



Landmarks Preservation Commission
Received
January 6, 2017

Zoning Adjustments Board
Land Use Planning Division
ATT: Shannon Allen, Secretary
2120 Milvia Street
Berkeley, CA 94704
zab@ci.berkeley.ca.us

Dear ZAB Commissioners,

On behalf of the West Berkeley Alliance for Clean Air and Safe Jobs (Alliance) I am submitting public comment regarding the Environmental Impact Report for the West Berkeley Shellmound/Village site (1900 Fourth St.).

This site once held at least one shellmound/funerary site of the Ohlone people and is the oldest inhabited site in the entire Bay Area. The site has been declared eligible for the National Registry of Historic Places, suggesting that its significance goes beyond just local interest.

In a series of proclamations passed earlier in 2016 the Berkeley City Council affirmed the rights of Native Americans and called upon the elected officials to consult with the Native community on issues affecting their well-being, cultural sovereignty, and spiritual practice.

The Alliance advocates for the protection of the West Berkeley Shellmound/Village site as an historic place and urges it be preserved as an open space. The Alliance further asserts that the proposed development of this site would put shop employees, shoppers and new housing residents at risk of exposure to toxic emissions emanating from Pacific Steel Casting Company (PSC), Berkeley Asphalt and other nearby sources of pollution. Please see: (<http://westberkeleyalliance.org/wp-content/uploads/2012/10/PSC-Emissions.pdf>) showing the increases in levels of CO, SO₂, PM, PM 10, PM 2.5 according to the California Air Resources Board (CARB) for PSC and Berkeley Asphalt. Also see: http://westberkeleyalliance.org/wp-content/uploads/2012/10/toxics_and_your_health.pdf This diagram shows potential health impacts from Chemicals Of Potential Concern (COPC) in Pacific Steel's Emissions Inventory Report.

The Alliance urges the ZAB to reject the application for commercial development of this site based on the importance of the site to the Ohlone people, as a landmark historical site, and the potential harm to people, especially sensitive receptors, living, shopping or working in a commercial development in this space due to nearby stationary sources of pollution.

Sincerely,
Janice Schroeder
Core Member
West Berkeley Alliance for Clean Air and Safe Jobs

Crane, Fatema

From: Allen, Shannon
Sent: Friday, January 06, 2017 11:01 AM
To: Crane, Fatema
Subject: FW: DEIR 1900 Fourth Street

From: Jane P. PERRY [<mailto:jpperry@berkeley.edu>]
Sent: Thursday, January 05, 2017 11:44 PM
To: Allen, Shannon <ShAllen@ci.berkeley.ca.us>
Subject: DEIR 1900 Fourth Street

Please circulate this email in place of my previous email sent earlier in the day.

December 8, 2016/January 5, 2017

City of Berkeley Planning and Development Department, Principal Planner Shannon Allen at ShAllen@ci.berkeley.ca.us

SUBJECT: Public comment on Draft EIR 1900 Fourth Street Project

Dear Ms. Allen,

Thank you for the opportunity to comment on the adequacy of the Draft EIR 1900 Fourth Street Project on City of Berkeley Landmark #228 “Berkeley Shellmound” (Chronological #227). I am Educator, however I did receive Landmark status #316 for my work site, the Harold E. Jones Child Study Center, with several other co-authors including Susan Cerny. I am heartbroken to hear of her loss. I benefited from her tutelage.

I appreciate all the available documentation provided by your department to help me get up to speed. I reviewed on your website, the NOD to Approve the Landmark designation to the West Berkeley Shellmound, listed under the LPC scoping documents as Attachment 3 NOD, the DEIR for 1900 Fourth Street, App B: the Initial Study, and App A: the NOP Comment Letters. Additionally I reviewed the 2016 CEQA Statutes and Guidelines (http://resources.ca.gov/ceqa/docs/2016_CEQA_Statutes_and_Guidelines.pdf), The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995 via your Planning and Development page “What is the Landmark Alteration Permit Process?,” the Berkeley Municipal Code Chapter 3.24. Section 260 Permit application--Review standards and criteria, and California Assembly Bill AB52, the Native American Historic Resource Protection Act (http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52).

I respectfully submit the following comments on the integrity of the West Berkeley Shellmound Landmark site:

Historic Resource

I NOTE that the Shellmound qualifies as a “historical resource” per CEQA Guidelines Section 15064.5(a)(1): “A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code § 5024.1, Title 14 CCR, Section 4850 et

seq.).” Further, I NOTE on page 38 of the Initial Study that “The Shellmound is also designated by the State as archaeological site P-01-000084/CA-ALA-307. The West Berkeley Shellmound was assigned a historical resource status code of “2S2” by the California Office of Historic Preservation, indicating that it has been determined individually eligible for listing in the National Register of Historic Places by a consensus through the Section 106 process; is also listed in the California Register of Historical Resources. This property qualifies as a historical resource under CEQA (CEQA Guidelines Section 15064.5(a)(2)).” I OBJECT to the DEIR designation as Section 15064.5(a)(2) when CEQA Guidelines Section 15064.5(a)(1) is sufficient and the City therefore need not address CEQA Guidelines Section 15064.5(a)(2) stipulation that “Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.”

Nevertheless, CEQA and CEQA Guidelines under Section 15126.4 (b) Mitigation Measures Related to Impacts on Historical Resources. (1) states that:

“maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project’s impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.”

This tells me that the DEIR needs to address how 1900 Fourth, ZP2015-0068 handles the historical resource West Berkeley Shellmound #228 (Chron #227) in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties.

The Secretary of the Interior’s Standards for the Treatment of Historic Properties, 1995 “Standards for Preservation” defines “preservation” as it relates to a property as [my inserted italics]: “the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features *rather than extensive replacement and new construction*.

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.” I NOTE in the NOD to Landmark that the West Berkeley Shellmound is “most highly significant to native descendants as a sacred burial ground.”

2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided. I NOTE in the NOD to Landmark that the West Berkeley Shellmound “plays an important role in the history of the changing shoreline and the change in attitude towards the use of natural resources.”

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research. I NOTE that in the NOD to Landmark, that the West Berkeley Shellmound’s “cultural resource lies in its age, the fact that it is the oldest and one of the largest mounds established around the bay, that it represents ancient culture, that it was built by the earliest humans in the area.”

The Secretary of the Interior’s Standards for the Treatment of Historic Properties, 1995 “Standards for Rehabilitation” as defined as [my italics] “the act or process of making possible a compatible use for a property

through repair, alterations, and additions *while preserving those portions or features which convey its historical, cultural, or architectural values,*” I NOTE no instance in the DEIR of compatibility with the historic nature of the West Berkeley Shellmound NOD as noted above in the preservation standards.

The Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995 “Standards for Restoration” is defined as [my italics] “the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the *removal of features from other periods in its history and reconstruction of missing features from the restoration period.* I NOTE no instance in the DEIR where reconstruction is described for “the oldest and one of the largest mounds established around the bay, ... built by the earliest humans in the area” (West Berkeley Shellmound NOD).

I respectfully OBJECT to the certification of the EIR because I can find no instance in the DEIR that addresses how 1900 Fourth, ZP2015-0068 handles the historical resource West Berkeley Shellmound in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties, 1995, pursuant to CEQA and CEQA Guidelines under Section 15126.4 (b) (1). Mitigation can therefore not be below a level of significance and thus is NOT not significant.

Cultural (Archaeological) Resource

On page 38 of the Initial Study, I NOTE the following acknowledgement: “The Project site is located within the boundary of the City Landmark #227 and, as such, the Project could have a potentially significant impact on the historic archaeological resource.”

I NOTE findings reported in a March 3, 2016 Memorandum from the Rhoades Planning Group to the City of Berkeley Landmarks Preservation Commission RE: 1900 Fourth Street (Listed under LPC’s March 3, 2016 EIR Scoping Session as Attachment 2: [2016-03-03 LPC ATT2 1900 Fourth Memo Re Archaeological Work.pdf](#)) describing their paid consultant, Archeo-Tec’s archival research, field investigation and laboratory analysis on the Project site is within but not inclusive of the integrity of the boundaries of Berkeley Shellmound Landmark as delineated in the West Berkeley Shellmound NOD.

On page 48 of the DEIR, I NOTE that “Although no human remains were encountered at the Project site during archaeological testing conducted in 1999, 2000, and 2014, over 95 human burials have been reported in earlier excavations and topographical modification of the West Berkeley Shellmound. Disarticulated human bone has also been identified during archaeological monitoring adjacent to the Project site along University Avenue.”

I NOTE facts in the 2004 Dore, Byrne, McFaul, and Running 2004 archaeologist report in the Proceedings of the Society of California Archaeology, “Why Here? Settlement, Geoarchaeological and Paleoenvironment at the West Berkeley Site (CA-ALA-307)” (found in App A-NOP Public Comments) of coring around the Spenger’s parking lot, of 33 separate areas of cultural deposits, 16 of which were intact and undisturbed.

On page 79 of the DEIR, I NOTE the fact that “in March and April 2016, Ohlone remains were identified during trenching activity for the 1919 Fourth Street Project along Fourth Street.” A December 1 2016 East Bay Times article notes that the Ohlone remains are human bones from at least five Native American individuals (<http://www.eastbaytimes.com/2016/11/29/berkeley-remains-of-at-least-five-individuals-found-at-project-site-report-says/>).

The two aforementioned disinterment incidents, have occurred within the integrity of the Berkeley Shellmound Landmark site boundaries as established in the 2000 landmarking.

Regarding research on City Landmark “West Berkeley Shellmound,” while the Rhoades Group Memorandum states that “The methodology, findings, and conclusions were reviewed by Berkeley writer and historian

Richard Schwartz,” Mr. Schwartz, in Appendix A: NOP Comment Letters of the DEIR writes; “I did not, as the developer both verbally stated and printed on their website, review Archeo-Tec’s work.” He continues, “none of my research appears to be used in the report.”

I therefore OBJECT to the DEIR qualification of Project site non-identified remains as irrelevant when considering the West Berkeley Shellmound Landmark boundaries as a whole and the CEQA and CEQA Guidelines under Section 15126.4 (b) Mitigation Measures Related to Impacts on Historical Resources. (3)(A), which state:

“Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.”

Tribal Cultural Resources

I NOTE that the Draft EIR omits the AB52 directive as it pertains to CEQA to “(2) Establish a new category of resources in the California Environmental Quality Act called “tribal cultural resources” that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation.”

As the West Berkeley Shellmound Landmark establishes the boundaries of the Shellmound as “most highly significant to native descendants as a sacred burial ground” and that the “Shellmound’s cultural resource lies in its age, the fact that it is the oldest and one of the largest mounds established around the bay, that it represents ancient culture, that it was built by the earliest humans in the area,” I OBJECT to approval of Structural Alteration Permit #LMSAP2015-00005 pursuant to AB52, SECTION 1. (3) to [my italics] “Establish examples of mitigation measures for tribal cultural resources that *uphold the existing mitigation preference for historical and archaeological resources of preservation in place*, if feasible.”

I OBJECT to approval of Structural Alteration Permit #LMSAP2015-00005 pursuant to AB52, where “Existing law, the Native American Historic Resource Protection Act, establishes a misdemeanor for unlawfully and maliciously excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources.”

I OBJECT to approval of Structural Alteration Permit #LMSAP2015-00005 pursuant to AB52, SECTION 1. (a) (1) as it reads [my italics]: Current state law provides a limited *measure of protection for sites, features, places, objects, and landscapes with cultural value to California Native American tribes*. (2) Existing law provides limited *protection for Native American sacred places, including, but not limited to, places of worship, religious or ceremonial sites, and sacred shrines*. (3) *The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not readily or directly include California Native American tribes’ knowledge and concerns. This has resulted in significant environmental impacts to tribal cultural resources and sacred places, including cumulative impacts, to the detriment of California Native American tribes and California’s environment*. (4) As California Native Americans have used, and continue to use, natural settings in the conduct of religious observances, ceremonies, and cultural practices and beliefs, *these resources reflect the tribes’ continuing cultural ties to the land and their traditional heritages*.

I OBJECT to approval of Structural Alteration Permit #LMSAP2015-00005 pursuant to AB52, SECTION 1, where the City of Berkeley shall “(1) Recognize that California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities” as this pertains to the Berkeley Shellmound and the 1900 Fourth Street Project site within the Shellmound.

Finally, I NOTE BMC 3.24.260 Permit application--Review standards and criteria.1. For permit applications for construction, alteration or repair states [my italics] a. “ For applications relating to landmark sites, the proposed work shall not adversely affect the exterior architectural features of the landmark; *nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting.*”

I OBJECT to the DEIR for adversely affecting the special character or special historical, architectural or aesthetic interest or value of the West Berkeley Shellmound landmark site, as viewed both in itself and in its setting pursuant to BMC 3.24.260.

I respectfully request that you do not certify the EIR and not approve the SAP for the 1900 Fourth Street Project for all the objections I have enumerated in this letter.

Thank you,

Jane Perry, a concerned community member

5814 Margarido Drive, Oakland 94618

cc: Landmarks Preservation Commission

From: Rhiannon
To: [Crane, Fatema](#)
Cc: [Beth Montano](#); [Meryl Siegal](#); [L. & T. Pop Account](#); [Pamela Deering](#); [Stephanie Manning](#); [Kathryn Stepanski](#)
Subject: Landmarks Commission: 1900 Fourth St
Date: Thursday, December 01, 2016 11:35:38 AM

Re: 1900 Fourth St.

This DEIR completely ignores the impacts of this project in addition to the 550 new units on the other side of the overpass that have been permitted since 2010 on the Sisterna Historic district, the Delaware Historic district, or the low income residents in the surrounding neighborhoods. Allowing new luxury units in an area where housing has not been considered or permitted will open all of the properties in the 4th St. shopping district and nearby residential areas to speculation and skyrocketing land/housing prices. Our neighborhood is historically low income people of color, and over 61% rentals. When absentee landlords are offered over market prices by developers looking to build high rent projects, the low income locals are quickly displaced. Since the City will bend any rule to guarantee a good profit, the developers are willing to pay any price up front for land.

In order to qualify as an infill project, a site has to be first zoned for residential. In both the West Berkeley Plan and the University Avenue Plan, this site has been designated as a small scale commercial site with no residential, to mirror, enhance, and protect the 4th St. Shopping district. The WBP includes Truitt & White, West Berkeley's third highest sales tax generator, as part of this 4th St. District, even though it's zoned MU/LI. Both Plans and the West Berkeley Circulation Master Plan and all their EIR's anticipated 10,000 sq. feet of retail for this site, with parking and no residential. Both Plans promised that a 4th St Strategic Plan was in the works. The West Berkeley Project with provisions that would have allowed a project like this in the C-W zone: an average height of 50' up to 75' maximum by right, was voted down by the electorate in 2012 as Measure T.

It's nearly impossible to determine the environmental effects of this project, since the descriptions, drawings and specifications seem to vary widely from page to page. There's not a straight line or right angle in any of the illustrations, and the industrial nature of the area is masked in a golden glow. The buildings will have to be set back at least another 10' along 4th St. in order to make room for parallel parking, sidewalks and bulbouts if there's to be room for travel lanes. The proposed 14 foot sidewalks along Hearst and University will also impede the traffic lanes. The current sidewalk at the corner of 4th and Hearst is only 3 feet wide, so the bulb-out on that corner will nearly eliminate the southbound lane of 4th St. The 'survey' diagrams seem to have added anywhere from 10 to 14 feet to the existing roadways. There are currently 9 parking spaces on Hearst that will be eliminated, and no space for parallel parking on 4th St. When determining traffic impacts,

the loss of the existing 350 car parking lot needs to be mitigated in addition to the other impacts. The folks that park there now will have to be accommodated.

In considering the impact of any development on this site, it will be necessary to also include the cumulative effect of the well over 500 new residences already permitted and/or under construction, and their combined effect on transit, traffic, schools, open space, air, water, etc. ABAG/Plan Bay Area's Sustainable Communities Strategy has calculated the total amount of housing needed along the entire University Ave "PDA" from 2010-2040 as 550 units. We've produced nearly that already just in the four blocks bounded by University, Addison, 6th and 2nd Streets, without providing the jobs required to support these new residents (the other half of a PDA requirement). With the loss of Grocery Outlet, a major employer which hired many low income neighbors, we have a net loss of good paying jobs for untrained workers in the area.

The West Berkeley Plan DEIR names University Ave from San Pablo to 3rd St. as a significant public view corridor. The applicant for any building taller than 30' which is higher than surrounding buildings must provide a wire frame model or photo simulation to accurately display the building in relation to its surroundings. The Dr. Suessian fish eye drawings provided are not suitable for any such determination.

rhiannon

My apologies for any repetition, there are so many different documents with vastly different descriptions of the same thing that it's hard to decide which to respond to. I will try to go page by page in my comments for next week.