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TERRITORY OF HUCHIUN ~ EAST BAY, CALIFORNIA

June 29, 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 Sprenger Company, Case No. S269012**

**Letter of Amici Curiae from Jews on Ohlone Land
in Support of Petition for Review**

Dear Chief Justice Cantil-Sakauye and Associate Justices,

We, Jews on Ohlone Land (JOOL) respectfully submit this letter as amici curiae in support of the petition for review of Petitioners City of Berkeley and the Confederated Villages of Lisjan.

Jews on Ohlone Land - Who we Are

JOOL is a Bay Area organization that activates and educates Jewish communities in solidarity with Indigenous sovereignty. Guided by the Jewish principle of *teshuvah*, or relational repair, we give workshops and training to Jewish community organizations, schools, camps and synagogues to teach about the history and contemporary experience of local Indigenous people. Our work is deeply informed by our relationship with local Indigenous people and organizations, including a primary accountability relationship with the Sogorea Te' Land Trust. We are an all-volunteer group that started in 2019, and now have over 150 members. We have offered dozens of

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workshops, reaching many hundreds of people, and we are called on to teach and to consult with local and national Jewish organizations about curriculum and policy, including Camp Tawonga, the Contemporary Jewish Museum in San Francisco, Hebrew College in Boston, and the Reconstructionist Rabbinical College in Philadelphia, and many Bay Area synagogues and community organizations. In June 2021, Jews on Ohlone Land was honored by Jewish Youth for Community Action with their annual Organizational Award.

JOOL's membership includes rabbis and other religious leaders, Jewish educators, secular Jews, academics and community members, with extensive experience in historical research, community education, Jewish history, practice and ritual, and also includes people with long-term connections to local Indigenous people and groups.

JOOL's Interest in this Case

The fact that Jews on Ohlone Land has grown so quickly, and that we have far more demand than we can meet for education and consultation, reflects a growing awareness among Jews in the Bay Area, and nationally, that our understanding of the histories of where we live is flawed and incomplete. There are many resonances between Jewish experiences and Indigenous experiences, and some members of our community also have mixed Jewish and Indigenous heritage.

Most Jews in the Bay Area, and in the U.S., have roots in the Ashkenazi communities of Eastern Europe, and share a history of genocide. Whether or not we or our direct ancestors are survivors of European pogroms and/or the Nazi Holocaust, our Jewish culture and experience is deeply

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informed by our relatively recent history of catastrophic violence and destruction, and by a long history of anti-Jewish violence. Our people were cut off from our towns, villages, cultural practices, language, religious and social communal networks. Unlike the Ohlone people, most of our surviving ancestors became refugees, and ultimately settled in places far from the graves of our ancestors, far from the plants they used for medicine, far from the trees they harvested to build their houses and synagogues, far from the waters where they fished and cooled off in the heat of summer days.

Cut off from our own ancestral homes, we have come to live in a place that is the site of another people's genocide, another people's suffering, where another people's villages stood, where another people's ancestors are buried, and where another people's religious ceremonies were and continue to be practiced, on ground that remains sacred. We live atop the desecrated graves of their ancestors, and we benefit from the sustainable practices, care for the land, and prayers that generations of Indigenous people engaged in here. So for us, there is a deep need for *teshuvah*, for healing and moving into right relationship. By acknowledging the history of this place, by trying to live on this land in alignment with, and informed by, and with the intention of being good guests of the Ohlone people who have been integral to this place for many thousands of years, we see the possibility of healing and repair, and even a hint of redemption. If we were to ignore or to desecrate the sacred places of the Ohlone people, if we were to turn away from the history of this place and its waves of violence against Indigenous people, it would be like desecrating the sacred places of our people, like turning away from our own ancestors' suffering and stories. We cannot honor our own ancestors and stories, and hope that others will honor them, if we don't honor the ancestors, and the living people, who belong to the place where we

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live. This is an expression of the teaching of Hillel the Elder (1st cent., BCE) who summarized the entire Torah with the words “What is hateful to you, do not do to your fellow....”

(Babylonian Talmud, Shabbat 31a)

We have been included in many interfaith ceremonies at the West Berkeley Shellmound, at the invitation of Corrina Gould, Spokesperson for the Confederated Villages of Lisjan. At these gatherings Corrina would always teach that this place is for all the relatives who live here, and we need to care for it in a good way. All prayers are welcome, from people of every background and tradition. All prayers are needed, to help us, as people, to live here in ways that support life - the life of the waters, of the trees, the animals and the people. Our whole planet is in crisis. As we write this the temperature is 115 degrees in Portland, Oregon. We know that cultures and peoples, like the Lisjan Ohlone, who lived in dynamic balance with the earth for millenia hold critical wisdom for our future as a species.

When the COVID-19 pandemic came, and communal gatherings were no longer possible, Corrina invited the larger community to continue to pray at the West Berkeley Shellmound, on our own, and in COVID-safe ways. Since then, many of us have continued to go to the Shellmound, individually or in small groups, including as part of our practice of Jewish holy days and times. Although the site may look like a parking lot, we have come to experience it as a holy place-- a place where people from all religious and cultural backgrounds come together to pray, to be guided by Indigenous teaching, and to slowly and gradually learn how to listen for the presence and the voices of our ancestors - both the ancestors of this place, and the ancestors of our own people.

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Because the West Berkeley Shellmound is a historic landmark and a historic sacred site, it is also a powerful contemporary sacred site.

In considering “historic structures” it seems important to acknowledge that there are different ways of thinking about how to define “structures.” There are more narrow, culturally specific definitions that generalize how one culture conceptualizes “structures” (in this case, the dominant U.S. culture, informed by Western traditions). And there are also broader, more inclusive ways to understand what constitutes a “structure”—ways that allow for multiple cultural contexts, elements, and life-ways that are not represented merely by a set of materials that form a building that would be recognizable to certain people.

It seems critical to acknowledge that human beings have inhabited this land for over five thousand years, and it is only for the last 250 or so years that human cultures have expressed themselves through what we now commonly recognize as buildings. Certainly, the structures built by the Ohlone people, including their Shellmounds, are historic structures worthy of respect and protection. Certainly the bones of their ancestors, carefully and lovingly laid to rest, generation after generation, for thousands of years, are worthy of the same respect we would accord to Arlington National Cemetery, or any other sacred burial site.

The Confederated Villages of Lisjan/Ohlone have inhabited the West Berkeley Shellmound and Village Site since at least 3700 B.C.E. [Brandon, Elissaveta M. ["Eleven Historic Places in America That Desperately Need Saving"](#). *Smithsonian Magazine*.] The last remaining portion of the original Village is located at 1900 Fourth Street. In 2000 the Berkeley City Council named

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the site an historic landmark, and in September, 2020, the National Trust for Historic Preservation declared the site as one of the 11 “most endangered historic places” in the United States. The Shellmound site includes subterranean ancestral remains and artifacts sacred to the Lisjan/Ohlone people and central to their ceremonial religious practices.

Native peoples in North America endure the cumulative effect of religious and cultural oppression, destruction of sacred sites, and genocide. Governor Gavin Newsom recognized and apologized for this genocide as it impacted California’s Indigenous people on June 18, 2019. Since Europeans first arrived in California, the Lisjan Ohlone people have experienced persecution, murder, enslavement and brutal physical violence. That the Lisjan Ohlone people are alive today is testimony to the vitality of their ancestral religious ways, enabling survival through ceremonial expression and exercise of spiritual traditions. The West Berkeley Shellmound and Village Site is central to this exercise of religious freedom.

Those seeking to develop the site under SB35 assert that their development will provide much-needed low-income housing. We recognize the need for affordable housing and support the City of Berkeley and the State of California’s efforts to address the lack of sufficient affordable housing in our communities. But this is not a case of “Not In My Back Yard.” It is an unfortunate attempt to pit marginalized and oppressed communities against each other - those in desperate need of housing, and Indigenous people whose home was stolen and who have been displaced. It doesn’t need to be either/or. We need both affordable housing, and recognition of, respect for, and protection for Indigenous sacred sites and historic structures.

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The West Berkeley Shellmound and Village has been the site of continuous religious practice for millennia. The Appeals Court conclusion, that there are no above-ground structures to be protected, ignores the true reality of what sacred structures are, and the critical context of the history of this place, its people and its culture. It also ignores the Shellmound's incalculable archeological value as the oldest human structure in the San Francisco Bay Area (at least 5000 years old, according to radio-carbon dating conducted by the UC Berkeley Anthropology Department).

We appeal to you to adopt a broad perspective, and a lens through which all human cultures are accorded equal respect. We appeal to you to challenge the constriction that all of us who are not Indigenous experience, having been educated and socialized in a society that historically denied the full humanity of its Indigenous peoples, and that continues to refuse to honor their full humanity. We appeal to you to accord the same respect and protection to the structures, above and below ground, and to the ground itself at the West Berkeley Shellmound and Village Site, that you would accord to Cathedral, a synagogue, or a veterans' cemetery.

We respectfully ask the court to support the Petitioner's petition for review.

Respectfully submitted on the 30th day of June, 2021

Rabbi Dev Noily
Co-founder, Jews on Ohlone Land

Ariel Luckey
Co-founder, Jews on Ohlone Land