

April 13, 2011

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California Department of Justice
Attn: Public Inquiry Unit
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COMPLAINT UNDER CALIFORNIA GOVERNMENT CODE § 11135 ALLEGING VIOLATIONS OF THE CIVIL RIGHTS OF AMERICAN INDIANS BY THE CITY OF VALLEJO AND THE GREATER VALLEJO RECREATION DISTRICT

I. Introduction

This is a civil rights complaint by Sacred Site Protection and Rights of Indigenous Tribes (SSP&RIT), a Native American organization based in Vallejo, California under California Government Code § 11135 against City of Vallejo (“the City”) and the Greater Vallejo Recreation District (“GVRD”) for discriminating on the basis of race in threatening to destroy and desecrate significant parts of the Glen Cove Shell Mound and burial site and in effectively excluding American Indians from their right to full participation in the decision-making process regarding this project.. The Glen Cove site contains human remains and cultural resources, yet the City and GVRD are planning to immediately proceed with plans that would desecrate, damage and potentially destroy the Glen Cove Shell Mound site, and their decision-making process improperly and intentionally limited the participation of American Indians.

The City and the Greater Vallejo Recreation District are taking and planning actions that violate the civil rights of American Indians, including but not limited to American Indians who are residents of Vallejo, California and surrounding communities.

As recipients of state funding, the City and GVRD are prohibited from taking actions that discriminate or have disproportionate impacts on people of color, such as the Indigenous peoples in Vallejo and surrounding areas and Indigenous peoples with cultural ties to the Glen Cove sacred site in Vallejo.

The activities and plans by the City and GVRD to develop the area occupied by the Glen Cove Shell Mound would destroy and desecrate a profoundly sacred cultural site that includes

many ancient burials, artifacts, and other cultural resources at what had been a major village and burial site for thousands of years. In addition, the GVRD plans – approved and permitted by the City – would harm the spiritual well-being of Indigenous people with cultural, ancestral and spiritual ties to the Glen Cove site and would interfere with the practice of American Indian religions and ceremonies.

This complaint will show all elements required to make a prima facie case of a violation of § 11135 by the City of Vallejo and GVRD: (1) their actions have had and will have an impact; (2) that is discriminatory on the basis of race and ethnic group identification; (3) caused by a recipient of state financial assistance; (4) within the statute of limitations period.

II. Funding

The City of Vallejo and GVRD must comply with § 11135 because they receive substantial state funding. State funding for the Glen Cove project comes from the State Coastal Conservancy, which gave the district a grant of \$200,000 for the Bay Trail improvements at Glen Cove, and a Ridge Trail grant of \$75,000.¹ Further, the GVRD's annual report for 2008/2009 indicates that they received a grant from the State Lands Commission for the project.²

State funding for GVRD projects are not limited to the Glen Gove Project. Additionally, the reconstruction of the sports field in Dan Foley Park cost about \$3 million and was funded by a state grant and park dedication fees.³ Legislative grants have also been awarded to GVRD for the Children's Wonderland, NVCC, and River Park.⁴

III. Complainants

The complainant is the American Indian organization known as Sacred Site Protection and Rights of Indigenous Tribes (SSP&RIT) based in Vallejo, California, and several members are or may be descendants of the people who lived and were buried at Glen Cove in Vallejo,

¹ Personal Communication from Melanie Denninger, State Coastal Conservancy, to Bradley Angel, Executive Director of Greenaction (Aug. 3, 2009).

² Greater Vallejo Recreation District, *Annual Report: Fiscal year: July 1, 2008 – June 30, 2009*, page 7, <http://www.gvr.org/PDFs/08-09.annual.report.pdf> (last visited Jan. 17, 2011). No specific amount is indicated for the grant.

³ Tony Burnchyns, *Dan Foley Park Gets \$3 Million Renovation*, Vallejo Times Herald, June 5, 2010, available at http://www.timesheraldonline.com/ci_15233574 (last visited Dec. 8, 2010).

⁴ Greater Vallejo Recreation District, *Blueprint for Tomorrow: Park and Recreation Master Plan*, page 67, http://www.gvr.org/PDFs/masterplan/Revised_MP_Draft_9-28-06.pdf (last visited Jan. 17, 2011).

California. SSP&RIT is an organization of Indigenous and Earth Peoples dedicated to preserving traditional Native American cultural and spiritual freedom. This mission includes the protection of sacred sites and places, preserving the right to practice traditional spiritual (religious) ceremonies, and respect for traditional cultural customs of Native Americans.

IV. The Site

The Glen Cove Shell Mound is a well-documented and culturally significant site located in Vallejo, California, and spans an area of fifteen acres along the Carquinez Strait.⁵ It is the final resting place of thousands of Indigenous People dating back more than 3,500 years, and has served as a traditional meeting place for dozens of California Indian tribes.⁶ The site continues to be spiritually important to California tribes such as the Patwin, Ohlone, Wintu, Yokut, Miwok, and many others.⁷ The City of Vallejo and the GVRD recognize that Glen Cove is an important cultural and burial site.

The Shell Mound at Glen Cove is one of the oldest known in the San Pablo Bay and contains a large number of ancestral remains and a wealth of sacred objects and other artifacts.⁸ It was first documented in 1907, and each research project thereafter (1984, 1985, 1986) has shown that the site was larger than previously assumed, resulting in the respective redrawing of the location's borders.⁹ In 1983, the Greater Vallejo Recreation District (GVRD) acquired the area from the city of Vallejo and since then has conducted more research in order to determine the borders of the sacred site. However, the exact size is still unclear, and in its 2007 Master plan the GVRD concludes that "more accurate mapping of the archaeological site borders cannot

⁵ Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan*, p. 1, 6, available at <http://www.gvrd.org/PDFs/masterplan/Glen-Cove-Master-Plan-07.pdf> (last visited Apr. 7, 2011).

⁶ Jones, Carolyn, *Indians: Vallejo's Plan for Park Desecration*, San Francisco Chronicle, Mar. 13, 2010, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/03/13/MN761CF40M.DTL> (last visited Apr. 7, 2011). Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan Appendices*, Appendix C, p. 30-39 available at <http://www.gvrd.org/PDFs/masterplan/GCAppendices.pdf>, (last visited Apr. 7, 2011).

⁷ Varner, Gary, *Glenn Cove- Sacred Indian Burial Ground*, Dec. 2, 2010, available at <http://www.authorsden.com/visit/viewarticle.asp?id=59812>, (last visited Apr. 7, 2011). Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan*, p. 6, available at <http://www.gvrd.org/PDFs/masterplan/Glen-Cove-Master-Plan-07.pdf> (last visited Apr. 7, 2011).

⁸ Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan*, p. 17-18, available at <http://www.gvrd.org/PDFs/masterplan/Glen-Cove-Master-Plan-07.pdf> (last visited Apr. 7, 2011).

⁹ Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan Appendices*, Appendix C, <http://www.gvrd.org/PDFs/masterplan/GCAppendices.pdf> (last visited Dec. 8, 2010).

completely eliminate damage which would occur even with the most careful removal of ground cover, trees and bushes and/or the two buildings.”¹⁰

V. Ripeness

This administrative complaint is ripe as the City of Vallejo and the Greater Vallejo Recreation District are taking constant action to move forward the project that would desecrate and damage the Glen Cove sacred site, including GVRD’s statement that the long-anticipated major work at Glen Cove will begin around the third week of April, 2011, the recent approval by the City of the final permits to allow work to proceed at the site and the GVRD’s acquiring a contractor to do the work. Other recent work by GVRD included seeking and acquiring permits, drilling in the middle of a known burial site, and calling the police to come to Glen Cove and city police intimidating American Indians peacefully observing contractors drilling in a known burial area. In addition, the City of Vallejo and GVRD intentionally failed to notify American Indians opposing the Glen Cove development project about their ability to appeal a permit decision.

Thus, as the discriminatory action against American Indians by the City of Vallejo and the Greater Vallejo Recreation District is ongoing, this claim is clearly brought within the one year statute of limitations period.¹¹ The threat of widespread and fatal desecration of the Glen Cove Shellmound and burial site is imminent.

VI. Violations of California Government Code § 11135

American Indians are a protected class of people protected from unlawful discrimination in state-funded activities and programs. Intentional discrimination against minority populations is prohibited under Cal. Gov. Code § 11135(a), which provides:

No person in the State of California shall, on the basis of race, national origin, *ethnic group identification*, religion, age, sex, sexual orientation, *color*, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that . . . is funded directly by the state, or receives any financial assistance from the state.¹²

¹⁰ Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan Appendices*, Appendix C, page 38, <http://www.gvrd.org/PDFs/masterplan/GCApndices.pdf> (last visited Dec. 8, 2010).

¹¹ Cal. Gov. Code § 12960 (d) (West 2007).

¹² Cal. Gov. Code § 11135(a) (West 2007) (emphasis added).

A. GVRD's Development Plans for the Site Would Have Discriminatory and Disproportionate Negative Impact on American Indians.

Both the City and GVRD are aware of the archeological and cultural importance of the Glen Cove.¹³ Despite its often stated pledge to protect the sacred site, the GVRD is now planning to grade part of it in order to “allow better visibility to the shoreline” and “create a more natural landform.”¹⁴

Despite the claims of the City and GVRD that they seek to protect the burials and cultural resources at the site, their activities and plans are having and will have a devastating negative impact on the sacred site and the cultural and spiritual well-being of Indigenous peoples. In addition to grading a hill that likely contains human remains and cultural resources, further plans are to make the site more accessible to visitors by adding amenities including building a parking lot and restrooms at the sacred site.¹⁵ GVRD also plans on demolishing the historic Stremmel Mansion that is located feet from a major known burial site.¹⁶

In the Glen Cove Master Plan, the GVRD acknowledges after a series of archeological research in 2005, that work on the site is not possible without doing damage to the sacred site.¹⁷ The archeologists of the consulting firm Holman & Associates state in their recommendations for the GVRD state that “any alteration of the landscape inside the general borders of the archaeological site and for a buffer zone of approximately 50 feet outside the borders as mapped by ARS will impact the archaeological site.”¹⁸ Everything that follows in the recommendations

¹³ Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan Appendices*, Appendix C, <http://www.gvrd.org/PDFs/masterplan/GCAppendices.pdf> (last visited Dec. 8, 2010).

¹⁴ Greater Vallejo Recreation District Notice, *Glen Cove Waterfront Park Improvements to Begin*, <http://www.gvrd.org/PDFs/masterplan/GCWFPpressRelease.pdf> (last visited Jan. 17, 2010).

¹⁵ Greater Vallejo Recreation District Notice, *Glen Cove Waterfront Park Improvements to Begin*, <http://www.gvrd.org/PDFs/masterplan/GCWFPpressRelease.pdf> (last visited Dec. 8, 2010).

¹⁶ Greater Vallejo Recreation District Notice, *Glen Cove Waterfront Park Improvements to Begin*, <http://www.gvrd.org/PDFs/masterplan/GCWFPpressRelease.pdf> (last visited Dec. 8, 2010).

¹⁷ Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan Appendices*, Appendix C, page 33-38, <http://www.gvrd.org/PDFs/masterplan/GCAppendices.pdf> (last visited Dec. 8, 2010).

¹⁸ Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan Appendices*, Appendix C, page 37, <http://www.gvrd.org/PDFs/masterplan/GCAppendices.pdf> (last visited Dec. 8, 2010).

section is about how to “minimize damage,” and a concession that even the most careful work will not avoid damage.¹⁹

One of the goals of the City and GVRD for Glen Cove is to enhance the aesthetics of the site by improving the visibility of the water from the nearby homes, despite being fully aware of the fact that this development would threaten and harm the spiritual and cultural resources. In order to accomplish this, GVRD plans to grade the western part of the site where remains and other artifacts are located.²⁰

In order to supposedly “protect” the archaeological site, the GVRD says it is planning not to grade into the original hillside but only into what they refer to as “fill.” However, as stated in the archeologists’ recommendations, any type of work will impact the site, regardless of how carefully it is done. GVRD has not provided proof that the soil they intend to remove from grading of the hill is free of human remains or cultural resources. Shane McAfee from GVRD has stated that he could not provide documentation that the “fill” GVRD intends to remove from the hill does not contain human remains or cultural resources and artifacts.²¹ Mr. McAfee has also acknowledged that the fill did come from the top of the hill at Glen Cove where the housing now stands.

GVRD’s plan to use heavy equipment to grade soil that could reasonably contain human remains and culturally important artifacts is reckless. It is not just a remote possibility that the dirt planned to be removed would contain remains and artifacts, as this was a major village and burial site. The use of heavy equipment that would be required to grade a hill has a likelihood of damaging any remains or artifacts that could be present.

For example, a 1954 excavation at the West Berkeley Shellmound uncovered an infant burial within eleven inches of the surface. Four other burials were found within 36 inches.²²

¹⁹ Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan Appendices*, Appendix C, pages 37-38, <http://www.gvrd.org/PDFs/masterplan/GCAppendices.pdf> (last visited Dec. 8, 2010).

²⁰ Greater Vallejo Recreation District, *Blueprint for Tomorrow: Park and Recreation Master Plan*, http://www.gvrd.org/PDFs/masterplan/Revised_MP_Draft_9-28-06.pdf (last visited Jan. 17, 2011).

²¹ Personal Communication from Shane McAfee, General Manager of GVRD, to Bradley Angel, Executive Director of Greenaction for Health and Environmental Justice (Jan. 5, 2011).

²² *West Berkeley Shellmound: A Culturally Stratified Shellmound on the East Shore of San Francisco Bay*. UC Press. 1975. pg. 120.

Even minimal grading at Glen Cove would likely result in disturbance of the site since cultural remains are buried throughout. The fact that a cultural observer retained by GVRD would be present would not prevent desecration or destruction of remains, as heavy equipment would likely do damage to remains or artifacts before the remains or artifacts are seen and work stopped.

GVRD added to the likelihood of damage to human remains or artifacts by failing to require that their contractor had experience or protocol for working in culturally sensitive areas, and GVRD's General Manager McAfee admitted he was unaware if their contractor had any such experience. Complainants believe this failure demonstrates GVRD's reckless disregard for protection of the sacred, culturally sensitive site at Glen Cove.

Additionally, in order to make the site more appealing to outside visitors, the GVRD is planning to install amenities, such as toilets, picnic tables, and a parking lot, for outside visitors to the site.²³ Many American Indians, including the complainants, have repeatedly informed GVRD and the City of their objections to placing toilets or pavement on top of ancient burials, as these acts would desecrate the spiritual well-being of the people buried at the site.

The GVRD is further planning to demolish the Stremmel Mansion and the care taker's house located on the site,²⁴ despite the acknowledgement in their Master Plan that "any proposals to remove and/or renovate the main house and to alter elements of its historical setting may not only damage these potentially significant historical resources, but may in the process also damage the prehistoric archaeological resource."²⁵ Discussions about providing SSP&RIT and others a watchdog and oversight role have not yet led to an agreement that would ensure the careful demolition of this structure which is located at an area confirmed and acknowledged to be a major burial area.

B. The City and GVRD have Excluded the Affected Community from Participation in Permit Process

²³ Greater Vallejo Recreation District Notice, *Glen Cove Waterfront Park Improvements to Begin*, <http://www.gvrd.org/PDFs/masterplan/GCWFPPressRelease.pdf> (last visited Dec. 08, 2010).

²⁴ Greater Vallejo Recreation District Notice, *Glen Cove Waterfront Park Improvements to Begin*, <http://www.gvrd.org/PDFs/masterplan/GCWFPPressRelease.pdf> (last visited Dec. 8, 2010).

²⁵ Greater Vallejo Recreation District, *Glen Cove Waterfront Park Master Plan Appendices*, Appendix C, page 34, <http://www.gvrd.org/PDFs/masterplan/GCAppendices.pdf> (last visited Dec. 8, 2010).

GVRD and the City have failed to notify concerned residents and the American Indian community of the opportunity to fully participate in the permitting process for the proposed project.

As Bill Tuikka from the City of Vallejo's Development Services Department boasts in a June 29, 2010 email to Randy Anderson of Alta Planning (GVRD's consultant), the City intentionally failed to inform the public of an appeal period that ended on July 8, 2010. In his words, "I don't believe that any of the Native American groups are going to pay the appeal fee and go forward with a formal appeal. We did not send out any more formal notice than the original notice, so I would believe that most people assume that we approved the project before June 28."²⁶

Continuing the pattern and practice of obstructing the American Indian community's right to participate in permit processes, GVRD rejected requests filed under the Public Records Act to provide a list of permits acquired and permits still pending for the proposed project, telling the requestors that they would have to pay hundreds of dollars to get this list. GVRD's Director Shane McAfee wrote an email stating that the costs would be \$217.50 plus copying costs, an exorbitant and prohibitive sum merely to produce a list.²⁷

By thus limiting the ability of American Indians to participate in the permitting process, the City and GVRD have excluded the very people who will be disproportionately impacted by this project. As this exclusion of a disproportionately impacted minority has been accomplished by an agency that uses state funding, this is a clear violation of § 11135.

VII. Remedies

In order to preserve the rights of the American Indians affected by this discrimination, the following relief is requested:

1. GVRD and the City will refrain from any and all actions and development that desecrate or damage the burials and cultural resources at Glen Cove, including, but not limited to: drilling, using heavy equipment, grading the hill, installing a toilet or parking lot.
2. GVRD and the City agree to provide proper public disclosure of any and all opportunities for public comment regarding plans at or impacting the Glen Cove site.

²⁶ Personal Communication from Bill Tuikka to Randy Anderson, (June 29, 2010).

²⁷ Personal Communication from Shane McAfee to Bradley Angel (Nov. 4, 2010).

3. GVRD and the City would agree to revoke any and all permits for activities that would damage the site and which were based on inadequate notice and/or opportunities for public comment on the Glen Cove project;
4. GVRD and the City agree to solicit input from and involve American Indians in future projects that affect American Indian cultural, spiritual, historic, and other resources.

Respectfully submitted,

Norman "Wounded Knee" DeOcampo, Chair
SSPRITS (Sacred Site Protection and Rights of Indigenous Tribes)

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