

Comment Set A0031  
Pechanga Indian Reservation  
(Portions of this comment appear on DVD only)



**PECHANGA INDIAN RESERVATION**  
*Temecula Band of Luiseño Mission Indians*

**OFFICE OF THE GENERAL COUNSEL**  
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April 11, 2008

**VIA EMAIL AND U.S. MAIL**  
**(sunrise@aspeneg.com)**

CPUC/BLM  
c/o Aspen Environmental Group  
235 Montgomery Street, Suite 935  
San Francisco, CA 94104

Re: Comments on Draft EIR/EIS for the Sunrise Powerlink Project

To Whom It May Concern:

The Pechanga Band of Luiseño Indians, a federally recognized Indian Tribe (hereinafter the "Pechanga Tribe") submits the following comments regarding the DEIR/DEIS for the above-referenced Project. Additional comments maybe submitted separately. The Pechanga Band requests that this letter be included in the record of approval for the Project.

**PECHANGA TRIBE CULTURAL AFFILIATION TO PROJECT AREA**

While the Proposed Project itself does not fall within Pechanga's traditional territory, the LEAPs alternative falls squarely within Pechanga's territory. Further, proposed future transmission system expansions also would likely fall within Pechanga's traditional territory. The Pechanga Tribe has submitted extensive comments on the LEAPs Project. A copy of the Comments on the LEAPs DEIS and HRMP is attached hereto and incorporated herein.

The Pechanga Tribe has a specific legal and cultural interest in this Project as the Tribe is culturally affiliated with the geographic area which comprises both a proposed alternative to the Project and also proposed future system expansions. The Tribe has been named the Most Likely Descendent (Cal. Pub. Res. C. §5097.98) on projects in the nearby vicinity of the LEAPs project, has been the named consulting tribe on projects in the vicinity of the LEAPs project, and has specific knowledge of cultural resources and sacred places within/near the LEAPs project and proposed future transmission systems. The Tribe understands that for any future proposed transmission systems, the project

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proponent would still have to comply with the necessary environmental review requirements and Section 106. However, the Tribe would like to state at this point in time that it wishes to be consulted with as soon as possible once these contemplated projects are started.

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**TRIBAL CONSULTATION REQUIREMENTS**

**A. THE CPUC AND BLM MUST CONSULT WITH THE PECHANGA TRIBE REGARDING THE PROJECT**

It has been the intent of the Federal Government<sup>1</sup> and the State of California<sup>2</sup> that Indian tribes be consulted with regard to issues which impact cultural and spiritual resources, as well as other governmental concerns. The responsibility to consult with Indian tribes stems from the unique government-to-government relationship between the United States and Indian tribes. The United States has a unique political and legal relationship with Indian tribal governments. In conformance with this unique relationship, the Federal Government recognizes the sovereign status of tribal governments and its obligation to deal with these tribal governments on a *government-to-government* basis. President Bush himself reaffirmed this responsibility in both his Executive Order 13336 and his Executive Memorandum of September 23, 2004.

The obligation to consult arises when tribal interests are affected by the actions of State governmental agencies and departments, such as approval of General Plans or EIRs. Further, with projects such as this which both proceed across Federal lands and require Federal approval, laws such as NEPA and the NHPA are implicated. Therefore, in order to comply with CEQA, Section 106, and other applicable Federal and California law, it is imperative that BLM and the CPUC adequately consult with the Tribe in order to guarantee an adequate basis of knowledge for an appropriate evaluation of the effects, as well as generating adequate objectives, policies and potential mitigation measures. In this case, it is undisputed that the area encompassing the Project Alternative lies within the Pechanga Tribe's traditional territory and thus the Tribe should be consulted on the Project.

**B. SECTION 106 CONSULTATION REQUIREMENTS**

<sup>1</sup> See Executive Memorandum of April 29, 1994 on Government-to-Government Relations with Native American Tribal Governments; Executive Order 13175 of November 6, 2000 on Consultation and Coordination with Indian Tribal Governments; and Executive Memorandum of September 23, 2004 on Government-to-Government Relationship with Tribal Governments.

<sup>2</sup> See California Public Resource Code §5097.9 et seq. and Cal. Govt. Code §§ 65351, 65352, 65352.3 and 65352.4.



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The requirements of Section 106 of the NHPA, set forth in 36 CFR Part 800, clearly requires consultation with Indian tribes, regardless of the location of the project (36 CFR 800.2(c)). The regulations go on to state that the agency official *shall* ensure that consultation provides an Indian tribe “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” *Id.* Further, consultation must occur early in the planning process in order to “identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.” *Id.*

A0031-1 cont.

As part of the Section 106 review process, agencies must make a “reasonable and good faith effort” at identification of historic properties within the area affected by the undertaking. (*Id.* at 800.4(b)(1)). The ACHIP and Federal Courts have determined that the process must be completed for not just the “permit area,” but for the entire project area. Colorado River Indian Tribes v. Marsh (1985) 605 F. Supp. 1425. Historic properties are defined to include archaeological sites and areas which have religious or cultural significance to Tribes. *Id.* Further, such identification efforts should include consultation with Tribes. *Id.*

It is the Tribe’s understanding at this point that the cultural resources survey reports have not yet been completed. While the Tribe understands that CEQA/NEPA review can progress separately from the Section 106 consultation, the fact of the matter is that the Project mitigation measures will be set through the CEQA/NEPA process. Thus, the Tribe objects to the fact that it has not been provided adequate information with which to comment on potential impacts to cultural resources and the opportunity to have adequate information with which to propose mitigation measures for such impacts.

### **POTENTIAL PROJECT IMPACTS TO LUISEÑO SACRED SITE, CULTURAL TRADITIONAL PROPERTIES AND ARCHAEOLOGICAL SITES**

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The Pechanga Tribe is not opposed to the Proposed Project itself, and as was noted above, believes that as currently proposed the Project falls outside of Pechanga’s traditional territory. However, the Pechanga Tribe’s primary concerns stem from the likely impacts on Native American cultural resources which would arise from the Project Alternative (LEAPs) and proposed future transmission systems. The Pechanga Tribe has a long history of involvement with projects in and around the Counties of Riverside and San Diego with regard to the protection and preservation of Luiseño cultural resources. The Pechanga Tribal Government has a Cultural Resources Department, with a staff of

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experts in Luiseño history and archeology, which its elders entrust to protect and preserve its cultural resources for future generations. As such, the Pechanga Tribe is concerned about both the protection of unique and irreplaceable cultural resources and archaeological items which could be displaced by ground-disturbing work if the Project Alternative were chosen, and on the proper and lawful treatment of cultural items, Native American human remains and sacred items that may be discovered in the course of the work.

The Pechanga Tribe requests that the attached comment letter on the LEAPs Project be appropriately reviewed and considered as part of the environmental evaluation of the Project and its alternatives. Further, the Pechanga Tribe requests that it be included as a partner in any future projects which may fall within the Pechanga Tribe's traditional territory.

The Tribe appreciates the opportunity to provide these comments and looks forward to working with the BLM, the CPUC, the Project Applicant and other interested agencies in protecting invaluable Luiseño cultural resources. If you have any questions, please do not hesitate to contact me at (951) 676-2768, Ext. 2137.

Sincerely,



Laura Miranda  
Deputy General Counsel

Cc: Pechanga Cultural Resources Department

Enclosure

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**PECHANGA CULTURAL RESOURCES**  
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April 25, 2006

Ms. Magalie R. Salas  
Secretary, Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Project No. P-11858-002 - Comments in HPMP and DEIS (Cultural Resources aspects only)

Dear Ms. Salas:

The Pechanga Band of Luiseño Indians, a federally recognized Indian Tribe (hereinafter the "Pechanga Tribe") submits the following regarding the above-referenced Project for the HPMP and cultural resources aspects of the DEIS. Additional comments regarding other portions of the DEIS may be submitted by the Pechanga Tribe separately. The Pechanga Band has previously commented on this Project and has attended various tribal meetings regarding the Project.

The Pechanga Tribe's primary concern regarding this Project is the impact it will have on significant cultural resources, Luiseño sacred sites, and Native American human remains. The Pechanga Tribe has a long history of involvement with development Projects, local, State and Federal, that impact cultural resources affiliated with the Pechanga Tribe and, as is discuss more fully below, the Pechanga Band has a strong cultural affiliation with the Project Area. The Pechanga Tribe is not opposed to this Project at this time. The Pechanga Tribe is concerned, however, about both the protection of unique and irreplaceable cultural resources, such as Luiseño village sites and archaeological items which would be displaced by ground-disturbing work on the project or impacted by water upon completion of the project, and on the proper and lawful treatment of ceremonial and sacred items, including Native American human remains and likely to be discovered in the course of the work.

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**Pechanga Affiliation with Project Area**

The Pechanga Band of Luiseño Indians has a rich and varied history within the Project Area and maintains strong cultural ties with the Project Area. A more detailed description of the Pechanga Band's history and affiliation with the Project Area is discussed in greater detail in the Confidential Appendix attached hereto.

Because of the sensitive nature of the information contained in the Confidential Appendix, the Pechanga Band is specifically requesting the Commission and any and all affiliates, whether governmental agencies or private entities, to maintain the confidentiality of the information by withholding it from publication and public review.

**Project Impacts to Luiseño Sacred Site, Cultural Traditional Properties and Archaeological Sites**

As a preliminary matter, the Pechanga Tribe feels that the HPMP and DEIS are lacking with respect to adequate tribal consultation concerning evaluation of resources which may be encountered. The Pechanga Tribe understands that given the large number of alternatives and routes for the transmission lines, it is not possible to adequately field survey all of the routes. Nevertheless, because of this difficulty, it is imperative that adequate monitoring and evaluation of the selected areas be performed. Such adequate monitoring and evaluation requires consultation with the Tribe in order to accomplish this. The Pechanga Tribe will discuss more fully below the specific areas of the HPMP and DEIS where it feels additional tribal consultation needs to be included.

With respect to the proposed alternatives, of particular concern is the Morrell Canyon upper reservoir alternative which would destroy or damage four prehistoric sites, the Santa Rosa and Ortega Oaks powerhouse sites which would each affect a prehistoric site and any of the routes that pass through the Pechanga Tribe's traditional territories. A copy of Luiseño traditional territory map is enclosed for your convenience. The Tribe has an interest in any portion of the Project within those territory boundaries.

**Potential Impacts to Morrell Canyon Sites and Other Project Sites**

Within the Morrell Canyon region, numerous archeological sites have been identified and recorded, and certain recommendations have been suggested. It is important to evaluate each site from a cultural perspective in order to determine whether the suggested recommendations correlate with an appropriate treatment from the Pechanga's Bands cultural values based on its knowledge of cultural resources and their importance. Listed below are the archeological sites identified in the report, with an additional recommendation given by Pechanga, if deemed necessary.

RIV-3836 located in the Preferred Project Morrell Canyon upper reservoir would be "inundated with water." The site consists of bedrock mortars and pictographs. This study's recommendation for 3386 indicates "the integrity and condition of the

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pictographs panels, which have been badly damaged by fire, need to be documented as part of a significance determination for the site.” Further, the potential destruction of RIV-3386 and its rock art due to this proposed reservoir is anathema to Tribal people, California history, and historic preservation. Complete site avoidance and National Register determination needs to occur.

RIV-271 located just adjacent to the transmission line corridor and could potentially have another component on the west side of the creek. RIV-271 would be severely and further impacted by any ground disturbance. There are known cremations, burials, petroglyphs, numerous cupule boulders, multiple bedrock mortar-stations, and at least one pictograph. The site should be avoided and be named to the National Register.

RIV-1082 would be impacted by a proposed upper reservoir which would be filled. Although at this time 1082 is defined as a bedrock-milling station/“kitchen-site,” the apparent presence of midden would warrant further evaluation and possible avoidance. The Pechanga Band believes that further subsurface resources are likely present.

RIV-2205 would be impacted by a proposed upper reservoir when filled. Although at this time 2205 is defined as a bedrock-milling station/ “kitchen-site,” the site would need to be reevaluated if any ground disturbance is expected to occur in the vicinity.

RIV-1091 located on the Northern Transmission Preferred Alignment. The site-studies say that the sites petroglyphs are “eroding away.” Erosion due to the weathering or wildfires, specifically for such resources as these incised Luiseño design-elements, is inevitable. However, the significance of these Luiseño resources is not diminished. Site reevaluation, with appropriate Luiseño on-site consultation, will be necessary to determine avoidance of the site if this alignment is chosen.

RIV-1311 located with the Eastern Transmission Corridor Alternative 2 route consisted of lithic scatter with possible midden. The presence of midden might represent de-composing of plant matter, or in the worse-case scenario, be indicative of cremation-burials. Careful, reevaluation of the site with on-site Luiseño consultation will be necessary of this alignment is chosen. Full avoidance of the area will need to be determined.

RIV-4045 located in the Ortega Tailrace Alignment may be impacted by trenching. Numerous artifacts including: manos, pestles, cores, fragments of burned bone, and fire-affected rock were located. Notably, the site is described as having “midden exceeding 3 meters in some areas as tested in 1991.” The midden could be botanical or cooking-related but the “possible intact midden deposit” could also be indicative of a cremation-burial area. Additional site study with appropriate Luiseño representation should occur if this alignment is considered. Possible site avoidance and National Register determination might be warranted.

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RIV-5878 located in the Santa Rosa Powerhouse site. Recorded as a bedrock milling station, potential avoidance and further study would be appropriate.

RIV-6174 located in the Local Distribution Lines area. This site record says it “may be related to RIV-4045.” The site is located on the site of Machado Adobe, which is the location of the place name called We’eeva. The cultural importance to the Luiseño People warrants avoidance.

RIV-7659 located in the Preferred Project Morrell Canyon Upper Reservoir. Recorded as a bedrock milling station, more study to relocate the site is necessary.

33-11009. The location of the APE for this site is undetermined at this time. This site represents the place name, Itengvu Wumowmu (Elsinore Hot Spring). The cultural importance to the Luiseño People warrants avoidance.

33-12661 located in the Local Distribution Lines area. Several types of artifact resources were found. The most significant material was a fragment of abalone shell. Shells were used to make personal-items such as pendants. Shell is also indicative of potential burials. Avoidance of this area should be considered.

SDI-5143 located in the Southern Transmission Line Alternative 5 Substation area. This bedrock milling site is located on Camp Pendleton and has a lithic scatter area. It has been heavily disturbed. Further testing to relocate the site and future avoidance should be considered.

SDI-9579 located in the Southern Preferred Substation area is a bedrock milling station. Further evaluation and site relocation should be considered.

SDI-15,649 is located in the Southern Transmission Line Alternative 5 Substation area. The site had a small amount of lithic scatter. Further evaluation of the site should be considered.

Given the expected impacts to prehistoric cultural resources sites, the Tribe is requesting that the Decker Canyon and Evergreen alternatives be selected for the upper reservoir and powerhouse sites respectively. This would avoid impacts to any cultural resources for those two portions of the project.

As this Draft EIS does not engage in focused review of the Project’s proposed alignments, for the transmission lines, the Tribe is unable to submit detailed comments at this time, but will submit further detailed comments on the specific impacts to cultural resources as soon as it is provided with specific information on route locations, grading plans, engineering plans, etc. In addition, as the information concerning cultural resources is sensitive and subject to confidentiality requirements under State and Federal law, the Tribe requests that the applicable agencies consult with the Tribe in-person

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regarding the specific locations and details of the Project impacts to cultural resources, as the Tribe is unable to disclose additional specific details in this letter.

### **Applicable Federal and State Law**

In addition to the National Environmental Protection Act, the Project is also subject to the National Historic Preservation Act (16 U.S.C. §§ 470 *et. seq*) which requires that a Section 106 review be performed for all Federal undertakings (16 U.S.C. 470w(7); 36 CFR §800.16(y)). As part of the Section 106 review process, agencies must make a “reasonable and good faith effort” at identification of historic properties within the area affected by the undertaking. (*Id.* at 800.4(b)(1)). The ACHIP and Federal Courts have determined that the process must be completed for not just the “permit area,” but for the entire project area. Colorado River Indian Tribes v. Marsh (1985) 605 F. Supp. 1425.

Historic properties are defined to include archaeological sites and areas which have religious or cultural significance to Tribes. *Id.* Further, such identification efforts should include consultation with Tribes. *Id.* As discussed below, the Pechanga Band therefore requests that appropriate assessments be made according to the Section 106 review process, and that the Pechanga Band be a consulting party on a government-to-government basis. (Executive Order 13175).

Further, the Band believes that if human remains are discovered, State law would apply and the mitigation measures for the Project must account for this. According to the California Public Resources Code, § 5097.98, if Native American human remains are discovered, the Native American Heritage commission must name a “most likely descendant,” who shall be consulted as to the appropriate disposition of the remains. Given the project’s location in Pechanga territory, the Pechanga Tribe intends to assert its right pursuant to California law with regard to any remains or items discovered in the course of this project in the Tribe’s traditional territory. And, accordingly, the Tribe further requests that all permitting agencies, including the Authority, the FRA, the DOT, and all other cooperating agencies, work with the Tribe to draft an Agreement which would address any inadvertent discoveries of cultural resources, including human remains.

### **Comments on HPMP**

The Pechanga Tribe has the following specific comments regarding the HPMP. With respect to delineation of appropriate APEs, the Pechanga Tribe is concerned that there have been no APEs set for the anticipated tunnels for the Project. This completely ignores the possibility of the existence of subsurface sites which may be impacted by the excavation of the tunnels. The Pechanga Tribe believes that the APE for the tunnel portions of the project should be reevaluated, in consultation with the Tribe. Further, wherever the HPMP notes that it will address future decisions regarding APEs or amendments to the APEs, it should acknowledge that the Lead Agency or its delegated agent will consult with the Tribe as well as the SHPO in making those determinations.

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In addition, the Tribe believes that in order to adequately comply with the mandates of Section 106, the Lead Agency or its delegated agent must also consult with the Tribe with respect to the evaluation of any prehistoric cultural resources discovered during the pendency of the construction of the Project, rather than just the SHPO and USFS. This includes adequate consultation with the Tribe in the development of any HPTPs so that the Tribe has adequate say regarding the treatment and disposition of any cultural resources.

Further, with respect to the evaluation plan, the Tribe should be specifically consulted on aspects such as field and lab methodologies and how surface collections should proceed. The Pechanga Tribe opposes all invasive or destructive testing of artifacts. Attached as Addendum 1 to this comment letter is suggested language for appropriate evaluation methods which takes into account the interests of the Tribe regarding their cultural resources. The Tribe believes that any such methodology should acknowledge that for certain sacred or ceremonial items, the Tribe may request that the item remain *in situ* and immediately reburied with appropriate ceremony. Further, the methodology must also acknowledge data recovery as the mitigation method should not be the presumption, but rather that avoidance and preservation should be the presumption.

Finally, the Tribe does not believe that there needs to be any public interpretation elements with respect to Native American cultural resources as the Tribe believes that all such sites and items are confidential. Therefore, the Tribe would request that no public interpretations be created for Native American cultural resources.

**Request Mitigation Measures and Authority Action**

1. Culturally appropriate evaluation methods, as set forth in Addendum 1, be incorporated into the HPMP.
2. The Tribe shall be allowed to review and comment on any Native American Monitoring plans as well as all CRTPs.
3. The Tribe requests further archeological surveys be completed to meet the legal requirements for this Project. The Tribe requests to participate in those surveys, and to be a partner in setting forth survey methods and procedures, especially in culturally sensitive areas. Based on the history of known cultural resources in the area, the Pechanga Tribe contends that a thorough cultural resources assessment is necessary as part of the Section 106 review process. Further, the Pechanga Tribe requests that the Lead Agency and its designated agents take steps for the protection of any uncovered resources in the process of any such assessment. Surveys may reveal significant archaeological resources and sites which may be eligible for inclusion in the historic site register, may contain human remains and/or may be sacred Luiseño sites.

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4. The Lead Agency commit to avoidance and preservation of Native American sacred sites.
5. The Lead Agency and/or its designated agent(s) enter into an Agreement with the Tribe which would address inadvertent discoveries of cultural resources, Native American human remains and cultural sites.
6. The Pechanga Tribe requests that the Lead Agency and/or its designated agent(s) allow the Pechanga Tribe to monitor all grading and ground-disturbing activities in culturally sensitive areas within the Tribe's traditional territory. Further, since there is the potential for archaeological resources within the Project area, it is the position of the Tribe that Pechanga tribal monitors should be required to be present during all archeological testing performed within the Tribe's traditional territory.
7. All Luiseño cultural resources uncovered in the Tribe's traditional territory and not located on Federal properties shall be relinquished to the Pechanga Tribe for proper treatment. Such treatment may include leaving resources in place, reburial of resources in an area not subject to further disturbance, or repatriation of the resources to the Tribe.

The Pechanga Tribe looks forward to working together with the Lead Agency, the applicant, and other cooperating agencies on this Project to address impacts to sacred sites, historic properties and cultural resources.

No\$úun Lóoviqam (no-shown-low-veek-um... thank you all) for your time, your careful consideration and this opportunity to comment.

Sincerely,



Gary P. Dubois  
Cultural Resources Director  
Pechanga Indian Reservation

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