Final Environmental Impact Report

HIGHLAND MARKETPLACE

SCH No. 2011061021

MAY 2012

Prepared By:

LILBURN CORPORATION

Lead Agency

Redevelopment Agency of the City of San Bernardino
201 North "E" Street, Suite 301, San Bernardino, CA 92401
Contact Person: John Oquendo, Planner II (909) 963-5016

FINAL
ENVIRONMENTAL IMPACT REPORT
(SCH No. 2011061021)

HIGHLAND MARKETPLACE

Prepared for:

City of San Bernardino
Community Development Planning Division
300 N. "D" Street, 3rd Floor
San Bernardino, CA 92418

Prepared by:

Lilburn Corporation
1905 Business Center Drive
San Bernardino, California 92408

May 2012

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1.0 INTRODUCTION

1.0 INTRODUCTION

1.1 OVERVIEW OF THE PROJECT AND ENVIRONMENTAL REVIEW PROCESS

In June 2011 ***Home Depot U.S.A, Inc. and Mark Development, Inc.*** **(Applicant)** submitted an application to the City of San Bernardino Community Development Department (City) for a General Plan Amendment (GPA), Zone Change, Tentative Parcel Map, Conditional Use Permit (CUP) and grading and building permits to construct and operate a commercial shopping center with a maximum of 204,720 square feet (SF) of general commercial land uses. The Applicant requests authority to construct and operate a commercial shopping center with one (1) 107,979 square-foot home improvement center with an attached 28,111 square-foot garden center; one (1) 43,830 square-foot major retail structure that may include a pharmacy; one (1) 8,340 square-foot multi-tenant building for various shops, and four (4) general commercial land uses ranging in size from 5,500 square feet to 2,900 square-feet that may include drive-thru restaurants, a gas station or bank. The Proposed Project includes an applicant-initiated parcel map to create 7 parcels, and the vacation of local utilities within the 17.37-acre Project Site, which will be relocated to serve the Proposed Project. The Project is the "Proposed Project" for purposes of the City's environmental review pursuant to the California Environmental Quality Act (CEQA).

The 17.37-acre Project Site is located in the northeastern section of the City of San Bernardino within southwestern San Bernardino County. Specifically, the Project Site is located on the south side of Highland Avenue, on the west side of Arden Avenue, and on the north side of 20th Street. The geographic coordinate location of the Project Site is 34.134417 Northlatitude and -117.237017 West longitude.

The Project Site is located at the terminus of the Interstate 210 (I-210) eastbound off-ramp at Highland Avenue, and west of the I-210 eastbound on-ramps at Arden Avenue. The freeway overpass crosses above the northeast corner of the Project Site. Major arterials in the vicinity of the Project Site include Highland Avenue and Baseline, and the I-210, I-215, and I-15. Surrounding land uses in the vicinity of the Project Site include commercial development to the north, residential development to the west, I-210 eastbound on-ramps and residential development to the east, and an elementary school and a prep academy/school to the south. The San Bernardino International Airport is approximately 2.3 miles south of the Project Site. There are no railroads or major utilities on or near the Project Site.

The Project Site has historically been developed with residential apartment buildings, primarily four-plexes, with a total of 296 units. The apartments were constructed in the 1970's, and over the past decades had fallen into a state of disrepair, afflicting the neighborhood with a number of physical and economic conditions of blight, including substandard structures and dwellings, residential overcrowding, substandard property maintenance conditions, and criminal activity at rates documented higher than crime rates in other neighborhoods of the City. Demolition of the structures comprising the Project Site and relocation of the residents started in 2007, and was completed in or around 2010. The streets and certain utilities that served the residential neighborhood are still present on the Project Site and would be replaced to serve the Proposed Project.

The Project Site lies within the Redevelopment Project Area of the Inland Valley Development Agency (IVDA) and is subject to the Project Area's governing redevelopment plan and its rules for Owner Participation as adopted by the IVDA. The Agency, acting on the direction of its Board of Directors and the Mayor and Common Council of the City of San Bernardino, with concurrence from IVDA, conducted a land acquisition project on the Project Site following the identification of the severe blight conditions and criminal activity associated with the deteriorating multi-family housing stock located on the Project Site. This use served as the baseline for the environmental analysis presented in the Draft EIR.

A complete description of the Project is provided in Chapter 3 of the Draft Environmental Impact Report (Draft EIR) prepared and circulated for public review and comment between December 21, 2011 and February 18, 2012 (State Clearinghouse Number 2011061021).

This Final Environmental Impact Report (Final EIR) has been prepared to describe the disposition of environmental issues raised in the comments received on the proposed Project's Draft EIR. Evaluating the potential impacts of the Project on the environment and responding to comments is an essential part of the environmental review process required under CEQA (California Public Resources Code (PRC) § 21000 et seq.). This Final EIR has been completed in accordance with CEQA and the CEQA Guidelines (Title 14 of Section 15132 of the California Code of Regulations (CCR) (14 CCR § 15132)).

1.2 FINAL EIR REQUIREMENTS

This Final EIR provides responses to comments received on the Draft EIR. Section 15132 of the CEQA Guidelines requires that the Final EIR consist of:

- The Draft EIR or a revision of the draft;
- Comments and recommendations received on the Draft EIR either verbatim or in summary;
- A list of persons, organizations, and public agencies commenting on the Draft EIR;
- The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and
- Any other information added by the Lead Agency.

This Final EIR for the Project has been prepared to provide responses to comments received on the Draft EIR and is to be used in conjunction with, rather than in place of, the Draft EIR. Therefore, the information in this Final EIR, which incorporates the Draft EIR, fulfills state and County CEQA requirements for a complete EIR.

Chapter 3.0 of this Final EIR provides revisions for clarification or amplification of information already in the record. In no instances do the errata provide substantial new information or indicate a new impact or increase in the severity of an impact identified in the Draft EIR.

1.3 USE OF THE EIR IN THE DECISION-MAKING PROCESS

The EIR is an informational document designed to inform the public of the significant environmental effects of a project, identify possible ways to minimize or mitigate the significant effects, and describe reasonable alternatives to the project.

The City will use the EIR, together with economic, social, and technical information, to decide whether to approve the discretionary entitlements being requested. The City has made this Final EIR available prior to hearings on Project approval or denial to provide an opportunity for agency and public review of the complete EIR before decisions are made. In addition, the City provided each of the commenting agencies a CD copy of this Final EIR at least 10 days before the first Planning Commission hearing on the Proposed Project.

This EIR (the Draft EIR as revised by the Final EIR) reviews the environmental consequences of the Project, as described in Chapter 4 of the Draft EIR. The City will use the EIR, along with other information, in its consideration of the applications.

Upon review of the Final EIR, and before rendering decisions on the discretionary actions, the City must certify that:

- The Final EIR has been completed in compliance with CEQA,
- The Final EIR was presented to the decision-making body of the Lead Agency, and
- The information was reviewed and considered before approving the project.

1.4 SIGNIFICANT AND UNAVOIDABLE IMPACTS

The analysis determined that no significant environmental impacts would remain significant after mitigation for any of the issues analyzed in Chapter 4 of the Draft EIR. Therefore, a statement of overriding considerations is not required for the Proposed Project.

2.0 CEQA PUBLIC REVIEW PROCESS

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2.1 PURPOSES OF PUBLIC REVIEW

CEQA Guidelines Section 15201 states:

> *"Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency."*

The City of San Bernardino (City) has invited public input during the EIR preparation process, including providing opportunities to review and comment during the scoping process and during Draft EIR circulation, as discussed further in Section 2.2.

CEQA (California Public Resources Code (PRC) § 21082.2(b)) explains that, "Statements in an environmental impact report and comments concerning an environmental impact report shall not be determinative of whether the project may have a significant effect on the environment." According to CEQA, it is the responsibility of the lead agency decision makers to "determine whether a project may have a significant effect on the environment based on substantial evidence in the record." Substantial evidence is defined as facts, fact-related reasonable assumptions, and expert opinion. "Substantial evidence" does not include arguments, speculation, unsubstantiated opinion or narrative, clearly erroneous evidence, or socioeconomic impacts not related to the physical environment (PRC § 21080(e), 21082.2(a), 21082.2(c), and CEQA Guidelines § 15384).

2.2 PUBLIC REVIEW PERIOD AND NOTIFICATIONS

In accordance with both the specific requirements and the intent of CEQA, the environmental review process for the Project has included substantial opportunities for public and agency review and comment on the environmental evaluations. The public review process for the Project EIR has included the following opportunities:

- A Notice of Preparation (NOP) was prepared for the Project and circulated to all responsible agencies and interested parties beginning on June 8, 2011, for a period of 30 days.
- On June 30, 2011, the City of San Bernardino Redevelopment Agency, hosted a Public Scoping Meeting at the Speicher Park Community Room (Operation Phoenix East), to discuss the scope of the Draft EIR being prepared for the Project.
- A Notice of Completion for the Draft EIR was filed with the State of California Clearinghouse on December 21, 2011, and a Notice of Availability was posted on the City's Internet website and sent to 16 property owners within a 500-foot radius of the Project Site, 13 Native American tribal contacts, and organizations and agencies that previously expressed interest in the Project.

- The Draft EIR was circulated for review and comment between December 21, 2011, and February 18, 2012.
- The Draft EIR was made available for public review at Feldheym Public Library, the City of San Bernardino Community Development Department and Redevelopment Agency offices, and on the City's Internet website.
- Copies of the Draft EIR were provided, upon request, to responsible, trustee, and other federal, state, and local agencies expected or known to have expertise or interest in the resources that the Project may affect.
- Copies of the Draft EIR or notices of the Draft EIR's availability were sent to organizations and individuals with special expertise on environmental impacts and/or who had previously expressed an interest in this Project or other activities.

This Final EIR has been provided to commenting agencies, organizations, and individuals either in hard copy or electronic form on CD prior to Project hearings before City decision makers. Notice of the availability of this Final EIR was also provided to agencies, organizations, and the public who have previously expressed an interest in the Project but did not comment on the Draft EIR.

2.3 SUMMARY OF PUBLIC INPUT

Four comment letters, all from public agencies were received on the NOP and three comment letters (two agencies and one individual/business) were received on the Draft. No comments were received during the Draft EIR Public Scoping Meeting held on June 30, 2011. Each comment letter is included in Appendix A of this Final EIR. A list of the agencies, and individuals who submitted comments is provided in the table of contents of this Final EIR.

Comments addressed a range of issues, including several on the content and analysis of the Draft EIR. Comments addressing the adequacy of the EIR or issues relevant to the environmental review included the following topics:

- Sewer and water mains need to be properly abandoned or protected in place
- Preparation of an economic analysis to address impacts to existing businesses
- Compliance with Native American tribal consultation pursuant to SB 18
- Potential impacts to archaeological deposits or isolated finds
- Cumulative impacts associated with other approved or proposed projects
- Potential threat to human health or the environment
- Potential impacts from contaminated soils
- Identify a mechanism to implement a workplan in the event of a hazardous substance cleanup

Issues raised in comments that did not speak to the adequacy of the Draft EIR or that did not otherwise address environmental issues included:

- Adverse financial implications to existing family-owned hardware business
- Outstanding debt incurred by the Redevelopment Agency
- Public has a right to know where their tax dollars are being spent

Many of the comments submitted were general and asked questions already answered in the Draft EIR evaluations. Other commenters asked for clarification on points addressed in the environmental evaluations.

Comments received indicated that some reviewers disagreed with the Draft EIR conclusions. Where specific points of disagreement were expressed by commenters, detailed responses have been prepared in this document. However, reviewers of the same data may arrive at different conclusions; therefore, the opinions of each commenter are hereby acknowledged.

2.4 APPROACH TO RESPONSES

The Draft EIR was circulated to numerous agencies having jurisdiction over natural resources that could be affected by the Project or having expertise or interest in environmental resources. In addition, interested organizations and individuals received the documents or were notified of their availability. Two agencies and one individual/business submitted specific comments or opinions based on review of the Draft EIR. The majority of comments submitted were general and expressed concern regarding cultural and Native American resources, human health and the environment, and the potential effects of urban decay. The majority of these comments requested clarification on specific points addressed, while some provided suggestions on further minimizing the potential threat to human health and the environment. Comments from the agencies and individual/business are responded to in Section 4.0 of this Final EIR.

3.0 DRAFT EIR ERRATA

3.0 DRAFT EIR ERRATA

3.1 OVERVIEW

In reviewing and responding to comments on the Draft EIR, the City of San Bernardino (City) determined that minor revisions to portions of the Draft EIR text were warranted to provide clarification or amplification of certain information. CEQA Guidelines Section 15088 provides that where the response to comments makes important changes in the information contained in the text of the Draft EIR, the Lead Agency should either revise the text in the body of the EIR or include marginal notes showing that the information is revised in the response to comments.

Section 3.2 of this Final EIR provides revisions to the Draft EIR as deemed necessary based on consideration of issues raised in comments on the Draft EIR. Revisions to the Draft EIR text are shown as *errata*, consisting of an excerpt of the Draft EIR text with changes represented with added text shown in underline (<u>example</u>) and deleted text show in strikethrough (~~example~~).

The City Council recognizes the Final EIR incorporates updated legal and technical information obtained and produced after the Draft EIR was completed, and that the EIR contains additions, clarifications and modifications related to that new information. The information is provided in the Errata and identified through interlineation of the Draft EIR for clarity, and was provided to the Planning Commission and to the public in the Planning Department staff report.

The foregoing new information provided in the Final EIR does not include any changes to the Project or the environmental setting in which the Project is undertaken and no additional discretionary approvals are required as a result of the changes. Rather, the new information merely clarifies, amplifies or makes insignificant modifications reflected primarily in the Executive Summary/Introduction, Section 2.0 (Purpose of EIR), and Section 3.0 (Project Description) of the Draft EIR.

The City Council independently has reviewed and considered the Final EIR and all of its information. The Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA. The new information added to the EIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure or alternative considerably different from others previously analyzed that the Project Applicant declines to adopt that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft EIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR. Thus, recirculation of the EIR is not required.

The City Council finds that the changes and modifications made to the EIR after the Draft EIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code § 21092.1 or CEQA Guidelines § 15088.5.

Severability Provision/Findings

If any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions, shall continue in full force and effect unless amended or modified by the City.

None of the changes provided in Section 3.2 of this Final EIR contain significant new information. The inclusion of this information in the Final EIR does not deprive the public of a meaningful opportunity to comment on a substantial adverse environmental effect of the Project or a feasible way to mitigate or avoid such an effect. The Final EIR does not identify any new significant impacts or substantial increases in the severity of any environmental effects identified in the Draft EIR. One of the errata in the following section introduces a new mitigation measure to the EIR. The mitigation measure is for an impact determined to be less than significant without mitigation and does not change the impact significance determinations. The mitigation measure would not cause new environmental impacts. All of the information added to the Final EIR merely clarifies, amplifies, or makes insignificant modifications in the Draft EIR. Therefore, recirculation of the Draft EIR is not required (see CEQA Guidelines § 15088.5).

3.2 ERRATA

This section contains errata to the Draft EIR. Each erratum or collective set of related errata is preceded by a brief explanation of the purpose of the change to the Draft EIR text.

3.2.1 Errata to Draft EIR Section 1.0 Executive Summary/Introduction (page 1-1)

Explanation

The following text revision addresses the change in lead agency following the California Supreme Court's decision to disband redevelopment agencies. A text revision was also made to further clarify preparation of the parcel map prepared for the Project. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revisions were made to the first and second paragraphs of Section 1.0 Executive Summary/Introduction.

Home Depot U.S.A, Inc. and Mark Development, Inc. (Applicant) have submitted an Application to the City of San Bernardino (City), for a General Plan Amendment (GPA), Zone Change, Tentative Parcel Map, Conditional Use Permit (CUP) and grading and building permits to construct and operate a commercial shopping center with a maximum of 204,720 square feet (SF) of general commercial land uses (the Proposed Project, also called the Highland Marketplace). An Environmental Impact Report (EIR), State Clearinghouse Number 2011061021, has been prepared for the Highland Marketplace. The City of San Bernardino Redevelopment Agency (RDA) was initially designated as the Lead Agency for the Proposed

Project. However, following the California Supreme Court's decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, upholding Assembly Bill 1X 26 (AB 1X 26), redevelopment agencies were effectively disbanded as of February 1, 2012. The City became the successor agency to the RDA (as defined in ABx1 26 and pursuant to City Resolution No. 12-020, on January 9, 2012. As successor agency to the RDA, the City has assumed the role of lead agency for the Proposed Project ~~is the Redevelopment Agency of the City of San Bernardino (RDA), California. Home Depot U.S.A, Inc. and Mark Development, Inc. ("Applicant") have submitted an Application to the RDA, for a General Plan Amendment (GPA), Zone Change, Tentative Parcel Map, Conditional Use Permit (CUP) and grading and building permits to construct and operate a commercial shopping center with a maximum of 204,720 square feet (SF) of general commercial land uses.~~ The Proposed Project for purposes of the EIR includes the activities proposed in Section 3.0 Project Description of the Draft EIR.

The Proposed Project includes an applicant-initiated parcel map to create 7 parcels, and the vacation of local utilities within the ~~simultaneous processing of two Parcel Maps; the first is an RDA initiated Parcel Map to combine existing parcels on the~~ 17.37-acre Project Site, which will be relocated to serve the Proposed Project ~~into one large parcel, and second is an applicant initiated parcel map to create 7 parcels for the specific project.~~

END OF ERRATA

3.2.2 Errata to Draft EIR Section 1.0 Brief Project Description (page 1-7)

Explanation

The following text revision further clarifies the preparation of the parcel map prepared for the Project. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

The following text revisions were made to the second paragraph of "A Brief Project History" on pages 1-6 and 1-7.

The Proposed Project includes an applicant-initiated parcel map to create 7 parcels ranging in size from 0.73 acres to 8.93 acres (see Figure 1-5), and the vacation of local utilities within the 17.37-acre Project Site, which will be relocated to serve the Proposed Project. ~~The Proposed Project includes the simultaneous processing of two Parcel Maps; the first is a RDA initiated Parcel Map to combine existing parcels on the 17.37-acre Project Site into one large parcel; the second is an Applicant initiated parcel map to create 7 parcels for the specific project, ranging in size from 0.73 acres to 8.93 acres (See Figure 1-5).~~ The Proposed Project would also require a Master Sign Program, Rezone and General Plan Amendment (GPA) to change the existing land use designation from Public Commercial Recreation (PCR) to Commercial.

END OF ERRATA

3.2.3 Errata to Draft EIR Section 1.0 Initial Study Impacts Found to be Significant (page 1-16)

Explanation

During preparation of this Final EIR, it was determined that the economic impact study called out in the Draft EIR, did not clarify the specific type of study and its preparer. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revisions were made to the first sentence of the third paragraph on page 1-16.

Additionally, the Applicant requested that the City prepare an economic analysis to determine the Proposed Project's potential for contribution to urban decay. The~~is~~ Retail Impact ~~S~~study prepared by Stanley R. Hoffman Associates was used in preparation of the Draft EIR section entitled Economic Impact – Urban Decay.

END OF ERRATA

3.2.4 Errata to Draft EIR Sections 2.2 Authority and 2.3 Lead Agency (page 2-5)

Explanation

The following text revision addresses the change in lead agency following the California Supreme Court's decision to disband redevelopment agencies. The errata also revises capitalization to be consistent with the entire document. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revisions were made to the fourth paragraph of Section 2.2 Authority on page 2-5.

During the development review process, the City must consider implementation of all feasible mitigation measures and alternatives addressed in the EIR to substantially lessen anticipated environmental impacts of the project. As mandated by the CEQA Guidelines, this EIR reflects the independent judgment of the ~~Redevelopment Agency of the~~ City of San Bernardino, as successor agency to the City of San Bernardino Redevelopment Agency (RDA) regarding the P~~p~~roposed P~~p~~roject, in accordance with CEQA Guidelines Section 15084(e)).

The following text revisions were made to the first paragraph of Section 2.3 Lead Agency on page 2-5.

2.3 LEAD AGENCY

As successor agency to the RDA, ~~T~~the City ~~RDA~~ of San Bernardino is the lead agency for environmental review of the Proposed Project, as defined in section 15051(b) of the Guidelines for implementing the California Environmental Quality Act (CEQA), which states "If the project is to be carried out by a non-governmental person, the ~~L~~lead ~~A~~agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole." Additionally, other agencies may have authority over resources that may be affected by the P~~p~~roject, or may be required to issue permits or give other input on implementation of the P~~p~~roject. These "responsible agencies" include the California Department of Transportation (CalTrans), Regional Water Quality Control Board (RWQCB), and the South Coast Air Quality Management District (SCAQMD).

END OF ERRATA

3.2.5 Errata to Draft EIR Section 2.6 Required Permits and Approvals (page 2-7)

Explanation

The following text revision addresses the change in lead agency following the California Supreme Court's decision to disband redevelopment agencies. The revisions are consistent with the Project as evaluated in the Draft EIR. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revisions were made to the sixth and seventh paragraphs of Section 2.6 Required Permits and Approvals on page 2-7.

The Environmental Impact Report (EIR) (State Clearinghouse No. 2011061021) was ~~has been~~ prepared initially by the RDA and then by the City as the successor agency to the RDA to evaluate the environmental effects of the proposed Highland Marketplace, a commercial development on an approximate 17.37-acre site.

As successor agency to ~~T~~the RDA, the City is the lead agency as defined in Section 15051(b) of the Guidelines for implementing California Environmental Quality Act (CEQA), which states "[i]~~I~~f the project is to be carried out by a non-governmental person, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole."

END OF ERRATA

3.2.6 Errata to Draft EIR Section 2.7 Project Under Review (page 2-7)

Explanation

The following text revision addresses the change in lead agency following the California Supreme Court's decision to disband redevelopment agencies. The revisions are consistent with

the Project as evaluated in the Draft EIR. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revisions were made to the fourth paragraph of Section 2.7 Project Under Review on page 2-7.

The Project Site is currently owned by the San Bernardino Economic Development Corporation (SBEDC), a 501(c)(3)~~C3~~ non-profit corporation ~~organization operating in tandem with the RDA, and is the subject of a Disposition and Development Agreement (DDA) between RDA and the Project Applicant~~, and is subject to a purchase and sale agreement with the Project Applicant. ~~The DDA is being processed concurrently with the Project entitlements.~~ The Project Site was initially acquired by the Redevelopment Agency of the City of San Bernardino (RDA) over a period of time starting in 1993, to address conditions of blight that existed in the Arden-Guthrie neighborhood and particularly on the Project Site. The primary purpose of the RDA's acquisition of the properties comprising the Project Site, and subsequent demolition of the existing residential structures and relocation of residents, was to promote and foster a commercially viable and economically sustainable plan of redevelopment and reuse of the Project Site and to prevent the spread of blight and related crime into other surrounding neighborhoods and communities. The RDA and the Project Applicant have been in negotiations since 2007 for the acquisition and commercial development of the Project Site. The RDA acquired the last properties of the Project Site in late 2008, and demolition of the residential structures was completed in or around 2010. Ownership of the project site was transferred to San Bernardino Economic Development Corporation in 2011 following the introduction of state legislation calling for the elimination of Redevelopment Agencies. ~~The~~ ~~c~~Certain utilities and other infrastructure that served the residential neighborhood are still present on the Project Site and will be replaced to serve the Proposed Project.

END OF ERRATA

3.2.7 Errata to Draft EIR Section 2.8.3 Issues Raised in Comments on the NOP (page 2-29)

Explanation

The section is revised to clarify the specific "city" addressed in the second paragraph of Section 2.8.3. After circulation of the Draft EIR, it was determined that the reference to "city" could refer to the City of San Bernardino. The revisions are consistent with the Project as evaluated in the Draft EIR. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revisions were made to the second paragraph of Section 2.8.3 Issues Raised in Comments on the NOP on page 2-29.

- City of Highland
  - The City of Highland requested that an economic analysis be included in the EIR to identify potential impact to the existing businesses in the area (inclusive of the City of Highland within a minimum one-mile radius of the site) and discuss the possible loss and closing of businesses. The City of Highland ~~City's~~ Engineering Division also requested a copy of the Project's Traffic Study.

END OF ERRATA

3.2.8 Errata to Draft EIR Section 2.8.6 Final EIR and 2.9 Acronyms (page 2-12)

Explanation

The following text revisions address the change in lead agency following the California Supreme Court's decision to disband redevelopment agencies. The revisions are consistent with the Project as evaluated in the Draft EIR. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revision was made to the second paragraph of Section 2.8.6 Final EIR on page 2-12.

The Final EIR will serve as the CEQA compliance document for the City, as successor agency to the Agency ~~RDA~~ and any other agencies that may be responsible for review of the proposed project and issuance of required permits (see Section 1.2.2).

END OF ERRATA

3.2.9 Errata to Draft EIR Section 3.1.1 Purpose and Need for Project (page 3-1)

Explanation

The following text revision addresses the change in lead agency following the California Supreme Court's decision to disband redevelopment agencies. The revisions are consistent with the Project as evaluated in the Draft EIR. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revisions were made to the fourth paragraph of Section 3.1.1 Purpose and Need for Project page 3-1.

The Project Site is currently owned by the San Bernardino Economic Development Corporation (SBEDC), a 501(c)(3) ~~C3~~ non-profit corporation, ~~organization operating in tandem with the RDA,~~ and is the subject of a purchase and sale agreement ~~Disposition and Development Agreement (DDA)~~ between SBEDC~~RDA~~ and the Project Applicant. ~~The DDA is being processed concurrently with the Project entitlements.~~ The Project Site was initially acquired by the Redevelopment Agency of the City of San Bernardino (RDA) over a period of time starting in 1993, to address conditions of blight that existed in the Arden-Guthrie neighborhood and particularly on the Project Site. The primary purpose of the RDA's acquisition of the properties comprising the Project Site, and subsequent demolition of the existing residential structures and relocation of residents, was to promote and foster a commercially viable and economically sustainable plan of redevelopment and reuse of the Project Site and to prevent the spread of blight and related crime into other surrounding neighborhoods and communities. The RDA and the Project Applicant were ~~have been~~ in negotiations starting in ~~since~~ 2007 for the acquisition and commercial development of the Project Site. The RDA acquired the last properties of the Project Site in late 2008, and demolition of the residential structures was completed in or around 2010. Ownership of the Project Site was transferred to SBEDA~~an Bernardino Economic Development Corporation~~ in 2011, following the introduction of state legislation calling for the elimination of Redevelopment Agencies. The certain utilities and other infrastructure that served the residential neighborhood are still present on the Project Site and will be replaced to serve the Proposed Project.

END OF ERRATA

3.2.10 Errata to Draft EIR Section 3.3.3 Legal Description (page 3-8)

Explanation

The following text revision clarifies the logistics of the preparation of the parcel map prepared for the Project. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revision was made to the second paragraph of Section 3.3.3 Legal Description on page 3-8.

The Proposed Project includes an applicant-initiated parcel map to create 7 parcels, and the vacation of local utilities within the 17.37-acre Project Site, which will be relocated to serve the Proposed Project. ~~The Proposed Project includes the simultaneous processing of two Parcel Maps; the first is an RDA initiated Parcel Map to combine existing parcels on the 17.37-acre Project Site into one large parcel, and second is an applicant initiated Parcel Map to create 7 parcels for the specific project.~~

END OF ERRATA

3.2.11 Errata to Draft EIR Section 3.3.4 History of the Project Site (page 3-8)

Explanation

The following text revision addresses the change in lead agency following the California Supreme Court's decision to disband redevelopment agencies. The revisions are consistent with the Project as evaluated in the Draft EIR. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revision was made to the second paragraph of Section 3.3.4 History of the Project Site on page 3-8.

The Project Site lies within the Redevelopment Project Area of the Inland Valley Development Agency (IVDA) and is subject to the Project Area's governing redevelopment plan and its rules for Owner Participation as adopted by the IVDA. The City of San Bernardino Economic Development ~~Redevelopment~~ Corporation ~~of the City of San Bernardino~~ (SBEDC)~~RDA~~, acting on the direction of its Board of Directors and the Mayor and Common Council of the City, with concurrence from IVDA, conducted a land acquisition project on the Project Site following the identification of the severe blight conditions and criminal activity associated with the deteriorating multi-family housing stock located on the Project Site. This use will serve as the baseline for the environmental analysis for this EIR.

END OF ERRATA

3.2.12 Errata to Draft EIR Section 3.4 Project Description (page 3-11)

Explanation

The following text revision clarifies the logistics of the preparation of the parcel map prepared for the Project, and also revises capitalization to be consistent with the entire document. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following revisions were made to the second and third paragraphs of Section 3.4 Project Description.

The Proposed Project includes an applicant-initiated parcel map to create 7 parcels ranging in size from approximately 0.73 acres to 8.93 acres (see Figure 3-5, Tentative Parcel Map), and the vacation of local utilities within the 17.37-acre Project Site, which will be relocated to serve the Proposed Project. ~~The Proposed Project includes the simultaneous processing of two Parcel Maps; the first is an RDA initiated Parcel Map to combine existing parcels on the 17.37-acre Project Site into one large parcel, and second is an applicant initiated Parcel Map to create 7 parcels for the specific project ranging in size from 0.73 acres to 8.93 acres (see Figure 3-5, Tentative Parcel Map).~~ The Proposed Project also would require a Master Sign Program, Rezone

and GPA to change the existing land use designation from Public Commercial Recreation (PCR) to Commercial General (CG-1), and approval of a CUP to allow for increased building heights for architectural elements and multi-tenant use of the Project Site, potentially including a gas station with 24 hour operation and alcohol sales, a bank with drive thru, fast food with drive thru and sit down restaurant with alcohol sales.

The P~~p~~roject would have an east-west orientation along Highland Avenue with major tenants facing north toward Highland Avenue. The home improvement center would be located at the southwest corner of the site, and the other major retail structure with attached shops is located near the southeast corner of the Project S~~s~~ite. The remaining general commercial pad buildings are detached and are located primarily along the northern portion of the Project Site. In addition to the major tenants, the land uses may include two drive-through restaurants, a drive-through bank, and a gas station.

END OF ERRATA

3.2.13 Errata to Draft EIR Section 4.5.4.4 Issues Determined to Have Potentially Significant Impacts (page 4.5-9 and 4.5-10)

Explanation

Based on comments received on the Draft EIR, it was determined that a specific statement regarding potential remediation of the Project Site, if necessary, was not called out in the Draft EIR. The addition of new text, a new mitigation measure, and renumbering of mitigation measures do not affect the impact analysis or the severity of impacts identified in the Draft EIR. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text revisions to the sections Mitigation Measures, and Level of Significance after Mitigation have been made, and a new Mitigation Measure HM-3 has been added on page 4.5-8.

~~Mitigation: No mitigation required.~~

Mitigation Measures

To ensure the provision of the highest level of protection to the health and safety of City of San Bernardino residents and the environment, the following mitigation measures shall be implemented for Project Site businesses as applicable.

Mitigation Measure HM-3:

If shallow soil is excavated and removed from the Site, representative samples shall be collected and analyzed to determine appropriate disposal options for the soil. Any required

investigation and/or remediation for the Site shall be supervised by the County of San Bernardino Hazardous Materials Division.

Level of Significance After Mitigation

Implementation of Mitigation Measures HM-1, ~~and~~ HM-2, and HM-3 would reduce potentially significant impacts to a less than significant level.

The following text revision was added to the first paragraph following Impact Statement HM-2.

The transportation and delivery of gasoline and diesel fuel is highly regulated by the United States Department of Transportation, California Department of Transportation, SCAQMD, and compliance with California Fire Code, Title 24, Part 9, Chapter 22 (locally codified through the Uniform Fire Code) which specifies the rules and regulations for motor fuel dispensing facilities and regulates the operational requirements necessary for both bulk fuel delivery to the gas station and fuel delivery to the individual vehicles. Adherence to the required federal, State, and local regulations would ensure that significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials would be reduced to a less than significant level. In accordance with State regulations, any remediation necessary would be conducted under a workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup.

The following text was added after the third paragraph following Impact Statement HM-3.

Due to past agricultural use at the Project Site, shallow soil may contain residual concentrations of various pesticides, herbicides, and/or insecticides. However, the residual pesticide concentrations are expected to be low and would not pose a significant threat to human health or the environment. Residual pesticide concentrations, if any, would likely have been minimized by grading operations during the development of the previous land use (apartments), and further during the current proposed redevelopment grading. Site preparation and earthwork would require soils be brought to the Site. However in the event soils are removed and deposited off-site, implementation of Mitigation Measure HM-3 would ensure potential impacts are reduced to a less than significant level.

END OF ERRATA

3.2.14 Errata to Draft EIR Section 6.0 Alternatives (page 6-1)

Explanation

After circulation of the Draft EIR, it was determined that the court case in the first paragraph of Section 6.1 was not referenced in italic. The clarification of this information in the Final EIR through this errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text in the first paragraph of Section 6.1 was revised to be italicized, and is underlined with a dashed line.

6.1 INTRODUCTION

This section evaluates alternatives to the Proposed Project. The CEQA Guidelines Section 15126.6 outlines the discussion of alternatives to a Proposed Project as follows: "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible." It further states that the lead agency is responsible for selecting a range of alternatives examined and must publically disclose its reasoning for selecting those alternatives. "There is no iron clad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason" (*Citizens of Goleta Valley vs. Board of Supervisors* [1990] 52 Cal. 3d 553 and *Laurel Heights Improvement Association vs. Regents of the University of California* [1998] 41 Cal. 3d 376). Thus, the EIR needs to evaluate those alternatives necessary to permit a reasoned choice and should not consider alternatives with effects that cannot be reasonably ascertained and whose implementation is remote and speculative.

END OF ERRATA

3.2.15 Errata to Draft EIR Section 6.1.1 Project Description (page 6-2)

The following text revision clarifies the logistics of the preparation of the parcel map prepared for the Project, and also revises capitalization to be consistent with the entire document. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text was revised in the second and third paragraphs of Section 6.1.1 Project Description.

The Proposed Project includes an applicant-initiated parcel map to create 7 parcels ranging in size from approximately 0.73 acres to 8.93 acres, and the vacation of local utilities within the 17.37-acre Project Site, which will be relocated to serve the Proposed Project. ~~The Proposed Project includes the simultaneous processing of two Parcel Maps; the first is a Redevelopment Agency of the City of San Bernardino (RDA) initiated Parcel Map to combine existing parcels on the 17.37-acre Project Site into one large parcel, and second is an applicant initiated parcel map to create 7 parcels for the specific project ranging in size from 0.73 acres to 8.93 acres.~~ The Proposed Project also would require a Master Sign Program, Rezone and General Plan Amendment (GPA) to change the existing land use designation from Public Commercial

Recreation (PCR) to Commercial General (CG-1), and approval of a Conditional Use Permit (CUP) to allow for increased building heights for architectural elements and multi-tenant use of the Project Site, potentially including a gas station with 24 hour operation and alcohol sales, a bank with drive thru, fast food with drive thru and sit down restaurant with alcohol sales.

The P~~p~~roject would have an east-west orientation along Highland Avenue with major tenants facing north toward Highland Avenue. The home improvement center would be located at the southwest corner of the site, and the other major retail structure with attached shops is located near the southeast corner of the site. The remaining general commercial pad buildings are detached and are located primarily along the northern portion of the Project Site. In addition to the major tenants, the land uses may include two drive-through restaurants, a drive-through bank, and a gas station.

END OF ERRATA

3.2.16 Errata to Draft EIR Section 6.3 Alternative Considered for Evaluation (page 6-4)

The following text revision addresses the change in lead agency following the California Supreme Court's decision to disband redevelopment agencies. The revisions are consistent with the Project as evaluated in the Draft EIR. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text was revised in the second paragraph of Section 6.3 Alternatives Considered for Evaluation.

The Lead Agency ~~RDA~~, has incorporated this rationale in its evaluation for selecting the alternatives presented. The following alternatives were considered and are included in the analysis herein:

END OF ERRATA

3.2.17 Errata to Draft EIR Section 7.1 List of EIR Preparers (page 7-1)

The following text revision addresses the change in lead agency following the California Supreme Court's decision to disband redevelopment agencies. The revisions are consistent with the Project as evaluated in the Draft EIR. This errata does not add significant new information to the EIR and does not require recirculation of the Draft EIR (see CEQA Guidelines § 15088.5).

ERRATA

The following text was revised in the first paragraph of Section 7.1 List of EIR Preparers.

7.0 REFERENCES

7.1 LIST OF EIR PREPARERS

CITY OF SAN BERNARDINO

John Oquendo, Planner II

END OF ERRATA

4.0 COMMENTS AND RESPONSES

4.0 COMMENTS AND RESPONSES

This chapter of the Final EIR provides specific responses to each issue raised in comments on the Draft EIR.

The public comment period for the Draft EIR began December 21, 2011 and ended February 18, 2012. A total of three comment letters were received. These are listed in Table 4-1 and are identified by a number. Individual comments within each letter are identified with a unique numeric indicator. For example the comment letter from the Department of Toxic Substances Control, is Letter 2. The letter contains four comments identified as comments 2-1 through 2-4. All comment letters are provided in their original form in Appendix A, Comment Letters Received on the Draft EIR.

Table 4-1
Comment Letters Received on the Draft Environmental Impact Report

LETTER	Name	DATE ON LETTER
1	State of California, Native American Heritage Commission	December 28, 2011
2	California Department of Toxic Substance Control	January 30, 2012
3	K&L Hardware	February 17, 2012

Letter No.1
Native American Heritage Commission, December 28, 2011

Comment 1-1: The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604). The court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites. The NAHC wishes to comment on the proposed project.

This project is slated for a General Plan Amendment; therefore is subject to California Government Code §65352.3 *et seq.*

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ...objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect.

Response 1-1: This is an introductory comment that does not address the adequacy of the Draft EIR. No further response is warranted.

Comment 1-2: The NAHC Sacred Lands File (SLF) search resulted as follows: **Native American cultural resources <u>were not identified</u>** within the project area identified. Also, the absence of archaeological resources does not preclude their existence. . California Public Resources Code §§5097.94 (a) and 5097.96 authorize the NAHC to establish a Sacred Land Inventory to record Native American sacred sites and burial sites. These records are exempt from the provisions of the California Public Records Act pursuant to. California Government Code §6254 (r). The purpose of this code is to protect such sites from vandalism, theft and destruction. The NAHC "Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Response 1-2: The City concurs that our research found no Native American cultural resources within the project area and that the asbsence of finding resources does not preclude their existence. Mitigation measures CR-1 through CR-3 address actions to be taken in the event resources are discovered in order to reduce any potential cultural/archeological impacts to a less than significant level (see Draft EIR, pp 4.3-7 and 4.3-8).

Comment 1-3: Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Consultation with tribes and interested Native American consulting parties, on the NAHC list, if the project is under federal jurisdiction, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Response 1-3: With regard to Native American tribal consultation pursuant to SB 18 (defined in Government Code §65450 et seq.), McKenna et al. contacted the Native American Heritage Commission in Sacramento and acquired the most current listing for Native American representatives within the County. The list provided various Native American group affiliations. A request for concerns and issues was mailed to each of the individuals. Additionally, the City provided a Notice of Preparation to the appropriate tribal contacts in June of 2011. McKenna et al. also contacted Anthony Morales, Chairperson for the Gabrielino/Tongva, and Ann Brierty, Cultural Resources Director for the Serrano, Highland to inquire into the relative sensitivity for the area to yield prehistory remains. No responses were received by either McKenna et al or the City of San Bernardino from any of the representatives. In December 2011, the City requested a second response by forwarding the Draft EIR to the NAHC and the tribal contacts that received the NOP; comment/correspondence was not received from any local tribes. Therefore, it is concluded that the City complied with all existing regulations, there were

no so significant concerns about the proposed project location, and the correct determination was made that the potential for prehistoric resources is considered very low.

Comment 1-4: Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Response 1-4: No archaeological deposits or isolated finds were identified during the cultural resources survey. No plant resources of potential value for Native Americans were observed in the Project Site. Nonetheless, because buried cultural resources that may be unique or otherwise significant may be uncovered during the site grading and excavation activities, this impact is potentially significant. Therefore, the mitigation measures discussed above in Response 1-2 have been incorporated into the Project.

Comment 1-5: Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'.

Response 1-5: See Responses to Comments 1-2 and 1-4.

Comment 1-6: To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Response 1-6: The lead agency considers the initial consultation in June, 2011, and the failure to receive any formal requests for consultation from the identified tribal entities to be compliant with the original requirement for consultation and the subsequent transmittal of the document(s) pertaining to the project to be "directory," as noted, but not mandatory. Nonetheless, on December 20, 2011, the documents were forwarded to the individuals/tribes referenced by the Heritage Commission. With the receipt of these documents (presumed to be January 1, 2012), the 45-day review period ended in mid-late February, 2012. Therefore, the City determines its review of the Proposed Project is in full compliance with Government Code 65352(a) (9), 65352(a) (10) (b) and 65352(a) (10) (c).

Comment 1-7:

Pechanga Band of Mission Indians
Paul Macarro, Cultural Resources Manager
P.O. Box 1477 Luiseno
Temecula , CA 92593
(951) 770-8100
pmacarro@pechanga-nsn.gov
(951) 506-9491 Fax

Gabrielino Tongva Nation
Sam Dunlap, Chairperson
P.O. Box 86908 Gabrielino Tongva
Los Angeles , CA 90086
samdunlap@earthlink.net

(909) 262-9351 - cell

Ramona Band of Cahuilla Mission Indians
Joseph Hamilton, Chairman
P.O. Box 391670 Cahuilla
Anza , CA 92539
admin@ramonatribe.com
(951) 763-4105
(951) 763-4325 Fax

Morongo Band of Mission Indians
Michael Contreras, Cultural Heritage Prog.
12700 Pumarra Road Cahuilla
Banning , CA 92220 Serrano
(951) 201-1866 - cell
mcontreras@morongo-nsn.gov
(951) 922-0105 Fax

San Manuel Band of Mission Indians
James Ramos, Chairperson
26569 Community Center Drive Serrano
Highland , CA 92346
(909) 864-8933
(909) 864-3724 - FAX
(909) 864-3370 Fax

San Manuel Band of Mission Indians
Ann Brierty, Policy/Cultural Resources Departmen
26569 Community Center. Drive Serrano
Highland , CA 92346
(909) 864-8933, Ext 3250
abrierty@sanmanuel-nsn.gov
(909) 862-5152 Fax

Gabrieleno/Tongva San Gabriel Band of Mission
Anthony Morales, Chairperson
PO Box 693 Gabrielino Tongva
San Gabriel , CA 91778
GTTribalcouncil@aol.com
(626) 286-1632
(626) 286-1758 - Home
(626) 286-1262 -FAX

Serrano Nation of Indians
Goldie Walker
P.O. Box 343 Serrano
Patton , CA 92369

(909) 862-9883

Ernest H. Siva
Morongo Band of Mission Indians Tribal Elder
9570 Mias Canyon Road Serrano
Banning , CA 92220 Cahuilla
siva@dishmail.com
(951) 849-4676

SOBOBA BAND OF LUISENO INDIANS
Joseph Ontiveros, Cultural Resource Department
P.O. BOX 487 Luiseno
San Jacinto , CA 92581
jontiveros@soboba-nsn.gov
(951) 663-5279
(951) 654-5544, ext 4137

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2011061021; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the Highland Marketplace Project; located in the City of San Bernardino; San Bernardino County, California.

Response 1-7: The list of tribal contacts provided is noted and was checked with the Lead Agency's current list to ensure proper deliver of notifications.

Letter No.2
Department of Toxic Substances Control, January 30, 2012

Comment 2-1: The Department of Toxic Substances Control (DTSC) has received your submitted Draft Environmental Impact Report (EIR) for the above-mentioned project. The following project description is stated in your document: "The Proposed Project is the development of a maximum of 204,720 square feet (SF) of general commercial land uses on a rectangular-shaped site of approximately17.37-acres located at the southwest corner of Highland Avenue and Arden Avenue in the northeastern section of the City of San Bernardino within southwestern San Bernardino County. Specifically the Project Site is located on the south side of Highland Avenue, on the west side of Arden Avenue, and on the north side of 20th Street. Land uses surrounding the site include commercial development to the north, residential development to the west, I-210 eastbound on-ramp and residential development to the east, and an elementary school to the south. The Project Site has historically been developed with residential apartment buildings, primarily four-plexes, totaling 296 units. The Project Site is currently designated Commercial Recreation in the City's General Plan and zoned Public Commercial Recreation (PCR)".

Response 2-1: This is an introductory comment that does not address the adequacy of the Draft EIR. No further response is warranted.

Comment 2-2: DTSC provided comments on the project Notice of Preparation (NOP) on July 8, 2011; some of those comments have been addressed in the submitted draft EIR. Please ensure that all those comments will be addressed in the final EIR.

Response 2-2: The July 8, 2011 comment letter contained a total of ten comments. To ensure DTSC is provided a response to all concerns/issues provided in their NOP comment letter, all comments are addresseed herein.

Comment NOP-1: The EIR should evaluate whether conditions within the Project area may pose a threat to human health or the environment. Following are the databases of some of the regulatory agencies:

- National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).

- Envirostor (formerly CalSites): A Database primarily used by the California Department of Toxic Substances Control, accessible through DTSC's website (see below).
- Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
- Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
- Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
- GeoTracker: A List that is maintained by Regional Water Quality Control Boards.
- Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
- The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).

Response NOP-1: A Phase I Environmental Site Assessment was performed on the subject property by Stechmann Geoscience, Inc., in March of 2011 According to the Phase I Environmental Site Assessment and as concluded in the Draft EIR (Section 4.5, pg. 4.5-6), the Project Site was not listed in any of the databases for hazardous sites searched. Therefore, less than significant impacts are anticipated.

Comment NOP-2: The EIR should identify the mechanism to initiate any required investigation and/or remediation for any site within the proposed Project area that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would require an oversight agreement in order to review such documents.

Response NOP-2: Section 4.5 Hazards and Hazardous Materials the Draft EIR has been revised to include an additional mitigation measure that would ensure potential impacts from contaminated soils are reduced to a less than significant level. Please refer to the Errata Section of this Final EIR and the Mitigation Monitoring Reporting Program (Mitigation Measure HM-1).

Comment NOP-3: Any environmental investigations, sampling and/or remediation for a site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found above regulatory standards should be clearly summarized in a table. All closure, certification or remediation approval reports by regulatory agencies should be included in the EIR.

Response NOP-3: The Draft EIR has been revised (see errata sheet) to include the following sentence on page 4.5-9:
"In accordance with State regulations, any remediation necessary would be conducted under a workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup."

Comment NOP-4: If buildings, other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should also be conducted for the presence of other hazardous chemicals, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints (LPB) or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.

Response NOP-4: As discussed in the Hazardous Materials Section of the Draft EIR, a majority of structures and materials associated with the previous on-site land use (i.e., apartments, internal streets, and concrete areas) were removed from the Project Site in accordance with applicable regulations, with the exception of curb and gutter, and fire hydrants. In the event additional concrete or other materials are demolished at the Project Site, any contaminants present shall be remediated in compliance with California environmental regulations and policies.

Comment NOP-5: Future project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination.

Response NOP-5: The addition of new Mitigation Measure HM-3 would ensure the presence of contaminated soil would be addressed accordingly. If during construction of the project, soil contamination is suspected, construction in the area would cease and appropriate Health and Safety procedures would be implemented as required under State regulations. If it is determined that contaminated soil or other remediation will be necessary, such activities are required to conform to the California Hazardous Waste Control laws and the contractor is required to contact the appropriate local and State government agencies to provide appropriate regulatory oversight.

Comment NOP-6: Human health and the environment of sensitive receptors should be protected during any construction or demolition activities. If necessary, a health risk assessment overseen and approved by the appropriate government agency should be conducted by a qualified health risk assessor to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.

Response NOP-6: The addition of new Mitigation Measure HM-3 would ensure potential impacts to sensitive receptors, including residential development to the west, and elementary schools to the south are reduced to a less than significant level.

Comment NOP-7: If the site was used for agricultural, livestock or related activities, onsite soils anc groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted under the oversight of and approved by a government agency at the site prior to construction of the project.

Response NOP-7: Implementation of new Mitigation Measure HM-3 would ensure proper investigation and implementation of remedial actions, if necessary during development of the site.

Comment NOP-8: If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22; Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.

Response NOP-8: Proposed uses on-site may include a gas station which would involve the use, storage and transport of hazardous materials. Petroleum hazardous waste stored and fueled from the Project Site would be controlled through California Hazardous Waste Control Law and Regulations, and would be reduced to a less than significant level with implementation of Mitigation Measures HM-1 and HM-2 as included in Section 4.5, page 4.5-8 of the Draft EIR.

Comment NOP-9: DTSC can provide cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

Response NOP-9: Comment noted. In the event remediation of the Project Site is required, the County of San Bernardino Hazardous Materials Division would supervise cleanup activities as stated in Mitigation Measure HM-3.

Comment NOP-10: Also, in future CEQA document, please provide your e-mail address, so DTSC can send you the comments both electronically and by mail.

Response NOP-10: The contact person's title and e-mail address were inadvertently excluded from the Draft EIR title page. However, the Notice of Availability/Notice of Completion contained detailed contact information.

Comment 2-3: DTSC can provide cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

Response 2-3: See Response to Comment NOP-9.

Comment 2-4: If you have any questions regarding this letter, please contact Rafiq Ahmed, Project Manager, at rahmed@dtsc.ca.gov, or by phone at (714) 484-5491.

Response 2-4: This comment letter and appropriate contacts will be maintained at the City of San Bernardino in the Project's file. In the event of questions, the DTSC shall be contacted.

Letter No.3
K&L Hardware, February 17, 2012

Comment 3-1: Hello my name is Brian Harris. I'm writing you in concern of the proposed Home Depot at the corner Highland and Arden. My family has owned and operated K & L Hardware for thirty-three years. We are a respected establishment that is hailed in our community as a provider of goods and services. We have served our customers well and provided them with reliability and knowledge. The business is an asset to the community and to the employee's who work here. In our local community we are a household name. This business has grown exponentially throughout the years and has expanded its staff from five to sixteen. Customers and employees alike rely on us to provide them with opportunity and growth.

Response 3-1: This is an introductory comment that does not address the adequacy of the Draft EIR. No further response is warranted.

Comment 3-2: It is our position that this proposed Home Depot would cause adverse financial implications on our business. The distance between the proposed site and us is less than one mile (.08 mile). In the EIR (Environmental Impact Report) my business, my livelihood, was described as a relatively small neighborhood - serving hardware store and brought up only briefly in the Urban Decay portion of the report. A small blip barely recognizable for the thirty-three years of due diligence it has put forth to make a name for itself.

Response 3-2: The California Environmental Quality Act (CEQA) sets statewide policies that require both state and local agencies to consider the environmental consequences of decisions that involve changes to the environment. The purposes of CEQA are to:

1. Provide information about the environmental effects of projects.
2. Identify ways that environmental damage can be avoided or reduced.
3. Prevent significant environmental damage through mitigation measures or alternatives; and

4. Disclose the reasons why a project was approved despite significant environmental impacts.

Discussion of project-related economic damage is not required by CEQA. Economic issues are only addressed if they could potentially cause physical damage (e.g. if a roadway project would cause a business area to be inaccessible and the resultant loss of taxes would reduce an agency's ability to maintain environmental protection). Although not required by CEQA, public costs and revenues of a project may be analyzed concurrently with environmental review. The City of San Bernardino requested the preparation of an Urban Decay analysis.

Based on the performance measure of sales per square foot for Building Material stores serving the Retail Trade Area (RTA), it was concluded in the October 2011 Retail Impact Study prepared by Stanley R. Hoffman Associates that the supply of competitive stores would not experience significant vacancies that would persist over the long-term.

Comment 3-3: I'm curious as to how the City of San Bernardino can continue forward with this project now that the state of California has dissolved Redevelopment Agencies? Home Depot has not broken ground yet. Where's the money coming from? Isn't there outstanding debt incurred by the Redevelopment Agency that needs to be addressed first?

Response 3-3: Approval of the Proposed Project does not solely rely on the City of San Bernardino Redevelopment Agency. The City of San Bernardino is the CEQA lead agency, and the Project has been reviewed by appropriate City departments during the Development/Environmental Review Committee meetings.

Although Redevelopment Agencies are generally known for providing funds for redevelopment projects, the Proposed Project was never designated to receive funds for redeveloping the Project Site. The Project occurs within an area designated for redevelopment and is the subject of a Disposition and Development Agreement (DDA) between RDA and the Project Applicant (see Response 3-5 below).

Comment 3-4: **The successor agency would receive the redevelopment agency's existing balances and future shares of tax increment revenue <u>to pay the agency's debts</u>…. While enactment of the Governor's proposal as urgency legislation would prohibit redevelopment**

agencies from entering into additional obligations, existing debts would need to be paid.

Response 3-4: The Proposed Project is not a part of the Redevelopment Agency's existing debt, which is described in greater detail in Responses 3-5 and 3-6 below. Therefore the Project would not result in any additional dept or obligations for the successor agency.

Comment 3-5: If the redevelopment agency no longer exists, who's approving the pursuance of this project? What is the legality of a city funded development that has not been approved by the public. If I'm not mistaken, legally it is up to the voters to decide if they want their tax revenue to be spent on this proposed development.

Response 3-5: The Project Site is currently owned by the San Bernardino Economic Development Corporation (SBEDC), a 501(c)(3) non-profit corporation, and is subject to a purchase and sale agreement with the Project Applicant. The Project Site was initially acquired by the Redevelopment Agency of the City of San Bernardino (RDA) over a period of time starting in 1993, to address conditions of blight that existed in the Arden-Guthrie neighborhood and particularly on the Project Site. The primary purpose of the RDA's acquisition of the properties comprising the Project Site, and subsequent demolition of the existing residential structures and relocation of residents, was to promote and foster a commercially viable and economically sustainable plan of redevelopment and reuse of the Project Site and to prevent the spread of blight and related crime into other surrounding neighborhoods and communities. The RDA and the Project Applicant have been in negotiations since 2007 for the acquisition and commercial development of the Project Site. The RDA acquired the last properties of the Project Site in late 2008, and demolition of the residential structures was completed in or around 2010. Ownership of the project site was transferred to San Bernardino Economic Development Corporation in 2011 following the introduction of state legislation calling for the elimination of Redevelopment Agencies.

The Proposed Project has been processed like any other development project Applications that are received by the City. The Project Applicant has been responsible for submittal and payment of all application, processing and review fees. No funds or incentives have been applied to the Project for development within a redevelopment area, and therefore no tax revenues or other public funds have been used or provided to the Project Applicant.

Comment 3-6: Tax increment revenues that currently go to redevelopment agencies would be redirected to retire redevelopment debts and contractual obligations and to fund other local government services. In place of redevelopment, the administration indicates that it will propose a constitutional amendment to allow local voters to approve tax increases and general obligation bonds for economic development purposes by a 55 percent majority.

Response 3-6: Yes, existing contractual obligations will require payment; however, the Proposed Project, as stated in Response 3-5 above, is not a part of any contractual obligation and therefore no existing or future funds are required for its approval or development.

Comment 3-7: I feel there are questions that need to be addressed here both legally and financially. The public has a right to know where their tax dollars are being spent.

Response 3-7: As presented in Response 3-2, the CEQA process does not require the analysis of project-related financial impacts. Preparation and discussion of an Economic Impact – Urban Decay analysis was completed at the discretion of the Lead Agency, and preparation of a Retail Impact Study was at the request of the Project Applicant. CEQA requires consideration of potential economic impacts of certain retail development projects, where such impacts have the potential to indirectly result in adverse physical changes to the environment. The Retail Impact Study examined whether or not adverse physical impacts were likely to result from economic impacts of the proposed Home Depot Center on existing and future competitive stores, pursuant to CEQA Guidelines §15131(a). It is intended to comply with the mandates of the Fifth District Court of Appeal decision in *Bakersfield Citizens for Local Control vs. City of Bakersfield*.

As presented in the Draft EIR, page 4.10-20, based on the performance measure of sales per square foot for Building Materials and Home Improvement stores serving the study RTA, it is concluded that the supply of competitive stores would not experience significant vacancies that would persist over the long-term.

5.0 MITIGATION MONITORING AND REPORTING PROGRAM

5.0 MITIGATION MONITORING AND REPORTING PROGRAM

5.1 INTRODUCTION

The mitigation monitoring and reporting program (MMRP) was prepared to implement the mitigation measures identified in the Highland Marketplace EIR. CEQA Section 21081.6 requires adoption of a monitoring program when mitigation measures have been identified that would reduce or avoid significant environmental effects.

CEQA requires adoption of a monitoring program for those measures or conditions placed on a project to mitigate or avoid adverse effects on the environment. The law states that the monitoring program shall be designed to ensure compliance during project implementation. When implemented, environmental effects associated with the development of the Highland Marketplace will be reduced or eliminated.

The MMRP was prepared and contains the following elements:

1. Measures that act to mitigate significant impacts on the environment are recorded with the action and the procedure necessary to ensure compliance.
2. A procedure of compliance and verification has been outlined for each action necessary. This procedure designates who will take action, what action will be taken and when, and to whom and when compliance will be reported.
3. The MMRP has been designed to provide focused, yet flexible guidelines. As monitoring progresses, changes to compliance procedures may be necessary based upon recommendations by those responsible for the program.

5.2 RESPONSIBILITIES AND AUTHORITY

The City of San Bernardino (City) will be the primary agency, but not the only agency responsible for implementing the mitigation measures. In some cases, the City or other public agency will implement measures. In other cases, the project applicant will be responsible for implementation of measure and the City's role is exclusively to monitor the implementation of the measures. In this case, the project applicant may choose to require the construction contractor to implement specific mitigation measures prior to and/or during construction.

5.3 MONITORING PERSONNEL

The City of San Bernardino is responsible for ensuring that the mitigation measures in this Final EIR are implemented. The City reserves the right to hire technical experts and professional to help in evaluating compliance. These may include but are not limited to biologists, archaeologists and planning professionals.

For impacts related to construction of the Project, the project planner or responsible City department has the authority to stop the work of construction contractors if compliance with any aspects of the MMRP are not occurring after written notification has been issued.

If any impacts require long-term monitoring, the applicant shall provide the City with a plan for monitoring the mitigation activities at the project site and reporting the monitoring results to the City.

MITIGATION MONITORING REPORTING PROGRAM

Project: Highland Marketplace **Applicant:** Home Depot U.S.A, Inc./Mark Development, Inc.

Lead Agency: City of San Bernardino **Date:** May 2012

Mitigation Measures No. / Implementing Action	Responsible for Monitoring	Monitoring Frequency	Timing of Verification	Method of Verification	Verified Date /Initials
Aesthetics					
Mitigation Measure AES-1: Project design features shall be incorporated to provide landscaping, physical barriers, screening, or other buffers to minimize project-generated illumination from entering off-site areas and to prevent glare for residential development along the western boundary of the site.	City of San Bernardino Community Development Department	Prior to impacts to residents	Prior to commencing operations	On-site Inspection	
Mitigation Measure AES-2: The final height of new lighting structures shall be minimized for surface parking areas, vehicular access ways, and walkways.	City of San Bernardino Community Development Department	Prior to construction	Prior to commencing operations	On-site Inspection	
Air Quality					
Mitigation Measure AQ-1: All paint shall have a low volatile organic compound (VOC) rating of 50 g/l or less for the project and restrict paint usage to 600,000 square feet.	SCAQMD	Throughout construction of the project	During inspections	On-site Inspection	
Mitigation Measure AQ-2: During site preparation phase, at least one grader and one dozer shall meet “Tier II” emission requirements.	SCAQMD	During site preparation	During inspections	On-site Inspection	
Mitigation Measure AQ-3: All exposed surfaces shall be watered three times a day during the grading and site preparation phases.	City of San Bernardino Community Development Department	During grading and site preparation	During inspections	On-site Inspection	

Mitigation Measures No. / Implementing Action	Responsible for Monitoring	Monitoring Frequency	Timing of Verification	Method of Verification	Verified Date /Initials
Cultural Resources					
Mitigation Measure CR-1: In the event that buried cultural resources, including historic or archeological resources, are discovered during construction, operations shall cease in the immediate vicinity of the find and a qualified archaeologist shall be consulted to determine whether the resource requires further study. The qualified archeologist shall make recommendations to the Lead Agency on measures that shall be implemented to protect the discovered resources, including but not limited to excavation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. If the resources are determined to be unique historic resources as defined under Section 15064.5 of the CEQA Guidelines, appropriate measures shall be identified by the monitor and recommended to the Lead Agency. Measures may include but are not limited to: a detailed mapping of the findings; a recordation of the discovery with appropriate agencies; and potential tests (if needed) to evaluate the resources' eligibility for listing in the National Register or California Register of Historic Resources. A technical report would then be prepared to document field methods and results.	Applicant/ Contractor; City of San Bernardino Community Development Department, and Qualified Archeologist	During grading and site preparation	In the event cultural resources are discovered	On-site inspection	

Mitigation Measures No. / Implementing Action	Responsible for Monitoring	Monitoring Frequency	Timing of Verification	Method of Verification	Verified Date /Initials
Mitigation Measure CR-2: In accordance with 36 CFR 800.13(b)(3), the State Historic Preservation Officer and Native American tribal contacts as listed on the letter (dated September 28, 2007) received from Native American Heritage Commission (NAHC), as well as the Advisory Council on Historic Preservation will be notified within 48 hours of the discovery of any archaeological artifacts..	Applicant/ Contractor; City of San Bernardino Community Development Department/Native American Heritage Commission	During grading and site preparation	In the event archeological artifacts are discovered	On-site inspection	
Mitigation Measure CR-3: If human remains of any kind are found during construction activities, all activities must cease immediately and the San Bernardino County Coroner and a qualified archaeologist must be notified. The Coroner will examine the remains and determine the next appropriate action based on his or her findings. If the Coroner determines the remains to be of Native American origin, he or she will notify the Native American Heritage Commission. The Native American Heritage Commission will then identify the most likely descendants to be consulted regarding treatment and/or reburial of the remains. If a most likely descendant cannot be identified, or the most likely descendant fails to make a recommendation regarding the treatment of the remains within 48 hours after gaining access to them, VMC shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.	Applicant/ Contractor, County Coroner/ Qualified Archaeologist	During construction activities	In the event human remains are found	On-site inspection	

Mitigation Measures No. / Implementing Action	Responsible for Monitoring	Monitoring Frequency	Timing of Verification	Method of Verification	Verified Date /Initials
Geology and Soils					
Mitigation Measure GS-1: Prior to issuance of grading permits, the developer shall submit grading plans that incorporate the general earthwork and grading specifications for rough grading as set forth in the geotechnical reports for the project (Appendix D). These include such measures as clearing and grubbing to remove all vegetation and any preexisting above ground and underground structures; over excavating and recompacting soil; placement or disposal of oversized material; construction of cut or fill slopes; preliminary foundation recommendation; and grading requirements for seismic considerations. Final recommendations shall be noted on all grading plans to be carried out by grading contractors, and monitored by the City of San Bernardino Building and Safety staff.	Applicant and City of San Bernardino Building and Safety Division	Prior to issuance of grading permits	During review of grading plans	Review of plans	
Mitigation Measure GS-2: Prior to issuance of building permits, including permits for utilities, the developer shall submit development plans that incorporate the recommendations of the geotechnical report prepared by Moore Twining Associates, Inc., dated March 25, 2011 (Appendix D) for preliminary foundation work, utility trenching, and concrete slabs. These include specifications for concrete slabs and footings, temporary excavation for utilities, preliminary pavement design, and protection of foundations from surface drainage.	Applicant and City of San Bernardino Building and Safety Division	Prior to issuance of building permits	During review of final development plans	Review of final plans	
Hazards and Hazardous Materials					
Mitigation Measure HM-1: Prior to issuance of occupancy permits for businesses that would use, store, or transport hazardous materials, the Project Applicant shall submit detailed building plans showing where storage areas would be located and where use would occur, to City and County agencies responsible for oversight and permitting such businesses. In conjunction with building plans the applicant shall propose a Business Plan Emergency Response Plan to be approved prior to occupancy.	Applicant and City of San Bernardino Community Development Department	Prior to issuance of occupancy permits	Prior to commencing operations	Review of Business Plan Emergency Response Plan	

Mitigation Measures No. / Implementing Action	Responsible for Monitoring	Monitoring Frequency	Timing of Verification	Method of Verification	Verified Date /Initials
Mitigation Measure HM-2: All proposed tenant improvements or change of business/occupancy applications shall require the submittal of detailed site plans indicating the location of hazardous material storage areas. The Project Applicant shall concurrently submit a Business Plan Emergency Response Plan to be approved prior to occupancy.	Applicant and City of San Bernardino Community Development Department	Prior to issuance of permits or approval of business/ occupancy applications	In the event of tenant improvements or change of business/ occupancy	Review of Tenant improvement plans and Business Plan Emergency Response Plan	
Mitigation Measure HM-3: If shallow soil is excavated and removed from the Site, representative samples shall be collected and analyzed to determine appropriate disposal options for the soil. Any required investigation and/or remediation for the Site shall be overseen by the County of San Bernardino Hazardous Materials Division.	Applicant/ Contractor and County of San Bernardino Hazardous Materials Division	During all grading activities/ earthwork	In the event soils are removed from the site.	Review of soil samples	
Hydrology and Water Quality					
Mitigation Measure HWQ-1: Prior to issuance of grading permits, the project proponent shall submit detailed drawings that would show the floor elevations of all proposed building and the designed storm water control measures as described, to the Public Works Department for review and approval. The drawings shall demonstrate that the proposed elevations would be adequate to prevent any flooding of the structures in a 100-year flood event.	Applicant and City of San Bernardino Public Works Department	Prior to issuance of grading permits	During review of final building elevations and storm water control measures	Review of final drawings	
Noise					
Mitigation Measure N-1: Control of Construction Hours – All construction activities shall be limited to the allowable hours of 7:00 a.m. and 8:00 p.m.	City of San Bernardino Community Development Department	Throughout construction of the project.	Prior to commencing operations	On-site inspections	
Traffic and Circulation					
Mitigation Measure TC-1: *Sterling Avenue/Highland Avenue (Weekend Peak Hour):* The east/west left-turn phasing shall be modified from protected phase to permitted/protected phasing. Intersection timing splits shall be optimized.	City Engineer	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	
Mitigation Measure TC-2: *I-210 Eastbound Off-Ramp at Highland Avenue (AM and Weekend Peak Hour):* The applicant shall work with Caltrans staff to optimize intersection timing splits.	City Engineer/ Caltrans	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	

Mitigation Measures No. / Implementing Action	Responsible for Monitoring	Monitoring Frequency	Timing of Verification	Method of Verification	Verified Date /Initials
Mitigation Measure TC-3: I-*210 Westbound On-Ramp/Arden Avenue at Highland Avenue (Weekend peak hour):*The northbound middle-through lane shall be changed to a left-turn lane to increase left turn capacity per cycle. The current northbound right turn lane shall become a through/right-turn lane. As this is a Caltrans-controlled intersection, Caltrans shall be consulted for approving and implementing the identified improvements.	City Engineer/ Caltrans	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	
Mitigation Measure TC-4: *Highland Avenue at Victoria Avenue (Weekend peak hour):* The applicant shall work with City staff to optimize intersection timing splits.	City Engineer	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	
Mitigation MeasureTC-5: *Sterling Avenue/Highland Avenue (PM and Weekend peak hour):* The applicant shall contribute a fair-share contribution to optimize signal timings by modifying the cycle length to 105 seconds and optimizing the timing parameters.	City Engineer	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	
Mitigation Measure TC-6: *I-210 Westbound On-Ramp/Arden Avenue at Highland Avenue (AM peak hour):* The applicant shall contribute a fair-share contribution to modify the northbound middle-through lane to a left turn lane to increase left turn capacity per cycle. The current northbound right turn lane would be restriped as a through/right-turn lane. As this is a Caltrans-controlled intersection, Caltrans shall be consulted for approving the identified modifications.	City Engineer/ Caltrans	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	

Mitigation Measures No. / Implementing Action	Responsible for Monitoring	Monitoring Frequency	Timing of Verification	Method of Verification	Verified Date /Initials
Mitigation Measure TC-7: *Date Street at Arden Avenue (PM peak hour):* The applicant will be responsible to contribute a fair share contribution toward a traffic signal.	City Engineer	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	
Mitigation Measure TC-8: *I-210 Eastbound On-Ramp at Arden Avenue (PM and Weekend peak hour):* The north/south left-turn phasing shall be modified from protected phase to permitted/protected phasing. As this is a Caltrans-controlled intersection, Caltrans shall be consulted for approving and implementing the phasing modification. Note, it may not be appropriate to provide protected/permitted phasing to over 600 southbound left-turns at this location. Alternatively, a second southbound left-turn lane shall be required. *Fair Share Contributions:* The applicant's payment of the City's Traffic Impact Fees and contribution of fair-share contributions for cumulative traffic and circulation impacts of the project as set forth above in Mitigation Measures TC-5, TC-6, TC-7 and TC-8 shall be based on the calculations set forth in Tables 4.8-13 and 4.8-14, and shall be made a condition of project approval.	City Engineer/ Caltrans	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	
Mitigation Measure TC-9: *I-210 Eastbound Off-Ramp & Highland Avenue, I-210 Westbound On-Ramp/Arden Avenue/Highland Avenue, and I-210 Eastbound On-Ramp/Arden Avenue* – The applicant shall coordinate with Caltrans to provide a signal interconnect between the intersections and coordinate them to coordinate the southbound, northbound, and southbound approaches and “hold” the queue at the upstream intersection, respectively.	City Engineer/ Caltrans	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	

Mitigation Measures No. / Implementing Action	Responsible for Monitoring	Monitoring Frequency	Timing of Verification	Method of Verification	Verified Date /Initials
Mitigation Measure TC-10: *Arden Avenue/Highland Avenue/I-210 Eastbound On-Ramp Signals*- Northbound Left-Turn exceeds available storage by 210' – 375' during the peak hours, the Westbound Left-Turn exceeds available storage by 80' during the PM and weekend peak hour, and the Eastbound Right-Turn exceeds available storage by 130' – 330'. The applicant shall coordinate with Caltrans to provide a signal interconnect between the two intersections and coordinate them to synchronize the northbound approaches and "hold" the queue at the upstream intersection and implement an eastbound right-turn overlap phase and implement coordination through the corridor.	City Engineer/ Caltrans	Prior to issuance of occupancy permits	Prior to commencing operations	On-site inspection	

APPENDIX A

COMMENT LETTERS RECEIVED ON DRAFT EIR

LETTER 1

STATE OF CALIFORNIA Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
ds_nahc@pacbell.net

December 28, 2011

Mr. John Oquendo, Planner II
Redevelopment Agency of the City of San Bernardino
210 North "E" Street, Suite 301
San Bernardino, CA 92401

Re: SCH#2011061021 CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the **"Highland Marketplace (Mixed-Use) Project;"** located in the City of San Bernardino; San Bernardino County, California

Dear Mr. Oquendo:

The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604). The court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites. The NAHC wishes to comment on the proposed project.

This project is slated for a General Plan Amendment; therefore is subject to California Government Code §65352.3 *et seq.*

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9. 1-1

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ...objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect.

The NAHC Sacred Lands File (SLF) search resulted as follows: **Native American cultural resources were not identified** within the project area identified. Also, the absence of archaeological resources does not preclude their existence. . California Public Resources Code §§5097.94 (a) and 5097.96 authorize the NAHC to establish a Sacred Land Inventory to record Native American sacred sites and burial sites. These records are exempt from the provisions of the California Public Records Act pursuant to. California Government Code §6254 (r). The 1-2

purpose of this code is to protect such sites from vandalism, theft and destruction. The NAHC "Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r). 1-2 cont.

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources. 1-3

Consultation with tribes and interested Native American consulting parties, on the NAHC list, if the project is under federal jurisdiction, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity. 1-4

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally 1-5

discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'. 1-5 cont.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects. 1-6

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,

Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

California Native American Contacts
San Bernardino County
December 28, 2011

Pechanga Band of Mission Indians
Paul Macarro, Cultural Resources Manager
P.O. Box 1477 Luiseno
Temecula , CA 92593
(951) 770-8100
pmacarro@pechanga-nsn.gov
(951) 506-9491 Fax

Gabrielino Tongva Nation
Sam Dunlap, Chairperson
P.O. Box 86908 Gabrielino Tongva
Los Angeles , CA 90086
samdunlap@earthlink.net
(909) 262-9351 - cell

Ramona Band of Cahuilla Mission Indians
Joseph Hamilton, Chairman
P.O. Box 391670 Cahuilla
Anza , CA 92539
admin@ramonatribe.com
(951) 763-4105
(951) 763-4325 Fax

Morongo Band of Mission Indians
Michael Contreras, Cultural Heritage Prog.
12700 Pumarra Road Cahuilla
Banning , CA 92220 Serrano
(951) 201-1866 - cell
mcontreras@morongo-nsn.gov
(951) 922-0105 Fax

1-7

San Manuel Band of Mission Indians
James Ramos, Chairperson
26569 Community Center Drive Serrano
Highland , CA 92346
(909) 864-8933
(909) 864-3724 - FAX
(909) 864-3370 Fax

San Manuel Band of Mission Indians
Ann Brierty, Policy/Cultural Resources Departmen
26569 Community Center. Drive Serrano
Highland , CA 92346
(909) 864-8933, Ext 3250
abrierty@sanmanuel-nsn.gov
(909) 862-5152 Fax

Gabrieleno/Tongva San Gabriel Band of Mission
Anthony Morales, Chairperson
PO Box 693 Gabrielino Tongva
San Gabriel , CA 91778
GTTribalcouncil@aol.com
(626) 286-1632
(626) 286-1758 - Home
(626) 286-1262 -FAX

Serrano Nation of Indians
Goldie Walker
P.O. Box 343 Serrano
Patton , CA 92369
(909) 862-9883

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2011061021; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the Highland Marketplace Project; located in the City of San Bernardino; San Bernardino County, California.

1-7 cont.

Ernest H. Siva
Morongo Band of Mission Indians Tribal Elder
9570 Mias Canyon Road Serrano
Banning , CA 92220 Cahuilla
siva@dishmail.com
(951) 849-4676

SOBOBA BAND OF LUISENO INDIANS
Joseph Ontiveros, Cultural Resource Department
P.O. BOX 487 Luiseno
San Jacinto , CA 92581
jontiveros@soboba-nsn.gov
(951) 663-5279
(951) 654-5544, ext 4137

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2011061021; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the Highland Marketplace Project; located in the City of San Bernardino; San Bernardino County, California.

LETTER 2

Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
Environmental Protection

Deborah O. Raphael, Director
5796 Corporate Avenue
Cypress, California 90630

Edmund G. Brown Jr.
Governor

January 30, 2012

Mr. John Oquendo
Redevelopment Agency of the City of San Bernardino
201 North "E" Street, Suite 301
San Bernardino, California 92401
joquendo@sbrda.org

NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE HIGHLAND MARKETPLACE PROJECT (SCH #2011061021), SAN BERNARDINO COUNTY

Dear Mr. Oquendo:

The Department of Toxic Substances Control (DTSC) has received your submitted Draft Environmental Impact Report (EIR) for the above-mentioned project. The following project description is stated in your document: "The Proposed Project is the development of a maximum of 204,720 square feet (SF) of general commercial land uses on a rectangular-shaped site of approximately17.37-acres located at the southwest corner of Highland Avenue and Arden Avenue in the northeastern section of the City of San Bernardino within southwestern San Bernardino County. Specifically the Project Site is located on the south side of Highland Avenue, on the west side of Arden Avenue, and on the north side of 20th Street. Land uses surrounding the site include commercial development to the north, residential development to the west, I-210 eastbound on-ramp and residential development to the east, and an elementary school to the south. The Project Site has historically been developed with residential apartment buildings, primarily four-plexes, totaling 296 units. The Project Site is currently designated Commercial Recreation in the City's General Plan and zoned Public Commercial Recreation (PCR)". 2-1

Based on the review of the submitted document DTSC has the following comments:

1) DTSC provided comments on the project Notice of Preparation (NOP) on July 8, 2011; some of those comments have been addressed in the submitted draft EIR. Please ensure that all those comments will be addressed in the final EIR. 2-2

2) DTSC can provide cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a 2-3

Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489. **2-3 cont.**

If you have any questions regarding this letter, please contact Rafiq Ahmed, Project Manager, at rahmed@dtsc.ca.gov, or by phone at (714) 484-5491. **2-4**

Sincerely,

Greg Holmes
Unit Chief
Brownfields and Environmental Restoration Program

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov.

CEQA Tracking Center
Department of Toxic Substances Control
Office of Environmental Planning and Analysis
P.O. Box 806
Sacramento, California 95812
Attn: Nancy Ritter
nritter@dtsc.ca.gov

CEQA # 3438

LETTER 3

Friday, February 17, 2012

To whom it may concern,

Hello my name is Brian Harris. I'm writing you in concern of the proposed Home Depot at the corner Highland and Arden. My family has owned and operated K & L Hardware for thirty-three years. We are a respected establishment that is hailed in our community as a provider of goods and services. We have served our customers well and provided them with reliability and knowledge. The business is an asset to the community and to the employee's who work here. In our local community we are a household name. This business has grown exponentially throughout the years and has expanded its staff from five to sixteen. Customers and employees alike rely on us to provide them with opportunity and growth. **3-1**

It is our position that this proposed Home Depot would cause adverse financial implications on our business. The distance between the proposed site and us is less than one mile (.08 mile). In the EIR (Environmental Impact Report) my business, my livelihood, was described as a relatively small neighborhood -serving hardware store and brought up only briefly in the Urban Decay portion of the report. A small blip barely recognizable for the thirty-three years of due diligence it has put forth to make a name for itself. **3-2**

I'm curious as to how the City of San Bernardino can continue forward with this project now that the state of California has dissolved Redevelopment Agencies? Home Depot has not broken ground yet. Where's the money coming from? Isn't there outstanding debt incurred by the Redevelopment Agency that needs to be addressed first? **3-3**

The successor agency would receive the redevelopment agency's existing balances and future shares of tax increment revenue <u>to pay the agency's debts</u>…. While enactment of the Governor's proposal as urgency legislation would prohibit redevelopment agencies from entering into additional obligations, <u>existing debts would need to be paid</u>. **3-4**

If the redevelopment agency no longer exists, who's approving the pursuance of this project? What is the legality of a city funded development that has not been approved by the public. If I'm not mistaken, legally it is up to the voters to decide if they want their tax revenue to be spent on this proposed development. **3-5**

Tax increment revenues that currently go to redevelopment agencies would be redirected to retire redevelopment debts and contractual obligations and to fund other local government services. In place of redevelopment, the administration indicates that it will propose a constitutional amendment to <u>allow local voters to approve tax increases and general obligation bonds for economic development purposes</u> by a 55 percent majority. **3-6**

I feel there are questions that need to be addressed here both legally and financially. The public has a right to know where their tax dollars are being spent. **3-7**

Thank you for your time,

Brian Harris
K & L Hardware
26091 Baseline St
San Bernardino, CA. 92410
909-862-9450

<u>Information provided by</u>:

Legislative Analyst's Office: Financial Nonpartisan Fiscal and Policy Advisor

The 2011–12 Budget: Should California End Redevelopment Agencies?

http://www.lao.ca.gov/analysis/2011/realignment/redevelopment_020911.aspx