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## State Appeals Court Hears Arguments to Erase West Berkeley Shellmound Native American Site of Reconciliation and Justice

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WASHINGTON, D.C. – The California Court of Appeal for the First District will hear oral arguments tomorrow in the ongoing legal battle over the fate of the West Berkeley Shellmound and Village Site, one of the earliest known Ohlone settlements on the shores of San Francisco Bay. The lawsuit pits the City of Berkeley and an Ohlone tribe known as the Confederated Villages of Lisjan against the private owners of the Shellmound site who want to excavate it to build a mixed commercial and residential development project.

The National Trust filed an amicus brief arguing that this sacred site is an invaluable cultural resource worthy of preservation and should be protected by California state law. At the crux of this lawsuit are two fundamental questions – does an Ohlone shellmound qualify as a historic “structure” eligible for protection under state law, and will the Ohlone have a voice in the decision-making process?

“The National Trust’s advocacy for the West Berkeley Shellmound and Village Site is motivated by our strong belief that the Ohlone tribe has the right to a say in what happens to a site that holds such deep cultural and spiritual significance to their community,” said **chief preservation officer of the National Trust for Historic Preservation, Katherine Malone-France**. “In this instance, preservation is firmly on the side of equity and justice.”

The 2.2-acre paved parking lot visible at the Shellmound site today hides millennia of Ohlone history. While the above-ground mound of shells, ritual objects, and artifacts has been destroyed over 200 years of Spanish, Mexican, and American rule, burials remain under the surface throughout the area and the Ohlone community continues to use the site as a place of prayer and ceremony.

Because of the significant and essential role the site plays in the history of the Bay Area and in the broader national narrative, the City of Berkeley designated the site as a City Landmark, the State placed the site on the California Register of Historic Resources, and the National Trust placed Berkeley’s Shellmound site on its 2020 list of [America’s 11 Most Endangered Historic Places](#). To the Ohlone people, and the broader Berkeley community, the Shellmound site is an invaluable cultural asset, described by local Ohlone leaders as critical to the cultural survival of a people who have been systemically oppressed for generations.

“We are grateful that the City of Berkeley and the National Trust have joined us to defend this landmarked site,” said **Corrina Gould of the Confederated Villages of Lisjan/Ohlone**. “The historic structure is still there, in the land, in our memory, and in our continuing prayer ceremonies that honor our ancestors at the site. We urge the court of appeal to affirm the original court decision, which was correct and a step toward justice.”

Despite the advocacy efforts of Gould, the Trust, and many others, the work to preserve the West Berkeley Shellmound and Village Site is just beginning. The current lawsuit was initiated by the private owners of the Shellmound site after the City of Berkeley denied their request for a streamlined approval of the proposed mixed-use development plan for the site. This new process is available for qualified housing projects that meet certain objective planning criteria, including the condition that they would not demolish an historic structure listed on a federal, state, or local historic register. The City and the Tribe prevailed in the lower court, and the private owners appealed the case to the California Court of Appeal.

Complicating matters, the California Legislature subsequently amended the law to require tribal consultation for housing projects that would impact tribal cultural resources (AB 168 amended SB 35 in September 2020). The California Court of Appeal is now called on to decide whether that amendment has retroactive effect. The public can view the oral argument which will take place [via videoconference](#) on Thursday, February 18<sup>th</sup>, beginning at 9:30 a.m. PST. Even if the Court decides in favor of the City of Berkeley and the Confederated Villages of Lisjan and confirms that the existence of the Shellmound means that the project does not qualify for streamlined approval, the housing project may still be resubmitted for consideration through Berkeley’s regular, discretionary local government approval process.

The National Trust and its partners are committed to acknowledging the West Berkeley Shellmound and Village Site as a sacred resource of the Ohlone people, an invaluable chapter in the full American story, worthy of protection. In so doing, the Trust proves that preservation can and must be a force for reconciliation and justice.

**About the National Trust for Historic Preservation**

The National Trust for Historic Preservation, a privately funded nonprofit organization, works to save America’s historic places. <http://savingplaces.org> | @savingplaces

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