

APPENDIX C
Regulatory Settings

APPENDIX C

Regulatory Settings

1 INTRODUCTION

This appendix lists all regulatory settings for each section of Chapter 3, Affected Environment and Areas Not Further Discussed, of the Campo Wind Project with Boulder Brush Facilities (the Project) Environmental Impact Statement (EIS). The purpose of this appendix is to streamline the EIS and gather all regulatory elements into one location for the reader.

1.1 Applicable Laws and Regulations

The Project would occur largely on Indian Reservation lands held in trust by the federal government, as administered by the Bureau of Indian Affairs (BIA). A portion of the Project's facilities (referred to herein as Boulder Brush Facilities) are off Reservation on private lands and are therefore subject to State of California and County of San Diego (County) jurisdiction. The Campo Band of Diegueño Mission Indians (Tribe) and the Campo Indian Reservation (Reservation) are subject to federal and Tribal law. The Reservation is not under the jurisdiction of the state or the County. This section provides general background about the Project's regulatory setting.

Under the terms of the lease, certain Tribal laws apply to the Lessee, including certain provisions of the Tribe's Tax Ordinance and Tribal Employment Rights Ordinance. This Appendix (C) discusses Tribal land use standards relating to the potential environmental effects addressed in this Draft EIS including the Campo Environmental Protection Agency (CEPA) statutes, the Campo Band of Diegueño Mission Indians Land Use Code (Land Use Code), and the Campo Band of Diegueño Mission Indians Land Use Plan (Land Use Plan). Prior to issuance of the Record of Decision for the Project, a Resource Development Plan shall be submitted and approved by the BIA as part of the lease approval process. Federal laws and regulations applicable to the Project that are listed below include BIA lease regulations; National Environmental Policy Act (NEPA); the Endangered Species Act (ESA); the U.S. Fish and Wildlife Service (USFWS) Land-Based Wind Energy Guidelines (USFWS 2012a); the Migratory Bird Treaty Act (MBTA); the Bald Eagle and Golden Eagle Protection Act (BGEPA); the Clean Water Act (CWA); the Clean Air Act (CAA); the National Historic Preservation Act (NHPA); the Archaeological Resources Protection Act (ARPA); the Antiquities Act of 1906; the Native American Graves Protection and Repatriation Act (NAGPRA); the Noise Control Act; and Executive Orders (EOs) 11988, 11990, and 13112.

1.2 Tribal Regulatory Setting

CEPA is a governmental agency of the Tribe that was created by order of the General Council in July 1990. CEPA was formed to develop environmental codes and accompanying regulations and procedures to protect the environment and promote the quality of the land, air, and water resources of the Reservation; issue, modify, and revoke permits and establish terms and conditions for any

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discharge into or upon the land, air, or water of the Reservation; and conduct hearings and receive testimony and documentary evidence of any nature relating to the quality of the environment on the Reservation. The business and affairs of CEPA are managed and governed by its Board of Commissioners (“Board”). Environmental policy is executed through the Tribal Chairman, Supervisors, and environmental technicians and specialists. CEPA is also responsible for implementing and overseeing provisions of the Land Use Plan and Land Use Code. Under the terms of the Campo Lease, the Tribe would consent to development of the Project in accordance with the Resource Development Plan approved by BIA as part of the lease approval process.

Under the terms of the lease, certain Tribal laws apply to the Lessee, including certain provisions of the Tribe’s Tax Ordinance and Tribal Employment Rights Ordinance. Summaries of the Tribe’s Land Use Plan and Land Use Code are provided in this section and in subsections of Chapter 3 of this appendix for reference. The Land Use Plan is a planning document adopted by the General Council of the Tribe in June of 1978 and most recently revised and adopted in December of 2010. The plan is “the policy guide to assure that future physical development within the Campo Indian Reservation occurs in a manner consistent with the Tribe’s goals for its economic and social development and with its concern that this development does not threaten the environment and cultural resources of the Reservation or surrounding communities.” In addition, it is important to the Tribe to “create and preserve a functional, healthful, decent, and efficient place in which to live for the tribal members, and to serve to inform tribal, public, and private interests regarding the long-range goals of the community in order to coordinate their activities and work in harmony toward creating a desirable community.” The Land Use Plan is meant to “provide technical information about the area’s resources and potential, so that future growth and change may be directed in an orderly and appropriate fashion” (Campo Band of Diegueño Mission Indians 2010a).

The Land Use Plan also contains a Cultural Resources Element. The stated objectives of that element are to:

1. Protect and preserve historic and archaeological resources on the Reservation.
2. Encourage and promote the recognition of the significance of historic and archaeological resources to the maintenance of the Campo Band’s cultural heritage among tribal members and the general public.
3. Assess current and proposed land uses for impacts on cultural resources.

The Cultural Resources Element states that CEPA shall continue to monitor the preservation of cultural resources on the Reservation and maintain an updated inventory and map of these resources that can be used in the evaluation of prospective development on tribal lands. Prospective developers are typically required to engage qualified archaeological assistance in preparing a comprehensive cultural resources study of an area proposed for development and not previously surveyed.

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The Land Use Code was adopted by the Tribe on June 15, 1992 and amended on June 1, 2011. The purpose of the Land Use Code is to “promote the health, safety, and general welfare of the residents of the Reservation and to develop and maintain adequate standards for diversity in land use and building patterns on the Reservation” (Campo Band of Diegueño Mission Indians 2010a). As stated in the Code, the Tribe is guided by the goals set forth in the Land Use Plan, which guides future development on the Reservation. The Land Use Code is enforced by the Tribe’s business corporation, Muht Hei Inc., and by CEPA. It codifies land use goals including protecting “groundwater and air, preserving tribal traditions and culture, retaining wilderness areas, providing adequate housing for all tribal members, promoting employment for tribal members, and improving the standard of living for tribal members.” As stated in the Land Use Code, the Tribe has adopted the 2006 International Building Code (IBC) as a standard for development and construction on the Reservation. The IBC provides for design standards for structures to resist earthquake forces.

1.3 BIA Lease Regulations

The BIA, a division of the Department of the Interior, oversees trust relationships between the United States and federally recognized Native American tribes. Federal law allows Indian lands (tribally or individually owned) to be leased for various purposes with the approval of the Secretary of the Interior (25 USC, Section 415). The lease term must not exceed 25 years, with several specific exceptions, and leases may be renewed or extended. Regulatory guidance on this statute, including identification of BIA’s implementation role, is stated in 25 CFR 162. Per Section 162.108, the BIA’s role is to ensure that tenants comply with the operating requirements stated in their leases and to ensure that tenants meet their payment obligations to the Indian landowners.

1.4 National Environmental Policy Act

The approval of a land lease by the BIA constitutes a federal action, subject to compliance with NEPA (42 USC, Sections 4321–4347, as amended). The purpose of NEPA is to ensure that potential environmental impacts of any proposed federal action are fully considered and made available for public review. The scope of the NEPA analysis considers the effects of proposed and alternative actions on the human environment, which includes biological resources and non-biological resources, such as cultural resources. The BIA can approve a land lease only after complying with NEPA.

2 FEDERAL AND TRIBAL OVERSIGHT

The BIA, in cooperation with the Tribe, initiated the EIS process for the Project to determine the scope of the issues to be addressed in the environmental review and to identify significant issues. In accordance with NEPA, scoping occurred early on in the review process and involved the

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participation of the affected parties. The public and other state and federal agencies had the opportunity to provide input during the scoping process that helped determine the scope of the environmental document. As part of the scoping process, the BIA as the lead federal agency took the following actions:

- Invited the participation of affected federal, state, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might oppose the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.
- Allocated assignments for preparation of the EIS among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.
- Identified other environmental review and consultation requirements so the lead and cooperating agency may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.
- Determined the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the EIS.
- Identified and eliminated from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.
- Indicated any public environmental assessments and other environmental impact statements which are being, or will be, prepared that are related to but are not part of the scope of the impact statement under consideration.
- Indicated the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decision-making schedule.

The BIA is the lead agency under NEPA for the proposed action because its approval of the lease is required to allow for the construction and operation of the Campo Wind Facilities on the Reservation. The Tribe is a cooperating agency in the NEPA review process. The Boulder Brush Facilities portion of the Project is on private lands subject to the jurisdiction of the County. As such, the County is also a cooperating agency. Impacts related to the Boulder Brush Facilities are addressed in the EIS. The County is also preparing a separate Environmental Impact Report (EIR) to evaluate the impacts of the Project pursuant to the California Environmental Quality Act (CEQA).

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In addition, review of the proposed action by the following agencies is necessary as part of the environmental and permit review processes:

- USFWS: consultation under Section 7 of the ESA and permitting under BGEPA.
- U.S. Army Corps of Engineers (ACOE): issuance of an authorization under a Section 404 Nationwide Permit under the CWA.
- EPA: issuance of Section 401 water quality certification under the CWA for the portion of the Project on the Reservation.
- California State Historic Preservation Office: consultation under Section 106 of the NHPA, as amended.

The BIA will coordinate with these agencies throughout the EIS and permitting process, and their respective comments will be considered during preparation of the Draft and Final EIS, permitting, and BIA's decision-making and approval process.

All comments received during the Draft EIS 45-day comment period, including those submitted or recorded at the public meetings or hearings, will be reviewed by the BIA. Responses to those comments will be exhibited in the Final EIS.

In addition to answering any comments received during the 30-day Final EIS review period, the BIA will prepare the Record of Decision, which will state which alternative has been selected for implementation and will briefly discuss the other alternatives considered. There is no requirement under NEPA to select the environmentally preferable alternative. If the selected alternative includes mitigation measures, a Mitigation Monitoring and Reporting Program will be prepared for implementation.

3 REGULATORY SETTINGS FROM CHAPTER 3

3.1 Land Resources

3.1.1 Federal

BIA Paleontological Resources Policy

The BIA has a Paleontological Resources Policy that has the intent of managing paleontological resources on Indian trust lands. The Policy is based on a July 12, 2002 opinion provided to the BIA by the Associate Solicitor, Division of Indian Affairs, in response to increasing commercial interests and scientific concern for such resources. The Policy applies to all imbedded fossils on all Indian lands, and states that no person or entity may excavate or remove any imbedded fossil from Indian lands without a permit issued under the authority of the Secretary

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by the respective Regional Director. Permits issued under this authority must adhere to the regulations at 25 CFR 162.100 et seq., and are subject to compliance with NEPA, Section 106 of the NHPA of 1966 (as amended through 2000), and Section 7 of the ESA of 1973, and must not include any sale or transfer of title.

3.1.2 Tribal

Under the terms of the lease, certain Tribal laws apply to the Lessee, including certain provisions of the Tribe's Tax Ordinance and Tribal Employment Rights Ordinance. Discussed herein are the Tribal land use standards relating to the potential environmental effects addressed in this EIS including the Campo Environmental Protection Agency (CEPA) statutes, the Campo Band of Diegueño Mission Indians Land Use Code (Land Use Code), and the Campo Band of Diegueño Mission Indians Land Use Plan (Land Use Plan). The Project will be developed in accordance with the Resource Development Plan approved by the BIA as part of the lease approval process.

Land Use Plan

The Land Use Plan is a planning document adopted by the General Council of the Tribe in June of 1978 and most recently revised and adopted in December of 2010. The plan is "the policy guide to assure the future physical development within the Campo Indian Reservation occurs in a manner consistent with the Tribe's goals for its economic and social development and with its concern that this development does not threaten the environment and cultural resources of the Reservation or surrounding communities." In addition, it is important to the Tribe to "create and preserve a functional, healthful, decent, and efficient place in which to live for the tribal members, and to serve to inform tribal, public, and private interests regarding the long-range goals of the community in order to coordinate their activities and work in harmony toward creating a desirable community." The Land Use Plan is meant to "provide technical information about the area's resources and potential, so that future growth and change may be directed in an orderly and appropriate fashion" (Campo Band of Diegueño Mission Indians 2010a).

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3. Assess current and proposed land uses for impacts on cultural resources.

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The Cultural Resources Element states that CEPA shall continue to monitor the preservation of cultural resources on the Reservation and maintain an updated inventory and map of these resources which can be used in the evaluation of prospective development on tribal lands. Developers are required to engage qualified archaeological assistance in preparing a comprehensive cultural resources study of an area proposed for development and not previously surveyed.

Land Use Code

The Land Use Code was adopted by the Tribe on June 15, 1992, and amended on June 1, 2011. The purpose of the Land Use Code is to “promote the health, safety, and general welfare of the residents of the Reservation and to develop and maintain adequate standards for diversity in land use and building patterns on the Reservation” (Land Use Plan § 102). As stated in the Code, the Tribe is guided by the goals set forth in the Land Use Plan, which guides future development on the Reservation. The Land Use Code is enforced by Muht Hei Inc. and CEPA. Goals include protecting “groundwater and air, preserving tribal traditions and culture, retaining wilderness areas, providing adequate housing for all tribal members, promoting employment for tribal members, and improving the standard of living for tribal members.” As stated in the Land Use Code, the Tribe has adopted the 2006 IBC as a standard for development and construction on the Reservation. The IBC provides for design standards for structures to resist earthquake forces.

CEPA Statutes

CEPA is a governmental agency of the Tribe that was created by order of the General Council in July 1990 (Campo Kumeyaay Nation 2018). CEPA was formed to develop environmental codes and accompanying regulations and procedures to protect the environment and promote the quality of the land, air, and water resources of the Reservation; issue, modify, and revoke permits and establish terms and conditions for any discharge into or upon the land, air, or water of the Reservation; and conduct hearings and receive testimony and documentary evidence of any nature relating to the quality of the environment on the Reservation. The business and affairs of CEPA are managed and governed by its Board of Commissioners (Board). Environmental policy is executed through the Tribal Chairman, Supervisors, and environmental technicians and specialists. CEPA also is responsible for implementing and overseeing provisions of the Land Use Plan and Land Use Code.

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3.2 Water Resources

3.2.1 Federal

Clean Water Act

The CWA (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, is the major federal legislation governing water quality. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” Key sections of the CWA are as follows:

- Sections 303 and 304 provide for water quality standards, criteria, and guidelines. Under Section 303(d) of the CWA, the State of California is required to develop a list of impaired water bodies that do not meet water quality standards and objectives and establish TMDLs for each pollutant/stressor.
- Section 401 (Water Quality Certification) requires an applicant for any federal permit that proposes an activity which may result in a discharge to waters of the United States, to obtain certification from the state that the discharge will comply with other provisions of the act. At the state level, with the exception of tribal lands, the California EPA and its sub-agencies, including the State Water Resources Control Board, have been delegated primary responsibility for administering and enforcing the CWA in California. On federal lands, including the Reservation, the U.S. Environmental Protection Agency (EPA) is responsible for Section 401 certification.
- Section 402 establishes the National Pollutant Discharge Elimination System (NPDES), a permitting system for the discharge of any pollutant (except for dredged or fill material) into waters of the United States. At the state level, with the exception of tribal lands, the California EPA and its sub-agencies, including the State Water Resources Control Board, have been delegated primary responsibility for administering and enforcing the CWA in California. This permit program is administered by the State Water Resources Control Board and the nine Regional Water Quality Control Boards, who have several programs that implement individual and general permits related to construction activities, municipal stormwater discharges, and various kinds of non-stormwater discharges. Specifically related to this Project, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 2009-0009-DWQ, applies to any project that disturbs 1 acre or more of soils. This Construction General Permit requires the development and implementation of a Stormwater Pollution Prevention Plan (SWPPP) to minimize construction-related aquatic contamination through the use of Best Management Practices to limit erosion, run-off, and discharge of potential pollutants. At the state level, with the exception of tribal lands, the California EPA and its sub-agencies, including the State Water

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Resources Control Board, have been delegated primary responsibility for administering and enforcing the CWA in California. On federal lands, including the Reservation, the EPA is responsible for Section 402 permitting.

- Section 404 establishes a permit program for the discharge of dredged or fill material into waters of the United States. This permit program is jointly administered by the ACOE and the EPA. Final jurisdiction waters determination must be completed by the ACOE for the Project site. It is expected that the determination will locate jurisdictional waters within the Project site, which would require the Project to obtain an authorization under a Nationwide Permit.

Numerous agencies have responsibilities for administration and enforcement of the CWA. At the federal level, this includes the EPA and the ACOE. At the state level, with the exception of tribal lands, the California EPA and its sub-agencies, including the State Water Resources Control Board, have been delegated primary responsibility for administering and enforcing the CWA in California.

Federal Antidegradation Policy

The Federal Antidegradation Policy (40 CFR 131.12) requires states to develop statewide antidegradation policies and identify methods for implementing them. Pursuant to the federal regulation, state antidegradation policies and implementation methods shall, at a minimum, protect and maintain: (1) existing in-stream water uses; (2) existing water quality where the quality of the waters exceeds levels necessary to support existing beneficial uses, unless the state finds that allowing lower water quality is necessary to accommodate economic and social development in the area; and (3) water quality in waters considered an outstanding national resource. CWA Section 518(e) expressly provides for Indian tribes to play essentially the same role in Indian country that states do within state lands, authorizing EPA to treat eligible federally recognized Indian tribes in a similar manner as a state for implementing water quality standards including antidegradation policy.

Safe Drinking Water Act

The Federal Safe Drinking Water Act (SDWA), established in 1974, sets drinking water standards throughout the country and is administered by the EPA. The drinking water standards established in the SDWA, as set forth in the CFR, are referred to as the National Primary Drinking Water Regulations (Primary Standards, Title 40, CFR Part 141) and the National Secondary Drinking Water Regulations (Second Standards, 40 CFR Part 143). EPA directly implements the SDWA on federal Indian reservations. Tribes are eligible for delegation of certain SDWA programs as well as to receive primary enforcement authority for the drinking water program and delegation of the Underground Injection Control program.

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National Flood Insurance Program

The National Flood Insurance Program (NFIP) is administered by the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security. The NFIP is a federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. In support of the NFIP, FEMA identifies flood hazard areas throughout the United States and its territories by producing flood hazard boundary maps, flood insurance rate maps, and flood boundary and floodway maps.

- **EO 11988, Floodplain Management** – EO 11988 directs all federal agencies to avoid the long-term and short-term adverse impacts associated with the occupancy and modification of floodplains, and to avoid direct or indirect support of floodplain development wherever there is a practical alternative.
- **EO Order 11990, Protection of Wetlands** – EO 11990 directs all federal agencies to avoid to the maximum extent possible the long-term and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.

EO 11988 and EO 11990 are among several statutes, regulations, and executive orders that impose requirements on BIA regarding compliance with NEPA (Indian Affairs Manual, Part 59, Chapter 3, Section 3.4).

3.3 Air Quality

3.3.1 Federal

Clean Air Act

The CAA, passed in 1970 and last amended in 1990, forms the basis for the national air pollution control effort. The EPA is responsible for implementing most aspects of the CAA, including the setting of the National Ambient Air Quality Standards (NAAQS) for major air pollutants, hazardous air pollutant standards, approval of state attainment plans, motor vehicle emission standards, stationary source emission standards and permits, acid rain control measures, stratospheric O₃ protection, and enforcement provisions.

NAAQS are established by the EPA for “criteria pollutants” under the CAA, which are ozone (O₃), carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), particulate matter (particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀) and particulate matter with an aerodynamic diameter less than or equal to 2.5 microns (PM_{2.5})), and lead (Pb).

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The NAAQS describe acceptable air quality conditions designed to protect the health and welfare of the citizens of the nation. The CAA requires the EPA to reassess the NAAQS at least every 5 years to determine whether adopted standards are adequate to protect public health based on current scientific evidence. States with areas that exceed the NAAQS must prepare a State Implementation Plan (SIP) that demonstrates how those areas will attain the standards within mandated time frames.

Federal General Conformity Rule

Federal projects are subject to either the Transportation Conformity Rule (40 CFR, Part 51, Subpart T), which applies to federal highway and transit projects, or the General Conformity Rule (40 CFR, Part 51, Subpart W), which applies to all other federal projects. The General Conformity Rule implements Section 176(c) of the federal CAA, which requires that a federal agency ensure conformity with an approved State Implementation Plan for air emissions generated by an agency action. Conformity determinations for federal actions are required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action equaling or exceeding 100 tons per year for affected pollutants. Because the Project area is located within the San Diego Air Basin (SDAB), which is in nonattainment for O₃ and a maintenance area for CO, conformity determination requirements do apply. If a project's emissions would exceed the *de minimis* thresholds for CO, oxides of nitrogen (NO_x), or volatile organic compounds (VOCs), the project would be considered to have a significant impact related to O₃.

Hazardous Air Pollutants

The 1977 federal CAA Amendments required the EPA to identify National Emission Standards for Hazardous Air Pollutants to protect public health and welfare. Hazardous air pollutants (HAPs) include certain VOCs, pesticides, herbicides, and radionuclides that present a tangible hazard, based on scientific studies of exposure to humans and other mammals. Under the 1990 federal CAA Amendments, which expanded the control program for HAPs, 187 substances and chemical families were identified as HAPs.

3.3.2 Tribal

In the 1990 revision of the CAA, Congress recognized that Native American tribes have the authority to implement air pollution control programs. The EPA's Tribal Authority Rule gives tribes the ability to develop air quality management programs, write rules to reduce air pollution and implement and enforce their rules within tribal lands. While state and local agencies are responsible for all CAA requirements, tribes may develop and implement only those parts of the CAA that are appropriate for their lands. The EPA provides technical assistance and resources to help tribes build their

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program capacity. The EPA also implements the CAA requirements on tribal lands through programs such as the Federal Rules for Reservations, Title V permits, and air toxics rules.

Initially, the General Conformity Rule of 1993 did not specifically identify the roles of Native American tribes in the General Conformity process or the connection between the regulations and Tribal Implementation Plans (TIPs). In the revised 2011 regulations, the EPA specifically identified tribal agencies as stakeholders in the conformity process to ensure that in a nonattainment or maintenance area, federal actions conform to the air quality plans established in the applicable SIP or TIP such as requiring specific notification for any federally recognized tribes in the nonattainment or maintenance area where the action is occurring. In addition, the revised regulations also clarify that federal actions must conform to any applicable TIP. The Reservation is in attainment for all criteria pollutants. The Tribe and the Reservation are not subject to the SIP.

The General Conformity Rule plays an important role in helping tribes improve air quality in those areas that do not meet NAAQS. Under the General Conformity Rule, federal agencies must work with state, tribal, and local governments in a nonattainment or maintenance area to ensure that federal actions conform to the air quality plan established in the applicable SIP or TIP.

3.3.3 State

State regulations are applicable to the Boulder Brush Facilities located within San Diego County. The Tribe and the Reservation are not subject to state regulations.

California Clean Air Act

The California CAA was adopted in 1988 and establishes the state's air quality goals, planning mechanisms, regulatory strategies, and standards of progress. Under the California CAA, the task of air quality management and regulation has been legislatively granted to the California Air Resources Board (CARB), with subsidiary responsibilities assigned to air quality management districts and air pollution control districts at the regional and county levels. CARB is responsible for ensuring implementation of the California CAA, responding to the federal CAA, and regulating emissions from motor vehicles and consumer products. Pursuant to the authority granted to it, CARB has established the California Ambient Air Quality Standards (CAAQS), which are generally more restrictive than the NAAQS.

The NAAQS and CAAQS are presented in Table 3.3-1.

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**Table 3.3-1
Ambient Air Quality Standards**

Pollutant	Averaging Time	California Standards ^a	National Standards ^b	
		Concentration ^c	Primary ^{c,d}	Secondary ^{c,e}
O ₃	1 hour	0.09 ppm (180 µg/m ³)	—	Same as Primary Standard ^f
	8 hours	0.070 ppm (137 µg/m ³)	0.070 ppm (137 µg/m ³) ^f	
NO ₂ ^g	1 hour	0.18 ppm (339 µg/m ³)	0.100 ppm (188 µg/m ³)	Same as Primary Standard
	Annual Arithmetic Mean	0.030 ppm (57 µg/m ³)	0.053 ppm (100 µg/m ³)	
CO	1 hour	20 ppm (23 mg/m ³)	35 ppm (40 mg/m ³)	None
	8 hours	9.0 ppm (10 mg/m ³)	9 ppm (10 mg/m ³)	
SO ₂ ^h	1 hour	0.25 ppm (655 µg/m ³)	0.075 ppm (196 µg/m ³)	—
	3 hours	—	—	0.5 ppm (1,300 µg/m ³)
	24 hours	0.04 ppm (105 µg/m ³)	0.14 ppm (for certain areas) ^g	—
	Annual	—	0.030 ppm (for certain areas) ^g	—
PM ₁₀ ⁱ	24 hours	50 µg/m ³	150 µg/m ³	Same as Primary Standard
	Annual Arithmetic Mean	20 µg/m ³	—	
PM _{2.5} ^j	24 hours	—	35 µg/m ³	Same as Primary Standard
	Annual Arithmetic Mean	12 µg/m ³	12.0 µg/m ³	15.0 µg/m ³
Lead ^{i,k}	30-day Average	1.5 µg/m ³	—	—
	Calendar Quarter	—	1.5 µg/m ³ (for certain areas) ^k	Same as Primary Standard
	Rolling 3-Month Average	—	0.15 µg/m ³	
Hydrogen sulfide	1 hour	0.03 ppm (42 µg/m ³)	—	—
Vinyl chloride ⁱ	24 hours	0.01 ppm (26 µg/m ³)	—	—
Sulfates	24- hours	25 µg/m ³	—	—
Visibility-reducing particles	8 hour (10:00 a.m. to 6:00 p.m. PST)	Insufficient amount to produce an extinction coefficient of 0.23 per kilometer due to the number of particles when the relative humidity is less than 70%	—	—

Source: CARB 2016a.

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Notes: $\mu\text{g}/\text{m}^3$ = micrograms per cubic meter; CO = carbon monoxide; mg/m^3 = milligrams per cubic meter; NO_2 = nitrogen dioxide; O_3 = ozone; PM_{10} = particulate matter with an aerodynamic diameter less than or equal to 10 microns; $\text{PM}_{2.5}$ = particulate matter with an aerodynamic diameter less than or equal to 2.5 microns; ppm = parts per million by volume; SO_2 = sulfur dioxide

- ^a California standards for O_3 , CO, SO_2 (1-hour and 24-hour), NO_2 , suspended particulate matter (PM_{10} , $\text{PM}_{2.5}$), and visibility-reducing particles are values that are not to be exceeded. All others are not to be equaled or exceeded. CAAQS are listed in the Table of Standards in Section 70200 of Title 17 of the California Code of Regulations.
- ^b National standards (other than O_3 , NO_2 , SO_2 , particulate matter, and those based on annual averages or annual arithmetic mean) are not to be exceeded more than once per year. The O_3 standard is attained when the fourth highest 8-hour concentration measured at each site in a year, averaged over 3 years, is equal to or less than the standard. For PM_{10} , the 24-hour standard is attained when the expected number of days per calendar year with a 24-hour average concentration above $150 \mu\text{g}/\text{m}^3$ is equal to or less than 1. For $\text{PM}_{2.5}$, the 24-hour standard is attained when 98% of the daily concentrations, averaged over 3 years, are equal to or less than the standard.
- ^c Concentration expressed first in units in which it was promulgated. Equivalent units given in parentheses are based on a reference temperature of 25°C and a reference pressure of 760 torr. Most measurements of air quality are to be corrected to a reference temperature of 25°C and a reference pressure of 760 torr; ppm in this table refers to ppm by volume, or micromoles of pollutant per mole of gas.
- ^d National Primary Standards: The levels of air quality necessary, with an adequate margin of safety, to protect the public health.
- ^e National Secondary Standards: The levels of air quality necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant.
- ^f On October 1, 2015, the national 8-hour ozone primary and secondary standards were lowered from 0.075 to 0.070 ppm.
- ^g To attain the national 1-hour standard, the 3-year average of the annual 98th percentile of the 1-hour daily maximum concentrations at each site must not exceed 100 parts per billion (ppb). Note that the national 1-hour standard is in units of ppb. California standards are in units of ppm. To directly compare the national 1-hour standard to the California standards, the units can be converted from ppb to ppm. In this case, the national standard of 100 ppb is identical to 0.100 ppm.
- ^h On June 2, 2010, a new 1-hour SO_2 standard was established, and the existing 24-hour and annual primary standards were revoked. To attain the national 1-hour standard, the 3-year average of the annual 99th percentile of the 1-hour daily maximum concentrations at each site must not exceed 75 ppb. The 1971 SO_2 national standards (24-hour and annual) remain in effect until 1 year after an area is designated for the 2010 standard, except that in areas designated nonattainment of the 1971 standards, the 1971 standards remain in effect until implementation plans to attain or maintain the 2010 standards are approved.
- ⁱ On December 14, 2012, the national annual $\text{PM}_{2.5}$ primary standard was lowered from $15 \mu\text{g}/\text{m}^3$ to $12.0 \mu\text{g}/\text{m}^3$. The existing national 24-hour $\text{PM}_{2.5}$ standards (primary and secondary) were retained at $35 \mu\text{g}/\text{m}^3$, as was the annual secondary standard of $15 \mu\text{g}/\text{m}^3$. The existing 24-hour PM_{10} standards (primary and secondary) of $150 \mu\text{g}/\text{m}^3$ were also retained. The form of the annual primary and secondary standards is the annual mean averaged over 3 years.
- ^j CARB has identified lead and vinyl chloride as TACs with no threshold level of exposure for adverse health effects determined. These actions allow for the implementation of control measures at levels below the ambient concentrations specified for these pollutants.
- ^k The national standard for lead was revised on October 15, 2008, to a rolling 3-month average. The 1978 lead standard ($1.5 \mu\text{g}/\text{m}^3$ as a quarterly average) remains in effect until 1 year after an area is designated for the 2008 standard, except that in areas designated nonattainment for the 1978 standard, the 1978 standard remains in effect until implementation plans to attain or maintain the 2008 standard are approved.

Toxic Air Contaminants

California regulates toxic air contaminants (TACs) primarily through the Tanner Air Toxics Act (Assembly Bill (AB) 1807) and the Air Toxics “Hot Spots” Information and Assessment Act of 1987 (AB 2588). The Tanner Act sets forth a formal procedure for CARB to designate substances as TACs. This includes research, public participation, and scientific peer review before CARB can designate a substance as a TAC. To date, CARB has identified over 21 TACs and has adopted the EPA’s list of HAPs as TACs. Once a TAC is identified, CARB then adopts an airborne toxics control measure for sources that emit that particular TAC. If there is a safe threshold for a substance at which there is no toxic effect, the control measure must reduce exposure below that threshold. If there is no safe threshold, the measure must incorporate best available control technology for toxics to minimize emissions. None of the TACs identified by CARB have a safe threshold.

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Under the Air Toxics “Hot Spots” Act, existing facilities that emit air pollutants above specified levels were required to (1) prepare a TAC emission inventory plan and report, (2) prepare a risk assessment if TAC emissions were significant, (3) notify the public of significant risk levels, and (4) if health impacts were above specified levels, prepare and implement risk reduction measures.

California Health and Safety Code Section 41700

Section 41700 of the Health and Safety Code states that a person shall not discharge from any source whatsoever quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property. This section also applies to sources of objectionable odors.

3.4 Greenhouse Gas Emissions and Climate Change

3.4.1 Federal

Massachusetts v. EPA

In *Massachusetts v. EPA* (April 2007), the U.S. Supreme Court directed the EPA administrator to determine whether greenhouse gas (GHG) emissions from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. In December 2009, the administrator signed a final rule with the following two distinct findings regarding GHGs under Section 202(a) of the federal Clean Air Act:

- The Administrator found that elevated concentrations of GHGs—carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—in the atmosphere threaten the public health and welfare of current and future generations. This is the “endangerment finding.”
- The Administrator further found the combined emissions of GHGs—CO₂, CH₄, N₂O, and HFCs—from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare. This is the “cause or contribute finding.”

These two findings were necessary to establish the foundation for regulation of GHGs from new motor vehicles as air pollutants under the Clean Air Act.

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Energy Independence and Security Act of 2007

The Energy Independence and Security Act of 2007 (December 2007), among other key measures, does the following, which aids in the reduction of national GHG emissions (EPA 2007):

- Increases the supply of alternative fuel sources by setting a mandatory Renewable Fuel Standard (RFS) requiring fuel producers to use at least 36 billion gallons of biofuel in 2022.
- Sets a target of 35 miles per gallon for the combined fleet of cars and light trucks by model year 2020 and directs National Highway Traffic Safety Administration (NHTSA) to establish a fuel economy program for medium- and heavy-duty trucks and create a separate fuel economy standard for work trucks.
- Prescribes or revises standards affecting regional efficiency for heating and cooling products and procedures for new or amended standards, energy conservation, energy-efficiency labeling for consumer electronic products, residential boiler efficiency, electric motor efficiency, and home appliances.

Federal Vehicle Standards

In response to the U.S. Supreme Court ruling discussed above, the Bush Administration issued EO 13432 in 2007 directing the EPA, the Department of Transportation, and the Department of Energy to establish regulations that reduce GHG emissions from motor vehicles, non-road vehicles, and non-road engines by 2008. In 2009, the NHTSA issued a final rule regulating fuel efficiency and GHG emissions from cars and light-duty trucks for model year 2011, and in 2010, the EPA and NHTSA issued a final rule regulating cars and light-duty trucks for model years 2012–2016 (75 FR 25324–25728).

In 2010, President Barack Obama issued a memorandum directing the Department of Transportation, Department of Energy, EPA, and NHTSA to establish additional standards regarding fuel efficiency and GHG reduction, clean fuels, and advanced vehicle infrastructure. In response to this directive, EPA and NHTSA proposed stringent, coordinated federal GHG and fuel economy standards for model years 2017–2025 light-duty vehicles. The proposed standards projected to achieve 163 grams per mile of CO₂ in model year 2025, on an average industry fleet-wide basis, which is equivalent to 54.5 miles per gallon if this level were achieved solely through fuel efficiency. The final rule was adopted in 2012 for model years 2017–2021 (77 FR 62624–63200). On January 12, 2017, the EPA finalized its decision to maintain the current greenhouse (GHG) emissions standards for model years 2022–2025 cars and light trucks (EPA 2017b).

In addition to the regulations applicable to cars and light-duty trucks described above, in 2011, the EPA and NHTSA announced fuel economy and GHG standards for medium- and heavy-duty trucks for model years 2014–2018 (76 FR 57106–57513). The standards for CO₂

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emissions and fuel consumption are tailored to three main vehicle categories: combination tractors, heavy-duty pickup trucks and vans, and vocational vehicles. According to the EPA, this regulatory program will reduce GHG emissions and fuel consumption for the affected vehicles by 6%–23% over the 2010 baselines.

In August 2016, the EPA and NHTSA announced the adoption of the phase two program related to the fuel economy and GHG standards for medium- and heavy-duty trucks. The phase two program will apply to vehicles with model year 2018 through 2027 for certain trailers, and model years 2021 through 2027 for semi-trucks, large pickup trucks, vans, and all types and sizes of buses and work trucks. The final standards are expected to lower CO₂ emissions by approximately 1.1 billion MT and reduce oil consumption by up to 2 billion barrels over the lifetime of the vehicles sold under the program (EPA and NHTSA 2016).

Clean Power Plan and New Source Performance Standards for Electric Generating Units

On October 23, 2015, EPA published a final rule (effective December 22, 2015) establishing the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (80 FR 64510–64660), also known as the Clean Power Plan. These guidelines prescribe how states must develop plans to reduce GHG emissions from existing fossil-fuel-fired electric generating units. The guidelines establish CO₂ emission performance rates representing the best system of emission reduction for two subcategories of existing fossil-fuel-fired electric generating units: (1) fossil-fuel-fired electric utility steam-generating units, and (2) stationary combustion turbines. Concurrently, the EPA published a final rule (effective October 23, 2015) establishing Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (80 FR 64661–65120). The rule prescribes CO₂ emission standards for newly constructed, modified, and reconstructed affected fossil-fuel-fired electric utility generating units. The U.S. Supreme Court stayed implementation of the Clean Power Plan pending resolution of several lawsuits.

Mandatory Greenhouse Gas Reporting Rule

On September 22, 2009, EPA published the Final Mandatory Greenhouse Gas Reporting Rule (Reporting Rule) in the Federal Register (74 FR 56260–56373). The Reporting Rule requires reporting of GHG data and other relevant information from fossil fuel and industrial GHG suppliers, vehicle and engine manufacturers, and all facilities that would emit 25,000 metric tons of carbon dioxide-equivalent (MT CO₂e) or more per year. Facility owners are required to submit an annual report with detailed calculations of facility GHG emissions on March 31 for emissions from the previous calendar year. The Reporting Rule also mandates recordkeeping and administrative requirements to enable EPA to verify the annual GHG emissions reports.

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3.4.2 State

State regulations are applicable to the Boulder Brush Facilities located within San Diego County. The Tribe and the Reservation are not subject to state regulations.

The statewide GHG emissions regulatory framework is summarized below by category: state climate change targets, building energy, renewable energy and energy procurement, mobile sources, solid waste, water, and other state regulations and goals. The following text describes EOs, legislation, regulations, and other plans and policies that would directly or indirectly reduce GHG emissions and/or address climate change issues.

Climate Change Regulations

The state has taken a number of actions to address climate change. These include EOs, legislation, and CARB plans and requirements. These are summarized below.

EO S-3-05. EO S-3-05 (June 2005) established California's GHG emissions reduction targets and laid out responsibilities among the state agencies for implementing the EO and for reporting on progress toward the targets. This EO established the following targets:

- By 2010, reduce GHG emissions to 2000 levels
- By 2020, reduce GHG emissions to 1990 levels
- By 2050, reduce GHG emissions to 80% below 1990 levels

EO S-3-05 also directed the California Environmental Protection Agency to report biannually on progress made toward meeting the GHG targets and the impacts to California due to global warming, including impacts to water supply, public health, agriculture, the coastline, and forestry. The Climate Action Team (CAT) was formed, which subsequently issued reports from 2006 to 2010 (CAT 2016).

AB 32. In furtherance of the goals established in EO S-3-05, the Legislature enacted AB 32 (Núñez and Pavley). The bill is referred to as the California Global Warming Solutions Act of 2006 (September 27, 2006). AB 32 provided initial direction on creating a comprehensive multiyear program to limit California's GHG emissions at 1990 levels by 2020 and initiate the transformations required to achieve the state's long-range climate objectives.

Senate Bill 32 and AB 197. Senate Bill (SB) 32 and AB 197 (enacted in 2016) are companion bills. SB 32 codified the 2030 emissions reduction goal of EO B-30-15 by requiring CARB to ensure that statewide GHG emissions are reduced to 40% below 1990 levels by 2030. AB 197 established the Joint Legislative Committee on Climate Change Policies, consisting of at least

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three members of the Senate and three members of the Assembly, in order to provide ongoing oversight over implementation of the state's climate policies. AB 197 also added two members of the Legislature to the Board as nonvoting members; requires CARB to make available and update (at least annually via its website) emissions data for GHGs, criteria air pollutants, and toxic air contaminants (TACs) from reporting facilities; and, requires CARB to identify specific information for GHG emissions reduction measures when updating the scoping plan.

CARB's 2007 Statewide Limit. In 2007, in accordance with California Health and Safety Code, Section 38550, CARB approved a statewide limit on the GHG emissions level for year 2020 consistent with the determined 1990 baseline (427 million metric tons (MMT) CO₂e).

CARB's Climate Change Scoping Plan. One specific requirement of AB 32 is for CARB to prepare a "scoping plan" for achieving the maximum technologically feasible and cost-effective GHG emission reductions by 2020 (Health and Safety Code, Section 38561(a)), and to update the plan at least once every 5 years. In 2008, CARB approved the first scoping plan. The Climate Change Scoping Plan: A Framework for Change (Scoping Plan) included a mix of recommended strategies that combined direct regulations, market-based approaches, voluntary measures, policies, and other emission reduction programs calculated to meet the 2020 statewide GHG emission limit and initiate the transformations needed to achieve the state's long-range climate objectives. The key elements of the Scoping Plan include the following (CARB 2008):

1. Expanding and strengthening existing energy efficiency programs as well as building and appliance standards
2. Achieving a statewide renewable energy mix of 33%
3. Developing a California cap-and-trade program that links with other Western Climate Initiative partner programs to create a regional market system and caps sources contributing 85% of California's GHG emissions
4. Establishing targets for transportation-related GHG emissions for regions throughout California, and pursuing policies and incentives to achieve those targets
5. Adopting and implementing measures pursuant to existing state laws and policies, including California's clean car standards, goods movement measures, and the Low Carbon Fuel Standard (LCFS 17 Cal. Code Regs., Section 95480 et seq.)
6. Creating targeted fees, including a public goods charge on water use, fees on high GWP gases, and a fee to fund the administrative costs of the State of California's long-term commitment to AB 32 implementation

The Scoping Plan also identified local governments as essential partners in achieving California's goals to reduce GHG emissions because they have broad influence and, in some cases, exclusive

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authority over activities that contribute to significant direct and indirect GHG emissions through their planning and permitting processes, local ordinances, outreach and education efforts, and municipal operations. Specifically, the Scoping Plan encouraged local governments to adopt a reduction goal for municipal operations and for community emissions to reduce GHGs by approximately 15% from then levels (2008) by 2020. Many local governments developed community-scale local GHG reduction plans based on this Scoping Plan recommendation.

In 2014, CARB approved the first update to the Scoping Plan. The First Update to the Climate Change Scoping Plan: Building on the Framework (First Update) defined the state's GHG emission reduction priorities for the next 5 years and laid the groundwork to start the transition to the post-2020 goals set forth in EOs S-3-05 and B-16-2012. The First Update concluded that California is on track to meet the 2020 target but recommended a 2030 mid-term GHG reduction target be established to ensure a continuum of action to reduce emissions. The First Update recommended a mix of technologies in key economic sectors to reduce emissions through 2050 including: energy demand reduction through efficiency and activity changes; large-scale electrification of on-road vehicles, buildings and industrial machinery; decarbonizing electricity and fuel supplies; and, the rapid market penetration of efficient and clean energy technologies. As part of the First Update, CARB recalculated the state's 1990 emissions level, using more recent global warming potentials identified by the Intergovernmental Panel on Climate Change, from 427 MMT CO_{2e} to 431 MMT CO_{2e}.

In 2015, as directed by EO B-30-15, CARB began working on an update to the Scoping Plan to incorporate the 2030 target of 40% below 1990 levels by 2030 to keep California on its trajectory toward meeting or exceeding the long-term goal of reducing GHG emissions to 80% below 1990 levels by 2050 as set forth in S-3-05. The Governor called on California to pursue a new and ambitious set of strategies, in line with the five climate change pillars from his inaugural address, to reduce GHG emissions and prepare for the unavoidable impacts of climate change. In the summer of 2016, the Legislature affirmed the importance of addressing climate change through passage of SB 32 (Pavley, Chapter 249, Statutes of 2016).

In January 2017, CARB released *the 2017 Climate Change Scoping Plan Update (2030 Scoping Plan)* for public review and comment (CARB 2017). The 2030 Scoping Plan builds on the successful framework established in the initial Scoping Plan and First Update, while identifying new, technologically feasible and cost-effective strategies that will serve as the framework to achieve the 2030 GHG target and define the state's climate change priorities to 2030 and beyond. The strategies' "known commitments" include implementing renewable energy and energy efficiency (including the mandates of SB 350), increased stringency of the Low Carbon Fuel Standard, measures identified in the Mobile Source and Freight Strategies, measures identified in the proposed Short-Lived Climate Pollutant Plan, and increased stringency of SB 375 targets. To

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fill the gap in additional reductions needed to achieve the 2030 target, it recommends continuing the Cap-and-Trade Program and a measure to reduce GHGs from refineries by 20%.

For local governments, the 2030 Scoping Plan replaced the initial Scoping Plan's 15% reduction goal with a recommendation to aim for a community-wide goal of no more than 6 MT CO_{2e} per capita by 2030 and no more than 2 MT CO_{2e} per capita by 2050, which are consistent with the state's long-term goals. These goals are also consistent with the Under 2 MOU (Under 2 2016) and the Paris Agreement (United Nations Framework Convention on Climate Change (UNFCCC) 2016), which are developed around the scientifically based levels necessary to limit global warming below 2°C. The 2030 Scoping Plan recognized the benefits of local government GHG planning (e.g., through climate action plans (CAPs)) and provide more information regarding tools CARB is working on to support those efforts. It also recognizes the CEQA streamlining provisions for project-level review where there is a legally adequate CAP.¹ The Second Update was approved by CARB's Governing Board on December 14, 2017.

The Scoping Plan recommends strategies for implementation at the statewide level to meet the goals of AB 32, SB 32, and the EOs and establishes an overall framework for the measures that will be adopted to reduce California's GHG emissions. A project is considered consistent with the statutes and EOs if it meets the general policies in reducing GHG emissions in order to facilitate the achievement of the state's goals and does not impede attainment of those goals. As discussed in several cases, a given project need not be in perfect conformity with each and every planning policy or goals to be consistent. A project would be consistent, if it will further the objectives and not obstruct their attainment.

CARB's Regulations for the Mandatory Reporting of Greenhouse Gas Emissions. CARB's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (17 CCR 95100–95157) incorporated by reference certain requirements that EPA promulgated in its Final Rule on Mandatory Reporting of Greenhouse Gases (Title 40 CFR, Part 98). Specifically, Section 95100(c) of the Mandatory Reporting Regulation incorporated those requirements that EPA promulgated in the Federal Register on October 30, 2009, July 12, 2010, September 22, 2010, October 28, 2010, November 30, 2010, December 17, 2010, and April 25, 2011. In general, entities subject to the Mandatory Reporting Regulation that emit over 10,000 MT CO_{2e} per year are required to report annual GHGs through the California Electronic GHG Reporting Tool. Certain sectors, such as refineries and cement plants, are required to report regardless of emission levels. Entities that emit

¹ *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490; *San Francisco Tomorrow et al. v. City and County of San Francisco* (2015) 229 Cal.App.4th 498; *San Franciscans Upholding the Downtown Specific Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656; *Sequoyah Hills Homeowners Assn. V. City of Oakland* (1993) 23 Cal.App.4th 704, 719.

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more than the 25,000 MT CO_{2e} per year threshold are required to have their GHG emission report verified by a CARB-accredited third-party verified.

EO B-18-12. EO B-18-12 (April 2012) directed state agencies, departments, and other entities under the governor's executive authority to take action to reduce entity-wide GHG emissions by at least 10% by 2015 and 20% by 2020, as measured against a 2010 baseline. EO B-18-12 also established goals for existing state buildings for reducing grid-based energy purchases and water use.

EO B-30-15. EO B-30-15 (April 2015) identified an interim GHG reduction target in support of targets previously identified under S-3-05 and AB 32. EO B-30-15 set an interim target goal of reducing GHG emissions to 40% below 1990 levels by 2030 to keep California on its trajectory toward meeting or exceeding the long-term goal of reducing GHG emissions to 80% below 1990 levels by 2050 as set forth in S-3-05. To facilitate achieving this goal, EO B-30-15 called for CARB to update the Scoping Plan to express the 2030 target in terms of MMT CO_{2e}. The EO also called for state agencies to continue to develop and implement GHG emission reduction programs in support of the reduction targets.

SB 605 and SB 1383. SB 605 (2014) requires CARB to complete a comprehensive strategy to reduce emissions of short-lived climate pollutants (SLCPs) in the state; and SB 1383 (2016) requires CARB to approve and implement that strategy by January 1, 2018. SB 1383 also establishes specific targets for the reduction of SLCPs (40% below 2013 levels by 2030 for methane and HFCs, and 50% below 2013 levels by 2030 for anthropogenic black carbon), and provides direction for reductions from dairy and livestock operations and landfills. Accordingly, and as mentioned above, CARB adopted its Short-Lived Climate Pollutant Reduction Strategy (SLCP Reduction Strategy) in March 2017. The SLCP Reduction Strategy establishes a framework for the statewide reduction of emissions of black carbon, methane, and fluorinated gases

Renewable Energy and Energy Procurement Regulations

SB 1078. SB 1078 (Sher) (September 2002) established the Renewable Portfolio Standard (RPS) program, which required an annual increase in renewable generation by the utilities equivalent to at least 1% of sales, with an aggregate goal of 20% by 2017. This goal was subsequently accelerated, requiring utilities to obtain 20% of their power from renewable sources by 2010 (see SB 107, EO S-14-08, and S-21-09).

SB 1368. SB 1368 (September 2006), required the CEC to develop and adopt regulations for GHG emission performance standards for the long-term procurement of electricity by local publicly owned utilities. These standards must be consistent with the standards adopted by CPUC.

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AB 1109. Enacted in 2007, AB 1109 required the CEC to adopt minimum energy efficiency standards for general-purpose lighting, to reduce electricity consumption 50% for indoor residential lighting and 25% for indoor commercial lighting.

EO S-14-08. EO S-14-08 (November 2008) focused on the contribution of renewable energy sources to meet the electrical needs of California while reducing the GHG emissions from the electrical sector. This EO required that all retail suppliers of electricity in California serve 33% of their load with renewable energy by 2020. Furthermore, the EO directed state agencies to take appropriate actions to facilitate reaching this target. The CNRA, through collaboration with the CEC and California Department of Fish and Wildlife (formerly the California Department of Fish and Game), was directed to lead this effort.

EO S-21-09 and SB X1-2. EO S-21-09 (September 2009) directed CARB to adopt a regulation consistent with the goal of EO S-14-08 by July 31, 2010. CARB was further directed to work with the CPUC and CEC to ensure that the regulation builds upon the RPS program and was applicable to investor-owned utilities, publicly owned utilities, direct access providers, and community choice providers. Under this order, CARB was to give the highest priority to those renewable resources that provide the greatest environmental benefits with the least environmental costs and impacts on public health and can be developed the most quickly in support of reliable, efficient, cost-effective electricity system operations. On September 23, 2010, CARB initially approved regulations to implement a Renewable Electricity Standard. However, this regulation was not finalized because of subsequent legislation (SB X1-2, Simitian, statutes of 2011) signed by Governor Brown in April 2011.

SB X1 2 expanded the Renewables Portfolio Standard by establishing a renewable energy target of 20% of the total electricity sold to retail customers in California per year by December 31, 2013, and 33% by December 31, 2020, and in subsequent years. Under the bill, a renewable electrical generation facility is one that uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation (30 megawatts or less), digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and that meets other specified requirements with respect to its location.

SB X1-2 applies to all electricity retailers in the state including publicly owned utilities, investor-owned utilities, electricity service providers, and community choice aggregators. All of these entities must meet the renewable energy goals listed above.

SB 350. SB 350 (October 2015) further expanded the RPS by establishing a goal of 50% of the total electricity sold to retail customers in California per year by December 31, 2030. In addition, SB 350 included the goal to double the energy efficiency savings in electricity and natural gas final end uses (such as heating, cooling, lighting, or class of energy uses on which an energy-efficiency program is focused) of retail customers through energy conservation and efficiency. The bill also

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requires the CPUC, in consultation with the CEC, to establish efficiency targets for electrical and gas corporations consistent with this goal.

SB 100. SB 100 (2018) increased the standards set forth in SB 350 establishing that 44% of the total electricity sold to retail customers in California per year by December 31, 2024, 52% by December 31, 2027, and 60% by December 31, 2030, be secured from qualifying renewable energy sources. SB 100 states that it is the policy of the state that eligible renewable energy resources and zero-carbon resources supply 100% of the retail sales of electricity to California. This bill requires that the achievement of 100% zero-carbon electricity resources do not increase the carbon emissions elsewhere in the western grid and that the achievement not be achieved through resource shuffling.

Mobile Source Regulations

AB 1493. AB 1493 (Pavley) (July 2002) was enacted in a response to the transportation sector accounting for more than half of California's CO₂ emissions. AB 1493 required CARB to set GHG emission standards for passenger vehicles, light-duty trucks, and other vehicles determined by the state board to be vehicles that are primarily used for noncommercial personal transportation in the state. The bill required that CARB set GHG emission standards for motor vehicles manufactured in 2009 and all subsequent model years. CARB adopted the standards in September 2004. When fully phased in, the near-term (2009–2012) standards will result in a reduction of about 22% in GHG emissions compared to the emissions from the 2002 fleet, while the mid-term (2013–2016) standards will result in a reduction of about 30%.

Heavy Duty Diesel. CARB adopted the final Heavy Duty Truck and Bus Regulation, Title 13, Division 3, Chapter 1, Section 2025, on December 31, 2014 to reduce PM and NO_x emissions from heavy-duty diesel vehicles. The rule requires PM filters be applied to newer heavier trucks and buses by January 1, 2012, with older vehicles required to comply by January 1, 2015. The rule will require nearly all diesel trucks and buses to be compliant with the 2010 model year engine requirement by January 1, 2023. CARB also adopted an Airborne Toxic Control Measure to limit idling of diesel-fueled commercial vehicles on December 12, 2013. This rule requires diesel-fueled vehicles with gross vehicle weights greater than 10,000 pounds to idle no more than 5 minutes at any location (13 CCR 2485).

EO S-1-07. EO S-1-07 (January 2007, implementing regulation adopted in April 2009) sets a declining LCFS for GHG emissions measured in CO_{2e} grams per unit of fuel energy sold in California. The target of the LCFS is to reduce the carbon intensity of California passenger vehicle fuels by at least 10% by 2020 (17 CCR 95480 et seq.). The carbon intensity measures the amount of GHG emissions in the lifecycle of a fuel, including extraction/feedstock production, processing, transportation, and final consumption, per unit of energy delivered.

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SB 375. SB 375 (2008) addresses GHG emissions associated with the transportation sector through regional transportation and sustainability plans. SB 375 required CARB to adopt regional GHG reduction targets for the automobile and light-truck sector for 2020 and 2035. Regional metropolitan planning organizations are then responsible for preparing a Sustainable Communities Strategy within their Regional Transportation Plan. The goal of the Sustainable Communities Strategy is to establish a forecasted development pattern for the region that, after considering transportation measures and policies, will achieve, if feasible, the GHG reduction targets. If a Sustainable Communities Strategy is unable to achieve the GHG reduction target, a metropolitan planning organization must prepare an Alternative Planning Strategy demonstrating how the GHG reduction target would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies.

Pursuant to Government Code Section 65080(b)(2)(K), a sustainable communities strategy does not: (i) regulate the use of land; (ii) supersede the land use authority of cities and counties; or (iii) require that a city's or county's land use policies and regulations, including those in a general plan, be consistent with it. Nonetheless, SB 375 makes regional and local planning agencies responsible for developing those strategies as part of the federally required metropolitan transportation planning process and the state-mandated housing element process.

In 2010, CARB adopted the SB 375 targets for the regional metropolitan planning organizations. The targets for the San Diego Association of Governments (SANDAG) are a 7% reduction in emissions per capita by 2020 and a 13% reduction by 2035.

SANDAG completed and adopted its 2050 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) in October 2011 (SANDAG 2011). In November 2011, CARB, by resolution, accepted SANDAG's GHG emissions quantification analysis and determination that, if implemented, the SCS would achieve CARB's 2020 and 2035 GHG emissions reduction targets for the region.

After SANDAG's 2050 RTP/SCS was adopted, a lawsuit was filed by the Cleveland National Forest Foundation and others. In July 2017, the California Supreme Court held that SANDAG's EIR did not have to use EO S-3-05's 2050 goal of an 80% reduction in GHG emissions from 1990 levels as a threshold because the EIR sufficiently informed the public of the potential impacts.

Although the EIR for SANDAG's 2050 RTP/SCS was pending before the California Supreme Court, in 2015, SANDAG adopted the next iteration of its RTP/SCS in accordance with statutorily mandated timelines, and no subsequent litigation challenge was filed. More specifically, in October 2015, SANDAG adopted San Diego Forward: The Regional Plan. Like the 2050 RTP/SCS, this planning document meets CARB's 2020 and 2035 reduction targets for the region (SANDAG 2015). In December 2015, CARB, by resolution, accepted SANDAG's GHG

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emissions quantification analysis and determination that, if implemented, the SCS would achieve CARB's 2020 and 2035 GHG emissions reduction targets for the region.

Advanced Clean Cars Program and Zero-Emissions Vehicle Program. The Advanced Clean Cars program (January 2012) is a new emissions-control program for model years 2015 through 2025. The program combines the control of smog- and soot-causing pollutants and GHG emissions into a single coordinated package. The package includes elements to reduce smog-forming pollution, reduce GHG emissions, promote clean cars, and provide the fuels for clean cars (CARB 2012). To improve air quality, CARB has implemented new emission standards to reduce smog-forming emissions beginning with 2015 model year vehicles. It is estimated that in 2025 cars will emit 75% less smog-forming pollution than the average new car sold today. To reduce GHG emissions, CARB, in conjunction with the EPA and the NHTSA, adopted new GHG standards for model year 2017 to 2025 vehicles; the new standards are estimated to reduce GHG emissions by 34% in 2025. The ZEV program will act as the focused technology of the Advanced Clean Cars program by requiring manufacturers to produce increasing numbers of ZEVs and plug-in hybrid electric vehicles in the 2018 to 2025 model years.

3.4.3 Regional

County of San Diego Climate Action Plan

Regional or local regulations are applicable to the Boulder Brush Facilities. The Tribe and the Reservation are not subject to the regional or local regulations.

The County has developed a Climate Action Plan (CAP) that is a comprehensive strategy to reduce GHG emissions in the unincorporated communities of San Diego County. A draft CAP was released on August 10, 2017, for public review. The plan includes six chapters (1) Introduction; (2) Greenhouse Gas Emissions Inventory, Projections, and Reductions Targets; (3) Greenhouse Gas Reduction Strategies and Measures; (4) Climate Change Vulnerability, Resiliency, and Adaptation; (5) Implementation and Monitoring; and (6) Public Outreach and Engagement. Concurrent with the release of the Draft CAP, the County published implementation tools for the County to use when conducting CEQA analysis. This includes a general plan land use conformity determination and CAP consistency review checklist. As the CAP is in draft form it is not considered a qualified CAP for CEQA analysis (see CEQA Guidelines Section 15183.5). In January 2018, Planning Commission recommended adoption of the final CAP to the County Board of Supervisors. On February 14, 2018, the County Board of Supervisors adopted the CAP.

In December 2018, a court overturned the CAP. Pursuant to the court order, the County cannot approve projects that would need to rely on M-GHG-1, which allows projects requiring General

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Plan amendments to rely on off-site carbon credits to mitigate significant GHG emissions. M-GHG-1 is inapplicable to the Project.

Although the CAP must be set aside, the court opinion did not address the majority of CAP measures, and the County finds those measures would reduce GHG emissions. For example, Measure E-2.1, *Increase Renewable Energy*, specifies a goal to achieve 90% renewable electricity for the unincorporated County by 2030. This measure is consistent with General Plan Strategy A-3.

3.5 Biological Resources

The Campo Wind Facilities would occur on Indian Reservation lands held in trust by the federal government, as administered by the BIA. The Tribe and the Reservation are subject to federal and Tribal law. The Reservation is not under the jurisdiction of the state or County. Federal laws and regulations applicable to the Project and listed below include NEPA, ESA, the USFWS Land-Based Wind Energy Guidelines (Guidelines) (USFWS 2012), MBTA, BGEPA, CWA, and EOs 11988, 11990, and 13112.

3.5.1 Federal

Endangered Species Act

ESA (16 USC 1531 et seq.) is implemented by USFWS through a program that identifies and provides for protection of various species of fish, wildlife, and plants deemed to be in danger of or threatened with extinction. As part of this regulatory act, ESA provides for designation of critical habitat, defined in ESA Section 3(5)(A) as specific areas within the geographical range occupied by a species where physical or biological features “essential to the conservation of the species” are found and that “may require special management considerations or protection.” Critical habitat may also include areas outside the current geographical area occupied by the species that are nonetheless “essential for the conservation of the species.”

USFWS Land-Based Wind Energy Guidelines

The USFWS and the Wind Turbine Guidelines Advisory Committee developed voluntary Guidelines as part of a system for evaluating and addressing the potential negative impacts of wind energy projects on species of concern. Although the Guidelines expired December 31, 2014, they continue to be voluntarily followed by many in the industry. The Guidelines provide a structured, scientific process for addressing wildlife conservation concerns at all stages of land-based wind energy development. They also promote effective communication among wind energy developers and federal, state, and local conservation agencies and tribes. When used in concert with appropriate regulatory tools, the Guidelines form the best practical approach for conserving species of concern.

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The Guidelines assist developers in identifying listed, proposed, or candidate endangered and threatened species.

Migratory Bird Treaty Act

The MBTA prohibits the take of any migratory bird or any part, nest, or eggs of any such bird. Under the MBTA, “take” is defined as pursuing, hunting, shooting, capturing, collecting, or killing, or attempting to do so (16 USC 703 et seq.). In December 2017, Department of the Interior Principal Deputy Solicitor Jorjani issued a memorandum (M-37050) that interprets the MBTA to only prohibit intentional take. Incidental or accidental take is not prohibited under this interpretation (DOI 2017) and applicable Ninth Circuit case law. Additionally, EO 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, requires that any project with federal involvement address impacts of federal actions on migratory birds with the purpose of promoting conservation of migratory bird populations (66 FR 3853–3856). The EO requires federal agencies to work with USFWS to develop a memorandum of understanding. USFWS reviews actions that might affect these species.

Bald and Golden Eagle Protection Act

Bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*) are federally protected under the BGEPA, passed in 1940 to protect bald eagles and amended in 1962 to include golden eagles (16 USC 668 et seq.). This act prohibits the take, possession, sale, purchase, barter, offer to sell or purchase, export or import, or transport of bald eagles and golden eagles or their parts, eggs, or nests without a permit issued by USFWS. The definition of “take” includes to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb. The definition of “disturb” has been further clarified by regulation as follows: “Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle; (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior” (50 CFR 22.3).

The BGEPA prohibits any form of possession or taking of both eagle species, and the statute imposes criminal and civil sanctions, as well as an enhanced penalty provision for subsequent offenses. Further, the BGEPA provides for the forfeiture of anything used to acquire eagles in violation of the statute. The statute exempts from its prohibitions on possession the use of eagles or eagle parts for exhibition, scientific, or Native American religious uses.

In November 2009, USFWS published the Final Eagle Permit Rule (74 FR 46836–46879) providing a mechanism to permit and allow for incidental (i.e., nonpurposeful) take of bald and golden eagles pursuant to the BGEPA (16 USC 668 et seq.). The previous year, 2008, USFWS

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adopted 50 CFR Part 22.11(a), which provides that a permit authorizing take under ESA Section 10 applies with equal force to take of golden eagles authorized under the BGEPA. These regulations were followed by issuance of guidance documents for inventory and monitoring protocols and for avian protection plans (USFWS 2010). In January 2011, USFWS released its Draft Eagle Conservation Plan Guidance aimed at clarifying expectations for acquiring take permits by wind power projects, consistent with the 2009 rule (USFWS 2011).

On December 16, 2016, USFWS adopted additional regulations regarding incidental take of golden eagles and their nests (81 FR 91494 et seq.). Most of the new regulations address “programmatic eagle nonpurposeful take permits” such as those typically requested by members of the alternative energy industry. For example, the new regulations extend the duration of such permits from 5 to 30 years. In addition, the new regulations modify the definition of the BGEPA “preservation standard” to mean “consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the service range of each species” (81 FR 91496–91497). This process has also resulted in standardizing mitigation options for permitted take if leveraged.

Clean Water Act

Pursuant to CWA Section 404, the ACOE regulates the discharge of dredged and/or fill material into “waters of the United States.” The term “wetlands” (a subset of waters of the United States) is defined in 33 CFR 328.3(b) as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.” In the absence of wetlands, the limits of ACOE jurisdiction in nontidal waters, such as intermittent streams, extend to the “ordinary high-water mark,” which is defined in 33 CFR 328.3(e).

EO 11988, Floodplain Management

EO 11988 requires federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. This EO provides an eight-step process that agencies carry out as part of their decision-making process for projects that have potential impacts to or within a floodplain.

EO 11990, Protection of Wetlands

Pursuant to EO 11990, each federal agency is responsible for preparing implementing procedures for carrying out the provisions of the EO. The purpose of this EO is to “minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of

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wetlands.” Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for any activity located in wetlands, unless the head of the agency finds that there is no practical alternative to such activity, and the proposed action includes all practical measures to minimize harm to wetlands that may result from such actions. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. Each agency must also provide opportunity for early public review of any plans or proposals for new construction in wetlands. The evaluation process follows the same eight steps as for EO 11988, Floodplain Management.

EO 13112, Invasive Species

EO 13112 requires federal agencies to “prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health effects that invasive species cause.” An invasive species is defined by the EO as “an alien species [a species not native to the region or area] whose introduction does or is likely to cause economic or environmental harm or harm to human health.”

3.6 Cultural Resources

3.6.1 Federal

National Historic Preservation Act

The NHPA of 1966, as amended (16 USC, Section 470) sets forth national policy and procedures regarding historic properties, defined as districts, sites, buildings, structures, and objects included in or eligible for the National Register of Historic Places. Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on such properties and to allow the Advisory Council on Historic Preservation the opportunity to comment on those undertakings, following regulations issued by the Advisory Council on Historic Preservation (36 CFR 800). The purpose of Section 106 is to avoid unnecessary harm to historic properties from federal actions. The BIA requires compliance with Section 106 for their formal undertakings.

Archaeological Resources Protection Act

The ARPA makes acts of destruction or alteration of archaeological resources punishable with civil and criminal penalties. The Department of the Interior has issued regulations under the ARPA, establishing definitions, standards, and procedures to be followed by all federal land managers in providing protection for archaeological resources located on public lands and Indian lands of the United States. Permitting authority of the BIA under ARPA is detailed in 25 CFR Part 262. An application for an ARPA permit must include authorization and a written agreement between the federal agency and an appropriate repository that will house and curate the collection

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recovered from the project site. This permit process applies to all excavations on federal, public, and Indian/Tribal lands.

Antiquities Act of 1906

The Antiquities Act of 1906 (Public Law 59- 209; 16 USC 431 et seq.; 34 Stat. 225) calls for the protection of historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest on federally administered lands.

Native American Graves Protection and Repatriation Act

If Native American human remains, associated or unassociated funerary objects, sacred objects, and objects of cultural patrimony are found, then the NAGPRA (25 USC 3001–3013) would apply. Under the NAGPRA, federal agencies are required to consult government-to-government with Indian tribes in addition to carrying out the inventory, summary, and repatriation provisions of the NAGPRA. Federal agencies also have special NAGPRA responsibilities when Native American human remains and objects are discovered on federal and tribal lands. On tribal trust lands, the tribe, rather than the federal agency retains responsibilities under the NAGPRA.

3.6.2 Tribal

Land Use Plan

The Tribe has adopted a Land Use Plan to guide physical development within the Reservation and ensure it occurs in a manner consistent with the Tribe's goals for economic and social advancement and that development does not threaten the environment and cultural resources of the Reservation or surrounding communities (Campo Band of Diegueño Mission Indians 2010a). Under the terms of the lease, certain Tribal laws apply to the Lessee, including certain provisions of the Tribe's Tax Ordinance and Tribal Employment Rights Ordinance. Discussed herein is the Tribal land use standards relating to the potential environmental effects addressed in the EIS relevant to cultural resources including the Land Use Plan. The Project will be developed in accordance with the Resource Development Plan approved by the BIA as part of the lease approval process.

Chapter 4 of the Land Use Plan states that it is a primary goal of the members of the Tribe to preserve the traditions and values of their culture via language, ceremonies, and religious practices, and to protect and preserve the historical and archaeological resources present on the Reservation.

The Land Use Plan also contains a Cultural Resources Element. The Cultural Resources Element includes objectives, programs, and standards as outlined below.

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Objectives

1. Protect and preserve historic and archeological resources on the Reservation
2. Encourage and promote the recognition of the significance of historic and archeological resources to the maintenance of the Tribe's cultural heritage among Tribal members and the general public.
3. Assess current and proposed land uses for impacts on cultural resources.

Programs

CEPA shall continue to monitor the preservation of cultural resources on the Reservation and maintain an updated inventory and map of these resources that can be used in the evaluation of prospective development on tribal lands. Developers shall be required to engage qualified archaeological assistance in preparing a comprehensive cultural resources study of an area proposed for development and not previously surveyed.

A historic or prehistoric resource shall be determined to be significant if it has one or more of the following characteristics:

- It exemplifies or reflects the broad cultural, political, economic, or social history of the Tribe;
- It has yielded or has the potential to yield information important in history of prehistory;
- It is a site or a structure that is important to the history of the Tribe; and/or
- It is a surviving site, structure, or object important to the culture or community for scientific, traditional, religious, or other reasons.

Standards

Development proposals shall be assessed for potential impacts upon historic and prehistoric resources. Development proposals found to have significant impacts on prehistoric or historic resources shall be required to provide adequate mitigation of those impacts, in accordance with the recommendations of a qualified archeological consultant and the designated cultural resources lead for the Reservation. Mitigation measures may include such measures as monitoring of earthmoving or construction equipment, study and documentation of resources, extraction, and/or preservation of resources, or incorporation of the resources into the Project design.

3.7 Socioeconomic Conditions

This section provides an overview of the applicable plans, policies, and regulations and existing conditions; historic trends and relevant projections for population and housing; employment and income; environmental justice, public services; and infrastructure and utilities, all of which

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influence or document the socioeconomic conditions of the Project area. Technical and reference information was obtained from the Campo Regional Landfill Project Supplemental EIS (Campo Band of Diegueño Mission Indians 2010b), which is hereby incorporated by reference.

3.7.1 Federal

National Environmental Policy Act

Under NEPA (42 USC 4321 et seq.), an EIS must include an analysis of the project's economic, social, and demographic effects related to effects on the natural or physical environment in the affected area, but does not allow for economic, social, and demographic effects to be analyzed in isolation from the physical environment.

EO 12898

EO 12898 requires that federal agencies identify and address any disproportionately high and adverse human health or environmental effects on their programs, policies, and activities on minority and low-income populations.

3.7.2 Tribal

Under the terms of the lease, certain Tribal laws apply to the Lessee, including certain provisions of the Tribe's Tax Ordinance and Tribal Employment Rights Ordinance. Discussed herein are Tribal land use standards relating to the potential environmental effects addressed in the EIS relevant to socioeconomic conditions including the Land Use Code and the Land Use Plan. The Project will be developed in accordance with the Resource Development Plan approved by the BIA as part of the lease approval process.

Land Use Code

The Tribe is guided by the goals set forth in its Land Use Plan, as discussed below, with protecting the natural and physical resources on the Reservation including "groundwater and air, preserving tribal traditions and culture, retaining wilderness areas, providing adequate housing for all tribal members, promoting employment for tribal members, and improving the standard of living for tribal members" (Campo Band of Diegueño Mission Indians 2011).

Land Use Plan

The Land Use Plan was originally adopted by the Tribe in June of 1978, and most recently revised and adopted in December of 2010. The purpose of the Land Use Plan is to ensure that future development within the Reservation occurs in a manner consistent with the Tribe's goals for "economic and social development and with its concern that such development does not

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threaten the environment and cultural resources of the Reservation or surrounding communities.” In addition, it is important to the Tribe to “support a viable economic development plan for achieving balanced economic growth, providing jobs, and improving the standard of living for tribal members without adversely affecting the Tribe’s environment and cultural resources.” Lastly, the Land Use Plan is meant to “provide technical information about the area’s resources and potential, so that future growth and change may be directed in an orderly and appropriate fashion” (Campo Band of Diegueño Mission Indians 2010a).

3.8 Resource Use Patterns

3.8.1 Federal

Farmland Protection Policy Act (Public Law 97-98, 7 USC Section 4201)

The Farmland Protection Policy Act (FPPA) is intended to minimize the impact federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. It ensures that—to the extent possible—federal programs are administered to be compatible with state and local units of government and private programs and policies to protect farmland. Federal agencies are required to develop and review their policies and procedures to implement the FPPA every 2 years.

The FPPA does not authorize the federal government to regulate the use of private or nonfederal land or, in any way, affect the property rights of owners. For the purpose of FPPA, farmland includes Prime Farmland, Unique Farmland, and Land of Statewide or Local Importance. Farmland subject to FPPA requirements does not have to be currently used for cropland. It can be forest land, pastureland, cropland, or other land, but not water or urban built-up land. Projects are subject to FPPA requirements if they may irreversibly convert farmland (directly or indirectly) to nonagricultural use and are completed by a federal agency or with assistance from a federal agency (NRCS 2008).

3.8.2 Tribal

Under the terms of the lease, certain Tribal laws apply to the Lessee, including certain provisions of the Tribe’s Tax Ordinance and Tribal Employment Rights Ordinance. Discussed herein are the Tribal land use standards relating to the potential environmental effects addressed in the EIS relevant to resource use patterns including the Land Use Code and the Land Use Plan. The Project will be developed in accordance with the Resource Development Plan approved by the BIA as part of the lease approval process.

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Land Use Plan

As described in the Tribe's Land Use Plan, the Reservation follows an approach to land use planning based on their culture and a history of thousands of years of living in the area now comprising San Diego County. Decisions about the use of land by the Tribe or any individual Tribal member are made by the General Council. This is equally true whether the proposed use is for residential, hunting, recreational, grazing, commercial, or industrial uses. Since all land use decisions are made for the benefit of the Tribe as a whole, land use planning is inherent in not only the functioning of the Tribe, but also the daily lives of individual members of the Tribe. The Tribe does not regard individual land uses as mutually exclusive. Numerous federal programs that the Tribe has pursued during the last two decades have addressed land use, and several key needs have been identified that include economic development, health care, education, housing, recreation, and environmental protection.

Section 6.1 (7) of the Tribe's Land Use Plan lists standards to protect land uses on the Reservation:

1. Five-Percent Standard Analysis – the Campo Renewable Energy Zone (CREZ) shall not adversely impact the land use designation of any district by more than five percent (5%) without completion of a detailed impact analysis and approval of the General Council. This is a threshold impact analysis (to determine if the 5% standard is exceeded. The analysis shall cover the categories defined in the National Environmental Policy Act (NEPA) and its implementing regulations, but will use standards defined by the Band in this Plan. The Executive Committee may assign the impact analysis to CEPA, an independent, qualified consulting firm or rely upon an existing impact analysis completed within the last three (3) years that was prepared by either CEPA or a consulting firm, so long as the analysis satisfies the CREZ criteria set forth in this Section (7) of this Plan.
2. Impact to Receptors Analysis – the CREZ must include an analysis of impacts to receptors (homes, businesses, offices, clinics, etc.) for safety, noise and visual impacts prior to any permanent development. The Executive Committee will determine if this analysis shall be conducted exclusively by CEPA or by a consultant pursuant to the NEPA. If a consultant completes this analysis, then the NEPA will govern the compliance process. In that event, CEPA will review and advise the Executive Committee as to any conflicts or omissions in the analysis that do not comply with tribal regulatory standards and the CEPA review, to the greatest extent practicable, will be conducted concurrently with the work of the consultant so as to avoid delays in completion of the NEPA process and designation of the CREZ.
3. CREZ Permitted Uses – the CREZ may be used for commercial wind, solar, geothermal, hydrological and other types of renewable energy generation that exploit existing energy resources not created by combustion, chemical or radioactive sources and that leverage market opportunities associated with the renewable energy sector for the benefit of the

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Band. The CREZ may include, without limitation, overhead and underground electrical distribution, collection, transmission and communications lines, electric transformers, electric substations, energy storage facilities, telecommunications equipment, and power generation facilities for the transmission of electrical energy, including, without limitation, the electrical energy generated by any wind turbines or solar panels; roads and crane pads; meteorological towers, wind and solar measurement equipment; control buildings, maintenance yards, and related facilities and equipment; and, any other undertakings or activities reasonably necessary, useful or appropriate to accomplish development of renewable energy resources and renewable energy business enterprises that may be developed in connection therewith.

Tribal lands are not parceled out into individual tracts for personal ownership. The decision to locate a municipal building, a softball field, a sand and gravel mining operation, grazing land, a commercial enterprise such as the Project, or even a single home are made by the General Council. Land use decisions are policy decisions made to benefit the Tribe as a whole (Campo Band of Diegueño Mission Indians 2010a).

Land Use Code

The Tribe also uses its Land Use Code “to promote the health, safety, and general welfare of the residents of the Reservation and to develop and maintain adequate standards for diversity in land use and building patterns on the Reservation.” The Tribe uses their Land Use Plan in conjunction with their Land Use Code to protect the natural resources and cultural heritage on the Reservation, including but not limited to groundwater and air, preserving Tribal traditions and culture, retaining wilderness areas, providing adequate housing for all Tribal members, promoting employment, and improving the standard of living for all Tribal members (Campo Band of Diegueño Mission Indians 2011).

3.9 Traffic and Transportation

Construction activities of the Project alternatives could potentially affect traffic flow, access, transit operations, and bicycle facilities on public streets, roadways, and highways. Therefore, the developer and/or the construction contractor(s) would be required to obtain encroachment, construction, excavation, and/or traffic control permits, or similar legal agreements from the CEPA, BIA, the County of San Diego Department of Public Works, California Department of Transportation (Caltrans), and any other public agencies responsible for the affected roadways and other applicable rights-of-way (ROWs). Such permits are needed for ROWs that would be crossed by the transmission lines, as well as where construction activities would require the use of roadway and highways/ROWs and easements for parallel installations, and would require permits from the CEPA, the County of San Diego Department of Public Works, and possibly Caltrans. For proposed

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railroad crossings, Metropolitan Transportation System would issue permits. The Campo Wind Facilities would be subject to applicable BIA policies and regulations.

3.9.1 Federal

Federal Aviation Administration

The standards and notification requirements set forth by the FAA for construction activities that would result in obstructions to FAA-regulated airspace are established by 14 CFR 77. To obtain a permit to construct, the FAA requires applicants/developers to submit a “Notice of Proposed Construction or Alteration” form (7460-1) and receive FAA approval/waiver prior to the initiation of construction activities associated with the project.

The Project developer will file a Notice of Proposed Construction or Alteration (7460-1) with the FAA.

3.9.2 Tribal

Under the terms of the lease, certain Tribal laws apply to the Lessee, including certain provisions of the Tribe’s Tax Ordinance and Tribal Employment Rights Ordinance. A summary of the Land Use Plan as it relates to traffic and transportation is provided in this section for reference.

Land Use Plan

The Land Use Plan incorporates a Circulation Element with the following issues, objectives, and programs, as well as Land Use Standards for the Tribe’s goals and objectives for transportation and circulation on the Reservation:

Circulation Element

Issues: The central portion of the Reservation is accessed through Church Road, an all-weather road. Another paved road exists above Live Oak Springs and services the community of Manzanita Reservation. Adequately engineered streets are needed for any development on the Reservation.

The location of future roads on a circulation map will depend upon the types of developments proposed and where they are projected to be built. Factors such as current roadways and existing improvements, physical constraints (i.e., flooding, slopes, streambeds), and the specific needs of the Project will determine the type and amount of public facilities and services required.

Objectives: (1) Monitor land use and development trends and formulate a circulation master plan in conjunction with ongoing and planned development; (2) Maintain the existing road network while providing for future expansion and improvement based upon travel demand and project-specific needs; (3) Develop policies and regulations such that developers and commercial and

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industrial tenants on tribal lands share the costs of maintaining and improving the road system and related facilities. Such policies and regulations could include utilization of such financing tools as assessment districts and impact fees; and (4) Require all new development projects to include proper and sufficient access and circulation for the project, plus integration with potential future circulation requirements in the vicinity of the project.

Land Use Standards

Road Rights-of-Way and Dedication: All Reservation lands are controlled by the Tribe and/or its entities and may be leased to developers on a long-term basis. There will be no land divisions since ownership is in the Tribe. The General Council, and CEPA shall conduct all land use review. The Bureau of Indian Affairs also reviews and approves leases for all projects to be constructed upon Reservation lands.

Rights-of-way dedications for public facilities should be aligned to match up with existing dedications along adjacent parcels and shall be of a width consistent with the ultimate design standard of the road. All road dedications shall relate to the overall existing and proposed street systems of the immediate area surrounding a proposed development. Dedications outside the road rights-of-way may be necessary to establish slope stability or drainage structures. These dedications shall be made by developers during the land review process by CEPA. Road rights-of-way and improvements shall be primarily determined by land use and travel demand.

Roadway Design: Intensive land uses shall be served by streets and highways capable of handling high volumes of commuter and truck traffic. Through-traffic shall be limited and avoid streets through residential neighborhoods. Provisions shall be made for highways and roads capable of carrying high volumes of through traffic between major trip generators.

Alignment: Curves and grades shall be designed to permit safe movement of vehicular traffic at the road's design speed.

Access: Access shall be provided to all parcels of tribal land, except as otherwise provided for by the Tribe. All-weather access shall be provided to all developed areas. Access points and intersections of streets and highways shall be limited based upon the road's classification and function. Parcel access points taken directly off general planned highways or roads on non-tribal lands shall be discouraged. Access may be permitted from off-Reservation highways if no local streets are present. Whenever access must be taken directly off an off-Reservation highway for abutting parcels with non-tribal land, common access shall be provided at the property line. Parcels on opposite sides of a highway or road shall have access points located directly opposite each other, whenever possible, to allow for future street intersections and increased safety.

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Intersections: All street intersections shall be designed to assure the safe, efficient passage of through traffic and the negotiation of turning movements. Sight distances shall be adequate to provide for safe vehicular movement at a road's design speed. Setbacks allowing for clear, unobstructed sight distance shall be provided at all intersections.

On-Site Road Improvements: Land developers shall be required to provide all on-site road and auxiliary facility improvements necessary to mitigate any development-generated circulation impacts. A review of each proposed land development project shall be undertaken to identify project impacts to the circulation system and its auxiliary facilities.

Off-Site Road Improvements: All developers shall be required to mitigate all significant impacts that development projects place upon the circulation system. Off-site improvements shall be required of developers, at their own expense, when necessary to mitigate increased travel demand or relieve potential access, congestion, or safety problems generated by the development. All identified impacts to the circulation system by proposed land developments shall be mitigated by the developer in conformance with requirements established by the Tribe.

Commercial and Industrial Development: Improvement of streets and highways serving as access to developing commercial and industrial areas shall primarily be the responsibility of the private developer and shall be built to standards developed by the Tribe. These may include road construction or widening, installation of turning lanes and traffic control signs or signals, and the improvement of any drainage facility or other auxiliary facility necessary for the safe and efficient movement of traffic or the protection of road facilities. Interior collector street systems for major commercial and industrial subdivisions shall be designed to accommodate heavy trucks. Off-street loading and unloading facilities for all new commercial and industrial developments shall be required.

Flooding: All roadways located within identified flood areas shall be provided with adequate flood control measures. Roadways shall be located outside identified floodplains whenever possible.

Dust and Blowsand: Dust shall be controlled during all stages of roadway construction. All road rights-of-way shall be protected from blowing sand to the extent practical. All streets and highways located within identified blowsand areas shall be protected from blowsand hazards.

3.9.3 State

State regulations are applicable to the Boulder Brush Facilities located within San Diego County. The Tribe and the Reservation are not subject to state regulations.

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Caltrans

The Project would be located within Caltrans District 11. Caltrans requires that an encroachment permit be obtained prior to the initiation of any transportation and non-transportation activities (including utility construction) occurring within the ROW of the state highway system (Interstate 8 and State Route 94). Encroachment permits are obtained from the local Caltrans office (District 11). According to the Caltrans Encroachment Permit Application Guide, utility construction projects are not required to submit or prepare a Traffic Control and Detour Plan. However, traditional construction projects are required to prepare a Traffic Control and Detour Plan. Caltrans “Guidelines for Traffic Control Plans” are located in Section 2-205 of the Caltrans Construction Manual (Caltrans 2009, p. 2-2.3). The Caltrans Construction Manual also contains provisions for nighttime construction work within the state highway system ROW.

Caltrans also requires transportation permits for the movement of vehicles or loads exceeding the limitations on the size and weight contained in Division 15, Chapter 5, Article 1, Section 35551, of the California Vehicle Code (1983). Due to the likelihood of heavy and oversized truck loads, transportation permits would be required and would be obtained by the transport contractor.

3.10 Noise

3.10.1 Federal

Noise Control Act of 1972

The Noise Control Act (42 USC 4910) is the national policy intended to promote an environment free from noise that jeopardizes the health and welfare of U.S. citizens. To accomplish this, the Noise Control Act establishes a means for the coordination of federal efforts in noise control, authorizes establishment of federal noise emissions standards for products distributed in commerce, and provides information to the public about the noise- emission and noise-reduction characteristics of the same products.

Information on Levels of Environmental Noise Requisite to Protect Health and Welfare with an Adequate Margin of Safety

The EPA recommendations in “Information on Levels of Environmental Noise Requisite to Protect Health and Welfare with an Adequate Margin of Safety,” NTIS 550\9-74-004, U.S. EPA, Washington, D.C., March 1974 (Levels Document), in response to a federal mandate, establish guidelines for acceptable noise levels within an adequate margin of safety for areas of outdoor use, including residences and recreation areas. The EPA intended the Levels Document to “provide State and Local governments, as well as the Federal Government and the private sector, with an informational point of departure for the purpose of decision making.” The EPA

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stresses that the recommendations include a safety factor and do not consider technical or economic feasibility issues, and, therefore, should not be construed as standards or regulations.

Federal Energy Regulatory Commission Guidelines on Noise Emissions from Compressor Stations, Substations, and Transmission Lines (18 CFR 157.206(d)5)

These guidelines require the following:

The noise attributable to any new compressor stations, compression added to an existing station, or any modification, upgrade, or update of an existing station must not exceed a day-night level (Ldn) of 55 dBA at any preexisting noise sensitive area (such as schools, hospitals, or residences).

The 55 dBA Ldn standard is based on the federal Noise Control Act of 1972, which established the requirement that all federal agencies administer their programs to promote an environment free of noise that jeopardizes public health and welfare. In 1974, the EPA, acting to execute its responsibility to coordinate federal research and activities related to noise control, identified an Ldn of 55 dBA as necessary to protect against speech interference and sleep disturbance for residential, educational, and healthcare noise sensitive areas (NSAs).

FTA – Construction Noise Standard (80 dBA L_{eq})

The Federal Transit Administration (FTA) and Federal Railroad Administration (FRA) regulate noise and other environmental impacts through 23 CFR Part 771. The FTA and FRA have developed extensive methodologies and significance criteria for the evaluation of noise impacts from surface transportation modes and related construction activities in the Transit Noise and Vibration Impact Assessment manual (FTA 2006). The FTA provides guidance for construction noise assessment; FTA recommends a daytime noise level limit of 80 dBA $L_{eq(8)}$ for construction noise affecting residential land uses.

FTA – Vibration Standard (0.2 PPV)

Although it is possible for vibrations from construction near buildings to cause building damage, the vibrations from construction activities are almost never of sufficient amplitude to cause more than minor cosmetic damage to buildings (FTA 2006). Groundborne vibration generated by construction is usually highest during pile driving, rock drilling and blasting, soil compacting, jackhammering, and demolition-related activities. The threshold for structural damage is 0.2 PPV at distances ranging beyond 65 feet (FTA 2006).

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3.10.2 Tribal

Under the terms of the lease, certain Tribal laws apply to the Lessee, including certain provisions of the Tribe's Tax Ordinance and Tribal Employment Rights Ordinance. A summary of the Land Use Plan as it relates to noise is provided in this section for reference.

Land Use Plan

The Noise Element of the Tribes' Land Use Plan (Campo Band of Diegueño Mission Indians 2010a) provides the following Land Use Standards related to noise to guide planning efforts:

- Noise issues shall be reviewed in relation to the land use, circulation, transportation, and housing elements.
- The following uses shall be considered noise sensitive and shall be discouraged in areas in excess of 65 CNEL (dBA): single and multiple family residential, group homes, business and professional offices, and parks and open space lands where quiet is a basis for use.
- Business and professional offices, where effective communication is essential, shall mitigate interior noise to 45 dBA.
- Proposed noise sensitive projects within noise impacted areas may be required to have acoustical studies prepared by a qualified acoustical engineer and may be required to provide mitigation.
- Proposed projects which are noise producers shall work with the Campo Band to either mitigate excessive noise or choose another Reservation site that does not affect any sensitive receptors.
- In areas within close proximity to highways and roads, the road's design standard (average daily trips) shall be used to estimate maximum future noise hazard.

3.10.3 State

State regulations are applicable to the Boulder Brush Facilities located within San Diego County. The Tribe and the Reservation are not subject to state regulations.

Caltrans Noise Increase – 12 dBA above Existing (Loudest) Noise Levels

For consideration of substantial increase in ambient noise levels due to project construction and operation, Caltrans defines a substantial increase as a 12 dBA or greater increase in ambient noise levels, when comparing the project's worst-hour design year noise level with the existing worst-hour ambient level (Caltrans 2011). This limit is used both for temporary consideration during construction and for permanent consideration during operation of the Project.

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3.11 Visual Resources

3.11.1 Federal

Federal Highway Administration Visual Resource Guidelines

The Federal Highway Administration (FHWA) added Title 23 of the U.S. Code to reflect NEPA's directives. To regulate aesthetic adherence to Title 23, the FHWA developed the VIA for Highway Projects (1981).

Under FHWA guidelines, visual impact is defined as follows: resource change + viewer response = visual impact. To evaluate resource change, one must define the visual resources in the area, their character, and their quality. To evaluate viewer response, one must define the viewers ("of" and "from" the road), their exposure, and their sensitivity. Landscape character (e.g., water, vegetation, and man-made development) is usually described by identifying landscape types that form visual units. These units include pattern elements (form, line, color, texture) and pattern character (dominance, scale, diversity, continuity). Landscape quality is defined by vividness, intactness, and unity. Viewer exposure is defined as the physical location of the viewer, number of people in each viewer group, and the duration of their view. Viewer sensitivity is defined as viewer activity, awareness, local values, and cultural significance of the visual resource.

BLM Visual Resource Guidelines

The BLM has developed the Visual Resource Management (VRM) system to evaluate the impacts on the scenic value of public lands. The VRM system is implemented through the Resource Management Plan and the Management Framework Plan process. Given the absence of a BIA-specific visual impact methodology, the BLM VRM system has been adapted and combined with other federally adopted methodologies to provide a highly utilized and unbiased framework through which a NEPA-level visual impact assessment can be performed.

The BLM, similarly to the BIA, is a federal agency within the Department of Interior that is responsible for the management of public lands and resources on behalf of the public. Congress directed that public lands be managed under the "principles of multiple use and sustained yield."

Contrast Rating System

The contrast rating system (Manual Section 8431) provides a systematic means to evaluate proposed projects and determine whether these projects conform to the approved VRM objectives. It also provides a means to identify mitigating measures that can be taken to minimize adverse visual impacts. The VRM system, therefore, provides a means to identify visual values; establish objectives

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through the Resource Management Plan process for managing these values; and to provide timely inputs into proposed surface-disturbing projects to ensure that these objectives are met.

The contrast rating process compared changes to existing visual characteristics from the introduction of proposed facilities and activities. The visual contrast created between a project and the existing landscape is described in terms of form, line, color, and texture. The contrast is then compared with VRM classes to determine whether construction and operation phases of the project meet management objectives. The degree of contrast is evaluated according to the criteria. For comparative purposes, the four acceptable levels of contrast (i.e., none, weak, moderate, and strong) roughly correspond with VRM Classes I, II, III, and IV, respectively. In other words, a “strong” contrast rating may be acceptable in a Class IV area but probably would not meet the VRM objectives for a Class III area.

U.S. Forest Service

The Cleveland National Forest lies approximately 1.56 miles, at its nearest point, west of the Project Area and consists of 460,000 acres of managed land. Portions of the National Forest, most notably the Hauser and Pine Creek Wilderness Areas, may have views (albeit distant and obstructed) to the Project site.

National Trails

The National Trails System (12 USC Section 1242) allowed federal designation to those extended trails (over 100 miles in length) that provide for the maximum outdoor recreation potential and for the conservation and enjoyment of the significant scenic, historic, natural, or cultural qualities of the areas through which they pass.

The Pacific Crest National Scenic Trail, which runs from the Canadian border to the north to the Mexican border to the south, traverses San Diego County across lands managed primarily by the BLM and U.S. Forest Service before terminating at the Mexican border. This segment of trail is located approximately 4.26 miles west of the Project Area at its nearest point.

Federal Scenic Byways

The vision of FHWA’s National Scenic Byways Program is “To create a distinctive collection of American roads, their stories and treasured places.” The National Scenic Byways Program was established under the Intermodal Surface Transportation Efficiency Act of 1991, and reauthorized in 1998 under the Transportation Equity Act for the 21st Century. Under the program, the U.S. Secretary of Transportation recognizes certain roads as National Scenic Byways or All-American Roads based on their archaeological, cultural, historic, natural, recreational, and scenic qualities.

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The Sunrise Scenic Byway lies approximately 10 miles west of the Project Area and consists of a 24-mile highway that traverses the Cleveland National Forest and Laguna Mountain Recreation Area.

3.12 Public Health and Safety

3.12.1 Federal

Hazardous Materials Transportation Act (49 USC, Section 5101 et seq.)

The U.S. Department of Transportation has regulatory authority for the safe transportation of hazardous materials under the Hazardous Materials Transportation Act, as amended and codified in 49 USC 5101 et seq. Vehicles transporting hazardous materials must comply with strict containment, safety, labeling, and manifesting requirements.

Resource Conservation and Recovery Act (42 USC, Section 6901 et seq.)

The Resource Conservation and Recovery Act (RCRA) of 1976 established a program administered by the EPA for the regulation of the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA was amended in 1984 by the Hazardous and Solid Waste Act, which affirmed and extended the “cradle to grave” system of regulating hazardous waste. RCRA regulates hazardous waste from the time that the waste is generated, through to its management, storage, transport, and treatment until its final disposal. In California, the EPA has authorized the Department of Toxic Substances Control to administer the RCRA program, pursuant to the state’s Hazardous Waste Control Law.

U.S. Environmental Protection Agency

The EPA defines hazardous waste as waste that is dangerous or potentially harmful to public health or the environment. Wastes that the EPA has determined to be hazardous are known as “listed wastes” and are organized into three categories: F-List (nonspecific source wastes from common manufacturing and industrial processes), K-List (source-specific waste from specific industries such as petroleum refining and pesticide manufacturing), and P-List and U-List (discarded commercial chemical products in an unused form) (EPA 2018a). Wastes included on the F-List can be found in the regulations established in 40 CFR Part 261.31, K-List wastes are discussed in 40 CFR Part 261.32, and P- and U-List wastes are discussed in 40 CFR Part 261.33. An additional category of waste, characteristic wastes, includes wastes that exhibit ignitability, corrosivity, reactivity, or toxicity.

The Federal Toxic Substances Control Act (1976; 15 USC 2601–2671) established a program administered by the EPA for the regulation of the generation, transportation, treatment, storage, and disposal of hazardous waste.

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EPA Region 9, Regional Screening Levels

Region 9 is the Pacific Southwest Division of the EPA, which includes Arizona, California, Hawaii, Nevada, the Pacific Islands, and over 140 Tribal Nations. Regional Screening Levels are tools for evaluating and cleaning up contaminated sites. Regional Screening Levels for the Superfund/RCRA programs are risk-based concentrations, derived from standardized equations combining exposure information assumptions with EPA toxicity data. They are considered to be protective for humans (including sensitive groups) over a lifetime. However, Regional Screening Levels are not always applicable to a particular site and do not address non-human health endpoints, such as ecological impacts. Region 9's Regional Screening Levels are viewed as agency guidelines, not legally enforceable standards (EPA 2018b).

Clean Water Act

The CWA (33 USC, Section 1251 et seq.) is the principal federal statute protecting navigable waters of the United States and adjoining shorelines from the discharge of pollution from point sources. Since its enactment, the CWA has formed the foundation for the regulations and permitting of pollution prevention and response measures in waters subject to federal jurisdiction. The CWA establishes basic structure for regulating discharges of pollutants into the waters of the United States, establishes pollution control programs such as setting wastewater standards for industry, and sets water quality standards for all contaminants in surface waters.

Clean Air Act

Under the authority of Section 112(r) of the CAA, the Chemical Accident Prevention Provisions require facilities that produce, handle, process, distribute, or store more than a “threshold quantity” of any extremely hazardous toxic and flammable substance listed at 40 CFR Part 68.130 to develop and implement a Risk Management Plan and submit it to the EPA. The program is applicable to companies of all sizes that use certain flammable and toxic substances. The Risk Management Plan is intended to help local fire, police, and emergency response personnel (first responders) in the event of an accidental spill or exposure event. The Risk Management Plan is contained within the CAA (42 USC 7401 et seq.).

Oil Pollution Prevention (40 CFR, Part 112)

The goal of the oil pollution prevention regulation in 40 CFR, Part 112, is to prevent oil discharges from reaching navigable waters of the United States or adjoining shorelines. Facilities that could reasonably be expected to discharge oil into navigable waters in quantities that may be harmful are required to develop and implement Spill Prevention, Control and Countermeasures plans per the Spill Prevention, Control and Countermeasures rule.

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Occupational Safety and Health Administration

The Occupational Safety and Health Administration (OSHA) administers health standards that (1) provide regulations for safety in the workplace; (2) regulate construction safety; and (3) require a Hazards Communication Plan. The plan includes identification and inventory of all hazardous materials for which Material Safety Data Sheets (MSDS) would be maintained, and employee training in safe handling of said materials (OSHA 2012).

National Fire Protection Association Codes, Standards, Practices, and Guides

National Fire Protection Association (NFPA) codes, standards, recommended practices, and guides are developed through a consensus standards development process approved by ANSI. This process brings together professionals representing varied viewpoints and interests to achieve consensus on fire and other safety issues. NFPA standards are recommended guidelines and nationally accepted good practices in fire protection but are not law or “codes” unless adopted as such or referenced as such by the California Fire Code or the Local Fire Agency.

- NFPA 850, Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations, 2010: NFPA 850 was prepared for the guidance of those charged with the design, construction, operation, and protection of electric generating plants and high voltage direct current converter stations that are covered by the scope of this document. This document provides fire hazard control recommendations for the safety of construction and operating personnel, the physical integrity of plant components, fire protection systems and equipment, and the continuity of plant operations.
- NFPA 10, Fire Extinguishers: A long-standing standard, which specifies the types, sizes, rating, and locations for portable fire extinguishers. It also provides information on how to calculate the number and size of portable fire extinguishers needed. NFPA 11, Fire Fighting Foam (Low, Medium, and High Expansion Foam): NFPA 11 is a longstanding standard, which provides recommendations for design and installation of firefighting foam systems and portable equipment. It also provides recommendations regarding calculating the amount of foam concentrate and solution needed on a flammable or combustible liquid fire. NFPA 13, Standard for Installation of Sprinkler Systems: NFPA 13 is the standard for design and installation of fire sprinkler systems in a building. It provides the requirements for the type of system needed in a particular occupancy, water supply, sprinkler head flow and pressures, the locations of sprinkler heads, and installation of the system. This standard is referenced by the California Fire Code.
- NFPA 22, Standard for Water Tanks for Private Fire Protection: Provides recommendations for the design, construction, and installation of water storage tanks for private fire protection systems.

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- NFPA 30, Flammable and Combustible Liquids Code: This standard provides recommendations for storage, use, and handling of flammable and combustible liquids. It provides detailed information regarding tank storage, spacing, dispensing of liquids, portable containers, and other related operations. NFPA 30 is referenced by the California Fire Code.
- NFPA 70, National Electrical Code: NFPA 70 is the standard for the design and installation of electrical systems. It includes recommendations for various types of occupancies and also provides recommendations and criteria for the location and installation of “explosion proof” electrical systems.
- NFPA 72, National Fire Alarm and Signaling Code: NFPA 72 is the standard for the design, installation, and operation of fire alarm systems in various occupancies. This standard is used by fire alarm system designers when designing and installing a system. It is utilized also by fire agencies when reviewing plans for new systems.
- NFPA 497, Classification of Flammable Liquids, Gases, and Vapors, and for Electrical Area Installations in Chemical Process Areas: NFPA 497 is the standard, which is utilized along with NFPA 70 to determine flammable gas, flammable liquid, and combustible liquid hazards and to recommend the areas that require explosion-proof electrical systems. It also sets forth the extent of the classified areas.

Federal Wildland Fire Management Policy

The Federal Wildland Fire Management Policy was developed in 1995 and updated in 2001 by the National Wildfire Coordinating Group, a federal multi-agency group that establishes consistent and coordinated fire management policy across multiple federal jurisdictions (NWCG 2001). An important component of the Federal Wildland Fire Management Policy is the acknowledgment of the essential role of fire in maintaining natural ecosystems. The Federal Wildland Fire Management Policy and its implementation are founded on the following guiding principles:

- Firefighter and public safety is the first priority in every fire management activity.
- The role of wildland fire as an essential ecological process and natural change agent will be incorporated into the planning process.
- Fire management plans, programs, and activities support land and resource management plans and their implementation.
- Sound risk management is a foundation for all fire management activities.
- Fire management programs and activities are economically viable, based upon values to be protected, costs, and land and resource management objectives.
- Fire management plans and activities are based upon the best available science.

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- Fire management plans and activities incorporate public health and environmental quality considerations.
- Federal, state, tribal, local, interagency, and international coordination and cooperation are essential.
- Standardization of policies and procedures among federal agencies is an ongoing objective.

National Fire Plan

The National Fire Plan was a Presidential directive in 2000 as a response to severe wildland fires that had burned throughout the United States. The National Fire Plan focuses on reducing fire impacts on rural communities and assurance for sufficient firefighting capacity in the future. It is a long-term investment that will help protect natural resources in addition to communities, as well as a long-term commitment based on cooperation and communication among federal agencies, states, local governments, tribes, and interested members of the public. There are five key areas addressed under the National Fire Plan:

- Firefighting and Preparedness
- Rehabilitation and Restoration
- Hazardous Fuels Reduction
- Community Assistance
- Accountability

International Fire Code

Created by the International Code Council, the International Fire Code addresses a wide array of conditions hazardous to life and property including fire, explosions, and hazardous materials handling or usage (although not a federal regulation, but rather the product of the International Code Council). The International Fire Code places an emphasis on prescriptive and performance-based approaches to fire prevention and fire protection systems. Updated every 3 years, the International Fire Code uses a hazards classification system to determine the appropriate measures to be incorporated in order to protect life and property (often these measures include construction standards and specialized equipment). The International Fire Code uses a permit system (based on hazard classification) to ensure that required measures are instituted.

International Wildland–Urban Interface Code

The International Wildland–Urban Interface Code is published by the International Fire Code and is a model code addressing wildfire issues.

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3.12.2 Tribal

Under the terms of the lease, certain Tribal laws apply to the Lessee, including certain provisions of the Tribe's Tax Ordinance and Tribal Employment Rights Ordinance. A summary of the Land Use Code and the Land Use Plan as they relate to public health and safety impacts are provided in this section for reference.

Land Use Code

The Land Use Code was adopted by the Tribe on June 15, 1992, and amended on June 1, 2011. The purpose of the Land Use Code is to “promote the health, safety, and general welfare of the residents of the Reservation and to develop and maintain adequate standards for diversity in land use and building patterns.” The Tribe is guided by the goals set forth in its Land Use Plan, which are to protect the natural and physical resources on the Reservation, including “groundwater and air, preserving tribal traditions and culture, retaining wilderness areas, providing adequate housing for all tribal members, promoting employment for tribal members, and improving the standard of living for tribal members” (Campo Band of Diegueño Mission Indians 2011).

Land Use Plan

The Land Use Plan was originally adopted by the Tribe in June of 1978, and most recently revised and adopted in December of 2010. The purpose of the Land Use Plan is to ensure that future development within the Reservation occurs in a manner consistent with the Tribe's goals for “economic and social development and with its concern that such development does not threaten the environment and cultural resources of the Reservation or surrounding communities.” In addition, it is important to the Tribe to “support a viable economic development plan for achieving balanced economic growth, providing jobs, and improving the standard of living for tribal members without adversely affecting the Tribe's environment and cultural resources.” Lastly, the Land Use Plan is meant to “provide technical information about the area's resources and potential, so that future growth and change may be directed in an orderly and appropriate fashion” (Campo Band of Diegueño Mission Indians 2010a).

3.13 Other Issues Discussed in This Draft EIS

3.13.1 Federal

Federal Energy Policy and Conservation Act

In 1975, Congress enacted the Federal Energy Policy and Conservation Act, which established the first fuel economy standards for on-road motor vehicles in the United States. Pursuant to the act, the National Highway Traffic Safety Administration is responsible for establishing additional

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vehicle standards. In 2012, new fuel economy standards for passenger cars and light trucks were approved for model years 2017 through 2021 (77 FR 62624–63200). Fuel economy is determined based on each manufacturer’s average fuel economy for the fleet of vehicles available for sale in the United States.

Energy Policy Act of 1992

The Energy Policy Act, effective October 24, 1992, (102nd Congress H.R.776.ENR, abbreviated as EPACT92) is a United States government act. It was passed by Congress and set goals, created mandates, and amended utility laws to increase clean energy use and improve overall energy efficiency in the United States. The Act consists of twenty-seven titles detailing various measures designed to lessen the nation's dependence on imported energy, provide incentives for clean and renewable energy, and promote energy conservation in buildings. Title XXII in the Energy Policy Act authorized tax incentives and marketing strategies for renewable energy technologies in an effort to encourage commercial sales and production.

Energy Independence and Security Act of 2007

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA) was signed into law. In addition to setting increased Corporate Average Fuel Economy standards for motor vehicles, the EISA includes the following other provisions related to energy efficiency:

- Renewable Fuel Standard (Section 202)
- Appliance and Lighting Efficiency Standards (Sections 301–325)
- Building Energy Efficiency (Sections 411–441)

This federal legislation requires ever-increasing levels of renewable fuels (the RFS) to replace petroleum (EPA 2013, 2015). The EPA is responsible for developing and implementing regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel. The RFS program regulations were developed in collaboration with refiners, renewable fuel producers, and many other stakeholders.

The RFS program was created under the Energy Policy Act of 2005 and established the first renewable fuel volume mandate in the United States. As required under the act, the original RFS program (RFS1) required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012. Under the EISA, the RFS program was expanded in several key ways that lay the foundation for achieving significant reductions in GHG emissions from the use of renewable fuels, reducing imported petroleum, and encouraging the development and expansion of the renewable fuels sector in the United States. The updated program is referred to as “RFS2” and includes the following:

- EISA expanded the RFS program to include diesel, in addition to gasoline.

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- EISA increased the volume of renewable fuel required to be blended into transportation fuel from 9 billion gallons in 2008 to 36 billion gallons by 2022.
- EISA established new categories of renewable fuel, and set separate volume requirements for each one.
- EISA required the EPA to apply lifecycle GHG performance threshold standards to ensure that each category of renewable fuel emits fewer GHGs than the petroleum fuel it replaces.

Additional provisions of the EISA address energy savings in government and public institutions, research for alternative energy, additional research in carbon capture, international energy programs, and the creation of “green” jobs.

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