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ZONING ADJUSTMENTS BOARD MEETING  
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>> Chair Tregub: Okay. No? Yes? Excellent. Now this meeting is called to order. Staff will call the roll.

>> G. Powell: We will start with board member Brazile Clark.

>> Present, no ex parte.

>> Thank you.

And Board Member Erickson, please.

>> Present, no ex parte.

>> Board Member Teresa Clarke.

>> Here, no ex parte.

>> Board Member O'Keefe.

>> Present, no ex parte.

>> Board Member Donaldson, welcome back.

>> Present, no ex parte.

>> Board Member Selawsky.

>> Present, no ex parte.

>> Board Member Pinkston.

>> Present, no ex parte.

>> Chair Tregub.

>> Chair Tregub: Present. And I answered questions about tonight, the public hearing for the 1900 Fourth Street promise with citizens.

>> G. Powell: Thank you.

>> Chair Tregub: Now we have an opportunity for -- there we go. Are there any public comments on not on the agenda? Tony Matzner, please come up. You have three minutes.

>> Good evening. And happy new year. I hope you all enjoy the beautiful full moon outside. I hope that doesn't mean we are all going to be lunatic tonight. But I wanted to report back to you on the paper that I'm writing on the R-1A zoning. So Shoshana, it is all your fault I'm doing all this work, because you said that the city must have had a vision, and I thought, oh, like heck. So I started doing a lot of research, and I want to tell you my paper has two elements. One is a database and the other is a history. And I am pretty much done with the database. I use the assessor's maps, and the city has a parcel database in Excel. And so I ran a business using Excel, so I was able with a little help from my friends and a retired computer instructor named Mary Ann Gallagher who came to my rescue, I have basically compiled a parcel database for the R-1A with several sheets.

The history's coming along. I have pretty much exhausted the online, I think, and tomorrow I'm filing a public records search to read the Planning Commission's minutes. It is a very, very interesting exploration. I do want to say that I am a retired academic, and a retired businesswoman. And I usually go into things with a fairly open mind. And I have my own personal experience as a longtime homeowner in the R-1A, but I usually don't present data and history to support my preconceived notions. I really go into things with an open mind. And talking to Teresa, you said what I thought, and like my mother said, Tony, vanilla is your favorite flavor when I wanted a chocolate ice cream cone.

Actually, I have a fairly nuanced feeling about zoning, and I'm not ready to say exactly what my conclusions are going to be, but I want to give you an update on the things I have undertaken, pretty arduous.

Thank goodness I'm a retired academic and hopefully I'll use my skills to inform everybody about a very important topic which is the zoning in the flatlands.

>> Thank you very much. I look forward to reading it.

>> Chair Tregub: And we have one more speaker card on an item not on the agenda that just came in from Peter Alexander. Please come up.

>> Is the microphone right here?

>> Chair Tregub: That's it.

>> This evening a most beautiful full moon. It be the inmate's high noon tune. I am that I am as I am here speaking truth to power free of all fear. I am the servant commanding the armies and angels of the almighty creator, all coming now forth from the east, south, west and north as the true liberator, liberator to shut down the entire west coast until D.C. and Wall Street be but burnt toast.

The 48 freedom strike be the prophecy's command that walks true hearts into the promised land. I am Peter, keeper of the keys. And this world of corruptors will be put to their knees. Be authority be mine to say as I do, and ceasing the status quo. By almighty creator's grace, truth and love, I say it you hear, so be it AHO.

>> Chair Tregub: Thank you.

With that, we are ready to move on. We might be ready to move on. We interrupt this commercial break to provide an update that I just received. First I wanted to ask if there is anyone here who wishes to speak in opposition or at least not in support of the school on 499 Spruce Street. If so -- step one.

>> D. Pinkston: Step one.

>> Chair Tregub: If so, please come up and fill out a speaker card.

>> D. Pinkston: Is there anyone opposed to the step one school item? That's the question.

>> Chair Tregub: Yeah. Seeing none, there might be an opportunity to put this item on consent. I will leave that to the ZAB to decide. Speaker cards we received on that issue are all in consent of it, or in support of it.

I also have a question for Kelly Hammargren. I just received a card on 2212 Tenth Street. It is getting continued until February 9th. Would you still like to speak on this item?

>> I was only going to say that the sign was taken down, the notification. So that was my comment.

>> Chair Tregub: Okay. Thank you very much. And thank you to members of the audience for trying to help us move things along since we have a lot of issues on our agenda to discuss. With that, I'm going to entertain motions on the consent calendar.

>> D. Pinkston: I would like to add 1325 Grizzly Peak and 499 Spruce to the consent calendar and then move the consent calendar.

>> Chair Tregub: All right. Thank you very much. Is there a second?

>> S. O'Keefe: There was a letter in opposition to step one. Do we want to consider that? I don't know if there's precedent for us moving something to consent that was on the action calendar when there was opposition.

>> Chair Tregub: If you would like to discuss it as part of the action calendar, we can certainly do so.

>> S. O'Keefe: I'm curious what other people think.

>> T. Clarke: Well, I think the way to handle that is if it goes on consent if someone's in opposition on the board that they want to discuss it, then you would pull it off consent. So that we can have a discussion about it further. So that's what I would suggest.

>> S. O'Keefe: But it is not on consent currently.

>> Chair Tregub: It is not on consent but the motion on the table right now is to move it to consent given that we have not received any speaker cards in opposition to it.

John.

>> J. Selawsky: I can second the motion. I agree with moving those to consent. I also want to note, part of what we are approving on consent is the minutes from December 22nd, but also 2212 Tenth Street will be continued to February 9th.

>> Chair Tregub: Correct.

>> J. Selawsky: And 27 Alamo Avenue will be continued, and that is off calendar. There's no date specific on that one. That is part of the consent.

>> Chair Tregub: That is correct. And thank you for making that point.

>> J. Selawsky: I want people to know that before we vote on it.

>> Chair Tregub: Yes. That is very important. The only approvals on consent, if this motion passes, would be 1800 Sacramento Street and

1325 Grizzly Peak Boulevard and 499 Spruce Street, which is the Step One school.

>> S. O'Keefe: I think -- if you want to vote on the motion, that's fine. I think I'm going to vote against it because I personally don't feel comfortable moving 499 Spruce to consent because of the letter of opposition.

>> D. Pinkston: I'm happy to pull that one and leave the motion if John's okay with it.

>> J. Selawsky: That's fine.

>> S. O'Keefe: And by way of reasoning, somebody wrote a letter, there is objection. I don't think them showing up should be the determining factor if it is heard.

>> Chair Tregub: And I appreciate your willingness to move it off the consent calendar to accommodate Shoshana's request.

With that, there is a motion and second for the consent calendar. We are ready to vote. Staff, could you please call the roll?

>> G. Powell: Sure. Board member Brazile Clark.

>> B. Clark: I approve the motion.

>> Board Member Erickson.

>> Yes.

>> Teresa Clarke.

>> Yes.

>> Board Member O'Keefe.

>> Yeah.

>> Board Member Donaldson.

>> Yes.

>> Board Member Selawsky.

>> Yes.

>> Vice Chair Pinkston.

>> Yes.

>> Chair Tregub.

>> Chair Tregub: Yes. Thank you very much.

With that, just to reiterate, 2212 tenth and 27 Alamo Avenue are continued.

1800 Sacramento Street and 1325 Grizzly Peak are approved. They are appealable to the city council. Congratulations to those applicants.

>> G. Powell: Give us a moment to get the staff ready for 1900 Fourth Street because the presentation will be from the table in front of you.

>> Chair Tregub: While you are doing that I wanted to ask permission from my colleagues on the board. I when we take up the order of the next three items, we would do 1900 Fourth Street first. After that, would there be objections to taking up 499 Spruce Street next ahead of 2517 Sacramento given that there appear to be some young children present belonging to parents speaking on this item? I did promise the very next thing taken up would be Fourth Street.

>> S. O'Keefe: Since I didn't let it go to consent, I didn't realize there were children in the audience, and I think it will be short. So I definitely am eager to get to the Fourth Street case as much as everyone else, but I would like to request that we do the Spruce street one first and try to make it quick.

>> Chair Tregub: Are there objections by anyone? Okay.

John.

>> J. Selawsky: Let's say ten minutes and if we don't come to a conclusion in ten minutes we move it back, okay? Because otherwise we, you know what I'm saying?

>> Chair Tregub: Yeah. And staff, are you willing to be nimble and present on Spruce street right now briefly?

>> G. Powell: Yes.

>> Chair Tregub: Thank you.

>> G. Powell: Just to keep it brief, 499 Spruce is a proposal to add some floor area on an existing school site without increasing enrollment or increasing staff. 499 Spruce is in the R-1H district, very top of Spruce almost in Contra Costa County. The recommendation for this report is to approve the project, and we are adopting some conditions that we normally would do for construction, but I don't think we are having any conditions that relate to the use. The reason I'm being so brief is it is a very small project.

The letters in opposition were mainly about the potential loss of trees, and I know the applicant's here and has a presentation ready to respond to what they are doing with the landscaping and trees. And just a little bit about the changes in the school and how the perception is that it was primarily a neighborhood school and now more people are driven there so there is more parking and maybe some congestion that is associated with the school, and my response at least to the interface of the school with the public is that we have standard protocols. If it does become a problem, we can do what we call a flight plan where we step in and try to manage that if there is any congestion that does occur. But I

have to also clarify something, that this site has a lot of street frontage, on the curb of Spruce. A lot of it is red so there is not an opportunity for normal pickup and drop-off but if it is indeed a problem and is safe the city can look at temporary loading for passenger pickup and drop-off tonight if we can do that.

But otherwise I don't want to say anything else. I want to let you guys go.

>> Chair Tregub: Thank you. I just had one question. And I tried to ask it in advance but I know you are prepared to provide an answer. It is actually on a different condition. Does staff believe 17 sufficiently accommodates all the recommendations made in the arborist's report?

>> G. Powell: And I thank you for mentioning that. You did send that to me via e-mail. Can you restate the question?

>> Chair Tregub: In the opinion of staff, does condition of approval 17 around coast live oak tree protections fully incorporate recommendations that may have been made by the arborist? It is a simple yes or no.

>> G. Powell: I believe so, yes. And it does give us the flexibility without spelling out everything that has to happen. It just says you have to follow the recommendations of the arborist. There is a consequence. The city has a prohibition of removal and there are strict limits to how much can be pruned, and we take that very seriously.

>> T. Clarke: So currently you do not have a condition of approval for there to be a traffic management plan for not the construction but for the objection raised by neighbors, which was the reason this was not put on the consent calendar. So you don't have a

condition of approval to say they need to provide or create one for the city traffic engineer for drop-offs and pickups?

>> G. Powell: Not part of this. And I wish I could say the prior use permits on the site had it or didn't have it. But I think the reason we didn't do it here was that if they were adding students or staff, of course we would do that. And if we had existing concern that it wasn't functioning right, we would have added it. Nevertheless, we have standard language that we can adopt with your direction tonight to say they shall create one that is to the satisfaction of the zoning officer and the city's traffic engineer. So we can simply add it just to kind of catch it.

>> T. Clarke: I would recommend that.

>> Chair Tregub: All right. Thank you. Other questions? At this time let's call up the applicant.

>> We are going to share our time, so sue's going to take three and we are going to take two.

>> Great.

>> And I will talk really fast. Thank you for the opportunity to speak on behalf of Step One school and this important project. I'm sue B, director of the school and one of its cofounders. We are a non-profit organization whose mission is to nurture students' love of life and learning in a community rooted in respect for self-and humanity. Step one's vision is to be a model of excellence in early childhood education thus inspiring our largest society to an elevated commitment to its young children. We host speaker events with national experts on cognitive development and social justice education and we hosted international early childhood education visitors on our campus. Our school's curriculum is

based on the 21st century education model of project-based learning developed within the context of natural play. We also believe the commitment of raising children to be global citizens and caring changemakers is absolutely critical to their education. Step One has been doing that work for a generation in a 60-year-old building that has seen few upgrades. With respect to this project we have needed some additional program space for a long time. New research supports a project approach in education and our proposed multipurpose room provides space for collaborative long-term projects worked on by groups of children and their teachers. Children will have an opportunity to develop their skills in ways that are currently prohibitive in the shared classroom. There will be room for music and drumming and movement. So important to learning through the mind/body connection. Large art projects will be possible. A children's learning kitchen will be attached to the new kitchen so garden produce can be made into health snacks. Our beloved teachers are excited about engaging new curriculum in the space.

Our school was founded in 1981 in Kensington and in 1983 we bought the school when it was put up for auction. Our school was shared with the new age academy, private middle school, that had been renting space. That year it was 75 children. The following year we increased enrollment to 100 in the five classrooms.

We have been licensed since 1983. I want to everyone size the project will not increase the number out of faculty or students at the school. The new multipurpose room will be a shared space for a variety of recreational purposes. Our school operates from 6:00 to 8:00 daily. We give enrollment priority to neighboring families, but core is the

celebration of diversity in the Bay Area and we are proud that the families who attend Step One are drawn from across the economic, geographic and racial spectrum of our community. Many families drive to school every day and that naturally puts pressure on street parking in the neighborhood. We take the issue seriously and have always worked hard to remind families throughout the year never to block our neighbors' driveways. It has been a privilege to be part of the neighborhood the past 33 years and we have enjoyed being an active member of this group, hosting meetings at the school, neighborhood meetings, soliciting the city to do a traffic study, accommodating reasonable requests regarding parking or tree trimming, and offering the neighborhood a place to house one of Berkeley's community CERT caches on our property.

>> Good evening, I'm Kristin Fisher, one of the architects for the project. And I will say that I am also a parent at the school and we are fully behind the curriculum the school offers. It is an amazing place and it is incredible there is a preschool that has a bona fide curriculum based on social justice and inclusiveness for preschool kids. Extraordinary. Switching hats from parent to architect, couple minutes or less on the design of the building. The gist is we wanted to take a really light touch. We appreciate the existing mid century look and feel of the building or massing of the building, and our intent is to have the addition that seamlessly integrates with the form. I'll speak to the landscaping because that is the question that has been raised by some of the neighbors, there is a lot of existing mature shrubs around the Spruce street corner, which seems to be the area of interest. Those will be maintained where they aren't affected by the construction. There is a

ten-inch cypress tree and eight-inch pine tree and a few four-inch to six-inch juniper trees at the very top of the hill at the top of the existing driveway that goes up. And in order to accommodate our accessible ADA ramps that go up to the new building, those need to come down, the trees need to come down. But we will maintain the existing shrubbery and also plant new native drought-resistant shrubs to screen the site work up to the level of the proposed railings. Guard rails going up the ramp and fences going up the ramp and the new stair to screen the building. And that site work from the corner.

>> Chair Tregub: Thank you. Questions?

>> T. Clarke: Do you have an objection to creating a new traffic plan that you work with the neighbors in getting approved by the city?

>> I know that the school has done last year or two years ago an official traffic study done that was initiated by the school.

>> T. Clarke: Management plan, I mean. Excuse me. Management plan.

>> No.

>> T. Clarke: So you would be okay with that. Okay.

>> Chair Tregub: Thank you. Anyone else questions? Thank you very much.

Now we are going to take public comments on this item. Bear with me for just one second.

>> They might be downstairs. Could I check for a second?

>> We were last on the agenda.

>> Chair Tregub: Yeah. Feel free to confer amongst yourselves while public comment is going on. Right now I'm going to ask Oliver John to come up followed by Candace and the others.

>> She is checking to see if they were outside. They thought they weren't going to be needed until later.

>> Chair Tregub: Is Candace here?

>> G. Powell: Just for your information the speakers are on outside and in the hall so they would be hearing us hopefully while we talk.

>> Chair Tregub: Given how I think this discussion is going and given that all four comments are in support, perhaps if they come back we will give them an opportunity to present, but we can move to discussion here. Sound good? Thank you.

So we are going to take this to the dais now for discussion.  
John.

>> J. Selawsky: If you want to add that on as a motion, I will second it.

>> T. Clarke: I would like to make a motion to approve the project and add one condition of approval to the ones that are listed so far, which would be that the Step One school create a traffic management plan that consults with the neighbors to manage the drop-off and pickup of and also events they have after-hours.

>> Second.

>> Chair Tregub: All right. Moved and seconded. Shoshana.

>> S. O'Keefe: I just want to say, like I said, I'm responsible for this, it is great that we had the public hearing. I want to say thank you to the applicant for addressing the concerns that were in the letter, and I am glad we did this. And I will support the motion.

>> Chair Tregub: Thank you. Anyone else? Is there anyone here who wishes to speak on Step One school before we move to a vote? Seeing none, let's move to a vote. Staff, would you please call the roll?

>> G. Powell: Board member Brazile Clark.

>> Yes.

>> Erickson.

>> Yes.

>> Teresa Clarke.

>> Yes.

>> O'Keefe.

>> Yes.

>> Board Member Donaldson.

>> Yes.

>> Board Member Selawsky.

>> Yes.

>> Vice Chair Pinkston.

>> Yes.

>> And Chair Tregub.

>> Yes. Thank you very much. Congratulations. Your project is approved.

>> Thank you very much.

>> Chair Tregub: With the new condition of approval. It is appealable to the city council. Before staff begins, I would like to say a few words about the process. First of all, I would like to thank everyone for coming tonight, and of course to everyone who has submitted letters that we have all been reading.

I wanted to remind everyone it is critical to a robust public process to be respectful. And the reminder is that, and I know everyone will be able to do this, please be respectful to all that are present in the room, and all opinions that are expressed.

Public comment is going to be allowed two minutes a piece, and time limits are going to be strictly kept this time around. The first time I allowed a little bit more leeway because we started the input so late. And there were a lot of members of the public wishing to speak. But in order to ensure the process is fair to everybody, we will honor the rules for everybody, two minutes per speaker.

During those two minutes, you can speak on anything you want on the item, however, there is a higher chance of the public comment being responded to as part of the formal EIR process. You are encouraged to keep the comments germane to the EIR.

And finally I wanted to ask that in order that we can hear all the speakers that you withhold anything that makes noise and makes it hard for us up here to hear you. That includes cheering, applause.

Something that Denise did when she was chair is she encouraged members of the public who agree with a comment to use hand motions something like this, for example.

You are welcome to do that. And finally we are just asking for civility and for respect for the process. And we are going to make sure we on the dais exercise the same level of respect.

>> S. O'Keefe: While we are addressing the public I want to make sure that everybody knows we are not going to be voting on this tonight. This is part of the comment process that is part of a longer process that will eventually result in us voting on whether or not to approve the EIR, but tonight we are just getting comments from you and we will also make some comments after the public hearing. And those comments will be responded to in a later document. So I just want to make sure everybody understands what to expect tonight.

>> Chair Tregub: Thank you very much for pointing that out.  
Staff. Go ahead.

>> Thank you. You have taken some of my items from my staff presentation.

>> Tonight is continued with a proposed five-story 192,000 square foot mixed use development containing 155 dwelling units, approximately 30,000 square foot of retail or restaurant use and a 372-space parking garage.

On December 8th, 2016, the ZAB held a public hearing to review and comment on the draft EIR, and please refer to that staff report for basic background project description and a summary of the draft EIR and associated initial study.

The project was continued. The discussion was continued until tonight. And the memorandum that was provided to the ZAB and available to the public was really to serve as a transmittal for correspondence that

was received between the December 8th meeting and this evening. And I would want to call attention that one of the documents is a revised notice of availability that extends the draft EIR comment period to February 9th. The comments received tonight as well as received at the hearing on December 8th plus the comments received at LPC hearings along with any written correspondence will be responded to in what is called a response to comments document. The draft EIR along with that response to comments document, together those constitute the final EIR. And on a date in the spring or summer of 2017 the ZAB will hold a hearing to consider certification of the EIR. After the EIR is certified, then the LPC can take action on the structural alteration permit and the ZAB can take action on the use permits. As many have stated already, there is no action being taken tonight. We are here to listen to comments on the draft EIR.

And I would like to turn it over to Teresa Wallace with LSA, the city's environmental consultant, who will do a one-minute summary of the EIR.

>> Chair Tregub: One minute. We will hold you to it.

>> Maybe two minutes if I may. Just again to summarize, we prepared an initial study that determined the impacts related to paleontological impacts and hazards would be mitigated to a less than significant level. The initial study identified impacts requiring more detailed information related to historic archaeological resources, traffic and circulation, air quality, and noise and vibration, and these topics were the focus of the EIR analysis. All other environmental issue topics evaluated in the initial study were determined to either result in no impact or less than significant impacts.

The draft EIR determined that impacts related to cultural resources including impacts to archaeological resources that could be associated with the West Berkeley Shellmound, air quality and noise and vibration would be mitigate today a less than significant level with related mitigation levels.

The topic of air circulation, it noted the impacts at four intersections during cumulative plus conditions which occurred in the year 2040. These include the fourth and Hurst, sixth and Hurst, San Pablo and university intersections. Mitigation measures were considered but were determined to be infeasible. Therefore the level of service impacts at these four intersections would be significant and unavoidable.

The draft EIR also looked at alternatives to the project and determined that the reduced building density alternative would be the environmental superior alternative as it would provide the greatest reduction in environmental impacts while meeting most of the project objectives. This alternative would eliminate the significant and unavoidable traffic-related impacts that two of the four study intersections.

That concludes the brief summary of the EIR analysis. With me tonight I just want to introduce LSA's cultural research manager Tim Jones and also traffic consultant with KITTLESON Amanda LEAHY. And if you have questions or comments for us we will do our best to answer those.

>> Chair Tregub: Any questions for staff? Denise.

>> D. Pinkston: Thanks for coming tonight. It is great to have the people who did the particular reports available to answer questions. I appreciate that.

On the traffic study, how are the study intersections derived? There have been comments made so far that we did not do a sufficiently broad scope of analysis on intersections and in particular a lot of traffic coming into Fourth Street comes from Gilman corridor, not the university corridor, and none of those intersections seem to have been caught in the traffic analysis. Can you talk about that?

>> Sure. We started with a trip generation analysis and then we distributed those trips. And we looked at where those trips would be coming in and out, and like you said, they would be a lot of them to the north to Gilman, some to the south along San Pablo. By the time they get to Gilman, they are very dispersed so if there are fewer than 50 trips added to a signalized intersection, the city's traffic impact study guidelines essentially say that those don't need to be evaluated specifically in that level of detail.

So we had discussions with the city and decided that this subset of intersections would be analyzed.

>> D. Pinkston: I have another question about the consultation with the Ohlone. A lot of the mitigations particularly but also the consultation process revolve around what appears to be a single individual. We had a lot of testimony at the last hearing from a number of other individuals that are representatives of the Ohlone tribe or are affiliated with the tribe who expressed a concern about lack of coordination or communication with them. So I'm wondering how you can talk about the process for selecting that individual and how we can make sure that everyone's concerns and questions get answered in a meaningful way,

particularly given the heightened level of concern with tribal coordination.

>> Sure. So in -- and I didn't bring all the background materials this evening, but in I want to say February of 2016 when this project was beginning LSA on behalf of the city sent a letter to the Native-American heritage commission describing the project in the area and asking for their NAHC's list of tribal members to be consulted for projects in this vicinity. We received a list back that had five names on that list. The City of Berkeley sent letters to those five individuals who represent the tribes. The one person that we received a response from was Andrew Galvan. At the same time, the City of Berkeley at large had received an AB52 consultation request from Mr. Galvan, and there is a description in the draft EIR of both the AB52 requirements and the consultation process. So under AB52, city staff, as well as cultural resources representatives from LSA had three meetings, I believe, with Mr. Galvan, talked through the preliminary earlier drafts of the cultural resources section in terms of background reports that we have reviewed, discussions and mitigations, and through that consultation process Mr. Galvan had the request for -- I should probably check the notes on this -- if the applicant team was willing to make a contribution to the Ohlone tribe represented by Mr. Galvan, and what the tribe's preference for that type of mitigation would be, be it a scholarship or a language fund or something else that the applicant team wouldn't have thought of. I believe Mr. Galvan went back and had that discussion with members of his tribe and it was determined through their process that their highest

priority is funding for the cemetery in Fremont, and that is why that is included.

Back about a week before the draft, so switching gears. The AB52 consultation with the representatives from the state list that was then concluded, about a week before the draft EIR was published the city received a letter from -- and I will mispronounce the name of the consolidated or confederated villages represented by KARINA Gould, because that was not a name that came from the list of the Native-American heritage commission, I reached out them and asked was it because now we were in November and that list was provided in February, if something had changed. The Native-American heritage commission said, no, we don't have any paperwork that looks at their ancestral documentation. They are not on the required list for consultation.

I conveyed that to Ms. Gould and said even though you are not on the list of course the City of Berkeley is interested in meeting with you. We had a meeting a week later. We talked about the findings in the EIR, the process to that date. Ms. Gould listened to the city sort of bring her up to speed on where we had been and she let us know that many people that she would be working with would be coming and talking at these meetings. They would be submitting comments on the EIR. And that she would be submitting her paperwork to the Native-American heritage commission. Since that time the city has not received an additional request for meetings from Ms. Gould or other representatives from the Ohlone community.

>> Chair Tregub: Thank you. Are you done with your questions, Denise?

>> D. Pinkston: I have one more traffic question but we can stay on this topic.

>> Chair Tregub: Teresa.

>> T. Clarke: When you first approached the heritage commission, is it?

>> S. Allen: Correct. Native-American heritage commission.

>> T. Clarke: What other outreach was done? Is there other notifications in the paper or in terms of contacting people at large for them to have time to get their paperwork in order? What is the process? Why do you just go to the Native-American heritage commission and not to the public at large to solicit that kind of thing?

>> S. Allen: I would say certainly through the EIR scoping process there was a notice of preparation that was circulated, posted on site. We have scoping meetings in front of both the LPC and ZAB, and I will Karina Gould attend and had spoke at one or both of the scoping meetings.

>> Chair Tregub: Thank you. Shoshana and then back to Denise.

>> S. O'Keefe: I was wondering if you are at liberty to disclose the names of the other four individuals that were provided to you.

>> S. Allen: Absolutely. I just simply didn't bring that with me. You have got it.

>> S. O'Keefe: We would love to hear it. Maybe if some of the people are here tonight I would be interested to know.

>> I apologize if I mispronounce any of the names but the five tribes that are eligible to consult with the city for purposes of the Assembly Bill 52 consultation are Irene ZWIRLIN with the Amah Mutsun

tribe, Tony with Coastanoan, Andy, Rosemary, and Andy Galvan with the Ohlone tribe.

>> S. O'Keefe: So the Muwekma tribe and the Ohlone tribe are closely related? Well, I look forward to hearing more about that. But the other four, none of them were affiliated with the Ohlone tribe, sounds like?

>> The Ohlone tribe in this context is its own specific entity represented by Andrew Galvan. They are separate from the Muwekma.

>> S. O'Keefe: He was the only one that was a member of the Ohlone tribe that you received?

>> He is the only one, I am not familiar with the other members of the other tribes.

>> D. Pinkston: Sorry to jump back to traffic. In one of the comment letters it talks about displaced parking. If you drive to Fourth Street on any busy weekend it is hard to find parking. The EIR doesn't look at what will happen with displaced parking, and it suggests in fact that people should come by means other than their car and to replace that displaced parking would be an implicit violation of the city's transit-first policy of encouraging people to leave their cars at home.

As a practical matter, most people shopping making trips for shopping purposes or dining purposes don't take the bus. They might take the bus for communicating, but they don't take it to do their weekend shopping. Certainly not sort of destination shopping. So I don't think that conclusion in the EIR is valid that you don't need to do a parking displacement analysis because people are going to take the bus. Because I

think practice and studies show people don't take the bus for retail trips.

>> Chair Tregub: Is there a question in there?

>> D. Pinkston: Is question is why didn't you include that, and I guess then the comment would be I think you need to include that. Where would those cars go if you do not park them? Because clearly they are going to go somewhere. They are not just going to go away.

>> So included in the traffic impact report which is I think appendix H of the EIR there is a parking study that was conducted, and we looked at a.m., weekend, midday, and p.m. peak hour parking conditions. We found that within the two-block vicinity it was fairly parked up but a little bit further south there was available parking. So some of that could accommodated perhaps slightly further away. I think the offset was about 50 vehicles, 50 to 60 cars during the peak peak parking demand. And another thing --

>> T. Clarke: Is that over and above what they are proposing in their garage?

>> The garage will include some public parking.

>> T. Clarke: You including that in that isn't it a fact.

>> D. Pinkston: Fewer stalls being provided in the future than they exist today.

>> Yeah. So essentially there would be 50 displaced vehicles with the project that would not be able to find parking during the peak period of demand.

>> T. Clarke: Public parking or private parking?

>> D. Pinkston: The Spenger's parking.

>> T. Clarke: That is not public parking, right? That is a private lot and that is not required parking for the area? It is a private owned lot? So you can't include that as a requirement.

>> D. Pinkston: I'm not asking that. That's not my question.

>> T. Clarke: Sorry.

>> D. Pinkston: My question was people are parking there now and if they don't park there now where are they going to go? That's my question. And what you are saying is they will go farther south.

>> Right.

>> D. Pinkston: But it actually doesn't appear, if you read through the text, doesn't appear there. So maybe in an appendix but it wasn't in the analysis of the impact mitigation section that I could find. That should be corrected in the final.

>> Chair Tregub: Thank you.

>> J. Erickson: Can I follow up on that on the parking?

>> Chair Tregub: Sure. Go ahead, and then back to Teresa and I will reserve the right to ask a question after.

>> J. Erickson: By eliminating the Spenger's parking lot you are losing about something like 150 parking spaces. And some of that -- there will be an additional retail -- that's for retail. And you are going to have additional retail, which is going to generate some more parking need. Is that correct, that you are losing maybe 150 or 200 slots for parking?

>> The project is going to provide 214 parking spaces for retail uses and 158 for residential use.

>> J. Erickson: But you are taking away 350.

>> Right. So there is a net loss of 130, 140 retail spaces.

>> J. Erickson: And you are adding retail. So you are actually diminishing parking by somewhere between 150 and 200 slots.

>> Correct.

>> S. Allen: I would like to just jump in for a second. One of the perceptions we hear wider is this city, how is the city allowing this? How is the city doing this? And just to be clear, city staff and the associated EIR consultants, we are analyzing a project that has been proposed. We are conducting an analysis, we are not proposing the project. I don't mean to look at -- I can look across, turn around and look at everybody. Just wanted to make that clarifying point.

>> J. Erickson: I think that we all agree up here what we are getting at is that it is not fully analyzed.

>> Chair Tregub: Thank you. Teresa, you are next.

>> T. Clarke: What I was trying to ask was the area right now, when you are doing a parking analysis, you are just saying what happens to be there now. But are you evaluating it based on whether it is public or private?

>> The parking supply and occupancy study that was conducted looks at on-street publicly available spaces and publicly available off-street spaces.

>> T. Clarke: And how are you evaluating those in terms of whether they are going to be available in the future in because there is no guarantee. If the retail -- I guess my question is how do you evaluate private parking at the Spenger's? It is providing parking for other retail. There is no retail on Spenger's right now on that lot. So the current retail, where are they providing their parking that they were

supposed to provide? And is that sufficient based on their original zoning? Are we going to analyze that?

>> So there is a parking demand analysis included for the proposed retail uses. And the proposed retail parking accommodates that demand. And the parking they are providing actually exceeds city code requirements.

>> T. Clarke: So in the neighborhood regardless of whether Spenger's is there or not, the parking demand is different than whether the retail that was built owns and has -- when the retail was built for Fourth Street they were required to have parking per 1,000 feet, right? There was one per 1,000, usually. Isn't it something like that in the zoning code? Does the analysis include that as well as the demand? Is the demand based on the zoning code or is it based on some other traffic measure?

>> It is based on ITE manual.

>> T. Clarke: So I think that would be the question I would have. I would want to understand that as well, are the current retail people providing their required under the zoning. That's my question.

>> G. Powell: Just because I have been feeling left out, one thing that I want to encourage the ZAB to consider when we talk about the Spenger's parking lot, that is what we generally know it as, but all of the required parking for the Spenger's restaurant and all the other buildings adjacent to the Spenger's restaurant is provided on the same site across the street. All the restaurants on for the historic use of Spenger's, the zoning ordinance required spaces are behind it on fifth and university and all the new development that is happening down there, all

the parking required for that is self-contained on the lot where the building sits and there is no zoning ordinance required parking in the Spenger's parking lot across the street. Just to follow up on somewhat somebody said earlier, I don't know how the city regulated the parking for most of the historic uses on Fourth Street because it was before my time here, but the standard today and in place since probably the mid-'90s -- and I presume the lots around it have the parking.

>> That is really helpful.

>> Chair Tregub: Thank you. I have a question on the level of service analysis you did on the intersections, and I understand from reading the EIR it came from -- the data came from the previous analysis done in the run-up to the West Berkeley project proposal circa 2009. So my question is what is underscoring my question, if one makes an assumption that 2009 was the height of the recession and there was probably less traffic in the height of the recession because there was less disposable income to go to Fourth Street and shop, is there a more recent analysis that has been done since then that might take into account the current state of the economy and also some of the new mixed use construction that has been built in that general area in the last few years?

>> Right. So this is a great thing to clarify. I'm not sure which data you are referring to because there were new traffic counts completed, so the background traffic for the existing conditions analysis reflects 2015.

>> Chair Tregub: Okay. So it was 2015. And I'm going to have to go back and find it, but I thought that there was discussion that the data was taken from 2009. But it is 2015 counts?

>> Yeah, 2015 counts.

>> Chair Tregub: Okay. Thank you. Other questions?

>> J. Erickson: I have one more.

>> Chair Tregub: Okay. Go ahead.

>> J. Erickson: Again, on traffic, you referred to the ITE standards that you used in your project trip generation analysis. And you use those numbers and then reduce them for weekday travel by 35%, I think it was 17%. Do you have any data to support that? It seems like an enormous reduction to me.

>> The data to back that up is mode share data from the Bay Area travel survey, a survey conducted by MTC. And it takes census data that estimates how many people within the project area census tract use vehicles versus bicycle versus transit. So it is essentially a mode share reduction because ITE trip generation rates are based on suburban sites where almost if not 100% of people do drive, whereas this site is fairly transit-oriented and we would expect that level of reduction.

>> Chair Tregub: Thank you. And I'm going to ask that you make this your final questions. We really need to get to the public.

Denise and then Shoshana.

>> D. Pinkston: It appears from the trip generation rates that most of the trips generated are coming from the restaurant uses on a per-square-foot basis and after restaurants the retail uses and then housing is the third. There is an alternative that reduces the amount of retail but is there an alternative we might consider that increases the number of units marginally with a more significant reduction in the retail square footage so that you can yield a project that would generate

benefits to the community, provide what the community needs most, which is housing, and reduce the primary trip generating problem, which is the restaurant in particular and the retail uses? That didn't seem to be considered, so it might be a hybrid, perhaps. Is that something that you could look at would that help?

>> From the trip generation perspective we did look at a number of scenarios and there was an increased residential reduced retail option but I'll maybe defer to Teresa. Nothing to add? So it is an alternative that could be evaluated further.

>> D. Pinkston: Did it help on the traffic side?

>> Reduced significant impacts, no.

>> D. Pinkston: So you still got that one intersection that is a problem that you didn't take the rest of the level of service above an F?

>> Right. But in about a year when CEQA reform is implemented, we won't be talking about level of service anymore. But the mitigation was still significant -- or not significant.

>> D. Pinkston: What were your thoughts about the alternative and why didn't you include it in the EIR?

>> I would say that we ran about 12 to 16 various scenarios trying to find some sort of combination that would reduce the traffic impacts, and honestly I don't recall why.

>> The message we are hearing now is that is something that you would like to see in the response to comments document.

>> D. Pinkston: Fair enough. Thank you.

>> Chair Tregub: Shoshana.

>> S. O'Keefe: This is a quick follow-up of the question that I asked a while ago. I don't remember your name, the gentleman in charge of cultural resources.

>> Tim.

>> S. O'Keefe: Hi, Tim. You said right at the end of the question that Andrew Galvan was the Ohlone representative. I was wondering if there is just one the way that NAHC works, can there just be one representative for each tribe or can there be multiples?

>> That is a good question. Typically under AB52 what I have seen is there is one contact person per tribe.

>> S. O'Keefe: Okay. So perhaps --

>> S. Allen: I would say that's a better way of defining it, that he is the contact person and it would be up to anyone in the tribe to come to meetings and participate in the discussions with the city, but there is one person who gets the letter.

>> S. O'Keefe: If there was -- I don't know if this is the case but if there was somebody else from the Ohlone tribe who wished to speak for them, it seems like it would be difficult for them to gain recognition under the NAHC because he has got the spot, he is the official guy? That is what I'm trying to understand.

>> Well, the Ohlone tribe is the official name of the tribe. So I think there is maybe two uses that are being used here E there is the Ohlone tribe and sort of inclusive sense and there's the Ohlone tribe as represented by Andy Galvan. So I couldn't tell you who else is part of his tribe, but he is the contact for that specific organization.

>> S. O'Keefe: There is one position like that and he has it?

>> Correct.

>> S. O'Keefe: I understand. Thank you for clarifying that.

>> J. Erickson: Let me just follow up on this issue.

>> Chair Tregub: Final question.

>> J. Erickson: You are using interchangeably representing the Ohlones and a contact person for the Ohlones. And they are not the same thing. I understand if he is the contact person it is his duty to notify all the people in the tribe of what is going on and to give them the opportunity to come forth and say something. But if he is the representative he gets to make the decisions. And I think it is the former. Is there any check on what Mr. Galvan did to notify people of the Ohlone tribe?

>> I am not aware of additional notifications in that tribe specifically. That is something that we could certainly clarify as part of the response to comment period, however.

>> Chair Tregub: Thank you very much. I would like to thank the public for patiently waiting yet again. This is now going to be your time to speak. And I'm going to be calling up names as I receive them in the speaker cards. If you would like to speak and have not filled out a speaker card, please feel free to see staff and they will help you out with that.

I'll call out the first five cards that I see.

Eugene Kaiser followed by Sierra Allen, Dylan cook, Karina Gould, and Clair Beauman. My apologies if I mispronounced anyone's name.

Go ahead, Eugene if you are here.

>> I am a resident of Berkeley since 1977, seen it go through a lot of different changes, and the recent developments in the community. I'm also an ally with the Ohlone people here in the Bay Area. And I am here to express my opposition to building this retail development and housing development on the west shellmound site. I would like to say in the brief time I have I have had a question lingering for quite a while. I haven't been able to get to the meetings so I'm glad you extended them.

The question I have is it is my understanding that the west shellmound site has been declared a city landmark as well as a state landmark and is also eligible for federal recognition as a landmark.

So I ask you as part of my statement if this is a city and state and can be a federally recognized landmark site, why are we even discussing having a retail center and housing build on a landmark site? Maybe I should be talking to the landmark people but I couldn't get to these meetings.

.

But that is the what I am asking. We are designating a landmark site. I understand the pilings underneath the structures will be going down into the ground to support the structures because be burrowing through places where the ancestors of the Ohlone people are buried. This is sacred to anybody. I know where my ancestors are buried. I can go visit them. Thank you.

>> Chair Tregub: Sierra Allen.

>> Hello. Good evening. My name is TIERRA Allen, worked in Berkeley for the last six years. Berkeley City Council has a fantastic opportunity to be on the right side of history by moving to protect the

West Berkeley Shellmound. It is of enduring significance to the Ohlone people and it should be recognized and protected accordingly. We should not be in the business of exhuming bodies for profit. I urge you to reject the EIR for the West Berkeley Shellmound.

>> Chair Tregub: Dylan cook followed by Karina Gould, Clair Beaman.

>> Hi. My name is Dylan. I had actually asked if Karina wanted to go first before me since she is a member of the Ohlone tribe but she had asked for me to go first.

So I just got back from Standing Rock. I was there for about a month and a half holding newcomer orientations. And it was an incredibly beautiful experience. There were hundreds and hundreds of people coming through every day. And one of the core things that I would talk about every day is that it was a fight that was based in indigenous sovereignty and that is the exact same thing that is happening here. This is about indigenous self-determination. And that if indigenous people in the Bay Area don't have self-determination over a site that is as old and sacred as the West Berkeley Shellmound, then what does self-determination mean on these lands? One of the things that I want to actually specifically talk about is the process of consultation. So energy transfer partners, the same company that was building the Dakota access pipeline was speaking the same language. They had found one or two people from the Sioux Nation that would sign off without representing the whole tribe. That is the same here. Andy Galvan doesn't represent the Ohlone people. And Carrie Olson said at the meeting last week that she had met Mr. Galvan several years ago saying that he worked for the same developer. Yeah. So there is a

very, very clear conflict of interest here that I think really needs to be taken into account. Because to me that makes this EIR invalid, that makes any kind of mitigation that Mr. Galvan would determine completely invalid because he has a very clear conflict of interest here and it is the exact same language that was used in making it okay to put in the Dakota Access Pipeline. And I know that you all made a statement in support of Standing Rock back in September, so I really want you to think of that when you are making this determination. Thank you very much.

>> Chair Tregub: Thank you. Karina Gould.

>> (Speaking native language). My name is Karina Gould, part of the Confederated Villages of Lisjan. I have been talking in front of you, this particular board, since March of last year about this particular development. And it seems like there is always some history that needs to be taught. When you are looking at California Indian people, the way that we develop our tribes is much different than the LAKOTA nations or Navajo nations or people that have large groups of folks. We were actually colonized three different times, first by the Spanish and then by Mexico and finally by America. But our groups actually group up together mostly by families and in smaller portions. So there are various different tribes that are from this same area. They were run by headmen and headwomen. The tribe that I represent, the confederated villages of Lisjan is a family tribe of grouping from my family, aunt's family and all the cousins and nephews and nieces and grand daughters and all of those folks. Andy Galvan has been using the name Ohlone tribe, Inc., with his non-profit organization that does these kinds of projects as well as Muwekma, another group that comes from various groups in the area. There are three

different tribes from this area, it is not one tribe. We have different names for ourselves. We all speak the same language, but we have different ways that we run our governments. So just so that is a little cleared up about how that works.

The Native-American heritage commission lost my paperwork in July and I did come and I met with Shannon for a very short while in a meeting. She did invite me to that so I want to make that clear to everybody and the public. At that time I told her and the representative from LSA that we actually felt very differently about this particular site, that this was not just a site that was the Shellmound, but it was a village site that also encompassed an entire landscape. I know that my time is up. But I wanted to clear that.

>> Chair Tregub: I'm going to ask you -- unfortunately, unlike the city council, there is no ability to yield time. But we are going to ask some questions of the speaker.

>> Everybody wants to hear her.

>> Chair Tregub: We understand, that is why we are going to ask questions.

>> S. O'Keefe: If I ask a question she gets unlimited time, right.

>> Chair Tregub: Yes.

>> S. O'Keefe: Can you tell us more about the history of the Ohlone people?

>> Thank you, Shoshana. Yes. So one of the things that I wanted to say is that as a representative for the Lisjan, Confederated Villages, that I actually do need to have consultation on this particular project.

This project, actually the parking lot when we see it it is a parking lot when most of us see these things but for us it is a sacred place, a place where our ancestors are buried. But it is a place where the first things that happened here in Berkeley, before Berkeley was named. This area is called Huchiun, and it actually encompasses five different cities. It is not a little village site. It is an immense place. But right now when we look at the village of Huchiun, which encompasses Oakland, Alameda, Berkeley, Emeryville and El Cerrito -- Albany, then we see nothing that says Ohlone people. We see nothing that says sacred site. We see nothing. But when I go, when I take my children to these places, we are at parking lots when we are saying prayers to our ancestors, we are at the mall in Emeryville. We are at jack London bar at jack London square. We are at these particular places. At apartment building on first avenue in Oakland. We are at a library that is on the Embarcadero. All the different places just because they have buildings on them doesn't make them less sacred. When we are looking at the history of the Ohlone people here in we recollect as being the first people to ever live here, imagine that, no one else, no other human laughter except from right at that space. 5,700 years ago. Think about that.

A few hundred years, all of these buildings popped up. All of these things happened here in Berkeley and Berkeley was created. But for all of those years before that, for 5500 years Ohlone people lived here without all of that stuff. And they had raised families here. Those are my ancestors. My DNA is in this land. We know where we come from. We are now refinding ourselves again. It took us a long time because at one point when the State of California was created it was against the law to be

Indian. People came here looking for gold. And actually there was laws that were passed that actually spent \$1.5 million killing natives, \$5 a head. \$0.25 an ear. That is how this state was created. But somehow my ancestors survived that genocide. Today we are trying to figure out together collectively as we go into this new administration how are we going to survive. I want us to survive in a good way. It us to remember our humanity. Part of remembering that humanity is to ask this board to please think of a different way of doing this. Allow us to have that full consultation, allow us to work with the city to create a different kind of plan. Allow us to figure out with other people in the City of Berkeley how to do that so that we can create something that not only signifies Ohlone people but signifies the humanity of the Berkeley citizens that live here today that we share our territory with.

>> Chair Tregub: Thank you. We have some more questions for you. Shoshana, a follow up. Second question and then Teresa.

>> S. O'Keefe: This one's a little more specific.

This EIR is based off of mitigating impacts, the word if used. And I was wondering if you could talk about what the nature of the impact would be if this site was dug up and this project was built. How would you describe the impact to these cultural resources? I think you are a very qualified person to shed light on that. The mitigations being proposed involve digging them up respectfully and respectfully putting them in a museum and documenting them and all these things. And I was wondering if you could comment how you feel about that sort of mitigation. Do you feel like that is -- how do you feel about that?

>> So I don't believe that this is mitigated in any kind of proper way. I think there is no way that we can say \$75,000 to clean up a cemetery that Andy Galvan will go and rebury other ancestors at for a huge amount of money is not mitigating anything. Do you mitigate something that should never be disturbed? How do you mitigate something that will go away forever? When we as human beings put our ancestors down for the last time we believe that is their last resting place. We all have these ways of putting them down, rituals, songs, prayers, whatever it is that we do when we have an ancestors or relative that we put down for the last time. Nobody is supposed to have rituals and ceremonies to bring their ancestors back up because that is their last resting place. Once this is gone, it is gone forever. There is no mitigating that. It is like finding something that is really old, an old vase from the Ming dynasty and you have this and you are taking care of it, doing things for it. But if all of a sudden it falls and it breaks, it is gone forever. Nobody ever can touch that again. Those ancestors do not deserve to be disturbed anymore there. There is no mitigating circumstances that will help fix that.

Once the zoning board gives the permits for that to happen, once they find the ancestors, once they dig them up, there is no going back. They are not saying that, oh, we found something we are going to stop development and it is going to go away. No. That means they are going to move them. That means that something else is bad that is going to happen. And we don't need that. The City of Berkeley right now at UC Berkeley holds 15,000 of my ancestral remains. San Francisco state owns 15,000 of my ancestral remains as well. Not one more of those ancestors need to be

disturbed in order for us to create development that is only going to be there for a short while.

>> Chair Tregub: Thank you. Next question. Teresa.

>> T. Clarke: My question was are you getting certified?

>> Yes. So the problem --

>> T. Clarke: Do you know when you'll be certified?

>> My lawyer is dealing with them right now. We are supposed to have a meeting real soon in order to get that work finished. They lost my paperwork in July when I submitted it. I had to resubmit it and we are hoping they push it through fast.

>> T. Clarke: And have you thought about mitigations that would occur on the site, not in terms of remains, but other mitigations to include space at the site have you thought about that or you saying if that is off the table.

>> If I had a way of dealing with this particular site and I was able to dream that the City of Berkeley could somehow help to purchase this land or we could create a park together, we could figure that out, that there is money that is probably set aside through Cal trans to mitigate for wetlands, that we can create a mutated wetland on that site that would not only create an open space, which we need a lot more of around here because it seems like we are getting a lot of buildings, but also it would talk about the history of not only the past Ohlone but the Ohlone people that are still here. It would be a place for people to go and have ceremony that is not on pavement. It would be a place we can bring back native plants and animals that are supposed to be in that place that we have actually displaced.

>> T. Clarke: Does aquatic park have any significance to you?

>> Yes, the total village site went all the way down to aquatic park. Andy Galvan is on multiple projects all the way down to aquatic park.

>> T. Clarke: On the park itself.

>> Yeah.

>> Chair Tregub: Thank you.

>> J. Erickson: One question.

>> Chair Tregub: Go ahead, John.

>> J. Erickson: Thinking about alternatives, the question that was just raised, what would seem more appropriate to you, leaving it as a paved over parking lot or partial development with some appropriate either memorial or park or something on part of the property? Is there any way to compare those two options in your mind?

>> I can't. I can't.

>> J. Erickson: Thank you.

>> Chair Tregub: Well, I have one more question, if you don't mind.

>> Don't mine at all.

>> Chair Tregub: This has been really informative. Thank you. Teresa already asked one of the questions I was going to ask, so I will ask the second one.

I have been fascinated reading the EIR and educating myself about the Native-American heritage commission and that whole process of getting consultation. And from your perspective, could you comment on what is it about that commission that makes it -- it sounds like almost the

authoritative source, if it is on that list that is where a local entity goes first. Do you feel that is the only authoritative source and what does it take to apply to be attached to the commission in some way, and how did it come about to be that particular system?

>> So the California Environmental Quality Act is part of that, because there was so much development that is happening in California and there was a lot of fights with native people that were having their sacred sites that were being destroyed because of development, power companies, because of a bunch of different things. The State of California decided to create this commission that is made up of volunteers from different native groups to come together to talk about how those things can be mitigated or stopped. There were various laws that were created. One of the laws that were created as well. What happens is now there is a law that says if there is construction happening and somebody hits a burial site, that the developer has to stop development at that particular part of it, call the morgue, city comes in and say whether it is an ancient burial or not and they contact the commission. And there is a list of people that have filled out paperwork that say they are tied to that land, that they have documentation. So like myself, I have documentation all the way back to the beginning to the first contact of Spaniards here in the Bay Area, and where my ancestors were taken, which missions they were enslaved at. So we were enslaved at Mission San Jose and Mission Dolores in San Francisco. And we know the areas we were taken from, who we married, who was baptized, who died. All of those things were kept by the Catholic church. They did a whole bunch of horrible things to us but they actually kept our records really well. When the American government came and said you have

to prove who you say you are, nobody else in the whole country, only the first people have to prove who they are, we were able to do that. Over the years there have been a lot of changes U.SB18 was one of the changes in 2005. And that says any city or county that adopts or amends their general plan has to consult with the tribes from that area whether they are federally recognized or not. And I don't know when you last changed or amended your general plan here in the City of Berkeley but I don't know if any consultation happened as well.

AB52 is something that happened actually over the last year or so. And AB52 actually provides that tribes that are working with the Native-American heritage commission have rights of consultation prior to development going through. It is supposed to be a consultation sits down or the tribal designated perp to actually talk about the idea before anything is ever written, before an EIR is created. Is there something that is in this area that is of concern? Should we even consider this as a place for us to do a project? What are some of the things that can happen? What are things that we can think about that might not actually disturb this area? So it actually was put into place to save and preserve these sites. Actually not to actually work with the developers to mitigate stuff. But actually for everybody that is in the city and the tribal members to actually keep in tact the places that ever sacred to us. This is not what is happening with the particular development. The consultation means we come as full governments, that Andy is a governmental sovereign nation, my nation is a sovereign nation. If Muwekma came, they were a sovereign nation. As three sovereign nations talking to the city government of Berkeley about how we can come up with an idea to save this

particular site. And if there's nothing there that needs to be saved, then we can go through and say we enjoy what you are doing on our territory and that would be probably the end of the consultation. But it really is to bring people together as equals at the same table to talk about what it is to stop these developments from happening on sacred places.

>> Chair Tregub: Thank you. That is really informative.

>> T. Clarke: Does your tribe and do the other tribes that were listed by Tim.

>> Correct.

>> T. Clarke: Do you have a rancheria or any lands granted to you as the tribe?

>> No. The tribes in the area are not federally recognized. In order to have land that is entrusted to you by the federal government you have to be a federally recognized tribe.

>> T. Clarke: Rancherias are all federal.

>> Yes.

>> Chair Tregub: Thank you so much. That was really informative.

Next is Clair Beauman. While you are coming up I'll read the next batch of names. Alejandro O'Connell, Ali HAKIMI, Michael V, Lenore Goldman. Feel free to line up as well.

Clair are you still here?

>> Hi there. My name is reverend Clair Beauman and I'm head of the temple of waters, here in the Bay Area. As a person of faith somebody who has a strong spiritual practice and is in the leadership role of a community who have people of strong spiritual practices I want to voice my opposition to this development. Very concerned about the impact and

potential impact that any development at this site will have for indigenous people here in the Bay Area, additionally for other people of faith. This is a site not only indigenous people go down there to pray, folks from my community who go down there to pray to honor the indigenous ancestors, first ancestors of this land. So I think it is important that this place remain the ancestors there remain intact and not disturbed. And we do development on this site and it will change the accessibility of this place.

Additionally, I think there are claims in the EIR that there are no remains in the ground. One of the things that I have learned is that there were remains unearthed at the beer garden at 1919 Fourth Street which is on one side of the parking lot and on the other side of the parking lot there were also remains unearthed. I think that is pretty good evidence there is probably remains in between, right? Additionally I was able to contact Canyon Sayers Rudes, a friend of mine, and Ann-Marie sayers one of the persons on the five list, Ohlone folks from the Amah Mutsune Ohlone tribe. She sent me a message saying that canyon's grandmother and mother believe a that when an individual is disrupted and you happen earthed the spirit of that individual is wandering until the individual is reentered into the ground. Her mom has been adamant for the past 20 years about standing in opposition of the destruction of sacred sites and being an advocate to honor the ancestors of the land and respect they remain in the ground where they were ceremonially placed. Think if it was a Christian burial ground, Jewish burial ground, we wouldn't even be having this conversation. It is an important question for us to ask. Thank you.

>> Chair Tregub: Alejandra Connell followed by Ali HAKIMI. Feel free to line up. Next is Michael V and Lenore.

>> I'm a resident of Berkeley and I just wanted to share my opposition to this project. I feel that we have a history of colonization and this is a time we have to reevaluate what path we want to take. I feel strongly to preserve the site and listen to indigenous folks and follow their leadership on what to do at the site. It also seems like to give weight to one voice seems very undemocratic. And as we have seen that, the one person that actually doesn't represent a community. And I would like to see more voices represented in the project.

>> Chair Tregub:

Thank you. Michael followed by Lenore.

>> Thanks for doing this task. And my apologies for attending this first meeting. As a Berkeley resident since 2007 I should be more involved. I come here in opposition to the plan. I think that with the report in mind but rather with the symbolism that it hits. Oddly with the exception of Ms. Clarke this feels a lot like what I have read in the history books where mostly white folks determine the fate of native folks. And as someone who was kicked out of their own country, I think my solidarity goes with the indigenous struggles and not of capital interests. I would like to return and I don't want see buildings on top of bodies. I think there is a state apparatus that is determining the fate for these people but on the other end development happening on the bodies of natives, probably going to be built by black and brown folks who are paid submit shitty labor costs and wages. So it feels really similar to the history of this place. I would hope that you would use your privilege

to oppose the continued history that the United States of America, one that is causing others to leave their lands and themselves for the sake of capital interests.

>> Chair Tregub: Thank you.

Next up is Lenore followed by Lewis Dunlap.

>> My name is Michael Warburton.

>> Chair Tregub: Michael. Yes. Missed you. Go right ahead.

>> I echo a lot of the concerns that have already been raised and support some of the ideas for alternatives. Berkeley can do better, especially for the Zoning adjustments board, taking a look at the environmental impacts. That is what you are doing. And you are going to either approve or disapprove of a project. And this project does not reflect the requirements of a Berkeley landmark which has been recognized. And all the trade-offs that you have been discussing so far have not measured up to the standards of what Berkeley has done over the ages. Here's an archaeological bulletin from the Pacific school of religion in 1928 when an archaeological campaign was undertaken in Palestine. And graves were disrupted at that point. It was a biblical site and it was a biblical scholar in Berkeley who unearthed the remains. And he ended upholding an interdenominational religious ceremony consecrating the remains and they were covered over just outside Jerusalem. And I think with Berkeley history and tradition, we can respond to a changing environment.

>> Chair Tregub: Thank you so much. Next is Lenore Goldman followed by Lewis Dunlap, Barry, Danny, Elliot, and Melinda.

>> We have young school-aged children, we have an eight-year-old that wants to speak. Is it possible to move her ahead of the line?

>> Chair Tregub: Would you like to go right after this speaker?

>> Thank you so much. I appreciate it.

>> My name is Lenore Goldman, Berkeley resident, and it seems to me that everything about this defies the whole letter of the law as well as the spirit of AB52. As well as Berkeley ordinances and SB18.

That once the site becomes this historic landmark any digging without approval is out of compliance. Who permitted the digs that were even referenced in the EIR from 2014? I wonder who was consulted on that. That is already desecrating the site. The city is also compelled to protect these sites and to do everything to do so as opposed to reacting to a developer's perspective. And that whole framework is turned on its head in this entire process.

Secondly, the comment period in my estimation needs to be extended at least 90 days to allow adequate tribal consultation that obviously hasn't occurred so that other ways and other perspectives on use of this area can be explored and fully developed.

The mitigation is inadequate, as well as the compliance with the existing laws.

So until there is an adequate opportunity for other tribal consultation, it seems that it is necessary to do that kind of extension.

Thirdly, why would zoning support a project that is contrary to what the EIR and staff have said that is worse for the environment, worse for public safety around the railroad crossings where there have been incidents, worse for public health in terms of air quality, lots of 200

parking spaces, problems for Fourth Street businesses that could undermine the access success and vitality of the area, let alone the impact of destroying tribal areas. I just have to say that the impact is not just on the tribes. It is on me, this is the oldest human history in the entire region. And this is an issue that isn't just an Ohlone Indian issue. This is a human issue. We have watched desecration all over the world. This site is -- I'm a Jew. This site is almost as old as the Jewish people. The idea that this would be not considered meaningful for all residents of Berkeley and humankind that care about our earliest roots is beyond me. So I urge you to reject the EIR.

>> Chair Tregub: Thank you. I have been asked -- I know -- I have made public comment before and it is really hard to get everything in in two minutes, and oftentimes I don't. But we are going to be flexible and generous to the extent that we can, but these time limits are for everybody. And if you don't get to finish all of everything you want to say, you can also submit it in writing to staff here tonight or up until the end of the comment period.

With that, the lady who asked -- go right ahead. And if there is anyone necessarily a similar situation that absolutely has to leave, please feel free to come up as well.

>> Thank you. I appreciate the opportunity.

>> Chair Tregub: Please state your name for the record.

>> Yes. Good evening, zoning board members. Thank you so much for having us here tonight. My name is Megan MIKO. I am here as a tribal member of the Seminole nation out of Oklahoma, a third generation resident of north Berkeley and a graduate of UC Berkeley.

I am deeply troubled about the potential desecration of this very, very sacred Shellmound site. It is not located at 1900 Fourth Street. It is the oldest known Ohlone village ceremonial center and burial site in the San Francisco Bay area. The earliest inhabited location in the Bay Area. These are the very first people. It continues to this day. We have talked a lot about the past but it continues to this day to be an important ceremonial site for the descendants of the Ohlone and the current Ohlone people. This site dates to 3700BC. In my opinion, and I am in real estate, and I do believe we have a housing crisis and need, West Berkeley is overbuilt and lacking green space. This is the perfect opportunity to build a memorial park that would serve as an educational opportunity and teaching tool about respecting culture, maintaining the sacred and historical while providing green space in increasingly dense and urban areas.

With the Dakota national pipeline and all the national attention we have the attention of the world and Berkeley specifically has a fortuitous opportunity and responsibility to respect, model respect and protection for Native-American sacred sites.

I implore the City of Berkeley to protect this sacred site and recognize and uphold its designation both as a City of Berkeley landmark and a listing in the California state registry of historic places.

Once destroyed, we will have permanently lost this opportunity, and this is something that the EIR does not consider. Please stand up and oppose this so our next seven generations will be able to reap the benefits of this very sacred land. Thank you.

>> Chair Tregub: Thank you. Next.

>> Can we have Sofia slipped in? She has a speaking card as well.

>> Chair Tregub: Go right ahead.

>> I don't think that we should build this building here. And I'm going to give three reasons why I don't think we should. One, say there was a house your family had lived in for 5,000 years and someone just came up and destroyed it. I mean, this is a sacred property. Two, our environment is already polluted enough. And releasing more dust and gravel into the air really won't help it get unpolluted at all.

Three. It is much more interesting to have a landmark of the first inhabitants of the Bay Area in Berkeley than a building exactly like thousands of other buildings around here. I have given you three reasons why we should not build this building at the address of 1900 Fourth Street. And I hope you deeply consider my along with everyone else's reasons. Thank you very much.

>> Chair Tregub: Thank you. Lewis Dunlap is next followed by Barry Barkin, Danny Abrams and Elliot Abrams.

>> I'm speaking for Lewis Dunlap. She has a terrible throat cold and can't speak. Asked if I would please read this statement by her.

>> Chair Tregub: What is your name.

>> Lenore Goldman and this is for Lewis Dunlap. She put in a car at the last hearing but couldn't stay as late as you guys went.

I grew up in Berkeley in the 1940s and 1950s went to Berkeley High and UC Berkeley plus many years of grad school. Lived and worked in many locations in Berkeley including the planning department where I wrote about the EIR process. My great grandparents once lived here near the

corner of Milvia and MLK. Generations of my family lived in Berkeley without knowing anything about the Ohlone or Shellmound until the 1970s when my mother and I read Malcolm MARGOLIS' book when we realized what a beautiful culture has been suppressed. Uncovering the culture has been a theme of my life and I walked around all four of the Shellmound walks in the Bay Area. We are lucky to be living in a time when there is a new consciousness about this history. Even if my ancestors couldn't, we can see what the West Berkeley Shellmound site was, and that it needs our respect and protection.

We can see what a beautiful possibility this site presents for educating people about the Ohlone and the creek side environment in which they lived. We can look at an EIR and see that development is fine in other parts of the city but not where this is a landmark like this one. We can see that this EIR did not properly consult the spectrum of Ohlone people who are concerned. We can see that archaeological research in a review like this should not be narrowly defined but should include all that is known about the village area and should be peer reviewed. Now that we understand let's act with the understanding and honor the space with the restoration and a true monument to the Ohlone.

>> Chair Tregub: Thank you. Next is Barry Barkin.

>> Good evening. My name is Barry Barkin and I want to speak in opposition to the project. Over the last 40 years I have been working with the cultural environment, particularly as it impacts elders and elders living in long term care. And I have had an opportunity to really learn firsthand the relationship of culture to quality of life to health to all

elements of life. And we need to see Berkeley as a cultural environment. And we need to look at the cultural impact of this project.

And one of the things that I have learned over the years is that the key to a healthy culture is congruency between values and what goes on, values and practice. And I have seen firsthand in nursing homes where I have seen nursing homes transform their culture and everything, quality of work life, quality of life for elders, everything there is special. And then in places where the culture is neglected, and the tragedies we read about in the newspapers. And one of the things that is really important to understand about the cultural environment and the congruency between values is what the values of the city are. The values of the city would not support the kind of genocide and enslavement that went on with the Ohlone people all the native peoples of the Bay Area. And the young people in the city, the young people who walked out of the high school to protest the last election, and there is a real need that they have for congruency between values and what we do here with the city. And this is something that is going to affect the people of this city for years, forever. So I urge you to vote against this and let's see what can happen here that could really embody the values of the city. Thank you so much.

>> Chair Tregub: Thank you. Elliot Abrams. Followed by Danny Abrams.

>> Denny Abrams. You don't allow giving minutes? Anyway.

>> Chair Tregub: Unfortunately, we do not.

>> Let me say that we started force 340 years ago. We have been there 40 years and we have nurtured this. We are a part of this community, which we love very much. In the 40 years we are humbled by what we are

learning about the Ohlone Indians. It is only this year that I have gotten to know Malcolm Margolis and Karina and heard these stories. Let me just say that we would welcome a different plan that would include a park, a visitor's center there now, which the traffic study failed to even recognize. There are a thousand housing units that are under construction and planned within a few blocks of there. They need a park. They need open space. But in case that plan fails, I want to tell you a little about how Fourth Street works. As Denise Pinkston brought up the issue of parking. Without parking, this place will die. What actually will the city lose? We are the most powerful economic engine of any neighborhood in Berkeley. Why is that? Because we import dollars into town. We are regionally based. We need parking and cars. This traffic study even failed to take into consideration the new project across the street isn't even mentioned. And it is not only us. TRUITT and White is here. They have hundreds of people do millions of dollars worth of business.

>> Chair Tregub: I'm going to ask you a question. Do you have specific comments about the traffic study?

>> Yes. We hired a traffic consultant who is well-known in the city. You have the study submitted to you. Did you get it in your packet? Oh, good. And he is the one that pointed out that there are so many failures in this traffic study, failure to consider the impact of parking. And I know economic impact is not supposed to be a part of the EIR, which is sort of moronic. And there is another issue. One of the greatest assets in this town will be that rail station. It isn't even addressed. BART right now rents those tracks. There are ten trains a day that go from Sacramento to San Jose and they are operated by BART. Someday that is all

going to connect to BART. And it isn't even mentioned that train station is just buried. This is a great asset and the planners of the town should be noting that. As far as Fourth Street goes, there are 800 people employed in retail there. They are entry-level jobs. \$15 an hour, \$20 an hour. There aren't that many jobs in this town for local people. Fourth Street provides some of that. TRUITT and White provides highly skilled jobs. They are going to be impacted by we are going to have traffic jams going all the way to the freeway coming down Frontage Road. The traffic study didn't even consider the freeway offramps and how they would be clogged by trains coming through. Please also read the letter from the railroad. They are going to increase the traffic there. And they are concerned about the danger of the backups of traffic. I could go on. Thank you very much.

>> D. Pinkston: When this site was sold, I presume you knew it was on the market and could have purchased it to retain it as parking and chose not to.

>> Yes. I was working with a Jamestown group and they actually had it in escrow. And I brought them to town from New York because I knew that site had to be dealt with in a way that would enhance Fourth Street and make Fourth Street better.

And so they came to town and they had it in escrow. They bought Spenger's and they brought a land lease. And then the last minute they didn't even tell me they dropped out because they thought it would be too difficult to develop.

And so the owner took the price from \$15 million and raised it to \$17 million, and this Brad Blake comes from out of town and he buys it.

And Mark Rhoades then encouraged them to max out the site beyond belief. This site is so overused. In my letter to you I tell you that -- I don't want to speak about an alternative against the Ohlone Indians. I am humbled to learn all about it and happy to support it. But if you want a lesser project alternative B in the EIR is a reasonable sized project. The actual plan for lower university points to that project and says that site should be developed for the use of the train station. It should be developed in a way that is in keeping with Fourth Street and not have a height greater than 40 feet.

>> D. Pinkston: That is not what I was asking about.

Particularly parking preservation. Right now the proposal for the project has the 250 stalls that are open to the public but it also has 150.

>> 350.

>> D. Pinkston: Yeah, an additional number of stalls that are identified as exclusive to the residential. It is not uncommon in other communities where parking is at a premium for the city or other landowners to rent or own a portion of the parking for the benefit of their merchants.

>> Right.

>> D. Pinkston: Is that something that you have approached the landowner about? Because I think the parking --

>> Oh, yes.

>> D. Pinkston: They bought it. You didn't.

>> Yes.

>> D. Pinkston: And so you could have.

>> No, I couldn't afford it.

>> D. Pinkston: All right. In any case, now it seems -- it is always easier to complain about what your neighbor is doing when you don't have enough parking. So I'm wondering if there is an economic arrangement for you to get more parking that would benefit your project in Jamestown project on that site. Is that something that you have explored with them or you haven't talked to them and you are coming to talk to us instead?

>> That is what I thought I was doing with the Jamestown people but they backed out at the last minute.

>> D. Pinkston: Let me ask another question. Doesn't include this in the traffic report but we have been talking in other projects about the need for a West Berkeley BART shuttle. Are you willing to pay in and contribute to a BART shuttle as parking becomes less available?

>> Yes. We have had discussions about putting a bid together. I don't see why a developer should come from out of town and come to this area where there is a golden goose --

>> D. Pinkston: That wasn't the question. We are trying to be respectful. Life's complicated in a big city. I'm just asking as a neighbor but also a retail landowner what it is that you can do to contribute to making the problems you are complaining about better. So I was specifically asking about your ability.

>> A shuttle for the workers, we have been under discussion. We have studied it. Unfortunately we are not big enough by ourselves but we have talked to Jamestown that now is developing Spenger's that they would participate, and we would hope that the developer of that site would also take a lion's share of it since he is creating more impetus than anything.

>> D. Pinkston: I get to ask the questions now. When you say open to the train, what do you mean? When you say this site is supposed to open up on the train station. Not the train street.

>> The overuse of this site by this plan is so great that it just buries the train station. There is no path to it. There is nothing.

>> D. Pinkston: You can't see it. Thank you very much. I appreciate the questions.

>> G. Powell: Board Member Tregub, sometime in the next five to ten minutes we will need to do the captioner's break. Thank you.

>> I. Tregub: I was going to propose we do it right after this next comment by Patricia S. Go ahead.

>> (Speaking native language). Hello. My name is Patricia. I was executive director of an organization in Berkeley for a long time. And my experience is that Berkeley has a long history of honoring its place in the world. So we couldn't get city funding unless we agreed not to do any construction with old growth redwood. Not to do business with any repressive regimes. So that is Berkeley's identity, internally and externally. And here was happening is Berkeley holding a settler mentality. This is not who we are. This project reflects colonizer mentality and approach. By approving the project, you are violating community values. Berkeley's community values. If the EIR process maintains a colonizer or settler mentality, maybe it needs to be changed. Because this -- so many people have spoken so eloquently about why this is important to the Ohlone community. It is important to Berkeley. It is important to the people who live here, to live into the values that you

espouse. And this project doesn't do that. This project violates those values.

So I would say that consultation is with one person. Other people have said it. It is not sufficient. Karina has been doing this work for over 25 years. This is the heart of who she is. And in your report you said we are doing less significant -- the mitigations allow for less significant impact. So I would ask you how many ancestors are less significant? If someone were coming to take your ancestors and move them, how many would be okay? How many would be sufficient? So my other question is are we operating as a 19th century community or a 21st century community?

>> Chair Tregub: Thank you very much. I would like to thank the public for being so patient and so great and so respectful. We have to every two hours or so take a quick break for the captioner to catch a breath. She has been doing great recording all of this. So we are going to take a ten-minute break, but we are going to come back at the end of the ten minutes. And the first five members of the public that will be called are Billy T, Jr., Bridgette B, Perry M, Arthur Jacobs, and Megan -- she already spoke -- and Peter Alexander.

>> There were two MIKOs.

>> Chair Tregub: O you will be first on the list. Just come up. We are now going to go into a break. Thank you.

[ RECESS ]

>> Chair Tregub: We will come back from recess.

If everyone can please have a seat. The sooner everyone has a seat, the sooner we can start.

I'm going to ask everyone in five seconds to finish their conversation. Five, four, three, two, one. Thank you so much.

We have a speaker list, and invariably when there are about 60 comment cards some folks get shuffled back. And some people got shuffled back to speak. Melinda MIKO followed by Peter Alexander followed by Elliot Abrams and then we will get back into the promised rotation.

Melinda.

>> I'm Melinda MIKO, member of the Seminole nation of Oklahoma and also a professor at Mills College and I teach about ethics and I teach about the respect for indigenous people. Born and raised in the Bay Area and have been amazed at the beauty of the Bay Area and know that we are stewards of the land, as the Ohlone people are. They have been the most amazing stewards of the land that enabled it to have the richness and variety that we appreciate today.

And I also wanted to mention too, as some other speakers have mentioned, we tend to look at native people as something from the past and a relic of the past but not in the contemporary picture. And I feel we are more valuable to people dead than alive. Valuable for the cultural patch Moni when they dig up on the graves. Valuable for the research they can do to find out what the diets were. There are strong oral traditions that talked about how they live and how they continue to live and how important it is for that to continue.

I have known about Andrew Galvan for maybe 30 years and about how much he was pro-development and doesn't speak for all Ohlone people. Mills College sits on a Chocheño village site, and I honor that. I honor Karina Gould and know about her integrity for doing things for her

community and not for herself. In fact, she does so much for the community that we want her to kind of slow down and we want to bring the next generation, my granddaughter and daughter who spoke here talked about the 7th generation. Among native people, that is what we look for, how will our actions today impact the next seven generations. Not just what you are doing today. Berkeley has been a model for rigorous ideas about social justice, about integrity, desegregation, about the rights of gay and lesbian people. Why are you abandoning those mores now. We have an opportunity to do that. Don't be like Emeryville where you built Bay Street over the graves of Ohlone people. And there is some sort of little notion there, a little walk. It doesn't really honor Ohlone people. Let's honor people in the way they should. (Speaking native language).

Next Peter Alexander followed by Elliot Abrams.

>> Thank you. Above and beyond any federal recognition, creator acknowledges the authority of Karina Gould to speak as a woman of wisdom and a leader. Never to be subject to a lawyer's scrutiny. -- therefore it should be known that the American natives blood lines are also part of that of the lost tribe of the city of David. And the prophetic 40 day freedom strike for which I have shared for 25 years that frees Leonard PELTIER in the US constitution is part of this coming storm. Wisdom strongly suggests that you deny any further desecration of the Shellmound. For the idea of desecrating the Ohlone Shellmound is but a symptomology shared nationwide of abusing native people and the lands by those who have clearly been above the law in a nation of martial law. They are a blood cult. The people at the very highest level are the primary movers and shakers in the heroin and human trafficking industries. Like George

Herbert walker bush, who of course gave a franchise to the heroin from the China white to Jerry and pat brown for the last 70 years. Tens of thousands of children, including large numbers of native children, have disappeared. Their game is over. The dog soldiers are here. And the coming spiritual storm be fierce as all illusions be set to pierce. I want to share one last thing about human trafficking, and that is on the 18th of this month investigator Monique LASSAN on an international revolution radio broadcast will be interviewing detective James ROSTEIN probably one to have world's most foremost knowledgeable people on human trafficking in this country and worldwide. That is on the 18th. January, 5:00 to 7:00.

>> Chair Tregub: Elliot Abrams followed by Billy.

Are you here? Would you like to speak? Move on to Billy price followed by Bridget.

>> Hello, zoning board members. My name is Billy price Jr. African-American with Cherokee ancestry. I am both an -- -- I am urging you to not give a permit to a real estate developer who wants to build condos and a mall on top of the Ohlone shell site on Fourth Street. The burial site is a resting place in which the Ohlone people are buried as far as 5,800 years ago and it should be off limits. If the human remains were Christian, Jewish, or Mormons, I don't think there would be any plans to build condos on the site. I urge you to deny the project.

>> Chair Tregub: Bridget followed by Gary and Arthur Jacobs.

>> The name is Bridget BREHEN. And I wanted to first of all thank the Ohlone people for allowing us as guests on their lands. I had the opportunity to speak at the last hearing at one in the morning as a resident and human rights worker, but as a human rights worker I requested

some additional consultation from an international environmental law firm on some of those particular issues on consultation. I think Karina Gould already is the theme expert, as she eloquently spoke to all the issues that I'm going to read but I thought it valuable to read some of the excerpts of the letter that I believe all of you also have before you and that were submitted tonight.

Specifically the letter refers to AB52 and the requirement to ensure that local and tribal governments, public agencies and project proponents have information available early, which I thinkings that was something that was asked about and not adequately addressed. And I think there is important norms and jurisprudence in this letter to say that in implementing the right to consultation of indigenous peoples there is full agreement that consultation is by no means a single act but a process of dialogue and negotiation that implies both parties' good faith and the objective of achieving a mutual agreement. Consultation procedures as a form of guaranteeing indigenous and tribal people's rights to participate in matters which can affect them must be designed to secure the free and informed consent of the peoples and must not be limited to notification or quantification of damages. The consultation procedure may not be limited to compliance with a series of formal requirements, and I think you asked questions about that that were not adequately answered this evening. In addition to summarize the particular letter that expresses the concerns about the obvious limitations of a consultation process carried out with a single individual in a single tribe. It speaks again tot necessity of free, prior, and informed consent and a formal request of the current draft EIR be rejected in favor of carrying out a proper and meaningful

consultation process that enforces the City of Berkeley's adopted municipal policy to respect and protect the rights of indigenous peoples according to the U.N. declaration on the rights of indigenous peoples and AB52.

>> Chair Tregub: Thank you. And we have received your letter.

Next is Perry. And I will read the next names. Arthur, tiny. Sofia, Daniel, and Sally Nelson.

>> Good evening, zoning adjustments board. My name's Perry Matlock. Born and raised in San Francisco. For over 25 years of my life I have been a Shellmound preservation activist, volunteering with the treaty council, Indian movement, Indian people organizing for change. Also the volunteer archivist for sacred sites protection and rights of indigenous tribes, please do not allow this project to occur, it is a hate crime to intentionally destroy a cemetery. As you know back in the Mideast the CIA's former ally the Taliban, what have you, has intentionally and calculatngly destroyed sacred sites. That is exactly what is happening to the West Berkeley Shellmound. It is being destroyed just as these people using explosive to blow up these sacred sites on the other side of the world. We don't have to do that here. We don't have to let a developer do it legally.

This EIR is inadequate, first of all. It was pointed out on page 60 up to eight feet of site soils would be excavated and removed. That's a huge portion of Shellmound material. And probably burials. And associated burial goods, ceremonial regalia along with the burials. Also on page 67 begins the cultural resources section. I don't really like the way that is put together, the \$75,000 and a memorial just doesn't work. This is a

cultural treasure. I did distribute maps of the Bay Area, the 1909 Shellmound map. If you see all those numbers and little dots, that's how many Shellmounds were in the Bay Area. 425 he counted, probably up to 600 now. Almost every single one of them has been destroyed. They are ruins. The West Berkeley Shellmound and the associated fringe areas are a ruin but we can still save them. And if you look at the little brochure I gave you, you'll see a map from 1852 which Stephanie Manning found and you will see the West Berkeley Shellmound is actually featured on this map. It is a wonder of the world. Don't let this development occur. It is a hate crime.

>> Chair Tregub: Thank you. Next we have Arthur Jacobs followed by tiny.

>> Hi. Good evening, everyone. Happy to be here. I have been here before when you are talking about a letter from Leonard PELTIER. [Indiscernible].

All the native people seem -- Karina Gould, I have been supporting her, her Shellmound, her trying to protect the Shellmounds for years. It is kind of a crime that you are doing. [Indiscernible].

And we need more of these real things. Thank you.

>> Chair Tregub: Thank you so much. Tiny is next. Followed by Sofia. I'm frustrated with Berkeley, AKA the hypocrisy city, that it once criminalizes and harasses and incarcerates unhoused people and at the same time is contemplating a billion dollar project that will desecrate indigenous territory. I'm curious, and I know you don't speak back but I'm curious how many of you all are actually answering our need to answer to the developers who are about to desecrate a 5,000-year-old site. That is really what I would like to hear back. I understand this is a listening

session but it concerns me this is the third or fourth how many weeks that we have been back to speak for ancestors who don't have a voice. You have indigenous peoples in this room talking you to with earnest and integrity and continuing to keep this going because obviously millions of dollars are going to come into the city or into your pockets or somebody that we would even have to keep discussing this. This is no logic to talking about desecration of burial sites, of desecration of indigenous peoples in a city that calls itself progressive. At the same time, there is no logic to the constant harassment of houseless people. I speak from a position of someone who was on the streets homeless with my mom. I am speaking now as a mother to a school that teaches revolutionary thought to poor people and people of color. Speak as a person in struggle with the same police systems and I speak to all of you who sit in this city and pretend to be progressive and are actually contemplating desecration in a time we are dealing with an apocalypse about to take over the country. So I ask you to actually hear all these beautiful folks, and I will commit because I ride with the ancestors to be back every single week we need to. Thank you.

>> Chair Tregub: Thank you.

Sofia, you are next, followed by Daniel Greg and Sally Nelson.

Sofa B.L. is Sofia here?

>> S. O'Keefe: That was the little girl.

>> Chair Tregub: Thank you.

Daniel Greg is next followed by Sally Nelson.

>> Good evening, chair, members of the board. Thank you for giving me the opportunity to speak tonight. My name is Daniel Greg, field representative of carpenters local seven be 13 Hayward. I represent 35,000

carpenters in northern California many of which who reside and work here in Berkeley. In addition to the comments here tonight the carpenters have concern with this project as well and the members I represent here in Berkeley. Blake Griggs property on the 1900 Fourth Street development are moving forward without any form of labor agreement. The development should be viewed not only as an opportunity to bring more housing, more retail and jobs after the construction is complete, 1900 Fourth Street is a development where the construction itself has the potential to create career pathways for those who build it. Berkeley is a very expensive city to live in. We know that not all students who graduate high school are going to decide or have the opportunity to go to college. Smart development with a responsible contractor who pays area standard wages and benefits and who participates in state-certified apprenticeship programs create opportunities for the individuals who work in the trades to have head-of-household jobs and can provide for their family. This creates a situation where workers who are making a living wage can give back to the community by continuing to live and shop here in Berkeley. Area standard wages and benefits local hire and implementation of apprenticeship programs on this project is more than a commitment to labor, it is a commitment to the community. The carpenters union does not support 1900 Fourth Street in its current iteration. We ask the commission to consider what the project does not provide for the community. Let's build a smart Berkeley, a city that reflects the needs of the workers and the community as one. Thank you.

>> Chair Tregub: Sally Nelson followed by Tony M, Marsha Feinland, Nancy Becker and Christopher Toby McCloud.

Sally. Is there a Sally Nelson here? Tony Matzner is next followed by Marsha.

>> I too would love to see a park, but unless somebody's going to buy the land, the City of Berkeley doesn't have the money to buy this property. So it is private property and it is probably going to be developed unless you all have a legal strategy that I haven't heard about. My strategy is to respond in detail to the DEIR, which I have read in full. And I'm going to give them hell. With due respect, the traffic study's inadequate. But I would like to try to move towards the reduced alternative. And this is my idea for the reduced alternative. Parking, lots of it serving Fourth Street, the AMTRAK station, and the people using the property. Housing nestled inside the parking protecting the housing and the retail below. An Ohlone memorial open space and plaza pedestrianized Fourth Street, which the city does own part of the plaza. The parking here, beautiful apartments or condominiums going down to the plaza. Everybody who lives there, who works there, who visits there will then be exposed to a memorial that the natives will in fact help design. So every day people who go there will be educated and will honor the memories of the native peoples who once lived there.

That is the best I can do. Unless somebody has a better strategy than the reduced alternative, let's hear it. I don't know any other strategy. I think we should go for the reduced alternative.

>> Chair Tregub: Thank you. Before we go to the next public comment, again, I would like to reiterate respect for every speaker regardless of whether you agree or not with their point of view. You have been to great up to now. So let's keep it up. Thank you.

Marsha Feinland is next followed by Nancy Becker.

>> Hello, members of the zoning adjustment board. Some of you know me as an active housing advocate in Berkeley and former member of the Rent Board. But I come tonight to speak in opposition of this development which I do not believe will provide affordable housing in Berkeley. And we know very well that there are people being displaced in Berkeley and need affordable housing. We see them on the streets being harassed and constantly displaced by the police but that's a whole different story. I want to talk about the EIR with respect to mitigation. I don't believe that you can mitigate a sacred site by giving money to someone else for some other project somewhere else. A sacred site is by nature in the place that it is in. So do we have evidence that this West Berkeley Shellmound actually existed? Well, as Perry pointed out, and he will be sending you or already has, there is this 1852 US coast survey map which clearly shows the West Berkeley Shellmound at the mouth of Strawberry Creek. Was it a burial ground? Perry will also be sending you a memoir by some gentleman named Wilhelm BOLSTED JONCARLO that said early West Berkeley had a beautiful street of white sand, Second Street was directly in back of the beach. Many Shellmounds on both sides of Second Street, built of clam which he wills by the coastal Indians when the mounds were moved to make way for the present-day factories, many Indian utensils, stones, arrow heads were found. There is still more to dig and more bones down there and they need to stay.

And I just want to add. I live on McGee Avenue on the corner of University Avenue. There is a big lot for sale that would make for great housing.

>> Chair Tregub: Toby McCloud is next. Is Toby McCloud here? And the next folks I'm going to call up after that are Rick AUER become ACH, Stephanie manning, Jeanine, warren and Richard.

>> I'm Nancy, cofounder with my husband of sacred sites international foundation. We have been a Berkeley based organization, non-profit, since 1990 and our job is to protect sacred sites both natural and built. And this is a clear case of a sacred site being desecrated. We have spent a lot of time in Emeryville to try to prevent that from happening in Emeryville. It didn't. We feel like there are plenty of things that could be done but we don't want this plan. We would like you to listen to other Ohlone Indians. Karina Gould has a very creative and beautiful plan for what could be done. Don't build on this site. Keep it as a natural site. Restore the habitat. Let the Ohlone people speak to their history and their ancestors. Thank you.

>> Chair Tregub: Thank you so much. And just point of clarification, you speaking for Toby McCloud?

>> No. Toby's here.

>> Chair Tregub: My sincere apologies. Thank you. Nancy B. Got it. Now Toby.

>> Toby McCloud. I direct the sacred land film project in the Broward center so I have spent 35 years for making films about PBS about Native-American sacred sites. I urge you to reread the landmark commission's document when they landmarked the site in 2000 and they noted it was highly significant to native descendants as a sacred burial site, on paper. And it is also the site of ongoing ceremony and prayer which is a historic fact that is ignored in the EIR. The city and developer have

not complied with AB52 having failed to consult with members of the Ohlone community as we have heard. And adding insult to injury, the single Ohlone consultant is advocating for the project. He gets paid to monitor digging. He gets paid if remains are found and he moves them to his own cemetery. And he has even promised a \$75,000 donation in the environmental impact report. What is wrong with that picture? Environmental impact report archaeological report is misleading and inadequate. It seeks to cleverly distract from the larger landmarked village site by asserting there is no Shellmound in the 2.2 acres. That is deceptive and inaccurate. And please note that we are all concerned about the entire site, which is eligible for the national register and whose border is already determined. The environmental impact report's language notwithstanding, disturbing human remains is highly significant and cannot be mitigated. The EIR's alternative analysis fails to address adequate alternatives by CEQA. One alternative project would be open space and open space restoration project there. This EIR is fatally flawed and I urge you to reject it and recommend alternative use for the West Berkeley Shellmound as a memorial park to honor the oldest human habitation site in the bay. Thank you.

>> Chair Tregub:

Thank you. Rick, you are up next followed by Stephanie.

>> Once the mission system in the State of California and the miners and settlers had perpetrated the original crimes of land theft, enslavement and massacre, they plan to kill and plan to enslave enough indigenous people so they disappear from existence. It was the state-enforced non-existence of the LISJAN people that allowed the crime the EIR should be addressing to occur, the removal of the above-ground

portion of the Shellmound. While ISIS and the Taliban blew up Palmyra and the Buddhas because the ancient people there believed something different from them, the people and government of Berkeley did the same thing to the 5700-year-old Shellmound only indirectly because it represented a different belief system but directly because they had already disappeared from their conscience and consciousness. The people and culture that created it. Allowing them to ignore their religion, culture, and their very existence.

The 5700-year-old Berkeley Shellmound was begun 1200 years before the pyramids and 600 years before Stonehenge. Think about that.

The paid archaeologist says well we think there is only a possibility a few artifacts are there so there is nothing worth saving. Instead of counting how few artifacts are there and using that as a reason the Shellmound shouldn't be saved, take every cubic foot above ground the Shellmound was destroyed, multiply that by five or ten artifacts and take that tally of what the colonizing culture disappeared and mark each artifact as one more reason the Shellmound site must not be further disappeared from our hearts and history and must remain a visible living landmark to the peaceful and beautiful people that first lived here and live here still. And to the terrible things that were done to them and their culture. Let this be a landmark to what must never happen again to our culture's relationship to indigenous people net natural world and set a new direction of respect for indigenous. Thank you.

>> Chair Tregub: Thank you so much.

Next, Stephanie manning. I feel really bad. My name is hard to pronounce too.

>> I didn't write it very clearly. Shall we start?

>> Chair Tregub: Go right ahead.

>> My name is Janice glow and it is a privilege to have lived on this beautiful Ohlone live most of my life. It is so beautiful. I strongly urge all of you not to accept the annual environmental impact report for Fourth Street. It is inaccurate and it is unacceptable. Please do not allow the village site and the Shellmound to be destroyed. Ohlone ancestors rest there, and they should be able to rest forever. Please protect the Shellmound. Also please include Karina Gould in your formal consultation. I ask that very strongly of you. We are guests, all of us, all of us, we are guests on this beautiful Ohlone land. We are guests. Let us be respectful of the Ohlone people. Let us be respectful of this beautiful land. It is here. It has been here so long. Let's not build on this beautiful land. Let's protect it. And please let's honor the Ohlone people, the ancestors, and all our future generations. Thank you.

>> Chair Tregub: Thank you. Next is warren White followed by Richard Schwartz.

>> I represent the TRUITT and White lumber company. This is a daunting task. I can tell in the room there is a lot of passion about this area down at Fourth Street and where we are. And I too have passion about it. I have grown up down there. We have been there for over 70 years. My dad started the business in 1946 when he got out of the war. And we have been there ever since. We are a third-generation business in Berkeley. We have provided thousands of jobs over those 70 years to many people. We have provided a fair bit of opportunity to the City of Berkeley by our thriving business. And we have concerns over this project. We are a

regional business. We picked the area because of its proximity to the freeway. Our ability to get vehicles in and out. For customers to come from all over the Bay Area to purchase from us and to be able to get in and out was important to them. And obviously gridlock on the freeways makes that more and more difficult.

Certainly gridlock in the city makes it worse. When I see the traffic backed up on Fourth Street on Hurst before this development has even started, a shovel full has turned in the ground, it concerns me. A.

What you can't see in the traffic reports and that kind of thing that I see every day in the street. The traffic that backs up turning into the parking lots, the double parking of trucks, the blocking of the driveways.

>> Chair Tregub: I'm going to ask you a question. I live not too far from Sixth Street and I was curious. This has always been a point of curiosity for me. What are the main patterns of circulation for customers of the business as well as for commercial traffic?

>> I'm sorry. The circulation.

>> Chair Tregub: When they get off the freeway I imagine many of your customers and many of the commercial vehicles that you need get off the freeway, they make a left on Sixth Street, correct, from university, and what happens next?

>> Typically they are coming right off down onto Frontage Road, if they are coming from the freeway. If they are coming from uptown, they are coming from University Avenue. And obviously we cater to people from all over doing business for the companies doing work in the area. We have trucks from all over delivering materials, so they are either coming off

if they are heading up the freeway from the Bay Bridge, they would be getting off there. If they are coming from the north bay, getting off at Gilman, which I wanted to bring to your attention too that we would hope that that intersection would someday have some sort of resolution to it. I know many things have been discussed. But so far nothing has happened. And it is going to make it more and more difficult for our customers which will have an impact on my overall business and the potential if they can't get to us and get to us in and out quickly, the chances are they will go someplace else and we will lose the revenues and the city will lose the opportunity that way.

I am concerned about the railroad crossing. Many times I see cars get stuck. The rail arms come down, land on top of the car or they are honking at the car in front of them to move up a little bit so that I can get the back end of my car off the tracks because they are stuck waiting for traffic that is trying to get into the Fourth Street parking that exists now because the lot's full during the midday rush hour and heaven forbid when the holidays exist that it is even worse.

So while I'm not opposed to the project, I don't believe that bigger is always better. And I do ask that we look for a well-planned development that is fair to all the property owners in the area and certainly the people in the area. That's why you have such a tough job in front of you. Thank you.

>> Chair Tregub: Thank you very much. Next up we have Richard Schwartz, and I'm going to read off the names that come next. If you could please come towards the front of the room, that would be great

Savanna K, I think that is SIGNE, Hank, Kelly Hammargren if you are still here and Tim Frank.

>> My name is Richard Schwartz, Berkeley building contractor and I would like to support all the concerns Mr. White has expressed. Been shopping at TRUITT and White since 1973 and all my contractor friends' livelihoods depend on it. And we are noticing we wait into lines to even turn into the parking lot now. I'm also the historian who was hired by the developer's archaeologist to share my research on the West Berkeley Shellmound. I have historical data over 400 burials ringing that parking lot, ringing that site. None of them made it into the archaeologist's report. And a brief mention was made in the EIR. There is no way to analyze the importance of that site. When you exclude 400 human burials and a lot of other cultural remains. From even the report. And saying, well, it just shows that the area's sensitive but not on the lot. The EIR is long on conclusions and short on data. And that is a fatal flaw, and I ask you to reject the EIR. Because I have gotten calls from soil scientists and archaeologists from out of state who want to comment on the EIR and they want to comment that the EIR is basically saying, well, they probably dug on what 2% of the lot and they are saying there is nothing there. How did they make that statement? They make that statement by saying they use ground-penetrating radar. Well, they provide 0 data for that ground-penetrating radar so no experts can review it. That is a reason to reject this EIR. There are many examples. And I reject the whole concept that they can say what is acceptable damage and mitigation to somebody else's burial ground. You don't have the right to say that. And we won't let them do that. These people have the right. Let them have a

voice. Three developers make a lot of money at the expense of hundreds of people's culture. No way.

>> Chair Tregub: Thank you. Savanna, you are next.

>> My name is Savanna. Lifelong resident of the Bay Area. The Dr. Who spoke with her daughter was a professor of mine at Mills College, and I was excited to see her here and I wanted to have the opportunity to thank her, but she left. I am also an invited guest here in the territory of Huchiun, as many of us are. And I submit a letter that details my specific concerns with the draft EIR and what I want to invite you to do tonight, and I know you are not voting tonight, but what I want you to do is to be bold. Be as bold as you can possibly be on the dawn of this presidency to do what is right, to reject the EIR and vote on the no project alternative or as Karina Gould has said time and time again, to do things in a different way. A lot of us feel unclear about what the next four years hold, myself included, but I think there is a lot of clarity about what is going on with this situation. It seems very clear me. It is undisputed in a the West Berkeley Shellmound is a sacred site for Ohlone people today and has been for thousands of years. It is also clear there are many concerns about the validity of the EIR. You know that. They have been raised time and time again. And also it is really clear we don't need more condos in West Berkeley. So I invite you tonight and when you make that vote to be bold and to consider the opportunity that you have. Thank you. SIGNE.

>> I am a resident of south Albany right near Gilman and one of my points that I want to make is the whole EIR process is so flawed. That area of Berkeley and Albany is a totally poisonous air quality. The level

of asthma and other respiratory problems, especially of the children who live around there, is further complicated by your developments when you do not consider the whole area and the whole situation but you look at a little piece here and then you have another report about another piece over there. I'm referring to one thing as the UC village development now that is going up. That is further polluting with traffic and other particulate problems. That is one thing.

Now this idea that something can be determined as no impact or less than significant, well, are you counting the early deaths of the children in the neighborhood because of breathing this polluted air? And then it said it is infeasible to mitigate traffic impacts. Well, how many more people are going to die or suffer debilitating illness and how much more of the environment is going to be destroyed? Now the other thing is those of us, and you included, that are of European and Nordic descent, it is totally time for us to quit trying to weasel out of recognizing that we are living on stolen land and we need to act like we understand that and we need to behave appropriately. So recognize where you are and live as though you care. Thank you.

>> Chair Tregub: Thank you. Hank Herrera followed by Kelly, if she is still here, followed by Tim.

>> Good evening. Thank you for your hospitality. My name is Hank Herrera. My ancestors are from the Amah Mutsun band of Ohlone people located in the San Jose Carmel area, that whole territory. I wanted to just mention, because there were a lot of questions about this business of tribes or tribe. And this is the state of California secretary of state. There is a non-profit organization named the Ohlone Indian tribe, Inc.

The agent for service is Andrew Galvan. It is a non-profit organization. There are in fact, as far as I know, five or six bands or tribes of Ohlone people. The Amah Mutsun band is one. And valentine Lopez is the chair. And the Rumsen band is another and Tony C is the chair. The confederated tribes with Karina developing that organization is another.

And there are a couple of additional bands. It is really important to recognize that one person who is obviously directly benefitting from payments that he designs and directs towards his own non-profit organization is a severe conflict of interest. And that needs to be remedied. I also want to say that I actually like the cultural resources section of this EIR. It clearly documents that this is a valuable cultural resource, and the City of Berkeley designated it a landmark site. So it is not an issue of whether it is or it isn't. The issue is of mitigation. And the thought came to my mind. It would be like the developer coming to me and saying, sir, I'm going to slice your soul and your spirit in many pieces. And then I'm going to offer you the chance to sew it back up. That's impossible.

>> Chair Tregub: You answered my question. Thank you. Kelly Hammargren, I think I saw her leave but I just wanted to make sure before I call the next batch of cards. And Tim, yes, you are next. So you can step up. Next after that is Jay, Stephanie D, Stephanie Thomas, Isaac Z, and Hartman Z.

>> Thank you very much. My name is Tim Frank and I'm the director of the center for sustainable neighborhoods. And I want to direct my comments towards the shortcomings of the traffic study. There have been some previous comments tonight about those and I just wanted to add a few

more details. It has been the practice of many of the developments in the area if you look at all the stick over the podium projects that have been built in the immediate area in the last couple years to draw most of their labor actually from extraordinary distances, mostly from outside of the Bay Area, somewhere in the central valley. And when we bring people from these very, very long distances, there are both social and environmental impacts associated with that. And I would like to note that while an EIR is not required to address social issues, it may do so. And I think that it is important to recognize that the reason why we are bringing in contractors from these far distant places is because that is where you find the contractors that have the very lowest paid workers. And there is a significant social cost with that strategy for doing business. And there is an alternative which is to actually work towards using more local hired employees. Often those who actually have higher skills and may actually have gotten training in the area. And if we do that, that is both a better environmental practice to use people who are actually situated locally and a better social practice. And so what I would encourage you to do is to ask the question where are the contractors and the subs drawing their employees from and document that. And what commitments is the developer willing to make towards the use of locally hired labor? Thank you.

>> Chair Tregub: Thank you. Jay.

>> My name is Jay S. I want to thank the indigenous people who have spoken so eloquently in opposition to the West Berkeley Shellmound. As you have heard, the Native-American heritage commission isn't totally equipped to find all legitimate tribal people who should be consulted for a project like this. And of course there are other people and other tribal

bands who should be consulted in this process. I also think that the fact that there is a movement here of tribal people and their allies in opposition to this proposal testifies to some of the people that the Native-American heritage commission left out, and Karina Gould and other people who were probably not on that list as well should be consulted about whether or not their ancestors should be desecrated. It is just ridiculous that the West Berkeley Shellmound that has already been desecrated so much that already stood at a height of 30 to 40 feet and hundreds of feet across would be subject to further desecration.

I am also a project assistant with the Amah Mutsun land trust. I'm not a member, but a person be of settler descent. But I have the honor of working with people whose sacred sites are honored and developed with consultation of the tribes who are able to build gardens and hold ceremony. And really the short term decision here to develop or not develop I think has really long term repercussions for the dignity of native people to be able to practice and acknowledge their ancestors. Please oppose this.

>> Chair Tregub: Thank you. Stephanie D followed by Stephanie Thomas. If you can start coming up here when I call your name. Thank you.

>> Hi. Thank you, everybody. As someone who was born and raised and San Francisco and attended UC Berkeley, I care deeply about the people, land and history to have region. I mention this next only in the hope that it is helpful and because so much else was covered. In 2011 I mapped a route of the road known as the Camino real. The route runs 800 miles from Sonoma to San Diego. In 2012 I walked all 800 miles. In the missions and along the routes I did not see one monument, Shellmound or

evidence of indigenous people save some minor mentions at mission Dolores. That is not true exactly, but I just mostly sawdusty dioramas that don't tell the story of the genocide. I don't know how many sites there were, buff pardon my ignorance, but there are none along the road.

When I was outside the mission Santa Inez I spoke with a native couple who told me where the whipping post had been. There is no sign for it now. We need to respect their sites. Abraham Lincoln said the missions were the pyramids of the west. He was wrong. The Standing Rock came about because of international media attention and DAPL potentially destroying sacred sites. Justice begins at home. The site represents a great opportunity to have an indigenous-led effort for recognition and maybe a chance to provide leadership for the rest of the state. Thank you.

>> Chair Tregub: Thank you. Stephanie Thomas followed by Isaac Z.

>> Good evening. And thank you if and thank everybody who spoke. It has really been in a way a beautiful event hearing all the history and the meaning of the special land. I'm in opposition to the project. Flaws in the EIR have been covered. And especially Karina not being able to be consulted. And I think that should be even before the EIR allowing enough time, however that would be, for her to be part of this. Other flaws. I go to Fourth Street every Monday afternoon for a yoga class on Fourth Street near Hurst and I can watch the traffic and the parking situation, so I know what everyone has mentioned about that.

There are other flaws. Karina mentioned about the Cal trans and the possibility of them purchasing the land, if I understand, for wetlands. I don't know how that would tie into her vision. That is another

purchasing opportunity, perhaps. And we have to pay attention about the oceans rising, building something there. And maybe we need to do something mitigate the climate change. I belong to the Berkeley Climate Action Coalition. I'm on the land use group. And we just had a meeting last week with the week committee about dealing with perhaps teaching schools or working with rain gardens. So treating the land in a respectful way besides the history we are talking about, but the climate, that is part of history being created. But I just want to mention on a visionary level the book I read, maybe you have heard of Summer Brennon. The book is called Richmond tales. But it was a beautiful story that was required reading for fourth and fifth graders. But it went back to the history. Just a sentence more. Of the Ohlone and the current situation at the time.

>> Chair Tregub: If you could finish your thought.

>> So we can create Berkeley tales by starting with this and creating a beautiful situation for that area.

>> Chair Tregub: Thank you. Isaac and Hartman D, if you could come up.

>> You may recognize me as Dylan. Isaac had to leave but he had a short statement that he wanted me to pass along. I am a member a catalyst project, an organization here to urge you to reject the EIR. We teach people about the history of racism on this land, including some of what Karina named. And what we know is that history is built one decision at a time with decisions like this one. We consult with the majority-white organizations on fighting racism and we say if we aren't fighting against racism we are collaborating with it. So I want to be clear that your choice right now is to either collaborate with colonization or to

interrupt it and that you can interrupt it by rejecting the EIR and not further desecrating the sacred site. Thank you.

>> Chair Tregub: Hartman and I'll read the next batch, if you could come towards the front of the room.

Katherine S, Melanie L, KRISTOFF, Chris oak.

>> My name is Hartman D, moved to Berkeley in 1978, went to Cragmont elementary, went to Berkeley arts magnet, went to Martin Luther King, Jr. high school. I remember when this street out here was called grove street. I remember that -- I have always been very proud to be from Berkeley. This is my home. And I remember that they changed the name from grove to MLK. What a great thing, to honor some of those folks who have come before us whose shoulders we stand on. And then I remember when they came up and this was the first city in the whole country to come up with indigenous peoples day instead of Columbus day. The first city in the country to act like this. And it spread around. The year I moved to Berkeley they came up with the Native-American religious freedom act to give our people, native people, the right to practice our own religion which everybody else already enjoyed. Already enjoyed. We got our basic rights given to us that everybody else already had in 1978 when I moved here. We also got the Native-American graves protection act. And that was to protect the graves of our people because they were not getting the same treatment of everybody else, just like our religion, our graves were not given the same respect. And the fact of the matter was this was only given to federally recognized native people. And I want Berkeley to act like they did with Martin Luther King boulevard, like they did with indigenous peoples day, and you don't need the federal government coming in and

making a law that says you have to respect somebody's decency, human rights, basic fundamental human decency and rights. You can do this on your own and it will spread out just like the indigenous people's day has done. You don't need somebody higher up to tell you to be somebody who can recognize the basic humanity in other people and respect the final resting places of people's ancestors. I wouldn't dig up your people. I wouldn't dig up your mother, your grandmother, your grandfather, great grandmother, great grandfather, great great grandfather or great great grandmother. I would not do that. Do not do that to anybody else.

>> Chair Tregub: Thank you. Katherine, you are up next, followed by Melanie.

>> Good evening. I'm here as a white settler on Ohlone land. And I spent my whole life here on this land. And as such I'm here in opposition to this draft EIR.

All sacred sites should be respected and preserved, including the West Berkeley Shellmound, especially the West Berkeley Shellmound. I just wanted to make a few points. One on this EIR, as people have mentioned, doesn't begin to speak to the importance of the site, it talks about traffic and other things mostly without addressing the cultural and spiritual significance. I want to echo a call that was made previously for a 60 to 90-day extension so that actually Ohlone folks have an opportunity to express their comments versus as we have seen just one Ohlone person having that opportunity. And then I also just want to bring up the point that LSA has a history of this kind of activity, having also written the EIR for mission peak, another sacred site here in the bay, and that obviously has major implications in this case too. Thank you.

>> Chair Tregub: Thank you. Melanie.

>> I recently gained knowledge about CEQA. My group brought a lawsuit against the city of Albany. I want to encourage you to reject the draft EIR. It is called a draft because it can be made better. As you know, it is your job to evaluate that and determine whether the draft is acceptable. I'm urging you to accept it for both reasons. AB52 is new. The EIR as you know addresses a number of different environmental impact categories. The tribal cultural resources are supposed to be a distinct category from cultural resources, a legally separate category. This EIR clearly confuses those who categories. It is not entirely surprising because the government is actually still working on the checklist they provide to agencies like this in order to follow when they prepare their EIRs, but the tribal cultural resource is a new language and it recognizes the history of a site isn't sufficiently determined of its significance and that their parties impact sovereign peoples whose cultural interests are not quantifiable by people who aren't them. This EIR talks about cultural resources. That is what the language is. And they switch back and forth. So that under cultural resources they merely list the mitigations that they have determined under AB52. And that is not an accident. That is the result of this consultation that they had with Andrew Galvan. So it is actually really interesting. My question to you is what did Andrew Galvan actually have to say and why isn't it in the record? The governor's office of planning and research says the purpose of the consultation is to inform the lead agency of the identification and determination of the significance of tribal cultural resources. The consultation can also include the alternatives and mitigation measures. But this meeting

determined that there was a separate tribal cultural resource but it is never listed as a separate tribal cultural resource. Instead, there is a significant impact asserted, a separate mitigation recommended, but there is no separate identification or explanation of that tribal cultural resource.

>> Chair Tregub: Thank you so much.

>> What you heard in this room from Karina Gould was the identification and termination of a tribal cultural resource. It is not in the EIR. There is nothing in the law prohibiting you from honoring the requests from this room for further consultation, and there is language in the law suggesting that the consultations done so far is incomplete. And in fact Andrew Galvan wrote himself December 22nd he wrote a letter which you should have all read into the record, I believe the complexity of the issues that have been presented from the public testimony received in December 2016 will require additional time to bring internal clarity from the Chocheño Ohlone community.

Now that draft EIR says the consultation was completed. This letter says more time is needed for them to even discuss internally what their opinion is. The consultation clearly wasn't completed. You need to reject the EIR and send it back to the drawing board.

>> Chair Tregub: Thank you. Chris followed by Monty coyote, Desire harp, Jane Perry, Clair, and Juliet Flores.

>> Hi. Good to see you again. Thanks for sticking with us last time until 2:00 in the morning. That was kind of cool.

So I want to speak a little bit to kind of follow up on a few things people had said tonight because I think they are important. One

thing was something Dylan said earlier, Carrie Olson at the landmarks committee last week said when she was introduced to Andy Galvan, he was introduced as working for Dana Ellsworth, not the developer of the current property but the owner of the property. Just to add to all of these hats that are in the air, we have got the monitor, the developer, the owner, and the CEO receiving money. Just paints a little bit bigger picture.

Now about Ohlone people, because we have heard a lot tonight about how this are various groups of Ohlone people, and I want to put it in a little bit of perspective. There are over 450 recognized tribes in the United States. Another 300 plus that are seeking recognition, some of which are the Ohlone people. My tribe is the Choctaw nation, we have nine federally recognized Choctaw tribes. The Sioux people we are familiar with, the Dakota and Lakota people, eight Dakota and seven Lakota. The Chumash have 14 bands. The POMO have 21. The Ohlone, where that comes from is that when the Spaniards got here they grouped the people of the coast, called them COSTENOS, which means the people of the coast. That got put into Coastanoan and in the '60s the people decided to start calling themselves Ohlone. We have a variety of different groups. Part of the way they organize themselves was through headwomen and headmen. These were essentially the mini chiefs. They were not one big group of people. So that when we are talking about Andy Galvan, he represents some people. Karina Gould represents some people. There are multiple people who need to be consulted in this process. Part of AB52 is seeking out the native people of this land and part of this process that is flawed is that they sought out one guy. This is one guy who also -- just one second -- one guy who also wears multiple hats. If you look in the neighborhood at other

developments where he has also been the consultant, this is his job. I would urge you to look at the e-mail response time from when he was e-mailed and when he responded. This is what he does.

California is different and we need to respect that history. We need to consult with all of the people. I urge the landmarks committee and I urge you as well to meet with a variety of Ohlone people from the various bands. Meet with certain members of your own board. Bring people from the landmarks board. Bring the people who wrote the application to make this a landmark. Get together and figure out what is going to be the best and the most respectful use of this property with the utmost respect and the decision going to Ohlone people. One major issue in this EIR when it talks about --

>> Chair Tregub: I'm sorry. We are out of time.

>> When it talks about alternative proposals none of them mention, the whole thing in the cultural section talks about how old this place is, how long people have been there, it is an important place which we have testified to onto ongoing Ohlone culture, yet none of the alternative proposals mention consultation with Ohlone people were a no-build option that is guided by Ohlone people. Thank you.

>> Chair Tregub: Thank you so much. Monty, you are up next followed by Desire.

>> Hi. Of course my mind, I went to about 20,000 different things to come up with so I'm going to say this. I happen to be southern Sierra MIWAK and Mona lake PIYU. We have five tribes that have to negotiate for events. And the MIWAK starts up the Sierra to the coastal, but we are not really related to the MIWAK out here. These are consistent.

I want to say that I was fortunate in the late '50s to the late '60s, my mother was a civil activists and she brought the kids to protest in the Vietnam war. Berkeley has been outside the box. When I hear Berkeley, I hear revolution. And Berkeley has to do the right thing. All of up you are there because you like Berkeley. To me Berkeley is power. And you need to really -- the first Berkeley people were Ohlone. So why not embrace them and figure out something? But don't build there. That is just disgusting and disgraceful. I can't describe what it really means to Indian people. And when things are buried, they are meant not to be moved. And we do offerings today. We bury something we don't want anybody touching it. It is bittersweet to see it in museums. And I know about UC Berkeley and all the stuff up there. And it stabs a knife in you.

>> Chair Tregub: Thank you. Desire followed by Jane and Clair.

>> (Speaking native language).

I come from the MISHWA people, that is what we call ourselves, we are from Napa valley. We are not federally recognized. And the way that this happened was that one individual person who happened to be living on the land decided to sign a piece of paper that made it so that way our land got taken away. And this is something that has continued to be repeated throughout history. You have a small group of people or you have one person that is making the decision for an entire group of people and this is not fair. This is not fair and our voices deserve to be heard. And as a community organizer, I know that something that is very important is for the people of that community to speak on behalf of their own community. And I want to say that Galvan does not represent our whole community. And I also want to say that this has more impacts than just the

environmental impacts. This has an impact on the emotional stability of indigenous people. People talk about being solution-oriented. We are standing up here right now but we don't have enough money to be able to combat these things. I am a college graduate and I didn't choose the route to have a bunch of money. I chose to route to become an educator so I'm a teacher. I don't have enough money to be able to throw out there to be able to say that I have the ability to financially solve this problem. But the reality of the situation is that shouldn't be holding me back just because I don't have enough money that means my voice isn't heard. The reality of the situation is these developers have a lot of money. Our people continue to be overlooked and people are right in that if this was a Christian cemetery this wouldn't be a discussion. Our people deserve to have an equal voice, and this should not be happening to our people.

>> Chair Tregub: Thank you so much. Jane, you are up, followed by Clair and Juliet Flores.

>> My name is Jane Perry. I'm a white settler in Ohlone LISJAN land where I have been educated and where I have brought up my family. I note that the West Berkeley Shellmound qualifies as a historic resource per CEQA section 15064.5 A and also as noted on page 38 in the initial study. CEQA section 15126.4 B relates to mitigation measures for impacts on historic resources. And I'm just very curious why a project whose purpose, the objectives are retail, housing, green construction and revenue for the city, would choose a site where the property -- and I'm using a quote from the secretary of interior standards of treatment for historic properties, which is what must be applied when you are on a historic resource. Why they have chosen a property that is going to be

used -- that must be used as it was historically. The NOD to landmark the West Berkeley Shellmound says this site is most highly significant to native descendants as a sacred burial ground. So why does the project pick a site where the historical character of a property will be retained and preserved? And I'm quoting again from the secretary of the interior's guidelines. Why does this project choose a site where the property will be recognized as a physical record of its time and place and use? Again, from the secretary of the interior's standards. And the N.O.D. to landmark the Berkeley Shellmound says this site is a cultural resource. It lies in its age. The fact that it is one of the oldest and largest mounds established around the bay and that it represents ancient culture and it was built by the earliest humans in the area.

>> Chair Tregub: Thank you.

>> I'm running out of time. I would really like to give you my --

>> Submit it in writing.

>> It is and I have it. But I have found that from reading the DEIR that comments and letters get subsumed into categories of concerns. So these specific objections do not get attended to by the writers of this particular -- the LSA associates. I have read their other draft for another project and I really want the committee to note the specific objections that I'm making that tie it to CEQA. And I also am tying it to AB52, which notes because it is new you might not be noticing it.

>> S. O'Keefe: Did you submit the question?

>> Chair Tregub: What were your principal concerns that you haven't done?

>> I'm quoting from AB52. 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. And I am wondering if even the archaeotect field investigation was a misdemeanor.

>> S. O'Keefe: When did you submit the letter? To the zoning board?

>> It was confirmed by Sharon.

>> Shannon.

>> Shannon on --

>> Recently?

>> The night after your last zoning meeting.

>> Did we get it in our packet tonight?

>> She confirmed that she got it.

>> Is it in our packet tonight? I didn't notice it.

>> Chair Tregub: Can you provide a response, Shannon? Because there are probably similar situations where letters were sent, maybe not yet received by us.

>> S. Allen: Comments on the draft EIR are directed to be sent to my attention at the City of Berkeley. When a comment comes to the -- when what looks to be an EIR comment letter comes to the Zoning Adjustments Board as opposed to the planning inbox or my inbox, I check that e-mail address, as does Greg Powell, the other cosecretary to the ZAB. I take that to mean it is a letter that is intended for ZAB as quickly as possible. And because I read that letter, I also interpret that to be a comment letter on the draft EIR. So I put that in both places. All

of the draft EIR, all of the letters that the city receives on the draft EIR are certainly provided to both the Zoning Adjustments Board and the Landmarks Preservation Commission in the response to comments document. So it comes in there under a different --

>> Chair Tregub: Even if we haven't received specific letters yet all of them are going to be part of the final packet of material that we will get at the appropriate time?

>> S. Allen: Yes, in the response to comments.

>> When does that happen?

>> Chair Tregub: Shannon, is it still the same time line as what you said before?

>> The time line that has been provided previously I think is spring or summer of 2017 with the extension of the draft EIR comment period and the volume of comment letters, I would assume it would be something in the summer of 2017.

>> Not only have I submitted a letter in person to you on December 8th that you are not familiar with it, you haven't seen. But I also submitted and was confirmed by Shannon to have received the day after last -- the day after the landmark last week and you haven't seen that. So I'm just noting that there is really important investigative work that we have done that you are not getting.

>> Chair Tregub: Thank you so much. And if you could do this for us as well. Forward to it ZAB@cityofBerkeley.info. That will ensure that our board can see it.

We have a Clair followed by Juliet and I will read the next stack of cards.

>> Good evening. My name is Clair G. Six members of my family are graduates of UC Berkeley running from 1905 to 1975. Served on two City of Berkeley commissions. Very invested in this community, as many of you know. I know a number of people on the board as well as a matter of fact staff. Two things. One is I can trace a deep and abiding commitment to this community back to 1906 when my grandparents had to move to Berkeley to get away from the fire and earthquake in San Francisco and then went back to San Francisco. But beyond that, since I can count over 100 years of my family here and I have a deep love for the land here and for the people, I taught environmental education in the City of Berkeley in the '70s at every single elementary school in the town and I know this town backwards and forwards. I have taken children to every single place here and how could I even begin to compare my commitment and love for in community to the 10,000 years of occupation of the original peoples of this land? It is not even close. It is not even comparable. What I'm trying to say here tonight is that we have to look at this project in a different way. This isn't your average development project, it isn't about height and shadow and other neighborhood issues. This is about a unique opportunity, one that had been lost. Had this been approached with proper consultation under AB52 and SB18 with the general plan and the housing reevaluation, with adequate consultation with the indigenous communities here whose love for this land and connection goes beyond anything any of us uh who came later can imagine, we may not be here today. I personally dug up some of the asphalt at Washington environmental yard and planted the redwood trees together with the school in as a visionary project in 1974. There is no reason that we can't take a step backwards, additional

time for consultation and really do the proper consultation with the indigenous peoples from the start adding more time net evaluation and not only for the no option of development but be visionary. As a teacher in 1975 there was not a single Ohlone resource for me to take the kids of the elementary schools to, the hundreds of children that I thought. Let's make that resource now and let's create it. Forget this project. Let's just start over and do the right thing. Thank you.

>> Chair Tregub: Thank you. Juliet, you are next. And then the next, Ariel, Jane, Katie, Ricky, Dennis.

>> Good evening. My name is Juliet Flores. I'm Apache. And I have a relationship with Berkeley as well as the residents and the Ohlone people here. I just want to encourage the council not to develop the space at the west Shellmound. And because of my experiences here living out here in Berkeley and the hardships that I have endured myself finding a community is so important. And one thing that was happening when I was a student at UC Berkeley, being a person of color is that we were facing a lot of budget cuts. We were facing the California economic crisis, and we are still in that. It hasn't gone away. But one thing that kept me in a position to have accessibility to space was land, land. And it allowed me to become a traditional dancer, allowed me to return and embrace my culture. It led me to find my father. So when you take away a resource, you take away opportunity. I don't care if you are a settler, I don't care if you are white, brown, red, black, rainbow. At the end of the day we need land and we need spaces to be accessible. And my grandmother was an Indian, one of those Indian boarding schools in Arizona and they had to leave the land and we never went back. We assimilated and survived. I

don't know was going to happen when you develop the land and I don't know what is going to happen to all of us. But at least I want to just stay present in the moment and share that and encourage y'all to not develop the West Berkeley Shellmound. Thank you.

>> Chair Tregub: Ariel followed by Jane and Katie.

>> What's up, everybody. My name is Ariel. Born and raised in Oakland California. My beloved is born and raised in Berkeley. We have both lived here all our lives and I speak to you tonight as a parent of two little boys, ten-year-old and seven-year-old. Little white boy and is they are growing up in the East Bay. This is our home. And like every third grader in the City of Berkeley, my boys in elementary school learn about Ohlone history, part of the required curriculum. It is a value of the curriculum, the education to learn about the land. I didn't do that. I went to Oakland schools. I didn't know the word Ohlone until I was like 24, 25. This is obviously a result of the invisibilization, marginalization, genocide that has happened on this land. For me I'm thinking about young people and the decision that we make today in this year about this project is going to affect this neighborhood and this landscape for generations to come. If a condo is built, it is not going to come down. It is going to be there for a long time. If an open space is preserved, that will also be there for generations. When my kids are grown ups and grandparents and this community has a treasured resource. So I'm here to absolutely oppose this proposal of development. It has been talked about inadequate for traffic, inadequate for mitigation, inadequate for every technical issue. I think this space should be left open. Cities take over land for freeways, public domain. They just take it over because it

is decided that it is in the common good. The land was sold for \$17 million, it wouldn't be worth that if you decided they can't build on it. So then decide, pass a law that you can't build on this land and then it won't be worth that much and we can buy it and make it green and design an open space that is a valuable space for the Ohlone people and for the whole community of Berkeley so that kids can come and learn about the history of the land they live on. As an example, don't be Emeryville, man. They did a terrible job with Bay Street. That's not what Berkeley's about, right if thank you.

>> Chair Tregub: Thank you. Jane followed by Katie.

>> Hi. My name is Jane. I'm a resident of Oakland. I have lived in the Bay Area for just two years. And I'm here to state my opposition to this development project. I don't believe that we should allow the desires of a few wealthy folks who have money to throw down on a piece of land to steam roll over the sovereignty of indigenous folks who have been here for thousands and thousands of years. Where is the respect for these people's right to keep their elders in their resting places, just like the most of us have had the privilege of doing? The fact is that no matter how official this process is and no matter how legitimate some of us may feel it is, many of us here, myself included, are guests on this land. Guests whose family members came to this land many years ago with a sense of entitlement to all that the earth has. And I think it is due time that those of us who are guests here whose families came here to take land for their own interests make amends to return the land to those who were here first and recognize that they should tell us what happens with the lands they are connected to. Thank you.

>> Chair Tregub: Next up is Katie followed by Ricky and Dennis.

>> Hello. My name is Katie. And I too feel humbled to be a guest on this land. I feel a little cranky to have to be here in particular at this moment. I have a date across town. I should be making out with someone cute right now and instead I am here with all these people reminding you that desecrating a sacred indigenous site is not a good look. But since as you have been generous and flexible with us, like you said, with time, we are here to be generous and flexible with you in reminding you to uphold your own values and your own policies. So to jog your memory, I can read out resolution number 67, 353-NS of the City of Berkeley. Honor Berkeley Shellmound indigenous sacred site, UC Berkeley return ancestral remains to Ohlone people. States in part be it further resolved that free prior and informed consent of the Ohlone and other indigenous people 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. And calls upon all parties to follow the principles of the declaration with respect to the West Berkeley Shellmound site.

So if I can still catch my date across town I plan to practice consent and respect for consent. I hope that you will do the same with the West Berkeley Shellmound.

>> Chair Tregub: Thank you. Ricky C.W. followed by Dennis Walton. I'm going to read the next, and this might be the Lars set of cards that I have, ADELITA, Danielle, Rebecca, Aimee H, and Rebecca K.

>> Honorable fellow residents of Berkeley. Please hear my humble speech, please hear my heart. I wish this could be a decision for the

Ohlone people. My heart is overflowing. I hardly know where to start. I wish to take somewhat of a counterintuitive approach. This could be a beautiful well-valued site for the pure treasure that it is for the City of Berkeley. Let's consider the traffic over this sacred site.

Many people in the city will value the site so much more if the City of Berkeley should only show the tremendous respect it is due and the people, the original people of this land are due that are still here. How can we even contemplate? I relate that this is a structural thing and we need to do -- please do whatever you can above and beyond what the structure allows, whatever you can to this desecration and to allow Karina Gould and people like her some vision, a beautiful vision of what this could be for the City of Berkeley. Thank you.

>> Chair Tregub: Thank you. ADELITA Gonzales followed by Danielle west.

>> You called me next.

>> Chair Tregub: Is ADELITA here?

>> Dennis Walton. You called me.

>> Chair Tregub: Oh, Dennis Walton. Yes.

>> Hi. Good evening. On page 209 of the DEIR we read however instantaneous noise levels could be an annoyance to future residents of the project site. This qualification amounts to an admission that passing trains have a significant adverse impact. It is well-established that train horn blasts disrupt people's sleep and effectively deprive them of the deep REM stage. It is a clinical fact that to be regularly deprived of deep REM sleep is detrimental to physical and mental health. A number of ordinances in the Berkeley Municipal Code recognize that the city has a

binding obligation to protect the health, safety and welfare of its residents. Therefore, the conditions for project approval cannot, I believe, be fully met. We know from the various statements of residents of buildings near the train tracks that the louder horn blasts make their lives miserable. A few years ago one or more of the residents of one of the buildings close to the railroad tracks had as I recall a professional evaluation done which showed that the horn soundings of the train exceed the official limit of acceptability. The city or Council Member Maio's office has a record of that report, which was reported in the local newspaper.

>> Chair Tregub: Thank you very much. And then sorry if this gets shuffled around. ADELITA Gonzales followed by Danielle west and I will see if Katie long is still here. Go ahead.

>> Hello. I'm a CHERIKAWE Apache, I'm not Ohlone, but I stand in solidarity with the Ohlone. My family came to California as refugees of a genocide that we had no place to hide from. When you destroy sacred sites of one nation, of one tribe, of one set of cousins, you destroy sacred sites for all of us. But we are not here to talk about sacred sites. We are here to talk about an environmental impact report, and we have been focusing on traffic. You have heard from everybody else about the sacredness and you knew long before any of this that this was a sacred site. What we are here to talk about is the EIR and traffic report. What I would like to know is if that EIR takes into consideration the political environment that will result of an approval of these building permits. Does it take into consideration the traffic that will result from the massive protests that will go on at this site? Does it take into

consideration the cost for the City of Berkeley for riot police and around-the-clock police presence and the traffic that will ensue? Does it take into account the political environment for each one of you with that decision that rests in your hands? For too long my people in our nation on our own lands have had to beg of a majority-white society that is visitor to our land for mere generations. Our tribes that have been here for millennia must ask of you permission to retain our sacred sites and our places of worship and our places of burial for our ancestors. But think about that traffic. It is going to be a doozy.

>> Chair Tregub: Thank you. Danielle west. Is Danielle here?

>> No. She had to leave.

>> Chair Tregub: Katie long.

>> I already spoke.

>> Chair Tregub: You already spoke. That's what happened. All right. Rebecca followed by Aimee followed by Rebecca.

>> I am a guest here and I am grateful to be alive and to be here. I am in opposition to the project. I am a religious person, Hebrew priestess. And part of my identity as a Jew is I don't have a homeland. I am a person in diaspora. It is part of my identity and responsibility to support the people who are indigenous to where I live. And to use my privilege and cultural rituals to heal the land I live on.

By honoring the ancestors of this land, we have the opportunity to honor all of our ancestors. And the wisdom in the earth of the Berkeley Shellmound is priceless. Healing exists for all of us if we make the right decision here. What I want to dream into our conscience right now is not only rejecting the EIR and honoring Ohlone people's wishes to preserve

what is left of their sacred site, but to also reimagine what it might look like to have this meeting, to have all these people here in a completely different situation of what I think it should be. What if we were in a meeting right now asking Ohlone people how we could help to support and repair, how we could distribute the \$17 million this property was sold for to be reparations oh to Ohlone people. And that is what this meeting should be about. And that would just be one small good start.

>> Chair Tregub: Thank you. Amy.

>> Hi. Amy HATO, settler from Oakland. Thanks for hearing me. The last speaker said kind of was getting at something that I was feeling. And I just want to add one thing on top of everything that everyone said here tonight, which is that don't let the idea that you don't know how could happen stop you from making a decision to stop the project. Because we don't know how we could get \$17 million, we don't know how. We don't have to know how. Just let that be an open question. You can still stop it even though we don't know how you are going to go forward. That is all. Thank you.

>> Chair Tregub: Thank you. And Rebecca Krump.

>> Hello. I am also a settler from Oakland and I just want to thank all the indigenous folks that have spoken out and all the other settlers that are in solidarity tonight. And thank you for listening to us. And I am here like everyone else to beg you to reject the EIR. I think you have heard everyone speak to eloquently. I'm not that eloquent, but we all know that it is already a designated landmark. It is a rich cultural historic resource that is still being used. And it should never have come to this. It should never have been considered. We all know that it is a

sacred site. We all know that the consultation was not adequate. It is very clear there are glaring, glaring conflicts of interest with Andy Galvan. It is just an awful situation. And like everyone has already said, you have a chance to do the right thing. Just trust your heart. This is Berkeley's Standing Rock moment here. You have a chance to do the right thing. Please do. And make an extension for a proper meaningful consultation. Thank you.

>> Chair Tregub: Thank you. Are there any other members of the public wishing to speak? Then please fill out a speaker card at the end.

>> I will do that. (Speaking native language) good evening, relatives, my name is Mr. CANDALARIA. I am RUMSON Ohlone people. We are the band of people in the Monterey Carmel area. I am a descendant of Maria SOTO who was baptized at the mission in Carmel.

What I want to say today, I'm watching and paying attention. I don't know about EIRs this place, I don't think belong here. But I feel like you guys are going to do the right thing. My spirit tells me that you are going to do the right thing. I hear people kind of compounding all of this information. Maybe you thought this was just a normal situation where you were going to stamp it and pass it on but I feel like you are like, whoa, what happened? Let's take a second look at this. There is something really going on. I really feel that. So I don't want to pound you with all this other information or maybe even speak down on you because you might be my friend after you make the decision. So I'm not going to do this. But because this is being officially documented I want to take the opportunity to share my story as an Ohlone person, an individual that is Ohlone living today because this might be of some use to somebody, some scientist, maybe

after I'm dead might think this is important to utilize. So my story is growing up my father was an MLD in our territory. I grew up going to offer songs and ceremonies for those remains that had already been excavated and were being returned to the land. Do you know what it is like to have to look at your ancestral remains being returned to the land? Being pulled out of Ziploc bags, being pulled out of office boxes numbered and tagged. Do you know what that is like to know that is my blood ancestor? I don't know if individuals live this life and know what that is like to grow up, but there are certain sight that is you see that never leave your mind that never make you feel comfortable. Maybe your ancestors. Maybe you might understand if you see a child's casket. Certain things don't make you feel comfortable. This is what will be done to the remains of our ancestors if it is desecrated. So for us we are connected to this land. The desecration of our ancestors, the desecration of the land is a physical desecration of us. So again, just the short history, I want to let you know that a lot of our Ohlone people are readily available to educate you on the history of who we are, and not even the history. Our current situation, where we are at as Ohlone people to educate you, because I think it is very important as you make decisions over Ohlone territory that you guys are very, very informed on who we are today.

So thank you very much for your time and your attention. I hope you have a great evening. (Speaking native language).

All my relations.

>> Chair Tregub: Thank you very much.

Okay. Well, at this time we are going to turn this back over to the ZAB. And I think given the lateness of the hour we will try for four

minutes per ZAB member. If that is acceptable. You don't have to use all four minutes, by the way. But this is your opportunity to make any remarks you would like on the EIR or ask any questions. Of course, anything that is germane to the EIR will be taken in as testimony and is supposed to be addressed in the response to comments.

Before this happens, it is time again for a captioner break.

>> Thank you. I need a break.

>> Chair Tregub: All right.

>> G. Powell: I think it is a good time to take it.

>> Chair Tregub: That sounds appropriate. Sorry. I was rearing to go, but yes, let's thank our captioner too on working very hard.

>> G. Powell: How long would you like? Ten minutes is customary.

>> Chair Tregub: Ten minutes.

>> G. Powell: Thank you.

[ RECESS ]

>> Chair Tregub: We are going to bring this back in five seconds. Five, four, three, two, one. If you can finish your conversations so that we can hear each other. We are now going to provide comments for the benefit of staff and the EIR consultants on the draft environmental impact report.

Let's start with John, switching it up a little, and go down.

>> J. Selawsky: I don't have much or many because I know it is being covered by others. But I do want to comment that I don't believe the consultation has been adequate and I'm going to cite AB52 and everything else that has been cited by the audience. And I want to thank audience members tonight, community members, for coming and articulating. You were

all amazingly eloquent and I really appreciated the testimony. Thank you for being so late also.

So I don't think there is adequate consultation with the Ohlone and I'm concerned about that. I don't think one person can necessarily speak for the entire tribe, clan, family. I would like to see further consultation built into this. And I'm not sure what that entirely looks like. I don't have anything preconceived, but I would like to see further conversation, deeper consultation, wider consultation. It wasn't brought up tonight but I think it was December 8th.

>> Chair Tregub: I remember like it was yesterday.

>> J. Selawsky: We went to 1:50 in the morning. It is a little bit better. Somebody cited the freedom of religion act and I think there may be a kernel there that needs to be investigated with council because it does seem to me this is a sacred site and people utilize it as a sacred site for their prayer and ancestors. So that struck a chord with me. I think there is a kernel of something there that needs to be looked at and investigated. I'm going to cite page 106 in the DEIR. There is a checklist here under XVI, 16, transportation traffic, and with to project if you go down to E, results in inadequate emergency access and potentially significant impact is checked. And I didn't see any response or anything that addresses that in any way. So I would expect the EIR to address that because that seems as it says itself, that is significant, that is a significant impact. The city's standard response time for emergency is I believe four minutes. I think somewhere in here it says the estimate at some of these intersections is up to five minutes. Somehow that is going to have to be reconciled and addressed, I believe. Whether that is

possible or not, I don't know because I don't know that these intersections are going to become any better. It even states in some places that is probably not going to happen. But I want to see some response to that significant impact for emergency response. That's it for me.

>> Chair Tregub: Shoshana.

>> S. O'Keefe: I have three statements. I actually just want to echo John's comments about traffic and some comments that I believe will be made about parking. If they are not made I'll make them. But I'm not an expert on those things and I don't want to repeat what other people are going to say. I want to talk about -- I have a comment about the impact, mitigation and comment about the project alternatives. I think the impact, the cultural resources here, is defined too narrowly. The impact is defined as demolishes or materially alters in an adverse manner the physical characteristics that account for the inclusion in the local register of historic resources. All the mitigations to the impact seem to have to do with the stuff that gets dug up, like the bones, the artifacts, anything that gets dug up. We will treat it with respect, take sensitivity classes. We are going to catalog it and photograph it and then we are going to rebury it with respect. The impact isn't to the things. The impact is to the site. And I asked Ms. Gould, who by the way I really appreciated your testimony, thank you so much for coming and informing us, as you did. I asked her that question about what does she think the cultural impact is? She made it very clear, as did others, it is to the site. It is the fact that these things are buried there that makes them sacred. And when you dig them up, that's the impact. These mitigations

don't address that. They try to treat the things with respect, but they are already dug up. So I would like to see -- I'll get back to this more later, but I want to see -- I think digging in itself is the thing we need to look at and we need to figure out if there is a way to minimize the impact of the digging itself. We should look at that. But that is difficult. Second, the nature of the proposed mitigation I have a problem with. Mr. Galvan, Andy Galvan, there has been a lot of talk about whether or not he can truly speak for the Ohlone people. And we on the board, our comments need to be rooted in the EIR themselves. That's a little bit problematic. My objection here is problematic because this does seem to check all the boxes from AB52. It does seem to do that. And so I have an objection. I'm trying to phrase where my objection comes from since it seems to very literally comply with the law. And I think it has to do with the fact that this is a cultural resource we are trying to mitigate the impacts to. And what gives that its power? Why do we care that it is a cultural resource? Because it is important to a culture, to a people. It is important to these people. And this man is just one man. And it is very clear from the testimony here that he does not speak for that culture. So how can he do anything to mitigate the impact to the culture? There needs to be a nexus between the mitigation and where it is coming from and the culture itself. And there doesn't seem to be a nexus here at all. And it seems there may be an opportunity for Ms. Gould to also get this official most likely descendant designation, and then she could under AB52 consult. And if that would be possible, it seems like she does have the respect of the people and she would be a more appropriate spokesperson. That would potentially be, if she could be brought in the same process at the same

level that he has or instead of him -- I know your feeling now. I am almost done, I promise -- then I would take the mitigations much more seriously. Right now they do not seem sufficient because there is no nexus between this mitigation of having a native person observe and speak and advise and the actual culture itself. I don't see that nexus, and I think that is an important part.

Lastly, it is the digging itself that is causing the damage. So what I would like to see in a final EIR is a project alternative that minimized digging completely. And I don't have an idea for how to do that. It is not my job to come up with the mitigation. It is my job to make comments. My comment is I want to see a project alternative that minimizes digging. Of course there is no no project alternative. But if the developer is serious about getting something built I would like to see them do something that requires much less digging. Not sure what that looks like but I look forward to seeing it. Those are my comments.

>> D. Pinkston: I agree with my two colleagues that the consultation that has happened to date feels forced and inauthentic given the degree of passion and testimony around the issue and the possibility that there are other legitimate spokespeople for the Ohlone tribe that may not be technically recognized or recognizable but should be. So I think -- and I don't mind taking more time with the EIR in order to provide a sufficient amount of time for that to occur. If we need another 60 days so folks that have come forward as representatives of the Ohlone interest have the same consultation opportunity as Mr. Galvan had, whether those were meetings with staff or the opportunity to talk about mitigations. Whatever happened with him should also happen with folks who

are other potentially legitimate representatives of the Ohlone. Not necessarily everybody in the room, but certainly Karina and some of the other leaders.

I think that is because this site is unique. Frankly from the data that we have been given, there are no remains on the site. That is what the data says. But I think there is no way for us to know that with certainty. And so if you can't know it with certainty, then you have to presume that you may find something and then you need to proceed accordingly. So I think that is why the mitigations are in there, because even though we believe there are no remains there today, there is no way to prove the point. So the mitigations need to account for the fact that in fact may be a burial ground that has remains that were ceremonially buried once upon a time and need to be respected. I think we have to spend some more time on that. And the last few hearings demonstrate that is very important to people.

I also think as we are talking about what might come of that consultation I have some thoughts to share. I know folks have talked about this entire site being a park or a memorial. Given the way land use law works and the way the city controls work, it is very difficult for the city to just decide to make somebody's private property a park. However, there are ways to balance interests, and I would like an alternative in the EIR that balances some more of the interests than just the reduced retail alternative. And I liked Tony Matzner's drawing very much, or something similar to it. I had a similar drawing of my own where the corner of Hurst and fourth would be reserved as permanent unbuilt open space that would include a permanent deed restriction perhaps given to a

land trust or another entity so that although the Ohlone don't have money oh buy the land today in effect by using it zoning powers the city can guarantee the land never becomes a building area, at least for one portion of the site. That could be an alternative. I think the way to do that is eliminate the retail free-standing building that has a couple floors of housing above it. Take the off the site plan and rationalize some of the way the building massing works so that you are not necessarily reducing the number of units to accomplish this. But you would definitely reduce the amount of retail to be just a sufficient amount of retail to have a retail presence along the retail street but get rid of the PASEOS and around the block retail and maybe that ends up being more like 10,000 to 12,000 square feet of retail than the 22,000 square feet that staff identified.

This could create a permanent land holding to honor the history of the Ohlone in this location. I think that that should not be designed by the developer. I think it should be designed by the Ohlone in conjunction with a sufficiently qualified entity look like Oakland museum or the Exploratorium where the community themselves do the designing and adding permanent installations that tell stories and create interactive information so that people down through the generations have the opportunity to learn and see and to understand what that place means E I have lived in Berkeley almost 40 years. I take my kids there all the time. Until this series of hearings I had no idea this history was a part of the site history of what I identify as a parking lot. So if an outcome of this development could be a place that people can see and understand this history in a really exciting meaningful way like what the Exploratorium

does, that could be a positive outcome from development. I'm not saying everybody would be satisfied with that uh I would like at least an alternative that we can look at.

It helps solve some of the traffic problems, helps solve some of the conversations about the Ohlone conversation and it somewhat reduces the overall traffic bulk, which will help traffic somewhat. I think the EIR on the subject of traffic needs to look at -- I sent an e-mail to you Shannon in case I didn't have time to say all these words but I think it needs to look at some of the northern intersections that come into the Fourth Street area because the university corridor will become more crowded and more people will come from the north. We need to be sure we are aware of what that is and what we are doing. We have to study the displaced parking issue. The fact that existing buildings at Fourth Street were built relying on parking they didn't own and that the City of Berkeley let that happen is water under the bridge.

>> That is not true. We qualified for every square foot as covered under the zoning.

>> D. Pinkston: Then you don't need the parking on this site then, do you?

>> That is not true.

>> D. Pinkston: That's not my point. In any case we are not cross talking right now, Denny, but the point is that existing retail uses are relying on parking they don't own, and when that parking goes away people who now go to those retail uses will be without a place to park. So they are going to go somewhere and I would like that to be more clear in the EIR so the impact is more clearly identified. I would like part of

that analysis to be taking a look at the existing square footage of the existing Fourth Street retail development and the new proposed Jamestown development and run an ITE-based trip analysis of what is typical in the Bay Area for retail. Not what did the City of Berkeley require for parking, because if we only required one or two stalls per thousand square feet we didn't require enough parking in the first instance. So I just want to see what the real demand is based on the square footage and if we take away the parking they are using they don't own where are those 350 cars going to go? We need to understand that. It will contribute to driving around and looking for parking which will contribute to congestion that you didn't look at in the document, so I think all the congestion issues are somewhat understated in the document and this analysis uh, but at least help us understand them. And hopefully with the reduced project alternative, would be further mitigated.

I think we need to add mitigations to the traffic section, including paying into a West Berkeley BART shuttle. We required that of the SCHOENSTEIN project and we need to require it here. There are a lot of other TDM measures when you are doing GreenTRIP. I would like all of those to be included as conditions and not just conditions of project approval. You can find everything they recommend on the website. Rather than me going through those, you can just look it up.

On the -- sorry, getting lost in my notes here. I think that that is the highlights. I will hand you my plan, my comment on the EIR, not very illustrative. It calls for a memorial plaza, reduced retail, adding some retail parking stalls, maybe 40 or 50 stalls. You won't get back up to the total number of stalls we lost but I have a feeling we will

need them. Let's look at them in an alternative. It would be deed-restricted to some permanent ownership of open space and that we have the less digging in the foundations. This will be the less is more alternative. And one of the things, some alternative structural design that doesn't require digging an eight-foot. If they are going down eight feet they are building heavy mat slab. Probably bay water and they are trying to keep the building from popping up. There are other ways to design the foundation so it is not so invasive in the earth work department. Those are my comments.

>> Chair Tregub: Thank you very much, Denise. And I agree with just about all the comments that have been said thus far that my colleagues said. So I am not going to belabor them again. I will try to fly through each one as quickly as possible. I agree with my colleagues to have further consultation. And I am willing for the EIR time line to be extended for as long as is necessary to ensure that there is a full analysis and consultation with all of the affected tribes.

I understand what has happened is not the fault of the staff nor the EIR consultant. However, it is important that all potential impacts are covered in the EIR. That is its responsibility. And consultation is one aspect of it that is required under AB52.

I would be interested in hearing more about the comments that one speaker said about the distinction between tribal and cultural resources, and if I understood his comments that there is now a distinction and the two sections need to be called out separately. If that is the case, then I believe the final EIR, whenever that is issued, needs to exercise best practices or the law. I'm not sure if this is in the law

now, but I would like to see that. I do agree those are two different things. And that has been made clear to us tonight.

I think the Berkeley City Council resolution on honoring the legacy of the Ohlone that passed overwhelmingly by eight of the nine members of the city council, it is an appendix to the EIR. I believe even though this is a comment perhaps not directly related to the four corners of the EIR. I think if our city council is serious about honoring the legacy of the Ohlone and there is language there that seems to be instructive on what can and cannot be developed on that land, it needs to at least be looked into. That is a resolution that was passed by our own city council.

On the traffic study, I will read and, yes, I live about eight blocks away from that site. I have seen that on every day of the week most hours of the day. And I do agree with the speakers that said it introduces a safety issue as well when it comes to cars backing up on the railroad tracks. On page 117 it talks about -- well, of the seven intersections that are studied, which I still feel that more intersections needed to be studied to get a full extent of all the cumulative impacts, but the level of service right now is D on two of the seven. And further, on page 123 when it talks about the cumulative year 2040 conditions, there are going to be five of the seven intersections whose level of service will be F. When I walk around my own experience right now with those intersections is it already feels like an F. I was surprised to read that it is actually -- that some of them are a D. I appreciate what the consultant said about the fact that 2015 traffic counts were used. We have added I believe two new development projects. If they are not fully inhabited yet,

that is going to happen in the foreseeable future. And there is additional construction going on. So the cumulative impacts are going to -- clearly need to be looked at. There will likely be more congestion, more traffic. Even though those projects are trying to not be completely fully parked. I'm a fan of cumulative impacts. That tends to be one of my favorite sections. The one I watch most closely. The comment by Tim Frank about whether greenhouse gas emissions would increase as a result of the fact that if this is being built the kind of labor that is being used if it is not local hire, would that increase cumulative greenhouse gas emissions and vehicle miles traveled? That would be interesting to look at.

In terms of the site itself, and this is where I appreciate the volume of members of the public that spoke about the cultural impacts that digging up this site would have. And I realize I'm going a little bit beyond the scope of the EIR with the next set of comments I'm going to make, but I think it is important for everyone to think about their own history and background, and I was thinking about that during the course of this discussion.

And as someone who is a Jewish expatriate from the former Soviet Union, I don't know where the remains of many of my ancestors right now. Many have been lost in the pogroms. Others have been lost in the famines and the wars. And I would certainly be deeply displeased if I found out that if their remains were found they were not being appropriately honored. So that is the context in which we are operating with the site. And even more so since the Shellmounds have been here for I think someone said 5,700 years. And we need to be deeply sensitive to that.

So whether the alternative that I would ultimately support -- it is premature for me to say that right now, but I feel that the EIR does need to study other alternatives. It needs to really look at the significant but unavoidable impacts on the proposed alternative. If there is going to be a structure there, I like the sound of what Denise is proposing. I think the most important aspect is there needs to be a due recognition of the history. And the Emeryville mall, I was surprised to learn that there is apparently a place when you are going from the garage up to the mall where the Shellmound is being -- the remains of the Shellmound, I should say, and the history of the Ohlone tribes is being honored.

>> It is on the way to the bathroom.

>> I. Tregub: I have never seen it. And that, my friends, I don't think is an appropriate process to honor the past at all.

So whether it is an alternative along the lines of what Denise is proposing or whether it is as some members of the public were proposing, ideally some wetlands and some open space because as we get into 2040 and 2050 there will be sea level rise, the effects of which we will see around east shore state park, and maybe resilience is the best way to deal with that now. Whatever the alternative is, I would I think prefer any of that as an environmentally superior alternative to the main project that is being proposed. And I will leave it at that and submit further comments in writing. Thank you.

>> T. Clarke: So where to begin. Even before our initial public hearing I was very concerned about the proposed mitigation. I felt it was kind of outrageously insignificant. It didn't mitigate anything at all. So

it really did baffle me. And of course I definitely agree there is a lot of cultural resources at this site. And to me it is not necessarily about the artifacts and the bones, it is really about the place and its relationship to the rest of the bay and kind of the -- Shellmounds were near the water and bay. To me that is a very important aspect of the cultural resource, its connection to the other Shellmounds, the population, the history of people living on the bay before it got built up.

So I think that the tribal cultural resource and the cultural resource was not thoroughly studied, and I think it would be important to maybe get more actual archaeological study in the report. I feel like that is needed. And the mitigation of a project that is probably going to be worth minimum \$80 million, I would say, up to \$120 million this project will probably be in the range of, in terms of what the developer spends on it and if they sell it to another -- they are going to sell it for even more. So to propose \$75,000, it is baffling to me that that small amount of donation would have been proposed, I feel like that is a total insult. I don't know why they thought that would be appropriate and why the consultant from the Ohlone non-profit thought that would be appropriate.

So I actually -- I think something in terms of if I was going to propose something here, I would want to see an alternate that looked at more how to connect the site to the aquatic park, to the other parks in the area, to more of an integral cultural resource in the whole area that we want to develop. We don't just want a plaque. We don't want just a plaza. I think if you are actually going to mitigate development of this, you need to create something that has a lot more cultural meaning for

people to use it on the site and use it in connection to the bay. Maybe a connection to aquatic park. I don't know how we ask for those kinds of alternatives, but a connection to the east shore park, perhaps, as well as the aquatic park.

And the consultations definitely need to be done. I don't know how this fits in with the EIR, but I don't feel like the train station, the public transportation was dealt with. How does this project connect to the public transportation in the area? I don't think that was adequately addressed in the proposal. And I don't know how that fits in to the EIR, but I would like to see a developer address the public transportation and its connection to the site. I think the Gilman intersection needs to be studied. That is a mess. And people who need to get out of Fourth Street you need to go towards the Gilman intersection on Frontage Road when everything else is backed up and you don't want to go through that mess. That to me definitely needs to be in the report. So I'm not sure. I don't quite understand why it doesn't get up to that level. But I would want to see it discussed more because it is a real mess there.

And as you get more traffic in that area, you need to do something with the railroad crossing as well. The railroad crossing was not talked about. There are no mitigations at the railroad crossing. I don't remember them. If there were, I apologize. But I would want to see them addressed if they are not. And at the Frontage Road how do people access going north on to get north on the freeway? How do you get there? Either you go down Sixth Street and up the overpass and around or you have to go north to Gilman. To me going to Sixth Street and up is insane in this big long line of cars and that is getting crazy there. So we will go

on the Frontage Road to the north. I think that Frontage Road and the Gilman intersection, they have to be part of this study.

Oh, the parking. I don't think parking is a good idea on this site. This should not be the parking for Fourth Street. It is a bad location for a parking garage, first of all, because you are coming over the railroad crossing and you are entering into a garage. That is terrible spot for an entrance to a garage. The other location for the entrance to the garage is facing Spenger's. Another terrible location. People are walking there. So the locations of the entrance to the garage are terrible. If I was going to put an entrance to the garage, I would put it near the train station on that side of the site. So that whole the way the traffic works there with the entrance to the garage, which is where you will get your backups, your pedestrian and car interactions that are going to be very dangerous and are going to lower the quality of the retail area there, those entrances shouldn't be in those locations. I would say the best location would be at the end over by the train station and not have two entrances to the garage. I think only one entrance. I think two entrances creates a higher impact. So I would like to see an alternate with only one garage entrance and off of the location right where the end of university hits the station, right in that section. I would also like to see an open space connection between -- and I like your idea of having some kind of dedicated outdoor space at the site that is dedicated and deeded, connected to aquatic park and I would like to see it connected to the other open spaces in the area. And I think that is it. I don't want to see parking there. I think parking should be in another location for Fourth Street, and that is not a great place. So I wouldn't want to

provide any extra parking at that site beyond what is really required for the housing and just that portion of the retail. I don't believe that is the right site for parking of the general public. So I would be against that. I guess that's all I have to say. I can't think of anything else.

>> Chair Tregub: Thank you. It is getting late.

John.

>> J. Erickson: Well, let me start with parking because even with the project proposal for parking, you are starting with a lot that has 350 spaces. You are replacing that with 372. But I think it was 158 of those are for project residents. And 214 for the public. So you are dropping off there over 100 spaces, 140, something like that.

And I think it is also pretty clear to me that because the fee for parking for residents will be unbundled, is what I read, that means that a lot of the people are going to park on the street. They are not going to park in the garage. Because they don't have to pay for it unless they choose to, and because they will be parking late at night often or after business hours, they are just going to find a free spot and take it for however long they need it. So it seems to me that the parking part of it needs further study. Even now as we all know, we have all been down there, it is very hard to park at many times of the day, particularly during the holiday season. So I think it really needs further consideration. Relating to the traffic question, the draft EIR finds four significant unavoidable impact locations, which is shocking, in a way. Even now those intersections often are very, very hard to get through. With a project that the DEIR says it will be worse, and I think it is understated in the DEIR. Some locations were not studied. Only seven were

studied. There are assumptions made about people using public transportation and bicycles, which I think are really optimistic for the area. There may be some -- I think any kind of -- it being a regional draw, people come in cars and as somebody said, when you go down to Fourth Street to shop, you are going to have things to carry so you'll take your car, typically. Anyway, I think again I think the DEIR understates the problem. I think it is a real killer for the project, in my mind. So I would ask that another look be taken at it.

In terms of cultural resources, a lot has been said about that, and we have heard a lot of testimony. Folks here have focused on that. And I would agree pretty much with everything that said the mitigations that are suggested, cultural sensitivity training, restrictions on treatment of archaeological deposits found during construction and these minimal pay-offs to Andy Galvan's organization and to the city, they are getting a benefit out of this, they are after the fact. You have destroyed them, taking the bones and doing something with them, treating them with respect, which is really not satisfactory.

I think that maybe some focus needs to be put on further study of the before condition before construction starts. Some people have suggested with further mapping that you might be able to locate where the village was with the little bit of trenching that was done, may be inadequate, there may be other devices. But it would be very helpful to try to pen down very carefully where the actual village was. And hopefully be able to use that as an open space memorial area and as another alternative.

My time is up, but I just want to say one thing that really hasn't been brought up, I think. This is the entryway to Berkeley. And compared to the entryway to Emeryville, the horrible mall that is in Emeryville, I think we should really be thinking about was really appropriate here. In terms of it should be I think first of all the same scale as what is there. And second of all, I think some open space -- I mean, it would be ideal if the whole thing was open, but maybe that is an impossibility. But at least carefully plan a portion of the site with height limits that are 40 feet rather than 70 feet would be the most appropriate thing.

>> Chair Tregub: Thank you. And Brazile.

>> B. Clark: Good evening, all. It has been a long evening. My comments come from a point of any decision that needs to be made needs to be made with sustainability and cultural sensitivity in mind to deliver upon the needs of the city. In regards to this EIR and in project, I agree with my colleagues John Selawsky and Shoshana that enough consultation wasn't made in regards to the indigenous people and the significance of this site, and I want to follow behind my colleague Denise Pinkston in that whatever that we do here needs, the historical notion needs to be made in regards to education. And I will tie that also into Teresa Clarke, because as looking at the map I see that all of the Shellmounds, the 400 that are listed here, are all near waterways. They are in creeks and all sitting on the edge of the bay. And because this site in particular is also near a waterway and I heard the young child speak with her mother about seven generations down what impact this project will have, it would be a perfect opportunity to educate the residents and have something that

is sustainable culturally and environmentally for the city to be a model for that. There needs to be somewhere -- I don't know. None of us -- well, I can't say that. But I'm not a professional or an expert in this, so I'm asking staff and those who draft the EIR to look into that.

Also, I'm concerned about the parking and the traffic as well because parking and traffic, all of that leads to one thing, transportation. How people are getting in and out. There will possibly be something here. There are alternatives to have nothing here, but I believe that something will be built here, and anything that will be built needs to take into account the traffic that is coming in along with more people coming in to visit the site as well as possibly living there.

So you have to take into account that you do have the water on one side and the railroads on one side and on the other side a train station and then people coming in. So what would be the best route for people enter and leave the site safely, whether they are coming by car or bike or on foot? Because those are all ways that people travel to Fourth Street regardless of what they are doing there. Travel there and I travel by bike. I'm shopping. Most people would rather drive. Taking in all counts of transportation to get to that site.

And I believe that is all I have to say. I really want to thank the indigenous people who came here today, the rest of us who have lived here or people visiting here E people who have been here their own lives or a day and never knew the history or cultural importance. So I just want to thank you all for coming in and shedding your light on that so that we could then reflect that in any of the decisions that we make. So thank you.

>> Chair Tregub: Thank you so much.

I believe that closes our comments on this item. And if there is any stamina left among my colleagues to finish the final item left on the agenda tonight.

>> Is it Sacramento Street?

>> Chair Tregub: Yes. Law I'll move approval.

>> Chair Tregub: I want to just confirm again from staff we received to comments in opposition or otherwise.

>> G. Powell: Well, there are no speaker cards for tonight but the packet does include some letters and a petition, does express some feelings about the property.

>> Chair Tregub: Is there anyone here wishing to speak on 2517 Sacramento?

>> The applicant is here.

>> Chair Tregub: Well, staff, would you like to provide a very brief report and then we will hear from the applicant.

>> B. Clark: Is the applicant present?

>> Chair Tregub: The applicant is here.

>> G. Powell: We have the project planner Leslie Mendez here to present the staff report.

>> Chair Tregub: Good morning, Leslie.

>> L. Mendez: Good morning. Good morning, everybody. Tonight we are -- after all of that, we are reviewing use permit ZP2015-0097, which is a project at 2517 Sacramento Street. It is a project to install a new rooftop co-located Verizon Wireless facility.

There is already an AT&T wireless facility that was approved by ZAB in April 2013 on the site. One thing I wanted to note is that there was an incorrect attachment. The photo simulations I attached incorrectly showed the wrong project that was approved by the Design Review Committee. But if you look on page six of the staff report, there is the existing conditions and three design alternatives that were presented to design review. It was the last one at the bottom, which is correctly labeled, the one with the design that the DRC did recommend approval for.

Thank you for that. And our applicant is here.

>> Chair Tregub: There was a question in there.

>> Which one are they recommending?

>> D. Pinkston: The one at the bottom. Those --

>> Those are the round -- hopefully you have a color version.

Mine didn't turn out so well. I'm here for any questions. And the applicant Maria Kim is here as well.

>> Thank you very much. Good evening.

>> Chair Tregub: Actually. Before you start it appears we have a recusal.

>> T. Clarke: I have to recuse myself on this one because I work for the applicant, SAHA.

>> Chair Tregub: Now you can proceed.

>> Good evening, members of the Berkeley Zoning Adjustments Board. My name is Maria Kim with complete wireless consulting and I represent Verizon Wireless on behalf of the project. I have Neil OLI, the independent third party radio frequency RF engineer tonight, and he can answer any RF questions that you have.

I would like to briefly discuss three major points, the history of the project, the need for the facility, and then the major point, which is the location and design.

On page four of Ms. Mendez' staff report she goes over in depth about how the project has started in early 2014. The 2517 Sacramento Street was chosen at the project facility site in September or October of 2014. It was submitted to planning in April 2015 and had two hearings with the Design Review Committee in late 2015. The need for the facility. We provided coverage maps. It was attachment four with the staff report. Produced by Berkeley planning for this evening. This was verified by URS, which is the city's chosen third-party peer reviewing firm. And what I wanted to discuss tonight was the location and the design. This location was chosen because it was the tallest building in the area, because it is zoned south area commercial, which is a more preferred zone for a telecommunications, and that Berkeley's municipal code prefers carriers to co-locate on structures that already house wireless equipment. Here AT&T already has equipment on the roof and you can see in the red arrow pointing on the right-hand side of that slide the total height is 58.4 feet.

The design if, there are two sections of antennas on this roof. We are proposing six in the rear of the building and six in the front portion facing Sacramento Street. The DRC recommended this as the final design for the rear section of antennas. It is radomes, four feet shorter than the existing AT&T facility that is already back there.

This is the view that would be most visible, and I would like to just go through quickly the designs that were presented. We started with

just a plain cupola with the roof to match. This is enclosed in RF material so the antennas may communicate. I also initially proposed faux windows and then without the roof altogether as well as a flat roof with a white trim. Based on our two design review committee hearings, the recommendations were as follows. Mini cupolas along the pitched portion of the roof, the wider with the flat white trim as well as the radomes, eventually the final design approved by DRC. I would like to pose two additional designs, which is a cupola with the pitched roof and white trim to match the existing portion of the building at 2517 Sacramento Street as well as having faux windows to match as well.

We are code compliant. We have been very cooperative with DRC and their suggestions. And we have the support of staff. I respectfully ask that ZAB approve this Verizon project with either the radome designs previously approved by DRC or with the cupola design your choosing. Thank you very much. And like I said, Neil OLI is here from Hammond and Edison. Thank you.

>> D. Pinkston: Why did they like the cupolas?

>> They actually liked the radomes.

>> D. Pinkston: Why did they like those?

>> One of the comments we got was not to have it match the existing building, even though that is what Berkeley's municipal code had stated. They were looking for something to show the public that there is telecommunications equipment up on the roof. This was the direction I was given after hearing number one and after producing the three requested designs after hearing one, this was the final design chosen.

>> D. Pinkston: Go back to the one that you are calling best and final.

>> This one or this one, the faux windows to match the existing building.

>> Chair Tregub: We can redesign this right now. Greg.

>> Which one went to design review?

>> The Design Review Committee approved that as the final design, three radomes along the pitched portion of the roof.

>> J. Selawsky: Design review, they did their work on this for whatever reason and this is what they came up with.

>> Chair Tregub: If we disagree we can send it back to design review.

>> Chair Tregub: It really didn't appeal to me last night when I approved it, but it is growing on me.

>> One of DRC's thoughts behind this, it also broke up the massing as opposed to having one larger massing. It kind of is a little less.

>> Chair Tregub: Any other questions for the applicant? I have a question for the consultant. Typically I do review the engineering report. Because of the EIR I did not get a chance to.

What is the percentage of the maximum acceptable RF threshold that you found off of the corner of Dwight and Sacramento and also to the residents inside the building?

>> So the maximum level at ground was 2.8% and then the maximum level in the top floor of the subject building was 2.4%.

>> Chair Tregub: Thank you. Any other questions?

>> B. Clark: I just have one question on the letter that was sent to us. It reads exceeds FCC general public exposure limits of electromagnetic energy due to the presence of T-Mobile antennas nearby. Do you have any comments on that statement?

>> That is not a true statement. The third party Hammond and Edison produced an independent third party RF study which disputes those results. And the firm chosen by Berkeley to also independently review it also concurred with Hammond and Edison's findings.

>> Chair Tregub: Other questions? Thank you very much.

>> L. Mendez: I just want to add for the record Maria Kim was very diligent in getting the 2017 annual certification in. So that was provided to you in your late submittal.

>> Chair Tregub: I saw that. Thank you very much.

>> S. O'Keefe: Thanks for staying so late.

>> No problem.

>> S. O'Keefe: I hope you are well-compensated.

>> Chair Tregub: At this point it is back before the board for discussion or a motion.

>> J. Selawsky: I'll make a motion for the one right up there, approval.

>> I second.

>> Chair Tregub: The recommended DRC design. There has been a motion.

>> B. Clark: I second that.

>> Chair Tregub: Staff, or other discussion? Seeing none, staff, please call the roll.

>> Board member Brazile Clark.

>> Yes.

>> Erickson.

>> Teresa Clarke recused herself.

Board Member O'Keefe.

>> I don't know. Let's think about it for ten minutes.

>> J. Selawsky: Why don't we stay here another 20 minutes.

>> Yes.

>> Board Member Selawsky.

>> Yes.

>> We will note that Board Member Donaldson's absent.

Vice Chair Pinkston.

>> Yes.

>> And Chair Tregub.

>> Si.

>> That's enough.

>> Chair Tregub: All right. This meeting is adjourned. Thank you so much to everyone for staying late.

>> G. Powell: Good-bye. Thanks, guys. It was a good meeting.

[Regular Meeting adjourned.]