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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.¹

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.² *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

¹ 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.

² 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.³

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.

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.