

June 30, 2021

Honorable Chief Justice Tani Cantil-Sakauye and Associate Justices  
California Supreme Court  
350 McAllister Street, Room 1295  
San Francisco, California 94102-4797

Re: City of Berkeley & Confederated Villages of Lisjan v. Ruegg & Ellsworth  
and Frank Spenger Company, Case No. S269012

**Amicus Letter by Chris Walker  
in Support of Petition for Review**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

I submit this letter as amicus curiae in support of the petition for review of  
Petitioners City of Berkeley and Confederated Villages of Lisjan.

My interest in this matter comes from my experience in the designing of  
cultural landscapes.

I grew up in Berkeley, California, and live and work two blocks from the West  
Berkeley Shellmound site (Spenger's parking lot). Professionally, I work as a  
landscape designer at Peter Walker and Partners Landscape Architecture. As  
an individual, I have been working closely with the leadership of the  
Confederated Villages of Lisjan, to create a vision moving forward for an  
Ohlone cultural center on the Spenger's parking lot.

Through my research of the history of the Shellmound, I have integrated a  
library of historical maps, aerial photographs, and archeological evidence into  
an accurate three-dimensional computer model of the West Berkeley  
Shellmound. This computer model incorporates all of the factual data (core  
samples) from Alan Pastron's archeological report of his 1999, 2000, and 2014

excavations, the very same report that was used as evidence in the appellate case. (Ruegg & Ellsworth et al. v. City of Berkeley et al (A159218))

There are three main arguments in this letter.

- 1) The archeological evidence used to support the appellate conclusion is without substance.
- 2) This case fits into a pattern in California's history of legislation, land grabs, and judicial overreach.
- 3) The Spenger's parking lot is hallowed ground that is worthy of honor and protection.

### **Facts vs. Opinion**

The appellate judges concluded that this is a site where the Shellmound "structure **once** existed" and that "there is no evidence in the record of a structure that could be demolished by the appellant's project" (pg. 32).

The underlying facts in Alan Pastron's core samples show that the Shellmound is intact, undisturbed, and very much in existence. However, there is a serious contradiction between the factual evidence presented by Alan Pastron and his concluding opinions, concluding opinions that three senior licensed archeologists have independently and publicly stated are not consistent with his findings,<sup>1</sup> concluding opinions that were used verbatim by

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<sup>1</sup> Kent G. Lightfoot, Lucy L. Gill and Jordan F. Brown, Amicus Letter, (University of California Berkeley, Department of Anthropology) Case No. S269012, 2021. pg. 10  
Steven Bryne, RPA, Public Comment for the Draft Environmental Impact Report for the 1900 Fourth Street Project, State Clearinghouse Number 2016022038. 2017. pg. 1  
Chris Dore, Archeological survey report for public improvement projects and maintenance in the West Berkeley redevelopment area, City of Berkeley, Alameda County, California. 2002. pg. 38

the appellate judges<sup>2</sup> in arguing that there is no Shellmound. The Appellate judges supported their conclusions relying solely on Alan Pastron's opinions, not the facts. Furthermore, there are glaring omissions of fact that violate the standards of evidence.

The result is that a site of world heritage significance will be destroyed because the appellant court judges have relied solely on factually inaccurate opinions from which to form their conclusions.

### **The History of Deception**

The Appellate opinion does not exist in a vacuum. The real-world effect of this decision is a stark reminder of the Native American struggle as it relates to real estate, the courts and legislation.

The Declaration of Independence, in which the Natives are described as "merciless Indian savages," set the stage for what was to come.

At the same time as the birth of our nation, Junipero Serra, under the guise of civilizing the savages, created the mission system in California. The 21 missions were in essence forced labor colonies that became death camps to the Native Americans. It has been estimated that the population of the Coast Natives of 300,000<sup>3</sup> before the missions, which was decimated by unbelievable cruelty, inhumane working conditions, and disease, plummeted to a

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<sup>2</sup> Appellate court decision, Ruegg and Ellsworth v. City of Berkeley and the Confederated Villages of Lisjan. A159218 pg. 31: "Upon closer examination, we determined that Boring #19 probably did not originally contain intact Shellmound between 5 and 9 feet below surface level" and that the "thin layer of crushed shell" was "most likely a redistributed remnant of the West Berkeley Shellmound".

<sup>3</sup> Elias Castillo, *A Cross of Thorns* (Fresno, Ca.: Craven Street Books, 2015). pg. 200

population of just 30,000.<sup>4</sup> Junipero Serra saw this as a triumph. By baptizing Natives before they died, he was able to “harvest” their souls and secure their entrance into heaven.

In 1823, Chief Justice John Marshall’s opinion in the U.S. Supreme court case *Johnson v. McIntosh*, using the Doctrine of Discovery as precedent, held that under principles of international law and customary practices at the time, the discovering European nation had “an exclusive right to extinguish the Indian title of occupancy, either by purchase or conquest,” essentially giving legal cover for the “civilizing” settlers to steal land simply by defining the Natives as savages.<sup>5</sup>

During the California Constitutional Convention in 1849, after much discussion, the Natives twice lost their right to vote in California by one delegate’s vote, even though it was widely agreed that California should stand by the Treaty of Guadalupe Hidalgo, which had already established that the Natives had full citizenship under Mexican law and should be eligible for full U.S. citizenship.

On Dec. 20, 1849, California established a civilian government.

On April 10, 1850, before statehood, California’s first governor, Peter Burnett, signed into law the Militia Acts,<sup>6</sup> that would give rise to more than 303 volunteer militias in which 35,000 Californians served from 1851 to 1866. These Militias became the state-funded agents for genocide of the California Native Americans. The record shows that \$1,293,179.20 from state and

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<sup>4</sup> Davis Lee, “California Tribes,” *Encyclopedia of North American Indians* (Frederick E. Hoxie, editor, Boston: Houghton Mifflin Company, 1996), pg.95. “The Coastal Indian population was reduced by 90 per cent from 1769 to 1848.”

<sup>5</sup> Robert A. Williams Jr., *Savage Anxieties, the invention of western civilization* (New York, NY: Palgrave Macmillan, 2012), pg. 224.

<sup>6</sup> Benjamin Madley, *An American Genocide, The United States and the California Indian Catastrophe, 1846-1873*, (New Haven: Yale University Press, 2016), pg. 174.

federal sources, equivalent to \$44,630,432.66 in today's dollars, was used for exterminating the Natives.

On April 21<sup>st</sup> 1850, the ironically named "Act for Government and protection of Indians"<sup>7</sup> was signed into law by Governor Peter Burnett. This law legalized the custodianship of Native minors. Native children with the consent of "friends," an extremely vague legal category, or "parents," could be held and worked without pay until age 15 for females and 18 for males. In reality this was a license for kidnappers to first kill the parents and seize their children, then claim to have obtained consent. No one questioned them. The kidnapping of Native children was seen as virtuous, saving their lives by introducing them to the superior White culture. The price for Native child slaves was \$30 to \$150 according to quality.<sup>8</sup>

The second part of the act for Government and protection of Indians legalized Native convict leasing, which empowered Whites to arrest Native adults "found loitering and strolling about, or frequenting public places where liquors are sold, begging, or leading an immoral or profligate life." If the court received a complaint along these broad lines, it was compelled to capture and lease such vagrant within 24 hours to the highest bidder. The Native could be made to work without pay for up to four months. Furthermore, the act stipulated that "In no case shall a white man be convicted of any offence upon the testimony of an Indian."<sup>9</sup>

The combination of state funding of militias and the Act for Government and protection of Indians unleashed an American genocide that lasted 16 years.

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<sup>7</sup> Benjamin Madley, *An American Genocide*, pg. 158.

<sup>8</sup> Elias Castillo, *Cross of Thorns*, pg. 198.

<sup>9</sup> Benjamin Madley, *An American Genocide*, pg. 159.

The White militias that roved the countryside to wholesale massacre Native American tribes had little or no fear of punishment by state courts.

This all happened before California was admitted as a state of the union on September 9, 1850.

On January 6, 1851, Peter Burnett, in his last speech to the California legislature, voiced these words: “That a war of extermination will continue to be waged between the races until the Indian race becomes extinct must be expected.” In Gavin Newsom’s formal apology to the Native Americans through Executive Order on June 19, 2019, the very same quote from Peter Burnett was used to communicate the atrocities of California’s history. Through this executive order Gavin Newsom also established a Truth and Healing Council.<sup>10</sup> It is disheartening to know that California’s first governor was a White supremacist. Before moving south, he took the lead in passing a law in Oregon excluding any Black persons from taking residence in the state, and attempted to do the same thing in California.

In 1852, two years after California’s statehood, U.S. Congress met in secret where they unanimously repudiated 18 treaties negotiated and signed in good faith by 119 California Native tribes. The California tribes agreed to surrender their lands, which they rightfully held under Spanish law, in exchange for 19 federal reservations totaling almost 7.5 million acres. It was also agreed that the tribes would be provided with tools, food, education (among other things), but most importantly, military protection. The U.S. senators ordered all 18 treaties to remain secret for 50 years. The tribes were never told that the treaties had not been ratified, thereby placing the tribes in

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<sup>10</sup> <https://www.gov.ca.gov/wp-content/uploads/2019/06/6.18.19-Executive-Order.pdf>

legal limbo with no land and no protection from well-funded militias intent on wiping out the Native race.<sup>11</sup>

C. Hart Merriam, an ethnographer researching California Native languages and customs at the University of California, estimated that the California Native population declined from 100,000 in 1849 to 35,000 in 1860.<sup>12</sup> This indicates that 2/3 of the California Native population was murdered by state-sponsored militia in 11 years.

Under the 1855 “Bounty Land Act”, Congress promised 160 acres to any regular militiaman or volunteer who had participated in battle or who had served for 14 days as long as the United States eventually paid for the operation, further rewarding the volunteer Indian-killing campaigns.<sup>13</sup>

## **Berkeley**

The entire East Bay was a reward to Luis Peralta for enforcing the Mission death camps for 40 years. As military commander, Luis protected the Missions from hostile Indians, rounded up and captured new Indians, and brutally recaptured Indians who had escaped. The Spanish Crown granted Luis 44,800 acres, everything north of Mission San Jose, an area that covered San Leandro, Oakland, Alameda, Emeryville, Piedmont, Berkeley, and Albany.<sup>14</sup> This proved to be the most valuable land grant ever created. In order to perfect ownership under Spanish law, Luis sent his sons to live on four sections of the property.

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<sup>11</sup> Elias Castillo, *A Cross of Thorns*, pg.203, and Benjamin Madley, *An American Genocide*, Pg. 168.

<sup>12</sup> Benjamin Madley, *An American Genocide*, pg. 268.

<sup>13</sup> *Ibid*, pg. 237.

<sup>14</sup> Alan Cohen, *A History of Berkeley, from the ground up*, (Berkeley Ca, self-published online, 2008), *Chapter 1, The Peraltas*.

In 1842, Domingo Peralta, Luis's second son, became the sole resident and owner of Berkeley. The Natives saw their lands being destroyed by Domingo's cattle as the entire city of Berkeley was now grazing land. Still, for the time being the West Berkeley Shellmound(s) were untouched.

Domingo Peralta, mostly illiterate, was loyal to his father and struggled throughout his life to live up to his father's request to not sell the land to the "Anglos". In 1849, Domingo's pastoral ranch life abruptly came to an end. Gold was discovered at Sutter's Mill, and the sleepy town of San Francisco went from a population of 800 to 42,000 almost overnight. And they were hungry! Bands of settlers from San Francisco came over to Rancho San Antonio to steal Domingo's cattle for food. It was estimated that he lost cattle at the rate of \$100,000 per year.

American squatters were spilling in from the Sierras and the high seas. One of those settlers was John Everding, who built the very first factory in Berkeley, Pioneer Starch Works, directly in front of the West Berkeley Shellmound. Reliable fresh water from Strawberry Creek was the very same reason for Everding, the University of Berkeley, and the Ohlone to make this area their home.

Domingo's troubles got worse when he found himself living under the newly established U.S. State government of California. The state legislature immediately started passing laws (in the legal language of English) that were unfavorable to big land owners. State and local taxes were imposed at \$.80 per acre annually.

To compound Domingo's problems, the "Possessory Rights Act" passed in 1852, encouraged newcomers to squat anywhere as long as they swore that

they didn't know that the land was privately owned!<sup>15</sup> And even though Domingo's land was protected under treaty, the US government established a Land Commission that gave the burden of proof of title to the land owner, a judicial process that was routinely appealed by the government through no fewer than four judicial levels, typically only satisfied at the Supreme Court. This process averaged 17 years to complete and required an attorney.

In waltzes Horace Carpentier, with a Columbia University law degree, who spoke perfect Spanish, who wore a gold cross around his neck, and claimed that he used to be a priest. Domingo put his trust in Horace Carpentier, which turned out to be the equivalent of inviting the fox into the henhouse. Horace Carpentier personified unrestrained greed in the Wild West. Instead of using bullets, he used the law, manipulating the legislature, installing partners in high places, and aggressively pursuing fraudulent legal tactics. He threatened land owners with years of legal entanglement to extort monies and properties. He purposely created legal confusion to out-manuever his adversaries and hide his assets. Domingo could not have known that Carpentier had perfected "legally" stealing land title, to a high art.

It all started when Carpentier and his lawyer buddies were caught squatting on 480 acres of Vincent Peralta's land (which would soon be Oakland).<sup>16</sup> In order to get rid of the squatters, Vincent initiated a sale of part of his property, pending clear title from the Land Commission. Meanwhile Carpentier, who had just been elected as a representative of Contra Costa County (by stuffing the county ballots), quietly slipped a bill for the incorporation of the City of Oakland into a pile of routine bills at the end of the California legislative session. The bill passed, creating the City of

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<sup>15</sup> George A Pettitt, *Berkeley: the town and gown of It*, (Berkeley, Ca.: Howell-North Books, 1973), pg.18.

<sup>16</sup> Ibid, pg. 14. Vincent was Domingo's younger brother. Vincent's inherited portion of the San Antonio Rancho became Central Oakland, Piedmont, and Emeryville.

Oakland, simultaneously perfecting Carpentier's squatter's title, and invalidating Vincent's pending sale.

Carpentier then appointed himself Oakland's first mayor and swiftly secured himself a deed to the Oakland waterfront (Jack London Square). The board of Supervisors of Contra Costa County protested the waterfront deal, so Carpentier then introduced a bill to create Alameda County, which also passed. On the next day Carpentier was given a new seat on the California assembly, completely sidestepping Contra Costa's authority.

Carpentier then implemented a fraudulent scheme known as the "Sheriff's Sale" by first instigating an issue of tax delinquency owed by the "unknown owners" of Rancho San Antonio. He then paid the sheriff \$1,827.33 (including interest and fees) for the tax debt. Thus, Carpentier gained title to 21,481 acres, almost half of the Peralta ranch! Carpentier then obtained the power of attorney for his cousin Harriet, making her the owner of Oakland and Berkeley. Historians are still not sure whether Harriet Carpentier ever existed! By accepting title for the rest of Domingo's land for unpaid legal fees, Carpentier wrested ownership of nearly all of Domingo Peralta's ranch.

Horace Carpentier, who went on to become the largest land owner in California, had simply out-maneuvered Domingo Peralta.<sup>17</sup> In the end, all of Domingo's land claims were upheld in the California Supreme court, but Domingo Peralta had long ago died penniless, unable to afford a decent burial.

In the case of the West Berkeley Shellmound, we are witnessing the application of new legislation (SB35) being used to disallow Native Americans and the City of Berkeley from protecting their most valuable historic structure.

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<sup>17</sup> Alan Cohen, *A History of Berkeley, From the Ground Up*. The finishing touches Chapter 15, Horace Carpentier.

We see Rue-Ell creating the illusion of consent from Native Americans, by hiring Andy Galvan, officer of Ohlone Tribe Inc. (an individual who does not represent the tribe), to monitor the desecration of Ohlone hallowed ground, effectively giving Rue-Ell “permission” to destroy the Confederated Village of Lisjan’s most valuable site and historic structure.

We see Rue-Ell buying archeological “expert” opinion from a single individual, Alan Pastron, in order to convince the courts and the public that there is no Shellmound on the property, when, in fact Pastron proved that the Shellmound was there on two separate digs in 2000 and once again in 2014.

We see the California Court of Appeal overturning the Alameda County Superior Court decision using Pastron’s wildly unsubstantiated opinion as a replacement for fact.

This is a pattern of deception that Native Americans have seen throughout America’s short history.

The avarice of Horace Carpentier and Rue-Ell are all part of the same fabric. They in effect have contributed to the low-cost housing crisis, by constantly driving the cost of housing up. Now they swoop in to save the day by imposing this sledgehammer style of development. Taken on its own this could be seen as business as usual. But, combined with a single use legislation (as argued by the Rue-Ell attorneys)<sup>18</sup> and the fact that this is the birthplace of civilization on the Bay, it becomes a crime beyond measure, a crime in which the legislation, the judges, and the landowners are all complicit.

At what point do the accumulated effects of “business as usual” become a conspiracy of cultural genocide?

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<sup>18</sup> Ruegg & Ellsworth, a California general partnership, and Frank Spenger Company, a California Partnership ANSWER TO PETITIONS FOR REVIEW, pg. 20.

And how is it that the fate of one of the most valuable historic structures in California can be decided by the suspect testimony of an unregistered professional archeologist,<sup>19</sup> who is not held to a code of conduct, with no peer or public review of his findings, and no ability to verify his physical samples and data?

History will not look kindly on this episode of capricious judicial overreach.

### **On Hallowed Ground**

Because this site is the birthplace of the very first civilization on the Bay, there is much value and meaning for the Ohlone, the Ohlone who lived here for over five millennia without war and without environmental collapse. In short, they represent one of the most successful cultures on the planet. They left us a veritable Garden of Eden, and now we want to build 260 condominiums on top of the Ohlone's most hallowed ground.

World history embraces many places that have cultural value and meaning. The Acropolis represents the birthplace of western democracy, and the pyramids of Egypt represent an oracle to the sun.

I have had the good fortune to work on the design of the 911 National Memorial "Reflecting Absence" at Ground Zero in New York, which has value and deep meaning to our culture. It is hallowed ground.<sup>20</sup>

Additionally, I helped design and visualize the Barangaroo Reserve in the center of Sydney's harbor, which incorporated an Aboriginal Cultural Center

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<sup>19</sup> Chris Dore, Public Comment for the Draft Environmental Impact Report for the 1900 Fourth Street Project, State Clearinghouse Number 2016022038, pg. 3. "None of the archeological work done within the project area was under the supervision of a Registered Professional Archeologist."

<sup>20</sup> <https://www.911memorial.org/>

inside a restored mountain headland and native ecology, a project that became a direct inspiration for the Ohlone cultural center. Barangaroo Headland Park has value and meaning to the Aborigine of Australia, and it is hallowed ground.<sup>21</sup>

I have also had the opportunity to create a vision for a new section of Arlington National Cemetery,<sup>22</sup> adjacent to the Airforce Memorial. The Arlington Cemetery has special value and meaning to the history of the American military and their families and is quintessentially hallowed ground.

Imagine for a moment that a descendant inherited a portion of Arlington National Cemetery.<sup>23</sup> The property is across the street from a successful shopping district. Imagine that the owners seize the opportunity to capitalize on the path of growth and draw up a plan for a housing complex of 260 condos on top of a ground floor of retail. Following a new law specifically written to address the housing crisis, half of the condos are to be built for low-cost housing. There is no need for any ministerial review by the National Cemetery or the City of Arlington. An archeologist is called in to assess the value of the sub-surface cultural remains. After drilling core samples in a grid across the property, the archeologist's expert opinion is that even though there are valuable cultural remains on all sides of this property, astonishingly, within the boundaries of this 2.2 acres of Arlington Cemetery there are only the vestiges of a trash dump that is most probably a disturbed secondary deposit redeposited for building roads and agricultural use. That said, the archeologist is not able to guarantee with full certainty that the

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<sup>21</sup> <https://www.barangaroo.com/see-and-do/things-to-do/itineraries/barangaroo-reserve/>

<sup>22</sup> <https://www.arlingtoncemetery.mil/#/>

<sup>23</sup> This actually happened. Custis Lee the grandson of Robert E. Lee, was granted title to the Arlington cemetery property by the US Supreme court in 1874. The court found that Arlington Cemetery had been illegally seized during the Civil War. Fortunately, the descendants decided to sell it back to the US government for \$150,000.

condo construction crew will not find any culturally sensitive materials or bones anywhere on the property. In pursuit of mitigating the impact to the families of the fallen soldiers, the owners hire an individual who says that he represents all of the families of the unknown soldier. He has a corporation called Unknown Soldier Inc., which can monitor the construction crew when digging ten feet down for the foundation and the underground parking lot. For \$50,000 he will make sure that if they find any bones of American soldiers, he can safely reinter the bones at another cemetery. Using this method, the impacts of building in Arlington Cemetery can be reduced to a “less than significant level.” Furthermore, the judges’ rule that the tomb of the unknown soldier is cracked and in disrepair, that it has no integrity, and is therefore just a remnant that cannot be considered an historic structure.

According to the Courts, the Legislature, the archeologists, and the most likely descendant of the Unknown Soldier, the owners are good to go! They can build a four-story housing development the size of a city block (with vibrant shopping, restaurants, and plenty of parking), on top of Arlington National Cemetery.

## **Two Cultures at a Crossroads**

The Daily Alta California in 1851 posed the question regarding the Indian troubles, **Extermination or Domestication?** History unfolded showing us that both the legislation, and the settlers chose **extermination**. The Natives were not given land or citizenship, and they were hunted down like animals. In order to survive, the Native Americans had to hide, in many cases posing as Mexican laborers.

Our culture is becoming more aware of this gross injustice. Berkeley was the first to formally change Columbus Day to Indigenous Peoples Day. Berkeley also recently added “Entering Ohlone Territory” to their Berkeley City Limit signs. In every call to order of municipal meetings across Australia, there is a prayer of gratitude and acknowledgment that this proceeding is on Aborigine territory. It is only a matter of time before the City of Berkeley, and the California Supreme Court, will be honoring the Native Americans when they call public meetings to order.

The legal arguments over the rights of Native Americans and the City of Berkeley to protect a city landmark are wrapped up in a much longer struggle. The constitutional arguments of land ownership and Indian sovereignty are at a crossroads. These forces are on a collision course. The culture of “Growth at any cost” as legislated in SB35 is hurtling headlong into the Native culture of “reverence and sustainability in the natural world.” The culture of Growth at any cost has created the existential threat of climate chaos and the extinction of countless animal species. The question of extermination or domestication is still before us. But now it seems to apply to the entire human race. It is an ironic twist of history that the very culture that the settlers tried to exterminate is the culture that can save them.

The proposed Ohlone Cultural Center is a way to turn this around. A way to heal the deep wounds from the recent history of Native genocide. A way to restore balance on this hallowed ground of the Ohlone ancestors. It can be a place for actively learning about deep ecology. A place for Ohlone celebration, and ceremonies of all peoples.

## Conclusion

It is easy to defend this property for the Ohlone, a property that for 20 years now has been a City of Berkeley Landmark. The Appellate Court conclusion has to either entirely ignore, or bend over backwards to refute, the California health code's own definition for an **historic structure**.<sup>24</sup>

**HEALTH AND SAFETY CODE - HSC**  
**DIVISION 13. HOUSING**  
**State Historical Building Code**

**Section 18955** of the Health and Safety Code defines:

A qualified historical building or structure is any structure or property, collection of structures, and their related sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction. This shall include historical buildings or structures on existing or future national, state, or local historical registers or official inventories, such as the National Register of Historic Places, State Historical Landmarks, State Points of Historical Interest, and city or county registers or inventories of historical or architecturally significant sites, places, historic districts, or landmarks. This shall also include places, locations, or sites identified on these historical registers or official inventories and deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction.

Furthermore, the land partners never paid for this property. They either inherited the Spenger's parking lot or, in the case of Rue-Ell, a 50% ownership was given to them as a gift.

So, the only thing that is at stake is the potential loss of profit for developing this property. The Ohlone and the community are willing to pay fair market price for the Spenger lot.

We have already seen the "sledgehammer" style of city-infill that Rue-Ell is planning to build. Directly across the street from the Spenger parking lot are

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<sup>24</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=HSC&sectionNum=18955](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=18955)

410 new apartments.<sup>25</sup> The result of “business as usual” (even before SB35) is that half of the street-level retail spaces remain vacant to this day. More than 50 below-market-value “affordable” apartments have not been rented,<sup>26</sup> and two of Berkeley’s oldest and most beloved restaurants have been closed: Spenger’s, which was 120 years old, and Brennan’s, which was 60 years old. This can hardly be seen as a success.

Yes, we need affordable housing, but indiscriminate greed needs to be restrained.

Why punish the Native Americans for a housing crisis they have nothing to do with? The settlers have already taken all of their land. If anything, Rue-Ell should be punished for lying to the public for 20 years about the archeological findings, for passing these lies on to the appellate court, for authorizing two illegal digs on a City of Berkeley landmark,<sup>27</sup> and for buying testimony from Andy Galvin, who does not represent the Ohlone people.

When the Native Americans first observed the White settlers, they noticed that they seemed to be suffering from *Wetiko*. *Wetiko*, simply described, is the affliction of a hunger that is insatiable.<sup>28</sup> The Natives see “growth at any cost” as a disease. Our culture of endless consumption, beyond the carrying capacity of the Earth, has brought us to this crossroads, while Native cultures have always urged reciprocity and care. The stakes surrounding this small piece of land in Berkeley could not be higher. Preserving the birthplace of civilization on the Bay and honoring the Ohlone tribes is simply the right

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<sup>25</sup> Aquatic 1,2 and 3, 258 units, and 4<sup>th</sup> and U, 152 units, a total 410 units

<sup>26</sup> [https://www.cityofberkeley.info/uploadedFiles/Housing/Level\\_3\\_-\\_General/BMR%20Contact%20Website%20August%202018.pdf](https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/BMR%20Contact%20Website%20August%202018.pdf)

<sup>27</sup> First by Archeotech Inc. (Alan Pastron) Feb. 3 thru March 6, 2014, and second by Geo Engineering Solutions on April 7-8 2014.

<sup>28</sup> Robin Wall Kimmerer, *Braiding Sweet Grass* (Minneapolis, Minnesota: Milkweed Editions, 2013), pg. 306.

thing to do. It is the right thing to do for the Natives, for the settlers, and every living thing on this planet.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Walker". The signature is fluid and cursive, with the first name "Chris" and last name "Walker" clearly distinguishable.

Chris Walker