

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

June 24, 2021

Re: Petition by the City of Berkeley and the Confederated Villages of Lisjan for Review of a Published Decision by the Court of Appeal, First Appellate District, Division Two, Case No. A159218, reversing a Judgment of the Superior Court of Alameda County, Case No. RG18930003, Hon. Frank Roesch presiding.

Honorable Chief Justice Cantil-Sakauye and Associate Justices:

I respectfully request that you grant the petition for review of this appellate court decision.

I. The Alternatives

Your decision on whether to review the Alameda County Superior Court's decision on this case will determine the future of the contested site in west Berkeley that is currently a paved parked lot. Will it become a 250-unit housing development with 27,500 square feet of commercial retail property? Or will what remains of the shellmound of the oldest human habitation in the Bay Area, an archaeological site listed on the California Register of Historic Resources, designated a City of Berkeley landmark, and named in 2020 by the National Trust for Historic Preservation as one of the eleven most endangered historical sites in the United States, be preserved for posterity as a ceremonial center and educational resource?

II. Statement of Interest

As a writer and filmmaker, I am interested in the preservation of the west Berkeley shellmound for the sake of public education about California



history and California Indians. As a citizen of Berkeley, I believe that this city where I have lived for 34 years will be profoundly affected by the outcome of the dispute over whether to allow real estate developers to obliterate a sacred and historically significant site.

Since 1973, my work as a writer and filmmaker has contributed to public education about California history and California Indians. The documentaries I have scripted include Cruz Reynoso: Sowing the Seeds of Justice; A Land Between Rivers, a history of the Central Valley; Berkeley in the Sixties, an Academy Award best documentary nominee in 1991; and River of Renewal, which won the best documentary award at the American Indian Film Festival in 2008. The companion book, River of Renewal, Myth and History of the Klamath Basin (University of Washington Press, 2006) includes chapters about three California tribes: the Yurok, Hupa, and Karuk. My most recent documentary, Wilder than Wild: Fire, Forests, and the Future, includes a sequence of prescribed burning by the Cultural Fire Management Council of the Yurok Tribe.

I have written about California Indians also as a reporter for the Pacific News Service and as a playwright. Watershed, which dramatizes the 1978 "Salmon War" on the Klamath River, is based on oral histories of Yurok tribal members as well as my own reporting. Yuroks celebrated Watershed's premiere in Berkeley in 1994 with a traditional salmon bake in front of the Julia Morgan Theater.

As a Berkeley citizen, I have fostered public awareness of California Indians through various projects. I helped establish a sister city relationship between Berkeley and the Yurok tribe. As a member of Friends of Ohlone Park, at the request of a city councilmember and with support from the Berkeley Parks and Recreation Department, I hired a California Indian artist, Jean LaMarr, to create "The Ohlone Journey", a four-sided mural on a BART vent structure. Friends of Ohlone Park also hosted a Native Berkeley symposium whose speakers included Malcolm Margolin, archaeologist Kent Lightfoot, and Vincent Medina, who revived the Chochenyo language and serves indigenous cuisine at Café Ohlone. We are currently working with the Parks Department to create a Native plants art garden around the mural.



Preservation of the shellmound in west Berkeley as a sacred site for the first people of this land and as a cultural resource for visitors to and citizens of Berkeley would be an invaluable and enduring contribution to public knowledge of California history and appreciation of indigenous culture, furthering the interests that have animated my public initiatives as a Berkeley citizen and my work as a professional writer.

And it would be more than that. For when one looks at the issue of whether or not to preserve the shellmound of the Bay Area's oldest village site in the context of California and Berkeley history, it appears that this could be a significant act of reconciliation and restorative justice.

III. Historical context

From the beginning of statehood, California's government sought to eliminate the Indian population. California's first governor, Peter Hardeman Burnett, proclaimed that "a war of extermination will continue to be waged between the races until the Indian race becomes extinct. . ." Using state funds, the governor purchased weapons to arm militias that conducted vigilante raids against Native people. And many local governments paid settlers a bounty for murdering Indians and stealing their horses. Ever since the publication of *An American Genocide* by Benjamin Madley in 2016, this tragic history, long ignored by historians, has been widely recognized.

Berkeley's role in the destruction of Native California is different in kind, for the Ohlone tribes were dispersed and missionized before statehood, and the massacres of California Indians occurred before the city was established in 1878. A. L. Kroeber, at the University of California, Berkeley, played a significant role in the cultural genocide of California Indians while at the same time taking and preserving their artifacts, thousands of which the Phoebe Hearst Anthropology Museum keeps in basement storage. The "salvage anthropology" that Kroeber practiced regarded Indians as objects of study rather than as subjects in history and defined indigenous people in terms of their pre-contact ways of life. Accordingly, when Ishi, the last surviving member of the Yahi tribe, who lived in Berkeley and went on display at a UC museum, died in 1916, he became known as "the last wild Indian in America". In 1925, Kroeber reinforced the myth of the "vanishing



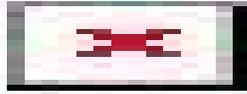
Indian" by declaring that the Ohlone were culturally extinct. As a consequence, the Bureau of Indian Affairs ended the tribe's federally recognized status, which it has not regained to this day.

During the last five decades Berkeley citizens and the City of Berkeley have attempted to make amends to Native people, and to California Indians especially, for their cultural annihilation. In 1969, when "Indians of All Tribes" occupied Alcatraz, the Berkeley-based radio station KPFA rallied citizens to support their cause. In 1979, after the publication of *The Ohlone Way* by Berkeley author and publisher Malcolm Margolin, the city named a strip of land over the BART tracks along Hearst Street, Ohlone Park. In 1992, Berkeley began to observe Indigenous Peoples Day instead of Columbus Day by holding annual Indian dances in the Civic Center. In 1993, the establishment of a sister city relationship with the Yurok Tribe led to an exchange of high school students, with Yuroks attending Berkeley High and Berkeley students attending school near the Yurok Reservation. In 2019, during the rededication of the Ohlone Mural, 24 members of the Muwekma Ohlone Tribe sang in Chochenyo and told stories of their relatives depicted on the mural.

At the rededication ceremony, Mayor Jesse Arreguin spoke about the benefits that the presence of Ohlone people and the continuity of their culture bring to Berkeley, to California, and to the world.

As Mayor, I am accustomed to welcoming people to Berkeley from all over the world, and it's humbling for me to be welcomed by the first people of the Bay Area. Hearing the original language of the East Bay brings to mind the fact that non-Indian languages first came to the Bay Area less than two and a half centuries ago while Chochenyo has been spoken here for thousands of years. Just as we are all enriched by having Spanish speakers and people of Latin American ancestry as a vital presence in California culture, so are we enriched by the language and culture of the first people of the Bay Area. . .

One of the wonderful things about Berkeley is that people are here from everywhere in the world. That's why it is especially important to honor the legacy and acknowledge the presence of the people who are native to this place. For just as Berkeley has been a seedbed for initiatives that have taken root in our society,



from disability rights to schoolyard gardening, so the Native people of this place offer guidance as we work toward a better future. For example,

- Some of the California tribes have resumed cultural burning. In doing so, they are reducing the risk of catastrophic wildfires and restoring wildlands that evolved with fire. We have a lot to learn from traditional land management practices, including the cultivation of Native plants. Not only do these provide many direct benefits, from medicines and foods to basketry materials, they attract birds and support a biodiverse insect population.
- The use of natural renewable materials for all sorts of containers as in the basket-making by California tribal members is much wiser than the proliferating plastic that is a planetary health hazard for animals and humans alike. The refusal to waste, the use of every part of an animal, the respect for the life of plants and animals as our relations offer lessons for a world in which so many cannot even respect other human beings.
- The revival of indigenous cultures after genocide and displacement and assaults on Native languages and religious practices is inspiring. No matter what the future holds for us, that example will give us courage and inspiration.
- Guiding us above all is the cultural wisdom that instructs us to act for the sake of future generations. This indigenous ethos challenges a society that rewards the favored few who manipulate our economic and political system to serve their short-term interests regardless of the consequences for the rest of us and the planet as a whole.

So thank you all for being here today. Enjoy this celebration of the 50th anniversary of Ohlone Park. And as you celebrate, think forward to 50 years from now and consider how our actions and our ways of living can benefit the people of the future.

IV. What is at stake

Article 11 of the UN Declaration of the Rights of Indigenous Peoples states: "Indigenous peoples have the right to practice and revitalize their



cultural traditions and customs. This includes the right to maintain, protect and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies, and visual and performing arts and literature."

In recent years, Ohlone tribal members have joined hundreds of people of varied faiths, ethnicities, and nationalities on the asphalt-covered shellmound to pray, dance, and celebrate indigenous culture. If the California Supreme Court were to prevent the destruction of this sacred site by a housing and commercial development, Bay Area residents and visitors, Native and non-Indian people, will continue to meet there. For the Muwekma Ohlone intend to establish on that ground a ceremonial space, an educational facility, and a creative shellmound with a path spiraling around a garden of Native plants, offering an elevated vista of San Francisco Bay. This natural monument will honor our shared history and "the cultural wisdom that instructs us to act for the sake of future generations".

Conclusion:

The California Supreme Court's review of the appellate court's decision to permit the obliteration of what remains of the Bay Area's original village site may affect the character and culture of Berkeley for many years to come. The decision of the Court of Appeal on Case No. A159218, if allowed to stand, will obstruct the efforts by the first people of the Bay Area to share their cultural wisdom with the larger community. And it will narrow citizens' understanding of who we are and what we value at this crucial moment in the history of our city, our country, and our world. This petition for review should be granted.

Sincerely,

Stephen Most

writer/producer, Filmmakers Collaborative SF



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