

June 28, 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

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**Prof. Dr. Katrin Wehrheim, Associate Professor of
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**Dr. Jane P. Perry, Retired Early Childhood Researcher
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**Autumn Belnap, M.A., Elementary School teacher in
Oakland Unified School District, and Community
Educator**

in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

We submit this letter as amicus curiae in support of the petition for review of Petitioners City of Berkeley and Confederated Villages of Lisjan. Our interest in this matter comes from our experience as educators active in the San Francisco Bay Area, facilitating students' historic and cultural knowledge and awareness as part of their lifelong intellectual, linguistic, aesthetic, moral, social and physical development. We are concerned with the preservation of the important historic West Berkeley Shellmound structure as a living educational agent in our community.

Living? you ask. The West Berkeley Shellmound has gathered people from all walks of life to come together to protect it and in the process, talk about the Ohlone people, who they are, and understand what relationship we all have with the land and with the first people of California.¹ The West Berkeley Shellmound has brought people together to figure out how to rebalance at a critical time of racial reckoning and climate crisis.

Were the Court of Appeal decision to stand, the foundation of the oldest extant structure in the Bay Area, the West Berkeley Shellmound, would be demolished. The Ohlone people would lose a site of sacred history where their ancestors still lead and communicate from, a site of ceremony, language, and lifeways.² The West Berkeley Shellmound is a site of healing from the wounds of colonization, enslavement and genocide for both the Ohlone and for people all over the world, indigenous and settler colonizer heritage, who come to the Shellmound to learn and pray.³

¹ For example: West Berkeley Shellmound Action on MLK Day, 2018. <https://www.youtube.com/watch?v=FkBQsL23UZk>

² <https://sacredland.org/a-new-vision-for-the-west-berkeley-shellmound/> and Indigenous Sovereignty: One Land Plot At a Time / KQED. <https://www.youtube.com/watch?v=h8HHoFZ3fXY>

³Corrina Gould and the Ohlone Shell Burial Mounds, 2017 Bioneers Conference, <https://www.youtube.com/watch?v=zzAfv5StDEc>

To Chief Justice Cantil-Sakauye and Associate Justices, you might say this educational function could happen anywhere. But the West Berkeley Shellmound structure is a living educational agent in our community: to the Ohlone people, place is a fundamental component of peoplehood. Corrina Gould, Spokesperson for the Confederated Villages of Lisjan(Ohlone), after introducing herself in her native Chochenyo language at the Shellmound, reminds us: “For thousands of years, hundreds of generations, the Lisjan Ohlone people have lived on the land that is now known as the East Bay in the San Francisco Bay Area. We did not own the land, we belonged to it.”⁴

The West Berkeley Shellmound is the place the Lisjan still go to remember their ancestors. The West Berkeley Shellmound is the first place where California people lived and died, laughed and cried. It is where California’s first people buried their ancestors. The value of the West Berkeley Shellmound is that even today as a parking lot, it reminds folks to show respect, honor, kindness and love for what was before and what is now. The West Berkeley Shellmound is an active place of education to all ages because it facilitates awareness of living in a good and mutually respectful way while also, by Ohlone history, bringing teachable awareness about the harms of our California State-sponsored Ohlone erasure.

We will now present from our collective educational expertise:

[Developmental Perspective for Petition to Review](#)

[Curriculum Perspective for Petition to Review](#)

[Education Psychology and Social Impact Perspective for Petition to Review](#)

[Conclusion](#)

⁴ Perry, J. P., Personal notation records, West Berkeley Shellmound

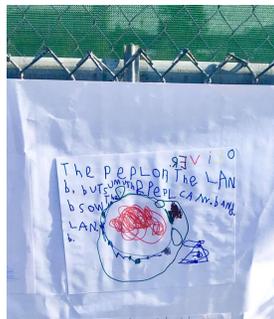
Developmental Perspective for Petition to Review

From as young as two-years-old and even younger, children learn who they are from family rituals and valued behaviors. The West Berkeley Shellmound is no exception. It is a place of ancestral reverence with much to teach us. The placing of a prayer ribbon at the West Berkeley Shellmound on Memorial Day 2021 tells this two year old that the same ribbon that is used to make her traditional ribbon skirt for ceremonial dance can be used to give love, honoring her indigenous heritage and her agency within her family unit.



Here she is by her Grammie's side, holding a prayer rattle as Grammie delivers a prayer at the West Berkeley Shellmound in grief and respect, remembering the 215, now reaching 1,000 children found in unmarked graves at former residential schools for indigenous children.

This two-year-old and other children old enough to compose and write, use skills in literacy, aesthetics, small motor coordination, moral and social empathy to convey their own thoughts on care, kindness and mutual responsibility at the West Berkeley Shellmound in prayer drawings.



(The people on the land. But some other people came by and saw the land.)

As children develop further they use creative reasoning to envision not only what they are learning of Shellmound history, but what the West Berkeley Shellmound could be in the future. By now children understand concepts of fairness.



(A hill to wisdom) Note the reunification of the West Berkeley Shellmound with Strawberry Creek.

Interactive engagement with the West Berkeley Shellmound as a place brings short- and long-term investment in children's development. In the short-term, interactive engagement creates a learning atmosphere of cooperation,

initiative, and intellectual challenge. Looking long-term, such interactive engagement supports children's growth in broad, inclusive competencies such as self-direction and industry. These are competencies valued both by parents and the community, and ones that children will need to develop to function as adults in our society.⁵

This connection to community and ritual continues its importance for elementary school students. These students learn about a world outside of their own and how to be in community. Elementary school is also where students first learn about California history. A living space like the Shellmound provides a link from the past to the present and future for students. They come to be in ceremonies and in community. The lessons learned from these experiences in the community are invaluable for elementary aged students who are social learners.

The Shellmound also becomes a broader conversation centerpost for students to understand their relationship to the place they are in and their role in it. They have discussions about how to be on this land and respect it. This is a land recognition drafted

and read daily by second grade students after having learned about the history and presence of the Ohlone people:

LAND RECOGNITION

We are on Lisjan/ Chochenyo Ohlone land. We will be good guests on this land by asking permission, respecting the rules and taking care of the land. We will help Ohlone people and respect them.

Here is another land recognition drafted by students at Wildcat Canyon Community School:

⁵ Hoorn, J.V., Nourot, P.M., Scales, B. & Alward, K.R., with Perry, J.P., Play at the Center of the Curriculum (Sixth Edition). Pearson, Inc.

"We acknowledge that we are a part of this beautiful land, as well as its stewards and caretakers. We remember as well that all non-native people to this land are settler occupiers, many brought against their/our will. At the Wildcat Canyon Community School site in El Sobrante, we acknowledge the Confederated Villages of Lisjan, Him'ren, Muwekma and Ohlone Tribe of this land that we live, learn and work on. We pay our respects to their people, their elders, past, present and future...and recognize that sovereignty was never ceded...it was never given up.

We also acknowledge the continued legacy of systemic racism stemming from the historic inequities of genocide and enslavement that equally require a process of truth and reconciliation in our nation.

In fourth grade students are introduced to California history and taught about the mission system and often taught about the Ohlone people in the past tense. The ceremonial space of the Shellmound is a space that educates children about the true history of this land as well as the knowledge that Ohlone people are still present and working to steward the land as they have done since time immemorial. The existence of this actual physical place breaks cycles that began hundreds of years ago.

Throughout the pre- and teen years, children develop a more complex sense of themselves, who they are and where they belong. Children's thinking and behavior develop in dynamic relationships with family, peers, teachers, and the larger social world. Their moral standards are largely based on adult role models, including their ideas about social rules concerning what is right and wrong, fair and unfair. Moral emotions (such as empathy, shame, and guilt) may flourish or be smothered, depending on what young people witness during these critical years. Were the Court of Appeal's Decision allowed to stand, the impact on California students, who study their State's history and then learn past physical and cultural genocide occurred not just in the past but in present time, cannot be overstated.⁶ This is reflected in the following poem that was collaboratively

⁶ Damon, W., and Colby, A. (2015) *The Power of Ideals: The Real Story of Moral Choice*. New York: Oxford University Press;

written by middle school students of the Urban Promise Academy in Oakland:

*We are here today to say
Shellmound site should not increase profits,
They should honor Indigenous People's Rights.
When you find resting bodies in sacred land,
In the past you dug their graves and sent their remains to UC Berkeley.
Today, when Indigenous people demand to be part of the process, you
never call back.
Why do people destroy history?
Why bother touching sacred land that is not yours.
Would you rather have a parking lot built over you or rather rest in peace.
We are here today to say
Shellmound site should not increase profits,
They should honor Indigenous People's Rights.
Why are people like this?
You're turning human existence and humanity into insanity.
The people that built Grocery Outlet (bargain market) on 5700 years of
sacred land should be ashamed of themselves
How would it feel if we built a parking lot on your graveyard?
We are here today to say
Shellmound site should not increase profits,
They should honor Indigenous People's Rights.*

Finally, there is another crucial educational benefit of the West Berkeley Shellmound that should be discussed, which is the cultural significance of a ceremonial space like this Shellmound for our Indigenous students. This space provides a link for Indigenous students from all backgrounds to connect with their culture and ancestry. An increasing number of students in the Bay Area are of Indigenous ancestry (from Mayan to Hmong to Pacific Islanders) and the Bay Area is also home to Indigenous students from all over the country whose families were relocated here by the Indian Relocation Act of 1956⁷. These students' development requires a connection to their culture in spaces like the Shellmound.

⁷ https://en.wikipedia.org/wiki/Indian_Relocation_Act_of_1956

Curriculum Perspective for Petition to Review

The crucial topic of Genocide Accountability is encountered by most US-educated students only in the context of the Holocaust that was perpetrated by Nazi Germany in the 20th century. However, we can also look to the reunited Germany's 21st century education system for guidance on developing curricula that critically address a Genocide that is baked into the foundation of a country — as the Genocide on Indigneous peoples in the Americas is baked, along with Slavery, into the foundation of this country. An extended visit to a concentration camp — often the focus of an entire week-long trip that is essentially compulsory for all students — is one crucial component of the Holocaust education in Germany. The West Berkeley Shellmound — in particular after restoration to a site of remembrance, as proposed by the Ohlone — is an analogous site to visit for California students while learning Indigenous history: “a memorial to thousands of years of habitation by Ohlone people...and a tribute to their survival today”.⁸ This would counteract the so-called white paper genocide which has excluded native narrative from history textbooks — speaking about Indigenous people only in past tense as “simply gone”. Actively used ceremonial sites such as the West Berkeley Shellmound are crucial in telling a more complete history of the Bay Area — and California — inclusive of Indigenous past, present, and future practices.

Indigenous peoples' present day survival and preserved wisdom can also teach students of all ages and backgrounds about resilience and living in reciprocity with the land. These indigenous perspectives provide a spiritual grounding as well as practical approaches for the present day struggles with climate breakdown, droughts, fire seasons, pandemic, and the resulting deep societal crises. The West Berkeley Shellmound has been

⁸ An Ohlone vision for the land,
<https://shellmound.org/learn-more/ohlone-vision/>

used as a site for such learning and teachings in interfaith, educational, and activist communities. Leaving the development decisions for this sacred site to the City of Berkeley — rather than a fast-tracked process without community input — will give the Ohlone, and those who have been learning from them, a chance to more fully develop their proposal for a living educational site of remembrance: “To find a place to reinter our ancestors, to give dignity back to those ancestors but also to the people that are living today. And not just the Ohlone people, but it gives dignity back to everyone that lives in our territory now.”⁹

Such Indigenous wisdom is deeply connected to land. It is transferred by interaction with sacred sites. It cannot be transported to a more convenient (to those with financial interests) location such as a lecture hall of UC Berkeley — though it is just a mile up the hill. To make this more apparent consider another Holocaust analogy: Jewish cemeteries in Germany have been systematically preserved by the state, because one cannot genuinely speak to genocide accountability, reconciliation, or reparations, in schools or lecture halls next door to desecrated sacred sites. As such, the presently open-ended story of the West Berkeley Shellmound has been a rich example for racial justice educators in the Bay Area — seeding discussions of what reconciliation and reparations might entail. There would be no such curriculum left if the story ended by the financial interest of a real estate development firm prevailing over the desire by the City of Berkeley to seriously consider its responsibilities to the Ohlone people — beyond printing “Ohlone territory” on its city signs.

⁹ A New Vision for the West Berkeley Shellmound, 2:20 in video, <https://sacredland.org/a-new-vision-for-the-west-berkeley-shellmound/>

Education Psychology and Social Impact **Perspective for Petition to Review**

Lest there be any doubt regarding the educational value of “affordable housing” proposed in this development: The type of units required by SB 35 would be affordable neither to most educators nor most students’ families in our classrooms. So the only educational utility of this housing development would be to demonstrate, again, that the housing crisis is not a matter of availability: There already are enough empty units and houses in the Bay Area to house every unhoused person.¹⁰ The problem is that there is no incentive for empty units to be rented to those who cannot afford market-price housing. And while there is an evident need for teaching quantitative thinking about social issues, this would be an unnecessarily cruel and devastating example to work with.

The active struggle to preserve the West Berkeley Shellmound serves as a rich source of learning in countless educational contexts from visceral early childhood experiences via lessons in history, civics, religion, etc to land acknowledgements as integral part of any gathering on any subject matter. For example, activities seeded by the Birthplace of Berkeley film¹¹ have proven to be a powerful way to ground a zoom-class of 500 students of “Linear Algebra and Differential Equations” in their connection to Berkeley, to the land they each called in from during the pandemic, and to each other. And such connection is crucial for effective learning spaces on any subject.

More substantially, Berkeley is home to the most comprehensive center for graduate-level study of religion in North America — the Graduate Theological Union (GTU). It is

¹⁰ [How many vacant houses are there in the Bay Area](#), Mercury News, 2020

¹¹ [The Birthplace of Berkeley](#), Sacred Land Film Project, 2020

an interreligious consortium. The faculty and students engage the world's religions and wisdom traditions in contemporary contexts to equip scholars to embody the critical thinking, ethical frameworks, compassionate values, and spiritual foundations essential to building a more just, peaceful, and sustainable world. At this time in human history, as the climate crisis worsens, humankind is in desperate need of the wisdom of the world's indigenous religions. The living cultural space that Ohlone leaders envision for the land would be a tremendous resource to the students of the Graduate Theological Union as well as all of Berkeley's residents.

On the other hand, a destruction of this extremely prominent sacred site in present time would make it near impossible to teach any related subject in integrity. It would send another devastating message of hopelessness to generations of students who barely survived a pandemic and will be struggling with the psychological aftermaths from nihilism to screen addiction.

Conclusion

As specialists in education, some of us directly involved in the teaching of California's first people's history and culture, we urge you to consider the pressing issues we have identified and grant the petition for review in this case.

The West Berkeley Shellmound — the oldest village and funerary site in the Bay Area — is a living place and educational agent in our community. It holds tremendous value towards educational awareness and healing of all members of the Bay Area community and Northern California from the cumulative effects of cultural annihilation. It is a beacon of hope for growing numbers of people nationwide as one of the U.S.'s 11 most endangered sites designated by the National Trust for Historic Preservation. The Lisjan (Ohlone) are remarkably gracious and

generous hosts on their ancestral West Berkeley Shellmound site, sharing ceremony with indigenous leaders visiting from around the world and offering visitors of all ages and backgrounds the chance to remember what it means to be human. We urge you to accept this invitation¹² by Corrina Gould, the Spokesperson of the Confederated Villages of Lisjan:

“Two hundred years ago on this land there was no such thing as homelessness. There was no such thing as hunger. You could drink from the fresh water out of the [Strawberry] creek. . . I think that you have to go backwards in order to go forwards right now. We have to think about what our ancestors would have done, all of our ancestors, and how we could make it better going into the future. . . That’s what these Shellmounds do. That’s what the ancestors do for us. If we take time to listen, if we take time to do the work, we could actually create something different.”

Sincerely,

Reverend Dr. Sheri Prud'homme, Assistant Professor of Religion and Education, Starr King School for the Ministry, Graduate Theological Union

Prof. Dr. Katrin Wehrheim, Associate Professor of Mathematics at University of California Berkeley, and Racial Justice Educator

Dr. Jane P. Perry, Retired Early Childhood Researcher and Teacher, University of California, Berkeley

Autumn Belnap, M.A., Elementary School teacher in Oakland Unified School District, and Community Educator

¹² Land Acknowledgement Panel on Ohlone Land, April 16, 2020: https://youtu.be/N6XG_hPRYs?t=956;

Corrina Gould on the West Berkeley Shellmound, Sacred Land Film, 2018: <https://www.youtube.com/watch?v=aeUPq0QXE2U>

Future Ecologies Podcast Episode 2.4 – Rematriation, November 13, 2019: <https://www.futureecologies.net/listen/fe-2-4-rematriation>