



# SSPRIT SACRED SITES PROTECTION AND RIGHTS OF INDIGENOUS TRIBES

PO Box 83, Vallejo, California, 94590

sspandrit@gmail.com

www.ssprit.wordpress.com

Christopher Oakes  
5125 Proctor Ave  
Oakland, CA 94618  
March 13, 2017

ATTN: Shannon Allen, City of Berkeley Planner  
City of Berkeley Current Planning Dept.  
1947 Center Street, 2nd Floor  
Berkeley, CA 94704

Re: Comments on the Draft EIR on 1900 4th street. West Berkeley Investor's Project.

Pre(R)amble:

My apologies in advance to whoever has to respond to this. This is long and filled with questions. Unfortunately the DEIR, as presented, is wildly insufficient. It begs the long list of questions that I have included in this response due to its misleading nature, omission of data, lack of archaeological context, and the fact that it is incomplete. I pose these questions because they do not appear to have answers in the DEIR as is currently presented.

This site is also of the utmost significance. This is the oldest place that human beings ever lived on the shores of the San Francisco Bay. This is the city where I was born. This is the area where my parents decided to raise their family, and where I have decided to raise my family. This site is significant because it represents a history of the Bay Area that we should all be proud of. This site is our Stonehenge, it is an intrinsic part of the history of where we call home.

This site is also a sacred site. It is a burial ground. This is a site that has links to the very creation stories of the Ohlone People. It is the first of the Shellmounds which defined our landscape prior to European settlement. The proposed project site is also undeveloped, so it gives an extraordinary opportunity to the preservation and education about this site.

The West Berkeley Shellmound is the resting place of the families of my friends. It is where my friend's ancestors are buried. It is where my family is invited to pray with Ohlone people. It is a place that I bring my daughter and where I can teach her about the Bay Area and her Ohlone friends. It is a place where I watch my friends bring their grandchildren, and great grandchildren and to teach them about their history, their culture, and their family. This site is part of a living history that as a bay area resident I am proud to share in.

This is a sacred site. This is the birthplace of our history as people who live in the Bay Area. For these reasons, I felt as though this warranted a long and complete response.

My name is Christopher Oakes. I am an enrolled member of the Choctaw Nation of Oklahoma. I was born at Alta Bates Hospital in Berkeley. My father was a graduate of CAL Berkeley and still proudly wears his CAL hat to this day. Although I have always lived in Oakland, I grew up for the most part in Berkeley. I continue to come to Berkeley on a regular basis. I like to say that I grew up at the view spots on Grizzly Peak.

I have always been proud of the values and the politics of Berkeley. When I leave the area, I quickly realize how unique and precious Berkeley is. Berkeley has enacted resolutions to preserve sacred sites such as the West Berkeley Shellmound and against the Dakota Access Pipeline, was the first city to adopt Indigenous Peoples Day, has offered resolutions to Free Leonard Peltier, as well as adopting UNDRIP as municipal policy. Berkeley has demonstrated that it is a city that Indian people can proudly call home.

I graduated from California State University East Bay with a Bachelor of Science in a degree which I created which is entitled "American Indian Pre-Law". I have been working as a paralegal for various Native American sacred site battles since 2011. I currently work as a paralegal in the fields of Immigration, Civil, Family, and Criminal Law. I am starting an apprenticeship to become a lawyer as per Title 4, Division 1, Chapter 3, Rule 4.29 under the Rules of the State Bar of California.

I am also writing this letter today on behalf of SSPRIT.

Sacred Sites Protection and Rights of Indigenous Tribes (SSPRIT) is an organization of Indigenous & Earth Peoples dedicated to upholding traditional Native American cultural & spiritual freedom. This includes the protection of Sacred Sites, the right to practice traditional ceremonies and respect for traditional cultural customs of Native Americans.

We support the endeavors of all Indigenous Peoples to maintain their sovereignty as individual Clans, Bands, Tribes and Nations. We give this support through information, education and resolutions of support.

We petition governments and institutions with grievances to the violation of the human & civil rights of Indigenous People and desecration of Native American Sacred Sites. We speak out against legislation that violates the sovereign rights of Indigenous Peoples.

We educate members of the community through presentations, discussions, and educational workshops to eliminate discrimination against Indigenous Peoples. Our goal is to inform the public of the importance in preserving & protecting Native American sacred sites and the importance to upholding the civil & human rights of all Indigenous Peoples.

We promote respect for Indigenous Peoples through community involvement; this includes attending & participating in community events, networking with local businesses and providing educational support for educators, staff, and students attending local schools.

We demonstrate Native American Cultural relevancy in contemporary society, speaking throughout the state about the disrespect and desecration of Native American Sacred Sites.

Introduction:

CEQA Section 15003(i) states, "(i) CEQA does not require technical perfection in an EIR, but rather **adequacy, completeness, and a good-faith effort at full disclosure.**"

Tribal consultation was inadequate. Not only in terms of how they city attempted to contact tribes, but also in that they appear to have solely used the NAHC list for tribal consultation. LSA has been approached by Corrina Gould in the last year regarding the development at Mission Peaks in the East Bay Regional Parks district, why was she not contacted for this development? The City has been approached by the Confederated Villages of Lisjan, who have asked for full consultation under AB-52 and CEQA. The city has not complied with that request, they have only had preliminary meetings.

Before the DEIR was released, I dropped off a FOIA/CPRA request to the city of Berkeley that included the names of Corrina Gould and Christopher Oakes on the letterhead. This request was not responded to until October 19 by Shannon Allan<sup>1</sup> (47 days after it had been

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<sup>1</sup> Allen, Shannon <ShAllen@ci.berkeley.ca.us>

10/19/16

Mr. Oakes –

As per my voicemail, I sincerely apologize that your organization was not contacted in response to your PRA request. Files were pulled, but due to internal miscommunication, you were never contacted to let you know the files were available.

Staff will compile these documents. I will reach out to you again next week, likely on October 26. Please assume files will be ready for your review on October 27.

Thank you,  
Shannon Allen

Shannon Allen, AICP  
Principal Planner, Land Use Planning Division  
Planning and Development Department

*Public Comment Letter for Draft EIR for 1900 4th Street, Berkeley, CA - Proposed  
Project by West Berkeley Investors*

hand delivered to the planning office). Under the California Public Records Act, the city was supposed to notify us within 10 days.<sup>2</sup> The requested information was not made available until nearly 55 days after it had been submitted to the Planning Department. This left only two weeks before the DEIR was to be released, instead of having over two months of preparation. This does not appear to be a “good faith effort at full disclosure.”

The inclusion and consultation with Andy Galvan brings up a potential conflict of interest. Mr. Galvan appears to be in violation of Chapter 3, Article 8, Section 29226: Most Likely Descendants and Authorized Representatives Code of Ethics. Corrina Gould on the other hand has sought consultation with the city, however has only had preliminary consultation. AB-52 requires consultation with the Confederated Villages of Lisjan because the proposed project has to deal with the West Berkeley Shellmound which is a Tribal Cultural Resource. For this reason, the DEIR is incomplete and inadequate.

The DEIR fails to include the Berkeley Landmark #227 application, history, findings and leaves an inadequate record in terms of the designation as city Landmark #227. This will be described in more detail below, however the best example of this is the reaction that the Landmarks Commission had to the proposed project in their verbal comments in 2017, as well as their unanimous decision to request for a Re-Circulation of the DEIR because it is so deficient. The Landmarks Commission called for Re-Circulation because the DEIR is incomplete and is not adequate.

The use of the available Archaeological resources used in this study is problematic. The DEIR is incomplete and misleading as it currently stands. The DEIR omits or skims over details that are pertinent to understanding the context of the archaeological record, as well as details that conflict with the findings of the DEIR. By omitting information, as well as by not dealing with the conflicts in conclusions, thi DEIR is not complete and is not a “good faith effort at full disclosure.”

The DEIR uses an incomplete archaeological record. The DEIR brushes over the GANDA report by Christopher Dore, the information provided by Richard Schwartz, findings

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City of Berkeley  
2120 Milvia Street  
Berkeley, CA 94704  
[\(510\) 981-7430](tel:(510)981-7430)

<sup>2</sup> California Public Records Act. IV(A) "When a copy of a record is requested, the agency shall determine **within ten days** whether to comply with the request, and shall promptly inform the requester of its decision and the reasons therefor. Where necessary, because either the records or the personnel that need to be consulted regarding the records are not readily available, the initial ten-day period to make a determination may be extended for up to **fourteen days**."

from the WSA Stadium report, completely fails to mention Tremaine, as well as ignoring burials that were included in neighboring properties DEIRs. Additionally, they fail to adequately include the burials in the vicinity of the project site to put the site into context.

The DEIR leads the reader to believe that if the Shellmound is not intact, then it isn't there<sup>3</sup>. It also uses information which fails to put the site into context in the sense that the Shellmound was of a shrinking size throughout history due to looting, road paving, etc. The DEIR misleads the reader that they are trying to prove or disprove the location of the West Berkeley Shellmound, when in fact the boundaries of it have already previously been set when it was made eligible for National Historic Listing. This is yet another example of how the DEIR is incomplete and misleading, as well as not being a "good faith effort at full disclosure".

The DEIR leaves out an entire section of Tribal Cultural Resources which is required under CEQA. This is not a small omission or just a formatting mistake. This makes the DEIR by definition, incomplete.

The Traffic and Parking section is incomplete. The DEIR fails to adequately address traffic and parking. The proposed development removes current parking spaces from the neighborhood, adds additional residents (who will be required to pay for parking spaces in the building), and adds retail, all of which without adequately addressing the parking needs of the neighborhood. The neighborhood currently has low rated LOS intersections that are shown in the DEIR that they will only get worse. This DEIR proposes a project which makes a neighborhood with bad traffic even worse. The DEIR is inadequate in addressing these impacts, as well as the mitigation measures that should help to alleviate them.

The Proposed development is out of line with the current skyline, height, and size of the neighborhood. The development would alter the possibilities for solar access to its neighbors. The development would also cast a shadow on, and be a few stories taller than Spengers across the street, which has been given Landmarks status.

The DEIR inadequately discusses the effects that the development will have on low-income families, apartments, residents, and units in the neighborhood. The DEIR inadequately discusses the effects of the proposed development on neighboring businesses. The proposed development is in conflict with the Berkeley General plan, as will be discussed below.

The DEIR is incomplete and misleading. Due to its omission of various items that will be listed below, it is not complete. The DEIR is not adequate due to all of the presented information. Due to the fact that the current DEIR, as it stands fails in terms of "...adequacy,

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<sup>3</sup> Pg 74 and 94 of the DEIR

completeness, and a good-faith effort at full disclosure."... it would need to be corrected and Re-Circulated so that an informed decision can be made on it. The no project alternative<sup>4</sup> is the only decision that can be made on the DEIR as presented.

### Definitions:

This letter will refer to the California Historic Register Information System as “CHRIS” (in all capital letters). This letter may refer to the United Nations Declaration of Rights of Indigenous Peoples as “UNDRIP” (all capital letters). This letter may refer to the Garcia and Associates report from 2001/2002 as the “GANDA”<sup>5</sup> report (all capital letters). This letter may refer to the report prepared for the Cal Stadium as prepared by William Self and Associates as the “WSA Stadium Report”<sup>6</sup>. This letter may refer to an article released in the Oakland Tribune in 1954 as the “Gifford findings”<sup>7</sup>. This letter may refer to a “1876 Tribune article”<sup>8</sup>. This letter may refer to two various reports by Archeo-Tec by their different dates in 1999/2000 and 2014<sup>9</sup>. This letter may refer to the California Register of Historic Places as the “California Register”, and to the National Register of Historic Places as the “National Register”.

This letter will often refer to the “Shellmound”. This letter does not refer to any Shellmound except the “West Berkeley Shellmound” except where otherwise noted. When using the word Shellmound, this letter does not mean the Emeryville Shellmound, or any other Shellmound of the 400+ Shellmounds in the Bay Area. When using the word “Shellmound” in this letter, it only refers to the Shellmound located in ALA-307. This letter only uses the word “Shellmound” to refer to what is called the “West Berkeley Shellmound”. This is the same shellmound that is featured on the General Plan of Berkeley under the description of the West Berkeley Neighborhood as a distinguishing characteristic of the neighborhood. It refers to the Shellmound as described in City Landmark #227.

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<sup>4</sup> DEIR. Pg 230

<sup>5</sup> Christopher D. Dore, Stephen Bryne, James W. Jenks. (2002). *Cultural Resources Inventory, Significance Evaluation, and Effects Assessment for Capital Improvement Projects in Public Streets in the West Berkeley Redevelopment Area, City of Berkeley, Alameda County, California*. Prepared by Garcia and Associates for City of Berkeley Planning Department & Department of Public Works. January 2002. Job 283.

<sup>6</sup> William Self Associates. (2008). *Geoarchaeological Testing Report for the University of California, Berkeley Student Athlete High Performance Center, Alameda County, California*. Prepared for University of California, Berkeley, Capital Projects.

<sup>7</sup> Oakland Tribune. Thursday, July 1, 1954. E3. “Ancient Indian Village Described” - UC Professors Tells Board about Berkeley Ruins Unearthed 3 Years Ago.

<sup>8</sup> Oakland Evening Tribune. Tuesday, August 8, 1876. “About Shellmounds”

<sup>9</sup> Archeo-Tec, Inc. (2014). *A Report on Archaeological Testing Conducted within the Spenger’s Parking Lot, bounded by University Avenue, Hearst Avenue, Fourth Street and the Tracks of the Union Pacific Railroad, City Of Berkeley, Alameda County, California*.

When this letter refers to the “Shellmound site”, it refers to the area surrounding the Shellmound that is of cultural significance. It refers to the entire boundaries of ALA-307 as described and logged in the California State Register of Historic Places, under CHRIS, and as landmark #227 by the City of Berkeley, as well as its boundaries described when it was found eligible for the National Register of Historic Places.

This letter is not trying to prove or disprove the existence of the Shellmound. This letter refers to the Shellmound that is documented in the California Register, documented as a City of Berkeley Landmark, as well as the Shellmound that has been documented by Nels Nelson (ALA-307), Dr. Christopher Dore, the GANDA Report, Archeo-Tec in 1999, 2000 and 2014, as well as the Shellmound that is mentioned in the DEIR for 1900 4th.

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## Local, State, Federal and International Protection

1900 4th Street is within the zone of land that was designated as a City of Berkeley Landmark #227 by the City of Berkeley Landmarks Commission on February 7th, 2000. The site at 1900 4th Street is also listed in the California State Registry of Historic Places. Additionally it was deemed eligible for inclusion in the National Register of Historic Places as CA-ALA-307.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by proclamation of the City Council of Berkeley, on May 19, 2009 stating that UNDRIP should be adopted as municipal policy for the City of Berkeley.<sup>10</sup> Several articles of the UNDRIP apply to this proposed development. If the City is going to stand by its former decisions to adopt UNDRIP, then clearly the option for this development is the ‘no-build’ option.

The City also has passed and discussed numerous resolutions that pertain to this sacred site, including, Resolution No. 67,353-NS of the City of Berkeley "Honor Berkeley Shellmound Indigenous Sacred Site, UC Berkeley Return Ancestral Remains to Ohlone People". This resolution specifically mentions free and informed consent with Ohlone people regarding planning of the West Berkeley Shellmound. Due to the issues presented in this letter, as well as the large number of comments that the city has received as part of the public comment period, the comment from Zoning Board and Landmarks Commission members, as well as comment from Ohlone people, it is clear that Resolution No. 67,353-NS and “free and informed consent” have been substantially lacking.

1. Why is there no mention of Resolution No. 67,353-NS? This measure directly pertains to the West Berkeley Shellmound.
2. Why is there no mention of the UNDRIP in the DEIR?
3. Why does the city pass resolutions regarding UNDRIP and then allow for a proposed development that breaks several of the Articles of the UNDRIP?
4. Why did the city propose to adopt UNDRIP and then not enforce or stand by it?
5. How can the City allow development of a property that is Landmarked (#227)?
6. How can the City allow the development of Landmark #227 when it appears that the Landmarks Commission is against it based on their public comments?
7. Did the developer, DEIR, and City Planner follow all the procedures set forth by the Landmarks Commission if they are proposing a development on a city Landmark?
8. Does the DEIR include the Landmarks application?
9. Does the DEIR include a copy of the language from the designation as Landmark #227?

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<sup>10</sup> See UNDRIP Articles, 3, 5, 8, 11, 12, 19, 25, 26, 27, 28, 29, and 32

10. Was the Landmarks commission included in the pre-DEIR discussions about potentially building on top of Landmark #227?
11. Was input gathered from the Landmarks Commission regarding development of Landmark #227 prior to the release of the DEIR? If so, from whom and when?
12. Does the DEIR address the process for developing a city Landmark?
13. Does the DEIR show or discuss the differences in boundaries in Landmark #227, and CA-ALA-307 as described in the California State Register of Historic Places?
14. What protections are given to sites that are included in the California State Register of Historic Places? Why are these not included in the DEIR?
15. What is the process for developing a site that is included in the California State Register of Historic Places? Why are these not included in the DEIR?
16. What is the process for developing a site that has been deemed eligible for inclusion in the National Register of Historic Places?
17. What protections does the National Register of Historic Places give a site that it deems eligible for inclusion? Why are these not included in the DEIR?
18. Does a site that is found to be eligible for the National Register of Historic Places require permits for trenches, borings, augerings or disturbing the soil? Why are these not included in the DEIR?
19. Was any federal money received for this project in any shape, way or form?

The DEIR on page 74 states that “Archaeological deposits that are not intact, as is the case with the Shellmound deposits identified at the Project site, do not qualify for listing in either the National Register or California Register due to a lack of integrity”. The site has already been deemed to qualify. The DEIR here is faulty in that it is drawing a conclusion that the site shouldn’t be eligible, however the site already has been placed on the State Historic Registry and has been deemed eligible for National Historic listing.

Again on page 94 of the DEIR, it states “While National Register or California Register-eligible Shellmound deposits have not been identified within the Project site during previous excavations, the possibility exists that intact Shellmound deposits could be present in areas that have not been previously excavated as well as at locations where above-ground utility connections would be relocated underground for the Project.” This is misleading because the site has been deemed eligible for the National Register, and is in the California Register.

20. Is the purpose of the DEIR to suggest that the site should not qualify?
21. For what purpose does the DEIR state that the site should not qualify for the California Registry?
22. Is this DEIR suggesting that the designation under the State Historic Registry and Eligibility as a National Historic Registry is incorrect?

## ALA-307 Boundaries

The DEIR assumes that ALA-307 is just the Shellmound. This is incorrect. As recorded in the California Register of Historical Resources, the boundary of ALA-307 includes the shellmound and also includes significant archaeological deposits beyond the footprint of the Shellmound archaeological feature. All portions of Site ALA-307 must be considered in the DEIR.

The DEIR is misleading because it confuses the Shellmound as being the entirety of ALA-307 or Landmark #227. It also gets the Landmark #227 and ALA-307 mixed up. The DEIR is misleading because it gets all of these things confused. For these reasons it is incomplete and inadequate.

1. Is ALA-307 just the shellmound?
2. Is the Shellmound itself the only thing that ALA-307 is?
3. Does ALA-307 only include the area of the Shellmound?
4. Is the Shellmound ALA-307 or is the Shellmound a part of ALA-307?
5. Is ALA-307 bigger than just the Shellmound itself?
6. Does ALA-307 include a larger area than is just the actual, physical Shellmound (historic or current)?
7. What are the boundaries of ALA-307?
8. Why does the DEIR not include a photo of the boundaries of ALA-307?
9. Is the Shellmound located inside of ALA-307 or does the Shellmound make up the entirety of ALA-307?
10. Does ALA-307 include area that is not just the Shellmound?
11. Is ALA-307 only located on 1900 4th street and Truitt and White lumber yard?
12. How many square blocks is ALA-307?
13. Is ALA-307 the shellmound, or is the shellmound within the boundaries of ALA-307?
14. On page 71 of the DEIR there is a map that states, "Designated Shellmound Location (California Register of Historical Resources #P-01-000084/CA-ALA-307; Berkeley City Landmark #227)". Is this a map of CA-ALA-307 from the California Register? Or is this a map of Berkeley City Landmark #227?
15. Why does the DEIR use Archaeo-Tec's 2014 report which had the purpose of finding the site (or Shellmound) in 2014 when over decade earlier the site and its boundaries were already established when it was put on the California Historic Register as ALA-307?
16. Why does the DEIR use Archaeo-Tec's 2014 report which had the purpose of finding the site (or Shellmound) in 2014 when in 2003 its boundaries were established by the U.S. Federal Highway Administration?

17. Why does the DEIR use Archaeo-Tec's 2014 report which had the purpose of finding the site (or Shellmound) in 2014 when over decade earlier the site and its boundaries were already established by the California State Historic Preservation Officer Dr. Knox Mellon?
18. Why does the DEIR for 1900 4th street use, adopt, or quote Archaeo-Tec's 2014 report about whether or not the Shellmound or the Shellmound site exists at this location when in 2003 its boundaries were established by the U.S. Federal Highway Administration?
19. Why does the DEIR for 1900 4th street use, adopt, or quote Archaeo-Tec's 2014 report about whether or not the Shellmound or the Shellmound site exists at this location when over decade earlier the site and its boundaries were already established when it was put on the California Historic Register as ALA-307?
20. Why does the DEIR for 1900 4th street use, adopt, or quote Archaeo-Tec's 2014 report about whether or not the Shellmound or the Shellmound site exists at this location when its boundaries were already established by the California State Historic Preservation Officer Dr. Knox Mellon?
21. Why does the DEIR for 1900 4th street quote a study (2014 Archaeo-Tec) that shows it didn't find the Shellmound when this study, as well as the DEIR also quotes several other studies and archaeologists that state that the site was at this location (Nels Nelson, Wallace and Lathrop, Tremaine, GANDA etc)?
22. Why does this DEIR not include the WSA Stadium report (QUOTE) which stated that burials were found on 1900 4th street?
23. If the Shellmound was dismantled, looted, destroyed, used to pave streets, or in any shape or form destroyed in the past<sup>11</sup>, yet its location and boundaries have been documented on several occasions by Nels Nelson, Wallace and Lathrop, Tremaine etc ...
24. How can a dig/trenches/borings that takes place in 2014 disprove its existence?
25. Did it disappear?
26. Were those former archaeologists mistaken in their findings?
27. Were they confused?
28. Were they wrong?
29. If something was there in 1856<sup>12</sup>, 1909<sup>13</sup>, and 1954<sup>14</sup>, was sketched by Nels Nelson in 1910, then how can a 2014 report that dug and didn't find it show that it does not exist?
30. Why is this report by Archeo-Tec so heavily relied upon in the DEIR for 1900 4th street?
31. Why is this 2014 Archaeo-Tec report so heavily relied upon in the DEIR for 1900 4th street when there is a well documented history of the Shellmound being at this location?
32. Who paid for the 2014 report by Archaeo-Tec?

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<sup>11</sup> Pg. 69 of DEIR

<sup>12</sup> U.S. Coast Survey Map of 1866 - Pg 79 of DEIR

<sup>13</sup> Pg. 82 of DEIR

<sup>14</sup> Article in Oakland Tribune 1954 regarding Professor Gifford

33. Who paid for the 1999 and 2000 report by Archaeo-Tec?
34. Who paid for the GANDA report in 2001/2002?
35. Where did the financing from these various reports come from?
36. Why are none of the previous 35 questions answered in the DEIR?

### Burials, Cultural Remains, Items, and Other Items of Cultural Significance in ALA-307

In the Archaeo-Tec 2014 report regarding 1900 4th Street, the stated purpose was to assess buried cultural remains at 1900 4th street and the vicinity, yet in their conclusions they state that they did not find evidence of the Shellmound.

1. How are these related?
2. How does their assessment of the cultural remains lead them to conclude that there is no shellmound here?
3. How can the DEIR for 1900 4th street conclude that there is no shellmound present on 1900 4th street when there is a historical record of the Shellmound being present on 1900 4th street that is quoted in the DEIR?
4. How can the DEIR for 1900 4th street conclude that there is no shellmound present on 1900 4th street when there is a historical record of the Shellmound being present on 1900 4th street that has been documented by Nels Nelson, Wallace and Lathrop, Chris Dore, the GANDA Report and several other archaeological and historical sources?
5. Why is the presence or non-presence of the shellmound an issue, when the site has already been deemed eligible for the National Register and is on the State Register?

The DEIR on page 74 acknowledges that there is cultural material on the site, but it believes it originated from somewhere else. This acknowledgement is important because it is acknowledging cultural material within the borders of ALA-307 and specifically on the project site. Thus, this culturally material would be disturbed and relocated if construction was to take place.

6. Why does it matter where the cultural material came from if it is located within the boundaries of ALA-307?
7. Does any of the paperwork, landmark status, or application for Landmark #227 require the Shellmound to be 'intact'? If it does, does this disqualify its status if it has already been landmarked?
8. Does any of the paperwork, landmark status, or application for Landmark #227 require the Shellmound to be 'undisturbed'? If it does, does this disqualify its status if it has already been landmarked?

9. Does any of the paperwork, landmark status, or application for Landmark #227 require the Shellmound to be in the original state that it was in the past? If it does, does this disqualify its status if it has already been landmarked?
10. Does any of the paperwork, eligibility status, or inclusion in the National or State Register, or application for CA-ALA-307 require the Shellmound to be ‘intact’? If it does, does this disqualify its status if it was already deemed eligible?
11. Does any of the paperwork, eligibility status, or inclusion in for the National or State Register, or application for CA-ALA-307 require the Shellmound to be ‘undisturbed’? If it does, does this disqualify its status if it was already deemed eligible?
12. Does any of the paperwork, eligibility status, or inclusion in for the National or State Register, or application for CA-ALA-307 require the Shellmound to be in the original state that it was in the past? If it does, does this disqualify its status if it was already deemed eligible?

### Unaddressed Discrepancies

1. Why are the conflicts between Archeo-Tec’s findings in its 2014 report and the findings of the GANDA report not discussed in the DEIR? How does the DEIR explain why they reach different conclusions? How does the DEIR explain why the perimeter of 1900 4th street is surrounded by deposits, yet they didn’t find anything on the site?
2. Why are the conflicts between Archeo-Tec’s findings in its 2014 report and the contributions of Richard Schwartz not discussed in the DEIR? How does the DEIR explain why they reach different conclusions? How does the DEIR explain why the perimeter of 1900 4th street is surrounded by deposits, yet they didn’t find anything on the site?
3. Why are the conflicts between Archeo-Tec’s findings in its 2014 report and the findings of the WSA Stadium Report not discussed in the DEIR? How does the DEIR explain why they reach different conclusions? How does the DEIR explain why the perimeter of 1900 4th street is surrounded by deposits, yet they didn’t find anything on the site?
4. Why are the conflicts between Archeo-Tec’s findings in its 2014 report and the findings of the Chavez report in 1989 not discussed in the DEIR? How does the DEIR explain why they reach different conclusions? How does the DEIR explain why the perimeter of 1900 4th street is surrounded by deposits, yet they didn’t find anything on the site?
5. Why is there no mention of Tremaine in the DEIR? Why is there no mention of the fact that Tremaine believed that he might have found the outer perimeter of the Shellmound area? How might his contributions explain why the perimeter of 1900 4th street is surrounded by deposits, yet they didn’t find anything on the site?

There are discrepancies between Archeo-Tec's findings in 1999/2000 and in 2014. Pastron concludes in 2000 that the Shellmound was very large and that the outer edge of the Shellmound was reached with his corings<sup>1516</sup>. Yet in 2014 he states that the Project site cannot be part of the shellmound and the materials found must be "run off". There is no mention in the DEIR of the discrepancies of findings of Archeo-Tec in 2000 vs 2014.

6. How did Archeo-Tec choose their locations for trenches in 2014?
7. Did they base their locations based purely on the results of their 1999/2000 auger locations?
8. Did Archeo-Tec consult with CHRIS and any other burials, or other new records that might have been provided since their 1999/2000 report?
9. Were the sites chosen for testing in 2014 weighed against information that may have been present in CHRIS?
10. How does the DEIR explain the changes in conclusions by Archeo-Tec from 2000 and 2014?
11. Why does the DEIR not explain these discrepancies in findings?
12. Did Archeo-Tec have a different employer or financier for their project in 2014 vs their project in 2000?
13. What year did the current developer get involved in the project?
14. Does not "a good effort at full disclosure" in the DEIR include information about who financed the 2014 study that appears to contradict all of the other available resources regarding deposits in the neighborhood?

### "Disturbed deposits" and the "Intact" Shellmound

Archeo Tec in their 2014 report concludes, despite finding Shellmound material in the area, that this was not the site of the Shellmound. They base this conclusion on the premise that "...much of the material was carted away during development and a substantial amount was scattered throughout the surrounding area. This dispersal makes it difficult to determine whether

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<sup>15</sup> Landmarks Preservation Committee 2/7/2000

" Allen Pastron-archeologist working in the Spenger's parking lot. He stated that a report would be released soon. In that report, there will be noted that disturbed midden was discovered by use of an auger in the northwest and eastern central quadrants of the parking lot. It is only a small sampling that has been done to date, but they believe that it is a significant deposit and it is approximately 2 to 8 feet beneath the surface."

<sup>16</sup> "...it appears that the center of the site was situated in and around the present day facilities of the Truitt and While (sic) Lumber Company. Nevertheless, there can be no doubt that the site's original horizontal boundaries were quite extensive, but never precisely determined (Wallace and Lathrap 1975:1-5). Given this, it is possible that the recently identified cultural deposit may represent an undisturbed, or at least minimally disturbed, remnant of the eastern edge of the West Berkeley Shellmound (CA-ALA-307)." (Pastron 2000:21)"

encountered cultural material is *situ* or redeposited.” Additionally he states, “Though we did not find intact shellmound, we did locate secondarily redeposited shellmound material...”.

The report continually notes that Shellmound material is found where other archaeologists have said the Shellmound area was located. There are several maps prepared by respected archaeologists that show the Project site as part of the Shellmound. Pastron, however, continues to conclude that the material must have come from somewhere else. Wallace and Lathrop stated decades earlier however that “in no place was absolutely sterile soil reached” (Wallace and Lathrap 1975:Appendix F). It was known that the Shellmound had been cut down, pillaged, and used for paving the streets of Berkeley.

The DEIR is misleading in this sense because it makes it seem that ‘intact’ material needs to be found. There is no question that 1900 4th street is located inside Berkeley Landmark #227. There is no question that 1900 4th street is located in CA-ALA-307. The DEIR misleads the reader by making it seem as though the DEIR or Archeo-Tec’s needs to prove whether 1900 4th street is the shellmound or not..

“The West Berkeley shellmound has been destroyed; however, it is apparent that subsurface remnants of the cultural deposit are present in the general vicinity of Hearst Avenue and Second Street ... Undisturbed West Berkeley cultural deposits could be present as well.” (Chavez 1989:27)<sup>17</sup> The information about whether the shellmound was intact or not was known prior to the designation under the California Register, it being found eligible under the National Register, as well as before it was made into City Landmark #227.

The idea that there is ‘secondarily redeposited’ material, or non-’intact’ material, or ‘dispersed’ material provides support for the premise that the project site, as well as the entire area, is the “Shellmond Area”. This is further described by Nels Nelson and confirmed by Christopher Dore. This is also supported by the WSA Stadium Report, the contributions of Richard Schwartz, the descriptions of Wallace and Lathrop, Pilling, the 1876 Tribune article, the 1954 Tribune article about Professor Gifford, the 1989 report by Chavez, the GANDA report, and Tremaine<sup>18</sup> in 2000.

The DEIR completely lacks reference to Tremaine’s contributions in 2000:

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<sup>17</sup> DEIR, Page 75 - Chavez, David, 1989. Archaeological Recovery Program for the West Berkeley Site (CA-ALA-307): Sanitary Sewer Rehabilitation for Infiltration/Inflow Correction Projects, City of Berkeley, California (Subbasin 15- 011), Clean Water Grant No. c-06-02967-110. David Chavez & Associates, Mill Valley, California.

<sup>18</sup> Tremaine noted that the fiber optic cable installation was “on the eastern limits of the West Berkeley Shellmound ...This testing occurred outside of the exclusion zone (the area of known midden plus a 100-foot buffer).”

“Shell midden was located between University Avenue and Hearst Avenue in potholes 3 and 4 (Tremaine 2000a). According to Tremaine (2000a), this was expected since the location of these holes was just east of the primary deposit. In addition, “dark soil with concentrated shell” was found “just south of Delaware Avenue in potholes 10 and 11” (Tremaine 2000a). In conclusion, Tremaine noted that the fiber optic cable installation was “on the eastern limits of the West Berkeley Shell Mound” and that utility locating through the site “does not appear to have had a significant impact to this cultural resource” (Tremaine 2000a). Tremaine observed that the portion of the deposit impacted appeared to have been highly disturbed, and that the potholes contained modern trash such as nails, glass, and plastic throughout their entire depth (Tremaine 2000a). Nevertheless, Tremaine indicated that pockets of undisturbed midden could possibly exist elsewhere on the site (Tremaine 2000a).<sup>19</sup>

Multiple burials and cultural remains have been found all within this small area of Berkeley. This is the last undeveloped portion of the “shellmound area”. All of the aforementioned archaeologists have produced work that supports the idea that the project site is significant and that it may be the last undeveloped portion of the shellmound area.

This is all evidence that has been developed by respected archaeologists who have demonstrated that 1900 4th street maintains integrity. This information is left out of the DEIR. These connections are left out of the DEIR. This information was not discussed sufficiently in the DEIR. This information is important because it paints a broader picture of the neighborhood, of the shellmound area, and how 1900 4th street fits into it.

### Augering and Backhoes - Possible Reasons for non-intact Deposits

In 2000 Pastron stated at a landmarks meeting that they found ‘disturbed’ cultural deposits by using an Auger. At the same meeting Jackie Kiehl stated that oftentimes deposits are confused as being disturbed because of how the augers bring them up to the surface.<sup>20</sup> Another

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<sup>19</sup> Christopher D. Dore, Stephen Bryne, James W. Jenks. (2002). *Cultural Resources Inventory, Significance Evaluation, and Effects Assessment for Capital Improvement Projects in Public Streets in the West Berkeley Redevelopment Area, City of Berkeley, Alameda County, California*. Prepared by Garcia and Associates for City of Berkeley Planning Department & Department of Public Works. January 2002. Job 283. Page 19

<sup>20</sup> Landmarks Preservation Committee 2/7/2000 Action minutes

“Jackie Kiehl stated that although it is noted that the deposit is disturbed, that this can often be misinterpreted when an auger is used. That type of testing device by definition, mixes the samples as it draws them to the surface. “

Landmarks Preservation Committee 2/7/2000

" Allen Pastron-archeologist working in the Spenger's parking lot. He stated that a report would be released soon. In that report, there will be noted that disturbed midden was discovered by use of an auger in the northwest

issue with Pastron's methodology, and a potential reason why he said that he did not find 'intact' deposits was because he used augers and backhoes.

For his borings in 1999, Pastron used an auger<sup>21</sup>, which spins the earth to the surface, thus mixing the contents of the soil.<sup>22 23 24 25</sup> Dore and Garcia and associates used corings in order to be able to identify whether deposits were intact or not.<sup>26</sup> The DEIR does not discuss what the preferred method is for finding 'intact' cultural remains. The DEIR does not discuss the differences between coring and augering. The DEIR does not discuss the limitations of augering in an archaeological context.

For his trenches in 2014, Pastron used a backhoe, which scooped the earth out and placed it onto screens.<sup>27</sup> They then identified the deposits that were on the screens. How can you tell whether a deposit is intact or not if you are looking at the contents of the bucket that is removed? You can only tell whether it is intact by looking at the sidewalls of where the scoop was taken out of. The DEIR makes no mention of the examination of sidewalls, but only mentions the shellmound material that was "screened".<sup>28</sup>

### We didn't find the Shellmound! - That's not the point ...

The DEIR is incomplete and faulty because it seems to be working under the assumption that it is required to prove or disprove the existence of the Shellmound. It operates under the

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and eastern central quadrants of the parking lot. It is only a small sampling that has been done to date, but they believe that it is a significant deposit and it is approximately 2 to 8 feet beneath the surface."

<sup>21</sup> DEIR page 70, "The testing consisted of 14 mechanical exploratory borings using a 24-inch auger mounted on a diesel-powered drill rig."

<sup>22</sup> Coring vs augering

"A core is defined as a continuous section of sediment or rock obtained by using a hollow cylinder called a corer or coring device. The core is a minimally disturbed section of subsurface material. An auger or drill is a device that cuts the sediment or rock in a helical motion, **disturbing the context of the material.**"

<sup>23</sup> <http://mcgillzooarchaeology.blogspot.com/2010/10/coring-augering.html>

"**Augering is the more destructive of the two**, requiring a drill of varying sizes bored into the ground and returning the soils from below. It can pull up in bucket sized increments the layers **which it has disturbed**, but they are by no means intact and sufficient for accurate study. To penetrate to large depths of several meters a motorized drill is often used to power the auger. ...

Alternatively coring ... preserves more accurately the layers below."

<sup>24</sup> [ftp://ftp.fao.org/fi/cdrom/fao\\_training/FAO\\_Training/General/x6706e/x6706e02.htm](ftp://ftp.fao.org/fi/cdrom/fao_training/FAO_Training/General/x6706e/x6706e02.htm)

"The auger boring method is cheap and fast, you can quickly check the soil at several places on your site, but it provides **only disturbed samples.**"

<sup>25</sup> See footnote #13.

<sup>26</sup> Dore, 2002, pg 33 "Cores were extracted with a trailer-mounted, piston-driven, Giddings Soil Sampling device. To penetrate the concrete, asphalt, and road base materials overlaying sediments, a 4-inch drill was used. When the softer sediments were reached, the drill bit was exchanged with a 2-inch core **capable of extracting intact sediment columns.**"

<sup>27</sup> DEIR, page 73

<sup>28</sup> DEIR, page 74

assumption that whatever material (cultural, burials or otherwise) is required to be found ‘in-tact’ to be of any significance.

The Boundaries of the site have been predetermined through its designation by the City (#227) and by the State (ALA-307). It is well documented that the site has a long history of being disturbed, relocated, dug up, looted, pillaged, used to pave streets, etc. The DEIR is faulty and incomplete because it tries to use this well-known history to confuse the fact that the site has already been designated by the City, the State, and is eligible for National Historic listing. The site has been found eligible regardless of whether it is ‘in-tact’.

The DEIR is faulty in that it fails to incorporate the entirety of what the ALA-307 site is. ALA-307 site is not just the shellmound. The DEIR fails to address the significance of the entire site, but instead only focuses on the Shellmound itself.

As evidenced by GANDA in 2002, Richard Schwartz in his various contributions, as well as documentation available at CHRIS (as a part of the record for ALA-307), various burials, artifacts, and cultural remains have been documented surrounding the site, and are located on ALA-307. The DEIR fails to address them, but instead focuses on the existence or non-existence of the Shellmound. Some of these deposits may be IN the shellmound (which the DEIR and 2014 Archeo-Tec tries to disprove) but others are located WITHIN the site boundaries of ALA-307.

The DEIR is misleading in that it appears to try to rely on proving or disproving the existence of the Shellmound on 1900 4th street. The boundaries of Landmark #227 are already set. The boundaries of CA-ALA-307 are already set. There is no disputing their boundaries. The existence of the Shellmound on the property is a non-issue. The DEIR is misleading in that it makes it an issue.

### We looked, and didn't find it, so we can say for certain it isn't there

If I look for milk in the refrigerator and don't find it. It doesn't mean it doesn't exist. It only means I didn't find it. It does not conclusively prove that it is not there. Why do Archeo-Tec in 2014 and the DEIR try to make conclusions about what they didn't find?

The DEIR and the 2014 Archaeo-Tec report on which it relies use faulty logic and reasoning to try and disprove the existence of the Shellmound. They state that they didn't find it in 2014, so it must not have been there or it must not be there. Instead of concluding that they didn't find anything, they instead conclude that it isn't there because they didn't find it. This is faulty logic for two reasons.

A. The first is that they state that something doesn't exist based on the absence of evidence. This falls into the Argument From Ignorance Logical Fallacy.

1. Is it normal policy with archaeologists that if you don't find what you are digging for then you can conclude that it must not exist there?
2. What percentage of 1900 4th street did they trench or auger up in 1999/2000 and 2014?
3. Is it fair to conclude that it isn't there just because they didn't find it?
4. Did they consult with CHRIS to see if any of the records might shed light on whether there might be any other 'hot spots' anywhere else on the property?

B. The second reason the logic is faulty is because in 1900 Nels Nelson sketched the site, and defined its boundaries. Nels Nelson stated that the site was shrinking due to looting, grave robbing, road paving, and general destruction (as stated in the DEIR and nearly every report that has been done on the Shellmound including the 2014 Pastron Report as well as the GANDA report). In 1856 the site was located on the U.S. Coastal Survey Map. In the 1950's the site was studied by UC Berkeley Professors. Again Wallace and Lathrop stated that the Shellmounds dimensions had shrunk to 45 x 100 feet according to the notes from those professors., This shows that the Shellmound has been decreasing in size due to the known destruction of it.

### Selective Use of Archaeological Data

Dr. Christopher Dore states in his report that 1900 4th street is part of the Shellmound. "An approximate boundary of Ca-ala-307, based on interpretation of one of Nelson's maps from Ca.1909 and the LaRamie findings, revealed that the majority of the Spenger's Parking Lot block might contain intact shellmound deposits" (Dore et al. 2002a)<sup>29</sup>

Dr. Christopher Dore believed that he verified the boundaries of Nels Nelson's maps through his corings, "Interestingly, the polygon that encloses all cores with primary deposits matches almost exactly the site boundary defined by Nelson in 1910."<sup>30</sup> This is not quoted nor mentioned in the DEIR. It is worth noting as well that the Nels Nelson Archaeological sketch of 1910 which Dore here refers to draws 1900 4th street as being nearly completely encompassed by the shellmound area.

The WSA Stadium Report is omitted from the DEIR, although it specifically mentions ALA-307 as well as the perimeter of 1900 4th street:

"The main body of the site was between 2nd and 4th Street and between Hearst and University Avenue, with the mound feature approximately one block in extent (CA-ALA-307 Site Card)...Dore conducted a subsurface boring program in 2001 for the City of Berkeley limited to streets in the vicinity of

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<sup>29</sup> Pastron, 2014. Pg 30

<sup>30</sup> Dore, *Why Here?* P 29

CA-ALA-307 (Dore 2002). The results of the boring program indicate that intact deposits, some over 3 ft. thick, extend from just west of 2nd Street to east of 4th Street, almost to 5th Street in Berkeley, and from University Avenue to just north of Hearst Avenue. Radiocarbon tests yielded a range of dates from ca. 3030 BC to AD 780. The site record does not identify the materials that were dated or their provenances. The entire above-ground mound was leveled in the 1950s and it is for this reason that Pilling reported that the site was destroyed. However, Dore has found with his drilling program that pockets of intact buried deposits remain. Dore describes the site as a substantial habitation site with a mound centered between 2nd and 3rd streets, and a much larger extended site radius based on a sketch map by Nelson produced in 1910.<sup>31</sup>

1. How did the DEIR utilize the scientific reports of Garcia and Associates (Amtrak station)? How does it explain why Archeo-Tec and the DEIR reach different conclusions about the location or absence of the Shellmound? Do the absence of utilization of these reports or records present an incompleteness of the record search to establish the baseline conditions?
2. How did the DEIR utilize the WSA Stadium Report? How does the DEIR explain why Archeo-Tec and the DEIR reach different conclusions about the location or absence of the Shellmound? Do the absence of utilization of these reports or records present an incompleteness of the record search to establish the baseline conditions?
3. How did the DEIR utilize the report on dating a Holocene shellmound by B.Lynn Ingram? How does the DEIR explain why Archeo-Tec and the DEIR reach different conclusions about the location or absence of the Shellmound? Do the absence of utilization of these reports or records present an incompleteness of the record search to establish the baseline conditions?
4. How did the DEIR utilize the Nels Nelson field notes for his 1909 survey of the site? How does the DEIR explain why Archeo-Tec and the DEIR reach different conclusions about the location or absence of the Shellmound? Do the absence of utilization of these reports or records present an incompleteness of the record search to establish the baseline conditions?
5. How did the DEIR use the book entitled *Mapping Archaeological Landscapes* which details a major project being conducted by UC's Archaeological Research Facility related to early indigenous life in the region? Do the absence of utilization of these reports or records present an incompleteness of the record search to establish the baseline conditions?

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<sup>31</sup> WSA stadium report, pg 24

6. How did the DEIR use the book *A Time of Little Choice* by Randall Milliken used in the preparation of the DEIR? Do the absence of utilization of these reports or records present an incompleteness of the record search to establish the baseline conditions?
7. How was the documentation for the Berkeley landmarks designation for West Berkeley Shellmound used in the Pastron report and the DEIR? Do the absence of utilization of these reports or records present an incompleteness of the record search to establish the baseline conditions?
8. In what ways were Ohlone ceremonies studied as a part of this report which analyzed the significance of the shellmound burial site? Do the absence of utilization of these reports or records present an incompleteness of the record search to establish the baseline conditions?
9. Why are the GANDA report's findings not gone into more detail in the DEIR? Do the absence of utilization of these reports or records present an incompleteness of the record search to establish the baseline conditions?
10. Why are the recommendations and conclusions from the GANDA report not explored in more detail in the DEIR?
11. Why are the maps and boundaries by Dore not included in the DEIR?
12. Why is the 1910 Archaeological Sketch by Nels Nelson not included in the DEIR?

### Baseline Conditions<sup>32</sup> - Did they gather all the facts?

1. Why did the DEIR give such little significance to the data provided by Richard Schwartz?
2. Why does the DEIR not give significance to the large volume of data that talks about artifacts, burials or cultural remains that ring and surround the parking lot?
3. Why did the DEIR not assume that the data regarding the perimeter of 1900 4th street might not shed light on what is contained within its boundaries?
4. Why does the DEIR not offer any explanation of why data that suggests disturbed and undisturbed deposits surrounding the parking lot is excluded?
5. Why does the WSA Stadium report discuss human remains found on or around 1900 4th street but the DEIR for 1900 4th street does not mention them?
6. Why does the DEIR omit so much data?

### Records Searches - Pg 68 of DEIR

The DEIR omits or selectively chooses which archaeological records are used. The DEIR leaves out several articles, reports, findings from neighboring properties, as well as archaeological reports. What it does use in the DEIR, it skims over at best, and fails to address

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<sup>32</sup> Page 67 of DEIR

the discrepancies between conclusions reached in various reports. The DEIR omits data that should be included in the DEIR.

The DEIR for 1900 4th street is incomplete and faulty because it does not include data that is available at CHRIS as well as data provided by Richard Schwartz that documents burials and cultural remains in close proximity to 1900 4th street, and that even ring 1900 4th street. It does not include data that Christopher Dore quotes and includes in his bibliographies. It does not have any mention of Tremaine in the entire DEIR.

The DEIR is faulty and incomplete because it fails to give adequate significance to a neighborhood that is riddled with archaeological deposits, burials, shell, and cultural remains and which is the home of ALA-307, Berkeley City Landmark #227, and which states that the West Berkeley Shellmound is an intrinsic part of the neighborhood in its General plan.

The DEIR fails to recognize the evidence of remains, deposits, shell, burials, cremations, and cultural deposits that are located all around the neighborhood of the proposed development at 1900 4th street. The DEIR ignores the wide variety of evidence that the Shellmound site is or may be partially located on 1900 4th street, including but not limited to the historical documentation of the Shellmound PRIOR to it being dismantled completely (1950's).

1. Richard Schwartz submitted around 400 burials found within and surrounding ALA-307. Mr. Schwartz was even a paid consultant to Archeo-Tec in their 2014 report.
2. What are “baseline conditions for archaeological resources in the project site and its vicinity”?
3. Why are Richard Schwartz 400+ burials given so little attention?
4. Do these 400+ burials fit the definition of “the project site and its vicinity” if they fall in, and around, ALA-307?
5. Why, if these are available in the record search, are these 400+ burials not included in the DEIR?
6. If 400+ burials are found in and around a site which is believed to be a Shellmound, or a burial place, aren't these important in terms of understanding the area?
7. If these are available in the record search, why are these 400+ burials not included in the DEIR?
8. If 400+ burials are found in and around a site which is believed to be part of the Shellmound area, don't these qualify as “the project site and its vicinity”?
9. Why are the contributions of Mr. Schwartz summarized (pg 78) as being “sensitive” instead of listing out that they contain over 400 burials?
10. Why is the number of articles or resources provided by Schwartz not mentioned?
11. Is there any evidence to support that any of the burials documented by Schwartz MAY be on the project site?

12. Is there any possibility that the burials provided by Schwartz could have been on the project site?
13. Can it be said conclusively that the burials provided by Schwartz are not on the project site?
14. Why does the DEIR on Pg 78 state that none of the newspapers on file from the NWIC are from within the project site?
15. How can the DEIR on pg 78 know for a fact that the newspapers on file from the NWIC are not from the project site?
16. Why does the WSA Stadium Report state that some of Richard Schwartz's documented burials WERE located on 1900 4th street? Does the DEIR for 1900 4th street believe that these burials were not located on 1900 4th street? What information has led the DEIR for 1900 4th street to conclude contrary to the WSA Stadium Report?
17. Why does the DEIR not address why the pattern of data (burials and cultural remains provided by Schwartz and GANDA[2002] that shows burials around the lot) would not be the same within the lot?
18. How do the burials and cultural remains documented by GANDA and Richard Schwartz fit into the context of the larger site?
19. The DEIR for the Grocery Outlet project across the street contained information regarding burials that were part of ALA-307 or the West Berkeley Shellmound site, why were these burials omitted from the DEIR?
20. Why is there a pattern of the DEIR for 1900 4th street omitting the context of burials and remains that have been found surrounding the current parking lot and on adjacent properties?
21. Why does the city and the DEIR believe that 1900 4th street is the exception to the ring of burials and cultural deposits that have been documented to ring around the current parking lot?

### GPR - Ground Penetrating Radar

The DEIR did not include the data sets for the GPR that they claimed to have done for the entire site. This means that the public and other archaeologists might be unable to do an effective peer review. The lack of data provided by Archeo-Tec makes it impossible for anyone, including experts, to evaluate, refute or support their conclusions. The DEIR does not include any data for GPR, nor does Archeo-Tec's reports from 2000 and 2014.

The DEIR mentions that as part of mitigation measure Cult-2a, that they will need to perform GPR to make sure that they do not find anything<sup>33</sup>. In the DEIR it states that part of Archeo-Tec's 2014 report that they performed GPR in order to pinpoint the most likely places

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<sup>33</sup> Cult-2a - Pg 20 of DEIR

for finding deposits.<sup>34</sup> In order to have given a complete DEIR, it would have had to have done a complete and comprehensive GPR in order to prove that there is nothing on the site.

The DEIR seems to contradict itself in terms of whether GPR was comprehensively used to find deposits on the site. This is troubling because the DEIR, as well as Archeo-Tec's reports fail to provide data regarding their use of GPR.

1. If they did GPR in the first place on the entire site, why would they need to do it again?
2. If they need to use GPR again to identify deposits, did Archeo-Tec's 2014 report miss something?
3. What does this say about the locations that Archeo-Tec chose to dig in 2014 if a mitigation measure in the DEIR is saying that they will need to perform GPR again before construction?
4. Where is the data for the GPR?
5. What is the salt content of the water that was found in the trenches and borings from Archeo-Tec found in 1999-2000 and 2014?
6. Does salt water interfere with GPR?
7. Could the water table under 1900 4th street contain salt-water?
8. Does the water table under 1900 4th street contain salt-water?
9. How effective would GPR be on this site if the ground-water has salt content?
10. Why does the DEIR fail to provide any information about the salt content of the water?
11. Why does the DEIR fail to provide any information about problems with GPR and salt-water?

### Water Table, Contradictions and its Significance for Cultural Remains

Pastron "recommend(s) that a site-wide ground penetrating radar (GPR) survey be conducted in advance of full-scale ground-disturbance and demolition ... One caveat is that GPR does not work especially well in very wet conditions, as water has the capacity of absorbing and scattering incident electromagnetic signals."<sup>35</sup> The site has a high water table. Several pictures<sup>36</sup> from the developer's website showed water at the bottom of some of the trenches.

Additionally, in the appendix, they mention encountering groundwater or the water table on several occasions in their borings and trenches. The average listed depth of groundwater being around 8-9 feet. Only on two occasions did they encounter water deeper than 10 feet in the trenches and the average depth of the water table from the numbers Pastron provides in his

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<sup>34</sup> DEIR pg. 73-74

<sup>35</sup> Pastron, 2014. Pg 14

<sup>36</sup>

<https://static1.squarespace.com/static/55406814e4b033b0c2b4cef3/554b40b1e4b02e2f91283a4c/554b91dae4b0f254f063e4d1/1431015902494/Spengers+arch+dig-8.jpg>

<http://www.1900fourthst.com/archaeology>

appendix for the 1999-2000 borings is 10.4 feet. Interestingly, he states “The water table was usually reached at 12-13 feet”<sup>37</sup>

1. Why is there a discrepancy in the depths at which Archeo-Tec states the average water table is and the depths at which he lists the water table being reached in the borings in the Appendix of the 2000 report?

Richard Schwartz has submitted an article from 1954 to CHRIS that states that Professor Gifford from Cal Berkeley “determined the age of various bone, stone, and shell artifacts to be 2,200 years old at the eight foot level, and 2700 years at the 12-13 foot level.”<sup>38</sup> at the south side of this site. Thus there likely are artifacts, bones, or cultural material that could be below the current water table. Even if Archeo-Tec was reaching the water table at 12-13 feet, this is still the depth at which Gifford was finding evidence of 2700 year old deposits. The Gifford article from the Oakland Tribune is not included in the DEIR.

Additionally, in the borings from 1999-2000 the average depth of the borings which he believed he found CA-ALA-307 is in between 9-10 feet. This could mean that much of the bones/shellmound/items may be at or below the waterline. This has implications for GPR as if the water table has salt water then this could mean that GPR would be compromised when trying to see if there are deposits under the water table.

Even if the borings are 12-13 feet, as Archeo-Tec states, this still has implications for GPR if there is salt content in the water table.

### Impacts on the Disciplines of History, Geology, Archaeology, and Anthropology etc.

The DEIR states “Based on analysis contained in the Initial Study (Appendix B) the City has determined that the proposed Project would not result in significant impacts to the following environmental topics: aesthetics; agricultural and forestry resources; biological resources; cultural (historic and paleontological) resources; geology and soils;”<sup>39</sup>

Wallace and Lathrop stated “As a concluding statement, it can be said that the West Berkeley shellmound proved to be of unusual significance to the understanding of San Francisco Bay’s prehistoric past. Not only has the midden’s excavation enriched the archaeological record with a considerable body of substantive data, but, more importantly, it extends knowledge of man’s presence in the bay region farther back in time by providing the first clear-cut evidences

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<sup>37</sup> Pastron, 2014. Pg 27

<sup>38</sup> Gifford, 1954, *Ancient Indian Village Described*

<sup>39</sup> DEIR pg. 63

of Early Horizon occupation, hitherto recognized only at inland localities. Major and minor differences in detail distinguish the bayshore Early manifestation from its interior counterpart, though there can be little doubt of their generic affinities.” (Wallace and Lathrap 1975:59)<sup>40</sup>

Here the DEIR is faulty in that it fails to address the impacts that disrupting this site would have on various academic fields. Being that this is viewed as the oldest Bayside settlement on the shores of the San Francisco Bay, it could offer valuable resources to be analyzed to various Academic fields.

The DEIR fails to address what the impacts will be on future digs or studies to the fields of history, geology, archaeology, anthropology, etc., if the site is covered up by a large building. The proposed development would not only impact, but could potentially destroy these cultural, historic, archaeological, anthropological, and geological resources. At the least they would significantly limit the ability for access.

The DEIR as well as the Archaeo-Tec report rely on the idea that because they didn't find the Shellmound, then it is OK to develop the site. Part of the sites eligibility for listing in the California Register of Historic places was under Criterion 4, which states that “it has yielded ... information important in pre-contact history”. This makes the site ALA-307 important as a whole because it has given us information about pre-contact history in the past, as well as being potentially able to give us more information in the future. Why does the DEIR allude to the fact that it will not be of import in the future?

The DEIR seems to fail to grasp that part of the reason that this site has listing in the California Register for Historic Places is that it may contain information that will be provided in the future. Therefore putting a building on top of the site would put that information into jeopardy and could destroy future archaeological finds.

1. What will the access be like for future study of these various academic fields?
2. How will the disruption of the soils and the removal of so much dirt affect these fields of study when researching one of the oldest inhabited settlements along the shores of the San Francisco Bay?
3. How will the development prevent future research of the site?

### ‘Preservation in Place’

The demolition of the existing building would involve digging up the ground to remove it and it's foundation. The project for the larger development of 1900 4th street also involves

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<sup>40</sup>

removing the top 8 feet of soil.<sup>41</sup> The removal of this soil would mean that any cultural remains, burials, or objects that were found would not be able to be left in place. It is required that the option exists for ‘preservation in place’<sup>42</sup>. CEQA Guidelines Section 15126.4 (b)(3) provides the guidance for projects like this- “preservation in place is the preferred manner of mitigating impacts to archaeological sites.”

1. How would ‘preservation in place’ be possible if the top 8 feet of soil is removed from the site?

### Strawberry Creek

The DEIR uses the 1911 Sanborn Maps<sup>43</sup> without referencing this location of the creek was the result of channelization in 1874. The DEIR uses the incorrect location for Strawberry Creek. The information regarding the historical course of the creek, as well as the non manmade course of the creek should be included in the DEIR.

Pastron’s 2014 report, as well as the DEIR talk about “redeposited material” as the reason why they are finding evidence of the Shellmound on the site. They claim that it is not part of the West Berkeley Shellmound but instead was redeposited there. One of his theories is that this was washed from Strawberry Creek,<sup>44 45</sup> however Strawberry creek was on the opposite side of the parking lot from where he found deposits.

Additionally, he states that these deposits likely were from the West Berkeley Shellmound, which was West of his trenches and borings, which seems like it means that the deposits would have washed uphill and against the flow of Strawberry Creek.

1. Where are the studies or maps of the historical course of the creek in the DEIR?
2. How does the historical path of the creek line up to where it says on page 74 of the DEIR, “That is, while these materials possibly originated from CA-ALA-307, they were likely relocated due to natural creek deposition”?
3. If the course of the creek prior to 1874 was south of University, how did this deposition take place?

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<sup>41</sup> “Up to 8 feet of site soils would be excavated across the entire site to remove materials that may not be suitable for Project development.” Pg. 60 of DEIR

<sup>42</sup> Madera Oversight Coalition, Inc. v. County of Madera (199 Cal. App. 4th 48 (2011) ruled that “feasible preservation in place must be adopted to mitigate impacts to historical resources of an archaeological nature unless the lead agency determines that another form of mitigation is available and provides superior mitigation of the impacts.”

<sup>43</sup> DEIR pg. 79

<sup>44</sup> DEIR, pg 74

<sup>45</sup> Pastron, 2014 - pg 36

4. How exactly did the creek deposit parts of the Shellmound so far from where the creek was located? Why are no maps provided as to the historical course of the creek?
5. If the ‘heart’ of the shellmound is located nearer to Truitt and White, how did Strawberry creek deposit the shellmound upstream?
6. If the ‘heart’ of the shellmound is located nearer to Truitt and White, how did Strawberry creek deposit the shellmound eastward?
7. If the ‘heart’ of the shellmound is located nearer to Truitt and White, how did Strawberry creek deposit the shellmound uphill?

Strawberry Creek has been daylighted on other parts of its course. Why was it not considered for daylighting as an alternative in the DEIR?

### Lack of Consultation under AB-52<sup>46</sup>

The consultation under AB-52 is incomplete. The proposed project will have an impact on a Tribal Cultural Resource known as the West Berkeley Shellmound. The City has so far denied full consultation with tribes that have requested it. The DEIR should include consultation with all tribal entities to which the proposed project is a cultural resource. Despite requests, the City has only preliminarily consulted with Corrina Gould of the Confederated Villages of Lisjan.

The Confederated Villages of Lisjan has not participated in the discussion of potential mitigation measures, they have not been allowed to give additional information about the site, and they have not been consulted about potential alternatives to the site.

The Landmarks Commission as well as the Zoning Board in their public comments both stated that they would like to see consultation with Corrina Gould and the Confederated Villages of Lisjan, as well as hearing from more Ohlone voices. Members of each Commission brought up the apparent Conflicts of Interest of the current consultant Andy Galvan, as well as the lack of

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<sup>46</sup> CEQA Appendix G- Environmental Checklist includes an additional category- separate from the Cultural Resources section utilized prior to adoption of AB 52, which the City failed to include within the Initial Study or the DEIR despite acknowledging potential impacts in this area. See below.

#### XVII. TRIBAL CULTURAL RESOURCES

a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or

ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Conflicts of Interest of Corrina Gould. Both boards had board members who publicly spoke about how it appeared that Corrina Gould was interested in protecting and preserving the site, whereas Mr. Galvans interests and financial motivations were unclear. Ms. Gould has attended every public comment for the site since March 2016, whereas Mr. Galvan, along with the developer, has refused to comment at the provided public comment periods.

Without complying with the requirements of AB-52 for consultation<sup>47</sup>, the City cannot complete the EIR process.

The city did the bare-bones minimum part of the requirement for Tribal Consultation. It sent 5 emails out to persons given to them by NAHC.

1. How did the City Planners, LSA, and the preparers of this DEIR go about contacting the Ohlone people?
2. Who was considered for consultation?
3. Did the preparers and planners of this report only use the NAHC list to contact the affected Indian Tribes?
4. What other research was done to find out what tribes or groups might be affected?
5. Due the fact that LSA has been approached by Corrina Gould regarding another project of theirs at Mission Peak in the East Bay Regional Park District, why did they not contact Ms. Gould regarding this project?

### Apparent Conflicts of Interest with the Chosen Consultant

Section 29226 provides a Code of Ethics for Most Likely Descendents and their Authorized Representatives to follow. Subdivision (a) provides that Most Likely Descendents shall not:

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<sup>47</sup> Discussion Draft Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA prepared by the Governor's Office of Planning and Research states the following at page 3:

The Public Resources Code now establishes that “[a] project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.” ([Pub. Resources Code, § 21084.2.](#))

To help determine whether a project may have such an effect, the Public Resources Code requires a lead agency to consult with any California Native American tribe that requests consultation and is traditionally and culturally affiliated with the geographic area of a proposed project. That consultation must take place prior to the determination of whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. ([Pub. Resources Code, § 21080.3.1.](#))

If a lead agency determines that a project may cause a substantial adverse change to tribal cultural resources, the lead agency must consider measures to mitigate that impact. [Public Resources Code §20184.3 \(b\)\(2\)](#) provides examples of mitigation measures that lead agencies may consider to avoid or minimize impacts to tribal cultural resources.

*Have a financial interest in the treatment and disposition of the Native American human remains and/or associated items for which the Most Likely Descendants have been identified as Most Likely Descendants. **Most Likely Descendants and their authorized representatives shall not serve as paid archaeological or cultural resource monitors for projects where the remains for which the Most Likely Descendants have been identified were discovered.***

Mr. Galvan is a paid consultant to the archaeological firm Archeo-Tec<sup>48</sup>. Mr. Galvan also is the party that was contacted and provided consultation from the NAHC list<sup>49</sup>. This relationship has been brought up in newspaper articles, by ZAB members during public comment, as well as by various members of the Landmarks Commission during their public comment.

Mr. Galvan is the President<sup>50</sup>/CEO<sup>51</sup> of the non-profit in Fremont which is listed in the DEIR as potentially receiving \$75,000. This was stated as not being part of the required mitigation measures by Shannon Allan at a Landmarks Commission meeting, however it is listed as a mitigation measure on the table presented on page 23 of the DEIR. Interestingly, Mr. Galvan's brother, Philip Galvan is listed on the non-profits Tax Filings for 2011 and 2014 as the CFO.

### Tribal Cultural Resources

The DEIR fails to address what impact the proposed project will have on the living culture of the Ohlone people. It also fails to address the impact that the development would have on access to their sacred site. Additionally, it fails to address the impact that will have on the Ohlone's connection to the West Berkeley Shellmound.

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<sup>48</sup> “ The 2014 archaeological investigation was conducted for the current Project by the Project applicant's consultant, Archeo-Tec. Andrew Galvan of the Ohlone Indian Tribe worked with Archeo-Tec to provide tribal monitoring services for the investigation.” Pg 73 of the DEIR.

<sup>49</sup> Pg. 80 of DEIR.

<sup>50</sup> See Footnote #48 on DEIR pg. 81 “Galvan, Andrew, 2016. President, Board of Directors, The Ohlone Indian Tribe, Inc. Written communication with Shannon Allen, City of Berkeley, Principal Planner. RE: Request for Funding to Conduct Improvements at the Ohlone Indian Cemetery in the Mission San Jose District in the City of Fremont, California. September 7.”

<sup>51</sup> See Ohlone Indian Tribe, Inc. Tax Filings from 2011 and 2014

The California Legislature amended CEQA through passage of AB 52, requiring a new category, Tribal Cultural Resources<sup>52</sup>, be included in the evaluation of environmental impacts by agency decision-makers. There is no Tribal Cultural Resources section in this DEIR.

This section needs to be included because a substantial adverse change will have on the integrity of Landmark #227, or its impact on the Ohlone people's spiritual and cultural connection to the site. This impact is acknowledged in Cul-2 of the DEIR.<sup>53</sup> Without this section, the DEIR is incomplete. It is lacking an entire section as required by CEQA. As it has currently been prepared, the only decision possible is the no-build alternative.

### Mitigation measures

Mitigation Cul-2<sup>54</sup> is completely inadequate and will not suffice as a mitigation measure. There is no mitigation measure that could reduce or lessen the unavoidable environmental impacts to this resource. Not only does this mitigation measure not include the opinion or involvement of the Ohlone people once the project is approved, but it also does not address the impact.

As mentioned by Zoning Board members O'Keefe and Clarke at the 1/12/2017 ZAB meeting, the impact to the site is to the site itself, not just the artifacts or bones that might be removed. The mitigations are not to mitigate the removal of the bones, but should be to site and place itself. The mitigation measures here are incomplete and fail to properly address the point. They fail to take the site into context. They assume that it is OK to treat the bones and burials with respect once they are removed. The removal itself is the issue. The removal is what destroys the site. It is not the destruction of the bones or artifacts, it is the destruction of the site.

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<sup>52</sup> CA Public Resources Code § 21074

(a) "Tribal cultural resources" are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

(B) Included in a local register of historical resources as defined in subdivision (k) of §5020.1.

(2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of §5024.1. In applying the criteria set forth in subdivision (c) of §5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

(b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in §21084.1, a unique archaeological resource as defined in subdivision (g) of §21083.2, or a "non unique archaeological resource" as defined in subdivision (h) of §21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

<sup>53</sup> Pg 20 of DEIR

<sup>54</sup> DEIR pg. 20

AB-52 Measure Cul-1<sup>55</sup> (although stated to not be a mitigation measure by Shannon Allan at one of the Landmarks Commission meetings).

1. This measure involves a cemetery that is located approximately 40 miles away in Fremont.
2. What vetting of this non-profit was done by the City?
3. Why is this measure (which is listed in the Mitigation table) being put to use at a location that is ~40 miles away?
4. How is donating to one burial ground a mitigation for digging up another?

AB-52 Measure Cul-2<sup>56</sup>.

This measure appears to give the city a map of archaeological resources that they can avoid or protect in the future. Approving this project would result in the adverse changes in one of these resources.

1. If this project was not approved, would this GIS Survey include the West Berkeley Shellmound or 1900 4th street?
2. If this would be a resource that would be listed hypothetically on this GIS survey, why is this project being considered for development?
3. Why is this a mitigation measure of destroying a known archaeological resource?
4. How is mapping out the other resources a mitigation measure for destroying a known one?
5. How will this information be used to protect archaeological and cultural resources?

Recommended Measure Cul-1<sup>57</sup>.

This measure would put up a display about the site and its history. The development of this project would destroy the site that is proposed to be displayed.

1. Is destroying a site and then putting up a plaque really a mitigation measure?
2. How does that mitigate the loss of history and culture?
3. How does that mitigate the loss of a cultural resource?
4. How does a display on the wall facilitate the Ohlone people to gather and pray at the site?
5. How did the displays at the Emeryville Shellmound work out?
6. How much time do visitors spend at the displays at the Emeryville Shellmound?
7. Does the city believe that this is a respectful way to treat their oldest site?

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<sup>55</sup> DEIR pg. 97

<sup>56</sup> DEIR pg. 97

<sup>57</sup> Pg. 97 of DEIR

8. Would the city propose destroying other landmarks registered by the Landmarks Commission and putting up a photo of what used to be there?

### Alternative Plans and Locations

The DEIR states that no alternative plans were proposed, therefore no alternatives are discussed. The City also must consider whether this project could be done in another location.

One of the issues with this location is that it is part of ALA-307 as well as Landmark #227. These landmarks have fixed boundaries. The same issues presented by the public, the tribes, as well as in this letter would not likely be included for any project that isn't located on ALA-307 or on Landmark #227. Therefore it seems that there is a large number of alternative sites for this project. The City is required to consider whether there are alternative locations that could be used for this project that do not result in the same 'significant unavoidable environmental impacts'. Clearly any location not on ALA-307 or Landmark #227 would satisfy this requirement. The DEIR however does not include any alternative locations for this development.

The applicant is required to consider whether other properties could be purchased, leased or otherwise obtained for the purposes of an alternative project.<sup>58</sup>

1. Why were so few alternative plans provided in the DEIR?
2. Why could an alternative site not be acquired?
3. At the Zoning Board, Boardmember Pinkston mentioned during one of the Public Comment periods, as well as Denny Abrams, that the site was being purchased for ~\$15-17 Million. Are there no other sites of a similar size that could be acquired for the same amount or less in the city of Berkeley?
4. Why was there no mention of daylighting Strawberry Creek?
5. Why was there no mention of an alternative plan that had to do with creek restoration?
6. Why was there no alternative plan that involved an Ohlone led project to see what they would like done with their sacred site?
7. Why was there no alternative plan for an Ohlone Museum or Cultural Center?
8. Why was there no alternative plan that talked of a park or open space? (as opposed to the 'No-build' option)
9. Why were tribes not consulted for their wishes as to alternative plans?
10. Why was there not an alternative plan that involved a no-dig option?

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<sup>58</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553.

## Contamination of Soils

Several of the Borings and Trenches found in the appendix of Pastron's 2014 report state that they encountered "demolition debris" and others included "demolition debris, which looks 20th century in origin". In the appendix of Allan Pastron's 2014 report it states that Trench 10 had contaminated soil, in Trench 11 there was a "petroleum odor", in Trench 12 there was a "noxious petroleum odor" and "oil contamination" in Trench 22.<sup>59</sup> Additionally, slag was found in several borings and trenches, although it is usually not considered hazardous waste. No mention of this is found in the DEIR,

Near, on, or adjacent to 1900 4th street were two Oil companies, El Dorado Oil, and Deitz Oil. Deitz Oil once was located at 3rd x Hearst Street. At the intersection of the railroad tracks and Hearst at the present day there is a marker for an underground petroleum pipeline. No mention of the pipeline or of these historic Oil companies can be found in the DEIR.

1. Why does the DEIR not mention El Dorado Oil or Deitz Oil?
2. Why does the DEIR not mention the "petroleum odor", "noxious petroleum odor", or "oil contamination", as can be found in Archeo-Tec's 2014 Report.
3. Why is there no mention of this contaminated soil?
4. How does the marked underground petroleum pipeline at the Railroad tracks of Hearst and the Railroad tracks get affected by this development?

## Low Income Units

1. Due to having 155 units, under the Rental Housing Mitigation Plan, this project would need 31 units Below Market Rate units. It appears that this project is proposing 13 units that it needed to qualify for the Density Bonus.
2. How many low income units is this project proposing?
3. Who pays the in lieu fee of \$4.8 million if all 31 units are not provided?
4. The project appears to be 23 feet above the height allowed by the Zoning Code for the City of Berkeley. The extra height appears to be parking. How does this result in cost reductions needed to provide for the affordable housing costs or lower rental rates?
5. Are Below Market Rate units required to pay for parking passes?
6. Are the affordable or lower rental rate units required to pay for parking passes?
7. What options do affordable, lower rental rate units or Below Market Rate units have for parking? What will the cost be of this parking?
8. Is this included in the Below Market Rate analysis?

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<sup>59</sup> Pastron, 2014. Pgs 68-70, 79 and 81

9. How do the affordable, lower rental rate units, and below market rate units compare to the Federal Poverty Guidelines?
10. At what percentage of the Federal Poverty Guidelines would these units fall into in terms of rent alone?
11. To be more clear, how much will these units be rented for, and how does that number compare with the Federal Poverty Guidelines for a family that could fit into that unit?
12. If the proposed development has a 200+ surplus in parking spaces due to the extra parking spaces on its proposed development that are not used for residents of the building, how do these parking spaces produce funding for affordable housing?
13. How will the traffic generated impact the low and very low income residents along 5th street between Hearst and Cedar?
14. What will be the effect of displacement and gentrification on the residents of 5th street between Hearst and Cedar?
15. Where in the DEIR is this analyzed, studied, or mentioned?
16. Being that South Berkeley and West Berkeley are absorbing the majority of new housing in Berkeley, how will this affect low-income residents of these neighborhoods?
17. How will this project affect its low-income neighbors?
18. How does the project help to alleviate poverty in the area, as called for in the West Berkeley Plan?
19. What will be the average rent of the proposed residences at 1900 4th street?
20. How does this rent compare with the rents of lower-income units in the neighborhood?
21. What will be the mean increase in rent in the neighborhood if this project is constructed?
22. How will this affect low-income residents?
23. What does this project propose to mitigate the displacement, gentrification or rising rents in the neighborhood for low income families?

### Sidewalks:

1. The right of way on 4th St, South of Hearst, is currently ~30 feet. How will on street parking, three foot bulb outs, truck loading and unloading, the bicycle boulevard and two lanes of traffic be accommodated?
2. How does this project fit into the required widths of sidewalks in this neighborhood?
3. How will this development affect visibility of pedestrians when pulling out of parking lots?
4. How will this project affect traffic safety when cars are pulling out of its parking lot?
5. What are the current regulations for sidewalks widths on 4th street where this project is to be located? How will the project proposed for 1900 4th street fit into these regulations? What are the proposed widths of sidewalks in front of this project?

## SB-18

Since the Housing Development Plan was put into effect in 2005, the City of Berkeley has amended it multiple times. The City is required to include the local tribes in consulting with that plan prior to amending it.<sup>60</sup>

Did the City consult with the Confederated Villages of Lisjan when amending their general plan?

Did the City consult with the Confederated Villages of Lisjan when amending their Housing Development Plan?

## Permits

For the following section, the term “dig” includes; any excavation, trenches, borings, augering or any disruption of the soil that took place on ALA-307 or Berkeley City Landmark #227.

1. Why were digs allowed or permitted on ALA-307 and Berkeley Landmark #227?
2. Wouldn't this disturb the sites?
3. Why were studies needed of these sites if their boundaries had already been established by their City Landmark status (#227) and by ALA-307's inclusion in the California Register?
4. What is the purpose of trying to find remains, cultural material, or other objects when we already have designated these areas as landmarks or included them on the historic register?
5. Were permits given for the various digs, trenches, and borings that have taken place in the last 20 years on 1900 4th Street?

### Archeo-Tec (1999-2000)

1. In terms of Berkeley City Landmark # 227 and the Landmarks Ordinance, were permits given for the dig, study, or report?
2. Did they receive an OSHA permit?
3. Was a plan for that dig given to the city of Berkeley?
4. Was a plan of that dig given to the Berkeley Landmarks Commission?

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<sup>60</sup> SB-18 “(3)...This bill would require the planning agency on and after March 1, 2005, to refer the proposed action to California Native American tribes, as specified, and also provide opportunities for involvement of California Native American tribes. The bill would require that, prior to the adoption or amendment of a city or county's general plan, the city or county conduct consultations with California Native American tribes for the purpose of preserving specified places, features, and objects that are located within the city or county's jurisdiction.”

5. Did the City of Berkeley or any of its commissions, or departments or governmental agencies provide inspections, receive plans, or issue a permit for that dig?
6. Were there any peer reviews of that dig or study?
7. Was there any written plan, a permit issued, or an inspection done for that dig that was required to be submitted to the City of Berkeley, any of its departments, commissions or any other governmental agency, including and not limited to the City, State, County or Federal Government?
8. If there are any permits, inspections or plans, (by the city, landmarks commission, OSHA) where can they be found?
9. Did they receive a permit in accordance to Berkeley Municipal Code 3.24.260?
10. What did those permits, plans or inspections entail?
11. Why are they not included in the DEIR for 1900 4th street?

Archeo-Tec (2014)

12. In terms of Berkeley City Landmark # 227 and the Landmarks Ordinance, were permits given for the dig, study, or report?
13. Did they receive an OSHA permit?
14. Was a plan for that dig given to the city of Berkeley?
15. Was a plan of that dig given to the Berkeley Landmarks Commission?
16. Did the City of Berkeley or any of its commissions, or departments or governmental agencies provide inspections, receive plans, or issue a permit for that dig?
17. Were there any peer reviews of that dig or study?
18. Was there any written plan, a permit issued, or an inspection done for that dig that was required to be submitted to the City of Berkeley, any of its departments, commissions or any other governmental agency, including and not limited to the City, State, County or Federal Government?
19. If there are any permits, inspections or plans, (by the city, landmarks commission, OSHA) where can they be found?
20. Did they receive a permit in accordance to Berkeley Municipal Code 3.24.260?
21. What did those permits, plans or inspections entail?
22. Why are they not included in the DEIR for 1900 4th street?
23. Did the city of Berkeley check with the California Historical Resources Information System to find out if any of the aforementioned digs, trenches, or borings might have been inside the site boundaries of ALA-307 or Berkeley City Landmark # 227?
24. Would checking to see if the digs, trenches or borings were located within ALA-307 or Berkeley Landmark #227 be required under CEQA?

## Miscellaneous Zoning and Code

The BMC has a height limit for parapets of 42 inches.

1. How high are the parapets for this project?
2. How do they justify higher parapets if they are higher than 42 inches?
3. Why is this explanation not included in the DEIR?

Including the other developments within 4 blocks of the proposed project, there have been approximately 540 units permitted, entitled or under various stages of completion. Including this project, this means there is expected to be over 1500 new residents. The West Berkeley Plan has a standard of .81 students per unit.

4. Are Berkeley's schools capable of taking in these additional students?
5. Are the neighborhoods schools capable of taking in these additional students?
6. How does the proposed project at 1900 4th street and/or their DEIR deal with their additions to Berkeley schools?
7. Are there enough parks and recreation options available in the neighborhood to deal with the proposed developments expected residents?
8. Are there enough parks and recreation options available in the neighborhood when the expected residents of the proposed project are added to the other new residents that will be joining the neighborhood as a result of neighboring projects?
9. How will the project affect Emergency services?
10. How does this fit into the Fire Departments threshold levels?
11. When was the last time the fire departments threshold levels were revised?
12. When do we expect the next revision of the fire departments threshold levels?
13. The West Berkeley Plan had a #1 goal of maintaining manufacturing jobs which pay unskilled workers a good wage. How does the proposed project fit into that goal?
14. The West Berkeley plan also mentions preserving its diversity and existing residential areas. How does the proposed development help to preserve the diversity of West Berkeley and to protect the existing residential areas?

## Utilities

The GANDA report has already shown that they found culturally sensitive material in the streets surrounding 1900 4th street. This will have an affect on installing and maintenance of utilities for 1900 4th street for the proposed project. There are no mitigation measures included due to utility access and the inevitable digging that will be required where culturally sensitive

material has been found. Furthermore, the DEIR fails to address the digging that will be required for Utility access in areas where the GANDA report found culturally sensitive material.

1. How will the Utilities and their required trenching affect the cultural resources, burials, or other in-ground deposits that are a part of ALA-307 and Berkeley Landmark #227?
2. How do the recommendations and conclusions of the GANDA report fit into the need for Utility access and development for the project of 1900 4th street?

The GANDA report was focusing on the streets after all, and this development would need access to the Utilities.

3. Where in the DEIR does it show how their utility access might affect cultural resources, burials, or other parts of the Shellmound, Berkeley Landmark #227 or ALA-307?

### Neighboring businesses

1. What will be the effect of the proposed retail establishments on the neighboring retail businesses?
2. What will be the effect of the proposed restaurants on restaurants that are currently in the neighborhood?
3. How does the amount of additional residents relate to the amount of additional shops that will be installed at the proposed project? Are there enough residents at the proposed project to justify the number of restaurants proposed?

### Traffic

When adopting the West Berkeley Project EIR (Resolution No. 65,209-N.S), certain mitigations were deemed infeasible such as TDM, signal light at 4th and Hearst, restriping 6th, West Frontage Rd changes, and changes to 5th at University.

1. Due to these being deemed infeasible, can these be mitigations?
2. What mitigations that were not included or addressed in the West Berkeley Project EIR are proposed?
3. How will the expected traffic problems be eased if you don't include the mitigations that were deemed infeasible by the West Berkeley Project EIR?

The Intersection at 6th and University has been operating at a LOS E-F in recent years.

4. How can a development make an LOS E or an F intersection worse?
5. How can this be allowed?

## Parking and Public Transport

1. In terms of the Extra Parking spaces (155 residential units with 158 parking spaces and 372 total parking spaces) provided by this project, since they appear to provide income for the owner, should they be considered a separate commercial use?
2. How do these extra parking (155 units with 158 parking spaces and 372 parking spaces) spaces fit into the city of Berkeley's policy of housing over cars?
3. How will the price of parking for the public in the proposed development for 1900 4th street compare to the current price of parking at 1900 4th street (the current parking lot)? How will the price of parking for the proposed development compare to street parking?
4. Why does the proposed development offer 214 public parking spaces when the current lot offers over 300? Where in the DEIR does it explain why it will be taking away public parking for the neighborhood?
5. How can this project take away parking for the neighborhood (a net loss of parking spaces), while adding housing and retail density to the neighborhood?
6. Due to tenants being required to pay for parking, how will this affect the current street parking? At what hours will the street parking be affected by the tenants of the proposed development at 1900 4th street who decide to park on the street?
7. Where at the intersection of 6th and Cedar Street does the AC transit line 52 stop?
8. How does this project affect Amtrak passengers at the nearby Amtrak station?
9. How will the increased traffic affect Amtrak passengers coming and going from the Amtrak station?
10. How will this project affect the Amtrak trains in terms of being on time?
11. How will this project affect the safety of people on the railroad tracks?
12. How will this project affect the safety of pedestrians on the railroad tracks?
13. What notice or instructions will be given to the public who is parking on this proposed property regarding safety near the railroads tracks?
14. What notice, instructions or warnings will be given to residents of the proposed project regarding safety near and along the railroad tracks?
15. What are the the expected increases in injuries and fatalities due to the close proximity of the project to the railroad tracks? What studies have been done on this?

## Skyline, Views and Solar access

How will this project affect the views of commuters at the Amtrak Station? How will this project affect the views of Grizzly Peak from the Amtrak Station? How will this project affect the views of Mt. Tamalpais from the Amtrak Station? How will this project affect the views of the Berkeley Hills, Grizzly Peak, and Mt. Tamalpais from neighboring properties? How will this

project affect the views of the Berkeley Hills, Grizzly Peak and Mt. Tamalpais from the sidewalks around this project? How will this project affect solar access to neighboring properties?

### Wildlife

How will this project affect the wildlife in the neighborhood? How will this project affect the bird populations that live around or on the current parking lot? How will this project affect species such as Anna's Hummingbirds, California Towhees, European Starlings, White-Crowned Sparrows, Rock Doves, American Crows and California Gulls? Will this project include any of the spikes, wire, or other methods used by large buildings to deter birds from landing on them or nesting on them? What will be the effect of the construction of this building on wildlife in the area? What effect will the digging and large equipment have on wildlife in the area? What effect will the vibrations caused by construction have on the wildlife in the area? What mitigations have been made for Wildlife disturbance, relocation or disruption?

### Railroad Crossing

Currently there is a lot of traffic along the railroad tracks next to the proposed site on Hearst St. This is a busy intersection and is difficult to cross because you cannot park or stop on the railroad tracks. It appears that the DEIR is deficient in its study and analysis of safety along the railroad tracks in terms of cars, bicycles and pedestrians.

1. What dangers are posed by having an exit to the parking lot or 1900 4th street that is in such close proximity to the Railroad tracks?
2. What other projects along this railroad also have exits to their buildings or parkings that are this close to the railroad tracks?
3. How will this exit affect traffic coming and going to Truitt and White or to the Eastshore Highway direction?
4. If an 8 foot retaining wall or fence is going to be installed along the railroad tracks, on the Western boundary of the site, how will this affect visibility when exiting the proposed development at 1900 4th street? How will this affect visibility?
5. How will the visibility due to the retaining wall or fence alongside the railroad tracks affect traffic safety? Pedestrian safety? And bicycle safety?
6. What are the potential dangers of having a parking exit this close to the Railroad tracks?
7. What other residential units in Berkeley are located this close to the railroad tracks? Is this the norm?

8. What other residential units that may be this close to the Railroad tracks have traffic exits that are of the equal or lesser distance to the Railroad tracks?

Berkeley General Plan<sup>61</sup>

The proposed development conflicts with various aspects of the Berkeley General Plan.

LU-7 Neighborhood Quality of Life<sup>62</sup> states “Preserve and protect the quality of life in Berkeley’s residential areas through careful land use decisions.”

A. Require that new development be consistent with zoning standards and compatible with the scale, **historic character**.

...

D. Strengthen Zoning Ordinance language **to ensure greater protection of solar access to adjacent properties** when new projects or additions are proposed”

Erasing the history of Berkeley does not preserve its historic character. Building a shopping mall on top of its birthplace does not preserve its historic character.

How is this development consistent with this neighborhood’s historic character? How will this development alter this neighborhood’s historic character if it builds on a site that is over 5000 years old?

How is this site consistent with zoning standards and compatible with the scale of neighboring buildings when it would be several stories taller than the neighboring buildings?

How will this site affect the solar access of Truitt and White as well as Spengers and the properties across the street?

From the 1977 Master Plan<sup>63</sup> “*Berkeley represents an intricate and delicate balance that is constantly undergoing subtle changes in its physical and social fabric. A continuing need exists to maintain, improve, adapt and, where necessary, replace existing development to meet changing circumstances. The Land Use Element recognizes the interdependence of residential neighborhoods, commercial centers, employment centers and the University of California. Its*

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<sup>61</sup> <http://www.ci.berkeley.ca.us/contentdisplay.aspx?id=488>

<sup>62</sup>

[http://www.ci.berkeley.ca.us/Planning\\_and\\_Development/Home/General\\_Plan\\_-\\_Land\\_Use\\_Element\\_Introduction.aspx](http://www.ci.berkeley.ca.us/Planning_and_Development/Home/General_Plan_-_Land_Use_Element_Introduction.aspx)

<sup>63</sup>

[http://www.ci.berkeley.ca.us/Planning\\_and\\_Development/Home/General\\_Plan\\_-\\_Land\\_Use\\_Element\\_Introduction.aspx](http://www.ci.berkeley.ca.us/Planning_and_Development/Home/General_Plan_-_Land_Use_Element_Introduction.aspx)

*proposals are intended to insure that future development reinforces, rather than undermines, this mosaic of community values.”*

Goal #7<sup>64</sup> of the Berkeley General Plan states “ ... The Plan also calls for the expansion of open space and recreational resources to meet the needs of all segments of the community.”

In the Open Space and Recreation Element<sup>65</sup> under the heading ‘Policy Background’ it states, “Few of Berkeley’s public assets are as highly treasured and as heavily used as the City’s open spaces. Berkeley’s open spaces include public parks and recreational facilities, ... creeks and other water features, and some privately owned outdoor spaces, such as plazas. Berkeley’s parks and other open spaces serve as places of recreation and beauty, as **community gathering places**, as centers of ecological learning (e.g., Shorebird Nature Center and **Strawberry Creek**), and **as reflections of our culture and history (e.g., the Ohlone Mural** and the Rose Garden). ... and to involve and engage the community in the implementation of this mission.”

In the Open Space and Recreation Element under the heading “Element Objectives” it states, “The policies and actions of the Open Space and Recreation Element are intended to achieve the following three objectives:

1. Preserve, maintain, and repair the city’s existing open space and recreational resources and facilities.
2. **Expand open space** and recreational resources to meet the evolving open space and recreational needs of **all segments of this community** through land acquisitions and improvements.
3. Increase funding for parkland, recreational facilities, and open space maintenance, improvement, and expansion.”

The proposed development at this site would specifically go against the creation of an ideal place for open space. Additionally, this project could potentially happen at alternate sites, however the birthplace of the City of Berkeley, and the oldest inhabited place in the Bay Area cannot be moved. Its location was specifically chosen to be at the vicinity of 1900 4th street over 5000 years ago.

The Ohlone have been and remain an underserved segment of this community.

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<sup>64</sup> <http://www.ci.berkeley.ca.us/contentdisplay.aspx?id=488>

<sup>65</sup>

[http://www.ci.berkeley.ca.us/Planning\\_and\\_Development/Home/General\\_Plan\\_-\\_Open\\_Space\\_and\\_Recreation\\_Element.aspx](http://www.ci.berkeley.ca.us/Planning_and_Development/Home/General_Plan_-_Open_Space_and_Recreation_Element.aspx)

In the Open Space and Recreation Element in section OS-6 states,

“A. Identify and prioritize open space expansion opportunities in neighborhoods that are **underserved** or not easily accessible to existing park and recreational facilities.

...

C. Develop joint-use agreements with other agencies such as the University of California, the Berkeley Unified School District, the Bay Area Rapid Transit District, and regional open space agencies to increase public access to public lands

....

E. Establish spaces for art, music, and **cultural activities.**”

Taking pride in the birthplace of human beings living on the shores of the San Francisco Bay could provide an incredible resource to the Berkeley Unified School District and to UC Berkeley. This could be a prime location to learn directly from the Indigenous inhabitants who have been living here for over 5000 years. This neighborhood is underserved in terms of parks. In terms of cultural activities, the proposed development would hinder the current and regular gatherings of Indigenous peoples and their allies that are invited by Ohlone people to gather at 1900 4th street.

In the In the Open Space and Recreation Element in section OS-7 states,

“Within the context of open space resource allocations for new or expanded facilities, give high priority to providing additional facilities for populations that are disadvantaged or underserved.”. Section C States, “C. Ensure that new open space, recreational, or cultural uses are compatible with the other vital community priorities for disadvantaged populations in Berkeley.”

There are two underserved and disadvantaged. First, the Ohlone community is one of the most underserved and disadvantaged communities in Berkeley. Although the city will name parks after them or put murals up of their ancestors, the same City will also consider the digging up of those very ancestors and the destruction of its own history and birthplace. The city is the home of the Hearst Museum at UC Berkeley that has refused to give back the bones and funerary possessions of the Ohlone people despite protests and years of requests by the Ohlone people. The development of 1900 4th street for the proposed project would actually take away this space that the Ohlone use and desecrate it along the way.

The second disadvantaged and underserved community are the low-income communities of West Berkeley, for example those that live on 5th street between Hearst and Cedar. West Berkeley and North Berkeley have a large percentage of the low-income residents of Berkeley.

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West Berkeley current does not have adequate open space on the East side of the freeway. The proposed development would add further housing density to the neighborhood and take away a prime location for a park.

In the In the Open Space and Recreation Element in section OS-11 states,  
“Encourage innovative use of public plazas, sidewalks, and temporary street closures as open space or for recreational or **cultural events**. (Also see Land Use Policy LU-20.)

Action:

A. Design and improve public streets, parking lots, and plazas to provide public spaces for street fairs, festivals and other **gatherings**.”

I personally have been invited to and have participated in prayer gatherings on the West Berkeley Shellmound for several years at the invite of the Ohlone community. I know through conversations with Corrina Gould that they have been gathering at this site for over 20 years. The proposed development would make those gatherings impossible and would desecrate the sacred site at which we gather. These cultural events and gatherings would be impacted severely by this development.

In the Urban Design and Preservation Element, under the section “Built Environment” it states, “Unfortunately, Berkeley has lost many of its important historic buildings and landscape features, while others are potentially threatened. And while in recent decades there has been much notably good new construction, there have also been many **poorly designed new buildings that are incompatible with the design and scale of the older structures around them.**”

Not only is this proposed development much larger than the neighboring properties, it also happens to threaten the oldest historic site in Berkeley and along the shores of the entire bay area. The Berkeley General Plan specifically calls for labeling and attempting to preserve Berkeley’s history and culture. Clearly this proposed construction is against these stated philosophies by the city government. This section of the Urban Design and Preservation Element specifically notes that certain features of Berkeley are in jeopardy. Not only is the proposed development bigger and taller than the historic building of Spengers across the street, but also any development of Berkeley Landmark #227 and ALA-307 is incompatible with preserving Berkeley’s oldest landmark.

In the Urban Design and Preservation Element, under the section “Neighborhoods and Districts” it states,

"West Berkeley is an area comprised of a number of subareas (some in themselves much more homogeneous than others), but overall having by far Berkeley's widest range of building and site types, from a **5,700-year-old shell mound site** to Victorian buildings reflecting Berkeley's earliest '49er settlement to bold factory forms expressing the district's longstanding industrial role to sleek new commercial buildings and high-tech start-ups."

In the Urban Design and Preservation Element, under the section "Benefits of Preservation and Good Design" it states under 'Economic Benefits'

a. "Stability of Residential and Commercial Areas - The city's special character can be a powerful tool for the economy as well as community identity."

In the Urban Design and Preservation Element, under the section entitled 'Community Identity' it states,

...  
c. Understanding - **Older buildings give an enhanced understanding of who we are, where we have been, and where we might be going.**"

Under the Urban Design and Preservation Element, the Shellmound site is specifically identified as a distinctive part of the West Berkeley neighborhood. The Shellmound isn't just old, it is the oldest site in Berkeley, and in fact is believed to be the oldest inhabited location on the shores of the entire San Francisco Bay. The Shellmound is what could define the community identity of the 4th Street area of West Berkeley. Additionally, it could define Berkeley as the oldest continuously inhabited city in the Bay Area.

In the Urban Design and Preservation Element, under the section "Protection of Existing Resources" it states,

"Protection is needed even for some things which are unseen or undiscovered. Archaeological resources, the material remains of past cultures or periods, often remain hidden till the ground is opened up for construction or utility work."

The city of Berkeley has already designated this site a Landmark (#227). This site contains both archaeological resources as well as 'material remains of past cultures or periods'. This has been demonstrated by the rich archaeological and historical record, including the work of Christopher Dore and the GANDA report which was done at the request of the city of Berkeley. Additionally, this site is in ALA-307, and is on the STATE AND FED list.

In the Urban Design and Preservation Element, under the section "Element Goal", subsection "Element Objectives" it states that there are four objectives,

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- “1. Protection of Existing Resources - Preserve historically or culturally important structures, sites, and areas and protect the character of Berkeley’s neighborhoods and districts. (See the Land Use Element for more policies on the Character of Berkeley.)
2. Preservation Incentives - Provide incentives for the preservation of historic and cultural resources.
3. New Construction and Alterations - Ensure that new construction and alterations are well designed and respect and enhance the existing environment.
4. Outreach - Promote awareness and understanding of Berkeley’s built environment and **cultural heritage**, and of **how to preserve** and improve them.”

All four of those objectives pertain to the West Berkeley Shellmound and more specifically to the no-build option for 1900 4th street. As is evidenced below, the proposed development at 1900 4th street is against all of the goals and objectives of the Urban Design and Preservation Element of the Berkeley General Plan. Therefore, the only alternative is the no-build option.

Objective #1 states that we must protect existing resources. The site is both of historic and cultural significance. It’s historic significance goes beyond just the neighborhood's history, or even the cities history. It is of significant importance to the entire Bay Area’s history. Additionally, the Shellmound is included in the Urban Design and Preservation Element of the Berkeley General Plan as a specific example of what makes the West Berkeley neighborhood unique.

Objective #2 states that we must provide incentives for the preservation of historic and cultural resources. Being that this is both a historic and a cultural resource, how are we incentivizing that it is preserved? This proposed project goes completely against the preservation of this site and in fact opts to destroy it and completely. It would destroy and demolish the site itself, and would bar future discoveries and understanding of the site for various academic disciplines.

Objective #3 is not fulfilled as it blatantly destroys the cultural resource and history that these Objectives seek to protect. This new construction is neither well designed nor respectful to the site. It does not enhance the site but instead demolishes this historic and cultural resource.

Objective #4 states that we must promote awareness and understanding of the cultural heritage and how to preserve it. How is the proposed development preserving this cultural heritage? The mitigation measure (QUOTE) calls for an informational display about the site that would involve destroying the site to install it. How is that preserving cultural heritage?

In the Urban Design and Preservation Element, under Policy UD-1 it states, “Use a wide variety of regulatory, incentive, and outreach techniques to suitably protect Berkeley’s existing built environment and cultural heritage.

Actions:

- A. Identify and protect historically significant structures, sites, districts, and neighborhoods. (Also see Land Use Policy LU-2.)
- B. Develop a comprehensive program that will indicate, in more detail, needed **in-depth surveys and other actions** to protect Berkeley’s built environment and cultural heritage.
- C. Conserve and update the Landmarks Preservation Ordinance.
- D. Encourage widespread **public participation in the identification and designation of historically or culturally important** buildings, sites, and areas.
- G. Through code enforcement and other activities, **provide early intervention to promote timely upkeep of historic and cultural resources, and thereby avoid continued neglect that could eventually make such resources unsavable.**”

The city already hired the GANDA report to do this and they showed the Shellmound as being on the parking lot.

Regarding subsection C. above, the several ZAB members mentioned that through their comments on this DEIR they realized how important this site is to the public and to Ohlone people.

In the Urban Design and Preservation Element, under Policy UD-2 it states, “Increase the extent of regulatory protection that applies to structures, sites, and areas that are historically or culturally significant.

Actions:

...

- B. Consider revising the Landmarks Preservation Ordinance so as to **prohibit demolition of designated landmarks**, except in unusual cases where rigorous prescribed findings are made by the Landmarks Preservation Commission and/or the City Council.
- C. For any public or private project that may adversely affect an archaeological site, consult with the North Central Information Center of the California Historical Resources Information System, require site evaluation as may be indicated, and attempt to prevent or mitigate any adverse impacts.”

The Landmarks Commission does not fit the requirement labeled in Section B of UD-2, as evidenced by their unanimous decision to request for the Re-Circulation of this DEIR because it is flawed and the comments and questions that they provided. Landmarks Commissioner Olson was heated in her statements where she said that she could not fathom how the developers had gotten this far in the process of trying to develop a city landmark and seemed to be outraged by the proposed development.

In terms of Section C of UD-2, as evidenced in this letter, the consultation with CHRIS was not sufficient. This DEIR neglected a considerable amount of information that has been referenced in this letter, and additionally neglected to completely consult the archaeological record. Various defects have been noted in the use of the archaeological record in this DEIR. Additionally as has been noted in this letter, the mitigation is also incomplete and lacking.

In the Urban Design and Preservation Element, under Policy UD-2 it states, “Use regulations to protect the character of neighborhoods and districts, and respect the particular conditions of each area.

Action:

A. Consider the creation of a new regulatory classification of "conservation district" to **protect areas with distinctive architectural or environmental characteristics”**

In the Urban Design and Preservation Element, under Policy UD-2 it states, “Promote, and encourage others to promote, understanding of Berkeley’s built and **cultural heritage**, the benefits of conserving it, and how to sensitively do that.

Actions:

A. On an ongoing basis, make readily available to the public the identity of historic and **cultural resources** that have been officially designated or have been found to be important by the City’s inventory.

...

C. Promote, or encourage others to promote, guided and self-guided tours of **historic and cultural resources.**

D. **Encourage the Berkeley Unified School District to incorporate into its curricula instruction about Berkeley’s history and built heritage.”**

This section seems to fit more with the proposed alternative as described by Corrina Gould.

One of the things that I take away from these sections is that the city by exploring an alternative like the one proposed by Corrina Gould could in fact satisfy all of the same sections of the Berkeley General Plan that are cited above, as opposed to the proposed development at 1900 4th street goes against all of these sections of the Berkeley General Plan. It would seem that having a park or open space on this site would satisfy a great deal of the objectives, goals, and stated philosophy of the Berkeley General Plan. It would satisfy almost every mention of the word “culture” or “cultural” in the Plan, as well as open space requirements, disadvantaged communities, low-income neighborhoods, Berkeley Unified School District and UCB participation, as well as promoting an intrinsic characteristic of not only the West Berkeley Neighborhood, but Berkeley as a city. Additionally, for all the reasons that the proposed development goes against the Berkeley General Plan, almost none of these same sections would be violated if the development took place at an alternative site. Any development that takes place at 1900 4th street will violate all of the aforementioned parts of the Berkeley General Plan.

### The West Berkeley Plan

#### **Goal 4:**

Assure that new development in any sector is of a scale and design that is appropriate to its surroundings, while respecting the genuine economic and physical needs of the development.

#### Rationale:

The modest scale of many West Berkeley areas, both residential and economically active, is an important aspect of their character. As development occurs in these areas, the City must balance the economic and physical needs of the development itself with the scale of the area, should these come in conflict

I do not believe that this proposed development is in line with Goal 4. The “scale and design” towers over the neighboring buildings, including Spengers which is landmarked. Additionally it towers over, and in fact completely demolishes most of Berkeley Landmark #227.

Environmental Quality Section Goal 5 - Air Quality “5.2 Reduce existing traffic and adequately mitigate the impact of future traffic (see Transportation Element)”

Physical Form Section, Goal 3 states”

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### Goal 3

Visually improve the University Ave. gateway and the other entry corridors into West Berkeley, **so as to provide a positive image as one enters Berkeley. In addition to the University Ave. gateway**, the entry corridors into West Berkeley are Ashby Ave. and Gilman St., and the northern and southern ends of San Pablo Ave.”

1. What better positive image than a mound of poppies?
2. Does this positive image of Berkeley include the demolition of its birthplace?
3. Does this positive image of Berkeley include another 5 story building and sacrificing a City Landmark to do it?
4. Does this positive image of Berkeley involve the desecration of a burial ground, the bulldozing of an archaeological site, and constructing a 5 story building on top of a site that is in the California Register?

### Goal 6

Develop and disseminate an understanding and appreciation of West Berkeley's heritage.

#### Policies

6.1 The City should develop criteria to identify and designate heritage areas-- particularly **strong concentrations of historically** and architecturally significant buildings--in West Berkeley and educate the public about these areas, If the residents come to support doing so, the City should formulate guidelines for development in these areas.

6.2 The City should support preservation efforts by private organizations in West Berkeley.

6.3 The City should innovate programs to educate the public concerning West Berkeley's architectural, **ethnic** and industrial history.

The City has already designated the site as Landmark #227. It is in the California Register and eligible under the National Register.

How does the proposed project help to disseminate an understanding of West Berkeley's heritage?

How does bulldozer fit into this dissemination of understanding?

Is putting up a plaque on top of the site that you demolish ‘disseminating understanding’?

### Open Space Goals and Policies for West Berkeley

Rationale:

West Berkeley has the advantage of being an urban district which sits adjacent to major open space resources--Aquatic Park, the Marina, the Waterfront. West Berkeley's

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residential population--largely low income, many with children, many living in apartments--is precisely that which most needs public open space.

This area has a lack of open space on this side of the freeways. The low-income communities have a lack of access to open space. This is one of the last undeveloped lots. It also happens to be the home of the birthplace of Berkeley. It is a site of vast historical and cultural importance. What better place for open space...

### **Goal 9**

Provide an accessible, aesthetically-pleasing network of green spaces and corridors--that is functional for varied types of users--to visually and physically link parks, creeks, and shoreline to residential and commercial, and light industrial areas.

1. Where is this “aesthetically-pleasing network of green spaces and corridors” on 4th street?
2. Where is this in the neighborhood? This is a dead end of development that is sandwiched in between freeways.
3. Where is the green space?
4. How does this proposed development help to add greenspace?
5. How does this proposed development add to the already established need for greenspace?

### Additional Consequences

As noted by a speaker at one of the Zoning Board Meetings, the DEIR fails to address certain ramifications of building on a known sacred site that has been and currently is used by the Indigenous community of the Bay Area, specifically by Ohlone people from various bands, villages, and tribes.

1. Boycott: The DEIR fails to study or take into consideration the possibilities of Boycotts of the businesses that are built on top of the Shellmound. The Emeryville Shellmound receives protests and Boycotts every single Black Friday since the shopping mall was constructed on the Shellmound. Black Friday represents one of the busiest days of the year for shopping. The Bay Area Indian community has demonstrated its ability to amass large numbers of protesters on a continuous and annual basis for various causes.

The Emeryville Shellmound aka Bay Street Emeryville is probably the clearest example of the presence of protesters on an annual basis when construction happens on a Shellmound that turns into a retail site.

- A. What are the economic ramifications of the continuous boycotts that happens on these sites?
- B. What studies or data is there to demonstrate the economic losses suffered by Emeryville and Bay St businesses by people in the Bay Area who not only refuse to shop there on Black Friday, but also refuse to shop there all year long?

As a personal example, my partner and family have to drive to the Apple Store at 4th street even though we live in Oakland, because we boycott the Apple Store at Bay Street. For us it involves going several freeway exits further than our home in order to shop. There are many people who have been filmed and documented as returning goods on Black Friday to shops on Bay Street in Emeryville once they find out that it is built on a burial ground.

- C. Do these customers ever return?
- D. Do these dollars ever come back?

The DEIR fails to show what the potential impacts of economic losses are for the neighborhood due to constructing apartments and retail on a sacred site, burial ground, a landmark and a site of historical significance.

- 2. Media and negative press: The DEIR fails to take into consideration the ‘impact’ of what bad press and a spotlight on the neighborhood could do for businesses. The media has been covering the events that are taking place with the development of the Bay Area's oldest bayside settlement, a place that gives Bay Area history as far back as potentially 5,700 years ago.
  - A. The media also has been covering the fact that this proposed development is being built on top of a burial ground and a sacred site to Indian tribes in the Bay Area.
  - B. What are the potential ramifications of bad media and negative press coverage on the proposed shops, businesses and apartments of 1900 4th street?
  - C. What are the potential ramifications of building on a burial ground, historic site, landmark, and sacred site on West Berkeley neighborhood as a whole?
  - D. What are the potential ramifications of building on a burial ground, sacred site, historic site and landmark on the businesses of 4th street?
  - E. The DEIR fails to consider potential ramifications for neighboring businesses that neighbor the proposed development of 1900 4th street.

3. Living on a Indian Burial Ground: The DEIR fails to take into consideration the potential for decreased property values for the apartments and units due to protests, media coverage and the general “bad ju-ju” of having their apartments built on top of an Indian Burial Ground and Cemetery.
4. Protests: The DEIR has failed to address the fact that if the construction is to take place on 1900 4th street that there inevitably and likely will be protests that will occur. The DEIR fails to study, mention or take into consideration the effects that this could have on local businesses, retailers, and traffic in the neighborhood.
  - A. How will this affect the traffic flow if there are large protests due to construction and development of 1900 4th street?  
 Idle-No-More Bay Area for instance has amassed several thousands of people at Protests in San Francisco due to the desecration of sacred sites related to the Dakota Access Pipeline.
5. Costs to the City of Berkeley: The DEIR fails to take into consideration, mention or address potential expenditures by the City of Berkeley due to protests, boycotts, vandalism, property destruction, traffic stoppages. The DEIR fails to take into consideration, mention or address any additional need for Police, riot gear, overtime for Police Officers, or any other city employees that might be required to address protests, riots, vandalism, graffiti, or any other consequences of potentially thousands of people protesting in the neighborhood.
6. Costs to local businesses: the DEIR fails to address any loss of income or costs that could be burdened by local businesses or retailers in the event of protests, riots, or boycotts. Specifically, any disruption in traffic, due to the miserable traffic situation that exists in the 4th street neighborhood could have unforeseen consequences to businesses in the Area.
  - A. What would be the economic damages to local businesses in the event of an annual boycott of 1900 4th street businesses?
7. Take-over: The Indian community as a whole, nation-wide, and specifically the local Indian community has had a long history of taking over land. The DEIR fails to address, mention or shed any light on the potential for the proposed site to be taken over.
  - A. What would be the economic ramifications of a take-over on the neighborhood?
  - B. What would be the economic ramifications of a take-over on the neighboring businesses?
  - C. What would be the economic ramifications of a takeover on local traffic?
  - D. What would be the ramifications of a takeover on media for the entire neighborhood?
  - E. What would be the cost burden of the City of Berkeley in the event that a takeover of 1900 4th street happens?

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Sincerely,

Christopher Oakes

Sacred Sites Protection and Rights of Indigenous Tribes