



City of Fontana
Planning Division
8353 Sierra Avenue
Fontana, CA 92335

Notice of Preparation of a Draft EIR and Scoping Meeting

Date: September 30, 2022
To: Public Agencies and Interested Parties
Subject: Notice of Preparation of a Draft Environmental Impact Report and Scoping Meeting
Project Title: Poplar South Distribution Center

The City of Fontana, as lead agency under the California Environmental Quality Act (CEQA), will prepare an Environmental Impact Report (EIR) for the Poplar South Distribution Center project (the “project”). In accordance with Section 15082 of the CEQA Guidelines, the City has issued this Notice of Preparation (NOP) to provide responsible agencies, trustee agencies, and other interested parties with information describing the proposed project and its potential environmental effects.

The purpose of this notice is to:

- 1) serve as the Notice of Preparation of an Environmental Impact Report for the Office of Planning and Research (OPR), Responsible Agencies, public agencies involved in funding or approving the project, and Trustee Agencies responsible for natural resources affected by the project, pursuant to CEQA Guidelines Section 15082.
- 2) advise and solicit comments and suggestions regarding the preparation of the EIR, environmental issues to be addressed in the EIR, and any other related issues, from interested parties, including interested or affected members of the public; and
- 3) advertise a public meeting to solicit comments from public agencies and interested parties regarding the scope of study in the EIR.

Project Location

The 19.08-acre project site consists of the following Assessor Parcel Numbers (APNs): 0237-171-01 through -19, 0237-172-01 through -12, -19, -22, -23, -26, -27, -28, -30 through -33. The site surrounds the existing Rose Avenue and is located south of Santa Ana Avenue, west of Catawba Avenue, north of Jurupa Avenue, and east of Poplar Avenue. The project site is located in the southern portion of the city of Fontana, south of Interstate 10 (I-10) (see Figure 1, Regional Location, Figure 2, Local Vicinity, and Figure 3, Aerial View). The project site is currently developed with approximately 41 existing single-family residential units and accessory structures (inclusive of 42 parcels with one vacant parcel). Rose Avenue runs east west through the center of the site.

The site is located in an area zoned as Specific Plan (SP) for the Southwest Industrial Park Specific Plan (SWIP) and is designated as Residential Trucking District (RTD) in the SWIP. The project site is designated as Residential Trucking (R-T), industrial-supporting residential with density of 2 dwelling units per acre, by the City’s General Plan. The surrounding areas are designated within the SWIP as East Industrial District (SED) and General Industrial (I-G) within the City’s General Plan. Surrounding areas are developed with warehousing and distribution uses.

Project Description

The project includes a Design Review, Tentative Parcel Map, General Plan Amendment, and Specific Plan Amendment for the development of the proposed project. Additionally, the Rose Avenue right-of-way will need to be abandoned via the Parcel Map.

The proposed project re-envision the project site with a new warehouse totaling approximately 490,565 square feet (SF), parking, landscaping, and related improvements. To allow for the development, the project would include a General Plan Amendment and Specific Plan Amendment for the site to change from Residential Trucking (R-T) to General Industrial (I-G) land use within the City's General Plan, and Residential Trucking District (RTD) to Slover East Industrial District (SED) within the SWIP. With the land use change, the site would be compatible with the surrounding vicinity and the project would be similar to surrounding uses.

The warehouse building would include 10,000 SF of office space. The building would include 56 dock positions and a parking lot with 98 trailer parking stalls and 210 auto parking stalls. The project would include 62,000 SF of landscaping that would be provided along the northern, eastern, and western property lines and around the perimeter of the building. Additionally, landscaping would be provided along the southern property lines at the site entrances. Offsite road and utility infrastructure improvements would also be constructed.

The project is speculative; no tenant has been identified but the building is assumed to be used for a dry storage warehouse. Typical operational characteristics include employee and customers traveling to and from the site, delivery of materials and supplies to the site, truck loading and unloading and related beeping of backup alarms from the trucks, and manufacturing activities. The project is anticipated to operate 7 days a week 24 hours a day.

The project would be constructed on a site that is currently zoned and developed with residential; therefore, the project is required to comply with the Housing Accountability Act (Senate Bill [SB] 330) which addresses the displacement and replacement of housing. The EIR will include evaluation of "replacement housing" in accordance with SB 330. SB 330 requires in part, that where a development project results in reducing the number of housing units allowed under existing zoning, the City must identify where the equivalent number of homes could be accommodated in the City. The proposed Project would result in the "loss" of approximately 38 residential units that are allowed by the current General Plan and zoning (2 du/ac). An equivalent number need to be accommodated elsewhere in the city.

EIR Scope

The City of Fontana has determined that an EIR is required for the project based on its scale and potential to cause significant environmental effects; therefore, no Initial Study will be prepared (see State CEQA Guidelines, Sections 15060 and 15081). The following environmental topics will be analyzed in the EIR:

- Aesthetics
- Agriculture and Forest Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire

The EIR will assess the effects of the project on the environment, identify potentially significant impacts, identify feasible mitigation measures to reduce or eliminate potentially significant environmental impacts, and discuss

potentially feasible alternatives to the project that may accomplish basic objectives while lessening or eliminating any potentially significant project-related impacts.

Opportunity for Public Review and Comment

This Notice is available for review on the City's website at:
<https://www.fontana.org/2137/Environmental-Documents>.

The City of Fontana would like to receive your input on the scope of the information and analysis to be included in the EIR. Due to time limits, as established by CEQA, your response should be sent at the earliest possible date, but no later than thirty (30) days after publication of this notice.

Please submit your comments by 5:00 p.m., Monday, October 31, 2022, by mail or e-mail to:

| | |
|--------------------|--------------------------|
| Alejandro Rico | Phone: (909) 350-6558 |
| Associate Planner | Email: arico@fontana.org |
| City of Fontana | |
| 8353 Sierra Avenue | |
| Fontana, CA 92335 | |

Please include the name, phone number, and address of a contact person in your response.

Scoping Meeting

The City of Fontana will hold a public scoping meeting, where agencies, organizations, and members of the public will receive a brief presentation on the Project and will have the opportunity to provide comments on the scope of the information and analysis to be included in the EIR.

The meeting will be held on:

| | |
|-----------------------|---|
| Date and Time: | October 12, 2022 at 5:00 pm - 6:00 pm |
| Place: | Virtual Meeting (Zoom) |
| | Access meeting at: |
| | https://us06web.zoom.us/j/83481328742?pwd=NU5pK2YvTVdCejBjOWdFSCt4YnZkQT09 |
| | Call in: +1 (669) 444-9171 |
| | Webinar ID: 834 8132 8742 |
| | Passcode: 135620 |

Attachments:

Figure 1 – Regional Location

Figure 2 – Local Vicinity

Figure 3 – Aerial View

Figure 4 – Conceptual Site Plan

Figure 1 Regional Location



Figure 2 Vicinity Map

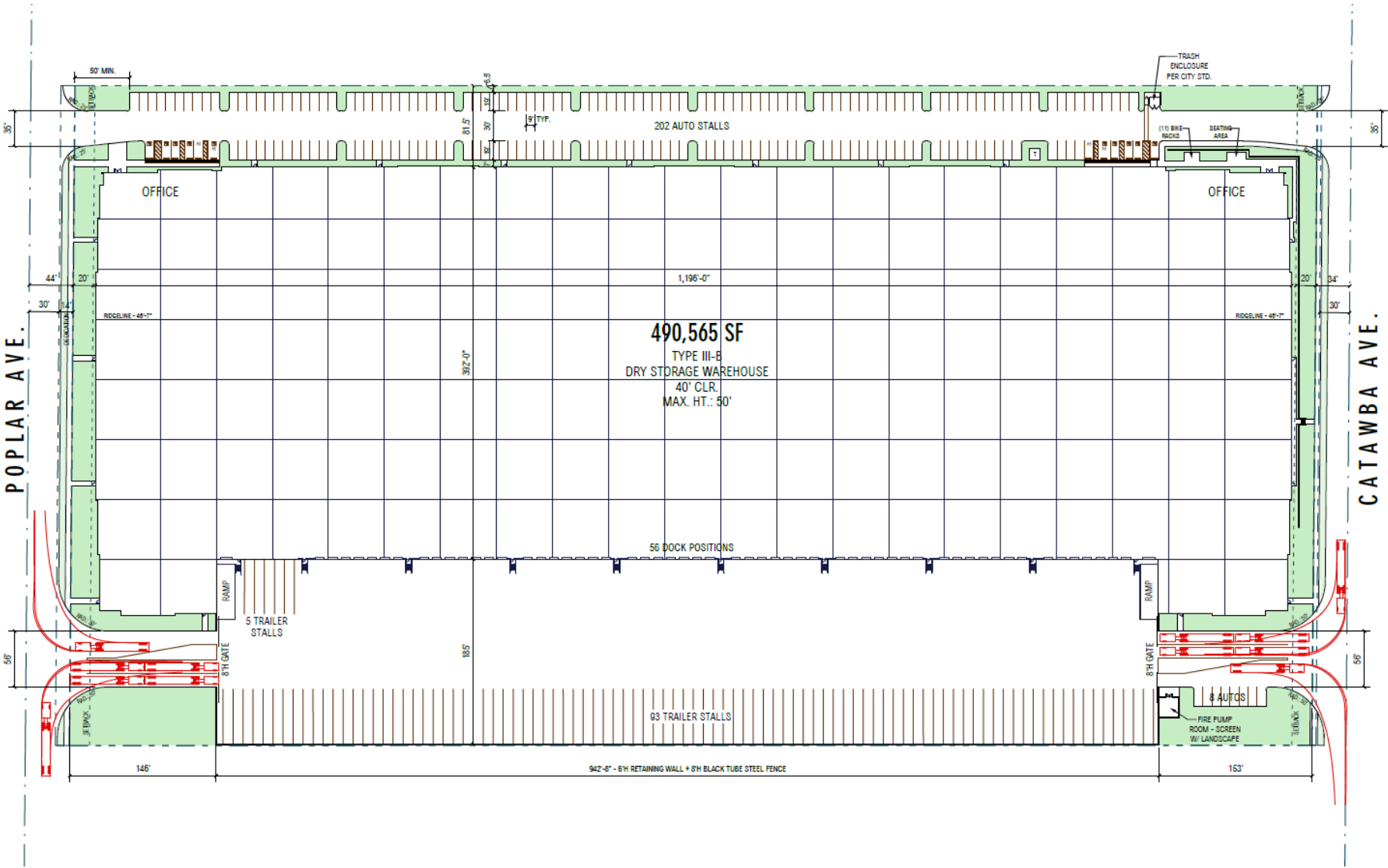


 Project Site

Figure 3 Aerial View



Figure 4 Conceptual Site Plan





October 31, 2022

Sent via email

Alejandro Rico
Associate Planner
City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Email: arico@fontana.org
Phone: (909) 350-6558

RE: Comments on Notice of Preparation of an Environment Impact Report for the Poplar South Distribution Center, SCH # 2022090102

Mr. Rico,

These comments are submitted on behalf of the Center for Biological Diversity (“the Center”) regarding the Notice of Preparation of an Environmental Impact Report (“EIR”) for the Poplar South Distribution Center (“the Project”). The Center urges the City of Fontana (“City”) to undertake a thorough and comprehensive environmental review of the Project as required under the California Environmental Quality Act (“CEQA”), prior to considering approval. Because the Project would add even more warehousing to an area already overwhelmed by warehouse impacts, the EIR must thoroughly analyze cumulative impacts and ensure the Project is compliant with all the land use policies designed to protect the residents of Fontana, including those that arose from the Fontana settlement. Additionally, because the Project would demolish 41 units of housing in the midst of a housing crisis that is particularly acute in the City of Fontana, the EIR must contain evidence showing that a plan has been developed to replace that housing with the capacity for least an equivalent amount of housing elsewhere. The EIR must also fully disclose and analyze the Project’s potential impacts to air quality and greenhouse gas emissions and adopt best practice measures to mitigate them.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in San Bernadino County.

Under CEQA, an EIR must provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, list ways in

which the significant effects of a project might be minimized and indicate alternatives to the project. (Pub. Res. Code § 21002.2.) The proposed Project is a high-traffic warehouse facility totaling 490,565 square acres that will displace 41 units of housing. (NOP at 1-2.) The EIR must fully disclose the impacts of this land use change so that the public can fully understand the publicly borne costs associated with the Project.

I. The EIR Must Carefully Assess and Mitigate the Project’s Cumulative Impacts on its Heavily Burdened Surroundings.

With the rapid increase in global trade, the Ports of LA and Long Beach have become a primary entryway for goods, processing over 40 percent of all imports into the United States, and accounting for 20 percent of diesel particulate pollutants in southern California—more than from any other source. (Minkler, et al. 2012.) These goods are often ‘transloaded’ before leaving Southern California, meaning that they spend some time in warehouse storage facilities before they reach their final destination. (Betancourt 2012, p. 2.) This has resulted in a massive expansion of warehouse development in Southern California.

Nowhere has this growth been more drastic than in San Bernardino County, and particularly in Fontana. (Betancourt 2012.) The number of warehouses in San Bernardino and Riverside counties has grown from 162 in 1975 to 4,299 in 2021, according to a recent mapping project from the Robert Redford Conservancy for Southern California Sustainability at Pitzer College. (Rode 2022.) The approximately 840 million square feet of new warehouse facilities—and the roads and railyards that serve them – has permanently altered the landscape of the Inland Valley area, creating a logistics hub so massive that it is now visible from space. (Pitzer 2022.)

The Project is in San Bernardino County within the City of Fontana. The surrounding area is a mix of residential, school, and industrial uses. The project site is within two miles of Jurupa Vista Elementary School, Citrus High School, and Jurupa Hills High School and within one mile of a residential neighborhood. The surrounding community, which is two-thirds Hispanic, is already highly burdened by environmental toxins. According to CalEnviroScreen 4.0, CalEPA’s screening tool that identifies the California communities most affected by pollution and where people are often especially vulnerable to pollution’s effects, the Project’s census tract is more polluted than 97 percent of the state’s census tracts, making it among the most polluted areas in the state. (OEHHA 2021.) Residents here suffer from some of the highest exposures statewide to ozone, fine particulate matter, diesel particulate matter, and hazardous waste.

Therefore, the people living near the project site would face environmental impacts not just from this project, but from this project’s cumulative effects with the surrounding warehouse development. The EIR must analyze and mitigate this cumulative impact. CEQA requires a lead agency consider whether the combined effects from both the proposed project and other projects would be “cumulatively considerable.” (CEQA Guidelines, § 15130, subd. (a).) The incremental effects of an individual project are cumulatively considerable if the effects are significant when “viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (*Id.*, §§ 15065, subd. (a)(3), 15355, subd. (b).) To perform this analysis, a lead agency must “use its best efforts to find out and disclose all that it reasonably can.” (*Id.*, § 15144; *Communities for a Better Environment v. City of Richmond*

(2010) 184 Cal.App.4th 70, 96.) Where, as here, a community already bears a high pollution burden, the relevant question is “whether any additional amount” of pollution caused by the project “should be considered significant in light of the serious nature” of the existing problem. (*Kings County Farm Bureau, supra*, 221 Cal.App.3d at 718.) Absent this analysis, piecemeal approval of multiple projects with related impacts could lead to severe environmental harm. (*San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 720.)

Pursuant to a recent settlement with the Attorney General’s Office, the South Coast Air Quality Management District (SCAQMD) has committed to revise its CEQA guidance for analyzing cumulative air quality impacts. (AGO 2022; SCAQMD 2022.) SCAQMD staff have proposed an approach for new guidance that would consider existing burdens associated with nearby pollution sources and quantify cumulative air quality impacts and the effects on human health. The purpose of this new approach is to consider the impacts of concentrating polluting land uses, like warehouse projects, in disadvantaged areas, thereby encouraging local governments to site future projects in areas where they will have the least impact on human health. (AGO 2022.) Accordingly, the City may soon be required to conduct additional analysis for cumulative air quality impacts. Should SCAQMD release its updated rules, the City must update its cumulative air quality analysis.

This Project will certainly add to and compound the environmental and health problems of people living in the area. Should the Project proceed, the Project should be designed to avoid serious harm to adjacent residents.

II. The EIR Must Comply with all Terms of the Fontana Settlement Agreement and Relevant Land Use Plans

Because of the harmful public health impacts suffered by Fontana residents from unchecked warehouse development, Fontana has a number of land use policies designed to protect residents from these cumulative effects. The EIR must thoroughly analyze the Project’s consistency with the relevant land use plans, including the City of Fontana’s General Plan and Municipal Code.

Fontana’s General Plan has several policies protecting residents from excessive impacts from industrial land uses. (City of Fontana GPU 2018.) Especially important are the dozens of policies in the City’s Environmental Justice element, which are required by SB 1000 and designed to reduce the unique and compounded health risks in disadvantaged communities such as Fontana. (City of Fontana Appendix Six 2018.) Included in these policies are requirements that large industrial projects undergo a Health Fontana Advisory Project Review process and minimize noise encroachment into adjoining residential neighborhoods. (City of Fontana Appendix Six 2018.)

Additionally, the EIR must demonstrate consistency with the mitigation measures in the final EIR for Fontana’s General Plan. For example, the Fontana General Plan contains 24 mitigation measures related to air quality, most of which should apply to the Project. (City of Fontana GP Update FEIR 2018, Table 2-2, pp. 2-4 – 2-6.) Those measures set requirements for building efficiency standards, on-site equipment, and preferential vanpool parking, among

others. The EIR should clarify whether those requirements have been incorporated into the Project design, and, if not, explain why the Project is inconsistent with these mitigation measures.

Further, the EIR must demonstrate consistency with Fontana’s Municipal Code. Ordinance No. 1891, which was adopted as part of the settlement agreement with the Attorney General, sets stringent environmental standards for all future warehouse development in Fontana. (City of Fontana 2022.) The ordinance includes a host of measures that were designed to mitigate impacts and protect Fontana residents and the air basin from the most deleterious effects of warehouse development. Among other requirements, the ordinance mandates that **all on-site motorized equipment be zero emission, that solar panels on-site supply 100 percent of the power needed to operate non-refrigerated portions of the facility, and that anti-idling signs reflect a 3-minute idling restriction.** The EIR must adopt all of these mitigation measures.

III. The EIR Must Replace Demolished Housing with Safe, Healthy Housing.

The City of Fontana, like many cities in Southern California, is suffering from an affordable housing crisis. Cities already struggle to identify suitable infill parcels for housing development. When cities do not prioritize quality, infill affordable housing, developers turn to sprawl development, which results in multi-hour commutes, damaged ecosystems, and dirty air.

Because the City has failed to meet its affordable housing targets, the California Department of Housing and Community Development has the City on its list of “affected cities,” which subjects it to the requirements of the Housing Crisis Act.¹ Therefore, Fontana is prohibited from enacting a development policy or standard – including an amendment to a general or specific plan – that reduces the site’s residential development capacity unless it concurrently allows more housing in another parcel such that there is no net loss of residential capacity (Gov. Code, § 66300, subd. (b)(1)(A), subd. (i)(1).) The Project would amend the General Plan to change the site’s land use designation from “Residential Trucking” to “General Industrial.” (NOP at 2.)

Because the project area is currently zoned for 38 dwelling units, the EIR must include plans to replace this housing capacity. The replacement housing must be in an area where the residents will be protected from environmental health risks as much as possible. Therefore, the EIR should include a plan for housing capacity in residential neighborhoods that are far from warehouses and other industrial uses.

IV. The EIR Must Fully Analyze and Mitigate Greenhouse Gas Emissions.

The EIR must carefully consider the project’s effects on statewide goals for reducing greenhouse gas emissions. Where a project will generate greenhouse gas emissions either directly or indirectly, the EIR should describe the expected increase in emissions and discuss mitigation measures. (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413, 430-34; Pub. Res. Code §§ 21002; 21083.5.) Major warehouse projects have the documented effect

¹ <https://www.hcd.ca.gov/community-development/docs/affected-cities.pdf>

of substantially increasing construction, operation, and vehicle-related emissions, all of which produce climate change-causing greenhouse gases. (Betancourt et al. at 4-5; USEPA 2018.) The EIR must carefully and completely address both the impacts on emissions from construction and operation of the plant, and those from vehicle miles traveled by trucks transporting goods to and from the warehouse and commuting employees.

To mitigate the known environmental harms of warehouse projects, the EIR should identify specific measures that the developers will take to minimize any increase in greenhouse gas emissions caused by the Project. These measures should include sustainability measures, like ensuring roofs are white to minimize the need for air conditioning and including rooftop solar for energy production. (AGO 2021; Betancourt et al. at 6.) Moreover, the Project should incorporate features to minimize greenhouse gas emissions, like zero-emissions off-road vehicles and construction equipment, electric vehicle charging stations, and a plan to adopt zero-emissions heavy trucks. (AGO 2021; *id.*) Mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development.” (*Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) Mitigation measures should be designed so benefits are realized by the local community and could include funding zero emission public transit, solar installations on residential homes, or providing publicly accessible electric vehicle charging infrastructure.

Finally, the EIR must fully describe the greenhouse gases the warehouse’s construction will produce and outline all feasible mitigation measures that will be taken to address them. Construction of such a large warehouse will require substantial quantities of construction materials, such as concrete. Cement and concrete manufacture is extremely energy intensive and produces a large amount of greenhouse gas emissions. (Masanet et al. at 89.) Concrete manufacturing accounts for roughly 3 percent of California’s greenhouse gas emissions. (*Id.*) This and other sources of greenhouse gas and particulate emissions—such as dust and emissions from heavy machinery used during construction—should be thoroughly examined and mitigated in the EIR.

V. The EIR Must Fully Analyze and Mitigate Air Quality Impacts.

Warehouse projects are well-documented sources of air quality degradation that can create serious, negative health outcomes for surrounding communities. (Betancourt 2012, pp. 4-5.) Particulate emissions from diesel vehicles that carry freight to and from warehouses contribute to “cardiovascular problems, cancer, asthma, decreased lung function and capacity, reproductive health problems, and premature death.” (*Id.* at 5.)

Air pollution and its impacts are felt most heavily by young children, the elderly, pregnant women and people with existing heart and lung disease. People living in poverty are also more susceptible to air pollution as they are less able to relocate to less polluted areas, and their homes and places of work are more likely to be located near sources of pollution, such as freeways or ports, as these areas are more affordable. (ALA 2022.) Some of the nation’s most polluted counties are in Southern California, and San Bernadino County continually tops the list. (ALA 2022.) According to the American Lung Association’s 2022 “State of the Air” report, San Bernadino County is the ninth-worst ranked county in the state for both ozone pollution and

year-round particulate matter (PM2.5) pollution, with a “Fail” grade and an average number of 180 days per year with ozone levels in the unhealthy range. (*Id.*) Even more disturbing, the same report found that San Bernadino County is one of only fourteen counties in the country that received a “Fail” grade in all air quality metrics. (*Id.*)

The EIR must include best practice measures to mitigate impacts to air quality. The California Office of the Attorney General has published a document entitled “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act” to help lead agencies design warehouse projects to minimize and mitigate environmental harms. (AGO 2021.) It contains the following best practices for siting and designing warehouse facilities, along with recommended mitigation measures (not repeated here) that should be incorporated into the Project:

- Creating physical, structural, and/or vegetative buffers that adequately prevent or substantially reduce pollutant dispersal between warehouses and any areas where sensitive receptors are likely to be present, such as homes, schools, daycare centers, hospitals, community centers, and parks.
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets.
- Screening dock doors and onsite areas with significant truck traffic with physical, structural, and/or vegetative barriers that adequately prevent or substantially reduce pollutant dispersal from the facility towards sensitive receptors.
- Posting signs clearly showing the designated entry and exit points from the public street for trucks and service vehicles.
- Posting signs indicating that all parking and maintenance of trucks must be conducted within designated on-site areas and not within the surrounding community or public streets.

IV. Conclusion

Thank you for the opportunity to submit comments on the Notice of Preparation of an Environmental Impact Report for the Poplar South Distribution Center. The environmental effects of the Project will include direct and indirect impacts on land use, housing, greenhouse gases, and air quality and will also add to cumulative environmental impacts. Evaluation of each of these impacts, as well as analysis of a reasonable range of alternatives and mitigation measures, must be included in the EIR.

Given the possibility that the Center will be required to pursue legal remedies to ensure that the City complies with its legal obligations including those arising under CEQA, we would like to remind the City of its statutory duty to maintain and preserve all documents and communications that may constitute part of the “administrative record” of this proceeding. (§ 21167.6(e); *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 762-65.) The administrative record encompasses any and all documents and communications that

relate to any and all actions taken by the City with respect to the Project, and includes “pretty much everything that ever came near a proposed [project] or [] the agency’s compliance with CEQA” (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the City’s representatives or employees, that relate to the Project, including any correspondence, emails, and text messages sent between the City’s representatives or employees and the Applicant’s representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

Please add Center attorney Hallie Kutak (hkutak@biologicaldiversity.org) and me to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,

A handwritten signature in black ink, appearing to read 'FT', with a long horizontal flourish extending to the right.

Frances Tinney
Legal Fellow
Center for Biological Diversity
1212 Broadway, Suite #800
Oakland, CA 94612
ftinney@biologicaldiversity.org
Tel: (510) 844-7117

References

- American Lung Association (ALA), State of the Air 2022.
- Betancourt, S. & Vallianatos, M. (2012). Storing Harm: The Health and Community Impacts of Goods Movement Warehousing and Logistics. The Impact Project Policy Brief Series. Available at: <https://envhealthcenters.usc.edu/wpcontent/uploads/2016/11/Storing-Harm.pdf>.
- California Office of Environmental Health Hazard Assessment. CalEnviroScreen 4.0 (online edition, 2021). Available at: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40> [accessed July 6, 2022.]
- California Office of the Attorney General (AGO) (2022, April 18). Attorney General Bonta Announces Innovative Settlement with City of Fontana to Address Environmental Injustices in Warehouse Development. (Press Release). Available at: <https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-innovative-settlement-city-fontana-address>
- California Office of the Attorney General (AGO) (2021, March). Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act. Available at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>
- City of Fontana. (2022, April 12). Ordinance No. 1891. Available at: <https://oag.ca.gov/system/files/attachments/press-docs/Final%20Signed%20Fontana%20Ordinance.pdf>
- City of Fontana. (2018). Fontana Forward-General Plan Update 2015-2035, Final Environmental Impact Report.
- City of Fontana. (2018b). Fontana Forward-General Plan Update 2015-2035, Appendix Six Environmental Justice. Available at: <https://www.fontana.org/DocumentCenter/View/28271/Complete-Documents---Approved-General-Plan-Documents-11-13-2018>
- Manaset, E.; Price, L.; de la Rue du Can, S. (2005). *Reducing Greenhouse Gas Emissions through Product Life Cycle Optimization*, Ernest Orlando Lawrence Berkeley National Laboratory, Environmental Energy Technologies Division. Available at: https://www.aceee.org/files/proceedings/2005/data/papers/SS05_Panel04_Paper08.pdf.
- Minkler, Meredith, et al. (2012). Community-Based Participatory Research: A Strategy for Building Healthy Communities and Promoting Health through Policy Change. PolicyLink.
- Pitzer College (2022), Warehouses Visible from Space, Webpage. Available at:

<https://www.pitzer.edu/redfordconservancy/warehouses-visible-from-space/>

Rode, Erin (2022). 3 Warehouses in works on N. Indian Canyon bring economic promise, environmental concerns. *Desert Sun*. Available at:

<https://www.desertsun.com/restricted/?return=https%3A%2F%2Fwww.desertsun.com%2Fstory%2Fnews%2F2022%2F07%2F10%2Fmassive-warehouses-proposed-palm-springs-desert-hot-springs%2F7756215001%2F>

SCAQMD (2022). CEQA Policy Development (NEW), Webpage. Available at:

[http://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-\(new\)](http://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-(new)).

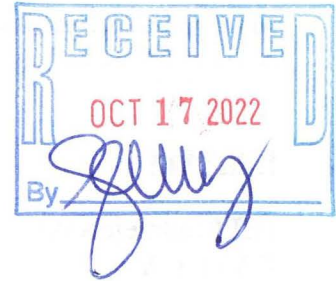
U.S. Environmental Protection Agency. (2022, accessed Oct. 3, 2022). *Sources of Greenhouse Gas Emissions*. Available at: <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>.



October 11th, 2022

Via Email and U.S. Mail

City of Fontana
Attn: Alejandra Rico
8353 Sierra Avenue
Fontana, CA 92335
arico@fontana.org



RE: Public Records Act Request and Request for Mailed Notice of Public Hearings and Actions – Poplar South Distribution Center, Jurupa Ave and Poplar Ave Fontana, CA 92337

Dear Ms. Rico,

CARE CA is writing to request a copy of any and all records related to the project, the Poplar South Distribution Center Project, located at Jurupa Avenue and Poplar Avenue in Fontana. The project will be the construction of a new warehouse totaling approximately 490,565 square feet. We are also writing to request copies of mailed notice of any and all hearings and/or actions related to the Project.

Our request for mailed notice of all hearings includes hearings, study sessions and community meetings related to the Project, certification of the MND (or recirculated DEIR), and approval of any Project entitlements. This request is made pursuant to Public Resources Code Sections 21092.2, 21080.4, 21083.9, 21092, 21108 and 21152 and Government Code Section 65092, which require local agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body. Our request includes notice to any City actions, hearings or other proceedings regarding the Project, Project approvals and any actions taken, or additional documents released pursuant to the California Environmental Quality Act.

Our request for all records related to the Project is made pursuant to the California Public Records Act. (Government Code § 6250 et seq.) This request is also made pursuant to Article I, section 3(b) of the California Constitution, which provides a constitutional right of access to information concerning the conduct of government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to information shall be narrowly construed.

We will pay for any direct costs of duplication associated with filling this request up to \$200. However, please contact me at (951) 540-1290 with a cost estimate before copying/scanning the materials.

Pursuant to Government Code Section 6253.9, if the requested documents are in electronic format and are 10 MB or less (or can be easily broken into sections of 10 MB or less), please email them to me as attachments.

My contact information is:

U.S. Mail

Jeff Modrzejewski
CARE CA
501 Shatto Place, Suite 200
Los Angeles, CA. 90020

Email

community@careca.org

Please call me if you have any questions. Thank you for your assistance with this matter.

Sincerely,



Jeff Modrzejewski
Executive Director



NATIVE AMERICAN HERITAGE COMMISSION

September 30, 2022

Alejandro Rico, Associate Planner
City of Fontana
8353 Sierra Avenue
Fontana, CA 92335

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

PARLIAMENTARIAN
Russell Attebery
Karuk

SECRETARY
Sara Dutschke
Miwok

COMMISSIONER
William Mungary
Paiute/White Mountain
Apache

COMMISSIONER
Isaac Bojorquez
Ohlone-Costanoan

COMMISSIONER
Buffy McQuillen
Yakayo Pomo, Yuki,
Nomlaki

COMMISSIONER
Wayne Nelson
Luiseño

COMMISSIONER
Stanley Rodriguez
Kumeyaay

EXECUTIVE SECRETARY
**Raymond C.
Hitchcock**
Miwok/Nisenan

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

Re: 2022090611, Poplar South Distribution Center Project, San Bernardino County

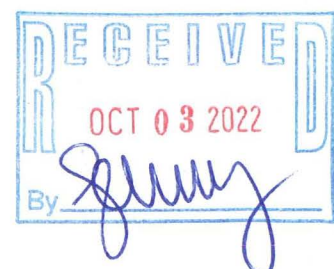
Dear Mr. Rico:

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:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** 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:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** 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:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** 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.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** 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)).
 - f.** 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:
- a.** 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.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** 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 (https://ohp.parks.ca.gov/?page_id=30331) 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:
Cameron.Vela@nahc.ca.gov.

Sincerely,

Cameron Vela

Cameron Vela
Cultural Resources Analyst

cc: State Clearinghouse