



Confederated Villages of the Lisjan

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Attn: Shannon Allen, AICP

City of Berkeley City Planning

1947 Center Street, 2nd Floor

Berkeley, CA 94704

Via Mail and Email to ShAllen@cityofberkeley.info

RE: Comments - Draft Environmental Impact Report 1900 Fourth Street Project

Dear Ms. Allen and Berkeley City Planners:

The Confederated Villages of Lisjan (the “Tribe”), representing a California Native American Tribe, submits these initial comments on the draft environmental impact report (DEIR) regarding the 1900 Fourth Street project (the “Project”) identified in the February 10, 2016 Notice of Preparation, the November 16, 2016 Notice of Availability (NOA) of DEIR and the November 23, 2016 Revised NOA of DEIR issued by the City of Berkeley (the “City”). More detailed comments will be provided on or before the final date to submit public comments and/or through consultation with the City of Berkeley. The Tribe participated in an initial consultation meeting the City, is appreciative of the City’s commitment to continue such consultations, and hopes that these conversations will result in and in meaningful participation in this environmental review process.

The Tribe also requests that the City extend the comment period for an additional 90 days from March 13, 2017 to allow the Tribe to provide specific and detailed comments reflecting any new information or agreements that may develop through the consultation process. The Tribe is requesting this extension of time due to unusual circumstances as this Project has raised complex and unique issues that have a high potential to conflict with the City’s current policy promoting protection of Native American sacred spaces and it will be the first EIR of such a significant nature completed pursuant to the new AB 52 CEQA requirements that

recently became effective. As this matter may set precedent going forward it is critically important that the City provide sufficient time for the Community, interested parties, and California Native American Tribes to have sufficient and fair opportunity to provide necessary information, and consult with the City. CEQA requires informed decision-making and due to these unusual circumstances the Tribe will need this extended time to ensure all of the information necessary for informed decision-making and consultation has been compiled and provided to the City. The Tribe has submitted a separate letter with more detail as to the unique and unusual circumstances that we believe warrant this extended period for public comment.

The Tribe concludes that the DEIR is inadequate as to the Project Description in a number of technical subject areas, including but not limited to Cultural (Archaeological) Resources, Tribal Cultural Resources, Traffic and Circulation, Air Quality, Noise and Vibration, Hazardous Materials, Water Quality, and Growth Inducing Impacts. The DEIR does not include sufficient discussion or a sufficient range of alternatives, and fails to address impacts in a number of environmental categories as required by California law. The DEIR also fails to adequately address requirements of AB 52 and impacts to Tribal Cultural Resources. The Tribe submitted a formal request for consultation to the City in November 2016 and participated in an initial consultation meeting on February 27, 2017. In order for the environmental process to be legally sufficient the City must consider information provided by the Tribe through consultation, consider the impacts raised by the Tribe to Tribal Cultural Resources, and consider mitigation measures or alternatives that would avoid or minimize impacts to Tribal Cultural Resources.

Background

The West Berkeley Shellmound and Village Site, the proposed site for the 1900 Fourth Street Project, represents the oldest bayside settlement in the San Francisco Bay Area, dating back approximately 5000 years or more. It is the true birthplace of Berkeley. It continues to be of utmost significance as a ceremonial center to the Ohlone people today. This site represents one of the last known undeveloped shellmound locations in the Bay Area. The West Berkeley Shellmound and Village Site are of critical importance to the Tribe, a space that is irreplaceable. The City has recognized the importance of the West Berkeley Shellmound and Village Site through numerous resolutions. The City has also recognized the importance of protecting resources and sacred spaces not only in Berkeley, but also throughout the country. See Resolution No. 67,694-N S, In Solidarity with Indigenous Resistance to the Dakota Access Pipeline, dated September 27, 2016. Local support and protection of sacred places that represent unique cultural, archaeological, and spiritual places is particularly critical given the new recent actions by the federal government and corporations that fail to take into account the critical importance of Tribal Cultural Resources. California, and especially the City of Berkeley need to take a stand to ensure that these unique places, spaces that cannot be recreated, are protected and preserved for future generations.

The Landmarks Commission designated the Project site as a City of Berkeley Landmark # 227. The Project

site is also listed in the California State Registry of Historic Places, and determined to be eligible for the National Registry of Historic places.

The DEIR faces massive community opposition as voiced during the December 1, 2016 Landmark Preservation Committee meeting and the December 8, 2016 Zoning Adjustments Board meeting, as well as numerous letters and comments at subsequent meetings. Community members raised issues concerning the methodology used to establish the archaeological reports and whether the City conducted adequate peer review of the data in the DEIR. The Community continues to express serious concern regarding the City's failure to address past excavations in and around the proposed site that uncovered human burials and undisturbed cultural remains. The Community and the Tribe continue to voice their opposition to the complete failure by the City to address cultural and traditional resources. The DEIR fails to address the high likelihood that human remains could be found on the site, and have specifically been documented as to finds on the adjacent Grocery Outlet site that is part of the same West Berkeley Shellmound site. These failures to properly characterize and acknowledge resources on the site raised at both the December 1 and December 8, 2016 meetings represent merely one example of the numerous significant oversights, inaccuracies, and omissions of the DEIR.

The City has passed numerous resolutions to honor and recognize this sacred site, including, Resolution No. 67,353-NS of the City of Berkeley "Honor Berkeley Shellmound Indigenous Sacred Site, UC Berkeley Return Ancestral Remains to Ohlone People" which states in part:

BE IT FURTHER RESOLVED that free, prior, and informed consent of the Ohlone and other indigenous peoples of the region be integral to any alteration planning for the Berkeley Shellmound sacred site, in accordance with the provisions of the United Nations Declaration on the Rights of Indigenous People, and calls upon all parties to follow the principles of the Declaration with respect to the West Berkeley Shellmound site.

This resolution has meaning to the Ohlone people, to the Tribe, that have faith in the City to live up to its promises. The City of Berkeley made a formal commitment to respect and honor this Ohlone sacred space. The proposed Project if approved, would dishonor this pledge by the City and instead represent one more lie and broken promise to indigenous peoples of California. It would show the world that the City of Berkeley has no more respect for Native Californian's than the federal government did in 1852 when it failed to ratify the treaties that resulted in stolen land and genocide for California Indians. The City of Berkeley is better than that and can demonstrate today that things have changed since the 1800s and that local governments can work with Native communities to protect and not destroy sacred places; that local communities can live up to their word and collaborate with Native peoples to protect and preserve a better environment for future generations. The City of Berkeley is not North Dakota, and will not go back on its word as other governmental entities are with regard to the Dakota Access Pipeline.

The comments set out below demonstrate the inadequacies, omissions, and failures to address sufficient alternatives of the DEIR. Based on these inadequacies, omissions, and failures the Tribe requests that the City find that the no Project alternative is the only decision that can be made on the DEIR as presented. The no Project alternative is the only alternative consistent with the City's prior resolution concerning the site, and the only alternative currently presented in the DEIR that will prevent significant adverse environmental impacts of the proposed Project. The City should revise the DEIR to consider additional alternatives including alternative locations, and designating the site as open space/park land.

DEIR Assessment of Inadequacies

The Project as proposed includes an approximately 2.21 acre site occupying the block surrounded by Hearst Avenue to the north, Fourth Street to the east, University Avenue to the south, and the Union Pacific Railroad (UPRR) tracks to the west. The Project site is located within the Fourth Street shopping area in West Berkeley. The site is also part of a group of several properties designated by the City of Berkeley's Landmarks Preservation Commission as a Landmark site due to its association with the West Berkeley Shellmound.

The proposed project would result in the demolition of the existing 900 square foot, one-story structure and approximately 350-space surface parking lot on the Project site and redevelopment of the site with a mix of residential and commercial uses within two separate buildings totaling 191,362 gross square feet, as well as associated parking and circulation, open space, landscaping, and utility improvements. The proposed Project would include development of 155 residential units and 30,000 square feet of retail and restaurant space, as well as 372 parking spaces within a parking garage. Building heights along Fourth Street would be lower and stepback from the street frontage, while the five story building components would be concentrated at the interior of the site and along the UPRR corridor and University Avenue/Fourth Street frontages. Maximum proposed building heights would be 71 feet to the top of the parapet at its greatest extent, which is the measurement required and defined by the Zoning Ordinance (Section 23F.04.010, "Height of Building, Maximum"). The roofline would generally be 60 feet above grade. Mechanical features, elevator, and stair overruns would extend up to 10 feet above the roofline. ...

Discretionary actions/approvals by the City that would be necessary for this Project include a Structural Alteration Permit, Demolition Permit, various Use Permits, and a waiver/modification under the State Density Bonus Law.

The demolition of the existing structures and severe disturbance that would occur on site as a result of excavation and construction, including the proposed parking garage that would be designed to include a single helix sloped floor and six levels of parking, creates multiple unmitigated significant adverse impacts that the City cannot allow.

The Tribe's review set forth below identifies multiple fatal flaws in the assessment of the DEIR and process leading to the preparation of the DEIR. The Project will result in unavoidable significant environmen-

tal effects. CEQA requires that the EIR describe these significant adverse environmental impacts that cannot be avoided. See Public Resources Code § 21100, subd. (b)(2)(A); CEQA Guidelines §§ 15126, and 15126.2. The California Legislature amended CEQA through passage of AB 52, requiring a new category, Tribal Cultural Resources, be included in the evaluation of environmental impacts by agency decision-makers.

The City has failed to adequately assess the impacts on Tribal Cultural Resource. The mitigation proposed by the City is not sufficient to avoid adverse significant impacts to the West Berkeley Shellmound and Village Site. The City has committed to protecting these resources and respecting tribal rights consistent with UNDRIP. The City therefore must choose the only available option presented in the DEIR for this Project: the no project alternative as the environmentally preferred alternative.

□ Insufficient Content of DEIR

The DEIR is required to include a brief summary of the proposed project and its consequences. Here the Project Description as set forth in Chapter III of the DEIR fails to address the consequences the Project will have in relation to the Ohlone peoples' connection to the West Berkeley Shellmound and Village Site. The DEIR fails to discuss the significant environmental effects of the proposed project as to Tribal Cultural Resources. The Initial Study recognizes the potential for significant effects that could occur as a result of hazardous materials that may be on site but the DEIR fails to discuss these potential effects without providing adequate information or sufficiently discussing adequate mitigation measures. The Traffic Study included in the DEIR is inadequate and fails to fully assess the likely effects the Project will have on traffic and circulation in the Project area. These areas, along with additional deficiencies are discussed in more detail below.

Pursuant to CEQA a DEIR is to include the following information in the project description: sufficient information to inform the public and the decision-maker regarding potential impacts of the project, and include a reasonable range of alternatives. Here the DEIR is insufficient, as the City has failed to include critical information regarding the designation of the property, resources located on the property, and how the project is compatible with the landmark designation and City resolutions affirming the need to protect the West Berkeley Shellmound and Village Site. The DEIR also fails to fully address potential significant environmental impacts, and does not contain a reasonable range of alternatives. These issues are discussed in more detail below.

□ Failure to Consult with Tribe and to Meet AB 52 Requirements

There has not been adequate tribal consultation in accordance with CEQA. The Tribe has repeatedly and continually requested consultation pursuant to AB 52. The City cannot complete the EIR process without complying with the consultation requirements of AB 52. The Tribe has recently had an initial meeting with the City, however needs additional time to provide sufficient information concerning the importance

of this site and the adverse impacts the Project will have to Tribal Cultural Resources.

On page 67, the DEIR states, "Consultation with the Ohlone Indian Tribe, conducted pursuant to AB52, was completed for the Project and mitigation measures are recommended, as appropriate." Unfortunately, this is only one tribal entity and the resolution designating the West Berkeley Shellmound Site and recognizing UNDRIP both very clearly state that the indigenous people of the region; which includes the Confederated Villages of Lisjan, must also be given the same formal consultation process as Ohlone Tribe Inc.

At this point, the only official recognition of this sacred shellmound site is the series of murals and the small plaque in the parking lot under the freeway. Certainly the City of Berkeley would benefit from truly meaningful public acknowledgement of its Ohlone past, present, and future by working with local Ohlone people to develop a major memorial and educational site at 1900 4th Street. This memorial should include designating the site as open space and forming a committee that includes the Ohlone people to develop a land management and development plan that allows for permanent preservation of the site. The Tribe has included as Attachment A to this comment letter a proposed concept for development of the site that the City should consider as a starting point for restoring this sacred place and honoring the Ohlone people.

- o AB 52 Non-compliance

The City must comply with the provisions of AB 52. This will require continued consultation with the Tribe concerning the significant adverse impacts to Tribal Cultural Resources. The proposed Project will impact an acknowledged Tribal Cultural Resource – the West Berkeley Shellmound and Village Site. To date consultation with the Confederated Tribes of Lisjan has not been completed, the City must consider additional information, any mitigation measures should be developed in consultation with the Tribe, and the range of alternatives should be chosen in consultation with the Tribe. None of these actions have yet occurred. Additional discussion regarding failure to comply with AB 52 is discussed below under the Tribal Cultural Resources section of these public comments.

- o Insufficient and inadequate proposed mitigation measures

The DEIR fails to recognize the significant unavoidable environmental impacts to the West Berkley Shellmound and Village Site. The DEIR provides for cultural mitigation measures at pages 20- 23. The environmental impact identified is

Cul-2 – Ground-disturbing activities associated with Project construction could result in a substantial adverse change in the significance of a historical resource, the West Berkeley Shellmound (City Landmark #227)

The West Berkley Shellmound is also a significant Tribal Cultural Resource, a separate category under CEQA. This category was not examined within the DEIR. This failure to assess the significance of the ef-

fect on the West Berkley Shellmound is more than a formatting oversight as there are substantive implications that were not accounted for in the cultural resources analysis that cannot be overcome by merely making reference to AB 52 within the section and proposed mitigation. The project will have a significant unavoidable environmental impact on Tribal Cultural Resources as a result of the identified substantial adverse change set forth in Cul-2 which constitutes an unavoidable environmental impact. The DEIR must address this unavoidable adverse environmental impact, yet completely fails to discuss the impact that this substantial adverse change will have on the integrity of Landmark #227, or its impact on the Ohlone people's spiritual and cultural connection to the site. This spiritual and cultural connection is discussed in more detail below.

There is no feasible mitigation that would lessen the significant unavoidable environmental impact to this resource if the project, or a reduced build-out of the project, is approved by the City. The mitigation identified in the DEIR is wholly inadequate and insufficient. The mitigation identified, not only does not address the identified impact, but it also excludes the Ohlone community generally from any oversight or involvement once the project is approved. The City has consistently consulted with Ohlone people, including the Confederated Tribes of Lisjan for many years, however it is unclear to what extent the City will include the Confederated Tribes of Lisjan in consultation, oversight, or development of future plans for the site.

Cult-2a (pg. 20) states before ground-disturbing activities, the Project site will be surveyed by a qualified archaeologist using ground-penetrating radar (GPR). This is intended to identify areas where Shellmound material may exist to focus monitoring efforts in these areas.

Cult-2b (pg. 20) requires cultural sensitivity training by a "qualified archaeologist that meets or exceeds the Secretary of Interior's Professional Qualifications Standards in archeology and an Ohlone tribal representative eligible to consult with the City, pursuant to AB-52." (emphasis added) The training shall occur before any ground moving activity and maintain a record of all construction personnel that have completed the training.

Cult-2c (pg. 21) a utility plan shall be identified and provided to a qualified archaeologist for review prior to issuance of any demolition or grading permits. The mitigation measures include; 1) a GPR survey to determine the possible presence and locations of subsurface archaeological feature; 2) archaeological excavation at proposed utility excavation locations to identify and recover archaeological deposits or human remains; 3) documentation and scientific study of recovered artifacts and human remains, and preparation of a report of findings; and 4) public outreach, including presentations, articles, and literature describing findings.

Cul-2d (pg. 21) provides that all ground-distributing activities shall be monitored by an archaeologist and a representative of an Ohlone tribe....the Ohlone tribal monitor shall be an individual identified by the Native American Heritage Commission as eligible to consult with the City under AB-52. This condition again excludes many Ohlone tribal members that have historically consulted with the City on issues of importance to the indigenous community in the Bay Area. This also represents a conflict of interest, as the identified Ohlone member that consulted with the City in development of the mitigation would be accepting compensation from the developer for mitigation measures.

The DEIR also contains three cultural mitigation measures that are listed as “AB 52 Measure CUL-1, AB 52 Measure CUL-2, and AB52 Measure CUL-3.” AB 52 Measure CUL-1 (pg. 23) states the applicant will make a donation to the Ohlone Indian Tribe, Inc. a 501(c)(3) organization, in the amount of \$75,000 for the sole purpose of maintaining, with the appropriate dignity, the Ohlone Indian Cemetery at 141 Washington Boulevard in the Mission San Jose District of the City of Fremont, Alameda County. This proposed mitigation measure provides for money to be paid by the developer to enhance a cemetery in a different jurisdiction, and does not protect the Shellmound site. This proposed mitigation provides for payment to an Ohlone tribal member, for mitigation developed with that individual to the exclusion of the rest of the Ohlone community.

AB 52 Mitigation CUL-2 (pg. 23) states the applicant will fund development and implementation of a GIS layer for the City. The GIS layer will identify sites of archaeological sensitivity within the City. The information will be maintained as confidential information and be routinely updated. It is unclear how the information will be used to effectively protect archaeological and tribal cultural resources as approving the Project will result in unavoidable adverse changes to the sensitive resources to be protected.

The DEIR also includes Recommended Measure CUL-1 (pg. 23) which if adopted would provide for applicant funding of a permanent display within the site boundary that describes the archaeological and cultural significance of the site. The display shall be developed through consultation with a qualified archaeologist and Ohlone representatives. This mitigation measure would document the site, but not prevent the development and destruction of the resources at issue.

The West Berkley Shellmound and Village Site is the last undeveloped site in the Bay Area that could provide any meaningful preservation of this significant Tribal Cultural Resource. The City has designated the site as a landmark, and adopted several resolutions recognizing the importance of respecting indigenous rights, sacred sites, and incorporation of the principles set forth in UNDRIP into City policies and practices. Any decision on this proposed Project that allows for significant adverse changes to the site would be dishonoring the Ohlone people and be in direct contradiction of City policy. The DEIR also fails to include the perspective of the Ohlone community, including the Confederated Tribes of Lisjan. The City only consulted with one group, despite a history of consulting with several of the Ohlone tribes within the Bay Area concerning projects and policies impacting Ohlone resources. For these reasons and the reasons set forth below the City should adopt the no project alternative, and reject the 1900 Fourth Street project as proposed.

Technical Subject Area Deficiencies

Air Quality

The Project has the potential to cause increased air emissions within the area. Additional green house gases (GHG) will be emitted. Studies have also indicated that residential develop should not be located so close to freeways and industrial uses. As referenced above the DEIR does not adequately address direct and cumula-

tive impacts from multiple projects in the area as to GHG emissions, and PM 2.5 emissions. Page 181 of the DEIR states that the Project could contribute to a cumulative impact to impaired air quality, but then summarily dismisses the impacts by stating that “the Project would not disrupt or hinder implementation of a control measure from the Clean Air Plan and ultimately would be consistent with the Clean Air Plan. Therefore the Project would not result in a considerable contribution to a cumulatively significant criteria air pollutant impact.” This does not specifically address the potential cumulative health impacts that occur from combined Project emissions and increased traffic emissions from roadways and the nearby freeway, and other industrial uses in the vicinity. The initial study indicates several areas under air quality that could create potentially significant impacts. See page 221 of the DEIR and Initial Study pg 32-34, and 53. A further examination of the potential for cumulatively significant air impacts in the region is needed to make an informed decision regarding the proposed project. This section also fails to discuss the health impacts of living close to major freeways, industrial sites, and the rail line.

o Cultural (Archeological) Resources

□ Age and Historical Importance:

Despite the current visual appearance of the existing parking on the last undeveloped site of the West Berkeley Shellmound and Village Site, this site contains substantial integrity as an archeological site, a site of historical and cultural importance, and even more importantly a contemporary spiritual place of great religious significance to the Ohlone people dating back over 5000 years. The West Berkeley Shellmound and Village Site is a Tribal Cultural Resource that will be significantly and adversely affected if this project is approved. This section of our comments discusses the cross over of historical and contemporary importance this site holds for the Confederated Village of Lejan tribal people and other Ohlone people that trace their heritage and life ways to this place.

The West Berkeley Site is thought to have been a multi-function habitation site occupied relatively continuously from 3030 B.C. to A.D. 780. It is the type-site for the Early Horizon, Berkeley Facies (as defined by Elsasser 1978:37-41 and suggested by Wallace and Lathrap 1975:57) and has been recommended as eligible for listing in the National Register of Historic Places under each of the four eligibility criteria (Dore et al. 2002). It currently is thought to be the earliest major settlement on the edge of San Francisco Bay following the Bay’s Holocene filling.

This place has particular significance to the Ohlone people as it is tied to their creation stories, the place that they as people come from and are tied to spiritually.

The West Berkeley Shellmound and Village Site may be the only site left in the Bay Area that has not been destroyed by development of in-fill projects. Nels Nelson recorded no less than 425 Shellmounds on or near the San Francisco Bay. The West Berkeley Shellmound is thought to be the oldest of these Shellmounds and was numbered CA-ALA-307. Allan Pastron of Archeo-Tec Consulting Archaeologists states,

...the known long occupation of the area by the Ohlone people and others before them, and in accordance with the known proximity of one of the most important pre-contact shellmounds in the state of California....

According to radiocarbon dating of some of the shells, the site is thought to be 5700 years old. This would make it the first place that human beings settled along the shores of the San Francisco Bay, consistent with the creation stories of the Ohlone people.

In between 1902 and the Early 1950's "95 more or less complete skeletons and a number of disassociated human bones were exhumed". Newspaper articles from the 1870's through the 1950's document numerous activities that uncovered human remains and cultural objects of the Ohlone people. These articles and other historical references document the resources and tremendous importance this place holds for the Ohlone people. There are many examples of resources discovered from the "mound at Strawberry Creek.

Wallace and Lathrop stated:

As a concluding statement, it can be said that the West Berkeley Shellmound proved to be of unusual significance to the understanding of San Francisco Bay's prehistoric past. Not only has the midden's excavation enriched the archaeological record with a considerable body of substantive data, but, more importantly, it extends knowledge of man's presence in the bay region farther back in time by providing the first clear-cut evidences of Early Horizon occupation, hitherto recognized only at inland localities. Major and minor differences in detail distinguish the bayshore Early manifestation from its interior counterpart, though there can be little doubt of their generic affinities.

It was thought, until recently that

The West Berkeley shellmound has been destroyed; however, it is apparent that subsurface remnants of the cultural deposit are present in the general vicinity of Hearst Avenue and Second Street...Undisturbed West Berkeley cultural deposits could be present as well.

Within the last 10-15 years archaeologists have been using new technology to explore the subsurface of the shellmound sites and have found that many of "these sites have not been destroyed and in some cases, retain substantial integrity." This requires lead agencies to carefully consider the information presented, and the significance of the resources that may be located on the site. Here the archaeological evidence may not be apparent based on the initial studies referenced in the DEIR. In fact the documented historical evidence would support a more thorough examination of the site, current information compiled, and information presented in these comments as well as other resources. It is also critical that the City continue consultation with the Ohlone people, including the Confederated Tribes of Lisjan to gain additional insight and information as to the importance of this site as a Tribal Cultural Resource and the significant adverse impacts this Project will have on this resource.

Site Location and Size

The site was conservatively estimated by Wallace and Lathrop to be 650x300 feet in size. This seems to be a figure that is mentioned frequently in the various archaeological reports. Others mention the size as being far larger. Pilling estimated that it was ~900 feet x ~300 feet. Nels Nelson with his street boundaries had the site as upwards of ~1400 feet x ~1200 feet. It is well known that the site was looted for artifacts by Berkeley residents for decades. It apparently was a past time in Berkeley to go artifact hunting at the Shellmound. Because of this, by 1954 the size of the site had shrunk to 45x100 feet.

In order to fully consider the potential resources and integrity of the site the Tribe requests that the City consider Pastron's results in the context of the previously documented size and location of the site, coupled with the resources that have been found around the site, as well as the fact that there was a history of looting and a documented shrunken size of the mound only 50 years after Nels Nelson first mapped it.

In 2000, Tremaine found deposits from the Shellmound outside the "buffer zone" when installing Fiber Optic cable. They believed that this demonstrated the outer edges of the shellmound, beyond the original known location. Given the historical evidence supporting a boundary larger for the West Berkeley Shellmound and new technologies that could demonstrate the substantial integrity of the Project site, the City must consult with impacted Tribes and seriously consider the severe impact this Project will have on the last remaining un-

developed portion of the West Berkeley Shellmound and Village Site than could be preserved in a manner that honor the Ohlone people, rather than approving further development that dishonors and dismisses their living culture.

Protection of Cultural Significant Tribal Sites- Local, State, Federal, and Global

1900 Fourth Street is within the zone of land that was designated as a City of Berkeley Landmark #227 by the City of Berkeley Landmarks Commission on February 7, 2000. The site at 1900 4th Street is also listed in the California State Registry of Historic Places. As well as being eligible for inclusion in the National Register of Historic Places as CA-ALA-307. The site is entitled to protection under state, federal, and international law, as recognized by the City when it designated the Project site as a Landmark. The City also recognized the need to respect and honor indigenous peoples, and consider such factors when making discretionary decisions.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by proclamation of the City Council of Berkeley, on May 19, 2009 stating that UNDRIP should be adopted as municipal policy for the City of Berkeley. The City consulted with many of the Ohlone groups that have significant cultural and spiritual ties to the land that the City is located on. The Confederated Tribes of Lisjan consulted with City boards and commissions and was an active participant in support the City's adoption of the May 19, 2009 Proclamation. The Tribe continues to work with the City and provide information for the consultation process. The Tribe believes the City should carefully consider the May 19, 2009 Proclamation, review the provisions set forth in the UNDRIP that are now municipal policy. The City has an opportunity to set an example in how it works with the indigenous peoples of the region, furthering implementation of UNDRIP. The City has an opportunity to work in collaboration with the indigenous peoples of this region to protect a sacred resource, a resource that cannot be moved or preserved through photographs or murals, a resource that could help bridge gaps and create an opportunity to bring the community together through acknowledgement of the first people of the region. The City has the power to do something great, in preserving this site in a way that protects this Tribal Cultural Resource, and opens the door for ensuring the Ohlone people are acknowledged as part of the past, present, and future of the Bay Area.

Contamination of soils

Several of the Borings and Trenches found in the Appendix of Pastron's 2014 report state that "demolition debris" was encountered and others included "demolition debris, which looks 20th century in origin". More concerning however is the fact that near or on the Shellmound was located a company called El Dorado Oil, and Deitz Oil once was located at 3rd and Hearst Street. The Appendix of Pastron's 2014 report states that Trench 10 had contaminated soil, in Trench 11 there was a "petroleum odor", in Trench 12 there was a "noxious petroleum odor" and "oil contamination" in Trench 22. Additionally, slag was found in several borings and trenches, although it is usually not considered hazardous waste, it is unclear in this case whether it is hazardous without having completed a phase II environmental site assessment (discussed further below).

Difficulties with Ground Penetrating Radar

The DEIR does not include the data sets for the GPR that were referenced. This prevents the public and other archaeologists/experts from conducting an effective peer review of the conclusions presented in the DEIR. The DEIR also states that as part of the mitigation measures there will be a need to perform GPR to verify the assumptions stated in the DEIR. This is problematic for two reasons. First, if GPR was used to assess the entire site to gather information to present in the DEIR, why would GPR need to again be performed as a mitigation measure? The second concern relates to the high water table and how that affects GPR.

Pastron

recommend(s) that a site-wide ground penetrating radar (GPR) survey be conducted in advance of full-scale

ground-disturbance and demolition ... One caveat is that GPR does not work especially well in very wet conditions, as water has the capacity of absorbing and scattering incident electromagnetic signals.

The site has a high water table. Several pictures from the developer's website depict water at the bottom of some of the trenches. Additionally, the Appendix to the report states that groundwater was encountered or the water table was hit on several occasions in boring and trenching on site, with the average boring or trenching being around 8-9 feet. Only on two occasions did they encounter water deeper than 10 feet in the trenches and the average depth of the water table from the numbers Pastron provides in the appendix for the 1999-2000 borings is 10.4 feet. However, the report states "The water table was usually reached at 12-13 feet" This is inconsistent with the information stating that water was hit on several occasions where the boring and trenching only went down 8-9 feet. This contradiction should be explained.

A news article from 1954 reports that Professor Gifford from UC Berkeley "determined the age of various bone, stone, and shell artifacts to be 2,200 years old at the eight foot level, and 2,700 years at the 12-13 foot level" at the south side of this site. Thus there likely are artifacts resources below the current water table. Additionally, the borings from 1999-2000 are believed to have an average depth of between 9-10 feet. It is believe these borings occurred at CA-ALA-307. This could mean that much of the remaining cultural resources may be at or below the waterline. This would make GPR a difficult tool to use for the Project site, especially since Pastron mentioned that it does not work well in "very wet" conditions.

Report Prepared by Pastron's in 2014

In 1999-2000 Archaeo-Tec did 43 borings in the Project area. Pre-contact cultural deposition was identified in 6 of those borings. Pastron's interpretations were that the shellmound site was located under Truitt and White, and that these were 'highly disturbed' deposits and that they likely were "intentionally distributed" by road building or soil enhancement. He concludes that there is likely evidence of the mound under 1900 4th Street because the mound was looted, used for road paving, and disturbed. He believes that there are deposits there because it was a "catch basin" for the West Berkeley Shellmound and an additional "satellite" mound on 6th street. This provides support for the premise that the entire area (including the Project site) as described by Nels Nelson and confirmed by Chris Dore is a "shellmound area." This means that multiple resources existed within this small area of Berkeley, and that it is likely that the Project site retains substantial integrity if sufficiently probed. This is the last undeveloped portion of the 'shellmound area'. Archaeologists such as Nels Nelson, Pilling, Wallace and Lathrop, and recently Chris Dore have produced work that supports the Project site's significant importance as the last undeveloped portion of the West Berkeley Shellmound and Village Site. This information was not included or discussed sufficiently in the DEIR. The DEIR leaves out important information and evidence developed by well-known and respected archeologists who support a conclusion that the Project site does maintain archeological resources, and substantial integrity.

This information is also available through CHRIS, and assessments completed for other projects in the vicinity. However, Pastron does not include this information in the DEIR and reaches a different conclusion in 2014 and in the DEIR than he did in 2000. Pastron concluded in 2000 that the Shellmound was very large and that the outer edge of the Shellmound was reached with his corings. Yet in 2014 he states that the Project site cannot be part of the shellmound and the materials found must be "run off". These discrepancies must be addressed in order to make an informed decision regarding the Project.

Archeological Experts Chris Dore and Garcia and Associates:

Chris Dore, a respected archeologist, has found evidence to support the premise that the 1900 Fourth Street site is part of the Shellmound. During the Landmarks Preservation Committee meeting held on 2/7/2000, Alan Pastron (the archaeologist working in the Spenger's parking lot) stated that a report would be released soon. Nevertheless, there can be no doubt that the site's original horizontal boundaries were quite extensive, but

never precisely determined (Wallace and Lathrap 1975:1-5). Given this, it is possible that the recently identified cultural deposit may represent an undisturbed, or at least minimally disturbed, remnant of the eastern edge of the West Berkeley Shellmound (CA-ALA-307).” (Pastron 2000:21)” This information is not included in the DEIR.

Findings, revealed that the majority of the Spenger’s Parking Lot block might contain intact shellmound deposits” (Dore et al. 2002a) Chris Dore believed that he verified the boundaries of Nels Nelson’s maps through his corings, “Interestingly, the polygon that encloses all cores with primary deposits matches almost exactly the site boundary defined by Nelson in 1910.” This information is also not included in the DEIR.

“The main body of the site was between 2nd and 4th Street and between Hearst and University Avenue, with the mound feature approximately one block in extent (CA-ALA-307 Site Card)...Dore conducted a subsurface boring program in 2001 for the City of Berkeley limited to streets in the vicinity of CA-ALA-307 (Dore 2002). The results of the boring program indicate that intact deposits, some over 3 ft. thick, extend from just west of 2nd Street to east of 4th Street, almost to 5th Street in Berkeley, and from University Avenue to just north of Hearst Avenue. Radiocarbon tests yielded a range of dates from ca. 3030 BC to AD 780. The site record does not identify the materials that were dated or their proveniences. The entire above-ground mound was leveled in the 1950s and it is for this reason that Pilling reported that the site was destroyed. However, Dore has found with his drilling program that pockets of intact buried deposits remain. Dore describes the site as a substantial habitation site with a mound centered between 2nd and 3rd streets, and a much larger extended site radius based on a sketch map by Nelson produced in 1910.” This information would indicate that the Project site may very well contain significant pockets of intact resources. The DEIR does not include this information or address the potential for such resources to be located within the Project site.

o Tribal Cultural Resources

Section 1 (a) of AB 52 sets forth the purpose of the legislation by declaring that current state law prior to adoption of AB 52 provided limited protection for Native American sacred places, including, but not limited to, places of worship, religious or ceremonial sites, and sacred shrines, sites, features, places, objects, and landscapes with cultural value to California Native American Tribes. CEQA was amended to provide for inclusion of California Native American tribes’ knowledge and concerns. The amendments to CEQA recognized that “California Native Americans have used, and continue to use, natural settings in the conduct of religious observances, ceremonies, and cultural practices and beliefs, these resources reflect the tribes’ continuing cultural ties to the land and their traditional heritages.”

The amendments recognize “California Native American tribal sovereignty and the unique relationship of California local governments and public agencies with California Native American tribal governments.” The Legislature intended to accomplish all of the following:

- (1) Recognize that California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities.
- (2) Establish a new category of resources in the California Environmental Quality Act called “tribal cultural resources” that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation.
- (3) Establish examples of mitigation measures for tribal cultural resources that uphold the existing mitigation preference for historical and archaeological resources of preservation in place, if feasible.
- (4) Recognize that California Native American tribes may have expertise with regard to their tribal history and

practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated. Because the California Environmental Quality Act calls for a sufficient degree of analysis, tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.

(5) In recognition of their governmental status, establish a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the California Environmental Quality Act environmental review process, so that tribal cultural resources can be identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decision-making body of the lead agency.

(6) Recognize the unique history of California Native American tribes and uphold existing rights of all California Native American tribes to participate in, and contribute their knowledge to, the environmental review process pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(7) Ensure that local and tribal governments, public agencies, and project proponents have information available, early in the California Environmental Quality Act environmental review process, for purposes of identifying and addressing potential adverse impacts to tribal cultural resources and to reduce the potential for delay and conflicts in the environmental review process.

(8) Enable California Native American tribes to manage and accept conveyances of, and act as caretakers of, tribal cultural resources.

(9) Establish that a substantial adverse change to a tribal cultural resource has a significant effect on the environment.

Tribal Consultation

The City must complete consultation with the Confederated Tribes of Lisjan prior to finalizing the environmental review process. The City has a history of consulting with the Tribe. The Tribe has significant information that must be considered by the City prior to any decision on this Project.

The Confederated Tribes of Lisjan have been participating in the process for this current development since the Zoning Adjustments Board meeting in March of 2016 where the developers made their presentation about the project. The Tribe has been at every comment period since the March 2016 meeting. The Tribe and its representative, Corrina Gould, are well known to the city Planners as well as the developers. The Tribe through its representative has also participated in consultation on other projects in the Bay Area, including proposed development at Mission Peak in the East Bay Regional Parks District. Jane Barry at the recent Landmarks Commission meeting had made a comment that the Confederated Tribes of Lisjan participated in a March to preserve Ohlone cultural and sacred spaces within the Bay Area over a year ago and were known by the City of Berkeley and the developer as an interested party of Ohlone descent.

The City has had an initial meeting with the Tribe, but additional time is needed to fully address the concerns of the Tribe and provide for input from tribal elders.

Cultural Activity at the West Berkeley Shellmound and Village Site

For the last 20 years the Tribe has been going to the West Berkeley Shellmound for prayer as well as participating in the Shellmound Walks. The Tribe has documentation for approximately 11 years of these walks and prayers. The revitalization of Ohlone culture has expanded over the last 25 years with a resurgence in interest for learning about the culture, songs, language and dances. Events such as the “Ohlone Days” with EBRPD

have regularly occurred over the last few decades. The Ohlone people have been active through protests at the Holiday Inn development in San Jose with the American Indian Movement to protect a burial site. The Tribe visits the West Berkeley Shellmound several times a year for gatherings, prayers, and ceremony.

Cultural Significance ^[L]_[SEP]

The West Berkeley Shellmound, the proposed Project site, is the oldest place that Ohlone people lived on the shores of the San Francisco Bay. This place is the beginnings of all of the Bay Area villages (Chochenyo, Huichin, Karkin, etc) including the original place of the ancestors of the Confederated Tribes of Lisjan. The Tribe's ancestors lived and died here for over 5000 years. This is the place that hundreds and hundreds of generations of Ohlone ancestors have been buried. Ohlone people are still under the ground in their final resting places. There also is medicine, sacred objects, cultural objects, children, animals, condors, coyotes and many culturally significant items that are buried at this site. It is considered desecration to dig into it, to remove anything, or to disturb what is buried there.

This also is a culturally significant site due to the fact that it is the oldest place that people lived in the Bay Area. It is direct proof of how old Ohlone culture is. It is a place that Ohlone people can be proud of and can consider as a world class culture site that predates the pyramids, Jerusalem, Aleppo, Damascus, and many of the world's historical sites. It is a place that Ohlone people can bring their children and grandchildren to teach them about their history and their culture. It is incredibly rare to have a place that you can point to and say that your relatives have lived for more than 5,000 years, and that their house is still only a few miles away.

o Significant irreversible Changes

The DEIR discusses several topics under the heading "significant irreversible changes" on pages 218-219. These changes include land use changes, damage from environmental accidents, and consumption of nonrenewable resources. The DEIR asserts that "the proposed Project would not commit future generations to more intense development and there would be nothing to preclude the location or redevelopment of some other type of use on the Project site in the future." See DEIR at page 218. However, this section fails to address the irreversible change in ability to utilize the site for tribal cultural and religious purposes, and that its importance as a landmark would be minimized by land use changes that significantly and adversely alter the character of the site. This change would deprive future generations from experiencing the site, and specifically deprive future generations of Ohlone people from being able to practice religious and cultural ceremony at the site.

This section also states that "no significant environmental damage, such as accidental spills or explosion of a hazardous material, is anticipated with implementation of the proposed Project" See DEIR at 218. This section references compliance with all federal, State and local regulations, as well as, implementation of proposed hazardous materials mitigation measures. The section then concludes that compliance with such requirements will prevent any irreversible changes from development of the project. However in making this conclusion the DEIR fails to acknowledge that a Phase II Environmental Assessment has not occurred and therefore it is not necessarily known what potential exists for irreversible damage from an environmental accident.

This section then goes on to state that consumption of nonrenewable resources in development of the project would not result in a significant impact. However, it does not address the cumulative impact from release of GHG from all of the development projects in the area. An additional assessment should be conducted to as-

sess the combined impact of the GHG emissions from all projects in the area.

o No Reasonable Range of Alternatives

The DEIR does not include a reasonable range of alternatives. The alternatives analysis must examine a range of alternatives to the project, including the potential of an alternative location of the proposed project, the alternatives should be alternatives that could feasibly attain the objectives of the proposed Project that would avoid the significant effects of the Project. See CEQA Guidelines § 15126.6. CEQA Guidelines section 15126.6(f)(2) provides guidance as to when an EIR must include an assessment of alternative locations. The City must ask whether any of the significant effects to the project would be avoided or substantially lessened by putting the project in another location. Here, any location outside the area of the West Berkeley Shellmound and Village Site would lessen the unavoidable significant adverse impacts to tribal and cultural resources. Other locations within the City would serve the purposes of the project (residential and commercial uses).

The range of alternatives in the DEIR is insufficient, “cursory at best” contrary to CEQA requirements. The alternatives analysis summarily rejects alternatives that would designate the Project site as open space/recreation and assessment of alternative locations. The DEIR states that “an alternative location was not considered for analysis because the applicant does not own or would not feasibly otherwise be able to gain control of a suitable vacant site within the City.” The DEIR summarily dismisses any alternative location within the City without addressing why an alternative site could not be acquired. There is a mention of demolition waste but no comparison of the impacts that demolition at another site would cause compared to potential hazardous materials release at the proposed project site, or the adverse impacts of destroying the last undeveloped portion of the West Berkeley Shellmound. Additionally, the City cannot use the applicant’s “control” over the proposed site as the sole basis to avoid scrutiny under CEQA.

The City should also consider the holding in *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553.

There may be cases involving proposed development by a private entity in which the consideration of alternative sites is necessary and proper. The private developer may own or control feasible alternative sites, may otherwise have the ability to purchase or lease such properties, or may otherwise have access to suitable alternatives.

A reasonable range of alternatives should discuss alternative project descriptions and alternative locations that would lessen or eliminate significant unavoidable environmental impacts. In this case the DEIR fails to acknowledge that the proposed project will result in a significant unavoidable environmental impact to Tribal Cultural Resources, despite the acknowledgement that the project will create a significant adverse change to the character of the City identified landmark. The Tribe’s position is that that this significant adverse change to the character of the site does in fact cause an unavoidable significant adverse change to both Cultural Resources and Tribal Cultural Resources. Therefore a reasonable range of alternatives must include alternative locations for the proposed project.

Given the historical and cultural significance of the site, and the adverse impacts that will be caused by the Project, the City should consider options that would permanently protect the site. The City should work with representatives of the Ohlone community, including the Confederated Tribes of Lisjan, to develop recommendations for this permanent protection of the site. This is the last opportunity that the City has to protect unique resources, and every options for such protection should be considered before moving forward with any project at this location. The Tribe has included a potential proposed alternative development of the site that includes restoration and preservation as open space.

o Land Use

The Land Use section is insufficient and fails to address how the proposed project is consistent with Berkley land use planning policies and ordinances including but not limited to the General Plan and the West Berkley Plan. This section fails to include adequate mitigation. The inconsistencies of the Project with Berkeley land use planning provisions demonstrates that this project should be reject for either the No Project Alternative or consideration of the proposed alternative that would preserve the site as open space, examine options for development of a park/recreation space on site. The City should consider whether it has other property that could be exchanged for the 1900 Fourth Street site; property that would preserve the West Berkley Shellmound and Village Site and better meet the project objectives.

The current Project as proposed would not provide adequate parking. In fact it would likely reduce available parking in the area. The Project would not provide for low income housing and would displace low income and disadvantage communities, and to the extent it does allow for low income housing, it would be housing close to the freeway, industrial areas, and rail lines. Study show these areas have a higher likelihood of exposing people (particularly children) to carcinogens, contaminated soil, poor air quality (PM 2.5), and car exhaust.

The City should deny approval of the Project and consider the following assessment regarding the land use inconsistencies presented in the DEIR.

LU-7 Neighborhood Quality of Life provides for “[p]reserve and protect the quality of life in Berkeley’s residential areas through careful land use decisions.”

A. Require that new development be consistent with zoning standards and compatible with the scale, historic character.

...

D. Strengthen Zoning Ordinance language to ensure greater protection of solar access to adjacent properties when new projects or additions are proposed”

Erasing the history of Berkeley does not preserve its historic character. Building a residential and commercial space on top of its birthplace does not preserve its historic character. How is this development consistent with

this neighborhood's historic character? How will this development alter this neighborhood's historic character if it builds on a site that is over 5000 years old?

How is this site consistent with zoning standards and compatible with the scale of neighboring buildings when it would be several stories taller than the neighboring buildings? How will this site affect the solar access of Truitt and White as well as Spengers and the properties across the street?

From the 1977 Master Plan "Berkeley represents an intricate and delicate balance that is constantly undergoing subtle changes in its physical and social fabric. A continuing need exists to maintain, improve, adapt and, where necessary, replace existing development to meet changing circumstances. The Land Use Element recognizes the interdependence of residential neighborhoods, commercial centers, employment centers and the University of California. Its proposals are intended to insure that future development reinforces, rather than undermines, this mosaic of community values."

Goal #7 of the Berkeley General Plan states "... The Plan also calls for the expansion of open space and recreational resources to meet the needs of all segments of the community."

The Open Space and Recreation Element under the heading 'Policy Background', states "Few of Berkeley's public assets are as highly treasured and as heavily used as the City's open spaces. Berkeley's open spaces include public parks and recreational facilities, ... creeks and other water features, and some privately owned outdoor spaces, such as plazas. The City's parks and other open spaces serve as places of recreation and beauty, as community gathering places, as centers of ecological learning (e.g., Shorebird Nature Center and Strawberry Creek), and as reflections of our culture and history (e.g., the Ohlone Mural and the Rose Garden). ... and to involve and engage the community in the implementation of this mission."

In the Open Space and Recreation Element under the heading "Element Objectives" it states,

The policies and actions of the Open Space and Recreation Element are intended to achieve the following three objectives:

1. Preserve, maintain, and repair the city's existing open space and recreational resources and facilities.
2. Expand open space and recreational resources to meet the evolving open space and recreational needs of all segments of this community through land acquisitions and improvements.
3. Increase funding for parkland, recreational facilities, and open space maintenance, improvement, and expansion.

The proposed development at this site would specifically go against the creation of an ideal place for open space. The proposed Project could be developed at an alternate site, however the birthplace of the City of Berkeley, and the oldest inhabited place in the Bay Area cannot be moved.

The Ohlone people, including members of the Confederated Tribes of Lisjan have been and remain an underserved segment of this community. The City needs to fully consider the importance of this place to the Ohlone

people.

In the Open Space and Recreation Element in section OS-6 states:

- A. Identify and prioritize open space expansion opportunities in neighborhoods that are underserved or not easily accessible to existing park and recreational facilities. ...
- C. Develop joint-use agreements with other agencies such as the University of California, the Berkeley Unified School District, the Bay Area Rapid Transit District, and regional open space agencies to increase public access to public lands....
- E. Establish spaces for art, music, and cultural activities.

Taking pride in the birthplace of human beings living on the shores of the San Francisco Bay could provide an incredible resource to the Berkeley Unified School District and to UC Berkeley. This could be a prime location to learn directly from the Indigenous inhabitants who have been living here for over 5000 years. The neighborhood where the Project is proposed is underserved in terms of parks and open space. This area also has limited cultural sites and activities that can still be preserved. The proposed Project would eliminate the current and regular gatherings of Indigenous peoples, the Ohlone people, at 1900 Fourth Street.

In the In the Open Space and Recreation Element in section OS-7 states, “Within the context of open space resource allocations for new or expanded facilities, give high priority to providing additional facilities for populations that are disadvantaged or underserved.”. Section C States, “C. Ensure that new open space, recreational, or cultural uses are compatible with the other vital community priorities for disadvantaged populations in Berkeley.”

There are two underserved and disadvantaged groups within the Project area. First, the Ohlone community is one of the most underserved and disadvantaged communities in Berkeley. Although the city will name streets or public features after our people, or put murals up representing our ancestors, the same City has in the past and is here potentially going to issue a decision that will result in the destruction of our sacred spaces. If the Project is approved it will result in digging up and demolishing our birth place, the remains of our ancestors and the eliminating the last and only opportunity left to preserve Bay Area shellmounds. The City is the home of the Hearst Museum at UC Berkeley that has refused to give back the bones and funerary possessions of the Ohlone people despite protests and years of attempts to negotiate the return of these cultural resources by the Ohlone people. Preserving this space and denying the Project is a unique opportunity for the City to give more than lip service to honoring and respecting the Ohlone people and the importance of this sacred space.

The second disadvantaged and underserved community is the low-income communities of West Berkeley, for example those that live on 5th street between Hearst and Cedar. West Berkeley and North Berkeley have a large percentage of Berkeley’s low-income residents. West Berkeley currently does not have adequate open space or parks on the East side of the freeway. The proposed development would add further housing density to the neighborhood and take away a prime location for a park. This Project would have limited low income

housing and contribute to gentrification that would price low-income residents out of the new location. The Project would provide less parking for the area, and given the potential for hazardous materials on site, disturbing the site could create health risks for residents. Therefore the Project as proposed would not meet the objectives identified in the DEIR.

In the In the Open Space and Recreation Element in section OS-11 states:

Encourage innovative use of public plazas, sidewalks, and temporary street closures as open space or for recreational or cultural events. (Also see Land Use Policy LU-20.)

Action:

A. Design and improve public streets, parking lots, and plazas to provide public spaces for street fairs, festivals and other gatherings.

Our Tribe has participated in prayer gatherings on the West Berkeley Shellmound for several years. We have gathered at this site for over 20 years. The proposed development would make it impossible to continue these gatherings, gatherings that are integral to our spirituality and cultural practices. The proposed Project would desecrate the sacred site at which we gather. These cultural events and gatherings would be unavoidably and adversely impacted by this development.

In the Urban Design and Preservation Element, under the section “Built Environment” it states,

Unfortunately, Berkeley has lost many of its important historic buildings and landscape features, while others are potentially threatened. And while in recent decades there has been much notably good new construction, there have also been many poorly designed new buildings that are incompatible with the design and scale of the older structures around them.

Not only is the proposed Project much larger than the neighboring properties, it also threatens the oldest historic site in Berkeley, the oldest site along the shores of the entire Bay Area. The Berkeley General Plan specifically calls for labeling and attempting to preserve Berkeley’s history and culture. Clearly this proposed Project is against these stated policy objectives of the City. This section of the Urban Design and Preservation Element specifically notes that certain features of Berkeley are in jeopardy. Not only is the proposed Project larger and taller than the historic building of Spengers across the street, but also any development within Berkeley Landmark #227 and ALA-307. The Project is incompatible with preserving Berkeley’s oldest landmark.

In the Urban Design and Preservation Element, under the section “Neighborhoods and Districts” it states,

West Berkeley is an area comprised of a number of subareas (some in themselves much more homogeneous than others), but overall having by far Berkeley’s widest range of building and site types, from a 5,700-year-old shell mound site to Victorian buildings reflecting Berkeley’s earliest ‘49er settlement to bold factory forms expressing the district’s longstanding industrial role to sleek new commercial buildings and high-tech start-ups.

In the Urban Design and Preservation Element, under the section “Benefits of Preservation and Good Design” it states under

Economic Benefits section a. “Stability of Residential and Commercial Areas - The city’s special character can be a powerful tool for the economy as well as community identity.”. The section entitled ‘Community Identity’ under subsection c. states, ““Understanding - Older buildings give an enhanced understanding of who we are, where we have been, and where we might be going.

Under the Urban Design and Preservation Element, the West Berkeley Shellmound and Village site is specifically identified as a distinctive part of the West Berkeley neighborhood. The Shellmound is not just old, it is the oldest site in Berkeley. In fact, this site is believed to be the oldest inhabited location on the shores of the entire San Francisco Bay Area. The Shellmound is what could define the community identity of the Fourth Street area of West Berkeley. Additionally, it could define the City of Berkeley as the oldest continuously inhabited city in the Bay Area.

In the Urban Design and Preservation Element, under the section

Protection of Existing Resources” it states, “Protection is needed even for some things which are unseen or undiscovered. Archaeological resources, the material remains of past cultures or periods, often remain hidden till the ground is opened up for construction or utility work.

The City has formally designated this site a Landmark (#227). This site contains both archaeological resources as well as ‘material remains of past cultures or periods’. The importance of this site is shown through the rich archaeological and historical record, including the work of Christopher Dore and the GANDA Report. This Report was prepared at the request of the City. Additionally, the Project site is within the bounds of ALA-307, and is on the California and Federal list of historic places.

In the Urban Design and Preservation Element, under the section “Element Goal”, subsection “Element Objectives” it states that there are four objectives:

1. Protection of Existing Resources - Preserve historically or culturally important structures, sites, and areas and protect the character of Berkeley’s neighborhoods and districts. (See the Land Use Element for more policies on the Character of Berkeley.)
2. Preservation Incentives - Provide incentives for the preservation of historic and cultural resources.
3. New Construction and Alterations - Ensure that new construction and alterations are well designed and respect and enhance the existing environment.
4. Outreach - Promote awareness and understanding of Berkeley’s built environment and cultural heritage, and of how to preserve and improve them.

All four of those objectives pertain to the West Berkeley Shellmound and more specifically to the No Project Alternative option for 1900 4th Street. As is discussed below, the proposed 1900 4th Street Project is not only inconsistent with the stated goals and objectives of the Urban Design and Preservation Element of the Berkeley General Plan, but is contrary to these goals and objectives. Therefore, the only alternatives the City should consider are the No Project Alternative or an alternative where the City acquires the site and designates it as open space.

Objective #1 states that we must protect existing resources. The proposed Project site is of historic and cultural significance. The historic significance goes beyond just the neighborhood's history, or even the City's history. It is of significant importance to the history of the entire Bay Area. Additionally, the Shellmound is included in the Urban Design and Preservation Element of the Berkeley General Plan as a specific example of what makes the West Berkeley neighborhood unique.

Objective #2 states that we must provide incentives for the preservation of historic and cultural resources. This site is both a historic and cultural resource, the City has an obligation to protect and preserve these resources. How is the City ensuring that these resources are preserved? Given the City's support for preservation of cultural resources and standing up to adopt alternatives that protect Tribal Cultural Resources in other jurisdictions, including North Dakota, shouldn't the City set an example by ensuring that one of the most important Tribal Cultural Resources within the City is also preserved and protected? This proposed Project is inconsistent with the City's policies of preservation and protection of Cultural and Historic Resources.

The proposed Project is inconsistent with Objective #3, as it will blatantly destroy the cultural resources and historic character of the site. The Project is neither well designed nor respectful to the integrity of the site. It does not enhance the site but instead demolishes known resources located on the site

Objective #4 states that we must promote awareness and understanding of the cultural heritage and how to preserve it. How is the proposed Project preserving the cultural heritage of the site, the City, and the Ohlone people? The mitigation measure set forth in the DEIR call for an informational display that provides historical and cultural information about the Ohlone people (see Cultural Resources section above), yet destroys the very aspects of the site that will be reflected in these informational displays. How does the City justify destroying these cultural and historic resources, the heart of the Ohlone people and the City's heritage?

In the Urban Design and Preservation Element, under Policy UD-1 it states,

Use a wide variety of regulatory, incentive, and outreach techniques to suitably protect Berkeley's existing built environment and cultural heritage.

Actions:

A. Identify and protect historically significant structures, sites, districts, and neighborhoods. (Also see Land Use Policy LU-2.) (The city already hired Dore/Garcia to do this and they showed the Shellmound as being on the parking lot)

- B. Develop a comprehensive program that will indicate, in more detail, needed in-depth surveys and other actions to protect Berkeley's built environment and cultural heritage.
- C. Conserve and update the Landmarks Preservation Ordinance. (Could this mean enforcing the landmark status of protected landmarks?)
- D. Encourage widespread public participation in the identification and designation of historically or culturally important buildings, sites, and areas. (ZAB mentioned that through the Public Comment period they realized how important this site is to the public and to Ohlone people)
- G. Through code enforcement and other activities, provide early intervention to promote timely upkeep of historic and cultural resources, and thereby avoid continued neglect that could eventually make such resources unsavable.

In the Urban Design and Preservation Element, under Policy UD-2 it states,

Increase the extent of regulatory protection that applies to structures, sites, and areas that are historically or culturally significant.

Actions:

...

- B. Consider revising the Landmarks Preservation Ordinance so as to prohibit demolition of designated landmarks, except in unusual cases where rigorous prescribed findings are made by the Landmarks Preservation Commission and/or the City Council.
- C. For any public or private project that may adversely affect an archaeological site, consult with the North Central Information Center of the California Historical Resources Information System, require site evaluation as may be indicated, and attempt to prevent or mitigate any adverse impacts.”

The Landmarks Commission voted unanimously decided to request for the re-circulation of the DEIR because they found it to be flawed and had numerous question that were not addressed in the DEIR.. Landmarks Commissioner Olson stated that she could not fathom how the developers had gotten this far in the process of trying to develop a city landmark and she demonstrated concern regarding the proposed Project. The City must consider the recommendations fo the Landmarks Commission, seek additional information, and not be pressured into approving a Project that will go against City land use policies intended to protect cultural and historic resources.

In terms of Section C of UD-2, as evidenced in this letter, the consultation with CHRIS was not sufficient. The DEIR neglected a considerable amount of information that has been referenced in this letter. The DEIR also failed to completely assess the archaeological record. Additionally as has been noted herein, the Project mitigation is incomplete and insufficient.

In the Urban Design and Preservation Element, under Policy UD-2 it states,

Use regulations to protect the character of neighborhoods and districts, and respect the particular conditions of each area.

Action:

A. Consider the creation of a new regulatory classification of "conservation district" to protect areas with distinctive architectural or environmental characteristics.

In the Urban Design and Preservation Element, under Policy UD-2 it states,

Promote, and encourage others to promote, understanding of Berkeley's built and cultural heritage, the benefits of conserving it, and how to sensitively do that.

Actions:

A. On an ongoing basis, make readily available to the public the identity of historic and cultural resources that have been officially designated or have been found to be important by the City's inventory.

C. Promote, or encourage others to promote, guided and self-guided tours of historic and cultural resources.

D. Encourage the Berkeley Unified School District to incorporate into its curricula instruction about Berkeley's history and built heritage.

The City policies stated above support an alternative that would provide for City acquisition of the site, designation as open space, and exploration of opportunities to develop a park dedicated to the Ohlone people. Please see proposed designs for park that could be located at this site. The City could create a committee that includes representatives of the community, the Ohlone people, the school district and University to explore and develop options for located a park on this site.

The City has an obligation to explore the Tribe's proposed alternative for developing a park at the site location. Development of a park and designation of open space would satisfy all of the sections of the Berkeley General Plan described above. Whereas the proposed Project at 1900 4th Street is in conflict with these sections of the General Plan. The Tribe's proposed alternative for a designation of open space would promote the intrinsic character of not only the West Berkeley Neighborhood, but also of the City itself. Additionally, the Project could be developed at an alternative location. The City should consider identifying City owned property that could be exchanged for the Project site as this would preserve the historic character of the site, protect Tribal Cultural Resources, and meet the objectives set out in the DEIR without the unavoidable adverse impacts that would occur if the Project is approved.

o Traffic and Circulation

The Traffic and Circulation section of the DEIR is fatally flawed as it fails to recognize the significant adverse impacts the project will have on traffic within the vicinity of the project location. The Tribe concurs with the comments submitted by Denny Abrams and Richard Millikan of Fourth Street Shops on January 10, 2017 as to the potential Project impacts on Traffic Resources. The Tribe also concurs with the preliminary

report prepared by PHA Transportation Consultants (“PHA”) as to the impacts on Traffic Resources. The Tribe sets forth below key points made by PHA and reiterates its concerns regarding the significant adverse impacts that the Project will cause in this area. The information below comes directly from the reported prepared by PHA submitted on January 10, 2017 to the City.

1. Missing Key Study Intersection Analysis:

Hearst Avenue, in conjunction with Delaware Street, is a key route connecting the project site to the North Berkeley BART Station. As the project site is more than a mile away and some of the residents from the project site may choose to drive instead of walk, which could take about 30 minutes. As such, the intersections of Delaware Street at San Pablo Avenue, which is a key intersection along the route from the project site to the North Berkeley BART Station, should be included in the traffic study for evaluation.

Recommendation:

Evaluate and discuss current traffic operations and the potential project impact on these two intersections.

2. Inadequate Driveway Analyses

While the traffic study evaluated both site access driveway Level-of-Service (LOS), it neglected to include vehicle turning movements from parking lots and driveways from across the street. In the case of the proposed residential driveway at Hearst Avenue, there is a parking lot from across the street. The potential conflicting vehicle turning movements to and from driveways on both sides of the street could create problems on the street. Further, the residential driveway at Hearst Avenue is close to the at-grade railroad crossing. As such, the safety aspects such as vehicle queuing, and the potential of vehicles straddling on the railroad crossing when trains are passing through must be evaluated and discussed.

The commercial driveway at Fourth Street is less than 100 feet away from University Avenue. Vehicles making left turns into the driveway may create vehicle queues that would extend to University Avenue and block traffic. This could be more problematic if there is a ticketing gate installed at the driveway entrance, which could significantly slow the driveway operation.

The traffic report indicated that the project will add on-street parking and a bulb-out along the project frontage on Fourth Street north of the driveway. This may have a negative impact on driveway sight-distance especially if planters and/or other street furniture are to be placed on or near the bulb-out.

Recommendation:

Re-evaluate driveway operation (LOS) with the traffic to and from driveways across the street. Evaluate vehicle queues and discuss whether or not vehicle queues at the access driveways would extend to University Avenue and across the railroad crossing. Evaluate and discuss the potential sight distance impact of the proposed on-street parking on the Fourth Street commercial driveway, and whether or not the proposed on-street parking along the project frontage would reduce current traffic lane width.

3. Missing Freeway (I-80) Ramp and Merge Area Analysis

Based on the retail and residential use nature of the project and its proximity to the freeway I-80, a significant portion of the project-generated traffic will use Interstate I-80 to access the site. The on-off ramps to and from the freeway I-80 and the merge areas should be evaluated as part of the traffic study.

Recommendation:

Evaluate current traffic operations at the I-80 on-off ramps and the merge area at University Avenue and discuss the project traffic impact at these locations

4. Inadequate Baseline Traffic Analysis Underestimated Traffic Impact:

The traffic report appendixes indicated there are 10 approved but not yet built projects in the area. These projects, once built, complete, and occupied, will add traffic to the study area. However, the report included only five approved projects in the analysis. This underestimates the baseline traffic conditions and likely underestimates the project traffic impact as well. Further, the report also neglected to include the project at the southeast corner of Fourth Street and Hearst Avenue intersection and another project at the southeast corner of Hearst Avenue and Fifth Street intersection that are currently under construction. These projects, once built, would have a significant cumulative traffic impact on study area traffic operation.

Recommendation:

Research and identify all approved but not yet built or completed projects in the vicinity of the project site and discuss the extent of traffic generation and impact from these projects on study area intersections and circulation.

5. Inadequate Trip Generation and Distribution Analyses for the Baseline:

While the report included and evaluated a limited number of approved projects in the area, the report did not include analyses and discussions of these approved projects in terms of their uses, trip generation, and the directional distribution of these trips and how they impact study intersections.

Recommendation:

Identify and list all approved projects as shown in the report appendixes plus those projects mentioned above; show sites of these project and their proposed uses; evaluate trip generation and directional distributions for these approved projects and how they affect study area intersection operations.

6. Lack of Solutions to Provide for the Displaced Current Parking Lot Users:

The current Spenger parking lot has 347 spaces. As indicated, the proposed new project garage will have 372 spaces and 214 spaces will be available for public parking. This will result in a net loss of 133 (347-214) parking spaces for the area. In reality, much of the 214 public spaces will likely be used by the proposed re-

tail and restaurants customers. How and where the current parking lot users are accommodated? Many of the current Spenger parking lot users are employees of the shops on Fourth Street. Their parking needs must be addressed. The report also indicated that there are 158 parking assigned to the 155 apartment units. It is likely some apartment residents will have more than one car. This will put even more pressures on parking in the area.

Recommendation:

Identify and develop solutions to accommodate current parking lot users and the parking needs generated by the proposed retail business at the project site. While CEQA no longer considers parking or the shortage of it as an impact, but the parking needs for the employees in the area are real and needs to be addressed.

7. Lack of Vehicle Queuing Analysis:

There are frequent long vehicle queues at the 6th Street and University Avenue intersection, particularly the eastbound left-turn and northbound left-turn direction and the northbound left-left-turn direction. Vehicle queues at the eastbound left-turn lane are long and frequently fill up the left turn lane and extended to the through traffic lane and blocking traffic. The proposed project, as well as those approved project, particularly the two projects that are near the intersection, will add traffic to the left-turn lane. The impact of current vehicle queues and the added traffic from the approved projects and the proposed 1900 Fourth Street project impact on the left-turn lane need to be evaluated and discussed.

Recommendation:

Identify the left-turn-bay storage lengths and in the eastbound and northbound directions, evaluate current left-turn traffic demands in relationship to available capacities, current and potential vehicle queues after the completion of the approved projects and the proposed 1900 Fourth Street project, and discuss the potential of those vehicle queues will block traffic through traffic movements at the intersection.

8. Inconsistent Project Description

The report's project description (page 4) says the project includes 135 apartments, but "Table 9, Project Vehicle Trip Generation Estimates" shows 155 apartments. Is 155 the correct count?

Recommendation:

Review project description and trip generation and clarify the number of residential units.

9. Potential errors/typos in the V/C ratios and LOS Analyses:

There are a number of the V/C ratios in Table 8, (page 44 and Table 16 (page 76) are not consistent with the standard LOS criteria and definitions. For example, 0.36 V/C = LOS C, 0.73 V/C = LOS C etc.? There are quite a few more potential errors such as those in Table 8 and Table 16.

Recommendation:

Review V/C ratios in the LOS Tables and revise and/or recalculate the V/C and LOS as needed.

10. Inconsistent project Trip Distribution Analysis:

The project directional trip distributions in Figure 12 add up to about 90 percent but the distributions in Table 12 on page 52 add up to 100 percent. The project traffic distributions are supposed to add up 100 percent in most cases. Why are the discrepancies?

Recommendation:

Review and compare project trip distributions in Figure 12 and those in Table 12 on page 52. Clarify the discrepancies and/or revise the distribution analysis and the subsequent LOS analyses as needed.

11. Potential Error in the Approved Projects LOS Analyses:

Table 14 (page 40) and page 80 of the traffic study show minimal project impact on area intersection operation under the approved condition scenario and approved plus project condition scenario. This conclusion is not accurate due to the fact that study failed to include and address several of the approved projects in the area that would potentially affect traffic circulation in the study area. These include the project at the southwest corner of the Fifth Street and Hearst Avenue and the project at the corner of 4th Street and Hearst Avenue.

The 2001 Fourth Street project appears to be a huge project as the project site encompass a significant part of a city block, will add traffic to the two Fourth Street intersections at University Avenue. However, the intersection LOS analyses for the Approved Project Condition shows no impact at all. Similarly, the LOS analyses for the intersection of Sixth Street and University Avenue shows very little traffic impact from the two approved projects at 800 and 824 University Avenue. This is unrealistic as both are significant projects currently under construction. Traffic to and from these two project sites would have more than a minimal impact on the intersection as indicated in the report.

Recommendation:

Identify the proposed uses and traffic distribution of the approved projects and re-evaluate traffic LOS analyses for the approved-projects conditions scenario.

12. Unrealistic Mitigation

The study indicated the proposed project would have significant impacts on University Avenue intersections at San Pablo Avenue and Sixth Street under cumulative conditions. The recommended signal timing changes as mitigation are not likely to work as these intersections are either at or over capacity and signal timings plan are likely operating at its optimal.

Recommendation:

Discuss whether or there are available mitigation measures to minimize project traffic impact at these two intersections. If not, the project impacts on these two intersections should be identified as significant that cannot

be mitigated.

13. Inadequate Discussion on Fourth Street Signalization:

The proposed signalization at the 4th street and Hearst Avenue intersection may improve operation for motorists but would likely have an impact on pedestrians. As there are high pedestrian activities in the area, the pros, and cons of signalization need to be further evaluated and discussed.

Recommendation:

Evaluate and discuss the pros and cons of signalization as a mitigation measure for the Fourth Street and Hearst Street intersection in terms of vehicle speed, motorist behaviors, and potential delays to pedestrians. Identify whether or not there is alternative mitigation.

The PHA report concludes that the Kittleson traffic report “is thorough in some aspects but it failed to adequately fully evaluate the potential impact of the proposed project.” The PHA report found that the Kittleson traffic report

neglected to evaluate the San Pablo Avenue and Delaware Street intersection, which is a critical intersection... and omitted several approved projects in the area which likely underestimated the baseline traffic condition, it also failed to fully evaluate traffic operation at the access driveway by neglecting the vehicle turning movements from the parking lot from across the street.

The inadequacies and failures of the report to evaluate key intersections, account for the loss in parking spaces that would result from the addition of residents on site, and other shortcomings of the traffic study require that the City reassess the traffic impacts the Project will create and whether the Project justifies the overriding findings that would be necessary to approve a project with significant adverse impacts to the environment.

o Hazardous Materials

The Initial Study prepared for the Project acknowledges that the Project has the potential to create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment that could create a potentially significant impact unless mitigation is incorporated.

The Initial study states “users of the completed Project could be exposed to hazards related to accidents that may occur on the nearby UPRR alignment which is located adjacent to the Project site’s western boundary.” In addition to potential exposure related to rail accidents, a subsurface ‘hazardous liquid pipeline’ is located within the rail right-of-way, west of the Project site.

The Initial Study discusses potential impacts from the release of hazardous materials from the Project site. These impacts are listed as potentially significant unless mitigation is incorporated. However, the DEIR fails

to include a detailed assessment of these impacts. Rather the DEIR at page 8 makes reference to the Initial Study and “the mitigation measures recommended in the Initial Study would mitigate these impacts to a level less than significant level.” The DEIR also lists mitigation measures in the Summary Tables section of the DEIR.

The Initial Study states that workers or the public may be affected by the release of hazardous materials from the Project site into the environment by: 1) exposure to potentially contaminated soil and groundwater during construction and or operation of the Project; or 2) exposing workers and or the public to hazardous building materials during demolition of the existing commercial structure. A Phase I Environmental Site Assessment (ESA) conducted in 2015 for the Project site found that it is likely the asbestos-containing materials and or lead based paint may be present in the structure targeted for demolition.

A 2015 Geotechnical Engineering Study performed on the Project site identified the potential for a number of hazardous materials impacts that are not discussed in the DEIR. The Initial Study lists a number of hazardous materials that are located on site, within fill that contains large amounts of slag (waste matter from smelting or refining ore) in a number of areas within the Project site. The Initial Study notes that removal of fill may potentially expose workers and surrounding public to hazardous materials in dust or vapors if the fill material is contaminated. If this material is reused as fill it could “potentially expose future residents, the public and maintenance workers to hazardous materials.” The study also noted “elevated concentrations of methane in soil gas can potentially pose explosion hazards, as vapor intrusion from the subsurface utility conduits, vaults, or other poorly ventilated/confined spaces that may be subject to vapor intrusion.”

The Initial Study states that these potential impacts will be mitigated to less than significant if specified mitigation measures are incorporated into the EIR. One such mitigation measure, Mitigation Measure HAZ-1a, requires Phase II sampling of soil, groundwater, and soil gas to be performed to evaluate potential impacts from hazardous materials and potential elevated methane levels in soil gas. The Phase II report is to be prepared by qualified environmental professionals and submitted to the Berkeley TMD for review and approval.

The report is to include recommendations for the following: further investigation if warranted; soil handling, disposal and potential re-use options; groundwater handling and discharge/disposal options; health and safety procedures and worker training requirements; and recommendations for addressing the possible presence of methane, if methane in soil gas could pose a potential explosion hazard for the proposed Project.

CEQA requires informed decision-making- this requires both the public and the decision-makers to have adequate information to assess potential adverse impacts. Here the potential impacts are health impacts from exposure to hazardous substances and safety risks as to potential explosion hazards. The DEIR and Initial Study acknowledge there is a potential for such impacts. However, the DEIR does not fully assess the potential or implications of such impacts. Rather the DEIR directs that the Phase II Site Assessment occur after the Project is approved, leaving the decision-makers and the public without sufficient information to assess the specific potential impacts of the Project in the area of hazardous waste. CEQA requires that such studies be completed prior to the preparation of the DEIR in order to ensure the results will be available and assessed as part of the environmental review process, before issuing a decision on a Project.

Failure to Provide Sufficient Assessment of Feasible Mitigation for Impacts

The majority of the mitigation measures set out in the Summary Table of the DEIR are vague and insufficient. Several mitigation measures defer assessment of potential impacts to after the Project has been approved. Areas with such mitigation include: Air Quality; Cultural Resources; Hazards and Hazardous Materials; Water Quality, Traffic and Circulation; and Noise and Vibration. A more detailed assessment of the potential impacts and proposed mitigation is necessary to allow for informed decision making as required by CEQA.

Projects affecting archaeological or historical resources require mitigation measures. Where a Project, such as the one proposed here, has the potential to adversely impact significant Archaeological Resources, Historical Resources, or Tribal Cultural Resources, there is a preference for completely avoiding sensitive areas. These special considerations are set forth in CEQA Guidelines § 15126.4. Consistent with the CEQA Guidelines, the Court in *Madera Oversight Coalition, Inc. v. County of Madera* (199 Cal. App. 4th 48 (2011)) held that “feasible preservation in place must be adopted to mitigate impacts to historical resources of an archaeological nature unless the lead agency determines that another form of mitigation is available and provides superior mitigation of the impacts.”

The City also fails to specifically address Tribal Cultural Resources, and any adequate mitigation for Project impacts to the West Berkeley Shellmound and Village Site. This is evidenced in the consultation process and lack of sufficient inclusion of the Ohlone people in development of mitigation measures and alternatives that would protect the critical resources located within the Project site.

Failure to Support a Need for Overriding Considerations Required by CEQA

The DEIR fails to address significant unavoidable environmental impacts in the areas of Traffic Resources, Cultural Resources and Tribal Cultural Resources. When a project has the potential to result in significant unavoidable environmental impacts the EIR must describe these impacts and the lead agency must make specific overriding findings. CEQA Guidelines, §§ 15126, subd. (b), 15126.2, subd. (b); also see Public Resources Code 21100. The EIR must address the implications of the impact involved and the “reasons why the project is being proposed, notwithstanding their effect.” CEQA Guidelines, § 15126.2 subd. (b).

The City of Berkeley has an obligation to its current residents and future generations to ensure that its resolutions to honor and protect sacred sites and the rights of Indigenous peoples are upheld. The City of Berkeley must set an example and ensure that resolutions previously adopted and consideration of the principles set forth in UNDRIP are upheld in a meaningful manner that truly provides for protection of irreplaceable sacred spaces within the City boundaries. The City must reject the proposed Project, choose to protect the thousands of years of history on this site, and embrace the no Project alternative, as well as work with the Ohlone people to develop a plan to permanently protect this sacred site.

Sincerely

Corrina Gould

