

Comment Set A0006, cont. Campo Kumeyaay Nation

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reference to the Band's Plan should be made when addressing any Alternative that will cross the Band's Reservation. Specific parts of the Draft EIR/EIS that require revision to reflect tribal authority and jurisdiction are discussed below.

A0006-7 cont.

A. Interstate 8 Alternative

The failure to recognize tribal jurisdiction and authority is most egregious, as it relates to the Band, in Section E.1.4 of the Draft EIR/EIS addressing Land Use for the Interstate 8 Alternative. The list of "jurisdictions" along this alternative route includes a number of federal and state agencies, the County and City of San Diego, but not the Campo Band. E.1.4-1. Turning to Table E.1.4-1, which delineates jurisdiction by mileposts, it becomes apparent that the Lead Agencies consider the Bureau of Indian Affairs ("BIA") to have jurisdiction over the Band's lands. Table E.1.4-1, p. E.1.4-3 (see entries for Mileposts I-8-43-44, I8-43-44, I8-44-45, and I8-45-46). While it is true that the United States holds the majority of the Band's lands in trust status, and the BIA is the federal agency with direct responsibility for carrying out the federal government's trust obligation to the Band, the Band, not the BIA, exercises governmental jurisdiction over those lands.³

A0006-8

Under the Campo North Option, in which the Interstate 8 Alternative would be moved to the north side of I-8, but still cross the Campo Reservation, Table E.1.4-1 incorrectly identifies the jurisdictional entity as the County of San Diego. E.1.4-6. In discussing the Land Use impacts of the Campo North Option for the Interstate 8 Alternative, the Draft EIR/EIS again fails to acknowledge that this alternative, like the segment it would replace, crosses tribal lands. E.1.4-14 -16. Once again, the Draft EIR/EIS appears to incorporate SANDAG or San Diego General Plan designations of land use instead of more specifically -- and properly -- referring to the Band's Land Use Plan.

B. New In-Area Renewable Generation Alternative

Reference to and reliance upon SANDAG and San Diego County planning documents and permitting authority permeates the discussion of the wind component of the New In-Area Renewable Generation Alternative, despite the fact that the wind component is proposed to be located entirely upon lands owned by the United States or Indian tribes.

A0006-9

E.5.1. Description of Alternative Components. In addressing the siting of wind turbines, the Draft EIR/EIS looks to the San Diego General Plan for land use designations on lands belonging to the Band and other tribes. E.5-25. The San Diego General Plan is not applicable to tribal lands. The Draft EIR/EIS does acknowledge, in the subsection addressing construction and grading, that approval of the "Campo, Manzanita, or La Posta Reservations," may be required.

³ Compare section D.4.2.3 of the Draft EIS, where the Santa Ysabel Band of Diegueno Mission Indians is at least listed as a jurisdictional entity along with the BIA. D.4-5 and Table D.4-5, entries for MP 99-100 and 100-101.

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E.5-28. While the Band appreciates this recognition, it is more appropriate to refer to approval by the affected tribe's government, *e.g.* the Campo Band General Council, rather than approval by a "reservation."

A0006-9 cont.

E.5.2. Biological Resources. Among the mitigation measures for Impact B-13 (avian mortality from collision with wind turbines) of the wind component, the Draft EIR/EIS provides that a site plan will be submitted for review and approval by the County Zoning Administrator. E.5-93. The County Zoning Administrator has no authority to approve siting of improvements on tribal lands.

A0006-10

E.5.3. Visual Resources. In reviewing the visual impacts of the wind turbines on the Band's reservation, the Draft EIR/EIS states that the turbines would be visible from I-8, "a third priority scenic route under the San Diego County Mountain Empire General Plan," and determines that the intensified industrialization of the area would result in a significant visual impact. E.5-106. The County of San Diego cannot limit development on tribal lands because of inconsistencies with County planning documents and this finding is irrelevant.

A0006-11

E.5.6. Agriculture. The subsection addressing the agricultural setting for this Alternative first states that there are no agricultural uses of the geographical area proposed for wind energy development, again without reference to any tribal land use plans, and then recites that "the San Diego County General Plan and San Diego Associations [*sic*] of Governments Regional Comprehensive Plan *would apply to this component as well....*" E.5-141 (emphasis added). The County and SANDAG Plans have no application to land use on tribal lands.

A0006-12

E.5.8. Noise. The subsection dealing with noise impacts of the wind component refers to the nighttime noise limit of 45 dBA Leq "established by the San Diego County Code of Regulatory Ordinances" even though it is assessing impacts on noise-sensitive receptors "within tribal reservations." E.5-178. Further, the Draft EIR/EIS refers to the "San Diego Mountain Empire Plan, Industrial Goal, Policy and Recommendation 11" in determining that the operational noise from wind turbines, though significant, could be mitigated to insignificant levels. E.5-179. County regulations and plans do not control development on the Band's Reservation.

A0006-13

This subsection of the Draft EIR/EIS also contains noise mitigation measure N-3b, which provides that an "Operational Noise Study shall be conducted to determine the potential noise levels to be experienced by residents located within reservation lands and along the boundaries of the reservation and BLM lands in which the planned wind component turbines would be located." *Id.* In the case of BLM lands, the requirement that an Operational Noise Study be conducted is not objectionable to the Band. However, the mitigation measure should have no applicability on tribal lands; in the case of the development of wind energy resources on tribal lands, the Band employs its own environmental review process, as part of which such noise studies would be conducted. For the same reason, the EIR/EIS must be revised to remove the remainder of the mitigation measure. That portion of the measure provides that the Operational

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Noise Study “shall be reviewed and approved by San Diego County prior to land use clearance,” and further -- and most objectionable to the Band -- that “final siting of wind component turbines shall be subject to approval by San Diego County.” *Id.* App.12-78-79. The County has no authority to issue land use clearances on tribal lands, to limit development because of concerns over noise, or to approve or disapprove siting of wind turbines on tribal lands.

A0006-14 cont.

E.5.11. Air Quality. The introduction to the subsection dealing with the air quality impacts of this Alternative states that “[t]he wind component is wholly within San Diego County, administered by the SDAPCD [San Diego Air Pollution Control District].”⁴ E.5-215. While the Band’s Reservation is located within the exterior boundaries of the County, neither the County nor its SDAPCD has jurisdiction over tribal lands or tribal air quality.

A0006-15

E.5.15. Fire and Fuels Management. One of the mitigation measures proposed to reduce the threat of fire in the high-risk area around the Campo Reservation calls for the preparation of a Weed Control Plan to limit the introduction of non-native plants. The mitigation measure provides that the “Weed Control Plan requires pre-construction and long-term weed surveys and implementation of control methods that require consultation and approval of the San Diego County Agricultural Commission and appropriate land-holding public agencies.” E.5-277. The Band has no objection to development of such a Plan, but should be consulted during both the planning and implementation processes. The Campo tribal government conducts its own on-Reservation brush and weed control program under the auspices of the Campo Reservation Fire Protection District, the Campo Environmental Protection Agency, and the Executive Committee. Coordination among the various entities within the County with jurisdiction over lands in the vicinity of the Campo Reservation will ensure that the Plan is carried out most efficiently. The term “land-holding public agencies” would be more appropriately written as “land-holding governmental entities,” which would encompass both the BLM and tribal governments. The County Agricultural Commission would appear to have no jurisdiction over either the tribal or BLM lands where the wind turbines are proposed to be located.

A0006-16

In sum, the land use plans of other jurisdictions simply have no application on tribal lands, and the Draft EIR/EIS should be revised to reflect this fact.

II. Environmental Justice

A0006-17

The analysis of the environmental justice implications of the Proposed Project and Project Alternatives presented in Section F.1 of the Draft EIR/EIS is seriously flawed and must be redone. The Draft EIR/EIS approaches the environmental justice analysis by first identifying minority and low-income populations, which are defined to occur when:

- The minority or low-income population of the affected area is greater than 50 percent of the affected area’s general population; or

⁴ “SDAPCD” is not included in the Glossary to the Draft EIR/EIS.