



US ARMY CORPS
OF Engineers

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

NUMBER: 28433N DATE: June 4, 2004
RESPONSE REQUIRED BY: July 4, 2004

PERMIT MANAGER: David Ammerman PHONE: 707-443-0855 Email: David.A.Ammerman@spd02.usace.army.mil

1. **INTRODUCTION:** The Elk Valley Rancheria, 2332 Howland Hill Road, Crescent City, California 95531, through its agent, Analytical Environmental Services (AES) (Contact: Mr. David Zweig, Project Manager, AES at 916-447-3479), has applied for a U.S. Army, Corps of Engineers (Corps) permit to discharge approximately 60,000 cubic yards (CY) of fill into 9.46 acres of waters of the United States (wetlands and other waters of the United States) in connection with the proposed construction of a destination resort: golf course, hotel, conference center, parking structure, casino and related infrastructure. The project location would be on the Martin Ranch (APN # 115-020-028) located east of Highway 101 and near Humboldt Road, approximately one mile south of Crescent City, in Del Norte County, California. The Elk Valley Rancheria proposes transfer of Fee land to federal Indian Trust Land, by the Secretary of the Interior, Bureau of Indian Affairs. The project would include over 3 acres of on-site mitigation and 4 acres of off-site mitigation to compensate for 9.46 acres of wetland impacts from the project. In addition, the applicant proposes the preservation of 17 acres of wetlands at Endert's Beach. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33

U.S.C. Section 1344). NOTE: The Bureau of Indian Affairs (BIA), U.S. Department of the Interior, is the Lead Agency for National Environmental Policy Act (NEPA) compliance regarding the Elk Valley Rancheria project described below. The BIA intends to prepare an Environmental Impact Statement (EIS) for this project. The U.S. Army Corps of Engineers is a Cooperating Agency in the EIS process. The BIA has prepared the *Draft Environmental Impact Statement, Elk Valley Rancheria Scoping Report*, dated February 2004. Copies of this report can be obtained from the U.S. Department of the Interior, Bureau of Indian Affairs, Pacific Region Office, 2800 Cottage Way, Room W-2820, Sacramento, CA 95825-1846. Unless otherwise specified in this Public Notice, information on this project is incorporated by reference to the above Scoping Report.

2. PROPOSED PROJECT:

Project Site: The project site would be located at the northwest corner of Section 35, Township 16 North, Range 1 West of the "Sister Rocks, California" USGS Quadrangle. The destination resort site would be located east of Highway 101 and near Humboldt Road, southeast of Crescent City, in Del Norte County,

California. Current conditions at the site consist of the Martin Ranch property, located on a coastal plain between mountains of the northern California Coast Ranges and the Pacific Ocean (See Sheet 1 of 13). The property ranges in elevation from approximately 20 feet above mean sea level (MSL) in the southwest to approximately 300 feet MSL in the east (See Sheet 2 of 13). The 900-foot high Rellim Ridge is the low coastal ridge to the east of the site. The property is not part of the Federal Emergency Management Agency (FEMA) 100-year floodplain. The Martin Ranch property is surrounded primarily by undeveloped land, with some rural development to the north and south. In addition, a residential subdivision is located a short distance north of the property. Average precipitation in this area is approximately 60 to 80 inches per year. The project site is currently undeveloped with the exception of a single-family residence, associated outbuildings and a barn.

The Crescent City Marsh Wildlife Area (administered by the California Department of Fish and Game) is located west of the Martin Ranch site and Humboldt Road. Habitat types occurring within the Martin Ranch property include Sitka spruce forest, red alder/mixed deciduous woodland, wetland prairie, annual grassland/pasture, and intermittent drainage. For further discussion of these habitat types, please refer below to the section titled, "Wetlands (Special Aquatic Sites)" and see Sheet 3 of 13).

Project Description: As part of the Proposed Action, a 203.50 acre property currently owned in fee title would be placed

into federal trust status for the Elk Valley Rancheria, a Federally recognized Native American Indian Tribe. The fee-to-trust acquisition would be made in accordance with the procedures set forth in 25 CFR Section 151. The regulations at 25 CFR Section 151 implements Section 5 of the Indian Reorganization Act (IRA), codified at 25 U.S.C. Section 465. Section 5 of the IRA is the basic statute that provides the Secretary of the Interior with authority to acquire lands in trust status for tribes and individual Indians. Section 20 of the Indian Gaming Regulatory Act (IGRA), codified as 25 U.S.C. Section 2719, does not provide the Secretary with authority to acquire land in trust. It allows gaming on tribal lands acquired after passage of the statute provided certain conditions enumerated in Section 20 are present. If a tribe is seeking to acquire off-reservation land in trust for gaming purposes, it must make an application to the BIA under the part 151 regulations and must comply with IGRA.

The facilities proposed for construction at the Martin Ranch by the Elk Valley Rancheria for the destination resort includes: (1) approximately 40,000 square foot casino/bingo facility (including slot machines and table games); (2) a 500-seat bingo/multi-function facility, (3) a restaurant, and (4) administrative/support space. The restaurant would be situated to conveniently serve both the casino, hotel and conference patrons. The bingo facility would be convertible to meeting/conference space to serve larger group needs and also to serve as an entertainment venue for the resort. (5) a 156-room hotel is proposed in conjunction with the conference center and casino and would be located near the back

of the site to avoid wetlands and coastal resources and to maximize the ocean view (See Sheet 4 of 13). The facility would be three floors with all rooms having an ocean view. The 156-room complex would also include nine detached bungalow style fourplex buildings located on the ground level in front of the main casino/hotel complex. A 20,000 square foot conference center is proposed between the casino and the hotel. The space would be flexible to serve both large and small groups and would feature non-fixed seating. (6) An 18-hole golf course is proposed to surround the casino/resort area of the site including multiple tees, greens, fairways, sand traps, and cart paths. The course would also include a driving range, practice putting green, practice chipping green, and maintenance area. A 2,500-foot clubhouse would also be built as part of the golf course development. The layout of the golf course would, to the greatest extent possible, avoid and protect the wetlands on the site (See Sheets 10 of 13 through 13 of 13). Approximately 1,000 visitor spaces would be provided for the hotel/conference center/casino complex, including approximately 60 spaces for staff parking. An additional 60 spaces would be provided for the golf course and clubhouse. Parking areas would be sited to avoid wetlands.

Purpose and Need: The basic purpose of this project is to construct road and utility line crossings and golf course fairways over the wetlands. The roads, utility lines and golf course infrastructure are considered integral and crucial elements of the destination resort development as a whole. The basic purpose would facilitate construction of a casino, hotel, conference center, and golf course near Highway 101

to attract business from the traveling public and provide increased revenues and income to the Elk Valley Rancheria and its tribal members. The overall purpose of this project is to enhance the Tribe's economic development potential by construction of new resort facilities closer to Highway 101. The applicant states that the existing gaming facility now located adjacent to Howland Hill Road is not suitable for economic development. The existing facility is physically removed from U.S. Highway 101 and has no visibility to the well-traveled Highway 101. The existing Howland Hill Road would not be adequate to accommodate traffic from the proposed project or expansion of the existing facilities. Rural residential areas surround the existing casino facility. Construction of the new destination resort near the existing casino would not be compatible with the adjacent residential areas. The applicant states that the proposed resort development on Martin Ranch would: (1) provide increased employment opportunities for tribal members, (2) improve the socioeconomic status of the Tribe by providing a new revenue source that could be used to build a strong tribal government, improve existing tribal housing, provide new tribal housing, fund a variety of social, governmental, administrative, educational, health and welfare services to improve the quality of life of tribal members; (3) provide capital for other economic development and investment opportunities; and (4) allow tribal members to become economically self-sufficient, thereby eventually removing tribal members from public-assistance programs.

Wetlands (Special Aquatic Sites):

Existing Wetlands at the Project Site: The habitat types occurring within the Martin Ranch property include Sitka spruce forest, red alder/mixed deciduous woodland, wetland prairie, annual grassland/pasture, and intermittent drainage (See Sheet 3 of 13).

Sitka Spruce Forest – Sitka Spruce Forest habitat exists primarily along the eastern portion of the property bordering areas of grazed, annual grassland/pasture. This habitat type is interspersed with red alder/mixed deciduous woodland in wet areas and along portions of drainage corridors. The overstory is mature Sitka spruce and grand fir and an under story of sword fern, bracken fern, California blackberry, western azalea, salmonberry, red elderberry, Nootka rose, cluster rose, hedge nettle, buttercup, violet and velvet grass. The spruce forest habitat is generally located at the higher elevation portions of the project area on the east side except for pockets of forest on the west side. The spruce forest at this project site is uplands and not wetlands.

Red Alder/Mixed Deciduous Woodland – The woodland habitat is associated primarily with drainage corridors and other wet areas within the Martin Ranch property. The wetter areas of this woodland have red alder, scattered Sitka spruce trees and dense thickets of shrub species (blackberry, thimble berry) and an under story of yellow skunk cabbage, slough sedge, nettle, iris and beach strawberry. The wettest portions of this habitat are considered riparian wetland due to the amount of water that regularly seeps or flows through these areas.

Wetland Prairie - This habitat type occurs in wet, low-lying areas of the annual grassland/pasture, mostly within the western portion of the property and are fed by runoff from the intermittent drainages and groundwater seeps. This habitat is dominated primarily by common rush and slough sedge. Several agricultural drainage ditches are located within the northern portion of the property. AES states that the drainage ditches are in areas that were most likely wetland prairie, but have been modified to support agricultural practices on the property. The drainage ditches were constructed to route water, allowing the conversion of wetland prairie to upland pasture.

Annual Grassland/Pasture - A large portion of the property consists of annual grassland/pasture habitat, found on the gently rolling, westward sloping portions below the Sitka spruce forest edge. Most of this habitat type has been subject to disturbances including grazing and mowing. In areas subject to moderate grazing and mowing, velvet grass is dominant. Other common species are colonial bentgrass, smooth cat's-ear, white-stemmed filaree and others.

Intermittent Drainages - Intermittent drainages on this property are small to medium drainage channels ranging from approximately two to ten feet wide and up to 20 feet deep. All drainages appear to carry water throughout all but the driest months of the year. The upper portions of the drainage channels drain surface water runoff and groundwater seepage from the steep, forested slopes within the eastern portion of the property. Most of the

drainages lose bed and bank definition once reaching the west side of the property, and fan out to support wetland prairie habitat and red alder riparian woodland. Water from the wetland areas on the west side eventually drain under 36-inch culverts or 24-inch culverts under Humboldt Road and into Crescent City Marsh and Enderts Road areas.

Wetland Impacts: There are a total of 30.33 acres of waters of the United States in Corps jurisdiction at the Martin Ranch site. Of this amount, approximately 23 acres is adjacent freshwater wetlands. The proposed project, which is described as Alternative A-1 (the preferred alternative, Sheet 4 of 13), would include placement of 60,000 CY of fill on 9.46 acres of wetlands due to access road construction, utility lines and golf course construction (See Sheets 10 of 13 through 13 of 13). Alternative A-2 would impact 12.86 acres of wetland (Sheet 5 of 13), Alternative B (the non-gaming alternative, Sheet 6 of 13) would have same wetland impacts as the preferred alternative. Alternative C (the no golf course alternative, Sheet 7 of 13) would result in the least amount of wetland impacts (0.95 acres). Alternatives A-1, A-2, B and C are all on-site alternatives to Martin Ranch. Alternative D is a rejected proposal to construct the destination resort on the west side of Highway 101 off of Enderts Beach Road (Sheet 8 of 13). This alternative would impact 15.70 acres of wetland.

Wetland Mitigation: The applicant has proposed to compensate for impacts to aquatic resources which could not be avoided. AES, on behalf of the applicant, has prepared the *Conceptual Wetland*

Mitigation and Monitoring Plan, Elk Valley Rancheria Martin Ranch Fee-To-Trust Project, dated March 2004. This document states that 3.67 acres of wetland pond would be constructed on the Martin Ranch. However, there is no detailed discussion in the document of how the on-site mitigation would be constructed and there are no conceptual drawings or site maps of the on-site mitigation area.

AES proposes creation of wetland offsite at Endert's Beach, an area currently owned by the Tribe as fee title (Sheet 9 of 13). About 4 acres of wetland would be created. Another 17 acres of existing wetland near Endert's Beach Road would be set aside for preservation without any enhancement work mentioned. With the preservation of this acreage, AES expects this would satisfy a nearly 2:1 ratio of wetland created or preserved versus to that acreage impacted by the proposed resort.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): The Bureau of Indian Affairs (BIA), as Lead Agency and the Corps as Cooperating Agency will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and Corps' Regulations, 33 C.F.R. Part 230 and 325, Appendix B. Unless otherwise stated, the Corps' Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting

from activities within the Corps' jurisdiction.

Endangered Species Act of 1973 (ESA):

Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if project subject to Federal permit review may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. The only species currently identified as potentially impacted by the proposed project includes the federally endangered western lily (*Lilium occidentale*). The BIA will initiate Section 7 informal consultation (16 U.S.C. Section 1531 *et seq.*) with the U.S. Fish and Wildlife Services' Arcata, California office regarding the potential for project impacts to the western lily. The Section 7 consultation will be addressed in the EIS. The U.S. Fish and Wildlife Service is also a Cooperating Agency with BIA on the EIS.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), in general, a Federally-recognized Native American Tribal applicant for a Corps permit must first obtain a water quality certification from the United States Environmental Protection Agency (EPA) before a Corps permit may be issued. The Elk Valley Rancheria, by letter prepared by AES and dated April 5, 2004, has applied for Section 401 Water Quality Certification from the EPA, Region 9 in San Francisco and has provided a copy of such application to the Corps' Eureka Office.

Those parties concerned with any water

quality issues that may be associated with this project should write to Ms. Alexis Strauss, Director of the Water Division, EPA, Region 9, Wetlands Regulatory Office (WTR-8), 75 Hawthorne Street, San Francisco, California 94105-3901.

b. Alternatives: Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). The Section 404 (b)(1) Guidelines will be addressed in the NEPA Alternatives section of the Draft EIS for this project.

Coastal Zone Management Act of 1972 (CZMA):

Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project will comply with the State's Coastal Zone Management Program, if applicable. In general, no Corps permit will be issued until the State has concurred with the applicant's certification. Since a Native American Indian Tribe, the Elk Valley Rancheria (a Federally-recognized Indian Tribe), has applied for a Section 404 Corps permit, it is unclear if the Tribe will assert sovereignty regarding state jurisdiction or if the tribe in this case will apply for State Coastal Zone Act permits from the California Coastal Commission.

National Historic Preservation Act of 1966 (NHPA):

The BIA will address cultural resources and other issues related to NHPA in the Draft EIS with the assistance of the Elk Valley Rancheria.

4. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be

based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

5. CONSIDERATION OF COMMENTS:

The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement (for this project in cooperation with Bureau of

Indian Affairs) pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

6. SUBMISSION OF COMMENTS:

Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to Lieutenant Colonel Michael McCormick, District Engineer, San Francisco District, U.S. Army Corps of Engineers, 333 Market Street, San Francisco, California 94105-2197. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting David Ammerman of our Eureka Office at telephone 707-443-0855 or E-mail: David.A.Ammerman@spd02.usace.army.mil. Details on any changes of a minor nature which are made in the final permit action will be provided upon request.