

# Appendix A

## **Notice of Preparation and Comments Received**



## NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

**Date:** November 4, 2020

**To:** Agencies and Interested Parties

**Lead Agency:** Sacramento Municipal Utility District  
6201 S Street, MS B203  
Sacramento, CA 95817-1899  
Contact: Rob Ferrera at (916) 732-6676

**ENDORSED**  
SACRAMENTO COUNTY

NOV 03 2020

DONNA ALLRED, CLERK/RECORDER  
BY  DEPUTY

**Subject:** Station H Substation Project Environmental Impact Report

**Review Period:** November 4, 2020 to December 8, 2020

Sacramento Municipal Utility District (SMUD) proposes to decommission the existing Station A substation and remove all electrical-substation-related equipment from within the historic Old Folsom Powerhouse Sacramento Station A building (historic Station A building) and the outdoor substation yard. Following the removal of all Station A equipment, SMUD would construct a new electrical substation (Station H) in place of the outdoor substation along the north side of H Street between 6th Street and 7th Street in downtown Sacramento ("Station H Substation Project" or "project"). SMUD plans to prepare an environmental impact report (EIR) for the project to satisfy the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code [PRC] Section 21000 et seq.) and will serve as the lead agency for CEQA compliance.

**Purpose of Notice:** In accordance with CEQA, SMUD is distributing a notice of preparation (NOP) to solicit comments on the scope of an EIR that is being prepared for the Station H Substation Project. SMUD is the lead agency responsible for the project and as such, is also responsible for complying with the provisions of CEQA.

The Station H Substation Project would provide electrical service reliability in the downtown Sacramento area. SMUD will prepare an EIR, as required by Public Resources Code Section 21080.09, to evaluate the environmental effects of the project.

This NOP has been prepared pursuant to Sections 15082 and 15083 of the CEQA Guidelines. This NOP starts a public scoping period that will assist in the preparation of the Draft EIR. The public scoping period is for 30 days and will run from November 4, 2020 to December 8, 2020. The purpose of the NOP is to provide sufficient information about the proposed project and its environmental impacts to allow agencies and the interested parties the opportunity to provide a meaningful response related to the scope and content of the

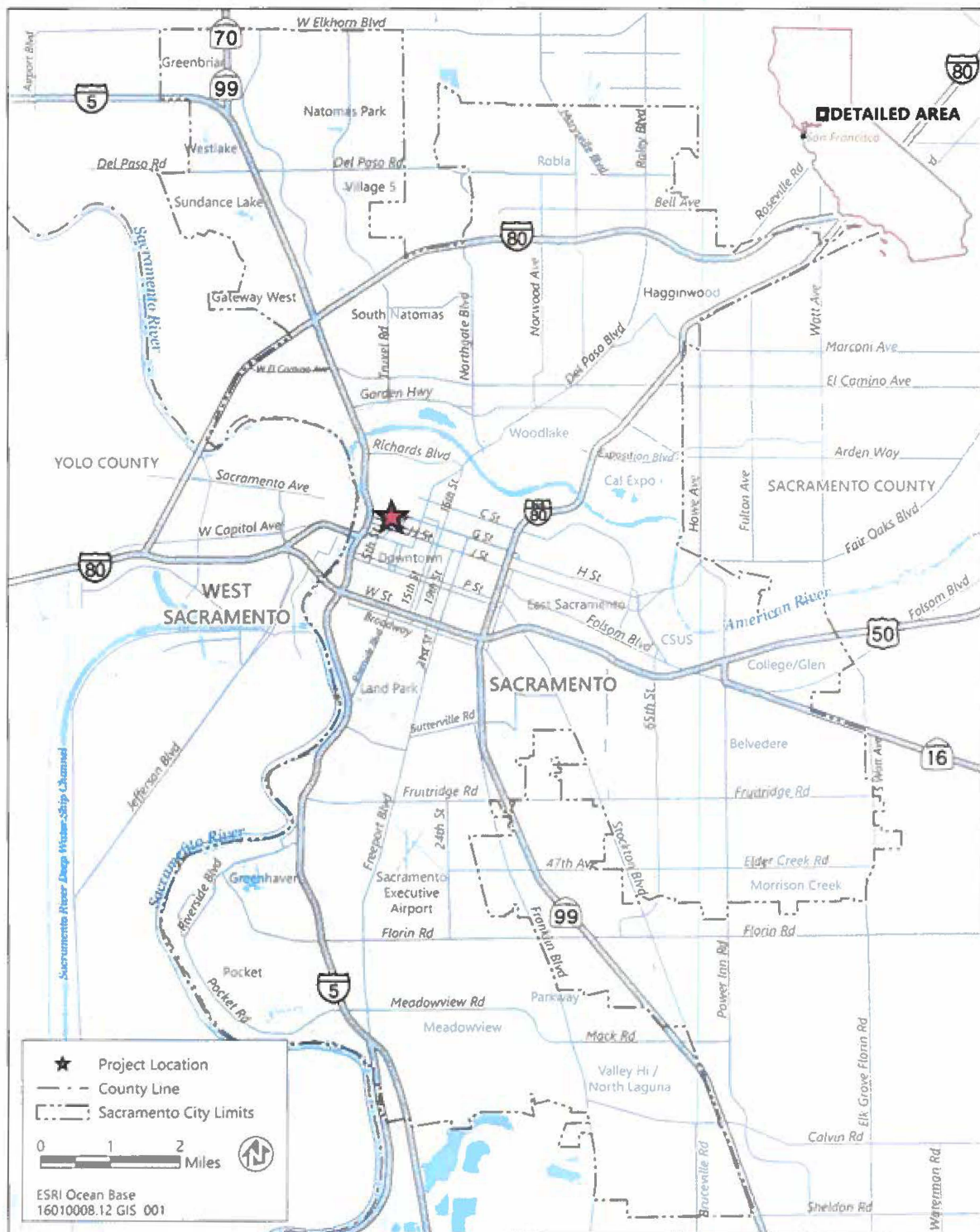
EIR, including possible environmental impacts, mitigation measures, and alternatives.

**Project Location:** The project site is located at the northeast corner of 6th Street and H Street in downtown Sacramento (see Figure 1). The project site is bordered by H Street to the south, 6th Street to the west, Government Alley to the north, and the Mercy Housing 7th & H Housing Community (Mercy Housing Community) to the east. The location for construction staging is not yet known but is assumed to be within five miles of the project site. As shown in Figure 2, much of the project site is currently occupied by Station A equipment and the historic Station A building, which is a California Historical Landmark. The project site totals approximately 0.47 acres.

The project is located in a highly developed area of downtown Sacramento. Sacramento County municipal buildings near the project site include the Sheriff's Department, Recorder's Office, Department of Technology, courthouse, jail, Administration Center, and two parking garages. The Mercy Housing 7<sup>th</sup> & H Housing Community is directly adjacent to the eastern edge of the project site. The Mercy Housing Community includes retail and clinic space on the ground floor with 150 residential units spread across seven stories. The Mercy Housing Community also includes two large landscaped terraces on the second floor. SMUD's Station G substation is currently under construction directly north of the project site across Government Alley and is within the boundary of the Railyards Specific Plan area. The privately-owned Hall of Justice Building is across the street to the south and the U.S. District Court is across the street to the southwest. The historic Rail Depot and Sacramento Intermodal Transportation Facility are located approximately 800 feet to the west.

**Project Objectives:** Objectives for the project include:

- provide safe and reliable electrical service to existing and proposed development in the downtown Sacramento area;
- meet SMUD's goals of ensuring electrical service reliability in the downtown Sacramento area by 2024;
- provide greater operational flexibility between circuits and substations in the area;
- maximize the use of available SMUD property and resources;
- minimize impacts to nearby sensitive receptors; and
- minimize potential conflicts with existing planning efforts within the City of Sacramento.



**Figure 1 Project Vicinity**



**Figure 2 Project Site**

**Description of Proposed Project:** With the City of Sacramento's continued implementation of both the Central City Specific Plan and the Railyards Specific Plan EIR, maintaining SMUD's ability to provide reliable electrical service within the downtown and the surrounding area is essential. The project involves the decommissioning and removal of outdated Station A equipment that is currently present at the project site and replacing existing equipment within the outdoor area between the historic Station A building and the Mercy Housing Community to the east with new outdoor substation equipment.

As part of the decommissioning of Station A, SMUD would remove and dismantle existing substation equipment, including protection and control equipment within the historic Station A building and transformers and switchgear within the outdoor switchyard. Decommissioning activities would also include the removal of oil pump equipment from within the historic Station A building. Equipment from inside the historic Station A building would be removed through existing doorways and no modifications to the structure would occur. Some equipment may need to be dismantled prior to removal. Additionally, two existing underground 115 kilovolt (kV) lines located within the Government Alley to the north of the site would be abandoned in place.

Once equipment associated with Station A has been decommissioned and the existing yard has been cleared, new equipment would be assembled and installed on site. The proposed substation would include two 115kV underground transmission lines, two 115/21kV transformers, a 21kV main-tie-main switchgear metal building structure with three feeder breakers per bay, and a control building. Station H would tie into the new Station G (currently under construction) via two new 115kV lines to be located within Government Alley, immediately north of the project site. The proposed electrical equipment to be located on site is anticipated to be no taller than existing Station A equipment currently located at the site, which is approximately 26 feet.

A canopy structure is proposed to be located between the new Station H substation yard and the historic Station A building. The canopy would be approximately the same height as the existing equipment in the outdoor area with a maximum height expected to be approximately 26 feet in height at its tallest point. The canopy roof would be angled and is designed to shield the control building in the event that bricks fall from the exterior of the historic Station A building.

Station H would include two 115kV underground transmission lines, two 115/21kV transformers, a 21kV main-tie-main switchgear with three feeder breakers per bay, and a control building. Two new 115kV lines would be installed beneath Government Alley to connect Station H to Station G. Excavation associated with construction of these new connections and installation of new equipment would reach a depth of 15 to 30 feet below ground surface, though piles needed for seismic support could go as deep as 55 feet. SMUD anticipates excavation and removal of existing soil and import of backfill to re-establish grade within the site, though removal and import volumes are not yet known. Lighting within the project site would consist of new light-emitting diode light sources. Lighting fixtures would be selected to complement the proposed site function and surrounding visual character.

Project construction activities would also include removal of the existing concrete block

wall, located along H Street, and replacement with a new wall that would shield views of the new equipment from H Street. Some features within the new Station H yard may help shield views from the adjacent the Mercy Housing Community.

Construction equipment and materials staging area would be located within nearby vacant land. While the staging areas have not yet been identified and would be identified by the contractor based on availability at the time, it is assumed that staging areas would be within 5 miles of the project site. During construction, access to the project site would be maintained, with the primary access point for construction equipment, deliveries, and workers located from Government Alley to avoid potential conflicts with Light Rail trains along H Street. Therefore, construction activities would require a temporary closure of Government Alley.

The decommissioning of Station A is anticipated to begin in the second half of 2022 and would be completed by early 2023. The construction of Station H is anticipated to begin soon after the decommission of Station A and would be completed in 2024. Construction intensity and hours would be in accordance with the City's Noise Ordinance, contained in Title 8, Chapter 8.68 of the Sacramento City Code. Construction would be limited to the hours between 7 a.m. and 6 p.m. Monday through Saturday, and between the hours of 9 a.m. and 6 p.m. on Sunday.

**Potential Approvals and Permits Required:** Elements of the project could be subject to permitting and/or approval authority of other agencies. As the lead agency pursuant to CEQA, SMUD is responsible for considering the adequacy of the CEQA documentation and determining if the project should be approved. Other potential permits required from other agencies could include:

*State*

- **California Department of Transportation:** Permits for movement of oversized or excessive loads on State Highways.

*Local*

- **Sacramento Metropolitan Air Quality Management District (SMAQMD):** Authority to Construct/Permit to Operate pursuant to SMAQMD Regulation 2 (Rule 201 et seq.).
- **City of Sacramento:**
  - Tree removal permit—to comply with the City of Sacramento Tree Ordinance
  - Transmission Facilities Permit – to comply with Sacramento City Code requirements
  - Building permits—to comply with Sacramento City Code requirements
  - Encroachment permit
  - Improvement Plans
  - Grading Permit

- Design Review
- **County of Sacramento:** connection to the sewer system

**Potential Environmental Effects:** The EIR will describe the significant direct and indirect environmental impacts of the project. The EIR also will evaluate the cumulative impacts of the project, defined as impacts that could be exacerbated when considered in conjunction with other related past, present, and reasonably foreseeable future projects. SMUD anticipates that the project could result in potentially significant environmental impacts in the following resource areas, which will be further evaluated in the EIR:

- **Cultural Resources:** Potential disturbances of known and unknown historic and/or archaeological resources.
- **Tribal Cultural Resources:** Potential disturbance of tribal cultural resources.

These potential impacts will be assessed and discussed in detail in the EIR, and feasible and practicable mitigation measures will be recommended to reduce any identified significant or potentially significant impacts.

SMUD anticipates that the project would not result in significant environmental impacts in the following resource areas, which will not be further evaluated in the EIR: aesthetics, agriculture and forestry resources, air quality, biological resources, energy, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise and vibration, population and housing, public services, recreation, traffic and transportation, utilities, and wildfire. SMUD has prepared an Initial Study (IS) that provides analysis of these resource areas and provides mitigation measures as needed.

**Comment Period:** Written comments on the NOP can be sent anytime during the NOP review period which begins November 4, 2020 and ends on December 8, 2020 at 5:00 pm. Please send your written or electronic responses, with appropriate contact information, to the following address:

Rob Ferrera  
Sacramento Municipal Utility District  
Environmental Management  
P.O. Box 15830 MS B203  
Sacramento, CA 95852-1830  
[rob.ferrera@smud.org](mailto:rob.ferrera@smud.org)

Digital copies of the IS and NOP are available on the internet at: [smud.org/stationH](http://smud.org/stationH).  
Hardcopies of the IS and NOP are available for public review at the following locations:

Sacramento Municipal Utility District  
Customer Service Center  
6301 S Street  
Sacramento, CA 95817

Sacramento Municipal Utility District  
East Campus Operations Center  
4401 Bradshaw Road  
Sacramento, CA 95827

**Scoping Session:** Written comments on the NOP may also be provided during the virtual open house scoping session to be held **November 16, 2020** from 6:00 to 7:00 p.m. During the scoping session, project information can be discussed with SMUD staff and written NOP comments will also be accepted via email. If you have questions regarding the IS and NOP or the scoping session, please contact Rob Ferrera at the email address shown above. Access to the public meeting will be provided through a meeting link found at [smud.org/stationH](http://smud.org/stationH).

**From:** [Rob Ferrera](#)  
**To:** [Cori Resha](#); [Chris Mundhenk](#)  
**Subject:** FW: RE: SMUD - CEQA Notice of Preparation of EIR for Substation H (H St between 6th and 7th streets)  
**Date:** Tuesday, December 1, 2020 1:38:39 PM

---

And another!

Hope you two were able to make full recovery from Tgiving day!

Talk soon,

Rob

Please note: I am working remotely in an effort to help reduce the spread of COVID-19. Please call my mobile phone if you need to get a hold of me. ~Take care

**Rob Ferrera**

(he, him)

*Environmental Services*

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m: 916.769.8241

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**From:** Sarai Ochoa <sochoa@cityofsacramento.org>  
**Sent:** Tuesday, December 1, 2020 1:35 PM  
**To:** Rob Ferrera <Rob.Ferrera@smud.org>  
**Cc:** Scott Johnson <SRJohnson@cityofsacramento.org>  
**Subject:** [EXTERNAL] RE: SMUD - CEQA Notice of Preparation of EIR for Substation H (H St between 6th and 7th streets)

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Hi Rob,

The Dept. of Utilities has the following comment on the NOP for the draft EIR of the SMUD Substation H: A drainage study will be required per the Design and Procedures Manual and Onsite Design Manual, with required flood mitigation specified in these manuals.

Let me know if you have any questions.

Regards,  
Sarai Ochoa, EIT  
Assistant Civil Engineer| Dept. of Utilities

Engr. & Water Resources Div.| Development Services  
300 Richards Blvd| Sacramento, CA 95811  
o: 916-808-5426



---

**From:** Scott Johnson <[SRJohnson@cityofsacramento.org](mailto:SRJohnson@cityofsacramento.org)>

**Sent:** Tuesday, November 10, 2020 7:35 AM

**To:** Aelita Milatzo <[AMilatzo@cityofsacramento.org](mailto:AMilatzo@cityofsacramento.org)>; Anis Ghobril <[AGhobril@cityofsacramento.org](mailto:AGhobril@cityofsacramento.org)>; Antoinette Batte <[abatte@cityofsacramento.org](mailto:abatte@cityofsacramento.org)>; Bill Sinclair <[bSinclair@cityofsacramento.org](mailto:bSinclair@cityofsacramento.org)>; Carson Anderson <[canderson@cityofsacramento.org](mailto:canderson@cityofsacramento.org)>; Cheryle Hodge <[CHodge@cityofsacramento.org](mailto:CHodge@cityofsacramento.org)>; Christian Svensk <[CSvensk@cityofsacramento.org](mailto:CSvensk@cityofsacramento.org)>; Dana Repan <[DRepan@cityofsacramento.org](mailto:DRepan@cityofsacramento.org)>; Elizabeth Boyd <[EBoyd@cityofsacramento.org](mailto:EBoyd@cityofsacramento.org)>; Ellen E. Sullivan <[EESullivan@cityofsacramento.org](mailto:EESullivan@cityofsacramento.org)>; Inthira Mendoza <[imendoza@cityofsacramento.org](mailto:imendoza@cityofsacramento.org)>; Jennifer Donlon Wyant <[JDonlonWyant@cityofsacramento.org](mailto:JDonlonWyant@cityofsacramento.org)>; Jodi Carlson <[JCarlson@cityofsacramento.org](mailto:JCarlson@cityofsacramento.org)>; Karlo Felix <[KFelix@cityofsacramento.org](mailto:KFelix@cityofsacramento.org)>; King Tunson <[ktunson@sfd.cityofsacramento.org](mailto:ktunson@sfd.cityofsacramento.org)>; Leslie Fritzsche <[LFritzsche@cityofsacramento.org](mailto:LFritzsche@cityofsacramento.org)>; Marco Gonzalez <[MGonzalez@cityofsacramento.org](mailto:MGonzalez@cityofsacramento.org)>; Marcus Adams <[MAdams@cityofsacramento.org](mailto:MAdams@cityofsacramento.org)>; Matt Hertel <[MHertel@cityofsacramento.org](mailto:MHertel@cityofsacramento.org)>; Matt Young <[myoung@pd.cityofsacramento.org](mailto:myoung@pd.cityofsacramento.org)>; Pelle Clarke <[PClarke@cityofsacramento.org](mailto:PClarke@cityofsacramento.org)>; Remi Mendoza <[RMendoza@cityofsacramento.org](mailto:RMendoza@cityofsacramento.org)>; Sarai Ochoa <[sochoa@cityofsacramento.org](mailto:sochoa@cityofsacramento.org)>; Teresa Haenggi <[THaenggi@cityofsacramento.org](mailto:THaenggi@cityofsacramento.org)>

**Cc:** Bill Busath <[BBusath@cityofsacramento.org](mailto:BBusath@cityofsacramento.org)>; Bruce Monighan <[BMonighan@cityofsacramento.org](mailto:BMonighan@cityofsacramento.org)>; Christopher Conlin <[CConlin@cityofsacramento.org](mailto:CConlin@cityofsacramento.org)>; David Edrosolan <[DEdrosolan@cityofsacramento.org](mailto:DEdrosolan@cityofsacramento.org)>; Evan Compton <[ECompton@cityofsacramento.org](mailto:ECompton@cityofsacramento.org)>; Fedolia Harris <[FHarris@cityofsacramento.org](mailto:FHarris@cityofsacramento.org)>; Greg Sandlund <[GSandlund@cityofsacramento.org](mailto:GSandlund@cityofsacramento.org)>; Jeffrey Heeren <[JHeeren@cityofsacramento.org](mailto:JHeeren@cityofsacramento.org)>; Jody Ulich <[JUlich@cityofsacramento.org](mailto:JUlich@cityofsacramento.org)>; Kevin A. Hocker <[KHocker@cityofsacramento.org](mailto:KHocker@cityofsacramento.org)>; Kourtney Burdick <[KBurdick@cityofsacramento.org](mailto:KBurdick@cityofsacramento.org)>; Matt Eierman <[MEierman@cityofsacramento.org](mailto:MEierman@cityofsacramento.org)>; Melissa Anguiano <[MAnguiano@cityofsacramento.org](mailto:MAnguiano@cityofsacramento.org)>; Michael Jasso <[MJasso@cityofsacramento.org](mailto:MJasso@cityofsacramento.org)>; Raymond Costantino <[RCostantino@cityofsacramento.org](mailto:RCostantino@cityofsacramento.org)>; Richard R. Rich <[RRRich@cityofsacramento.org](mailto:RRRich@cityofsacramento.org)>; Ryan Moore <[RMoore@cityofsacramento.org](mailto:RMoore@cityofsacramento.org)>; Sheri Smith <[SSmith@cityofsacramento.org](mailto:SSmith@cityofsacramento.org)>; Sheryl Patterson <[SPatterson@cityofsacramento.org](mailto:SPatterson@cityofsacramento.org)>; Stacia Cosgrove <[SCosgrove@cityofsacramento.org](mailto:SCosgrove@cityofsacramento.org)>; Tom Buford <[TBuford@cityofsacramento.org](mailto:TBuford@cityofsacramento.org)>; Tom Pace <[TPace@cityofsacramento.org](mailto:TPace@cityofsacramento.org)>; Tony Bertrand <[abertrand@cityofsacramento.org](mailto:abertrand@cityofsacramento.org)>; Winfred DeLeon <[WDeLeon@cityofsacramento.org](mailto:WDeLeon@cityofsacramento.org)>

**Subject:** SMUD - CEQA Notice of Preparation of EIR for Substation H (H St between 6th and 7th streets)

## NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

**Subject:** Station H Substation Project Environmental Impact Report

**Review Period: November 4, 2020 to December 8, 2020**

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SMUD proposes to decommission the existing Station A substation and remove all electrical-substation-related equipment from within the historic Old Folsom Powerhouse Sacramento Station A building (historic Station A building) and the outdoor substation yard. Following the removal of all Station A equipment, SMUD would construct a new electrical substation (Station H) in place of the outdoor substation along the north side of H Street between 6th Street and 7th Street in downtown Sacramento ("Station H Substation Project" or "project"). SMUD plans to prepare an environmental impact report (EIR) for the project to satisfy the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code [PRC]Section 21000 et seq.) and will serve as the lead agency for CEQA compliance.

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Environmental Management  
P.O. Box 15830 MS B203  
Sacramento, CA 95852-1830

**Contact:** Rob Ferrera at (916) 732-6676  
[rob.ferrera@smud.org](mailto:rob.ferrera@smud.org)

**Project Information:** <https://www.smud.org/stationh>

Scott Johnson  
City of Sacramento  
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[srjohnson@cityofsacramento.org](mailto:sjohnson@cityofsacramento.org)

**From:** [Rob Ferrera](#)  
**To:** [Cori Resha](#); [Chris Mundhenk](#)  
**Subject:** FW: Station H Substation Project  
**Date:** Tuesday, November 24, 2020 10:12:27 AM  
**Attachments:** [a sesquicentennial discovery.pdf](#)

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Cori and Chris,

Here's another comment.

Talk soon,

Rob

Please note: I am working remotely in an effort to help reduce the spread of COVID-19.  
Please call my mobile phone if you need to get a hold of me. ~Take care

**Rob Ferrera**

(he, him)

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**From:** Derrick Lim <ahyeebrew@att.net>  
**Sent:** Tuesday, November 24, 2020 10:00 AM  
**To:** Rob Ferrera <Rob.Ferrera@smud.org>  
**Subject:** [EXTERNAL] Station H Substation Project

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Rob,

Thanks for taking my call yesterday. I appreciated your time and feedback regarding potential cultural artifact discovery relative to the substation's pending construction proximity to the Robert T. Matsui United States Courthouse.

Before the Amtrak station and railyards were built, the area was a slough and/or lake (China Slough/China Lake) depending on the river flows and adjacent habitation. The slough/lake was landfilled for the railyards and starting point for the Central Pacific Railroad.

I am not a historian or archeologist so I do not know if the slough/lake or human

habitation was present at Station H Substation site. However, given the close proximity of the substation site to the federal courthouse where significant cultural artifacts were actually found, I feel it is important to mention as a friendly fyi.

The attachment below is additional background and context regarding artifacts found at the courthouse site. Thank you for the consideration.

Derrick

*YEEBREW = Community + Culture + History*

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# A Sesquicentennial Discovery



BY DERRICK LIM

**L**ike the discovery of gold 150 years ago, the permanent Chinese artifact exhibit in the new federal courthouse can be a valuable surprise.

When you go in, first take in the visual expanse of the rotunda, sizing up the massive surrounding columns. Behind and to your right, some of those columns stand like sentries guarding an entrance.

If you have the inquisitiveness of a Lt. Columbo, you may be moved to enter an intimate 600 square foot space behind the columns. Once inside, take a step back in time and imagine what life might have been like in historic Chinatown—the very site that now holds the federal courthouse.

Four years ago, the Chinese American Council of Sacramento (CACS), an organization formed to build a stronger Chinese American presence through advocacy, civic and cultural activities, initiated a dialogue aimed at a permanent Chinese artifact exhibit with then Chief Judge Robert E. Coyle and Regional Administrator Kenn Kojima of the U.S. General Services Administration. All wished to preserve the site's history, and all thought it appropriate to set up a permanent artifact exhibit.

As a Sacramento native and volunteer in the Asian community, I can remember a time when Chinatown was looked upon by outsiders as an undesirable area—good enough only for Chinese. It was the judiciary that once enforced anti-Chinese laws against Chinese immigration, Chinese people's testimony in court, Chinese ownership of property, and Chinese marrying non-Chinese. (See Prof. Berring's "Chinese and the Legal System" sidebar in this issue—Ed.) Therefore there is irony in the judicial branch now making its home in Sacramento's historic Chinatown. The Court and GSA deserve credit for helping all of us learn from our history.

This is the first public building in my experience that preserves the historical significance of its Chinatown site with a permanent exhibit of the discovered artifacts. What was uncovered here symbolizes to me the efforts of our forebears to make things better for future generations. To me, CACS's participation in this project is a way we can tell our forebears that their children and grandchildren have not forgotten their sacrifice, courage, and determination.

I learned from this experience that government can be responsive to community concerns. This responsiveness cannot happen, however, without the active and committed collaboration of both the government and the community.

This project sets a positive tone for discussion about the future of the Chinatown block between I and J Streets, kitty-corner to the courthouse. This block has a 72-unit public housing facility, Ping Yuen center, that was once home to many elderly Chinese and fixed income residents. Now it is vacant. I hope that future collaboration of the government and the community on Ping Yuen will be as fruitful as it has been for the federal courthouse.

Meantime, the artifact exhibit will be dedicated this spring. I invite the entire community to take advantage of this wonderful educational discovery.

*Derrick Lim is an administrative analyst with the City of Sacramento. The Chinese American Council of Sacramento honored him in 1998 as its Member of the Year. The views expressed here are his, and do not necessarily represent the position of CACS or of any branch of government.*

## The Chinese and the Legal System

*Professor Charles J. McClain's In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth-Century America*

**T**he struggle of the Chinese immigrants to California to make a life for themselves is a stirring saga of triumphs and tragedies. This book tells the tale in exquisite detail. One of the most amazing elements in the story is the very learned way that the Chinese used the legal system to pursue their ends. The Chinese community was well organized and very well aware of the importance of the legal system. Good lawyers and lobbyists were retained, and the Constitution was invoked over and over again. When they lost, as they often did, the Chinese forced the courts to be explicit in their harrowing racism. Cases like *People v. Hail* (1854) 4 Cal. 399, which in part declares that Chinese people are technically Negroes, which so baldly underscores the root of racism, still sit on our shelves.

Professor McClain works through the various obstacles thrown before the Chinese community, including statutory exclusion from testifying in court, attempts to segregate public schooling, exclusion acts and anti-miscegenation statutes. His description of the Constitution of 1879, with its explicit declaration that the presence of Chinese in the state was dangerous, and directly empowering the Legislature to do all that it could to exclude them, is startling in its raw edge. This racist screed, drafted by Dennis Kearney's Workingman's Party, although not long on the books, is testimony to the times.

Yet the Chinese fought back at each point, using the legal system. Carefully, incrementally, they gained ground that was to serve as important precedent for later days when civil rights once again entered the nation's docket. Brave federal judges, whose names we should remember with pride, appear here as they move to protect the nascent rights of the Chinese.

McClain does not write with the grace or power of Sacramento's Kevin Starr (see the piece in this issue on Kevin Starr's *California Dream*), but then few do. Where Starr can make a story sing, McClain is a careful workman. At a few places the two narratives cover the same territory, but Starr is sweeping by and McClain is carefully aligning each rock. McClain's work is sound and he carefully footnotes each fact so that the interested reader can follow any of a thousand roads. I highly recommend this paperback to anyone who wants to really understand this difficult question.

—Robert Berring

# SACRAMENTO LAWYER

SACRAMENTO COUNTY  
BAR ASSOCIATION

Volume 99, Number 2 March 1999

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Contents page photo by Adrian Velicescu,  
supplied by courtesy of the Joint Venture of  
Nacht & Lewis Architects and HLM Design

Cover photo by Carl Takei

On the plaza at the new United States Courthouse, Magistrate Judge John E. Moulds examines an inscription. It says, "The function of the lawyer is to preserve a skeptical relativism in a society hell-bent for absolutes."

Sacramento Lawyer welcomes letters and article suggestions from readers. Please e-mail them to the Editor, Yoshinori Himel, yhimel@pobox.com. The Sacramento County Bar Association reserves the right to edit articles and letters sent in for publication. Please contact SCBA 916-448-1087 x204 for deadline information, fax 916-448-6930, or e-mail scba@sacbar.org. Web page: www.sacbar.org.



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November 4, 2020

Governor's Office of Planning &amp; Research

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[NAHC.ca.gov](http://NAHC.ca.gov)

Rob Ferrera  
Sacramento Municipal Utility District  
6201 S Street  
Sacramento, CA 95817

**Re: 2020110057, Station H Substation Project, Sacramento County**

Dear Mr. Ferrera:

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

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

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

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

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

**1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:**

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
- b. The lead agency contact information.
- c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

**2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).

- a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

**3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

**4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.
- d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

**5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

**6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

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

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

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

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

## NAHC Recommendations for Cultural Resources Assessments

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

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

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

If you have any questions or need additional information, please contact me at my email address: [Nancy.Gonzalez-Lopez@nahc.ca.gov](mailto:Nancy.Gonzalez-Lopez@nahc.ca.gov).

Sincerely,



Nancy Gonzalez-Lopez  
Cultural Resources Analyst

cc: State Clearinghouse

**From:** [Rob Ferrera](#)  
**To:** [Cori Resha](#)  
**Subject:** Fwd: Station H Substation Project Environmental Impact Report  
**Date:** Thursday, November 19, 2020 10:55:20 AM

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From City Fire.

Please note: I am working remotely in an effort to help reduce the spread of COVID-19.  
Please call my mobile phone if you need to get a hold of me. ~Take care

Rob Ferrera  
(he, him)  
Environmental Services  
SMUD | Powering forward. Together.  
d: 916.732.6676 | m: 916.769.8241

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**Date:** November 19, 2020 at 10:37:58 AM PST  
**Subject:** [EXTERNAL] Station H Substation Project Environmental Impact Report  
**To:** Rob Ferrera <[Rob.Ferrera@smud.org](mailto:Rob.Ferrera@smud.org)>

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Rob,  
I have reviewed the NOP for the above-referenced EIR and don't have any comments. Thanks

King Tunson  
Program Specialist  
Planning Entitlements/Administration  
Sacramento Fire Department  
5770 Freeport Blvd, Ste 200  
Sacramento, CA 95822  
Office (916) 808-1358  
Fax (916) 808-1677  
[ktunson@sfd.cityofsacramento.org](mailto:ktunson@sfd.cityofsacramento.org)

**From:** [Rob Ferrera](#)  
**To:** [Cori Resha](#)  
**Subject:** Fwd: Sac Metro Air District- no comments on SMUD Station H NOP  
**Date:** Wednesday, December 9, 2020 12:44:27 PM

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From Sac Metro.

Talk soon!

Please note: I am working remotely in an effort to help reduce the spread of COVID-19.  
Please call my mobile phone if you need to get a hold of me. ~Take care

Rob Ferrera  
(he, him)  
Environmental Services  
SMUD | Powering forward. Together.  
d: 916.732.6676 | m: 916.769.8241

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**Date:** December 9, 2020 at 12:07:25 PM PST  
**Subject:** [EXTERNAL] Sac Metro Air District- no comments on SMUD Station H NOP  
**To:** Rob Ferrera <Rob.Ferrera@smud.org>  
**Cc:** Karen Huss <KHuss@airquality.org>, LU Project Review Account <ProjectReview@airquality.org>

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Hi Rob,  
Thank you for informing us of the SMUD Station H NOP. Due to its small size, we have no comments.  
Best regards,  
Rachel DuBose

Rachel DuBose  
Air Quality Planner/Analyst

Sacramento Metropolitan Air Quality Management District (Sac Metro Air District)

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