

**From:** [Lisa Haws](#)  
**To:** [Harris, Susan](#); [Beddow, Donna](#); [Koutoufidis, Nicholas](#); [Potter, Andrew](#)  
**Cc:** [Slovick, Mark](#); [Anderson, Joel](#); [Kazmer, Gregory](#); [noravargas@sdcounty.ca.gov](mailto:noravargas@sdcounty.ca.gov); [Flores, David](#); [Lawson-Remer, Terra](#); [Andrade, Evlyn](#); [Petterson, Cody](#); [Fletcher, Nathan \(BOS\)](#); [EmilyWier@sdcounty.ca.gov](mailto:EmilyWier@sdcounty.ca.gov); [Desmond, Jim](#); [Mills, Benjamin](#); [Angela Elliott Santos](#); [Johnny Elliott](#)  
**Subject:** [External] Manzanita Band's Comments of Current Draft EIR - Public Hearing - Wednesday, August 18, 2021  
**Date:** Tuesday, August 17, 2021 5:42:17 PM  
**Attachments:** [17 August 2021 Manzanita Comment Letter JVR.pdf](#)

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Greetings: Please find attached comments provided by the Manzanita Band of the Kumeyaay Nation. We look forward to continued and meaningful government-to-government consultation to resolve this matter. Thank you.

Best regards,

Lisa C. Haws  
Tribal Administrator & THPO, Manzanita Band of the Kumeyaay Nation  
Executive Director, Kumeyaay Diegueno Land Conservancy  
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## Manzanita Band of the Kumeyaay Nation

August 17, 2021

Ms. Susan Harris  
Planning & Development Services  
5510 Overland Avenue, Suite 310  
San Diego, CA 92123  
[Susan.Harris@sdcounty.ca.gov](mailto:Susan.Harris@sdcounty.ca.gov)

RE: Comments of the Manzanita Band for the JVR Energy Park Project Draft EIR  
PDS2018-MUP-18-022 and PDS2018-ER-18-22-001

Dear Ms. Harris:

The Manzanita Band of the Kumeyaay Nation ("Tribe), also known as the Manzanita Band of Diegueno Mission Indians, is a federally recognized Self-Governance Indian Tribe that operates pursuant to its Constitution and Bylaws adopted on July 12, 1975 pursuant to the Indian Reorganization Act and approved by the Commissioner of Indian Affairs on January 9, 1976, and possesses inherent powers of self-governance with duties, rights, responsibilities, and with power and authority over the lands within the exterior boundaries of the Manzanita Indian Reservation.

The Manzanita Band submitted previous comments and request for consultation in November 16, 2020 and December 7, 2020. Copies of those correspondences are attached and incorporated as on-going concerns. The County has not fully and meaningfully conducted adequate government-to-government consultation. The County stated they concluded consultation on May 27, 2020 due to a lack of response. This statement is not valid as the response to Mr. Elliott's email of November 16, 2020 was not received until February 25, 2021. No response was received to the comments submitted by Lisa Haws on December 2, 2020 until posted on the County's website.

The Manzanita Band received no further emails from the County regarding the project until August 12, 2021. Therefore, without adequate participation by the County to respond to concerns of the Manzanita Band, the County's obligations for meaningful consultation have not been fulfilled. The timing of the correspondence with the declaration of a statewide Covid-19 pandemic, further exacerbated communication and addressing our concerns. Furthermore, in the current draft EIR, Dudek states that the County's "consultation on AB 52 is ongoing and will

continue throughout the process of the Proposed Project.” The Manzanita Band looks forward to improved communication and consultation.

The Manzanita Band is aware that solar energy facilities produce diverse impacts on cultural resources in and around the areas where they are built. Impacts occur during both facility construction and operation. Solar project significantly impact cultural resources for which visual integrity and/or a quiet setting is a component of a site’s significance, such as trails, sacred sites and landscapes, historic structures, traditional cultural properties, and historic landscapes. Cultural resources are nonrenewable and, once damaged or destroyed, are not recoverable. When a cultural resource is damaged or destroyed during solar energy development, this particular cultural location, resource, or object is irretrievable.

The Manzanita Band is very familiar with the culturally sensitive areas of Jacumba Hot Springs and the surrounding areas. Jacumba Valley (Jacume/Hametaay) is a village site extending from its center near the Jacumba Hot Springs several miles in all directions, including the project area and south across the border into what is now Mexico. Jacumba Valley is the central location of a Kumeyaay origin story. It has also been recommended for listing as a Multiple Resource Area, meaning that it is comprised of several types of important resources such as village sites, sacred area, and plant gathering locales, trails, ceremonial sites, cremations, burials, and other significant resources that collectively distinguish the area from other smaller sites with a less comprehensive set of related religious and cultural resources. The EIR contains no consideration of the cumulative effects on this area and these sites. Cultural resources are non-renewable resources and destroying any of them is erasing our history.

We are very concerned about the research and information used by Dudek to reach their conclusions in favor of the developer rather than the protection of cultural resources. For example, Jacumba Valley is a part of the Jacumba Valley Archaeological District, a 4,222-acre area which the Bureau of Land Management has nominated for inclusion on the National Register of Historic Places because of the area’s role in, and rich archaeological record of, Kumeyaay history, culture and ceremonial life. The Bureau of Land Management, Jacumba Valley Archeological District nomination to the National Register of Historic Properties (2013) explains,

According to ethnographic testimony and some archaeological evidence, Jacumba Valley was an important trade center lying between the Pacific Coast and the Colorado River. The district comprises 144 Native American archaeological sites and nine isolated artifacts that date principally to the Late Prehistoric and early Historic periods (A.D. 500-A.D. 1880). The sites range from habitation bases (villages) and spiritual/ceremonial sites to small lithic scatters and isolated or clustered earth ovens, mostly for the processing of the edible portions of the desert agave plant. In addition, the district incorporates nine ethnographically attested sites that are documented in the literature going as far back as one hundred years and by Kumeyaay elders in the late 1970s. These sites include a spiritually significant hot spring and two sacred mountains, remembered village locations (one of which corresponds, at least in part, to archaeological site SDI-4455), a cremation burial area, plant gathering locales, and the local segment of a

major trans-regional trail. Because of this traditional and continued knowledge and use of the area, the ethnographic sites included in the Jacumba Valley Archaeological District may qualify as Traditional Cultural Properties (TCPs).

Yet Dudek states, "...despite the recordation of the village of Hakum (avoided, outside the ADI) by Malcom Rogers... nothing was found at evaluated archaeological sites in the Proposed Project ADI that could link them to this village, or indicate that they were chronologically contemporaries with the village of Hakum." Dudek further ignored the contribution of Ms. Carmen Lucas of the Kwaavmii Laguna Band of Mission Indians, when she stated, "...that Jacumba is a sacred area and that "not one inch" of the area does not have cultural significance." Furthermore, Dudek independently and without tribal involvement considered the potential impact of the sites in relationship to the larger cultural context and concluded the area does not represent or convey the significant elements defining archaeological sites in the broader region. Yet, the area is a proposed archeological district with connections to other proposed and approved districts such as In-Ko-Pah, Table Mountain, and Kuchumaa Mountain (Tecate Peak).

Not surprisingly, there are a number of significant archeological sites in the region. There is a site immediately adjacent to the border wall near Jacumba, which involves extensive findings, including a 10,000-year-old stone hearth at 21 feet below the surface. Given this information, it is professionally irresponsible for the County to support Dudek's conclusion that, "Considering the history of surface disturbances by agricultural activities, the mixed subsurface stratigraphy, and the few subsurface artifacts, this site has a low potential for significant buried deposits or culturally sensitive materials...based on exposed bedrock." The comprehensive use of ground penetrating radar would improve the ability to locate subsurface materials. Due to the extensive use by the Kumeyaay people of the area, there is also a high probability that human remains are in the Project area, particularly and justifies the use of specially trained forensic dogs to survey the entire project area.

Much of Dudek's evaluation were based on site records and site surveys before and during 2019. Since that time additional surveys have been conducted for other projects in the area including the international border wall with Mexico. New reports and finding should have been evaluated prior to the distribution of the current draft EIR. All artifacts, and there have been many observed artifacts within the project boundaries, need to be recorded. If they are within the area of potential impact, they need to be collected and curated. All artifacts and resources, whether in situ or not, are very important to the Kumeyaay People and are important for the history of the world.

It is our firm belief that the EIR is severely technically flawed, inadequate to approve the projects, and heavily weighted in support of the developers proposal. The role of the lead CEQA agency, the County of San Diego, is not only to evaluate potential impacts and mitigation, but also to protect the public interest. This is especially important for a project of this size which has never been seen in the County. Not only are real and potential impacts to cultural resources and tribal cultural resources minimized, their analysis is segmented to further reduce and negate any impacts.

The JVR Energy Park Project Draft EIR continues to be deficient in the following areas:

- It does not provide adequate information for the evaluation of the direct, indirect and cumulative impact of the entire proposed project or project alternatives.
- It is insufficient to inform public agencies, the public, and decision makers of the significant environmental effects of the Proposed Project or any consultation on Tribal Cultural Resources.
- It does not identify sufficient ways to minimize significant effects or describe reasonable alternatives to the Proposed Project, and a management and collection plan is needed prior to any ground disturbance.
- There is little to no consideration or analysis of Tribal Cultural Values, assessment of impacts to Kumeyaay People under the American Indian Religious Freedom Act.
- No evaluation of ethnobotanical or wildlife resources important to the Kumeyaay.
- No assessment of visual or aesthetic impacts to landscapes, sacred sites or freedom of religion.
- There is no information on the continued use of qualified Kumeyaay Monitors with priority given to tribal members and tribal governments closest to the project area; tribal participation plan; and monitoring plan. Without these assurances, the guarantee of appropriate participation by the Kumeyaay Nation, is in an indeterminate state.

These comments are provided on behalf of the Manzanita Band of the Kumeyaay Nation. The Manzanita Band looks forward to working with the County of San Diego and engaging in meaningful government-to-government consultation. Should you have any questions, you may contact Councilman Johnny Eagle-Spirit Elliot at 619-980-7679 or Lisa Haws, Tribal Historic Preservation Officer at 619-733-7697. Thank you.

Sincerely,



Ms. Angela Elliott Santos, Chairwoman

cc:

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## Manzanita Band of the Kumeyaay Nation

December 7, 2020

Ms. Susan Harris  
Planning & Development Services  
5510 Overland Avenue, Suite 310  
San Diego, CA 92123  
Susan.Harris@sdcounty.ca.gov

RE: Preliminary Comments of the Manzanita Band for the JVR Energy Park Project Draft EIR  
PDS2018-MUP-18-022 and Request for Government-to-Government Consultation

Dear Ms. Harris:

The Manzanita Band of the Kumeyaay Nation ("Tribe), also known as the Manzanita Band of Diegueno Mission Indians, is a federally recognized Self-Governance Indian Tribe that operates pursuant to its Constitution and Bylaws adopted on July 12, 1975 pursuant to the Indian Reorganization Act and approved by the Commissioner of Indian Affairs on January 9, 1976, and possesses inherent powers of self-governance with duties, rights, responsibilities, and with power and authority over the lands within the exterior boundaries of the Manzanita Indian Reservation.

The Manzanita Band is one of twelve Bands of the Kumeyaay Nation whose aboriginal territory is from the Pacific Ocean to the desert and approximately 75 miles north and south of the international border and as far as the Colorado River adopted by the State of California through Assembly Joint Resolution No. 60 on the 29th day of August 2002. The Manzanita Band of the Kumeyaay Nation is also traditionally and culturally affiliated with cultural resources now submerged in the Pacific Ocean from 3 to 17 kilometers further westward than today's coastline and as far as we could travel to harvest marine resources. The Manzanita Band also strives to protect known and unknown cultural resources within the aboriginal territory.

On November 16, 2020, Councilman Johnny Eagle-Spirit Elliott requested by email additional information on the JVR Energy Park Project (Attachment A). On December 2, 2020, Lisa Haws, Tribal Administrator and Tribal Historic Preservation Officers (THPO) emailed Donna Beddow, County of San Diego, to follow-up on the delivery of information requested in the November 16th email. Ms. Beddow responded, "County staff is preparing a response and will forward to Councilman Elliott once complete." The County did not provide a target date for the delivery of information. Therefore, the comments provided below and in the email of November 16th, are preliminary and additional comments will be provided during government-to-government consultation and review of the information requested.

The Manzanita Band is very familiar with the culturally sensitive areas of Jacumba Hot Springs and the surrounding areas. As drafted, the JVR Energy Park Project Draft EIR does not provide adequate information for the evaluation of the direct, indirect and cumulative impact of the entire proposed project or project alternatives. The Project Draft EIR cannot be used by the County to sufficiently inform public agencies, the public, and decision makers of the significant environmental effects of the Proposed Project. The Draft EIR does not identify sufficient ways to minimize significant effects or describe reasonable alternatives to the Proposed Project as government-to-government consultation has not concluded; there little consideration or analysis of Tribal Cultural Values; no evaluation of cultural to ethnobotanical and wildlife resources; and no assessment of visual or aesthetic impacts to landscapes, sacred sites or freedom of religion.

The Manzanita Band has previously expressed to the County of San Diego the importance of early and meaningful consultation to ensure our concerns and comments are included from the beginning of a project through project decommissioning. Our initial comments are as follows:

1. The Biological Resources Impact and Mitigation does not identify cultural or tribal values of animal resources, plant resources, or wildlife movement. The Biological Resources Impact and Mitigation shall include management plans specific to fauna and flora with cultural significance to the Kumeyaay Nations such as Tamarisk, a plant with important value to the Kumeyaay.

The biological open space easement that will be granted to the County of San Diego (County) does not address access for the Kumeyaay Nation to perform culturally appropriate management and monitoring activities for the purposes of traditional practices or species and habitat conservation.

The Project Biologist shall include a qualified Kumeyaay representative during all environmental monitoring duties before, during and after construction. The contract provided to the County shall include the cost of a Kumeyaay biological monitor and clarify the role of the Kumeyaay biological monitor in the Memorandum of Understanding (MOU) between the biological consulting company and the County.

The County should prioritize the open space habitat land to be owned and managed by the Manzanita Band of the Kumeyaay Nation or the Kumeyaay Diegueño Land Conservancy (KDLC). If necessary, an open space easements may be dedicated to the County in perpetuity, unless the easement is conveyed to the Manzanita Band or KDLC. The Manzanita Band or KDLC will be the resource manager and recipient of funding adequate to fund annual costs for implementation as a non-wasting endowment.

2. The Cultural and Archaeological Resources sections do not include sufficient safe guards to evaluate or protect critical Kumeyaay resources. In order to prevent inadvertent disturbance to sensitive resources areas within or adjacent to the project area of impact, the applicant shall retain a qualified Project Archeologist with experience in San Diego and Imperial Counties, subject to the review and approval by the Manzanita Band and the County.



Qualified Kumeyaay Cultural Monitors shall participate in all surveys, have access to project maps, and receive draft copies of any newly recorded sites.

To mitigate for potential impacts to undiscovered, buried archeological or cultural resources and to mitigate the additional impacts to known archaeological resources, a pre-construction, construction, and post-construction archeological and Kumeyaay monitoring program and potential data recovery program shall be developed and subject to the review and approval by the Manzanita Band and the County.

- The programs shall include a description of the Kumeyaay Monitors selection process and equal access to monitoring opportunities for the Kumeyaay Nation.
  - The plans shall clarify the Manzanita Band's preference for avoidance, relocation, collection, transportation protocol, testing, and curation of cultural materials and by whom.
  - A Research Design and Data Recovery Program shall be prepared by the Project Archeologist and Kumeyaay Monitors and approved by the Manzanita Band and the County.
3. Similar to the requirements for biological monitoring, to ensure sufficient funding to support the required number of qualified Kumeyaay Monitors needed for a project of this size, the Project Archeologist or Applicant shall provide a contract to the County with the cost of a Kumeyaay Monitors and clarify their roles in a Memorandum of Understanding (MOU) between the archeological consulting company and the County.
  4. Upon the discovery of human remains, no further disturbance shall occur in the area of the find until the Manzanita Band is notified and the County Coroner has made the necessary findings as to origin. Should the remains need to be taken offsite for evaluation, the Manzanita Band shall be consulted on the type of evaluations necessary and the protocol for transportation.
  5. The Cultural Resources Treatment Agreement and Preservation Plan shall be developed prior to the approval of any plan or issuance of any permit and prior to use of the premises in reliance on this permit. The plan shall be prepared by the Project Archeologist and in consultation with the Manzanita Band and the County.
  6. The 24-paged Tribal Cultural Values section does not discuss the potential impacts to Tribal Cultural Resources (TCRs) resulting from implementation of the proposed JVR Energy Park Project (Proposed Project). The concerns regarding proper Native American consultation and proper monitoring for tribal cultural resources, tribal artifacts, cremation sites and human remains are not addressed in this section. The analysis is sterile, academic, and based on a review of existing cultural resources; technical data; applicable laws, regulations, and guidelines; and other technical reports. These documents have not been fully shared with the Manzanita Band and do not minimally satisfy the purpose for which the California Environmental Quality Act (CEQA) was revised to include TCRs.



The assessment is premature as meaningful government-to-government consultation conducted by the County pursuant to Assembly Bill (AB) 52 has yet to be completed with the Manzanita Band and other Bands of the Kumeyaay Nation. Government-to-government consultation is not the responsibility of a consulting firm and rests with the lead CEQA agency. Therefore any statements that Native American Heritage Values are considered or evaluated or not impacted are baseless.

The consultant minimizes the Proposed Project's area of direct impact (ADI) by describing it as "largely confined to the valley floor, a portion of which has been altered by agricultural activity." The Project will require a demolition permit for the existing dairy operation which will uncover cultural resources. Furthermore, Ms. Carmen Lucas of the Kwaavmii Laguna Band of Mission Indians stated to the consultant, "...that Jacumba is a sacred area and that "not one inch" of the area does not have cultural significance."

The cultural setting for continuous human occupation in southern California inaccurately describes the spans as the last 10,000-years while research academic research has expanded far beyond this timeframe. The section further recognizes human movements westward between the Colorado Desert and the Imperial Valley rather than the movement of the Kumeyaay from the ocean to the desert and north and south of the international boundary with Mexico.

7. The methodology use to evaluate the presence and significance of existing tribal cultural resources was conducted without the involvement of the Manzanita Band and did not include Kumeyaay Monitors. The sole use of archaeological site record and archival research, a Sacred Lands File search, intensive pedestrian field survey and evaluation are woefully inadequate and premature as Native American consultation pursuant to AB 52 is not concluded.
8. The consultant received direct input from the La Posta Band and Ms. Lucas. The information provided by Ms. Lucas was not included in the evaluation, assessment or mitigation measures. As previously stated by Ms. Lucas, the entire area is culturally significant and Ms. Lucas, "recommended that forensic dogs be used to identify human remains, and that the dog analysis should dictate the design of the solar arrays." The request for forensic dogs was not included as a mitigation measure or even as a best management practice. The tribal input received by the consultant was ignored.
9. The consultant further erroneously states that, "operational activities are unlikely to disturb tribal cultural resources because they would affect surface soil horizons only, which do not contain significant tribal cultural resources as previously analyzed." Vehicle movement, pedestrian activities, wind, rain, and erosion are all part of operational activities and frequently disturb and reveal inadvertent discoveries.
10. Archeological and Cultural Monitoring is a best management practice and not a mitigation measure. The evaluation of the significance of discovered resources and whether they constitute a TCR is performed by the Project Archaeologist and the

Kumeyaay Monitor, but the determination if they constitute a TCR is by the Manzanita Band in consultation with the County Archaeologist.

These preliminary comments are provided on behalf of Ms. Angela Elliott Santos, Chairwoman, Manzanita Band of the Kumeyaay Nation. The Manzanita Band looks forward to working with the County of San Diego and engaging in meaningful government-to-government consultation. Should you have any questions, you may contact Councilman Johnny Eagle-Spirit Elliot at 619-980-7679. You may also contact me at 619-733-7697. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa C. Haws".

Lisa C. Haws  
Tribal Administrator & Tribal Historic Preservation Officer (THPO)

cc: Ms. Beddow, Donna (Donna.Beddow@sdcounty.ca.gov)  
Mr. Nicholas Koutoufidis (Nicholas.Koutoufidis@sdcounty.ca.gov)  
Ms. Angela Elliott Santos, Chairwoman  
Mr. Johnny Eagle-Spirit Elliott, Councilman

**From:** [Beddow, Donna](#)  
**To:** [Harris, Susan](#)  
**Subject:** FW: JVR Energy Park PDS2018-MUP-18-022  
**Date:** Tuesday, November 17, 2020 12:54:54 PM

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-----Original Message-----

From: Johnny Elliot <[johnny@eagle-spirit.us](mailto:johnny@eagle-spirit.us)>  
Sent: Monday, November 16, 2020 12:10 PM  
To: [mhale@dudek.com](mailto:mhale@dudek.com); Beddow, Donna <[Donna.Beddow@sdcounty.ca.gov](mailto:Donna.Beddow@sdcounty.ca.gov)>; [patrick.brown@baywa-re.com](mailto:patrick.brown@baywa-re.com)  
Cc: Angela Santos <[aelliottsantos7@aol.com](mailto:aelliottsantos7@aol.com)>; Johnny Elliot <[johnny@eagle-spirit.us](mailto:johnny@eagle-spirit.us)>; Lisa Haws <[lisahaws@msn.com](mailto:lisahaws@msn.com)>; Veronica Santos <[nativespirit91@aol.com](mailto:nativespirit91@aol.com)>  
Subject: JVR Energy Park PDS2018-MUP-18-022

Good Morning All,

I am writing to you all this morning to share a few concerns on the JVR project.

1. As on of the closest Tribes to the project area and as a Tribe who has Tribal Members who's clan trace back directly to the Jacumba Valley, including myself, we demand Government to Government consultation immediately! You know that the Manzanita Tribe is very concerned with protecting Kumeyaay cultural resources is our Traditional Homelands. The County's process and protocols on consultation and protection of cultural resources are severely inadequate and do not actually address the spirit of state and federal laws and the working relationship and lack thereof with the Tribes of San Diego County.
2. Manzanita is preparing a comment letter addressing many of the inadequacies of the Environmental Documents, our concerns with the protection, avoidance, recording, collecting and curating of the resources and archeology and project development.
3. I have been informed that there are surveys that will take place this week and I want to know what Tribes are sending Kumeyaay Monitors? All surveys should have Kumeyaay monitors that are endorsed by a Kumeyaay Tribe. Kumeyaay monitors should be included in all ground disturbing activities before, during and for maintenance of the project. In addition there is a very high probability for subsurface discoveries for which we are very concerned
4. From the map I was shown there are so many concerns that I'm surprised that the company wishes to develop. There are two sacred mountains with in the project map, these area will have to be taken out of the area of impact at least 1000 feet from the base of theses sacred places. In addition it is well known to the County that the Jacumba Valley has so much buried cultural resources that even water lines can not be dug or maintained without disturbing and destroying these resources. We will not accept the destruction of these areas.
5. Manzanita is requiring sincere and meaningful mitigation on this project.
6. The Manzanita Band requests copies of the confidential site records and any studies, preliminary or draft, immediately.

I look forward to receiving a response as soon as possible.

Johnny EagleSpirit Elliott

Manzanita Band of the Kumeyaay Nation

**From:** [Beddow, Donna](#)  
**To:** [Harris, Susan](#)  
**Subject:** FW: JVR Energy Park PDS2018-MUP-18-022  
**Date:** Tuesday, November 17, 2020 12:54:54 PM

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-----Original Message-----

From: Johnny Elliot <[johnny@eagle-spirit.us](mailto:johnny@eagle-spirit.us)>  
Sent: Monday, November 16, 2020 12:10 PM  
To: [mhale@dudek.com](mailto:mhale@dudek.com); Beddow, Donna <[Donna.Beddow@sdcounty.ca.gov](mailto:Donna.Beddow@sdcounty.ca.gov)>; [patrick.brown@baywa-re.com](mailto:patrick.brown@baywa-re.com)  
Cc: Angela Santos <[aelliottsantos7@aol.com](mailto:aelliottsantos7@aol.com)>; Johnny Elliot <[johnny@eagle-spirit.us](mailto:johnny@eagle-spirit.us)>; Lisa Haws <[lisahaws@msn.com](mailto:lisahaws@msn.com)>; Veronica Santos <[nativespirit91@aol.com](mailto:nativespirit91@aol.com)>  
Subject: JVR Energy Park PDS2018-MUP-18-022

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Johnny EagleSpirit Elliott

Manzanita Band of the Kumeyaay Nation