



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 Friends of the Earth in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

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

Friends of the Earth is a national non-profit environmental organization founded in 1969 by David Brower, a Berkeley, California resident. With offices in the District of Columbia and Berkeley, California, and nearly 178,000 members and more than 1.7 million activists nationwide, Friends of the Earth defends the environment and champions a healthy and just world. Friends of the Earth's campaigns focus on promoting clean energy and solutions to climate change, keeping toxic and risky technologies out of the food we eat and products we use, and protecting marine ecosystems and the people who live and work near them. Friends of the Earth is part of Friends of the Earth International, a global network representing more than two million activists in seventy-four countries.

The West Berkeley Shellmound and village site is the oldest known of many sites held sacred by the Ohlone Tribes, the original and continuous inhabitants of the eastern shores of San Francisco Bay. Buried for decades under a parking lot, the 5,000-year-old site was rediscovered in 2016 when developers broke ground for a planned real estate development. Local members of the Chochenyo Ohlone Tribe and the coalition of Ohlone Tribes initiated a campaign to protect the sacred site, where the bodies of their ancestors remain buried amid shell bead offerings and other memories of pre-conquest life. Organizers of the campaign to save the West Berkeley

Shellmound envision the two-acre site's transformation into a public memorial and cultural center—the only monument of its kind in a region rich with such buried and forgotten histories.

In October 2018 the board and staff of Friends of the Earth issued a resolution supporting the full protection of the West Berkeley Shellmound and Ohlone village site in Berkeley, California. The resolution was as follows:

**Friends of the Earth Resolution in Support of the West Berkeley Shellmound
Cultural Heritage and Village Site Taken in Honor of Indigenous Peoples'
Day 2018**

Be it resolved on this Indigenous Peoples Day, 2018, that the Executive Committee on behalf of the Board of Friends of the Earth stands in support of the full protection of the historic West Berkeley Shellmound and Village Site. Friends of the Earth will lend its voice and its heart to efforts to protect and preserve this sacred site in the ancient village of Huichin, in keeping with the desires of the Chochenyo Ohlone people and the all of the Ohlone communities of the San Francisco Bay Area, the original inhabitants of this land who have lived and cared for this land continuously and are most definitely still here today.

As stated in Article 25 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)¹ adopted by the United Nations in September 2007 and further adopted by the City of Berkeley as municipal policy² in 2015, the Ohlone people possess “the right to maintain, protect, and have access in privacy to their religious and cultural sites.” By resolution,³ Berkeley also affirmed the UNDRIP standard of “free, prior and informed consent of the Ohlone” specifically with regard to “any alteration planning for the Berkeley Shellmound sacred site.” As a longstanding national and international environmental rights organizations, Friends of the Earth supports full recognition of the UN Declaration on the Rights of Indigenous Peoples and full implementation of its principles.

Further, in January 2016, the City of Berkeley passed a resolution⁴ formally recognizing the Ohlone peoples as the original inhabitants of Berkeley and committing to work in good faith with representatives of the Ohlone peoples today. Simultaneously, the City passed Resolution No. 67,353⁵ recognizing that the West Berkeley Shellmound site is “held sacred by Ohlone peoples.” As an organization founded in and resident in Berkeley, Friends of the Earth is

¹ <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

² https://shellmound.org/wp-content/uploads/2018/04/Berkeley_Resolution_67328.pdf

³ https://shellmound.org/wp-content/uploads/2018/04/Berkeley_Resolution_67353.pdf

⁴ https://shellmound.org/wp-content/uploads/2018/04/Berkeley_Resolution_67352.pdf

⁵ https://shellmound.org/wp-content/uploads/2018/04/Berkeley_Resolution_67353.pdf

committed to supporting these resolutions and to the protection and ceremonial use of this important cultural heritage site, as long as the rivers shall run.

Friends of the Earth supported and continues to support the decision by the City of Berkeley to reject the permit application for the development of a 5-story condo/retail building on top of the West Berkeley Shellmound site. Indigenous sites like the West Berkeley Shellmound deserve preservation and protection and should not be given over to developers to destroy—too much of it has been covered up by development already. We believe that the City of Berkeley and the Ohlone people of the San Francisco Bay Area should be able to move forward with restoration of the Shellmound site including restoring some of the original wetlands, native plants and daylighting Strawberry Creek. In an area that is already heavily developed, the discovery of this cultural site before it also disappears is extremely important and we should not let it disappear like so many others in the region and across California.

Under the United Nations UNDRIP articles the Ohlone people possess “the right to maintain, protect, and have access in privacy to their religious and cultural sites.” There should also be “free, prior and informed consent of the Ohlone” with regard to “any alteration planning for the Berkeley Shellmound sacred site.” As a longstanding national and international environmental rights organization, Friends of the Earth supports full recognition of the UN Declaration on the Rights of Indigenous Peoples and full implementation of its principles with regard to the West Berkeley Shellmound site and the Ohlone people’s right to object to its destruction.

Friends of the Earth respectfully requests that the California Supreme Court grant the petition for review in this case.

Sincerely,



Marcelin Kever, Legal Director
Friends of the Earth

Document received by the CA Supreme Court.