

PUBLIC TRUST ALLIANCE
A Project of the Resource Renewal Institute
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June 28, 2021

Supreme Court of California
Honorable Chief Justice Tani G. Cantil-Sakauye
Associate Justices of the Supreme Court
350 McAllister Street San Francisco, CA 94102

Re: *Ruegg & Ellsworth V. City of Berkeley (Confederated Villages of Lisjan)* Case No. S269012;
Public Trust Alliance Amicus Letter in support of Petitions for Review

Honorable Chief Justice Cantil-Sakauye and Associate Justices:

I. Introduction

Pursuant to Rule 8.500 subdivision (g) of the California Rules of Court, Public Trust Alliance submits this *amicus curiae* letter in support of the positions of the City of Berkeley and the Confederated Villages of Lisjan. We write to urge the Court to act favorably on their Petitions for Writ of Review concerning the Appellate ruling for all the reasons cited.

We are writing partly because we feel that public process so far has resulted in improperly confusing the community into believing that only “private property” is involved in this dispute and that our laws require “the developer” to be “the winner” in contested situations. California has always recognized “trust protected” assets that are indeed actual use values and not mere “token interests” which might be negotiated through placing some sort of plaque or other symbolic note. The tensions involved in this dispute are very real and it is indeed “located” in the midst of a housing crisis that all parties recognize will require more City land to be converted to residential uses. But fortunately, we live in a world of changing circumstances and we now have “the greatest opportunity in human history” to act reasonably and with compassion as we solve our daily challenges. This is partly because, as we come out of our latest “Covid pause,” a great deal of public attention has been focused on exactly what sort of “reality” we want to “reconnect our financial markets to.” “Normal” IS the problem. Fossil fuels left in the ground are suddenly “more valuable” to humanity than oil extracted for any “purpose.” Just because some individual lawyers may believe that “the problem” can be “solved” more simply for their own particular clients if long established public rights are ignored, this does not mean that a whole field of Constitutional law has somehow “disappeared” into some administrative wastebin. On the contrary, more people every day are learning that our historic “public trust doctrine” may be a key to our nonviolent transition and transformation to a more sustainable economy in the long term.

Document received by the CA Supreme Court.

As we understand it, the streamlining provisions of SB (35) were always intended to accelerate permit approval for construction of badly needed affordable units for growing numbers of displaced California residents. But here, the great majority of proposed units don't reach anywhere near this objective, and the original language has long since been "corrected" to eliminate any confusion that the streamlining provisions were ever intended to apply to this type of situation, where an officially culturally landmarked indigenous structure would be necessarily destroyed. This is the site of the earliest and most developed human habitation in the San Francisco Bay Area and has been recognized as such since shortly after initial incorporation of Berkeley.

The people of our Nation have recently been transfixed by images of public "peace officers" actually killing vulnerable individuals in their custody. It doesn't take a highly compensated lawyer to "notice" that nine minutes of kneeling on a prone man's neck (two and a half minutes after his last breath was drawn) is "too" long. We respectfully request the California Supreme Court grant the writs of review of this highly technical whitewash and reinstate the findings made at the most local stages of public consideration. The California Public deserves this basic standard of "legal" practice.

II. Statement of Interest

The Public Trust Alliance is a fiscally sponsored non-profit educational and advocacy project of the California-based 501(c)3 Resource Renewal Institute (RRI). RRI is a "person" within the meaning of California Rule of Court 8500 (g). RRI seeks to promote comprehensive resource management strategies rooted in public participation and transparency.

The Public Trust Alliance, as an RRI project, seeks to empower citizens to defend and conserve public resources under the public trust doctrine which has always required public agencies to hold and manage certain natural and cultural resources and assets for public benefit rather than the benefit of private entities. The doctrine is rooted in the California Constitution as well as the common law.

The Public Trust Alliance embraces and espouses interpretations of the public trust doctrine which require a hard look at administrative decision-making to ensure that decisions about our natural and cultural assets adhere to high standards for an open and visible administrative process informing the public and affording an opportunity for comment. While the doctrine need not be explicitly articulated in most routine legal proceedings, assuming its "disappearance" (or ignoring its possible application) leaves fundamental California public interests vulnerable to misleading argument and without a long recognized procedural shield for public values, especially in times characterized by changing circumstances. The shifting of usual burdens of persuasion and prof from Grantor to Grantee for public interest balancing analysis is poorly understood by many modern legal professionals and is frequently exploited by private claimants to the disadvantage of long term public values without required notice. California agencies are Constitutionally prohibited from alienating trust assets by implication and often need to be reminded of long established public duties that many private interests would rather treat as "quaint guidelines." The essential mission of Public Trust Alliance is to use the liberal

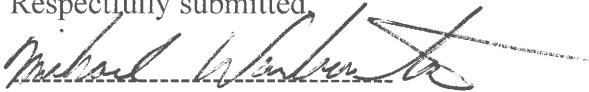
standing customs associated with the doctrine to protect otherwise unrepresented public interests that are so often at stake in modern resource use debates in California.

III. Statement of Support

Public Trust Alliance supports the positions of the Confederated Villages of Lisjan, and the City of Berkeley that the Appellate Division inappropriately over-reached its public authority in favor of a private developer by applying the technical streamlining provisions of AB 35 inappropriately and unconstitutionally without explicit reference to the public nature of assets located at the West Berkeley Shellmound. The proposed residential units are not of the type intended to be constructed to solve the “affordability crisis” addressed by the streamlining provisions, and the subject land itself is specifically exempted from such use. A large amount of land in the near vicinity of the proposed development is presently devoted to the sale and maintenance of increasingly outmoded gasoline powered automobiles. It is clearly not impossible to imagine that a great deal of this land will be economically repurposed for residential use to actually help solve the housing affordability crisis and will produce a great deal of private economic benefit to present owners. When trust protected values are reclaimed for public use, the public trust doctrine should usually be interpreted not to require compensation because no private property is taken. Such assets are beyond the capacity for public agencies to “grant” for private use in the first place and they are not available to be taken through legal artifice as seems to be the case here

Please protect our most valuable public interests and act favorably on these petitions for review.

Respectfully submitted,



Michael Warburton
Executive Director
Public Trust Alliance

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Alameda, California. My business address is 1413 ARCH ST. BERKELEY, CA 94705. I am over the age of 18 years and not a party to the above entitled action. On June 25, 2021, I served the following document(s) on the parties below, as designated:

- Amicus Curiae Letter in Support of Petition for Review

MANNER OF SERVICE


[B] By Electronic Service (email)

I caused such document to be served via electronic mail transmission (email) for electronic service from my email address: _____ by transmitting a true copy to the e-mail addresses listed under each addressee below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[A] By Priority Mail

In the ordinary course of business, I caused each such envelope to be placed in the custody of the United States Postal Service, with Priority Mail postage thereon fully prepaid in a sealed envelope.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 29, 2021, in the County of Alameda California.


(Name)
MICHAEL WARBURTON

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