



# Campo Kumeyaay Nation

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**A0006**

**Chairman** H. Paul Cuero, Jr.  
**Vice Chairman** Ralph Goff  
**Secretary** Kerm Shipp  
**Treasurer** Michael Connolly Miskwish  
**Committee** Jackie Lelafu  
**Committee** Christopher Thornton  
**Committee** Nehemiah Dyche

February 25, 2008

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

RE: Draft EIR/EIS, Sunrise Powerlink Project

Dear Sirs:

Thank you for the opportunity to comment on the Sunrise Powerlink

As you're aware, the Campo tribal government has weighed in twice on the proposed Sunrise Powerlink. In our first correspondence with the PUC we expressed a willingness to listen and review the details of the project in the EIR process. We also asked that potential direct benefits to the Campo Reservation population be included with your evaluation of the potential impacts. Subsequently, we sent a letter of opposition to the newly released Alternative Route D due to the disproportionate impact to area residential use. We also asked that land access arrangements be made prior to determining that a route through the Reservation is a viable alternative.

After reviewing the document, we have made some decisions regarding the proposed route through the Campo Indian Reservation, as well as some general comments regarding the document.

Comments-

The document is unclear regarding the weighting of dissimilar impacts. For example, underground lines in some areas may reduce the visual impact while dramatically increasing the potential for impacts to archeological resources. Since the integrity of the archeological site is difficult if not impossible to mitigate through relocation, it seems that a heavier weight should go to this factor than to aesthetic impacts. It appears that aesthetics gets heavier weight, particularly, in proposing alternatives through wealthier communities.

It is also clear that the impacts to the La Posta, Manzanita and northern Campo Reservations from an alternative routing north of all three Reservations has not been adequately evaluated. This should be done prior to finalizing the route preferences.

The Environmental Justice evaluation is weak. Environmental Justice refers to siting or locating facilities in minority or economically disadvantaged communities. EJ policy was enacted to help empower those who do not have political clout to get fair treatment. There is no substantive socioeconomic evaluation of the proposed routes. There should be a detailed comparative analysis of the routes based on income, education, employment, as well as, racial minority populations.

It is clear that there is no direct benefit to the Campo Indian Reservation. In fact, the project would likely have an adverse direct financial impact on our present and proposed tourism based businesses near the freeway. This adverse impact is not adequately addressed in the document but further evaluation is not required if this alternative is dropped, as we now request. We have also sent a letter to SDG&E denying access for the purpose of surveying this alternative route.

We look forward to maintaining open lines of communication regarding this project and ask to be included in any future evaluations. We also ask to be consulted regarding the direct impacts to any archeological sites along the adopted route.

Additional comments may be submitted before the close of comment deadline.

Sincerely,

A handwritten signature in black ink that reads "H Paul Cuero Jr". The signature is written in a cursive style with a large initial "H".

H. Paul Cuero, Jr.

Chairman

Campo Kumeyaay Nation

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April 11, 2008

**VIA E-MAIL (sunrise@aspeneq.com) AND**  
**U.S. POSTAL SERVICE PRIORITY MAIL**

Billie Blanchard, CPUC  
Lynda Kastoll, BLM  
c/o Aspen Environmental Group  
235 Montgomery Street, Suite 935  
San Francisco, CA 94104-3002

**Re: Comments of the Campo Band of Mission Indians on the Draft Environmental Impact Report/Environmental Impact Statement and Proposed Land Use Amendment for the San Diego Gas & Electric Company Application for the Sunrise Powerlink Project; SCH No. 2006091071; DOI Control No. DES-07-58**

Dear Ms. Blanchard and Ms. Kastoll:

We write on behalf of the Campo Band of Mission Indians (also known as the Campo Band of Kumeyaay Indians) ("Band"), a federally-recognized Indian tribe with lands located within the boundaries of the State of California, to comment on the above-referenced Draft Environmental Impact Report/Environmental Impact Statement and Proposed Land Use Amendment ("Draft EIR/EIS"). The Band appreciates the efforts made by the CPUC and the BLM ("Lead Agencies") to engage in government-to-government consultations with the Band. These comments are submitted in furtherance of that consultative relationship. As the Lead Agencies are aware, the Band has previously submitted comments on the Proposed Project and Alternatives to the Project. The comments made herein reflect the Band's final position on the Proposed Project and the Project Alternatives as described in the Draft EIR/EIS.

**I. Tribal Jurisdiction/Land Use**

The Band must point out at the outset that it is somewhat dismayed by the Lead Agencies' apparent failure, despite the ongoing dialogue with the Band and other potentially affected Indian tribes, to recognize the most basic facts about tribal governments and their authority to make land use decisions regarding tribal lands. The Draft EIR/EIS fails to

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acknowledge tribal jurisdiction over matters occurring on tribal lands, repeatedly stating that other entities -- the County of San Diego and the San Diego Association of Governments ("SANDAG") are examples -- have authority to make decisions regarding tribal lands when that is not, and has never been, the case.<sup>1</sup>

The introduction to Land Use impacts is set out in section D.4 of the Draft EIR/EIS. The first sentence of section D.4.1 should be rewritten as follows:

The Proposed Project and alternatives are located within, or pass adjacent to, or near the boundaries of various federal, State, tribal, and local jurisdictions, including ...[the names of affected tribes should be included in the list jurisdictional entities].

D.4-1. Further down on the same page, the Draft EIR/EIS recites that access to tribal lands is restricted and that information about tribal land use was limited to visual inspection from public roadways and through publicly available information. *Id.* The Band suggests that through government-to-government consultation with affected tribes, much of this information could have been made available to the Lead Agencies.

In the same vein, the Lead Agencies appear to have adopted land use categories employed by SANDAG for purposes of the Draft EIR/EIS. *See* Table D.4-1 and notation of "Source". The Draft EIR/EIS describes different land use classifications to include: Agriculture, Commercial and Office, Industrial, Parks and Recreation/Open Space, Public Facilities and Utilities, Residential, *Tribal*, Water, and Sensitive Land Uses. Table D.4-1 (emphasis added); *see also* E.1.4-9, E.5-117, E.5-118 (all referring to "tribal" land use). It may make sense for the County to designate lands as "tribal", meaning lands within the exterior boundaries of the County but over which the County lacks jurisdiction. However, from the Band's perspective, "tribal" land use is a meaningless designation. The Band, like other jurisdictions, has a Land Use Plan. *See Campo Band of Mission Indians Land Use Code* (1992). Different areas on the Band's reservation are set aside for various uses including residential, cluster residential, grazing, agricultural, commercial, civic, tribal enterprise, industrial and wilderness.<sup>2</sup> *Id.* Figure 6.2-1. The Band's Land Use Plan should be included in Appendix 2, the Policy Screening Report (which should also be amended to include a heading for "Tribal" documents), and

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<sup>1</sup> These comments are generally focused on the Band's specific concerns. However, in many instances, they are equally applicable to other tribes and the Draft EIR/EIS should be revised in a comprehensive manner to correctly refer to tribal jurisdiction and land use authority.

<sup>2</sup> For example, at E.5-133, the Draft EIR/EIS recites that a "substation would either be constructed on private land or Reservation land and thus there are no wilderness or recreation areas associated with the proposed substation." This statement fails to consider that the Band has designated portions of its Reservation wilderness areas in its Land Use Plan. *Id.*

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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.

#### **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.<sup>3</sup>

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.

*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.

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<sup>3</sup> 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."

*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.

*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.

*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.

*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.

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.

*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].”<sup>4</sup> 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.

*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.

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**

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

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

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- The minority or low-income population percentage of the affected area is meaningfully greater (50 percent or greater per EPA Guidance Document) than the minority [or low-income]<sup>5</sup> population percentage in the general population of the jurisdiction or other appropriate unit of geographic analysis (i.e., County or Native American<sup>6</sup> Reservation) where the affected area is located.

F-2 (referring to and relying upon the United States Environmental Protection Agency's ("EPA") Guidance Document on NEPA Compliance Analysis). The Draft EIR/EIS adopts the block census tract as the unit of analysis for measuring potential environmental justice impacts on minority and low-income populations. F.3. The following significance criteria are established in the Draft EIR/EIS for environmental justice impacts:

- More high-minority block groups are within one-half miles of the ROW than either medium-minority block groups or low-income block groups;
- More low-income block groups are within one-half miles of the ROW than either medium-income block groups or high-income block groups.

The Draft EIR/EIS then evaluates block groups within what the Lead Agencies have determined to be the "appropriate unit of geographic analysis," which, in the case of affected tribes, is the boundaries of the tribe's reservation.

As is evident from Table F-1, each of the Indian reservations affected by the Project has a substantially greater minority population than the County of San Diego. Many of the reservations, including the Band's reservation, also have significantly higher low-income populations. F-3. It makes sense to assess the impacts of the Project on reservation residents by comparing the on-reservation populations near the Project with on-reservation populations that are further away. The Band strongly suggests that the Lead Agencies reanalyze the environmental justice impacts of the Proposed Project and its Alternatives by comparing the affected populations with some larger population, the most obvious choice being the population of San Diego County.

The Band cannot help but note that while the Lead Agencies have made a practice in the Draft EIR/EIS of consistently ignoring tribal jurisdiction in matters of significant concern to the affected tribes, they have chosen to limit their environmental justice analysis to impacts within

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<sup>5</sup> Omission of this text appears to be a typographical error.

<sup>6</sup> The Draft EIR/EIS reflects the input of different authors who rely on different terms. The Band suggests that the Lead Agencies edit the Draft EIR/EIS for consistency of usage. When referring to the race of Indian people, the Band prefers the term "Indian" to "Native American." When referring to jurisdictional matters, the term "tribal" should be used.



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tribal jurisdictions -- the one part of the Draft EIR/EIS where such reliance is clearly inappropriate. Again, the environmental justice impacts of the Proposed Project and Project Alternatives must be recalculated. The Band anticipates that a revised analysis will result in the identification of significant environmental justice impacts associated with the Proposed Project and may affect CPUC's environmental ranking of the Project Alternatives.

### **III. Objections to the Interstate 8 Alternative**

In discussions with the CPUC, the Band expressed a willingness to support the evaluation of the Interstate 8 Alternative in the Draft EIR/EIS. After carefully reviewing the Draft EIR/EIS's discussion of the Alternative's potential impacts and benefits, the Band has determined that the Interstate 8 Alternative is not viable. The Band appreciates the willingness of the Lead Agencies to consider and incorporate its proposal of the Campo North Option to the Interstate 8 Alternative. However, while relocating the transmission line to the north of I-8 slightly reduces both the length of the line and the impacts on tribal lands, the Band has determined the negative impacts -- particularly the impacts to the Band's tourism-based businesses -- to be significant and outweigh any potential benefits.

The Band objects to the Interstate 8 Alternative because of the significant impacts to the Band, its lands, and its people that are documented in the Draft EIR/EIS. Specifically, the Band is concerned about the increased risk of fire associated with 500 kV transmission lines in an area that is already at extremely high risk resulting in a Class I impact that cannot be mitigated to insignificance. *See generally* Section E.1.15, and pp. E.15-20, E.15-29, and Figure E.15-17. The Band is also concerned about the potential risks to groundwater and the potential for even temporary reduced yield of local supply wells associated with construction of the Interstate 8 Alternative, given the extremely shallow aquifer. *See generally* Section E.1.12 and pp. E.1.12-1 and E.1.12-5. Finally, although there are no plans for underground transmission across the Band's lands, even the ground disturbance associated with construction and installation of transmission towers and related infrastructure has the potential to destroy cultural resources important to the Band and neighboring tribes.<sup>7</sup> *See generally* Section E.1.7. Many of the potential economic impacts and impacts to cultural resources are incapable of mitigation.

The CPUC has identified a number of Project Alternatives that are environmentally superior to the Interstate 8 Alternative. The Band encourages the Lead Agencies to pursue one of these less damaging options. Indeed, the Band is convinced that even those alternatives deemed environmentally inferior in the Draft EIR/EIS may turn out to be superior if properly and fairly evaluated. We look forward to a continuing dialogue in the form of government-to-

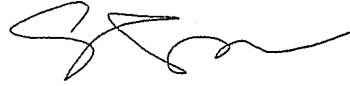
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<sup>7</sup> The Band appreciates the Lead Agencies' efforts during preparation of the Draft EIR/EIS to keep the Campo Executive Committee informed of the status of work to determine the potential cultural resource impacts of the Proposed Project and Project Alternatives. The Band requests that the Lead Agencies continue to consult with the Band with regard to such impacts as the environmental review moves forward.

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government consultation as analysis of the Proposed Project and its Alternatives progresses. We appreciate this opportunity to comment on the work of the Lead Agencies at this preliminary stage in the process.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Gollis', written in a cursive style.

Samuel D. Gollis

cc: H. Paul Cuero, Jr., Chairman  
Campo Band of Mission Indians

Members of the Executive Committee  
Campo Band of Mission Indians

Lisa Gover, Director  
Campo Environmental Protection Agency