

Memorandum

Date: June 6, 2006
To: Rollie Wilson
From: Donald M. Clary
Re: Pechanga Tribe - Acquisition of the
Great Oak Ranch

Donald M. Clary
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I write on behalf of the Pechanga Band of Luiseno Mission Indians ("Tribe"). The following are the Tribe's responses to your request for additional information relating to the Tribe's acquisition of the Great Oak Ranch.

1. Clarify the timeline for when the Tribe began the land to trust process v. SDG&E's application to build the transmission line (describe when the land-to-trust process was complete).

Before responding to this question, the Tribe objects to this line of inquiry, because the Tribe was lawfully protecting its cultural and historical resources through its opposition to the construction of the Rainbow-Valley Line over the Great Oak Ranch. The Tribe's right (indeed its obligation) to protect its cultural and historic resources cannot be questioned. However, by implying that if a certain chronology was present in the Great Oak Ranch acquisition, SDG&E's threat to the Tribe's cultural and historical resources could somehow be justified, DOI and DOE improperly places the Tribe in the position of defending its lawful and appropriate actions, and implicitly condones the complete disregard of the importance of the Tribe's cultural and historic resources that SDG&E demonstrated during the Rainbow-Valley proceeding.

Instead of directing this type of question to the Tribe, DOI and DOE should ask SDG&E why it insisted on constructing a line that the CPUC determined was unneeded, and on pursuing a route for such an unneeded line that would have (if implemented) seriously damaged the Tribe's cultural and historic resources. The type of disregard of cultural and historic resources demonstrated by SDG&E clearly undermines the relationship between Tribes and utilities and presents a definite example of why Tribes cannot concede their sovereign right to approve utility rights-of-way.

DOI and DOE should also ask SDG&E why it misrepresented to them that the Valley-Rainbow Line was needed (by failing to mention in its comments to DOI and DOE that the CPUC had, years ago, determined that it was not needed). If utilities are indeed willing to misrepresent factual considerations in such a manner, this also clearly demonstrates why Tribe's must retain the right to approve right-of-way requests.

Moreover, even if this inquiry (regarding the chronology of the acquisition of the Great Oak Ranch) were appropriate, the Tribe objects because this line of inquiry would only be relevant if one assumes that the line was actually needed, and the route over the Great Oak

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Ranch was the only viable location for the line. Neither of these assumptions is true. As stated in CPUC Decisions D 02-12-066 and D 03-05-038, the State of California determined the line was not needed.

Further, contrary to SDG&E's position, the route over the Great Oak Ranch was not the only available route for the line. In a document entitled "Proponent's Environmental Assessment," dated March 16, 2001, SDG&E identified *seven* alternate routes beginning from the proposed Rainbow Substation, in the south and ending at the Southern California Edison Valley Substation, in the north.

As the line was not needed, and, even if it were, alternative routes were available, the Tribe's actions concerning the taking of land into trust are simply irrelevant to the current Study. Further, even if the Land had not been taken into Trust (and the Tribe had not been able to exercise its right to refuse the location of the Line on the reservation property), the Valley-Rainbow Line would still have been subject to review under the California Environmental Quality Act. CEQA requires that a potential project's impact upon tribal cultural and historic resources must be taken into consideration during any such review. Therefore, it is erroneous to automatically assume that, even if the facility was needed (which it was not) the Rainbow Valley Line could have (or should have) been constructed over the Great Oak Property.

However, in order to be cooperative with the DOE and DOI, the Tribe will respond to this question. In this regard, it is important to commence the timeline from the point at which the Tribe first began to acquire the Great Oak Property. This is because it would have made no sense for the Tribe to have commenced the Fee to Trust process until it believed that it could control the Property it was attempting to incorporate into the Reservation.

As you will note from the attached maps, prior to the acquisition of the Great Oak Ranch, the Pechanga Reservation consisted of two separate parcels (these portions are identified as the "Original Reservation" and the "Kelsey Tract" on the attached maps). The parcel identified as the Great Oak Ranch (on Map 2a) joined these two separate portions of the Pechanga Reservation. Contrary to SDG&E's allegations, acquiring this important portion of its aboriginal homeland and uniting these two non-contiguous parcels was the Tribe's motivation for making this acquisition. The purpose of the Fee to Trust Application was to preserve and protect the historical, cultural and natural resources of the Great Oak Ranch property, including the ancient Great Oak itself. Most importantly, the actual effort to negotiate and acquire this Property actually commenced years before SDG&E filed its application to construct the Valley-Rainbow line.

Although the Tribe had, for many years desired to acquire the Great Oak Ranch, circumstances did not permit the commencement of negotiations until 1998, when the Band began negotiations with the owners of what was then called the Boseker Ranch. The Tribe had historically been very poor, and had wanted to acquire the relevant property for decades. However, it was not until 1995 that the Tribe was able to open its gaming operations, and was, after the satisfaction of some initial expenses, able to obtain enough capital to move forward with the acquisition of the Great Oak Ranch. However, it should be noted that this was still over two years prior to March 23, 2001 when SDG&E submitted an application for a Certificate of Public

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Necessity and Convenience ("CPNC") to the California Public Utilities Commission for the Valley-Rainbow line. At this time, the Tribe also undertook appropriate environmental reviews so that the process could be completed efficiently once the acquisition took place.

In December 31, 2000, negotiations had progressed sufficiently to enable the Pechanga Band to authorize Tribal Chairman Mark A. Macarro to submit a Fee-to-Trust Application to the Bureau of Indian Affairs. Tribal Resolution No. 001231-C. In February 2001, following over two years of negotiations, the Band was successful in purchasing the Boseker Ranch and escrow was opened. The Band renamed the tract the "Great Oak Ranch" in recognition of the presence of the Great Oak on the property.

On April 11, 2001, the Band submitted a written request to the Bureau of Indian Affairs to have the United States of America take the Great Oak Ranch into trust pursuant to Tribal Resolution No. 001231-C, dated December 31, 2000. On April 13, 2001 the Bureau of Indian Affairs issued a notice of receiving the Pechanga Band's application seeking acceptance of title to real property in trust for the Band. Escrow on the property closed in May, 2001.

Having successfully acquired the Property, on June 19, 2001, the Band submitted its Fee-to-Trust Application to the Bureau of Indian Affairs for 688.73 acres pursuant to the statutory authority of Section 5 of the Indian Reorganization Act, 48 Stat. 985, Act of June 18, 1934, 25 U.S.C. Section 465, and Section 203 of the Indian Land Consolidation Act of 1983, 25 U.S.C. Section 2205.

On July 13, 2001, the Bureau of Indian Affairs published an Environmental Assessment related to the Fee to Trust Application. On August 31, 2001, after receiving the comments of parties, including SDG&E, the BIA published a revised Environmental Assessment. Also on August 31, 2001, the Acting Pacific Regional Director issued a finding that the act of transferring title from the Band to the United States of America would have no significant impact on the environment ("FONSI").

On March 21, 2002, the Acting Director of the Pacific Regional Office issued a Notice of Decision of the BIA's intent to accept the Great Oak Ranch into trust. This acquisition vested title in the United States of America in trust for the Pechanga Band in accordance with the Indian Land Consolidation Act of 1883 (25 U.S.C. §2202 *et seq.*). SDG&E's parent company, Sempra Energy filed a challenge to the decision on the ground that the BIA failed to follow NEPA. Following several rounds of briefings, Sempra voluntarily dismissed these appeals on December 18, 2002. The Great Oak Ranch was formerly taken into trust by the United States of America soon thereafter.

From the foregoing, it is apparent that the Tribe commenced the negotiations for the Great Oak Property (and took other appropriate actions to move the Great Oak Ranch into Trust status) over two years prior to SDG&E's filing of its Application for the Valley-Rainbow Line with the CPUC. The Tribe undertook these efforts years before it became aware of SDG&E's intent to construct the Rainbow-Valley Line, and for reasons (the uniting of two non-contiguous portions of the reservation and the preservation of its aboriginal lands) other than its opposition to that Line.

This is not to say that the Tribe ignored the possible construction of the Rainbow-Valley Line at the time that it made the Fee to Trust Application. The Fee to Trust Application noted SDG&E's intent to construct the Line, but it did *not* identify this as the purpose for the Application. The Application, at page 6 stated:

Considering our primary reason for purchasing the property is for *preservation*, these transmission lines would not be consistent with our desire to preserve this property. The approval of such a Right-of-Way would be in direct conflict with our desire to preserve this property. Since San Diego Gas & Electric would claim this to be their preferred route, they could consider condemnation through eminent domain. As long as this land is not held in Trust by the United States for our Tribe and protected for our future generations, we fear the condemnation proceedings would adversely impact our Tribe. Therefore, it is our desire to have this land placed into Trust and protected by the United States.

The Tribe submits that the goal expressed by this statement, the preservation of its cultural and historic resources, is an appropriate action by a sovereign tribal government.

2. Were the lands that the Pechanga Band acquired within the existing reservation boundary? Or outside of the reservation.

As stated above, prior to the acquisition of the Great Oak Property, the reservation was located on two non-contiguous properties. The Great Oak Ranch acquisition joined these non-contiguous properties and is therefore contiguous with the existing Reservation. In order to provide assistance, we've attached a map showing the reservation before and after the acquisition of the Great Oak Ranch. Again, the Great Oak Ranch was part of the Tribe's aboriginal property for thousands of years.

In light of the time involved in the negotiation of such a significant acquisition, and the clear function of uniting these two non-contiguous properties that the Great Oak Ranch acquisition served, it should be apparent that any implication that the Tribe acquired this Property for the purpose of interfering with the construction of the Rainbow-Valley Line is simply false.

3. Because SDG&E was unable to construct the line, are you aware of any resulting reliability issues in San Diego? Or, inability to meet load in San Diego? Do you know if they constructed other facilities to met this load?

The Tribe is not aware of any reliability issues resulting from the fact that SDG&E did not construct the Rainbow-Valley Line. The Tribe is only aware that the CPUC, which has jurisdiction over these issues, determined that the line was not required in the timeframe specified in SDG&E's Application.

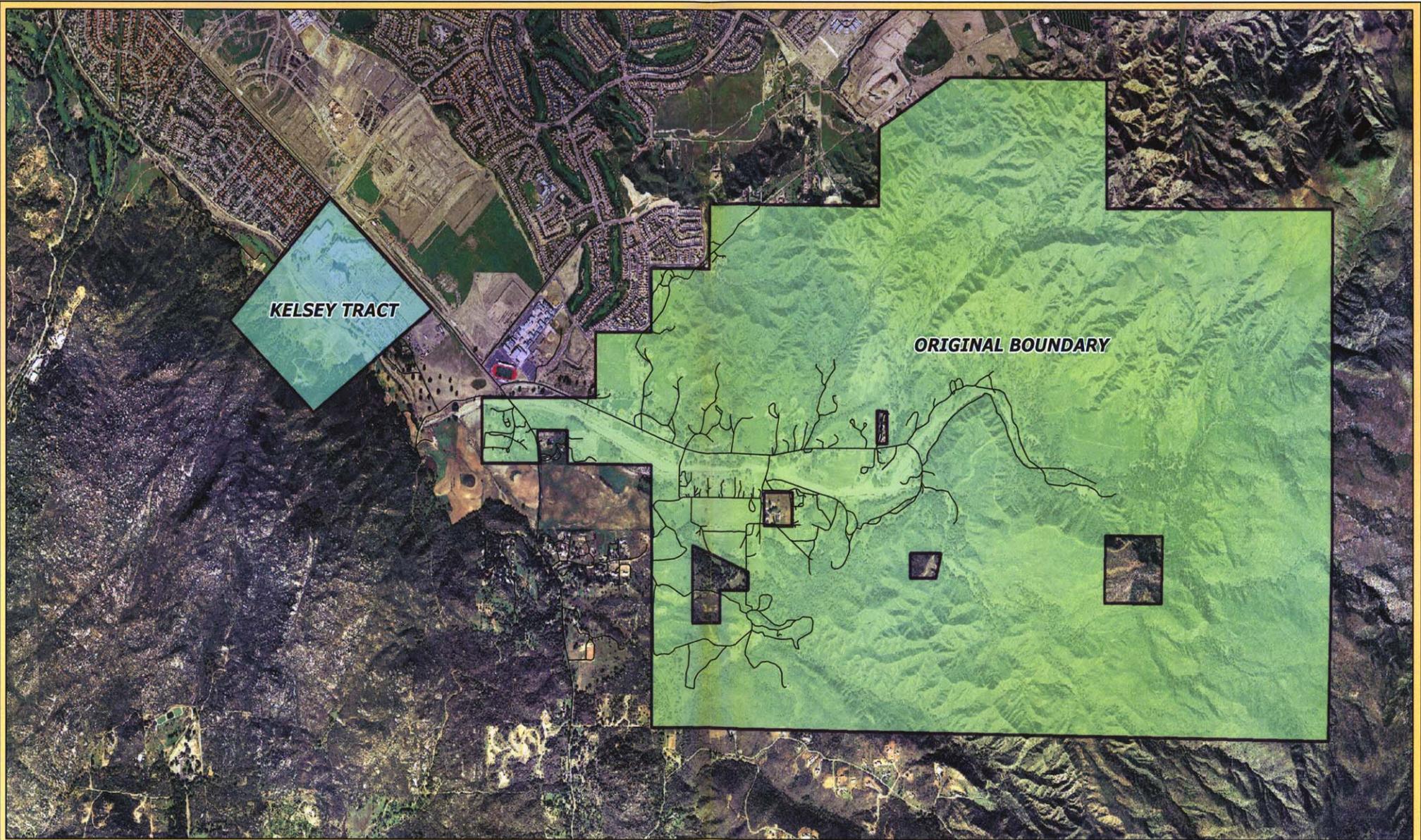
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4. Please forward a copy of the California Public Utilities Commission decision regarding this line – electronically if possible.

These decisions were forwarded electronically on May 26, 2006.

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Pechanga Tribal Government
Legal Department

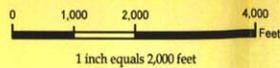
Pechanga Indian Reservation Boundary

-  KELSEY TRACT
-  ORIGINAL BOUNDARY
-  Pechanga Indian Reservation

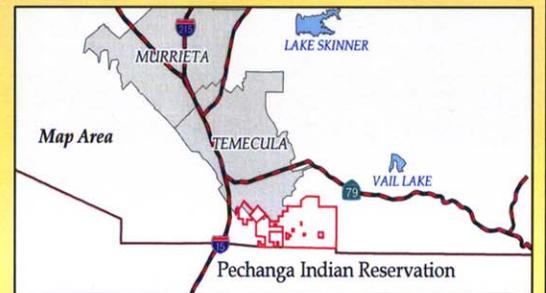
-  Roads
-  Highways
-  Lakes
-  Cities
-  County Boundary

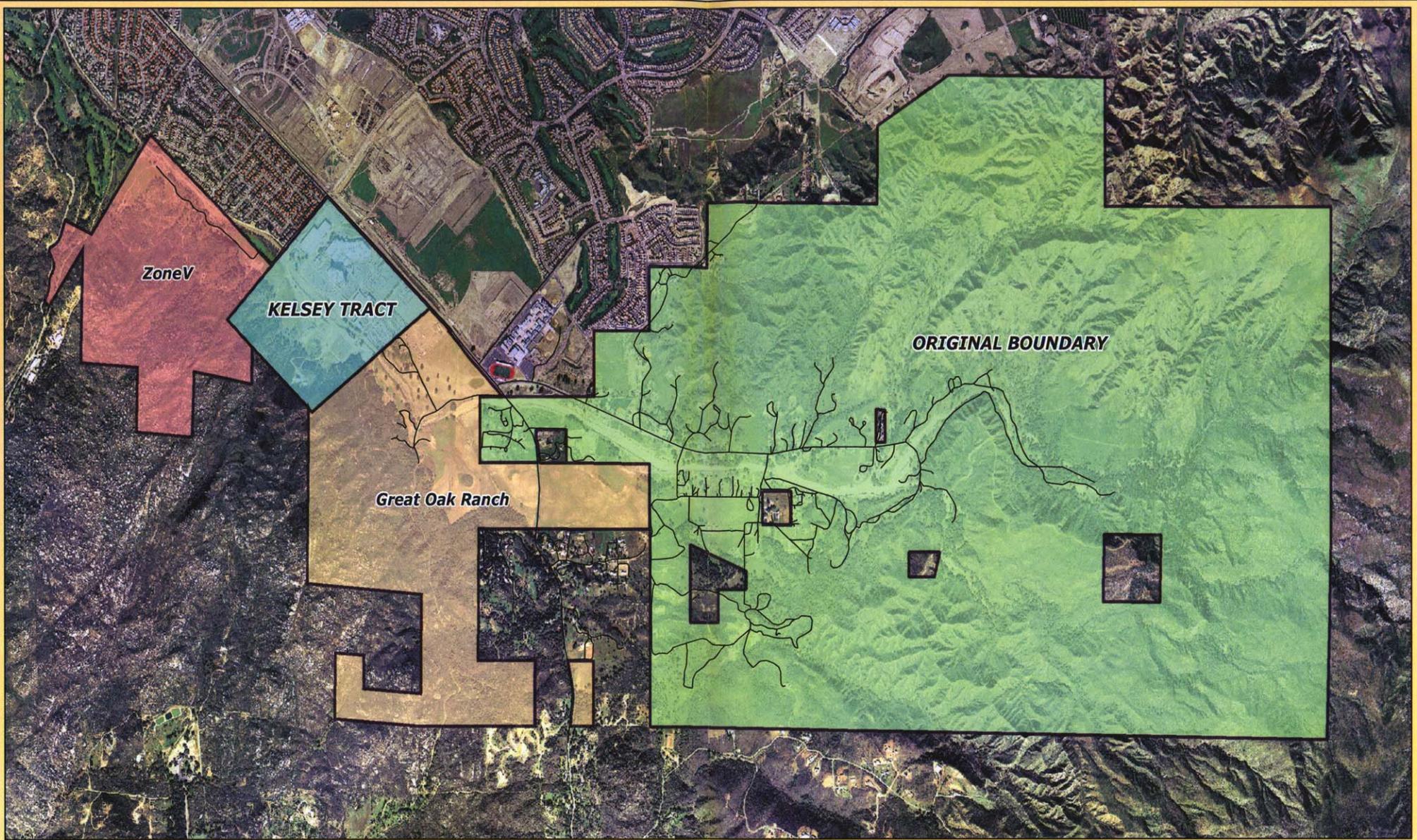
Pechanga Indian Reservation Boundary Before 2003

Date: May 31, 2006



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K/Legal/MXD2006/ResBoundBefore_053006





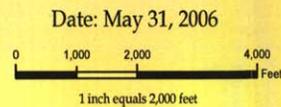
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Legal Department

Pechanga Indian Reservation Boundary

-  KELSEY TRACT
-  ORIGINAL BOUNDARY
-  Zone V
-  Great Oak Ranch
-  Pechanga Indian Reservation

-  Roads
-  Highways
-  Lakes
-  Cities
-  County Boundary

Pechanga Indian Reservation Boundary After 2003



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