



PLANNING AND DEVELOPMENT DEPARTMENT
LAND USE PLANNING DIVISION

LANDMARKS PRESERVATION COMMISSION

ACTION MINUTES

Date: Thursday, February 2, 2017
Time: 7:08 p.m.
Place: North Berkeley Senior Center, 1901 Hearst Avenue
Attendees: approximately 75

The Landmarks Preservation Commission (LPC) packet is available for review at the Berkeley Main Library (2090 Kittredge St.) and the Permit Service Center (2120 Milvia St.)

The Commission consists of nine members appointed by City Council:

Christopher Adams, District 5
Paul Schwartz (Vice-Chairperson), District 6
Phil Allen, District 2
Dmitri Belser, District 1
Shannon Brown, District 8
Steve Finacom, District 4
Christopher Linvill, District 3
Carrie Olson, District 7
Kim Suczynski Smith, Mayor



ADA DISCLAIMER

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

For inclusion in the Commissioners' agenda packet, please submit written comments by Wednesday the week prior to the meeting. One set of "late communications" will be distributed to the Commissioners two days before the meeting. Please submit any material for distribution as "late communications" no later than 12 noon on the Tuesday prior to the meeting. Please be advised: Commissioners do not have an opportunity to read written materials handed out at the meeting.

Correspondence and Notice of Decision Requests

- **To distribute correspondence to Commission members *prior to the meeting date* -- submit comments *by 12:00 noon, seven (7) days before the meeting*.** Please provide 15 copies of any correspondence with more than ten (10) pages or if in color or photographic format. This method is strongly preferred.

** INDICATES THAT THE LANDMARKS PRESERVATION COMMISSION RECEIVED DOCUMENTS (NOTICES OF DECISION, STAFF REPORTS, APPLICATION MATERIALS OR CORRESPONDENCE) AS PART OF THE PACKET THAT WAS DELIVERED PRIOR TO THIS MEETING.

- Correspondence received by 4:00 pm the Tuesday before the meeting will be posted on the Commission web site for review by the Commission and public prior to the meeting. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.
- Any correspondence received after this deadline will be given to Commission members on the meeting date just prior to the meeting.
- Staff will not deliver to Commission members any additional written (or e-mail) materials received after 12:00 noon on the day of the meeting.
- Members of the public may submit written comments themselves at the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Landmarks Preservation Commission Secretary. **Please be advised: You are strongly advised to submit written comments *prior* to the meeting date as Commission members do not have an opportunity to read written materials handed out at the meeting.**
- Written comments or request for a Notice of Decision should be directed to the Landmarks Preservation Commission Secretary.

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.**

Contact:

Fatema Crane, Senior Planner, Landmarks Preservation Commission Secretary
(510) 981-7413 | FCrane@CityofBerkeley.info | 2120 Milvia Street, Berkeley CA 94704

Request for initiation of Landmark designation on a future agenda lies within the range of action to be considered on each structure or property appearing at any place on the agenda.

Consent Calendar: The Consent Calendar allows the Commission to take action, without discussion, on Agenda items for which there are no persons present who wish to speak, and no Board members who wish to discuss. The Consent Calendar may include the following: (1) Approval of previous meeting minutes; (2) Items being continued to another meeting (action will be postponed to another meeting) or withdrawn by the applicant; and (3) Items noticed for public hearing which the Commission decides to move to the Consent Calendar. The Chairperson will announce any additional items proposed for the Consent Calendar at the beginning of the meeting. Anyone present who wishes to speak against one of these items should advise the Chairperson if they request the item be pulled from the Consent Calendar.

PRELIMINARY MATTERS

1. **ROLL CALL** Please put all cellular phones and ringers on silent during the meeting.
All Commissioners present; Belser departed at 9:38 p. m.

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2. **EX-PARTE COMMUNICATIONS:** In the context of adjudicative matters that come before the LPC, ex-parte communications are those which occur outside of the formal hearing process. LPC members should avoid ex-parte contacts on matters pending before the LPC as much as possible, as they may represent, or be perceived to represent, the receipt of evidence that can unfairly influence a decision on a matter before the Commission. If such contacts do occur, they must be placed in the record and disclosed to all interested parties sufficiently in advanced of the decision to allow rebuttal.

Brown: 1900 Fourth Street

3. **PUBLIC COMMENT on Non-Agenda and Information Items** (Three minutes per person; five minutes per organization, or at the discretion of the Chairperson)

Speakers: None

4. **AGENDA CHANGES**

Action: Move Item 5A to occur after Item 7.

M/S/C: Olson, Allen

Vote: 9-0-0-0

5. **DISCUSSION/COMMENT**

A. **Certified Local Government Annual Report to the Office of Historic Preservation****

6. **ACTION**

A. **Landmark designation for the property at 1335 Shattuck Avenue**

Continue a hearing to consider a pending application to designate a property in the R-2AH district

Speakers: 4

Action: Close the public hearing.

M/S/C: Olson, Adams

Vote: 9-0-0-0

Action: Designate this property as a City Landmark with the list of Features To Be Preserved submitted on January 26, 2017

M/S/C: Olson, Belser

Vote: 8-0-1-0

Yes: Schwartz, Allen, Belser, Brown, Finacom, Linvill, Olson, Suczynski-Smith; No: none; Abstain: Adams

B. **Appointment of a LPC Member to Design Review Committee**

Appoint a member of the LPC to serve on the Design Review Committee in accordance with Berkeley Municipal Code 23B.08.010

Action: Appoint Commissioner Linvill

M/S/C: Olson, Finacom

Vote: 7-0-2-0

Yes: Adams, Schwartz, Allen, Brown, Finacom, Linvill, Olson; No: none; Abstain: Belser, Suczynski-Smith

Substitute Motion

Action: Appoint Commissioner Suczynski-Smith

M/S/C: Belser, Schwartz

Vote¹: 5 - ___ - ___ - 0

Yes: Belser, Brown, Linvill, Schwartz, Smith; No: ___ ; Abstain: ___ ; Absent: none

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7. REVIEW OF DRAFT EIR FOR 1900 FOURTH STREET

Continue review of and provide comments on the Draft Environmental Impact Report for the proposed multi-story, mixed-use development on the Spenger's park lot, a City Landmark site – West Berkeley Shellmound

Speakers: 45

Action: Close the comment session.

M/S/C: Olson, Brown

Vote: 9-0-0-0

Action: Encourage the City Manager to extend the comment period per the request of Corrina Gould.

M/S/C: Olson, Linvill

Vote: 9-0-0-0

Action: Provide comments drafted, presented and read by Commissioner Finacom with edits (1) to include comments by Commissioners Linvill and Kim Suczynski Smith; and (2) to remove certain text as specified.

M/S/C: Finacom, Olson

Vote: 8-0-0-1

Yes: Adams, Schwartz, Allen, Brown, Finacom, Linvill, Olson, Suczynski-Smith; No: none;

Abstain: none; Absent: Besler.

Action: Propose a joint meeting with the Zoning Adjustments Board on the topic of the West Berkeley Shellmound

M/S/C: Finacom, Brown

Vote: 7-0-1-1

Yes: Adams, Schwartz, Allen, Brown, Finacom, Linvill, Olson; No: none; Abstain:

Suczynski-Smith; Absent: Belser.

8. AD HOC Subcommittee or Liaison Comments: Opportunity reports on status of projects for which the LPC has established a subcommittee or liaison. (Note: Site will come off the subcommittee list upon approval of a Certificate of Occupancy)

- A. ZAB Design Review Committee
- B. Berkeley Rose Garden (TB, CO, PS, KSS)
- C. LM Initiation Form (CO, DB, SF)
- D. BART Plaza Project (CO, DB)
- E. Resiliency Strategy (CO)

9. ACTION: Approval of Action Minutes** - Approve January 5, 2017 Meeting Action Minutes

Action: Approve minutes.

M/S/C: Olson, Brown

Vote: 7-0-1-1

Yes: Schwartz, Allen, Brown, Finacom, Linvill, Olson, Suczynski-Smith; No: none; Abstain:

Adams; Absent: Belser.

INFORMATION REPORTS Commissioners may ask for discussion to be scheduled on a future agenda (per Brown Act, no deliberation or final action may be taken).

10. Communications

A. Correspondences regarding the Draft EIR for 1900 Fourth Street (qty. 3)

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B. Late Correspondences (qty. 5)**11. Chair Announcements****12. Staff Announcements****A. Upcoming California Preservation Foundation trainings****B. 42nd Annual California Preservation Foundation Conference – May 10-13, 2017****13. Future Council Calendar Items****14. POTENTIAL INITIATIONS**

The Commission may establish and maintain an ongoing list of structures, sites and areas having a special historical, architectural or aesthetic interest or value. After public hearings, the Commission may initiate landmark and historic district designations from the list.

- A.** 2362 Bancroft Way-Trinity United Methodist Church (3/1/99)
- B.** Berkeley High School, Building C, 1920; W. C. Hayes (LE 9/13/99)
- C.** John Galen Howard Power Station, UC Campus (CO 4/3/00)
- D.** H.C. Macaulay Foundry, 811 Carleton Street (4/3/00)
- E.** UC Storage Station, James Plachek, Architect (4/3/00)
- F.** "Kittredge Street Historic District" - 2124 Kittredge Street (Elder House and storefront), 2138 Kittredge (Fitzpatrick House and storefront), and 2117 Kittredge Street (A.H. Broad House and storefront) (JK 11/5/2001)
- G.** 1842-1878 Euclid Avenue (CO 9-14-07)
- H.** Berkeley High School Campus Historic District (SW 1/3/08)
- I.** 2746 Garber Street (SW 3/5/09)
- J.** 2070 Addison Street (CO 11/16/10)
- K.** 100 Berkeley Square (CO 11/16/10)
- L.** 124 Berkeley Square (CO 11/16/10)
- M.** 134 Berkeley Square (CO 11/16/10)
- N.** 1901 Bonita Avenue (CO 11/16/10)
- O.** 1920 Bonita Avenue (CO 11/16/10)
- P.** 2132 Center Street (CO 11/16/10)
- Q.** 1940 Channing Way (CO 11/16/10)
- R.** 1920 Haste Street (CO 11/16/10)
- S.** 2113 Kittredge Street (CO 11/16/10)
- T.** 2124 Kittredge Street (CO 11/16/10)
- U.** 2138 Kittredge Street (CO 11/16/10)
- V.** 1905 Martin Luther King Jr. Way (CO 11/16/10)
- W.** 2122 Shattuck Avenue (CO 11/16/10)
- X.** 2150 Shattuck Avenue (CO 11/16/10)
- Y.** 2168 Shattuck Avenue (CO 11/16/10)
- Z.** 2177 Shattuck Avenue (CO 11/16/10)
- AA.** 2225 Shattuck Avenue (CO 11/16/10)
- BB.** 2257 Shattuck Avenue (CO 11/16/10)
- CC.** 2270 Shattuck Avenue (CO 11/16/10)
- DD.** 2274 Shattuck Avenue (CO 11/16/10)
- EE.** 2281 Shattuck Avenue (CO 11/16/10)
- FF.** 2414 Shattuck Avenue (CO 11/16/10)
- GG.** Terminal Place (alley) (CO 11/16/10)
- HH.** 2041 University Avenue (CO 11/16/10)
- II.** 2044 University Avenue (CO 11/16/10)

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- JJ. 1907 Walnut Street (CO 11/16/10)
 KK. 1922 Walnut Street (CO 11/16/10)
 LL. 1925 Walnut Street (CO 11/16/10)
 MM. 1930 Walnut Street (CO 11/16/10)
 NN. 2482-2498 Telegraph Avenue and 2445-2449 Dwight Way (CO 12/7/11)
 OO. 2301-2315 Telegraph Avenue / 2445-2449 Dwight Way (CO 12/7/11)
 PP. 2328-2346 Telegraph Avenue / 2441-2447 Durant Avenue (CO 12/7/11)
 QQ. 2400-2402 Telegraph Avenue / 2486-2498 Channing Way (CO 12/7/11)
 RR. 2410-2422 Telegraph Avenue (CO 12/7/11)
 SS. 3049 Adeline Street (CO 3/12/12)
 TT. "Manoa Historic District"- 2530 Dwight Way, 2524 Dwight Way, 2503 Regent Street, 2509 Regent Street, 2511 Regent Street, 2515 Regent Street, 2517 Regent Street, 2506 Dwight Way, 2502 Dwight Way/2501 Telegraph Avenue, 2512-2516 Regent Street/2525 Telegraph Avenue (CO 3/12/12)
 UU. 1400 Sixth Street (CO 6/7/13)
 VV. 1409 Scenic Avenue (CO 9/3/15)
 WW. 1301 Shattuck Avenue, Live Oak Park (CO 2/2/17)

15. CURRENT LAND USE PROJECTS (BMC SECTION 23B.24.030.B)

<http://www.cityofberkeley.info/ContentDisplay.aspx?id=62826>

Projects proposing demolition of buildings greater than forty years old

a. Non-Residential Structures (BMC Section 23C.08.050)

UP2013-0058	(1951 Shattuck)
ZP2015-0045	(2813 Eighth)
ZP2015-0096	(2556 Telegraph)
ZP2015-0229	(3000 Shattuck)
ZP2015-0238	(600 Addison)
ZP2016-0009	(1218 Santa Fe)
ZP2016-0014	(2720 San Pablo)
ZP2016-0020	(2072 Addison)
ZP2016-0117	(2190 Shattuck)
ZP2016-0207	(2527 San Pablo)
ZP2016-0216	(1486 University)

b. Residential Structures

ZP2015-0177	(1946 Russell; 2908 Adeline)
ZP2015-0183	(1222 Sixty-Sixth)
ZP2015-0194	(1325 Grizzly Peak)
ZP2016-0025	(1415 Fifth)
ZP2016-0026	(1140 Carleton)
ZP2016-0028	(1155-1173 Hearst)
ZP2016-0098	(2229 Seventh)
ZP2016-0129	(2212 Tenth)
ZP2016-0148	(908 Cedar)
ZP2016-0179	(2129 Ninth)
ZP2016-0223	(2323 Eighth)

16. NOTICE CONCERNING LEGAL RIGHTS

If you object to a decision by the Landmarks Preservation Commission to approve or deny a designation or permit for a project, the following requirements and restrictions apply:

1. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to

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notify the Current Planning Division in writing to receive a Notice of Decision when it is completed.

2. Pursuant to Code of Civil Procedure, Section 1094.6(b), no lawsuit challenging a City Council decision to deny a permit or variance may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure, Section 1094.6(b), which has been adopted by the City. Any lawsuit not filed within that ninety (90) day period will be barred.
3. Pursuant to Government Code, Section 65009(c)(5), no lawsuit challenging a City Council decision to approve (with or without conditions) a permit or variance may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure, Section 1094.6(b), which has been adopted by the City. Any lawsuit not filed within that ninety (90) day period will be barred.
4. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

17. ADJOURN – 11:20 p. m.

Action: Adjourn the meeting

M/S/C: Adams, Brown

Vote: 8-0-0-1

Yes: Adams, Schwartz, Allen, Brown, Finacom, Linvill, Olson, Suczynski-Smith; No: none;

Abstain: none; Absent: Belser.

The Senior Center closes at midnight and the meeting must adjourn by 11:45 p.m.

2017 LPC Meeting Schedule - First Thursday of the month or as follows:

February 2, 2017
March 2, 2017
April 6, 2017
May 4, 2017
June 1, 2017
July 6, 2017
No meeting in August
September 7, 2017
October 5, 2017
November 2, 2017
December 7, 2017

¹ Motion abandoned prior to completion of the vote.

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**West Berkeley Shellmound - Ohlone/Lisjan settlement
Landmark's Preservation Commission 2/2/17**

Revised per LPC comments

In 2000 the West Berkeley Shell mound was designated as a City of Berkeley landmark. The extent of the landmark includes the property at 1900 Fourth Street, for which a development proposal is under consideration.

The Notice of Decision by the City Council, dated February 7, 2000, specifically noted "*Designation does include the site itself and all items found subsurface including artifacts from the earliest native habitation such as but not limited to native tools, ornaments, and human burials.*" This brings the 1900 Fourth Street site and all its subsurface character under the purview of the Landmarks Preservation Commission.

The LPC has taken extensive public testimony on and considered the Draft Environmental Impact Report (DEIR) for 1900 Fourth Street on three occasions, and considered a large amount of written testimony and documentation.

The LPC finds and recommends:

The DEIR is seriously deficient in content, scope, and findings. We recommend the Cultural Resources section of the document in particular be withdrawn, re-written, and recirculated.

A re-circulated DEIR should take these issues into account:

- adequacy and extent of consultation with Most Likely Descendants (MLD) and members of the Ohlone/Lisjan communities. This issue should be considered not only under the provisions of AB52 requiring MLD consultation, but under the City of Berkeley's commitment, expressed in City Council Resolution 67.353-NS, that "free, prior and informed consent of the Ohlone and other indigenous peoples of the region be integral to any alteration planning for the Berkeley Shellmound sacred site, in accordance with the provisions of the United Nations Declaration on the Rights of Indigenous People... (the Council)... calls upon all parties to follow the principles of the Declaration with respect to the West Berkeley Shellmound site."
- the full extent of historic documentation of the West Berkeley Shellmound that has been submitted or referenced in public testimony.

In regard to mitigations, the LPC believes that those proposed for Cultural Resources in the DEIR are inadequate and should be reconsidered. The mitigations proposed—including payments to organizations outside Berkeley, creation of a GIS layer in City databases, and creation of a history display on the site -are questionable, insufficient, and do not speak to the fundamental issue that needs to be mitigated - direct impacts on the historic site itself.

Specifically, we question the proposal in Mitigation **CUL-1**, that a \$75,000 payment be made by the developer to a non-profit organization in Fremont. In particular we ask that the City require proof of active non-profit status for the entity that owns the Oh lone Cemetery. **This mitigation should either be further clarified by staff and consultants, or withdrawn.**

Additionally, disturbing any Native American burials at the 1900 Fourth Street property and removing them to another site, possibly in Fremont, is not a desirable mitigation.

Staff suggested during the January, 2017. LPC discussion of the DEIR that construction of a GIS layer in City databases, recommended as **Mitigation CUL-2**, would cost \$7,000 to \$10,000. **We recommend that the Planning Department request funding for that project from the City Council, independent of this particular project.** The creation of the GIS layer should not depend on funding from a project that would substantially damage Berkeley's most significant archaeological site.

In regard to Mitigation CUL-3, the creation of a historic display is an inadequate mitigation for disturbance and possible destruction of the historic resource itself. Plaques and displays should augment and amplify historical sites; they should not be regarded as a replacement or substitute for the sites themselves.

In addition, the LPC suggests a modification to the project alternatives, namely that the "No Project" alternative describe the option of the property being transferred to permanent park / memorial use, owned and operated by a government agency and/or an appropriate non-profit, with appropriate compensation to the current owners for the value of the land.

The other restoration alternatives proposed are not appropriate or relevant to the issue of preserving the Shellmound site. While altering the height or square footage of the project may alter or reduce some impacts, it does not speak to the fundamental issue of consideration before this Commission—preservation of the Shellmound site itself.

Finally, while impacts related to traffic, circulation, and other issues are not the direct concern of the LPC, the LPC notes that significant critiques of the proposed projects impacts have been raised and should be taken into account by the environmental review consultants, City staff, and the Zoning Adjustments Board.

The LPC incorporates by reference into this motion the specific concerns and critiques raised by Commissioner Olson in her written submittal to the Commission. keys points are highlighted here:

- The West Berkeley Shellmound IS a sacred site. The term sacred site is part of the landmark designation language.
- The West Berkeley Shellmound has only one surviving parcel of open space – known as the Spenger's parking lot
- The West Berkeley Shellmound is still used for Ohlone ceremonial purposes
- The City of Berkeley City Council passed a resolution in 2015 recognizing the Ohlone people as the original inhabitants of Berkeley. that the Ohlone have sacred sites in Berkeley and the city will work in good faith with the representatives of the Ohlone
- The 2000 landmark designation and the 2004 California Register designation both acknowledged the presence of resources below the ground
- The site has not lost integrity since the designation
- Hundreds of other burials have been found in nearby sites – UNDER the flat surface of the ground.
- Above ground structures are not cultural resources, per the landmark designation
- The landmark designation seeks to protect everything under the surface, regardless of the period of its origin
- If the soil is removed from the site and replaced with fill, the sacred site is desecrated
- Boundaries of the site are not in dispute. They are in the landmark and California Register designations
- Unpermitted coring of 2014, who approved, how, and where are the artifacts recovered
- Concern about one person performing MLD capacity for all processes of development
- Accurate historical creek information needed, including 19th century maps
- Accurate dates of habitation needed
- Accurate burial information needed, including total number of residents, burials, burial rituals and placement within the mound
- Endorse public comments opposed to DEIR

- Support City of Berkeley land use and urban design policies and public process
- Accurate historical photographs of the mound
- All documentation requested must become part of the documented record
- The loss of a resource cannot be mitigated
- Any mitigations must take all information into account