



US Army Corps  
of Engineers®

Regulatory Division  
1455 Market Street  
San Francisco, CA 94103-1398

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

## Project: Bear River Casino Parking Lot Expansion

NUMBER: 2002-27501      DATE: July 26, 2010      RESPONSE REQUIRED BY: August 26, 2010  
PROJECT MANAGER: DAVID AMMERMAN      PHONE: 707-443-0855

1. **INTRODUCTION:** The Bear River Band of Rohnerville Rancheria, 32 Bear River Drive, Loleta, California 95551, through their agent (Contact: Mr. Craig W. Hiatt, Analytical Environmental Services, 1801 7<sup>th</sup> Street, Suite 100, Sacramento, California 95811 at 916-447-3479) has applied for a Department of the Army permit to discharge fill into 0.51 acres of seasonal freshwater wetland for the purpose of constructing additional automobile parking spaces serving an existing gaming casino (Bear River Casino). The applicant proposes to compensate for the loss of 0.51 acres of seasonal wetland by conducting wetland mitigation on property located west of Singley Road (See section under "Wetland Mitigation" below). The proposed project is located adjacent to 32 Bear River Drive, off of Singley Road, approximately one quarter mile east of State Route 101, near the community of Loleta, in Humboldt County, California. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

2. **PROPOSED PROJECT:** The applicant, Bear River Band of Rohnerville Rancheria (BRB), a Federally-recognized American Indian tribe, proposes to discharge fill into 0.51 acres of existing freshwater seasonal wetland and would remove vegetation, grade and pave the site to create an approximately 0.51 acre parking area (See Project Drawings, Sheets 1 of 5 through 5 of 5). The applicant's agent, Analytical Environmental Services (AES), states analysis of the current and projected use of the nearby existing Bear River Casino indicates the need for an

additional 222 parking spaces on Indian reservation land. The parking lot expansion is considered critical to meet project goals and objectives because suitable areas to expand the parking lot and associated infrastructure are limited on site. The tribe owns 8.6 acres of land (Assessor Parcel Numbers 309-051-009, 200-041-002, and 309-071-001) containing the existing main casino operations, existing parking areas associated with the casino and other ancillary facilities. The Indian Gaming Regulatory Act (IGRA) generally prohibits Indian tribes from using lands for gaming and gaming-related operations unless the lands were held in Federal trust prior to October 1988. The land containing the existing Bear River Casino, existing parking area and other adjacent ancillary facilities is currently under Federal trust through the United States Department of Interior, Bureau of Indian Affairs. The applicant anticipates the proposed new parking lot construction to begin in mid-2010 and would be completed by the summer of 2011. The parking lot would be accessible to the public using casino facilities.

Excavation and grading to form the parking lot would be accomplished using motorized heavy equipment including front end loaders, tracked dozers, tracked excavators, sheep foot rollers, scrapers, box graders, backhoes, vibratory compactors and dump trucks. Standard and appropriate erosion control measures would be used including reseeding exposed soil with native vegetation. Access for construction would use existing paved roads and parking areas. No new roads would need to be built. Little or no additional electrical or water service would be required.

Parking lot lighting would augment any existing lighting. The existing wetland swale to be filled would be replaced with the paved parking area and piping for storm water drainage (See Sheet 4 of 5). In addition, the applicant proposes to install and maintain a media filtration/Vortech®-type system. The filter unit would perform water quality enhancement functions that do not currently exist. Stormwater drainage from the casino, existing parking areas and new parking area would enter this system and continue into culverts under Singley Road, flowing west into a small drainage located northwest of Singley Road (formerly known as the Fearrien property, now owned by the BRB).

**Wetland Mitigation:** The BRB has proposed compensatory wetland mitigation to replace, at a 1:1 ratio, the 0.51 acres of wetland that would be lost from construction of the new parking area. This wetland mitigation would be performed on site, on land located northwest and across Singley Road from the Bear River Casino (See Sheets 3 of 5 and 5 of 5). This property, formerly the Fearrien property now owned by BRB (APN 309-051-004 and APN 309-071-016), contains several small drainages and adjacent freshwater wetlands that drain west under Highway 101, Eel River Drive and the railroad tracks, and enters a drainage network that eventually enters the Eel River or its floodplain. The 113 acre property also contains grass-covered upland terraces and hill slopes. The U.S. Army Corps of Engineers (Corps) verified a wetland delineation prepared by AES on this property on July 16, 2009 and a revised verification of wetland delineation dated March 11, 2010.

AES prepared a conceptual wetland mitigation plan for the casino parking lot project (*Conceptual Wetland Mitigation Plan, Bear River Band of Rohnerville Rancheria, Bear River Casino Parking Lot Expansion, May 2010*)(See Sheets 3 of 5 and 5 of 5 for drawings excerpted from this plan). The entirety of the mitigation plan is available upon written request from AES. The goal of the mitigation is to compensate for the habitat functions and values of the wetlands lost as a result of the parking lot

construction. The created wetland on upland portions of what is now known as the “Tish Non” would provide habitat for terrestrial and aquatic species, such as large and small mammals, reptiles and amphibians. The proposed wetland mitigation site currently contains a terraced slope and the upper reaches of an unvegetated or sparsely vegetated swale-like drainage. As described in the AES mitigation plan, this area has been subject to cattle grazing in the past by the former owners of the Tish Non property. The proposed wetland would consist of three shallow ponds descending in series approximately 54 feet in elevation over a 300-foot distance, an approximate 5:1 drop. The pond areas would be constructed in the existing flat, terraced areas of the proposed site, with only slight modifications being done to the surrounding topography. The pond areas would be separated by approximately 40-50 feet of a sloping hillside, and would terminate with a gradual slope that ties into the existing drainage. The goal is for water to infiltrate into the ground and flow subsurface into the existing drainage, with the intent of preventing creek bed scouring and bank erosion. In addition, the wetlands could further filter the treated waste water prior to its entering the lower reaches of the Eel River watershed.

The wetland impact site is a headwaters seasonal freshwater wetland that appears to be derived from hill slope seeps or in part by old abandoned domestic water wells (See Sheet 3 of 5). Water from this wetland drains under Singley Road into the intermittent drainage that bisects the Tish Non property northwest of Singley Road. The impact wetland contains dominant facultative wet and obligate wetland plants including soft rush (*Juncus effuses*), creeping buttercup (*Ranunculus repens*), horsetail (*Equisetum* sp.), and spreading bentgrass (*Agrostis stolonifera*), to name a few. Similar species would be planted in the mitigation site (see mitigation plan for complete list). Annual monitoring of the site for mitigation success would occur for at least five years or when success is confirmed.

**Previous Regulatory Actions and Related Activities:** The Corps issued Nationwide Permit No. 2006-400694 (issued August 1, 2007 and cross referenced with File No. 400179) to the Humboldt County Department of Public Works for the discharge of fill into waters of the United States for the purpose of widening and improvements to Singley Road from its intersection with the Highway 101 interchange and proceeding northeast to near the entrance of Bear River Casino. This project was completed in 2008.

The Corps issued Nationwide Permit No. 2007-00681 (issued July 16, 2009) to the Bear River Band of Rohnerville Rancheria for the discharge of fill into waters of the United States and adjacent wetlands in connection with construction of the Tish Non Village (combination residential units, recreational facilities, road network and utilities) on the old Fearrien property located west of Singley Road and across the road from Bear River Casino. However, the Nationwide Permit for the Tish Non Village is currently not valid as the BRB has not obtained Section 401 Water Quality Certification for the Tish Non Village project from either the California Regional Water Quality Control Board or the U.S. Environmental Protection Agency. The construction contractor for the Tribe began construction of roads and culverts without 401 Certifications. The Corps issued a Cease and Desist order to the BRB on September 28, 2009. This Cease and Desist Order is still in effect until 401 Certification is obtained.

The BRB proposes to add a hotel on the south side of the existing casino building, with new construction linking the two buildings. No new gaming positions are proposed. The proposed hotel will not be constructed in waters of the United States or adjacent wetlands. No Corps permit is required for this facility. The hotel project is described in a document titled, *Environmental Evaluation, Bear River Band of Rohnerville Rancheria, Bear River Casino Hotel Addition and Expansion*, prepared by AES dated August 2009. This document can be obtained from either BRB or AES.

### **3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:**

**National Environmental Policy Act of 1969 (NEPA):** The Corps 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. Parts 1500-1508), and the Corps' Regulations (33 C.F.R. Part 230 and Part 325, Appendix B). Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Division, 1455 Market Street, San Francisco, California 94103-1398.

**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 a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. The Tish Non site and surrounding area represented potential habitat for the western lily (*Lilium occidentale*), a plant that is listed as endangered under the ESA by the U.S. Fish and Wildlife Service (USFWS). The western lily is a perennial herb that grows from a bulb. The species typically grows in bogs, freshwater marshes, coastal scrub or prairie or gaps in coniferous forest. Populations are found within six miles of the coast, and from near sea level to 320 feet elevation. The lily blooms from June to July. AES conducted a survey for the western lily during the wetland re-verification on June 22, 2009. The western lily was not observed during that site inspection and during any previous site visit. Personnel from the USFWS also inspected the Tish Non site and observed no evidence that the western lily is present, nor evidence of habitat which would be considered likely for the western lily. The USFWS stated the Tish Non

Village project would have no effect on the western lily (David Imper, USFWS, e-mail communication, January 9, 2007). No other ESA species, terrestrial or aquatic have been observed or known to exist on the property. The proposed project will not impact any known threatened or endangered species.

**Magnuson-Stevens Fisheries Conservation and Management Act:** Essential Fish Habitat - The Magnuson-Stevens Fishery Conservation and Management Act requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions permitted by the agency that may adversely affect Essential Fish Habitat (EFH). There are no EFH concerns with this proposed project.

**Clean Water Act of 1972 (CWA):**

**a. Water Quality:** Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification or, if on American Indian lands, a water quality certification from the U.S. Environmental Protection Agency (EPA) before a Corps permit may be issued. The applicant, through AES, has submitted an application for Section 401 Water Quality Certification to the U.S. EPA on September 11, 2009 for the above described project. Since that time, there have been some changes to the wetland mitigation plan and amount of wetland impacts from the parking lot construction. Some modifications of the 401 certification application may be necessary. The wetland mitigation site on the Tish Non property is not yet in Federal trust by Bureau of Indian Affairs. Therefore, EPA cannot issue a Section 401 Certification until Federal trust is attained for the Tish Non property. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State or U.S. EPA fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issue that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403 or the Director, Water Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901 by the close of the comment period of this Public Notice.

**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)). AES submitted an alternative analysis to the Corps (*Section 404 (b)(10) Alternative Analysis, Bear River Band of Rohnerville Rancheria, Bear River Casino Parking Lot Expansion*, dated May 2010), which the Corps will forward to U.S. EPA. The Corps will independently conduct an alternatives analysis under the 404 (b)(1) guidelines. AES identified two alternatives, Alternative 1 which is the proposed project described above and Alternative 2: No Project. "No project" is a scenario in which there are no impacts to waters of the U.S. The land would remain in its current status and all impacts or effects from all other proposed projects would be avoided. However, no project could be initiated and none of the needs of the proposed project are met (additional casino parking). While other lands nearby and within the Loleta vicinity were briefly considered, the tribe is restricted to locations. The Indian Gaming Regulatory Act (IGRA) generally prohibits the Tribe from using lands for gaming and gaming-related operations unless the lands were held in trust prior to October 1988. An evaluation has been made by this office under the guidelines and it was determined that the proposed project is not water dependent.

**Coastal Zone Management Act of 1972 (CZMA):** Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project is consistent with the State's Coastal Zone

Management Program, if applicable. The proposed project is not within the Coastal Zone.

**National Historic Preservation Act of 1966 (NHPA):** Based on a review of survey data on file with various City, State, and Federal agencies, no historic or archaeological resources are known to occur in the project vicinity. If unrecorded resources are discovered during construction of the project (if and when permitted by the Corps), operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) in accordance with Section 106 of the National Historic Preservation Act.

**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, historic 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 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 the U.S. Corps of Engineers, San Francisco District, Regulatory Division, 1455 Market Street, San Francisco, California 94103-1398. 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 number 707-443-0855 or E-mail: David.A.Ammerman@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.