

Appendix A NOP and NOP Comments

Appendices

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**CITY OF BREA
NOTICE OF PREPARATION
of a DRAFT ENVIRONMENTAL IMPACT REPORT
for the MERCURY RESIDENTIAL PROJECT
and NOTICE OF SCOPING MEETING**

Date: December 13, 2018
Subject: Notice of Preparation (NOP) and Scoping Meeting for the Mercury Residential Project Draft Environmental Impact Report
To: State Clearinghouse, State Responsible Agencies, State Trustee Agencies, Other Public Agencies, Interested Organizations
Lead Agency/Sponsor: City of Brea, Planning Division
Project Title: Mercury Residential Project

NOTICE IS HEREBY GIVEN that the City of Brea will prepare an environmental impact report (EIR) for the Mercury Residential Project. The City is the lead agency for the project. The purpose of this notice is to (1) serve as a Notice of Preparation of an EIR pursuant to the California Environmental Quality Act (CEQA) Guidelines § 15082, (2) advise and solicit comments and suggestions regarding the scope and content of the EIR to be prepared for the project, and (3) notice the public scoping meeting.

NOTICE OF PREPARATION: The City of Brea, as Lead Agency, requests that responsible and trustee agencies respond in a manner consistent with § 15082(b) of the CEQA Guidelines. Pursuant to CEQA § 21080.4, responsible agencies must submit any comments in response to this notice no later than 30 days after receipt. The public review period will commence on **Thursday December 13, 2018**, and will close on **Tuesday, January 22, 2019**. The meeting will be an Open House format. A copy of the NOP is available for review at the City of Brea offices and at the Brea Branch of the Orange County Public Library.

City of Brea – Planning Division, Level 3
1 Civic Center Circle
Brea, CA 92821

Brea Library
1 Civic Center Circle, Level 1
Brea, CA 92821

The document can also be viewed electronically on the City's webpage at: www.cityofbrea.net/projectsinprocess

WRITTEN COMMENTS: We ask that any person wishing to comment on the NOP provide written comments by the end of the public review period at 5:00 p.m., **January 22, 2019**, addressed to Christy Teague, Contract Planner, City of Brea – Planning Division, at christyt@ci.brea.ca.us, or by mail to the City of Brea at the address above.

PUBLIC SCOPING MEETING: The City will hold a scoping meeting in conjunction with this NOP in order to present the project and the EIR process, and to provide an opportunity for agency representatives and the public to assist the lead agency in determining the scope and content of the environmental analysis for the EIR. The public scoping meeting will be held at the time and location listed below:

Date: January 14, 2019
Time: 5:00 p.m. – 7:00 p.m.
Location: City of Brea City Hall, Community Room B
1 Civic Center Circle
Brea, CA 92821

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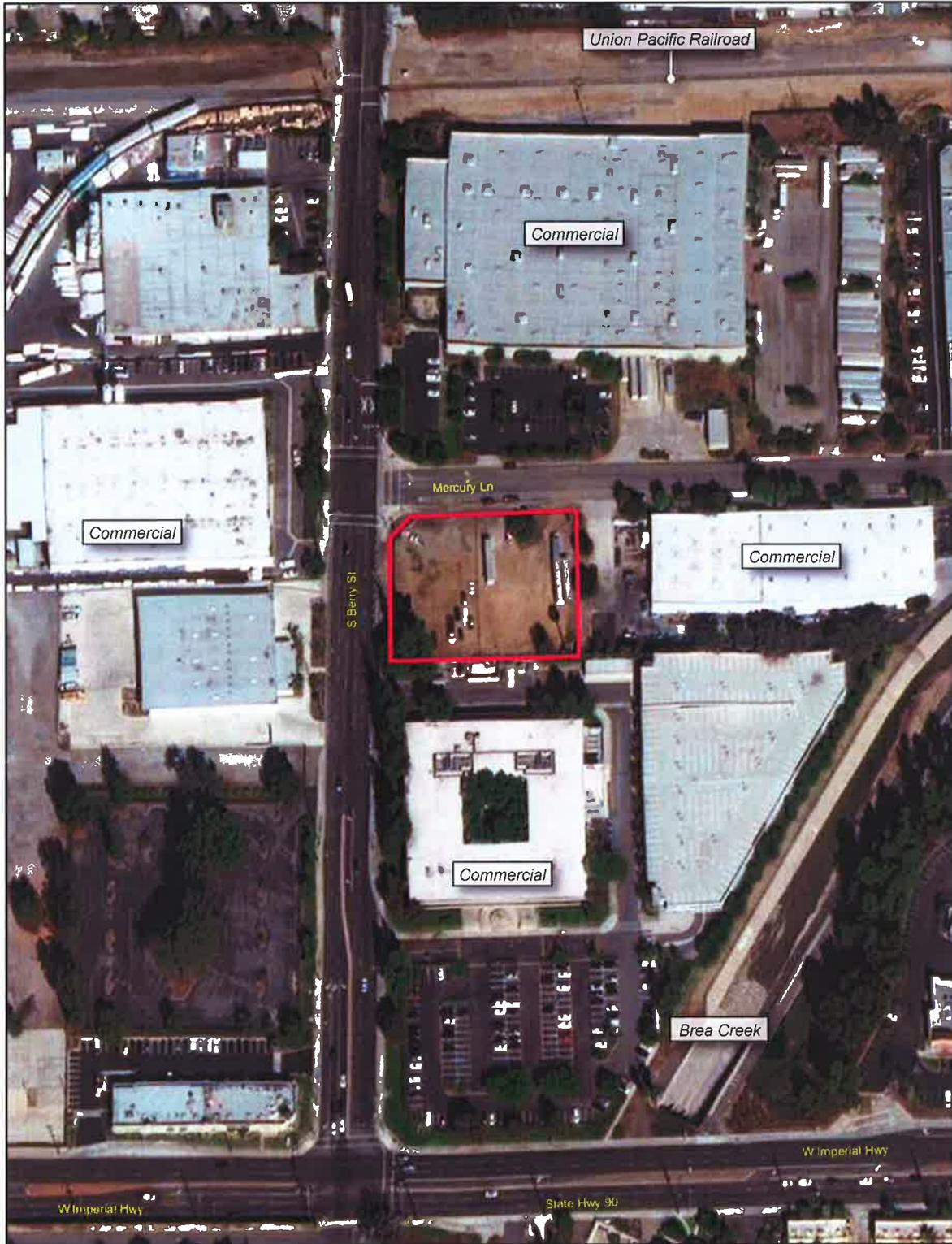
DEC 13 2018

MERCURY RESIDENTIAL PROJECT NOTICE OF PREPARATION
CITY OF BRE

ORANGE COUNTY CLERK-RECORDER DEPARTMENT

BY: PW DEPUTY

Figure 1 - Aerial Photograph



— Project Boundary

0 200
Scale (Feet)



Source: ESRI, 2018

PlaceWorks

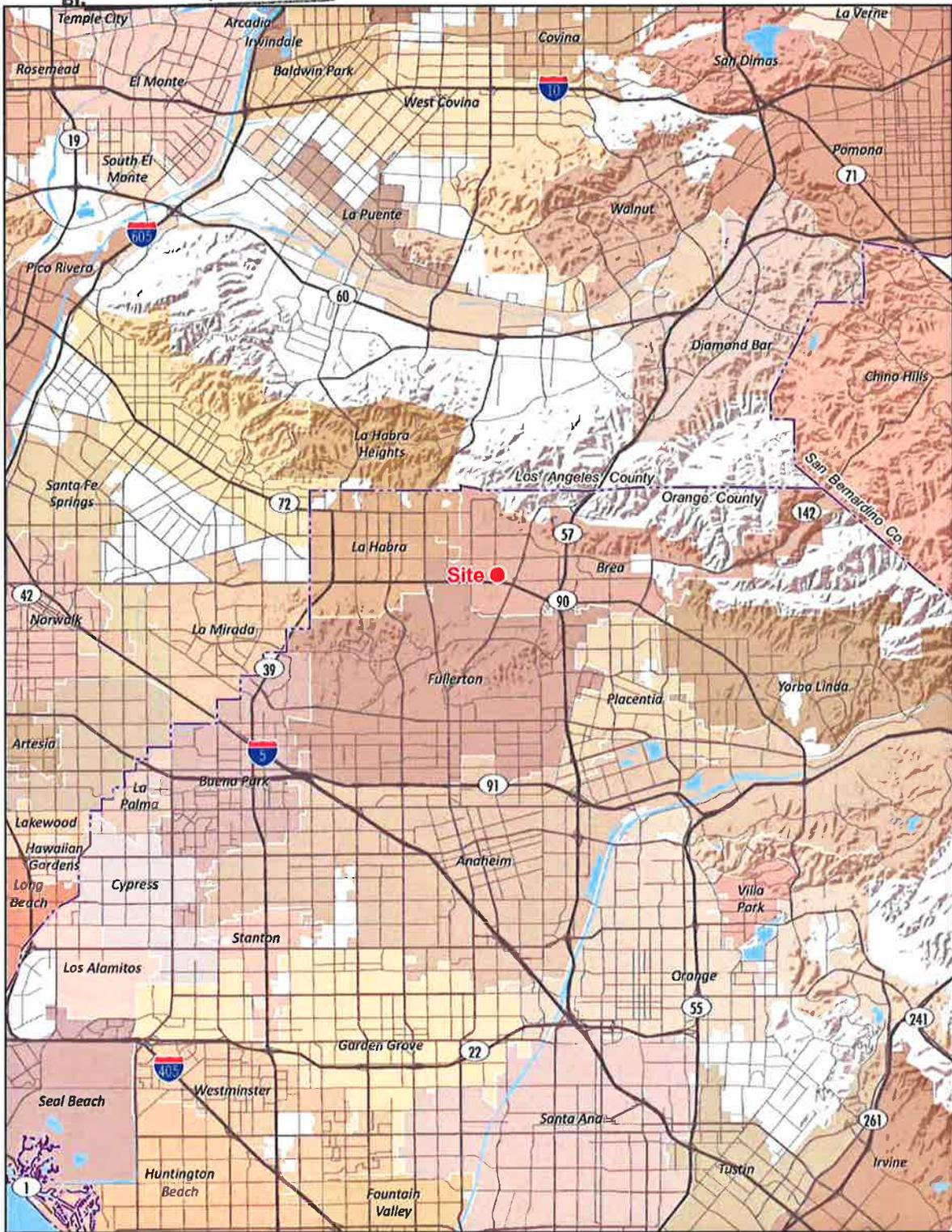
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MERCURY RESIDENTIAL PROJECT NOTICE OF PREPARATION
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Figure 2 - Regional Location



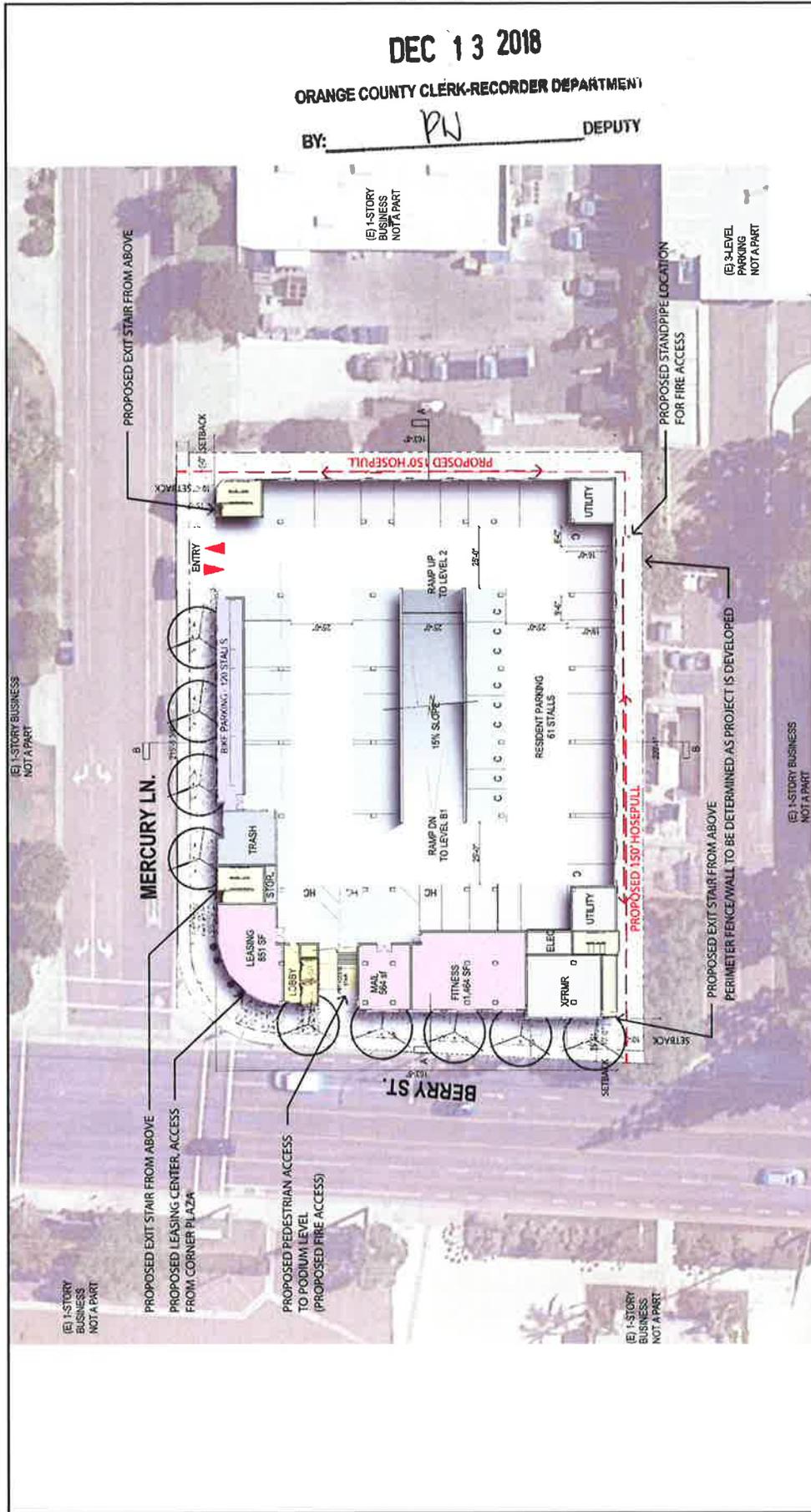
Note: Unincorporated county areas are shown in white.



Source: ESRI, 2018

PlaceWorks

Figure 3 - Conceptual Site Plan



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BY: PW DEPUTY



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Scale (Feet)



GABRIELEÑO BAND OF MISSION INDIANS - KIZH NATION

Historically known as The San Gabriel Band of Mission Indians / Gabrielino Tribal Council
recognized by the State of California as the aboriginal tribe of the Los Angeles basin

City of Brea
1 Civic Center Circle
Brea, CA 92821

December 18, 2018

Re: AB52 Consultation request for Mercury Residential Project

Dear Christy Teague,

Please find this letter as a written request for consultation regarding the above-mentioned project pursuant to Public Resources Code § 21080.3.1, subd. (d). Your project lies within our ancestral tribal territory, meaning belonging to or inherited from, which is a higher degree of kinship than traditional or cultural affiliation. Your project is located within a sensitive area and may cause a substantial adverse change in the significance of our tribal cultural resources. Most often, a records search for our tribal cultural resources will result in a "no records found" for the project area. The Native American Heritage Commission (NAHC), ethnographers, historians, and professional archaeologists can only provide limited information that has been previously documented about California Native Tribes. For this reason, the NAHC will always refer the lead agency to the respective Native American Tribe of the area. The NAHC is only aware of general information and are not the experts on each California Tribe. Our Elder Committee & tribal historians are the experts for our Tribe and can provide a more complete history (both written and oral) regarding the location of historic villages, trade routes, cemeteries and sacred/religious sites in the project area.

Additionally, CEQA now defines Tribal Cultural Resources (TCRs) as their own independent element separate from archaeological resources. Environmental documents shall now address a separate Tribal Cultural Resource section which includes a thorough analysis of the impacts to only Tribal Cultural Resources (TCRs) and includes independent mitigation measures created with Tribal input during AB-52 consultations. As a result, all mitigation measures, conditions of approval and agreements regarding TCRs (i.e. prehistoric resources) shall be handled solely with the Tribal Government and not through an Environmental/Archaeological firm.

In effort to avoid adverse effects to our tribal cultural resources, we would like to consult with you and your staff to provide you with a more complete understanding of the prehistoric use(s) of the project area and the potential risks for causing a substantial adverse change to the significance of our tribal cultural resources.

Consultation appointments are available on Wednesdays and Thursdays at our offices at 910 N. Citrus Ave. Covina, CA 91722 or over the phone. Please call toll free 1-844-390-0787 or email admin@gabrielenoindians.org to schedule an appointment.

*** Prior to the first consultation with our Tribe, we ask all those individuals participating in the consultation to view a video produced and provided by CalEPA and the NAHC for sensitivity and understanding of AB52. You can view their videos at: <http://calepa.ca.gov/Tribal/Training/> or <http://nahc.ca.gov/2015/12/ab-52-tribal-training/>*

With Respect,

Andrew Salas, Chairman

Andrew Salas, Chairman

Albert Perez, treasurer |

PO Box 393, Covina, CA 91723

Nadine Salas, Vice-Chairman

Martha Gonzalez Lemos, treasurer ||

www.gabrielenoindians.org

A-6

Christina Swindall Martinez, secretary

Richard Gradias, Chairman of the Council of Elders

gabrielenoindians@yahoo.com

Original People of Los Angeles County



Map of territories of Original Peoples with county boundaries in Southern California.

NATIVE AMERICAN HERITAGE COMMISSION

Cultural and Environmental Department
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
Phone (916) 373-3710
Email: nahc@nahc.ca.gov
Website: <http://www.nahc.ca.gov>
Twitter: @CA_NAHC



December 27, 2018

Maribeth Tinio
City of Brea
1 Civic Center Circle
Brea, CA 92621

RE: SCH# 2018121032 Mercury Residential Project, Orange County

Dear Ms. Tinio

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit. 14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
- The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
- Avoidance and preservation of the resources in place, including, but not limited to:
 - Planning and construction to avoid the resources and protect the cultural and natural context.
 - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - Protecting the cultural character and integrity of the resource.
 - Protecting the traditional use of the resource.
 - Protecting the confidentiality of the resource.
 - Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Katy.Sanchez@nahc.ca.gov.

Sincerely,



for

Katy Sanchez
Associate Environmental Planner

cc: State Clearinghouse



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

SENT VIA USPS AND E-MAIL:

January 8, 2019

christyt@ci.brea.ca.us

Christy Teague, Contract Planner
City of Brea, Planning Division, Level 3
1 Civic Center Circle
Brea, CA 92821

Notice of Preparation of a Draft Environmental Impact Report for Mercury Residential Project

The South Coast Air Quality Management District (SCAQMD) staff appreciates the opportunity to comment on the above-mentioned document. SCAQMD staff's comments are recommendations regarding the analysis of potential air quality impacts from the Proposed Project that should be included in the Draft Environmental Impact Report (EIR). Please send SCAQMD a copy of the Draft EIR upon its completion. Note that copies of the Draft EIR that are submitted to the State Clearinghouse are not forwarded to SCAQMD. Please forward a copy of the Draft EIR directly to SCAQMD at the address shown in the letterhead. **In addition, please send with the Draft EIR all appendices or technical documents related to the air quality, health risk, and greenhouse gas analyses and electronic versions of all air quality modeling and health risk assessment files¹. These include emission calculation spreadsheets and modeling input and output files (not PDF files). Without all files and supporting documentation, SCAQMD staff will be unable to complete our review of the air quality analyses in a timely manner. Any delays in providing all supporting documentation will require additional time for review beyond the end of the comment period.**

Air Quality Analysis

SCAQMD adopted its California Environmental Quality Act (CEQA) Air Quality Handbook in 1993 to assist other public agencies with the preparation of air quality analyses. SCAQMD recommends that the Lead Agency use this Handbook as guidance when preparing its air quality analysis. Copies of the Handbook are available from SCAQMD's Subscription Services Department by calling (909) 396-3720. More guidance developed since this Handbook is also available on SCAQMD's website at: [http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/ceqa-air-quality-handbook-\(1993\)](http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/ceqa-air-quality-handbook-(1993)). SCAQMD staff also recommends that the Lead Agency use the CalEEMod land use emissions software. This software has recently been updated to incorporate up-to-date state and locally approved emission factors and methodologies for estimating pollutant emissions from typical land use development. CalEEMod is the only software model maintained by the California Air Pollution Control Officers Association (CAPCOA) and replaces the now outdated URBEMIS. This model is available free of charge at: www.caleemod.com.

SCAQMD has also developed both regional and localized significance thresholds. SCAQMD staff requests that the Lead Agency quantify criteria pollutant emissions and compare the results to SCAQMD's CEQA regional pollutant emissions significance thresholds to determine air quality impacts.

¹ Pursuant to the CEQA Guidelines Section 15174, the information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

SCAQMD's CEQA regional pollutant emissions significance thresholds can be found here: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>. In addition to analyzing regional air quality impacts, SCAQMD staff recommends calculating localized air quality impacts and comparing the results to localized significance thresholds (LSTs). LSTs can be used in addition to the recommended regional significance thresholds as a second indication of air quality impacts when preparing a CEQA document. Therefore, when preparing the air quality analysis for the Proposed Project, it is recommended that the Lead Agency perform a localized analysis by either using the LSTs developed by SCAQMD staff or performing dispersion modeling as necessary. Guidance for performing a localized air quality analysis can be found at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/localized-significance-thresholds>.

The Lead Agency should identify any potential adverse air quality impacts that could occur from all phases of the Proposed Project and all air pollutant sources related to the Proposed Project. Air quality impacts from both construction (including demolition, if any) and operations should be calculated. Construction-related air quality impacts typically include, but are not limited to, emissions from the use of heavy-duty equipment from grading, earth-loading/unloading, paving, architectural coatings, off-road mobile sources (e.g., heavy-duty construction equipment) and on-road mobile sources (e.g., construction worker vehicle trips, material transport trips). Operation-related air quality impacts may include, but are not limited to, emissions from stationary sources (e.g., boilers), area sources (e.g., solvents and coatings), and vehicular trips (e.g., on- and off-road tailpipe emissions and entrained dust). Air quality impacts from indirect sources, such as sources that generate or attract vehicular trips, should be included in the analysis.

Mobile Source Health Risk Assessment

Notwithstanding the court rulings, SCAQMD staff recognizes that the Lead Agencies that approve CEQA documents retain the authority to include any additional information they deem relevant to assessing and mitigating the environmental impacts of a project. Because of SCAQMD staff's concern about the potential public health impacts of siting sensitive populations within close proximity of freeways and other sources of air pollution, SCAQMD staff recommends that, prior to approving the project, Lead Agencies consider the impacts of air pollutants on people who will live in a new project and provide mitigation where necessary.

When specific development is reasonably foreseeable as result of the goals, policies, and guidelines in the Proposed Project, the Lead Agency should identify any potential adverse health risk impacts using its best efforts to find out and a good-faith effort at full disclosure in the CEQA document. Based on a review of aerial photographs and information in the Notice of Preparation, SCAQMD staff found that the Proposed Project will be located near the Union Pacific Railroad and State Route (SR) 90. Because of the proximity to the existing freeway and a potential source of air pollution, residents at the Proposed Project² would be exposed to diesel particulate matter (DPM), which is a toxic air contaminant and a carcinogen. Diesel particulate matter emitted from diesel powered engines (such as trucks) has been classified by the state as a toxic air contaminant and a carcinogen. Since future residences at the Proposed Project would be exposed to toxic emissions from the nearby sources of air pollution (e.g., diesel fueled highway vehicles and locomotives), SCAQMD staff recommends that the Lead Agency conduct a health risk assessment (HRA)³ to disclose the potential health risks to the residents in the Draft EIR⁴.

² According to the Project Description in the Notice of Preparation, the Proposed Project would include a new construction with 120 workforce housing units.

³ South Coast Air Quality Management District. "Health Risk Assessment Guidance for Analyzing Cancer Risk from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis." Accessed at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>.

Guidance Regarding Residences Sited Near a High-Volume Freeway or Other Sources of Air Pollution

SCAQMD staff recognizes that there are many factors Lead Agencies must consider when making local planning and land use decisions. To facilitate stronger collaboration between Lead Agencies and the SCAQMD to reduce community exposure to source-specific and cumulative air pollution impacts, the SCAQMD adopted the Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning in 2005. This Guidance Document provides suggested policies that local governments can use in their General Plans or through local planning to prevent or reduce potential air pollution impacts and protect public health. SCAQMD staff recommends that the Lead Agency review this Guidance Document as a tool when making local planning and land use decisions. This Guidance Document is available on SCAQMD's website at: <http://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/complete-guidance-document.pdf>. Additional guidance on siting incompatible land uses (such as placing homes near freeways or other polluting sources) can be found in the California Air Resources Board's (CARB) *Air Quality and Land Use Handbook: A Community Health Perspective*, which can be found at: <http://www.arb.ca.gov/ch/handbook.pdf>. Guidance⁵ on strategies to reduce air pollution exposure near high-volume roadways can be found at: https://www.arb.ca.gov/ch/rd_technical_advisory_final.PDF.

Mitigation Measures

In the event that the Proposed Project generates significant adverse air quality impacts, CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized during project construction and operation to minimize these impacts. Pursuant to CEQA Guidelines Section 15126.4 (a)(1)(D), any impacts resulting from mitigation measures must also be discussed. Several resources are available to assist the Lead Agency with identifying potential mitigation measures for the Proposed Project, including:

- Chapter 11 of SCAQMD's CEQA Air Quality Handbook
- SCAQMD's CEQA web pages available here: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies>
- SCAQMD's Rule 403 – Fugitive Dust, and the Implementation Handbook for controlling construction-related emissions and Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities
- SCAQMD's Mitigation Monitoring and Reporting Plan (MMRP) for the 2016 Air Quality Management Plan (2016 AQMP) available here (starting on page 86): <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2017/2017-mar3-035.pdf>
- CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures* available here: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

As stated above, the Proposed Project is located in proximity to the Union Pacific Railroad and SR-90. Many strategies are available to reduce exposure, including, but are not limited to, building filtration systems with Minimum Efficiency Reporting Value (MERV) 13 or better, or in some cases, MERV 15 or better is recommended; building design, orientation, location; vegetation barriers or landscaping screening, etc. Because of the potential adverse health risks involved with siting sensitive receptors near

⁴ SCAQMD has developed the CEQA significance threshold of 10 in one million for cancer risk. When SCAQMD acts as the Lead Agency, SCAQMD staff conducts a HRA, compares the maximum cancer risk to the threshold of 10 in one million to determine the level of significance for health risk impacts, and identifies mitigation measures if the risk is found to be significant.

⁵ In April 2017, CARB published a technical advisory, *Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways: Technical Advisory*, to supplement CARB's Air Quality and Land Use Handbook: A Community Health Perspective. This technical advisory is intended to provide information on strategies to reduce exposures to traffic emissions near high-volume roadways to assist land use planning and decision-making in order to protect public health and promote equity and environmental justice. The technical advisory is available at: <https://www.arb.ca.gov/ch/landuse.htm>.

freeways and sources of air pollution, it is essential that any proposed strategy must be carefully evaluated before implementation.

In the event that enhanced filtration units are installed at the Proposed Project either as a mitigation measure or project design feature requirement, SCAQMD staff recommends that the Lead Agency consider the limitations of the enhanced filtration. For example, in a study that SCAQMD conducted to investigate filters⁶, a cost burden is expected to be within the range of \$120 to \$240 per year to replace each filter. In addition, because the filters would not have any effectiveness unless the HVAC system is running, there may be increased energy costs to the residents. It is typically assumed that the filters operate 100 percent of the time while residents are indoors, and the environmental analysis does not generally account for the times when the residents have their windows or doors open or are in common space areas of the project. In addition, these filters have no ability to filter out any toxic gases from vehicle exhaust. Therefore, the presumed effectiveness and feasibility of any filtration units should be carefully evaluated in more detail prior to assuming that they will sufficiently alleviate exposures to toxic emissions.

Additionally, if enhanced filtration units are installed at the Proposed Project, and to ensure that they are enforceable throughout the lifetime of the Proposed Project as well as effective in reducing exposures to DPM emissions, SCAQMD staff recommends that the Lead Agency provide additional details regarding the ongoing, regular maintenance of filters in the Draft EIR. To facilitate a good faith effort at full disclosure and provide useful information to future residents who will live and/or work at the Proposed Project, the Draft EIR should include the following information, at a minimum:

- Disclosure on potential health impacts to prospective residents from living and/or working in proximity to freeways and the railroad, and the reduced effectiveness of air filtration system when windows are open and when tenants are outdoor;
- Identification of the responsible implementing and enforcement agency such as the Lead Agency for ensuring that enhanced filters are installed on-site at the Proposed Project before a permit of occupancy is issued;
- Identification of the responsible implementing and enforcement agency such as the Lead Agency's building and safety inspection unit to provide periodic, regular inspection on filters;
- Provide information and guidance to the Project developer or proponent on the importance of filter installation and ongoing maintenance;
- Provide information to residents about where the MERV filters can be purchased;
- Disclosure on increased costs for purchasing enhanced filtration systems to prospective residents;
- Disclosure on increased energy costs for running the HVAC system with MERV filters to prospective residents;
- Disclosure on recommended schedules (e.g., once a year or every six months) for replacing the enhanced filtration units to prospective residents;
- Identification of the responsible entity such as residents, tenants, Homeowner's Association (HOA) or property management to ensure filters are replaced on time, if appropriate and feasible;
- Develop ongoing cost sharing strategies between the HOA and residents/tenants, if available, for replacing the enhanced filtration units;
- Set up criteria for assessing progress in installing and replacing the enhanced filtration units; and
- Set up process for evaluating the effectiveness of the enhanced filtration units at the Proposed Project.

⁶ This study evaluated filters rated MERV 13 or better. Accessed at: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/aqmdpilotstudyfinalreport.pdf>. Also see 2012 Peer Review Journal article by SCAQMD: <http://d7.iqair.com/sites/default/files/pdf/Polidori-et-al-2012.pdf>.

Alternatives

In the event that the Proposed Project generates significant adverse air quality impacts, CEQA requires the consideration and discussion of alternatives to the project or its location which are capable of avoiding or substantially lessening any of the significant effects of the project. The discussion of a reasonable range of potentially feasible alternatives, including a “no project” alternative, is intended to foster informed decision-making and public participation. Pursuant to CEQA Guidelines Section 15126.6(d), the Draft EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the Proposed Project.

Permits

In the event that the Proposed Project requires a permit from SCAQMD, SCAQMD should be identified as a responsible agency for the Proposed Project. For more information on permits, please visit SCAQMD webpage at: <http://www.aqmd.gov/home/permits>. Questions on permits can be directed to SCAQMD’s Engineering and Permitting staff at (909) 396-3385.

Data Sources

SCAQMD rules and relevant air quality reports and data are available by calling SCAQMD’s Public Information Center at (909) 396-2039. Much of the information available through the Public Information Center is also available at SCAQMD’s webpage at: <http://www.aqmd.gov>.

SCAQMD staff is available to work with the Lead Agency to ensure that project air quality impacts are accurately evaluated and any significant impacts are mitigated where feasible. If you have any questions regarding this letter, please contact me at lsun@aqmd.gov or call me at (909) 396-3308.

Sincerely,



Lijin Sun, J.D.

Program Supervisor, CEQA IGR

Planning, Rule Development & Area Sources

LS
ORC181214-01
Control Number

COMMENT CARDS

January 14, 2019 5:00-7:00 PM – Mercury Residential Project Scoping Meeting

Please let us know your comments/concerns regarding the Mercury Residential Project EIR

(please print): VERY SUPPORTIVE

WE NEED MORE OF THIS TYPE OF HOUSING!

Name: CHRIS YELIC

Address: 3030 SATURN
BREA, CA

Please return this card to Christy Teague, Contract Planner, City of Brea – Planning Division, at the end of the Scoping Meeting or mail to:

Place
Stamp
Here

City of Brea – Planning Division, Level 3
Attn: Christy Teague
1 Civic Center Circle
Brea, CA 92821

From: [Teague, Christy](#)
To: [Nicole Vermilion](#)
Cc: [Tinio, Maribeth](#)
Subject: FW: Written Comments for NOP Mercury Residential Project
Date: Tuesday, January 15, 2019 2:12:45 PM

Nicole –

Please see comments below received from a Brea resident today.

Thank you.

-Christy

From: Thomas Kwan [mailto:wkcranberry@gmail.com]
Sent: Tuesday, January 15, 2019 1:22 PM
To: Teague, Christy <christyt@ci.brea.ca.us>
Subject: Written Comments for NOP Mercury Residential Project

Ms. Teague
Contract Planner
City of Brea, Planning Division

In reference to the Mercury Residential Project NOP, the EIR should analyze the following:

Land use. The property is currently not zoned for residential use, and the question of whether it should be changed or varied to permit residential use should be analyzed including the justification of why any exception should be granted which would be so contrary to existing general plan and decades of prior planning and execution of such planning. In particular, the proposed project calls for a high density residential development for 120 units on approximately 1 acre with a maximum height of 65 feet in the middle of a commercial and light industrial area.

Air quality. The high density residential structure will result in additional burden to air quality compared its current zoning with its carbon and nitrogen footprint from car trips generated by residents and workers at the proposed project and the use of carbon fuels for heating water and possibly living spaces. Though state mandated solar energy usage for the proposed project will reduce this impact, the net impact still must be determined using reasonable assumptions. While the NOP does not specify the number of parking spaces for the proposed project, there should be a reasonable estimate of the average of number of cars per unit which may be parked on or offsite.

Population and housing. The proposed project will add a significant number of housing units and residents to the site. While Brea is in need of more housing and lower cost housing, the question is what is the impact to the environment due to this, especially when the current General Plan specifies a different use for the land.

Noise. In a highly dense residential structure, noise inside the structure is more significant than noise outside the structure. Noise seriously affects the residents as to their quality of life

in a confined space. Does the building incorporate sufficient noise dampening such as noise dampening sheet rock, water hammer mitigation, insulation between units, especially next to trash chutes, elevator and mechanical equipment, and noise dampening floor underlayment? Echoing and other noises such as car alarms from cars moving inside the garage and ramps may also be problematic.

Public Services. To what extent will insufficient parking onsite at the proposed project result in overflow parking on public property, especially the downtown Brea parking garage with access from Mercury Lane near the proposed project? Also in a highly dense residential building, there is the concern for additional need of police, fire and paramedic services due to the additional number of residents. As to fire concerns, the use of solar panels means extra wiring inside the already dense structure. While all wiring will be regulated by building codes, the fact remains that there will more wiring per square feet in this proposed structure than less dense structures. Also while subject to review by the BFD, are the public corridors wide enough for egress, are there enough fire exits for the all residents to leave safely considering the number of stories and units in the structure. In addition, with a highly dense building where there is light industry neighbors, the proximity of dangerous and hazardous materials may pose a significant risk to the residents at the proposed project. So the question is what is the additional risk associated with this building and impact on fire services?

Transportation and circulation. There is no efficient mass transit in Brea, meaning transportation by car is still the primary means of traveling to work, unless someone works within a mile of the proposed project. Traffic in Brea is heavy during the rush hours, and the proposed project may add significant amount of traffic onto Berry St. The left turn lane from Berry southbound to Imperial may be filled and backed up by the additional traffic. Others may go through the parking garage Downtown to skip that left turn and come out on Brea Blvd. Any residents with children attending middle or high school will likely travel north on Berry and turn right on Lambert which will add traffic to that street. So the impact of the proposed project on circulation should also be evaluated.

Let me make it very clear, that I am not opposed to the proposed project if built to the highest standards and best practices and have no more than a reasonable environmental impact, as low cost quality housing is in great need. If Brea should have a high density development, it should be done right. There have been indications of low rent to be charged to residents at the proposed project, and if those indications are taken into consideration for approval by the City of the proposed project, then that should be documented and made enforceable by agreement with the City.

Tom Kwan
Brea



COUNTY OF LOS ANGELES FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE
LOS ANGELES, CALIFORNIA 90063-3294
(323) 881-2401
www.fire.lacounty.gov

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FIFTH DISTRICT

DARYL L. OSBY
FIRE CHIEF
FORESTER & FIRE WARDEN

January 16, 2019

Christy Teague, Contract Planner
City of Brea
Planning Division, Level 3
1 Civic Center Circle
Brea, CA 92821

Dear Ms. Teague:

**NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT,
"MERCURY RESIDENTIAL PROJECT," WOULD RESULT IN THE DEVELOPMENT OF A
5-STORY, APPROXIMATELY 65-FOOT-TALL, 171,433-SQUARE-FOOT PODIUM
STRUCTURE WITH 120 WORKFORCE HOUSING UNITS, SOUTHEAST CORNER OF
BERRY STREET AND MERCURY LANE, BREA, FFER 201800144**

The Notice of Preparation of a Draft Environmental Impact Report has been reviewed by the Planning Division, Land Development Unit, Forestry Division, and Health Hazardous Materials Division of the County of Los Angeles Fire Department.

The following are their comments:

PLANNING DIVISION:

The subject property is entirely within the City of Brea which is not a part of the emergency response area of the Los Angeles County Fire Department (also known as the Consolidated Fire Protection District of Los Angeles County). Therefore, this project does not appear to have any impact on the emergency responsibilities of this Department.

LAND DEVELOPMENT UNIT:

This project is located entirely in the City of Brea. Therefore, the City of Brea Fire Department has jurisdiction concerning this project and will be setting conditions.

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

- | | | | | | | |
|--------------|-------------|------------------|----------------------|----------------------|-----------------------|------------------|
| AGOURA HILLS | CALABASAS | EL MONTE | INDUSTRY | LAWNDALE | PARAMOUNT | SIGNAL HILL |
| ARTESIA | CARSON | GARDENA | INGLEWOOD | LOMITA | PICO RIVERA | SOUTH EL MONTE |
| AZUSA | CERRITOS | GLENDORA | IRWINDALE | LYNWOOD | POMONA | SOUTH GATE |
| BALDWIN PARK | CLAREMONT | HAWAIIAN GARDENS | LA CANADA-FLINTRIDGE | MALIBU | RANCHO PALOS VERDES | TEMPLE CITY |
| BELL | COMMERCE | HAWTHORNE | LA HABRA | MAYWOOD | ROLLING HILLS | WALNUT |
| BELL GARDENS | COVINA | HERMOSA BEACH | LA MIRADA | NORWALK | ROLLING HILLS ESTATES | WEST HOLLYWOOD |
| BELLFLOWER | CUDAHY | HIDDEN HILLS | LA PUENTE | PALMDALE | ROSEMEAD | WESTLAKE VILLAGE |
| BRADBURY | DIAMOND BAR | HUNTINGTON PARK | LAKEWOOD | PALOS VERDES ESTATES | SAN DIMAS | WHITTIER |
| | DUARTE | | LANCASTER A-21 | | SANTA CLARITA | |

Christy Teague, Contract Planner
January 16, 2019
Page 2

This project is located in close proximity to the jurisdictional area of the Los Angeles County Fire Department. However, this project is unlikely to have an impact that necessitates a comment concerning general requirements from the Land Development Unit of the Los Angeles County Fire Department.

The County of Los Angeles Fire Department's Land Development Unit appreciates the opportunity to comment on this project.

The statutory responsibilities of the County of Los Angeles Fire Department's Land Development Unit are the review of, and comment on, all projects within the unincorporated areas of the County of Los Angeles. Our emphasis is on the availability of sufficient water supplies for firefighting operations and local/regional access issues.

However, we review all projects for issues that may have a significant impact on the County of Los Angeles Fire Department. We are responsible for the review of all projects within contract cities (cities that contract with the County of Los Angeles Fire Department for fire protection services). We are responsible for all County facilities located within non-contract cities. The County of Los Angeles Fire Department's Land Development Unit may also comment on conditions that may be imposed on a project by the Fire Prevention Division which may create a potentially significant impact to the environment.

Should any questions arise regarding this report, please contact the County of Los Angeles Fire Department Land Development Unit's, SFPEA Claudia Soiza at (323) 890-4243 or Claudia.Soiza@fire.lacounty.gov.

FORESTRY DIVISION – OTHER ENVIRONMENTAL CONCERNS:

This project is located entirely within the City of Brea. The County of Los Angeles Fire Department's Forestry Division has no further comments regarding this project.

HEALTH HAZARDOUS MATERIALS DIVISION:

The Health Hazardous Materials Division of the Los Angeles County Fire Department advises that a Phase I Environmental Site Assessment be conducted for the project site if not done so already.

If you have any additional questions, please contact this office at (323) 890-4330.

Very truly yours,



MICHAEL Y. TAKESHITA, ACTING CHIEF, FORESTRY DIVISION
PREVENTION SERVICES BUREAU

MYT:ac



City of La Habra

"A Caring Community"

COMMUNITY DEVELOPMENT

110 E. La Habra Boulevard
Post Office Box 337
La Habra, CA 90633-0785
Office: (562) 383-4100
Fax: (562) 383-4476



January 18, 2019

Ms. Christy Teague
Contract Planner
City of Brea
Planning Division-Level 3
1 Civic Center Circle
Brea, California 92821

Re: Mercury Residential Project

Dear Ms. Teague,

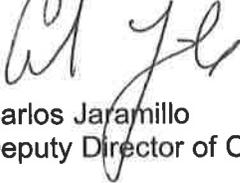
Thank you for the opportunity to review the Notice of Preparation of a Draft Environmental Impact Report for the Mercury Residential Project. As you are aware, the California Environmental Quality Act allows potentially affected agencies to comment on proposed projects that may cause significant environmental impacts to their community. We would offer the following comments on the environmental document:

1. The City of La Habra synchronized Lambert Road (in conjunction with Brea) and is in the process of synchronizing Imperial Highway (in conjunction with Brea, Fullerton, Placentia, and Yorba Linda) to allow for improved flow of traffic, a decrease in the number of stops, and a reduction of greenhouse gases throughout the communities. The construction of 120 residential units could affect the signal synchronization to and from La Habra. The Transportation and Traffic Section of the Draft Environmental Impact Report (DEIR) should analyze the potential impacts to La Habra.
2. The City of La Habra requires developers to pay "fair share" traffic impact fees towards intersections that require improvements, in order to maintain acceptable Levels of Service ("LOS") for existing and future conditions. The DEIR should at a minimum study the intersections of Lambert Road/Palm Street, Lambert Road/Harbor Boulevard, and Harbor Boulevard/Imperial Highway based on the trip distribution pattern identified in the Traffic Study as appropriate. A condition should be placed on the project that requires the developer to contribute their "fair share" traffic impact fees for any incremental project impacts at these intersections in La Habra based on the traffic study analysis.
3. Imperial Highway in the City of La Habra is on the Orange County Congestion Management Program (CMP) Highway System. Furthermore, the intersection of Imperial Highway/Harbor Boulevard is a monitored intersection on the Orange County CMP system. The DEIR should address CMP impacts at this intersection.

We are prepared to assist you in addressing the above concerns. We would request that when the DEIR is completed, a copy be provided to the City of La Habra for review and comment. Additional comments may be generated based on that review.

If you should have any questions, please feel free to contact me at (562) 383-4100.

Sincerely,



Carlos Jaramillo
Deputy Director of Community Development

cc: Jim Sadro, City Manager
Chris Johansen, City Engineer
Michael Plotnik, Traffic Manager
Andrew Ho, Director of Community and Economic Development



NIXON PEABODY LLP
ATTORNEYS AT LAW

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Bryan C. LeRoy
Partner
T 213-629-6118
bleroy@nixonpeabody.com

300 S. Grand Avenue, Suite 4100
Los Angeles, CA 90071-3151
213-629-6000

January 22, 2019

*Via email: christyt@ci.brea.ca.us
and Regular U.S. Mail*

Christy Teague, AICP
Contract Planner
City of Brea – Planning Division
1 Civic Center Circle
Brea, CA 92821-5732

RE: Notice of Preparation for Mercury Residential Project; Southeast Corner of Berry Street and Mercury Lane, APN # 296-141-05

Dear Ms. Teague:

On behalf of our client, SPX Cooling Technologies, Inc. (“SPX”), we appreciate the opportunity to provide comments to the Notice of Preparation (“NOP”) and Scoping Meeting for the above-referenced Mercury Residential Project (“Project”). SPX, an industry leader in air cooling technologies, manufactures evaporative cooling towers and other cooling products at its Recold facility located at 550 W. Mercury Lane, immediately adjacent to the property proposed for the Project. The SPX facility has been operating in the City of Brea for almost 40 years and relies on 36 dedicated employees who work at all hours of the day and night, sometimes seven days per week.

Our primary concern is about the propriety of placing a residential development in the middle of an area that is dominated by heavy commercial and industrial uses. If the City successfully rezones the property as Planned Community (PC), it would be surrounded on all sides by manufacturing zones. Properties to the south and west of the Project property are all zoned C-M (Commercial Industrial), and properties to the north and east of the Project property are zoned M-1 and M-2 (Light and General Industrial). Some of the current uses on properties in the immediate vicinity of the proposed Project include the manufacturer of pvc pipes and stormwater protective lining systems, wholesale distribution of electrical and HVAC systems, and construction service providers. All of these businesses, including SPX, require machinery, forklifts, outdoor storage, early morning truck deliveries and other noises appropriate for an industrial setting. It is not an appropriate area of the City for residential living. We are equally concerned about the steady decline in the region’s manufacturing base motivated by the encroachment of incompatible uses.

Apart from the many policy reasons not to rezone the Project property, there are a number of legal and environmental considerations about the proposed Project that must be considered by the City and fully addressed in the Environmental Impact Report (“EIR”) in accordance with the California Environmental Quality Act (“CEQA”):

- **Thresholds of Significance:** The EIR must clearly identify thresholds that distinguish significant from less-than-significant impacts, and it must support those thresholds with substantial evidence in the record. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099.)
- **Land Use and Planning:** Compatibility with surrounding land uses and consistency with the City’s zoning regulations and general plan policies, goals and objectives are environmental considerations under CEQA and must be thoroughly discussed in the EIR. (See, e.g., California CEQA Guidelines, 14 CCR 15000 *et. seq.* (“CEQA Guidelines”), Appx. G, Part X.) In particular, the EIR must consider the effects of the proposed Project as compared to the current baseline, including the current commercial industrial designations. A conclusion that the proposed use will be consistent with City regulations once the rezoning is approved would improperly compare the Project against a future baseline and is not sufficient to evaluate impacts under CEQA. (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439.) The land use analysis must consider the impacts of the proposed Project in comparison to existing use restrictions and development standards for the subject and surrounding properties. For example, in addition to the fact that the current C-M Zone does not permit residential uses, the zoning also sets a maximum building height of 35 feet (Brea City Code, § 20.240.060.B). By contrast, the Project is proposed to be 5 stories and 65-feet tall, which would dwarf the surrounding structures. The C-M Zone also allows a maximum lot coverage for buildings and structures at 50 percent of the total lot area (Brea City Code, § 20.240.060.F), yet the plans for the proposed Project show the building will cover the entire site. The EIR must evaluate the stark contrast of the proposed Project compared to the existing land use regulations and the surrounding structures and uses.
- **Loss of Industrially Zoned Property:** The EIR must consider *indirect* physical changes in the environment that may result from the economic and social effects of a proposed project. (CEQA Guidelines §§15064(e), 15131.) The economic and social effects of a project may also factor into whether the physical change on the environment is significant. Similar to the physical effects of urban decay, which has been recognized by multiple California courts as a legitimate concern under CEQA, the conversion of industrial properties to incompatible uses can be a catalyst for the mass migration of industrial factories to more hospitable areas, the loss of key manufacturing jobs and wages, and the concomitant effects of vacant buildings and deteriorating neighborhoods during the transition. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1210.) Moreover, the cumulative effects of a regionwide

erosion in the availability of manufacturing locations drives up the cost of industrial property and forces more and more factories and warehouses to relocate farther and farther away, increasing the commute for workers and the distance for industrial deliveries. The EIR should evaluate the land use trends resulting from a loss of industrially zoned property and the potential for a spiral of deteriorating environmental effects.

- **Spot Zoning:** The EIR also needs to consider the Project's consistency with California planning and zoning laws. As described above, the proposed rezoning would create an island of residential use surrounded by large areas of industrial-zoned properties. Residential uses are expressly prohibited in the adjacent M-1 and M-2 zones and are not permitted in the subject C-M zone. The EIR should explain how the proposed rezoning is not impermissible spot zoning under California law.
- **General Plan Amendment:** The NOP incorrectly states that only a zone change is needed to permit the proposed Project. The current General Plan designation for the Project property is Light Industrial, which is intended to "accommodate[] industrial uses." (Brea General Plan, Commercial and Industrial Categories, p. 2-15.) According to the General Plan, allowable uses include only research and development, light manufacturing and processing, offices, light warehousing and storage, high-technology production, and related uses. Other uses may be allowed only if they are determined to be compatible, which residential clearly is not. Moreover, the General Plan sets a maximum Floor-Area Ratio ("FAR") of 0.75 for the Light Industrial designation. At five stories and 171,433 square feet, the proposed Project far exceeds the FAR limit under the General Plan. Accordingly, the proposed Project requires an amendment to the General Plan to change the land use classification and requires an amended NOP that identifies this necessary approval. Please also keep in mind that California law requires that the zoning must be consistent with the General Plan and that the General Plan must be internally consistent among its various elements. (Cal. Govt. Code § 65680; *Sierra Club v. Kern County Board of Supervisors* (1981) 126 Cal.App.3d 698.)
- **Appropriateness of Planned Community (PC) Zone:** The PC Zone is not an appropriate zoning designation for the proposed use. According to the City's Zoning Code, the purpose of the PC Zone is to encourage diversity of uses, use relationships and heights of buildings in "planned building groups" while ensuring the spirit and intent of the zoning code and General Plan. (Brea City Code, § 20.272.010.A.) The proposed Project is not a planned building group, nor is it compatible with the spirit and intent of the City's zoning code or General Plan. Moreover, the property must "be of sufficient acreage . . . to be suitable for development [as a Planned Community]" and subject to the regulations of a Master Land Use Development Plan. (Brea City Code, § 20.272.010.B.) The Master Land Use Development Plan is intended to serve as a governing specific plan to include a diversity of land uses with a statement of goals and objectives and various elements similar to an abbreviated general plan. (Brea City Code, §

20.272.020.) Clearly, the PC Zone was not intended to be used for a single parcel of land with a single structure, as proposed. In fact, it appears there is no other location in the City where the PC Zone has been used for a single parcel of this size and without a diversity of housing products. The EIR and the City's findings must justify why the PC Zone is appropriate to use in this unique situation. Additionally, the EIR must evaluate the Master Land Use Development Plan for the subject property.

- **Project Alternatives:** The EIR is required to evaluate a range of reasonable alternatives to the proposed Project, including alternatives to the location of the Project, that could feasibly avoid or substantially lessen the significant impacts. (CEQA Guidelines § 15126.6.) “Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process.” (*Laurel Heights Improvement Assn v. The Regents of the University of California* (1988) 47 Cal.3d 376, 404.) Given the significant (and presumably unavoidable) land use impacts of the proposed Project, we expect to see a thorough discussion of other potential project sites in the City. In addition, the EIR should focus on other alternatives that could feasibly attain most of the basic objectives of the Project. Unfortunately, the City has elected not to prepare an initial study or identify objectives or potential alternatives in the NOP. Without an understanding of the Project's basic objectives, it is impossible for scoping commenters to suggest alternatives. Accordingly, the City cannot complain if commenters raise new reasonable and feasible alternatives after the Draft EIR is prepared and circulated to the public. Please keep in mind that the City may not give a project's purpose an artificially narrow definition in order to limit the range of alternatives in the EIR. (*In re Bay-Delta, etc.* (2008) 43 Cal.4th 1143, 1166.) In addition, to the extent the EIR eliminates alternatives as infeasible, the City needs to support the rationale with substantial evidence. (CEQA Guidelines §§ 15126.6(c), 15091(b).)
- **Growth-Inducing Impacts:** The EIR must discuss the ways in which the proposed Project may encourage population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. (Pub. Res. Code §21100(b)(5); CEQA Guidelines §§15126(d), 15126.2(d).) This discussion should specifically consider the expansion of residential uses to industrial areas of the City, particularly given the City's strategy of using the PC Zoning to allow islands of housing in previously unpermitted zones.
- **Receptor Impacts:** The EIR is required to “analyze any significant environmental effects the project might cause by bringing development and people into the area affected.” (CEQA Guidelines §§ 15126.2(a).) Not only does this include potentially significant *exacerbating* effects of the Project, but in this case, the EIR must also consider the *exposure* of future residents to hazards and risks in the existing environment. The California Supreme Court has found that CEQA's limit on the availability of exemptions where future residents or users of certain housing projects

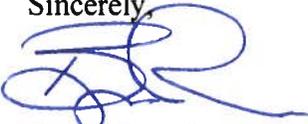
may be harmed by existing conditions reflects “an express legislative directive to consider whether existing environmental conditions might harm those who intend to occupy or use a project site.” (*Calif. Building Industry Assn v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 391.)

- **Traffic Impacts:** The EIR must fully evaluate both project-specific and cumulative traffic impacts from residents, customers and delivery trucks related to the proposed Project, including, without limitation, level of service impacts to intersections, capacity impacts to road segments, vehicle miles traveled, and potential circulation conflicts with other travel routes and access points to loading docks. The traffic study must specifically consider the prevalence of background truck traffic under the existing and future conditions. Given the industrial nature of the neighborhood, we specifically request that the traffic study evaluate potential impacts at various hours of the day and night, rather than just looking at typical rush hours. Moreover, the traffic study must justify assumptions about circulation and paths of travel based on substantial evidence. In addition, the analysis must evaluate the extent to which the bridge at the east end of the cul-de-sac on Mercury Lane may be used for vehicular or pedestrian traffic and whether improvements to the bridge, trail and/or roadway may be necessary.
- **Parking Impacts:** The EIR must evaluate the Project’s impacts on parking in the area. The parking analysis must consider both the Project’s compliance with code requirements and its ability to meet anticipated demand for the proposed residential and commercial uses, including guests and deliveries. Insufficient parking provided by the Project may also result in secondary effects to traffic and circulation as residents and visitors roam the streets looking for other available parking.
- **Safety and Security:** The introduction of housing in a residentially-isolated area of the city raises a host of concerns about safety and security, both for the future residents and visitors of the Project and for the surrounding properties. The EIR must thoroughly evaluate the capacity and response times of police, fire and emergency services to accommodate the potential demands of the Project and cumulative needs. In particular, the EIR must consider the relative isolation of residents and guests after normal business hours and the potential risks to their personal safety and security, as well as the increased demand on police and security services for the surrounding properties.
- **Mitigation Measures:** In addition to disclosing and analyzing the effects of the Project, the EIR must describe feasible, enforceable mitigation measures that could minimize significant adverse impacts. (CEQA Guidelines §15126.4.) Please keep in mind CEQA prohibits the City from approving a project that has one or more significant unavoidable impacts unless it can find that all mitigation measures or project changes have been imposed to the extent feasible, regardless of whether the City issues a statement of overriding considerations pursuant to CEQA Guidelines § 15093. (CEQA Guidelines §§ 15091(a), (f), 15093.) Both the feasibility finding and the statement of overriding considerations must be supported by substantial evidence in the record.

Finally, we note that Section 20.272.020 of the Brea City Code requires the applicant for reclassification to the PC Zone to submit a Master Land Use Development Plan prior to acceptance of the rezoning petition. We see no reason why this requirement would not also apply where the City is the sponsor of the project. Pursuant to the California Public Records Act, Cal. Govt. Code § 6250 *et. seq.*, please provide me with a copy of the Master Land Use Development Plan for the proposed Project or explain why it is not available at this juncture in the review process. Additionally, please include me in all notifications regarding the proposed Project or the subject property at the following address: 300 South Grand Avenue, Suite 4100, Los Angeles, CA 90071.

We look forward to a thorough and meaningful analysis of the Project that will present the City Council with an accurate and informed choice about the effects of this proposed action. Of course, we reserve the right to raise new and different issues in our comments on the Draft EIR depending on the analysis in an effort to ensure the EIR is complete, accurate and complies with the requirements of CEQA. Please include our comments in the official record for the Project. Thank you for your consideration.

Sincerely,



Bryan C. LeRoy
Partner

BCL

DEPARTMENT OF TRANSPORTATION

DISTRICT 12

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a California Way of Life.*

January 23, 2019

Christy Teague
City of Brea
Planning Division, Level 3
1 Civic Center Circle
Brea, CA. 92821

File: IGR/CEQA
SCH# 2018121032
12-ORA-2018-01040
Mercury Residential Project

Dear Ms. Teague,

Thank you for including the California Department of Transportation (Caltrans) in the review of the Draft Environmental Impact Report (DEIR), for the City of Brea. The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability.

The proposed Mercury Residential Project would result in the development of a 5-story, approximately 65-foot-tall, 171,433-square-foot podium structure with 120 workforce housing units. Vehicular site access would be provided off of Mercury Lane. Parking would be provided in three levels of the parking garage. A staircase and elevator would provide access from Berry Street to the third-story courtyard.

The 1.01-acre project site is on the southeast corner of Berry Street and Mercury Lane in the City of Brea. The project site is approximately 1.5 miles northwest of State Route (SR) 57 and 0.1 mile north of Imperial Highway, also known as SR 90. SR 90 is overseen by Caltrans, and as a responsible agency, Caltrans has the following comment:

Traffic Operations Comments:

1. Please provide Caltrans with the trip generation impact report on the intersection of Imperial Hwy (SR 90) and Berry Street.

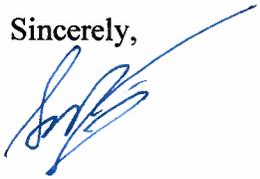
System Planning

1. Caltrans appreciates the City's efforts to promote Active Transportation by including bike parking at the proposed Project.

2. Please ensure there are adequate connections to the bicycle network near the Project site. This will increase regional connectivity since there are several existing and planned bicycle facilities nearby, including the The Tracks at Brea Trail and a proposed section of the OC Loop.

Please continue to coordinate with Caltrans for any future developments that could potentially impact State transportation facilities. If you have any questions, do not hesitate to contact Julie Lugaro at 657-328-6368 or Julie.lugaro@dot.ca.gov.

Sincerely,



SCOTT SHELLEY
Branch Chief, Regional-IGR-Transit Planning
District 12