite ample notice, broad power and resources, and willing partners.⁴ Local providers have had to take the

² Letter from Rebecca Wallace, Staff Attorney and Senior Policy Counsel, ACLU of Colorado, & Tristia Bauman, Senior Attorney, National Law Center on Homelessness & Poverty, to Durango City Council & Mayor Sweetie Marbury (Aug. 24, 2018), <https://www.aclu-co.org/sites/default/files/2018-08-24-Durango-ACLU-camping-ban.pdf>.

³ Mary Shinn, *Durango to Close Homeless Camp, Won't Provide New Location*, Durango Herald (Aug. 18, 2018), <https://www.durangoherald.com/articles/durango-to-close-homeless-camp-wont-provide-new-location/> (“[The Sheriff] said he committed to closing a camp for homeless residents on county property west of town and enforcing camping bans because the city committed to opening an alternative site.”); Aedan Hannon, *La Plata County Doubles-Down on Plan to Close Purple Cliffs This Year*, Durango Herald (June 20, 2022), <https://www.durangoherald.com/articles/la-plata-county-doubles-down-on-plan-to-close-purple-cliffs-this-year/> (discussing Sheriff and County Managers’ plan “to start enforcing no camping at Purple Cliffs”).

⁴ See, e.g., Petition from Citizens and Business Owners to Durango City Council and City of Durango Officials (Aug. 30, 2022), available at <https://www.durangoherald.com/articles/with-purple-cliffs-closure-imminent-no-location-identified-yet-for-managed-camp/> (“Over the past several years, Durango has been presented with solutions and willing partners Purple Cliffs was always meant to be a

lead in triage efforts to find emergency shelter for Purple Cliffs' most vulnerable, including children. And while providers have been able to connect some of these community members with temporary resources, they cannot feasibly sustain those efforts on their own. Nor does such emergency assistance offer a meaningful path to long-term stability.

By all accounts, the City's failure to act betrays an underlying hope to drive unhoused residents away from Durango. Indeed, that goal has sometimes been explicit, with city officials openly lamenting legal barriers to simply bussing people experiencing homelessness out of town. And threats from both the City and County to ramp up enforcement of anti-camping laws in the wake of Purple Cliffs' closure—when there is nowhere else in town unhoused residents can stay—confirms the same motivation. Certainly, failing to invest in housing, shelter, and services; declining to designate safe camping or parking sites; but allocating resources to break up encampments and criminalize life-sustaining behavior is not a strategy aimed at helping individuals out of houselessness.

Indeed, closing Purple Cliffs without a plan in place for its residents—outside of placing them in jail if they dare to stay in the city they call home—runs directly counter to best practice as outlined by the leading, evidence-based public health authorities and experts on homelessness policy. The Centers for Disease Control and Prevention (CDC) has specifically instructed that “[i]f individual housing options are not available,” local officials should “allow people who are living unsheltered or in encampments to remain where they are.”⁵ The CDC warns that clearing encampments “increases the potential for infectious disease spread” by “caus[ing] people to disperse throughout the community and break connections with service providers.”⁶ Local providers have voiced similar concerns, warning that “once Purple Cliffs is closed, . . . caseworkers and outreach workers will not be able to find [the individuals they serve] on a daily basis.”⁷

temporary solution until the city could designate an alternative location and/or alternative programming.”).

⁵ *Id.*

⁶ Centers for Disease Control & Prevention, *Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials* (last visited Sept. 24, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

⁷ Tyler Brown, *Survey Says More Than 400 People Are Living Homeless in La Plata County*, Durango Herald (July 28, 2022), <https://www.durangoherald.com/articles/survey-says-more-than-400-people-are-living-homeless-in-la-plata-county/> (quoting Dr. Kathleen Van Voorhis, director of community strategy with Project Moxie).

Likewise, the United States Interagency Council on Homelessness (USICH) has unequivocally counseled local communities experiencing a crisis of unsheltered homelessness that “[e]ncampments should not be closed unless there is access to low-barrier shelter or housing.”⁸ Specifically addressing local decision-makers who, like the City and County, are bound to face demands for swift action to address unsheltered homelessness, USICH has urged against “turn[ing] to strategies that use aggressive law enforcement approaches that criminalize homelessness, or . . . clos[ing] encampments without offering shelter or housing options.”⁹ That is because encampment disbandment only worsens the problem it purportedly seeks to solve:

These approaches result in adverse health outcomes, exacerbate racial disparities, and create traumatic stress, loss of identification and belongings, and disconnection from much-needed services. While these efforts may have the short-term effect of clearing an encampment from public view, without connection to adequate shelter, housing, and supportive services, they will not succeed. When people’s housing and service needs are left unaddressed, encampments may appear again in another neighborhood or even in the same place they had previously been.

. . . . Moving encampment residents around without a place to go to will only cause further instability and trauma.¹⁰

Proceeding with this approach to homelessness in Durango is not only disingenuous and irresponsible; as we cautioned in 2018,¹¹ it also violates the Constitution. As you know, in Durango, the local housing market is increasingly impenetrable; permanent supportive housing options are scarce; and waitlists are far too long. Indoor shelter capacity is woefully insufficient to meet the growing need, and the limited shelter that is available is high-barrier. Against this backdrop, when Purple Cliffs closes, unhoused residents will be left with the following “choices”: either live under constant threat of policing, tickets, warrants,

⁸ U.S. Interagency Council on Homelessness, *7 Principles for Addressing Encampments* at 4 (June 17, 2022), https://www.usich.gov/resources/uploads/asset_library/Principles_for_Addresssing_Encampments_1.pdf.

⁹ *Id.* at 1.

¹⁰ *Id.* at 1–4.

¹¹ See Wallace & Bauman, *supra* note 2, at 4–5.

jail, and fines for self-sheltering outdoors¹²; refrain from the prohibited conduct and risk serious injury and death from exposure to outdoor elements; or leave town.

Under such circumstances, policing and prosecuting anti-camping laws will be fraught with risk to unhoused residents' constitutional and statutory rights and invite liability for the City, the County, and your officers. To name just a few concerns, enforcement of anti-camping laws will hazard (1) punishing the unavoidable consequences of being unhoused, in violation of prohibitions against cruel and unusual punishments; (2) imposing financial penalties beyond people's ability to pay, in violation of prohibitions against excessive fines; (3) exposing unhoused individuals to an unreasonable risk of harm by prohibiting the use of items they rely on for their very survival, in violation of prohibitions against state-created danger; (4) excluding an entire segment of the community from public space, in violation of the right to freedom of movement; (5) unreasonably interfering with residents' possessory interests in their property, in violation of protections against unlawful seizure; (6) depriving unhoused individuals of protected property and liberty interests without adequate notice or process; and (7) failing reasonably to accommodate unhoused residents living with disabilities, in violation of the Americans with Disabilities Act (ADA) and its state equivalents. We assure you we will remain vigilant and protective of these crucial civil liberties.

We urge both the City and County to take seriously the urgent threat to life and liberty posed by the closing of Purple Cliffs with no plan in place for the community that has called it home. Winter is coming, the COVID-19 pandemic is ongoing, and there is no lawful or safe place for residents experiencing houselessness to go. Pointing fingers at each other¹³ will not solve the crisis at hand nor absolve either government of responsibility moving forward.

Sincerely,



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Attorney & Equal Justice Works Fellow
ACLU of Colorado



Lily Milwit
Housing Not Handcuffs Attorney
National Homelessness Law Center

¹² Durango Municipal Code sec. 17-57(a), (e) (prohibiting camping and sheltering); sec. 1-16 (imposing general penalty of up to \$2650 and 364 days in jail).

¹³ See Hannon, *supra* note 3.