

CALIFORNIA COASTAL COMMISSION

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**W 8a****STAFF RECOMMENDATION****ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-054-05
Staff:	MPD-SF
File Date:	4/15/2005
60th Day:	6/14/2005
75th Day:	6/29/2005
Extended to:	9/16/2005
Commission Meeting:	9/14/2005

FEDERAL AGENCY: **Bureau of Indian Affairs****DEVELOPMENT****LOCATION:**

East of Humboldt Rd. and northeast of Highway 101 (Martin Ranch Parcel (APN 115-020-28)), east of Crescent City, Del Norte County (Exhibits 1-2)

DEVELOPMENT**DESCRIPTION:**

Placement of 203.5 acre Martin Ranch Parcel into Trust for Elk Valley Rancheria, and development of Elk Valley Rancheria Resort-Casino (Exhibits 3-8)

SUBSTANTIVE FILE**DOCUMENTS:**

See Page 30.

EXECUTIVE SUMMARY

The Bureau of Indian Affairs (BIA) has submitted a consistency determination for the placement of the 203.5 acre Martin Ranch parcel (which is bisected by the coastal zone boundary) into trust status for the Elk Valley Rancheria, and for the construction of a gaming casino, resort, restaurant, parking and associated improvements. The project would include a 40,000 sq. ft. casino, a restaurant/conference facility, a 156-room hotel, parking lots, and approximately 112,000 cubic yards of grading.

The project site is east of Crescent City in Del Norte County. The parcel is bisected by the coastal zone boundary. The project initially included a golf course within the coastal zone portion of the parcel, and proposed within wetlands. The Commission staff expressed concerns over the consistency of the golf course with the Coastal Act's wetland policies, and the BIA revised the proposal to eliminate the golf course. As now proposed, the vast majority of proposed development (i.e., the proposed casino, resort, restaurant, water tank, and parking lots) would be located outside (landward of) the coastal zone boundary, and adjacent to an existing developed community (the Bertsch Ocean View Community, to the north of the site and also outside the coastal zone). Only the proposed improvements to the access road to the casino from Humboldt Rd., and any signs or highway improvements advertising and/or facilitating vehicular access off Highway 101, would be within the coastal zone.

The project would nevertheless affect the coastal zone in the following ways:

1. **Public Views.** The resort and casino buildings would be visible from Highway 101, a major coastal access thoroughfare, in an area designated as highly scenic in the County's Local Coastal Program, and in a rural, scenic, relatively undeveloped viewshed. Also, any signs at Highway 101, although not specified at this time, would be within the coastal zone and would add to the visual impact.
2. **Traffic/Roads.** The project would add approximately 3,442 additional vehicle trips per day to area roads, the vast majority of which would use Highway 101 to approach or leave the resort. The project would also involve physical road improvements within the coastal zone, including: (a) widening of the narrow access road to the proposed resort from Humboldt Rd., and (b) although not specified at this time, possible intersection improvements (such as turn signals or acceleration and deceleration lanes) at Highway 101.
3. **Sewer/Water.** The project would involve extending water and sewer lines to serve the resort, and project demand may generate the need for additional sewer infrastructure construction within the coastal zone (e.g., expanding the City of Crescent City's sewage treatment plant). Also, if the improvements are not properly sized and located, the project could be growth-inducing and effectively expand the region's urban/rural boundary.
4. **Wetlands/Water Quality.** The project is located upstream of sensitive wetlands in the coastal zone, including the Crescent City Marsh. Both construction-related and operation-related downstream impacts from the proposed approximately 9.3 acres of impervious surfaces and parking lots has the potential to cause erosion, sedimentation, and pollutant loading in the downstream wetlands, and changes to the Crescent City Marsh's hydrological regime.
5. **Agriculture.** The parcel is currently zoned primarily for agricultural use and has historically been used for grazing. While the resort will be predominantly outside the coastal zone, it has the potential to decrease the site's continued agricultural viability through creation of conflicts between agriculture and the intense, more urbanized, resort complex.

6. **Change in status of coastal zone portion of the parcel.** While the resort is predominantly proposed to be located outside the coastal zone, because land held in trust is land owned by the BIA, an agency of the federal government, the proposed action would change the status of the coastal zone half of the 203.5 acre parcel, in that, once in trust, it would be treated similarly to other federally owned lands (which under the Supremacy Clause of the U.S. Constitution are not subject to state or local regulation). This change would modify state regulatory procedures currently in place via State and County permit review under the applicable Local Coastal Program. The Commission would retain federal consistency authority over future activities affecting the coastal zone involving federal agency permits, activities, or funding, but where such federal involvement is absent, or no spillover effects on the coastal zone would occur, the Commission and/or the County would not have any review authority.

Based on the above coastal zone concerns, the Commission staff requested that the BIA provide additional information concerning the project's impacts (Exhibit 19), to which the BIA responded (Exhibit 20). The following discuss summarizes the Commission staff's information requests and the BIA's responses:

1. Concerning **public views**, the Commission staff requested analysis of the project's visual impact from Highway 101 (ideally, including a visual simulation of the view from the highway), include: (a) details for vegetative screening; (b) details for revegetation efforts for slopes disturbed during construction; (c) impacts of any signs along Highway 101; (d) any above-ground water storage tanks needed; (e) community character effects; and (f) night lighting effects.

The BIA's response was that: (a) the primary view considerations are of views west, not east, of Highway 101; (b) the project is primarily outside the coastal zone; (c) the project's visual impacts would not be significant; (d) the water storage tank will be screened by landscaping; (d) the existing barn and pasture will partly obscure the project's visual impacts; (e) measures discussed in the Draft EIS¹ would reduce visual impacts, including: downcast lighting, vegetative screening, low sodium light bulbs, fast growing grasses, sensitive architectural treatment, use of earth tones; and (f) a recent court case limits the Commission's authority outside the coastal zone.

2. Concerning **traffic and road improvements**, the Commission staff requested a description of needed improvements, such as widening of the access road to the resort from Humboldt Rd. and turning lanes at Highway 101 (which may be required by Caltrans), and analysis of the adequacy of the proposed parking and impacts of additional traffic on recreational traffic on Highway 101.

¹ Inter-agency administrative Draft, not yet public, dated April 2005.

The BIA's response was that: (a) the area has adequate road capacity to accommodate the development; (b) only limited intersection and offsite improvements would occur within the coastal zone; (c) the Draft EIS has been revised to show frontage improvements (at the intersection of Humboldt Road, Sandmine Road and the project access road); and (d) the Elk Rancheria's MOU with Del Norte County (Exhibit 15) is in place to address potential future non-project improvements (and those "non-project" improvements would be offsite and subject to County and Caltrans permit processes).

3. Concerning **sewer and water infrastructure**, the Commission staff requested a clear description of the proposed improvements needed (e.g., locations and sizes of water and sewer lines, pump stations (if needed), and on-site water storage, and improvements needed to the City's sewage capacity, which is limited), and analysis of the project's effects on sewer and water capacity.

The BIA's response was that: (a) Crescent City is upgrading its sewage capacity by improving its outfall and expanding wastewater pre-treatment; (b) Crescent City projects that it will have sufficient capacity to serve the proposed development; and (c) Crescent City sewage issues are not the BIA's responsibility and not part of the proposed action.

4. Concerning **wetlands and water quality**, the Commission staff requested: (a) analysis of water quality and hydrological impacts; (b) a commitment to submit water quality plans, which have not yet been prepared, to the Commission staff for its review and concurrence, prior to commencement of construction; (c) an articulation of an overall goal for the plans to design them to assure no increases in runoff and sedimentation beyond baseline conditions; and (d) agreement that the plans will also: (i) address measures to revegetate graded slopes; (ii) include measures to be implemented both permanently and during the construction period; (iii) explain whether and how parking lot runoff will be filtered; (iv) indicate the approximate size and location of the proposed detention basin as mentioned in the DEIS to slow the rate of runoff; and (v) analyze effects on groundwater recharge, including and potential effects on the timing and extent of both surface and groundwater flows to the downstream Crescent City Marsh.

The BIA's response was that: (a) Best Management Practices will be developed to protect water quality and downstream wetlands; (b) the Draft EIS specifies several of these measures, to include: (i) filter fences and barriers; (ii) revegetation of disturbed areas; (iii) directing stormwater runoff from parking lots to vegetative filter strips; and (iv) use of vegetated detention swales (at a ratio of 500 feet of swale per acre of impervious surface to be located within parking areas, south of parking areas and roadways, and along the western edge of the fill slope adjacent to the parking area); (c) the project would result in a small (0.6%) increase in imperious surfaces in the watershed of the downstream Crescent City Marsh, and that the above mitigation will further reduce this impact; (d) the BIA is not able or willing to

provide water quality plans to the Commission staff for review and concurrence, prior to commencement of construction; and (e) the Coastal Act and a recent court case limit the Commission's authority outside the coastal zone.

5. Concerning **agriculture**, the Commission staff requested analysis of the project's effects on the continued agricultural viability of the site, as well as a discussion of any mechanisms any place that will assure or assist in the continued protection of the coastal zone resources on the coastal zone portion of the site.

The BIA's response was that: (a) the project will not preclude continued agriculture on the site; (b) the casino will create the economic means for the Elk Rancheria to implement a resource management program to protect important resources; (c) current grazing activities on the ranch are marginally economic and detrimental to the site's (and downstream) wetlands; (d) although 96 acres of the site contain "prime and unique farmland," the soils are not "of Statewide and local importance"; (e) the only proposed improvements on agricultural portion of the property are relatively minor access road improvements; and (f) the Elk Rancheria's development and implementation of a proactive natural resources protection plan under tribal ordinance (Exhibit 14) will serve to protect the interests of the Commission, Tribe and the human environment.

The deficiencies in these BIA responses are as follows:

1. The BIA has not included visual simulations or other descriptive analysis reflecting the effect that the very large commercial complex will have on a scenic, rural, predominantly undeveloped public view from Highway 101.
2. The BIA states that vegetative screening and low-intensity lighting will be used, but the BIA has not provided any standards, landscaping plans, or analysis of how effecting vegetative screening will be (including how long it will take for vegetation to mature).
3. The BIA has not described or discussed signs along Highway 101, signs on Humboldt Rd., access road improvements, Highway 101 intersection improvements, or an analysis of the adequacy of the amount of parking.
4. The BIA states that the City expects to have the sewer capacity for the resort but has not provided documentation to support that assertion or analyze the effects of expanding the City's sewer system. The DEIS contains a letter from the City expressing confidence it will be able to serve the project, but that letter does not describe how this would occur.
5. The BIA references runoff controls, Best Management Practices, and water quality plans, but it has not provided any such plans, any standards they would contain, or

any agreement that, when they are prepared, the Commission or its staff would have the opportunity to review them (and if necessary, request changes).

6. The BIA has not provided any hydrological analysis of effects on groundwater recharge and on the Crescent City Marsh.
7. The BIA states that the casino will provide the means for the Elk Rancheria to implement a resource management program to protect wetlands and views, and control non-native vegetation, but it has not provided any such plans, any standards they would contain, or any agreement that, when they are prepared, the Commission or its staff would have the opportunity to review the program to determine when it would be implemented and how it would protect the site's (and downstream) coastal zone resources.

Without this information, the Commission lacks sufficient information to find the project consistent with the public view, public services, public access/recreation, concentration of development, wetlands, environmentally sensitive habitat, water quality, and agricultural resource protection policies (Sections 30251, 30254, 30252, 30250, 30254, 30233, 30231, 30240, 30241 and 30242, respectively) of the Coastal Act.

In addition, the BIA relies on an inapplicable court case to assert that the case limits the Commission's ability to review activities outside the coastal zone. The case the BIA cites involves state law permit authority. The proposed action is being reviewed under federal law (the Coastal Zone Management Act), which clearly authorizes the Commission to review coastal zone effects from federal agency activities outside the coastal zone.

STAFF SUMMARY AND RECOMMENDATION

I. Project Description. The Bureau of Indian Affairs (BIA) has submitted a consistency determination for the placement of the 203.5 acre Martin Ranch parcel (which is bisected by the coastal zone boundary) into trust status for the Elk Valley Rancheria, and for the construction of a 40,000 sq. ft. gaming casino/bingo facility (Exhibits 1-8). The project would include approximately 400 slot machines and 60 gaming tables, a 500-seat bingo/multi-function, restaurants, a 20,000 sq. ft. convention center, a 156-room hotel, approximately 1,250 parking spaces, and associated sewer, water, and other infrastructure improvements. The project's overall appearance is as depicted in Exhibit 4. With the exception of the access road from Humboldt Rd., which forms the western boundary of the site, the improvements would be located landward of the coastal zone boundary (Exhibits 4-5). As currently described, the project does not include any advertising signs or Highway 101 intersection improvements.

Water would be served by the City of Crescent City or the (adjacent) Bertsch Ocean View Community Services District (BOVCSD), which contracts with the City for its water. Water service involves a 3 or 4 inch water line connection from the property line to an on-site storage

reservoir (which would be a 500,000 – 700,000 gallon buried or at-grade reservoir), and a pump station.

Sewer services would include construction of onsite wastewater pretreatment and pumping facilities (to pump sewage to the City's sewer system). Pretreatment would include a grease trap, pH control system, flow measurement devices, pump station, and force main. City sewer lines abut the property to the north.

The project also includes 112,000 cubic yards of grading (balanced cut and fill), road improvements at the intersection of Humboldt Rd., Sandmine Rd., and undefined (at this time) improvements to the access road to the resort from that intersection. Road improvements (e.g., turning lanes) may also be included at Highway 101's intersection with Humboldt and/or Sandmine Roads, if required by Caltrans (however, they are not part of this submittal).

The site currently contains a single-family residence, associated outbuildings, and a barn, and is used primarily for grazing and residential uses. The parcel ranges in elevation from 10 ft. to 320 ft. The eastern portion of the site, which is forested and not proposed for development, is quite steep. The site is zoned for agricultural and forestry uses – the coastal zone portion is zoned agriculture (Agriculture General, with a 5-acre minimum parcel size, and a Resource Conservation Area/Farmed Wetland ("RCA-2" (FW)) overlay, mostly over wetlands and streams covering a portion of the site (Exhibit 21). RCA overlay areas are generally not developable (unless the entire site is an RCA). Although it is not applicable outside the coastal zone, the County's Local Coastal Program also specifies, with respect to this parcel:

The [subject] parcel ...shall be identified for an agricultural use as an interim use. Should the parcel be developed for a public or quasi-public use, such as a community education center this area may be used for low intensive uses related to the public or quasi-public use in conformance with the local coastal program.

Outside the coastal zone the site is zoned "Prime Agriculture" and "Forestry." Surrounding development includes a residential community to the north, Highway 101 and a state wildlife area to the west, private forest land owned by Save-the-Redwoods League to the east, two single-family homes and open space to the south, and a motel just across Humboldt Rd. to the southwest.

Most of the five sub-drainages on the site (Exhibit 12) drain (through culverts under Humboldt Rd. and Highway 101) to offsite wetlands, including the Crescent City Marsh (Exhibit 22). The largest drainage (in the center of the property, from north to south) drains to a marsh south of Crescent City Marsh and south of Sandmine Rd. Overland storm flow rates across the site are as follows:

10-yr. Storm -	160.3 cubic ft./sec. (cfs)
25-yr. storm -	211.7 cfs
100-yr. storm -	266.5 cfs.

The property contains 28.85 acres of wetlands (based on the Army Corps wetland definition, not the Coastal Act definition), shown on Exhibits 5 & 10. The wetlands are located within the coastal zone portion of the site and are not proposed to be filled. The largest of the wetlands is 21.56 acres and drains under Humboldt Rd. to a California State Game Refuge.

The Elk Valley Rancheria currently operates a smaller casino on existing tribal lands to the north (outside the coastal zone and approximately one mile to the north of the project site, just north of Howland Hill Rd.). The Elk Valley Rancheria proposes to cease using the existing casino and to convert it into Tribal administrative facilities.

The BIA states the project goals include:

- Provide increased employment opportunities for Tribal members;
- 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;
- Provide capital for other economic development and investment opportunities; and
- Allow Tribal members to become economically self-sufficient, thereby eventually removing Tribal members from public-assistance programs.

The Tribe has adopted an "Off-Reservation Impact Ordinance" (Exhibit 14) providing for preparation of an Environmental Assessment including analyzing off-site impacts, and, pursuant to that ordinance, has prepared an Environmental Assessment. The Tribe has also entered into a Memorandum of Understanding (MOU) with Del Norte County (and reviewed by the Bureau of Indian Affairs) (Exhibit 15) that address off-site impacts, building and safety inspections, infrastructure issues, financing, law enforcement, and consistency with County Land Use policies.

II. Federal Agency's Consistency Determination. The Bureau of Indian Affairs has determined the project consistent to the maximum extent practicable with the California Coastal Management Program.

III. Staff Recommendation. The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission concur with consistency determination CD-054-05 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

STAFF RECOMMENDATION:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in an objection to the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

RESOLUTION TO OBJECT TO CONSISTENCY DETERMINATION:

The Commission hereby **objects to** consistency determination CD-054-05 by the Bureau of Indian Affairs, finding that the consistency determination lacks information necessary to evaluate the project's consistency with the California Coastal Management Program.

IV. Applicable Legal Authorities. Section 307 of the Coastal Zone Management Act (16 USC § 1456) provides in part:

(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of the approved State management programs.

A. Necessary Information. Section 930.43(b) of the federal consistency regulations (15 CFR Section 930.43(b)) requires that, if the Commission bases its objection on a lack of information, the Commission must identify the information necessary for it to assess the project's consistency with the CCMP. That section states:

If the State agency's objection is based upon a finding that the Federal agency has failed to supply sufficient information, the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal agency activity with the enforceable policies of the management program.

Nature of Information Requested

As described in Sections V(A) - V(D) of this report below (pp. 12-30), the Commission finds this consistency determination lacks the information that the Commission has requested from the Bureau of Indian Affairs (BIA) to enable the Commission to determine whether the proposed project is consistent with the public view, public services, public access/recreation, concentration of development, wetlands, environmentally sensitive habitat, water quality, and agricultural resource protection policies (Sections 30251, 30254, 30252, 30250, 30254, 30233, 30231, 30240, 30241 and 30242, respectively) of the Coastal Act. In order to determine the project's consistency with these policies, the Commission has requested the BIA to provide it with the following necessary information:

1. Visual simulations or other descriptive analysis reflecting the effect a very large commercial complex will have on the scenic, rural, predominantly undeveloped public view from Highway 101.
2. Standards, landscaping plans, and analysis of how effective vegetative screening will be (including how long it will take for vegetation to mature, and how extensive the screening will be).
3. A clear description, location, and analysis of the effects of: (a) any signs that will be used to advertise the resort along Highway 101 or any other public road used for recreational traffic in the coastal zone; (b) access road improvements (including width of pavement, amount of grading, and drainage features); and (c) Highway 101 intersection improvements (or an explanation of why they would not be needed).
4. An analysis of the adequacy of the amount of parking proposed to serve the development.
5. A clear description of access road improvements in the coastal zone and pathways (if needed) from Humboldt Rd. to the resort complex.
6. Evidence that Crescent City will have and will allocate adequate sewer capacity for the resort, including a description of (and locations of) any pump stations that will be needed, as well as improvements to the City's treatment plant that will be needed to accommodate the project.
7. A description of (and location of) any sewer line extensions connecting existing lines to the resort complex.

8. Water quality and hydrological analyses of effects of construction and post-construction runoff on downstream wetland, groundwater recharge, and the Crescent City Marsh, including changes in runoff rates, changes in pollutant loads, rates and amounts of water retention, locations and other specifications for the Best Management Practices that will be implemented, standards that the water quality plans will adhere to, plans to monitor the effectiveness of the BMPs, and a description of any on-going on-site and/or off-site water quality testing that will occur.
9. Alternatively, if BIA is unable to provide the information requested in #8 above at this time, a commitment that the BIA will submit the water quality plans to the Commission staff for its review and concurrence, prior to commencement of any construction of the resort.
10. A mechanism to enable the Commission or its staff a meaningful role in the review of the Elk Rancheria's to-be-prepared resource management plan to protect the resources of the site.

Without this information, the Commission lacks sufficient information to find the project consistent with the public view, public services, public access/recreation, concentration of development, wetlands, environmentally sensitive habitat, water quality, and agricultural resource protection policies (Sections 30251, 30254, 30252, 30250, 30233, 30231, 30240, 30241 and 30242, respectively) of the Coastal Act.

B. Practicability. The federal consistency regulations implementing the CZMA include the following provision:

Section 930.32 Consistent to the maximum extent practicable.

(a)(1) The term "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

Since the BIA has raised no issue of practicability, as so defined, the standard before the Commission is full consistency with the policies of the California Coastal Management Program (CPRC §§ 30200-30265.5).

C. Federal Agency Response to Commission Objection. Section C(a)(i) of Chapter 11 of the CCMP requires federal agencies to inform the Commission of their response to a Commission objection. This section provides:

If the Coastal Commission finds that the Federal activity or development project ... is not consistent with the management program, and the federal agency disagrees and decides to go forward with the action, it will be expected to (a) advise the Coastal

Commission in writing that the action is consistent, to the maximum extent practicable, with the coastal management program, and (b) set forth in detail the reasons for its decision. In the event the Coastal Commission seriously disagrees with the Federal agency's consistency determination, it may request that the Secretary of Commerce seek to mediate the serious disagreement as provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.

The federal consistency regulations reflect a similar obligation; 15 CFR §930.43 provides:

State agency objection. ...

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (see §930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period, Federal agencies should consider using the dispute resolution mechanisms of this part and postponing final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless: ... (2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

V. Findings and Declarations. The Commission finds and declares as follows:

A. Water Quality, Wetlands, and Environmentally Sensitive Habitat. Section 30231 of the Coastal Act provides:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233(a) provides:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following [, including]: ...

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

Section 30240 of the Coastal Act provides:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The site contains a variety of habitat types (Exhibit 11): Sitka spruce forest (38 acres, or 18% of the property) and Red Alder/Mixed deciduous woodland (19 acres, or 11% of the property), primarily along the steep eastern portion of the property, annual grassland/pasture (116 acres, or 56% of the property, which includes the area proposed for development), wetland prairie (23 acres, or 11% of the property), riparian wetland (5.5 acres, or 3% of the property), and several intermittent drainages (2 acres, or 1% of the property).

Sensitive and listed species in the project area include western lily (*Lilium occidentale*), found to the west of the site, across Humboldt Rd. on the state wildlife refuge. Past agricultural practices on the project site have eliminated any western lilies on the site itself; nevertheless the U.S. Fish and Wildlife Service believes the site contains conditions conducive for the species, and the BIA notes:

The only other portion of the property that had habitat even remotely similar to the reference population was located in the large central wetland of the property. This wetland was colonized with non-native weed species and was severely trampled by cattle. However the moisture regime of this portion of the site (saturation to the surface) was equivalent to the fens of the reference site. Though a western lily population was absent, this location may offer opportunity for restoration of western lily, buckbean, and [Pacific reedgrass] Calamagrostis nutkaensis habitat.

Other sensitive species in the area include: (a) tidewater gobies (*Eucyclogobius newberryi*), found in Crescent City Marsh, downstream from the site (Exhibit 22); (b) red legged frogs (*Rana aurora aurora*), found in wetlands on the project site; and (c) several species of raptors, which may nest or roost in the eastern forested portion of the site (not proposed for development).

As noted on page 2 above, as originally proposed the project would have included a golf course within the coastal zone portion of the parcel, and proposed within wetlands. The Commission staff expressed concerns over this initial proposal, in part due to the fact that golf courses are not among the eight allowable uses for wetland fill under Section 30233(a) of the Coastal Act. Accordingly, the BIA revised the proposal to eliminate the golf course.

The project is located upstream of sensitive wetlands in the coastal zone, including but not limited to Crescent City Marsh. The BIA indicates that Best Management Practices would be followed and lists several that would be used; however the water quality plans have not yet been drafted. In these types of situations where the water quality plans are not available at the

consistency review stage, and as it has done so for the subject proposal, the Commission staff regularly and consistently requests that applicants (including but not limited to federal agency applicants) agree to a review process in which the to-be-prepared water quality control plans will be submitted to the Commission staff for its review and concurrence, prior to commencement of construction, and with an overall goal articulated to design them to assure no increases in runoff and sedimentation beyond what occurs at the site currently (i.e., above baseline conditions). For this project these plans need to include/address: (a) measures to revegetate graded slopes; (b) measures to be implemented both permanently and during the construction period; (c) whether and how parking lot runoff will be filtered; (d) depiction of the approximate size and location of the proposed detention basins to slow the rate of runoff; and (e) analysis of the effects on groundwater recharge, including effects on the timing and extent of both surface and groundwater flows to the downstream Crescent City Marsh.

This last concern was raised in EPA's July 12, 2004, letter to the BIA (commenting on the BIA's initial proposal). In that letter EPA noted the small size of the watershed of the Crescent City marsh (339 acres) compared to the large (for the area) amount of impervious surfaces proposed. It also noted that the watershed "... according to the California Native Plant Society, is home to more than half the global distribution of the endangered western lily [*Lilium occidentale*], and at least a dozen other state or federally listed plant species, and plant communities found nowhere else in Northern California." Even without the golf course, the large amount of impervious surfaces could redistribute (both spatially or temporally) groundwater recharge, which could adversely affect the marsh.

In response to the Commission staff's requests for information (and/or agreement to a review process) requests, the BIA states that:

(1) Best Management Practices will be developed to protect water quality and downstream wetlands;

(2) its Draft EIS specifies several of these measures, to include: (a) filter fences and barriers; (b) revegetation of disturbed areas; (c) directing stormwater runoff from parking lots to vegetative filter strips; and (d) use of vegetated detention swales (at a ratio of 500 feet of swale per acre of impervious surface to be located within parking areas, south of parking areas and roadways, and along the western edge of the fill slope adjacent to the parking area);

(3) the project would result in a small (0.6%) increase in impervious surfaces in the watershed of the downstream Crescent City Marsh, and the above mitigation will further reduce this impact;

(4) it does not have the ability or willingness to provide water quality plans to the Commission staff for review and concurrence, prior to commencement of construction; and

(5) the Coastal Act and a recent court case limit the Commission's authority outside the coastal zone.

The BIA states:

Water Quality/Habitat. Best Management Practices and mitigation for water quality impacts are included in the DEIS as measures to address the Coastal Commission's concerns of increased runoff and sedimentation. The measures will be further specified upon the completion of detailed water quality plans. The DEIS identified mitigation measures which includes: filter fences and barriers, revegetation of disturbed areas, especially on graded slopes, direct stormwater runoff from parking lots to vegetative filter strips, vegetated detention swales at a ratio of 500 feet of swale per acre of impervious surface to be located within parking areas, south of parking areas and roadways, and along the western edge of the fill slope adjacent to the parking area. As the Commission will see in the DEIS, the watershed which drains to the Crescent City Marsh consists of 1,500 acres of which approximately 1,000 acres are currently developed and the remaining 500 acres are undeveloped. Proposed development of 9.3 acres under the Preferred Alternative would represent a 0.6% increase in developed area within the Crescent City Marsh watershed. This amount would not create a significant effect on stormwater runoff to the marsh, however, mitigation measures are specified to further reduce potential impacts to the marsh.

The Commission's request for review and concurrence of the finalized water quality plans, prior to the commencement of construction is outside the ability of the BIA to grant. The BIA is neither the permitting agency for the proposed development nor the applicant under provisions of the Clean Water Act. Additionally, Section 30604(d) of the Coastal Act, states:

No development or any portion thereof that is outside the coastal zone shall be subject to the coastal development permit requirements of [the Coastal Act], nor shall anything in [the Coastal Act] authorize the denial of a coastal development permit by the commission on the grounds the proposed development within the coastal zone will have an adverse environmental effect outside the coastal zone.

Further, in Sierra Club v. California Coastal Commission,² the California Supreme Court, issued an opinion on May 19, 2005, in support of the Commission's extensive findings that it did not have permit authority or jurisdiction over proposed development outside the coastal zone for a project which straddled the coastal zone boundary.

² Sierra Club v. California Coastal Commission (2005), 35 Cal.4th 839.

The deficiencies in these BIA responses are as follows:

1. Although the DEIS includes a hydrological analysis, that analysis is limited to surface flows, and although that analysis recommends mitigation measures to address runoff, water quality, and wetlands, it does not provide any design details or standards, but rather indicates that there is sufficient area on the site to include such measures as detention basins and drainage swales. In addition, it does not analyze hydrological effects on the Crescent City Marsh. Thus, the BIA has not provided sufficient details to enable the Commission to determine what measures would be included, how they would be designed, and what the project's construction and post-construction effects on downstream wetlands, groundwater recharge, and the Crescent City Marsh. The Commission is requesting additional analyses, including but not limited to estimating changes in runoff rates, changes in pollutant loads, rates and amounts of water retention, depicting locations, sizes, and other specifications for the list of Best Management Practices, providing standards that the water quality plans should adhere to, monitoring of the effectiveness of the BMPs, or on-going water quality testing that will occur.
2. As an alternative to providing such plans at this time, consistent with past Commission practice the Commission would accept BIA commitment to overall standards such plans would contain, combined with an agreement that, when the plans are prepared, and prior to commencement of any construction of the resort, the Commission or its staff would have the opportunity to review them (and if necessary, request changes).³

Without this information and/or commitment to provide the water quality plans to the Commission for its review, the Commission lacks sufficient information to find the project consistent with the wetlands, environmentally sensitive habitat and water quality policies (Sections 30231, 30233, and 30240) of the Coastal Act.

In addition, the BIA relies on an inapplicable Coastal Act citation and court case to assert that either the Coastal Act or the court case limits the Commission's ability to review activities outside the coastal zone. The Coastal Act policy and the court case the BIA cites both involve state law permit authority. The proposed action is being reviewed under federal law (the Coastal Zone Management Act (CZMA)), which clearly authorizes the Commission to review effects and protect resources within the coastal zone from federal agency activities located outside the coastal zone. Section 307(c)(1)(A) of the CZMA provides⁴:

³ The federal consistency regulations, at 15 CFR Part 930, §930.45, provides a context and a procedure which the Commission has historically relied on for this type of continuing review of federal agency activities.

⁴ 16 U.S.C. Section 1456, with implementing regulations at 15 CFR Part 930.

(1) (A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

B. Public Services, Traffic, and Public Access and Recreation. Section 30250 of the Coastal Act provides, in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. ...

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30254 provides:

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

(1) Traffic and Parking. While the casino would be located outside the coastal zone, it could affect public access and recreation within the coastal zone if inadequate parking is provided, or if users of the casino generate sufficient traffic to affect the capacity of Highway 101 serve the recreational needs of the region. In addition to the above Coastal Act policies, Section 30252 of the Coastal Act provides:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing

nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The BIA estimates the project would add approximately 3442 additional vehicle trips per day to area roads, the vast majority of which would use Highway 101 to approach or leave the resort. It would appear from the BIA's analysis that Highway 101 in this area is not near its capacity, and it is unlikely the proposed project would exceed available highway capacity. It does appear likely, however, that the project would generate sufficient traffic to necessitate intersection improvements (such as turning lanes or a traffic light) at Humboldt Rd. and Highway 101, and possibly Sandmine Rd. and Highway 101, to route traffic onto and off Highway 101 safely. It also appears clear that the unpaved, one-lane, on-site access road from Humboldt Rd. to the resort complex (Exhibit 13) is far too narrow to serve the traffic a large resort complex would generate and would need to be widened. Consequently the Commission staff requested that BIA provide additional details for needed Highway 101 improvements and the access road, and an analysis of the how the BIA determined the appropriate amount of on-site parking proposed to serve the resort.

In response to these information requests, the BIA states:

- (1) that adequate road capacity existing in the area to accommodate the development;
- (2) that only limited intersection and offsite improvements would occur within the coastal zone;
- (3) that the Draft EIS has been revised to show frontage improvements (at the intersection of Humboldt Road, Sandmine Road and the project access road);
- (4) that the Elk Rancheria's MOU with Del Norte County (Exhibit 15) is in place to address potential future non-project improvements (and will be subject to the County's and Caltrans' permit processes).

The BIA states:

Traffic. The BIA agrees that the proposed resort development will add vehicle trips to area roads, including Highway 101. However, significant impacts to either public safety or intersection performance are not expected. Based on existing plus project traffic volumes and trip distribution patterns contained in the traffic study for the project (DEIS, Appendix C) and the fact that all roadways expected to serve the project

are well below capacity, impacts to area roadways would be less than significant. Limited intersection and off-site roadway improvements are proposed in the Coastal Zone as part of the preferred alternative project. Page iii of the DEIS has been revised to describe frontage improvements at the intersection of Humboldt Road, Sandmine Road and the project access road which are partially in the Coastal Zone and proposed to be upgraded and widened. Best Management Practices, within the DEIS, pages 5-2 through 5-5, would reduce impacts to the Coastal Zone to a less than significant level. We believe the limited roadway related improvements within the Coastal Zone are consistent with Sections 30250, 30252 and 30254 of the Coastal Act. Additionally, the Memorandum of Understanding between the Elk Valley Rancheria and Del Norte County addresses potential future non-project improvements subject to the County's and Caltrans permit process.

Thus, the only details the BIA has provided at this time are that turning lanes at Highway 101 "may be required by Caltrans," and the statement that the project has been revised to upgrade and widen the access road and improve the intersection of Humboldt Road, Sandmine Road and the access road. However, the BIA has not yet submitted any such further revisions, plans, or details to the Commission staff. The Commission is therefore unable to determine what, if any, Highway 101 intersection improvements within the coastal zone would be, and/or whether the access road improvements would be designed to protect coastal zone resources. Also, the BIA has not explained its rationale for the number of parking spaces proposed; therefore the Commission is unable to determine the adequacy of the amount of parking proposed. Without this information, with respect to traffic, parking, and public access and recreation, the Commission lacks sufficient information to find the project consistent with Sections 30250, 30254, and 30252 of the Coastal Act.

(2) Sewer and Water Infrastructure. While the subject parcel is adjacent to an existing developed residential community, the project would involve extending water and sewer lines to what is currently a rural area. Therefore the infrastructure improvements need to be located, sized and designed to not excessively induce growth in rural areas, to only serve the projected needs of the resort, and to avoid inducing systemwide improvements that would be regionally growth inducing. Accordingly, the Commission staff posed several questions concerning these infrastructure improvements, requesting the following descriptions and analyses:

(a) locations and descriptions of water and sewer lines extensions and pump stations on the parcel;

(b) analysis of the adequacy of the area's sewage systems to accommodate the approximately 100,000 - 150,000 gallons/day (above and beyond the level of the existing Elk Rancheria Casino to the north) of sewage generated by the project, including explaining whether such demand can be accommodated within existing infrastructure constraints, or whether it will generate the need for additional physical infrastructure construction within the

coastal zone (e.g., expanding the City of Crescent City's treatment plant). The Commission staff's concern was raised in part because, as the BIA had already noted, Crescent City is in the process of undertaking improvements to its sewage system to address an 8+ year old Cease and Desist Order issued by the Regional Water Quality Control Board regarding the inadequacy of its existing sewage treatment plant. The BIA had also previously acknowledged that proposed (or currently anticipated) improvements to the plant, if they are implemented, may not be on-line when the resort is ready for occupancy (and the Draft EIS discussed alternative means the Rancheria could use if the City was unable to provide the capacity)(Exhibits 16 & 18).

While the Draft EIS contained a letter from the City expressing confidence it would be able to serve the project (Exhibit 17), that letter does not describe how this would occur. The Commission staff therefore stated:

...it is not clear at this point what the City's plans are for allocating this capacity, and, in fact, whether the City intends to allocate some or all of it to the proposed resort. We therefore request clarification on both the timing and the availability of this capacity for the proposed resort.

In response to these information requests, the BIA states that:

(1) Crescent City is upgrading its sewage capacity by improving its outfall and expanding wastewater pre-treatment;

(2) City of Crescent City projects that it will have sufficient capacity to serve the proposed development; and

(3) City of Crescent City sewage issues are not the BIA's responsibility and not part of the proposed action.

The BIA states:

Sewer and Water Infrastructure. Revisions to the Preliminary DEIS have been made to address the Commission's concerns. The DEIS includes the following description: "The City of Crescent City is upgrading its wastewater treatment plant to accommodate additional capacity at a level sufficient to meet the needs of the Tribe. Construction of the outfall project, which will increase capacity, will be completed in the fall of 2005. Other improvements for the wastewater treatment plant have a design deadline of August 2005 (Levi, pers. comm., 2005). In addition, the City is working with a local industry to further treat industrial discharges to free up capacity at the wastewater treatment plant through the enactment of a wastewater pre-treatment ordinance (City of Crescent City, 1993). One of the main industrial contributors, Rumiano, began a pretreatment unit in April 2005, which has freed biological load at the wastewater

treatment plant." With the Rumiano pretreatment unit, outfall project, and other improvements, the City projects that it will have the capacity to treat wastewater from the casino and will be consistent with Sections 30250 and 30254 of the Coastal Act.

Additionally, please note that changes to the City wastewater infrastructure are not part of the BIA's federal action, which is confined to the trust acquisition. The City of Crescent City, as the wastewater service provider, will obtain the project approvals needed to construct upgrades to its wastewater treatment plant. Typically, the BIA does not require final design and permitting of a project prior to the decision on trust acquisition. We believe the City of Crescent City's projects should not be considered in the BIA's Consistency Determination.

The Commission is not requesting that the BIA apply for improvements that may be needed to the City's sewer system. Rather, the Commission is requesting that the BIA: (a) identify the adequacy of the existing infrastructure to serve the proposed development; (b) estimate, to the degree possible, changes/upgrades that may be needed to the system, to the degree possible given existing information; (c) analyze whether any needed upgrades can be accomplished without excessively inducing additional growth in the coastal zone; (d) describe the sizes and locations of the on-site sewer lines and pump stations to establish that they will be appropriately designed and located to minimize impacts; and (e) document how the City has or will generate adequate sewer capacity for the resort, and intends in fact to allocate such capacity to the resort (or if it does not, propose alternative means to provide the capacity).

Without this information, the Commission lacks sufficient information to find that the project would be located within, contiguous with, or in close proximity to, an existing developed area able to accommodate it, and where adequate public services exist, where it will not have significant adverse effects, either individually or cumulatively, on coastal resources, and where it will not induce development in the coastal zone that would be consistent with Chapter 3 of the Coastal Act, and thus whether the project would be consistent with the public services and concentration of development policies (Sections 30250 and 30254) of the Coastal Act.

In addition, the BIA asserts that the City, not the BIA, is responsible for addressing sewage infrastructure issues. While it is true that the City would need to obtain any necessary permits for its facilities, this fact does not obviate the need for the BIA to analyze the project's effects on the City's sewage treatment system, in terms of determining whether capacity is available, and if it is not, what changes (and effects) would be induced by the additional demand from the project. While the Commission notes that under the Coastal Act (Sections 30250 and 30254), where infrastructure capacity is limited, it should be reserved for priority uses, and while the project can be considered a priority use as a visitor serving facility, the BIA nevertheless needs to document whether and how limited public services will be able to accommodate the resort, and if new improvements would be needed to the sewer system, how they can be implemented without resulting in growth-inducing impacts on the coastal zone.

C. **Public Views.** Section 30251 of the Coastal Act provides:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The resort and casino buildings would be visible from Highway 101, a major coastal access thoroughfare, and in an area designated as highly scenic in the County's Local Coastal Program. Given the site topography, the project would be within the direct line of sight from Highway 101, and, according to the DEIS, would include a 40,000 sq. ft. casino, a restaurant/conference facility, a 156-room hotel, large areas of impervious surfaces (mostly parking), and 112,000 cubic yards of grading, all to be located in what is currently a rural, scenic, relatively undeveloped viewshed. While most of the development would be outside the coastal zone, its effects on public views from Highway 101, and its consistency with the character of the sparsely developed area, could be significant. Accordingly, the Commission staff has requested that the BIA:

... analyze the project's visual impact from Highway 101 (ideally, including a visual simulation of the view from the highway), and if it would be visible from the shoreline and/or any public parks or other public viewpoints in the coastal zone in nearby areas, its impact from those public locations. The analysis should discuss: (a) any measures intended to screen the resort from these public locations (including, if vegetative screening is proposed, the length of time needed for the vegetation to mature and provide adequate screening); (b) revegetation efforts for slopes disturbed during construction; (c) impacts of any signs along Highway 101 (or otherwise visible from public areas) advertising the resort; (d) any above-ground water storage tanks needed⁵, including the degree to which any such tanks would be screened by the resort, and/or by existing vegetation or proposed vegetative screening; and (e) effects on community character. The analysis should include the effects of lighting at night. While the DEIS states that exterior lights would be designed to be shielded to shine only internally and not affect outlying areas, it may not have addressed lighting such as from windows. The consistency determination should describe the visibility of all night-time lighting (including any advertising signs along Highway 101), and perhaps should consider

⁵ The DEIS indicates the possible need for an up to 500,000-700,000 gallon storage tank; however its location is not depicted.

agreeing to defined criteria of residual light outside the project footprint.⁶ The visual/community character analysis should be based on the Sections 30251 and 30253) of the Coastal Act (although the night-lighting discussion may also be applicable to biological impacts).

In response to these information requests, the BIA states that:

- (1) Caltrans has not designated this portion of Highway 101 as a scenic highway;
- (2) view considerations in the coastal element focus on views west of Highway 101 (and the project is east of Highway 101);
- (3) the project is mostly outside the coastal zone;
- (4) the project's visual impacts would not be significant;
- (5) the water storage tank will be screened by landscaping;
- (6) the existing barn and pasture will partly obscure the project's visual impacts;
- (7) measures discussed in the Draft EIS would reduce visual impacts, including: (a) downcast lighting; (b) vegetative screening; (c) low sodium light bulbs; (d) fast growing grasses; (e) sensitive architecture; and (f) use of earth tones; and
- (8) a recent court case limits the Commission's authority outside the coastal zone.

The BIA states:

Visual Impact. The portion of Highway 101 adjacent to the southwest portion of the property is not classified by Caltrans as a Scenic Highway. Visual considerations contained in the Coastal element pertain primarily to views west of Highway 101, toward the Pacific Ocean and not the upland areas to the east. In addition, the proposed development is located outside the coastal zone with the foreground portion of the parcel, within the coastal zone, remaining undeveloped. We do not believe the proposed project will result in significant impacts to the visual character of the coastal zone. Views from Highway 101 toward the proposed resort development would contain the predominant foreground view of the grazing pasture, barn and spruce covered

⁶ For example, in the Commission's review of the Department of Homeland Security's (DHS') Border Fence project at the U.S./Mexican border, the lighting was to be directionally shielded away from biologically sensitive areas (i.e., outside the immediate project footprint, where it was to be no lighter than the light from a full moon, which was defined as 0.1 foot candles of illumination, based on coordination between DHS and the U.S. Fish and Wildlife Service).

outcropping partially obscuring the resort buildings. The proposed parking structure is planned below the Phase 3 Events Center and would not affect views of passing vehicles on Highway 101. The proposed 500,000 to 700,000 gallon domestic water storage tank will be an at-grade reservoir and located upgradient, to the east of the resort complex buildings. The reservoir will be obscured by landscaping.

Further, in Sierra Club v. California Coastal Commission, the California Supreme Court, issued an opinion on May 19, 2005, in support of the Commission's extensive findings that it did not have permit authority or jurisdiction over proposed development outside the coastal zone for a project which straddled the coastal zone boundary. The Commission's concerns as to lighting from windows within the resort appear to be beyond Commission's jurisdiction. Nonetheless, the DEIS recognizes potential visual impact, and impacts from proposed lighting, and has identified mitigation measures in Section 5.0. These measures include: the use of native building materials, sensitive architecture, and earth and forest tone paint to blend with visual/community character, use of native trees as a screen between the housing subdivision along Roy Avenue and placed strategically within the development to provide an established appearance to the resort development, downcast lighting, low-pressure sodium bulbs, minimal removal of existing vegetation and use of fast growing annual and perennial grasses. With the visual impact mitigation measures identified in the DEIS, the proposed project will be consistent with Sections 30251 and 30253 of the Coastal Act.

The deficiencies in these BIA responses are as follows:

The BIA has not include visual simulations or other descriptive analysis reflecting the effect the proposed large commercial resort complex will have on a scenic, rural, predominantly undeveloped public view from Highway 101.

The BIA states that vegetative screening and low-intensity lighting will be used, but the BIA has not provided any standards, landscaping plans, grading plans, or analysis of how effecting vegetative screening will be (including how long it will take for vegetation to mature).

The BIA has not described or discussed the visual impact/clutter from signs along Highway 101 (or other public roads in the coastal zone). It would be unusual for a resort complex of this size and in this location to not include any information and/or advertising signs informing travelers on Highway 101 of the existence and location of the complex.

As discussed on page 19-20, although noting it would be widened, the BIA has not described the access road improvements; therefore the Commission is unable to determine whether they would be visible from and/or alter visual impacts from

Highway 101, and/or whether any grading and landform alteration would be needed, and if so, whether it would be minimized.

Without this information, the Commission lacks sufficient information to find the project has been or will be designed to protect views to and along the ocean in a scenic coastal area, will minimize visual impacts, will minimize grading and landform alteration, and will be consistent with the character of the surrounding area, and thus whether the project would be consistent with the public view policy (Section 30251) of the Coastal Act.

In addition, the BIA relies on an inapplicable court case to assert that the case limits the Commission's ability to review activities outside the coastal zone. The case the BIA cites involves state law permit authority. The proposed action is being reviewed under federal law (the Coastal Zone Management Act), which clearly authorizes the Commission to review coastal zone effects from federal agency activities outside the coastal zone.

D. Agriculture. Section 30241 of the Coastal Act provides:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas, agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30241.5 provides:

(a) If the viability of existing agricultural uses is an issue pursuant to subdivision (b) of Section 30241 as to any local coastal program or amendment to any certified local coastal program submitted for review and approval under this division, the determination of "viability" shall include, but not be limited to, consideration of an economic feasibility evaluation containing at least both of the following elements:

(1) An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.

(2) An analysis of the operational expenses, excluding the cost of land, associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.

For purposes of this subdivision, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal program or in the proposed amendment to a certified local coastal program.

(b) The economic feasibility evaluation required by subdivision (a) shall be submitted to the commission, by the local government, as part of its submittal of a local coastal program or an amendment to any local coastal program. If the local government determines that it does not have the staff with the necessary expertise to conduct the economic feasibility evaluation, the evaluation may be conducted under agreement with the local government by a consultant selected jointly by local government and the executive director of the commission.

Section 30242 provides:

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

In addition, in weighing land use priorities, Section 30222 of the Coastal Act provides:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

According to the BIA, the property is zoned primarily for agricultural use and is currently used for "grazing and residential uses." As noted on page 7, the County's Local Coastal Program appears to contemplate other public or quasi-public uses on the site, where it states:

The [subject] parcel ...shall be identified for an agricultural use as an interim use. Should the parcel be developed for a public or quasi-public use, such as a community education center this area may be used for low intensive uses related to the public or quasi-public use in conformance with the local coastal program.

It difficult to contemplate characterizing this project as a low-intensity use; at the same time, the LCP only applies to the coastal zone, and the resort complex would be outside the coastal zone. Because of the potential for the fairly intensive development to conflict with agricultural uses of the coastal zone portion of the site, and because under Section 30222, agriculture is accorded higher priority than visitor serving uses, the Commission staff requested that the BIA analyze the project's effects on continued agricultural use and viability for the coastal zone portion of the site. The Commission staff also requested that the BIA analyze the effect of placing the coastal zone portion of the site (along with the rest of the parcel), because once land is placed in trust, it is then considered excluded from the coastal zone, reducing state law-based regulatory protections currently in place (e.g., the County's permit authority under its Local Coastal Program). While the Commission would retain some federal consistency jurisdiction in the event any wetland fill were proposed (which would be triggered by the need for a U.S. Army Corps of Engineers permit, and/or any federal funding or other assistance by the BIA), the Commission and the local government would have a reduced ability to regulate development adjacent to those wetlands (e.g., the ability to require adequate buffers would no longer be available through the permit process), or to prevent conversion from agriculture to lower priority uses. The Commission staff therefore requested that the BIA describe any mechanisms in place that would serve to assure the continued protection agriculture, wetlands, and other coastal resources from any future development within what is now the coastal zone portion of the parcel.

In response to these information requests, the BIA states that:

- (1) the project will not preclude continued agriculture on the site;

- (2) the casino will create the economic means for the Elk Rancheria to implement a resource management program to protect wetlands and views, and control non-native vegetation;
- (3) current grazing activities on the ranch are marginally economic and detrimental to the wetlands;
- (4) although 96 acres of the 203.5 acres site constitute "prime and unique farmland," (as defined by NRCS), they are not considered to be "of Statewide and local importance;" and
- (5) the only proposed improvements on agricultural portion of the property are relatively minor access road improvements.

The BIA states:

Agriculture. As noted, the Coastal Zone portion of the property is zoned for agricultural use and currently used for grazing purposes. No development, other than proposed access road improvements, is proposed for the Coastal Zone portion of the property. Continued agricultural use of the Coastal Zone portion of the property would not be precluded. Construction of the proposed resort complex would provide the economic means to support the implementation of a resource management program designed to control weed and invasive non-native vegetation. The resource management program would also protect existing wetlands and foreground views to the ocean from the proposed resort. The current grazing use on the property is only marginally economical and may contribute to degradation of habitat and wetlands should the operation be expanded for increased viability.

Our consistency determination was based on the Coastal Act's agricultural policies, specifically Sections 30241 and 30242, prime agricultural land and maintenance in agricultural production as well as conversion of lands suitable for agricultural use. The NRCS, through their Farmland Conversion Impact Rating, determined that 96 acres of the total 203.5 acres proposed fee-to-trust land acquisition are considered prime and unique farmland. None of the 96 acres were considered of Statewide and local important farmland. Since the only development in the Coastal Zone is the proposed access road improvements, a de minimis amount of farmland would be converted.

Additionally, our consistency determination recognizes the Coastal Act land use hierarchy, in Section 30222, where agriculture and coastal dependent uses are accorded higher priority than visitor-serving uses as no such uses are planned in the Coastal Zone portion of the property.

The deficiencies in these BIA responses are as follows:

Although it references a future resource management plan that the Elk Rancheria intends to prepare, the BIA has not provided any such plans, any timetables for implementation, any standards they would contain, or any mechanism for Commission (or its staff) review.

As discussed on page 19-20 (and again on pp. 25-26), although noting it would be widened, the BIA has not described the access road improvements; therefore the Commission is unable to determine whether the improvements would minimize effects on agricultural operations.

Without this information, the Commission lacks sufficient information to find the project has been or will be designed to protect agricultural viability (and other coastal zone resources, including balancing agricultural and habitat conflicts) on the coastal zone portion of the site, and thus whether the project would be consistent with the agricultural protection policy (Sections 30241 and 30242) of the Coastal Act.

VI. SUBSTANTIVE FILE DOCUMENTS

1. Administrative Draft EIS, Elk Valley Rancheria, Martine Ranch Fee-To-Trust Project, Bureau of Indian Affairs, April 2005.
2. Coastal Development Permit 1-05-003, City of Crescent City, Construction of 24 inch diameter effluent outfall line, approved by the Commission May 13, 2005.

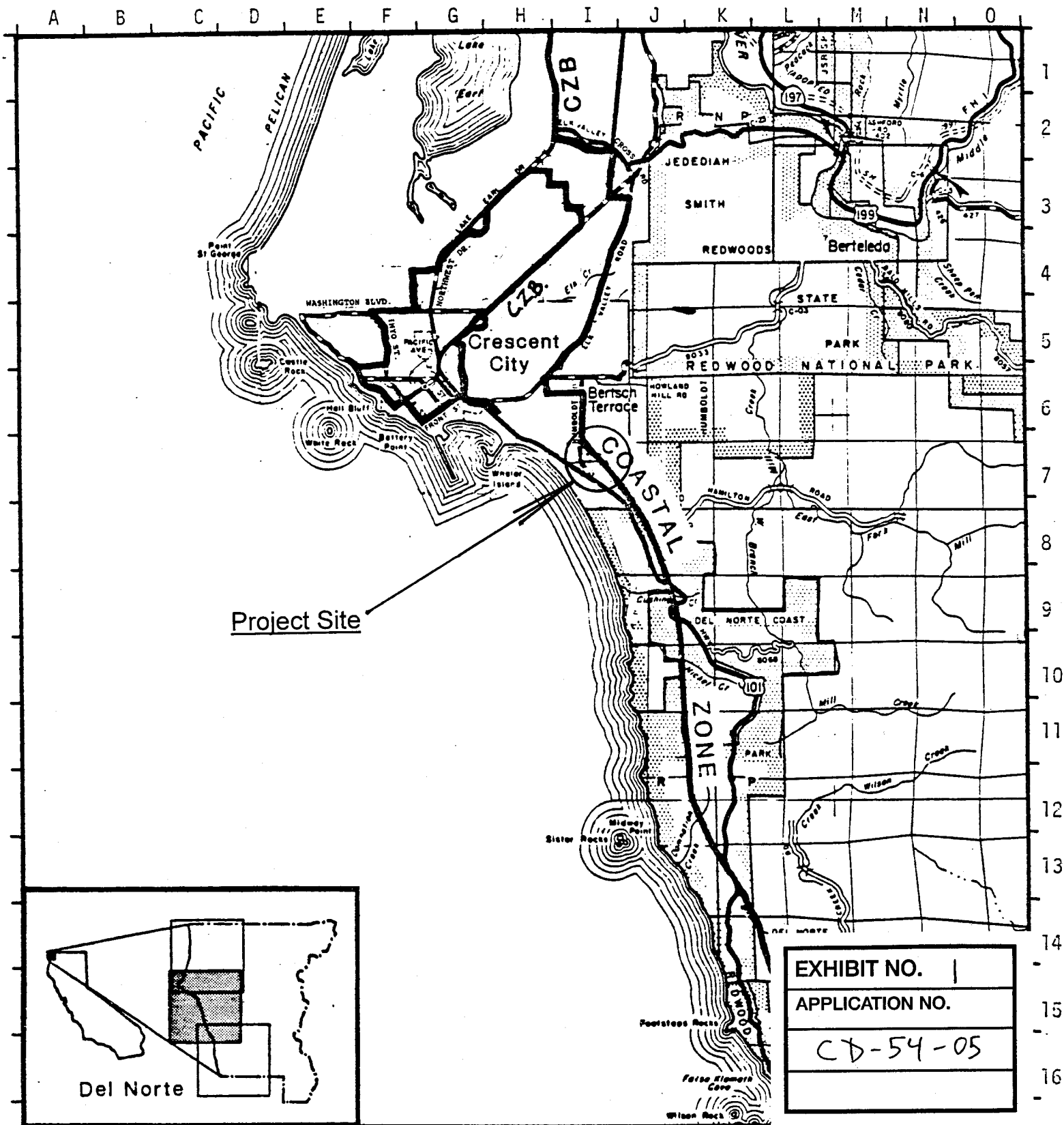
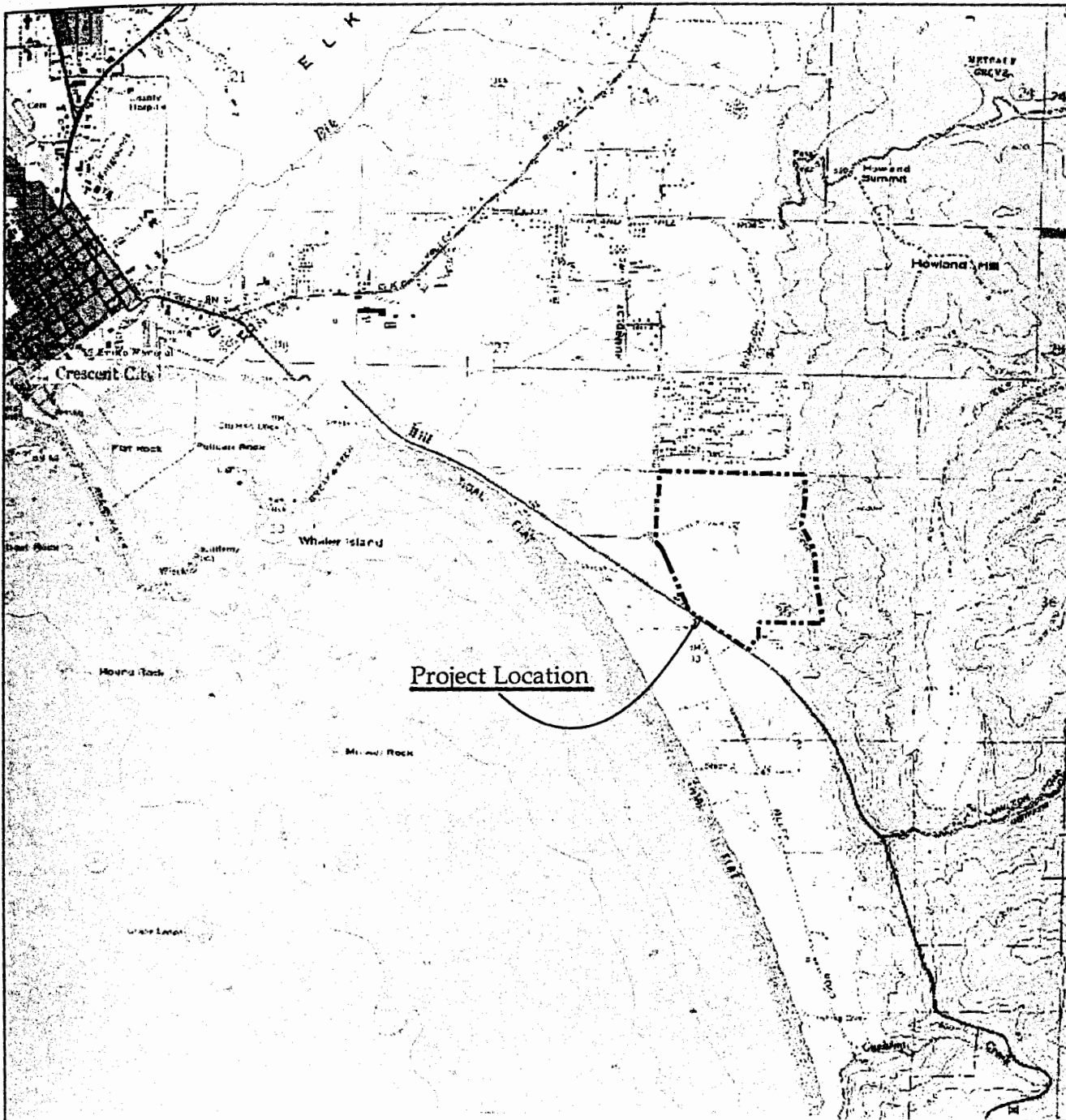


EXHIBIT NO.	1
APPLICATION NO.	
	CD-54-05



Explanation

----- Site Boundary

1 inch equals 3,000 feet

SEI
Consulting Engineers
& Geologists, Inc.

ELK VALLEY RANCHERIA
MARTIN RANCH FEE-TO-TRUST PROJECT
CRESCENT CITY, CA

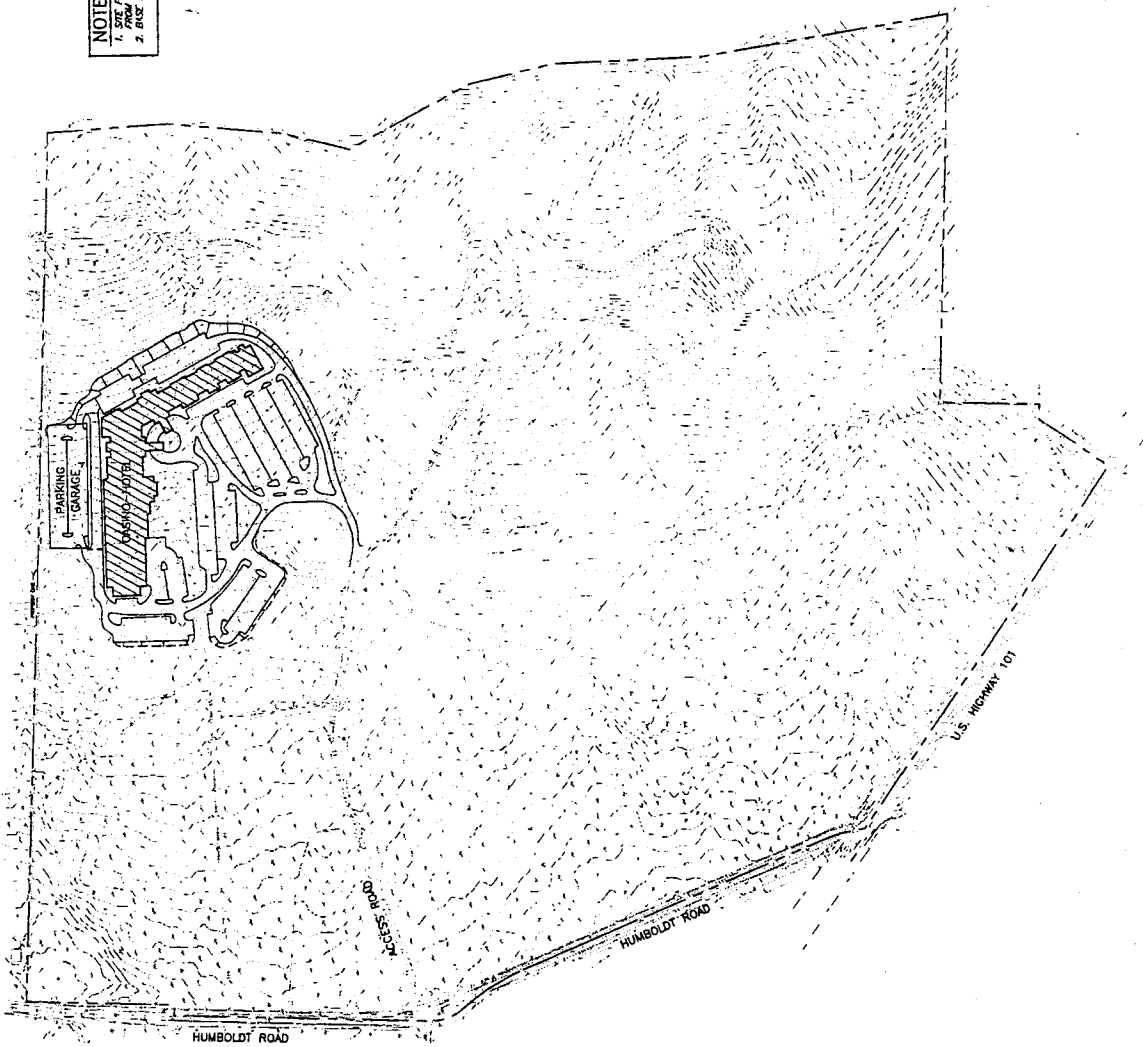
JANUARY 2005

L:\004301\Projects\Elk Valley Ranch

EXHIBIT NO. 2

APPLICATION NO.

CD -54-05



NOTES:
 1. SITE PLAN BASED ON REVISED SITE LAYOUT RECEIVED
 2. FROM GROUP WEST ARCHITECTS ON DECEMBER 1, 2004
 3. SITE LAYOUT PROVIDED BY AEC, NOVEMBER 2004

PRELIMINARY



EXHIBIT NO. 3
APPLICATION NO.
CD-54-05

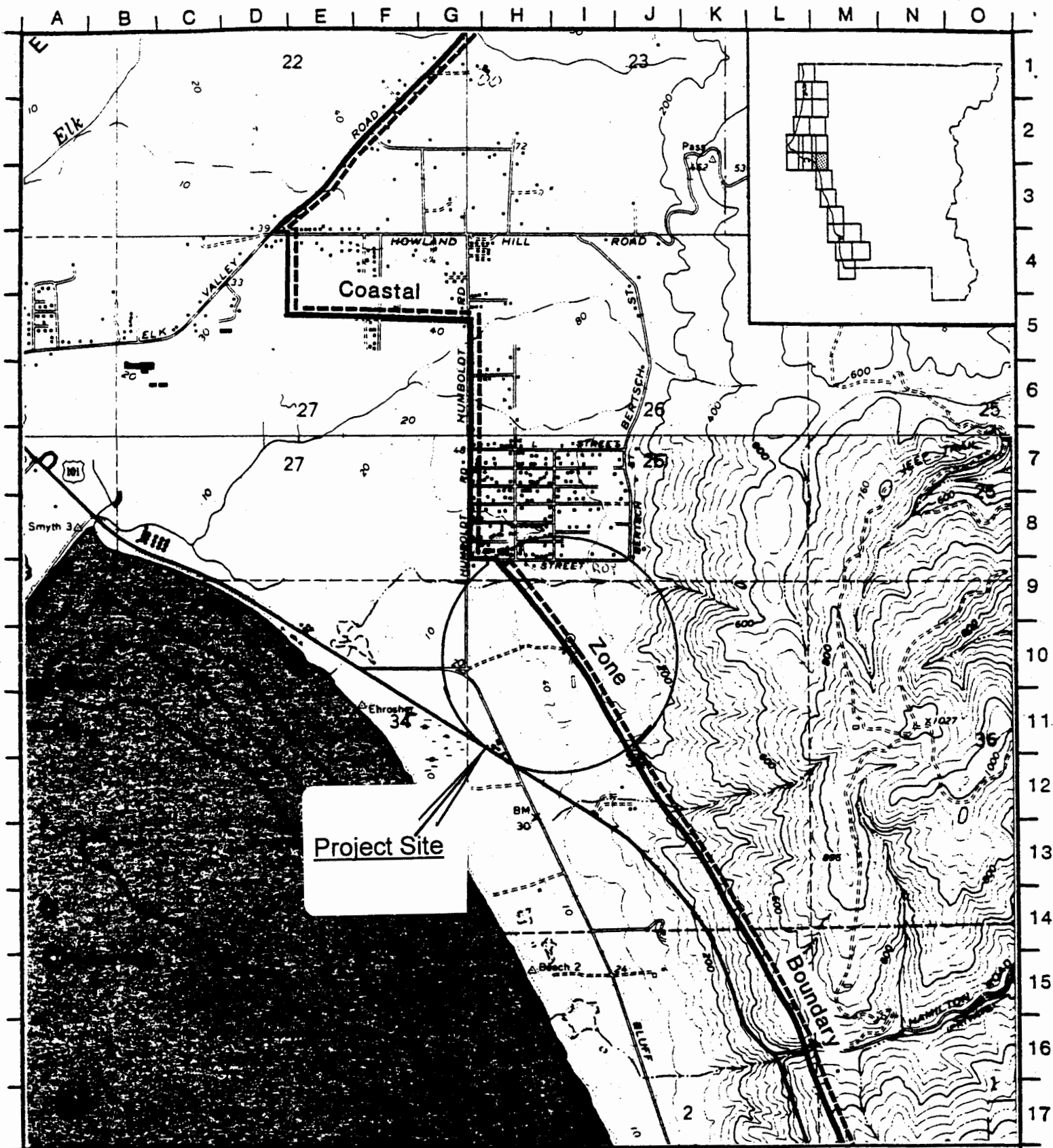


EXHIBIT NO. 4
APPLICATION NO.
CD-54-05

C.Z. BOUNDARY

PROPOSED
PARKING STRUCTURE

PROPOSED CASINO & HOTEL

PROPOSED
PARKING

HUMBOLDT ROAD

HUMBOLDT ROAD

US 101

BOBBY'S BEACH

Coastal Zone Boundary

Army Corps-defined
Wetlands

LEGEND

EXHIBIT NO. 5
APPLICATION NO.

CD-54-05

PRELIMINARY

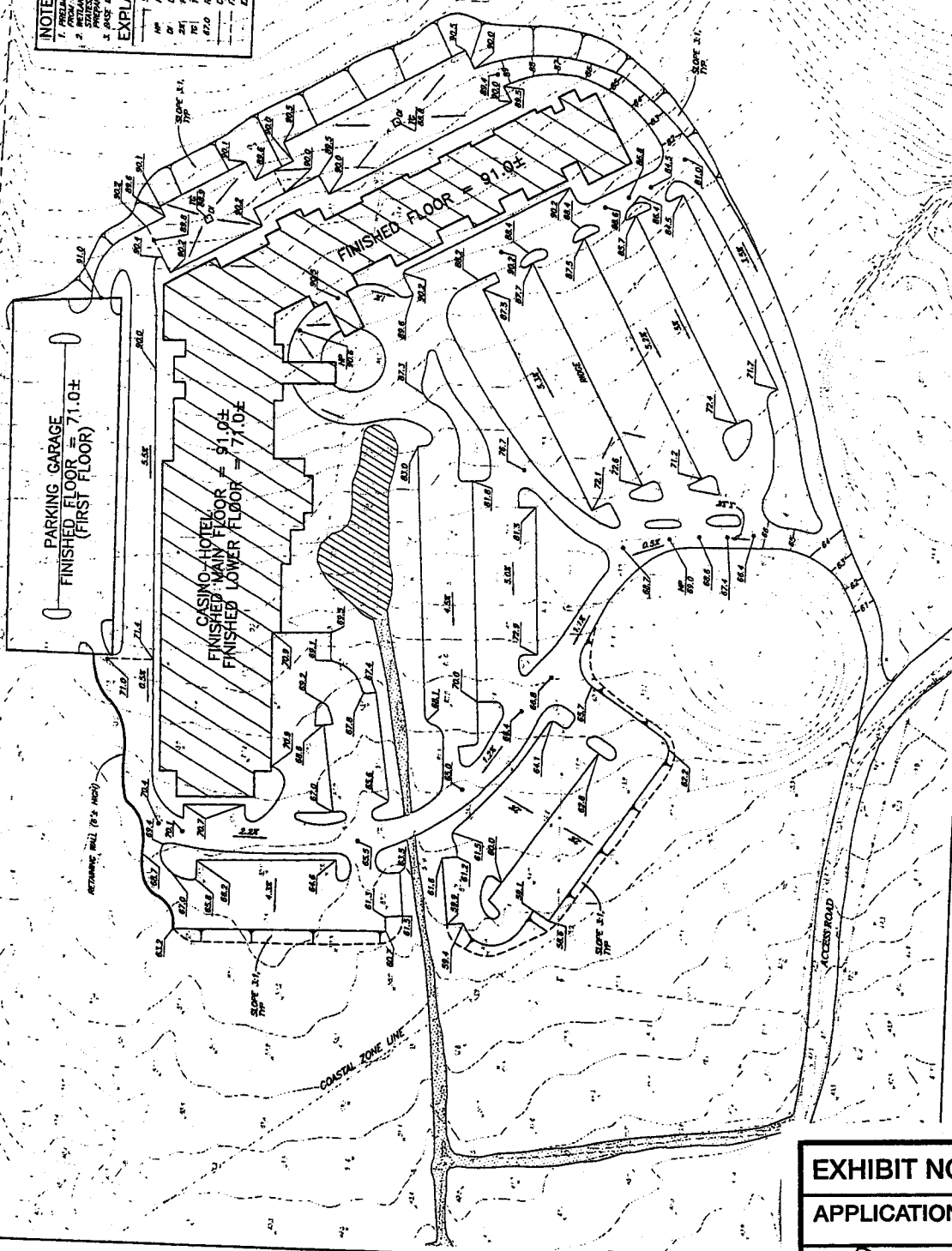
[illegible]

EXHIBIT NO. 6
APPLICATION NO.
CD-54-05

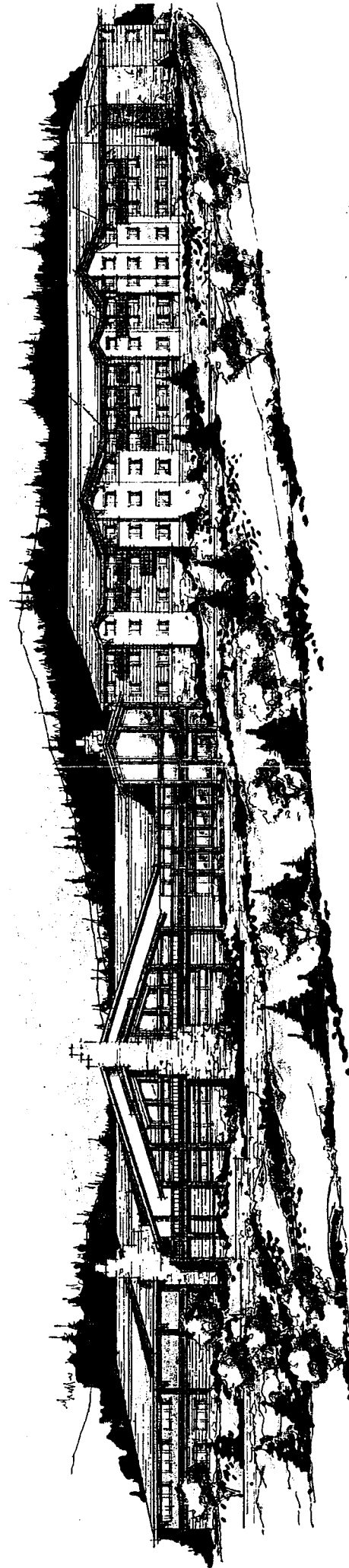


EXHIBIT NO. 7

APPLICATION NO.

CD-54-05

CONVENTION CENTER

PARKING STRUCTURE

HOTEL

CASINO

BINGO

NOT TO SCALE



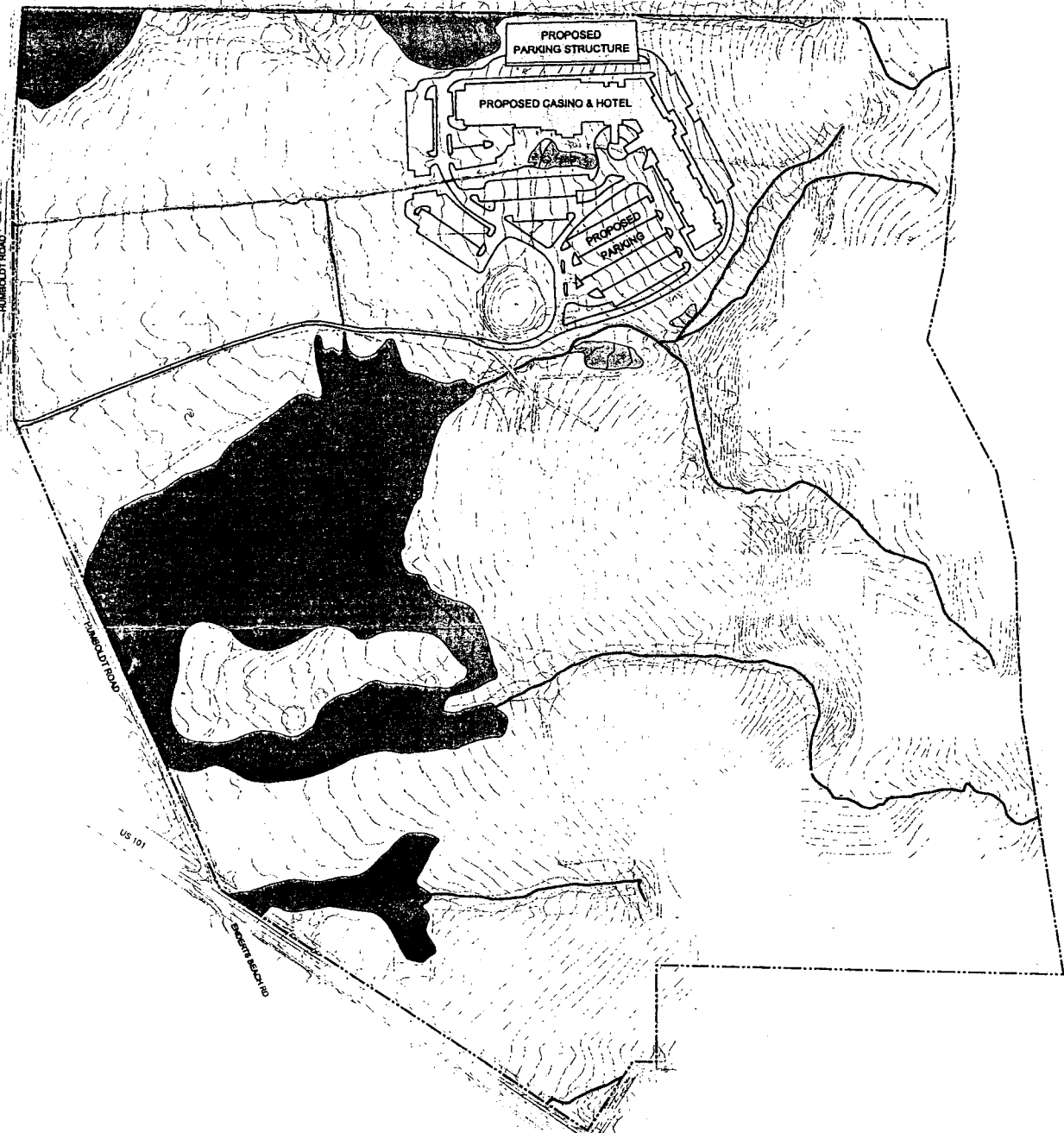
EXHIBIT NO. 8
APPLICATION NO.

CD-54-05

SOURCE: Group West Associates, 11/29/2004 : AES, 2004

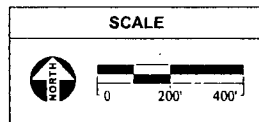
Elk Valley Rancheria Martin Ranch Project EIS / 202511 ■

Figure 2-2
Conceptual Floor Plan



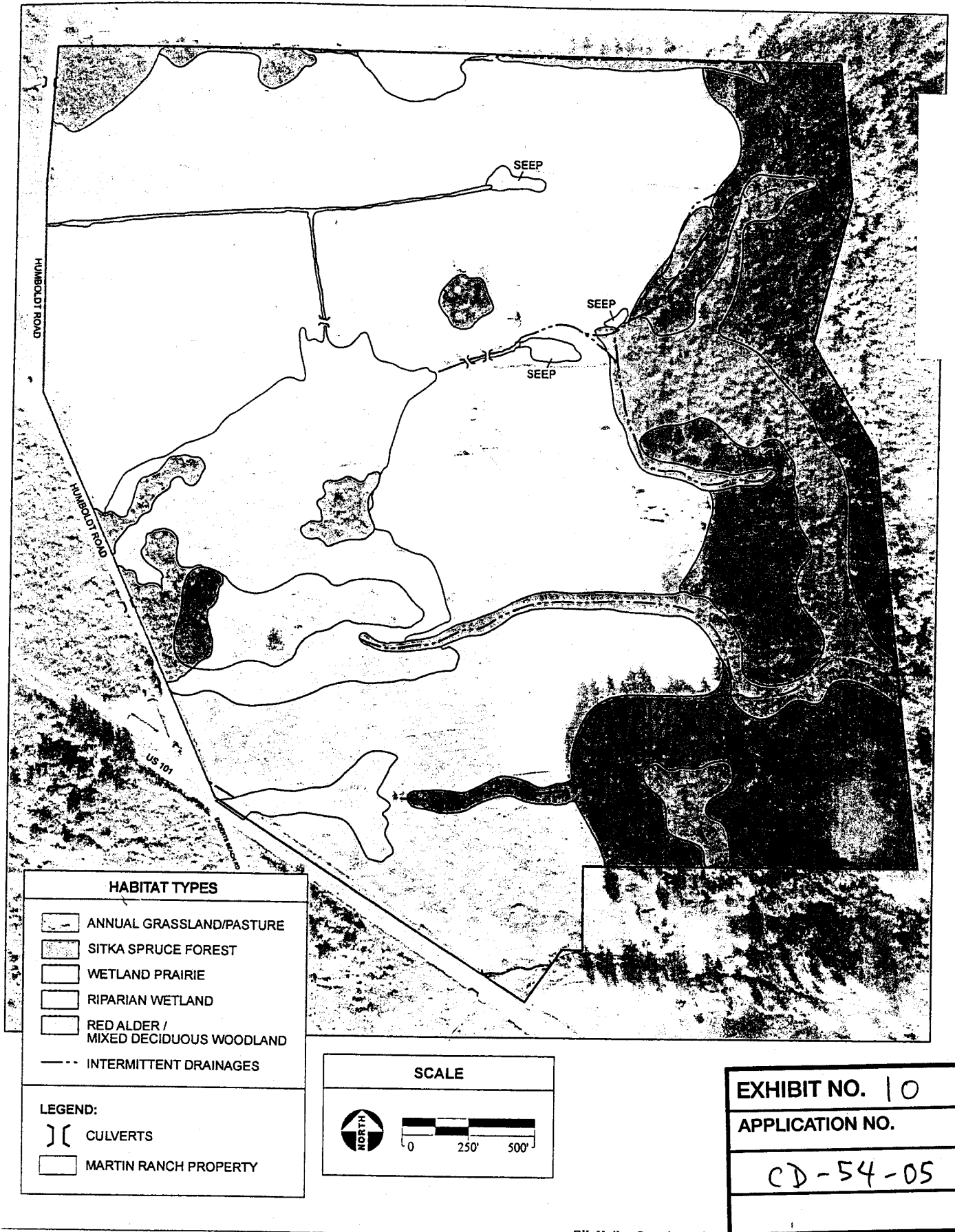
LEGEND	
SB ●	Data Point
	Proposed Project Areas
	10' Topographic Contours
WETLAND / WATER TYPES:	
	Stream
	Wetland
	Ditch
	Seep

Army Corps-defined Wetlands



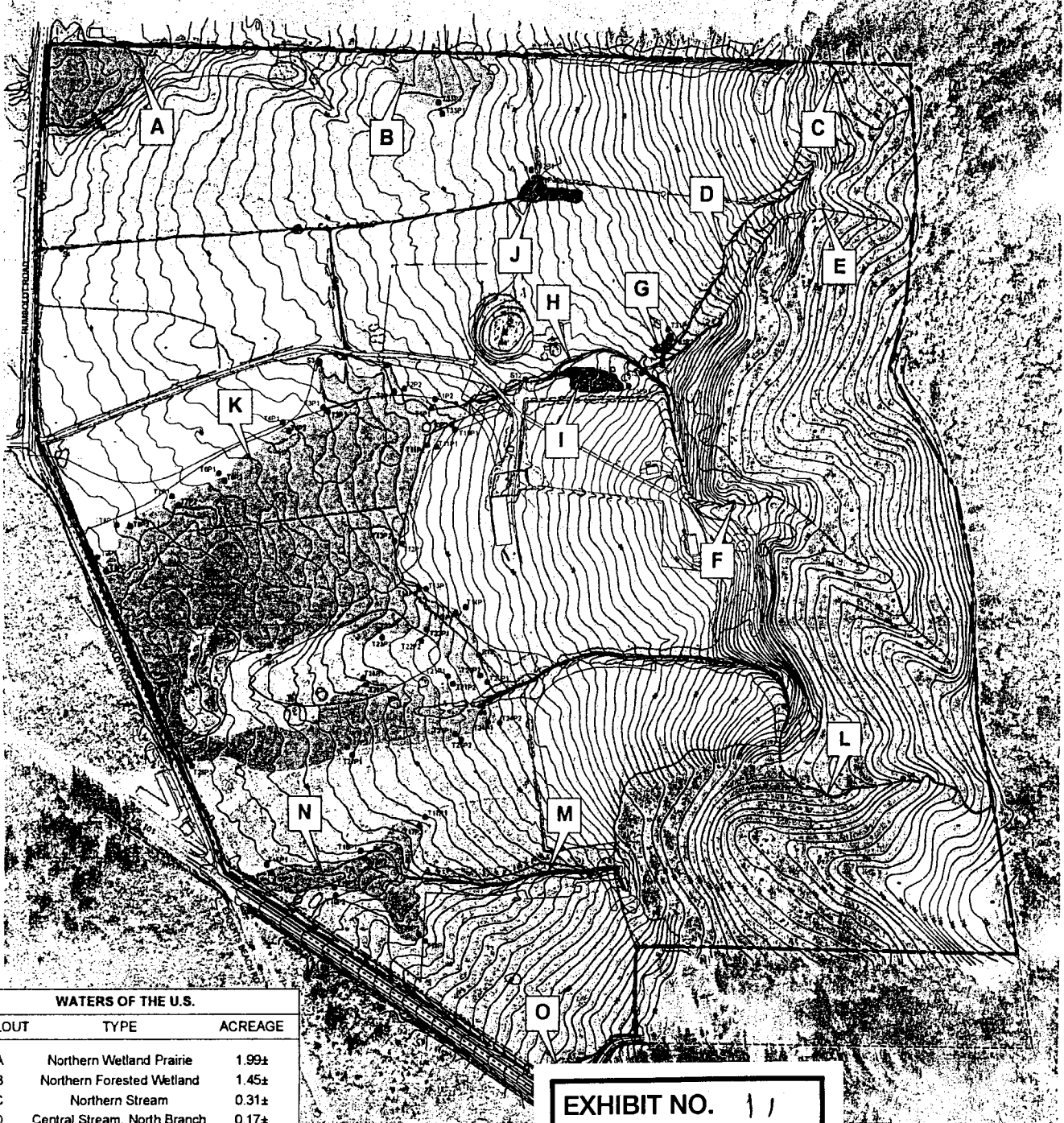
NOTE: Map Revised 4/2/2004

EXHIBIT NO. 9
APPLICATION NO.
CD-54-05



SOURCE: Aerial by Richard B. Davis Company, Inc. 2000 ; AES, 2004

Elk Valley Rancheria M



WATERS OF THE U.S.

CALLOUT	TYPE	ACREAGE
A	Northern Wetland Prairie	1.99±
B	Northern Forested Wetland	1.45±
C	Northern Stream	0.31±
D	Central Stream, North Branch	0.17±
E	Central Stream, Northeast Branch	0.19±
F	Central Stream, East Branch	0.29±
G	Seep	0.07±
H	Central Stream, Main Stem	0.15±
I	Seep	0.33±
J	Seep and Ditch Complex	0.74±
K	Main Wetland Prairie and Scrub	21.56±
L	South Central Stream	0.63±
M	South Stream	0.21±
N	South Wetland Prairie	2.18±
O	Southeast Stream	0.06±
TOTAL = 30.33±		

EXHIBIT NO. 11

APPLICATION NO.

CD-54-05

LEGEND

- Data Point
- ▭ Proposed Project Areas
- ▨ 10' Topographic Contours

WETLAND / WATER TYPES:

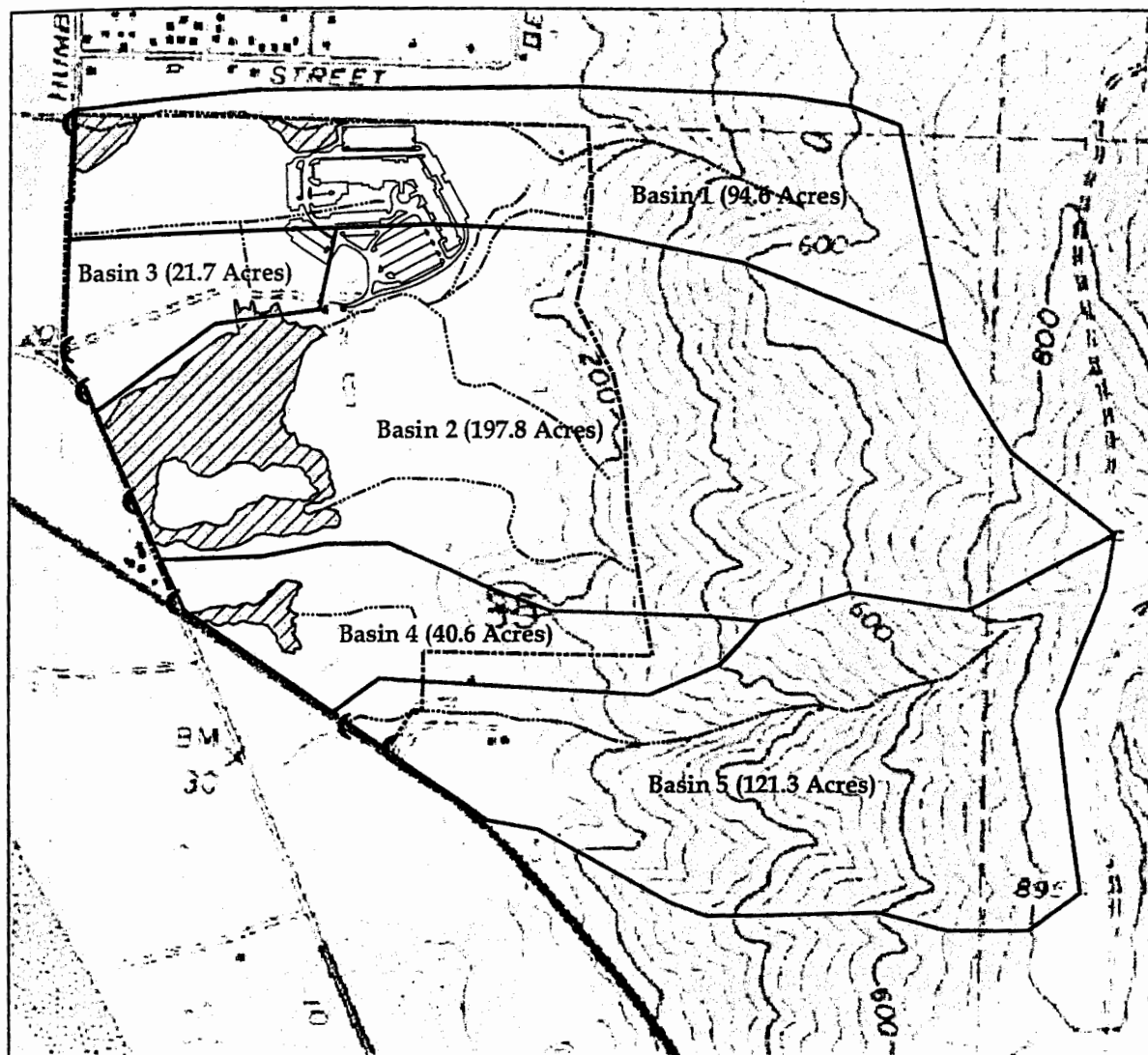
- ▭ Intermittent Drainage
- ▭ Wetland
- ▭ Ditch
- ▭ Seep

SCALE









DELINEATORS

Tim Armstrong, Heather Hinds,
John Miller, Mark Weustehube
November 2003 & February 2004



Explanation

-  Culverts
-  Drainage Areas
-  Site Boundary
-  Wetlands
-  Drainage Courses
-  Proposed Site Development

1 inch equals 1,000 feet
(Locations are approximate)

Data Sources:

1. Wetlands and drainage courses based on the "Delineation of the Waters of the United States, Elk Valley Rancheria Martin Ranch Fee-To-Trust Project", prepared by AES, Ma:
2. Sister Rocks, CA 7.5-minute Topographic Quadrangle (USGS, 1966)
3. Site plan based on revised layout provided by Group West Architects on December 3, 2

EXHIBIT NO. 12

APPLICATION NO.

CD-54-05

SEI
Consulting Engineers
& Geologists, Inc.

ELK VALLEY RANCHERIA'S
MARTIN RANCH FEE-TO-TRUST PROJECT
DEL NORTE COUNTY, CA

JANUARY 2000

Project Conditions
Site Map
JOB # 004301

J:\Projects\Elk Valley Rancheria

Figure 3

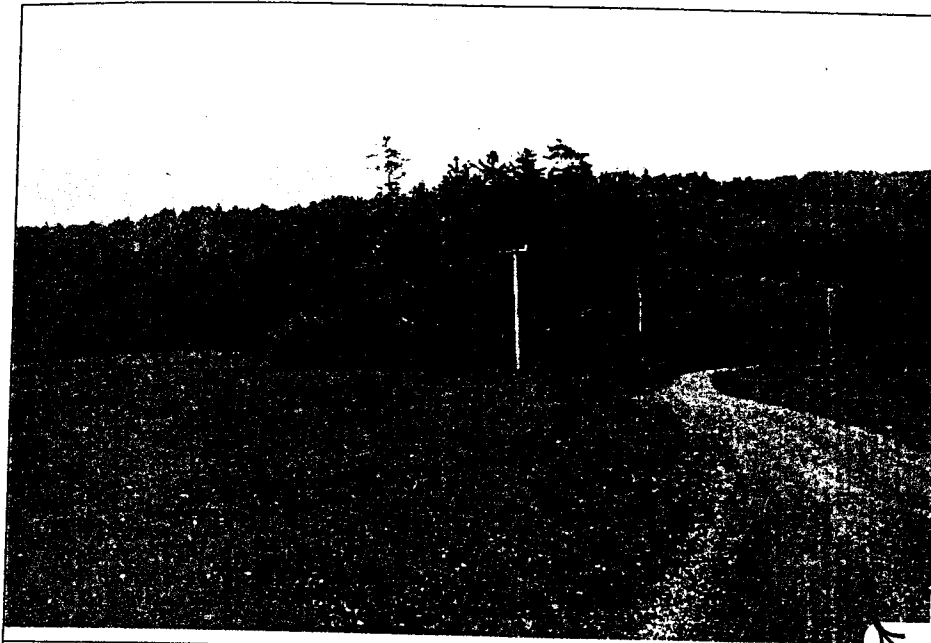
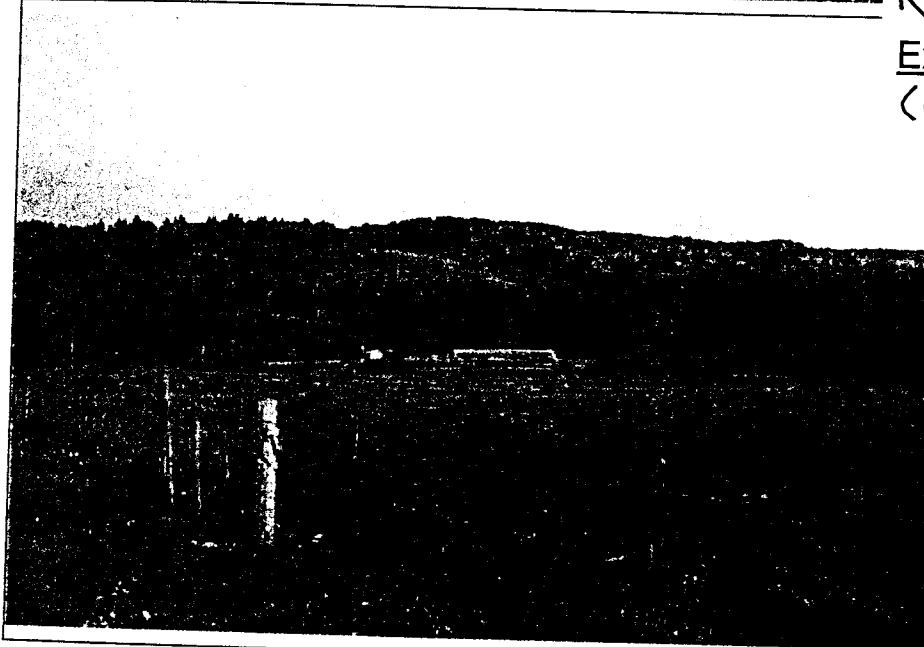


Photo 1. Site Location (1)
The proposed development will be located behind the knoll shown in the center of the photo. Note the existing access road on-site.



Existing Access Road
(Looking east)

Photo 2. Site Location (2)
This photo provides a general overview of the property. Note the forested hillsides in the background and the grass meadow in the foreground.

EXHIBIT NO. 13

APPLICATION NO.

CD-54-05



ORDINANCE NO. 00-23

AN ORDINANCE OF THE TRIBAL COUNCIL OF THE ELK VALLEY RANCHERIA ESTABLISHING AN ENVIRONMENTAL PROCEDURE FOR ASSESSING OFF-RESERVATION IMPACTS CAUSED BY THE CONSTRUCTION OF A NEW OR MODIFIED GAMING FACILITY.

The Tribal Council of the Elk Valley Rancheria ("Tribe") hereby ordains as follows:

Section 1. Findings and Declarations. The Tribal Council ("Council") for the Tribe finds and declares that:

1. The Tribe is a federally recognized Indian Tribe organized under the provisions of the Indian Reorganization Act, 25 U.S.C. §476, with a written Constitution establishing the Elk Valley Tribal Council as the governing body of the Tribe.
2. Pursuant to Article V, Section 1, of the Tribe's Constitution, the Council is vested with the authority to enact ordinances for the purposes of promoting the health and general welfare of the members of the Tribe, managing all tribal lands and natural resources, and managing all economic enterprises of the Tribe.
3. The Tribe is the owner and operator of the Elk Valley Casino which is presently located on land leased from a tribal member within the boundaries of the Elk Valley Reservation.
4. The Council contracted with Urban Systems Innovation Group for the purpose of preparing a comprehensive market study to determine the feasibility of constructing a new casino for the Tribe on land purchased by the Tribe and taken into trust outside the boundaries of the Reservation.
5. The market study has determined that a market exists to expand the Tribe's existing casino or build a new casino at a new location.
6. Based upon the market study, the Council has decided to expand the Tribe's

EXHIBIT NO. 14
APPLICATION NO.
CD-54-05

existing casino or construction a new casino on land that the Tribe has purchased outside of the boundaries of the Reservation.

7. On or about September 10, 1999, the Tribe entered into a Tribal-State Compact with the State of California, which authorized the Tribe to conduct Class III gaming on its Reservation. Section 10.8 of the Compact requires the Tribe "not less than ninety days prior to the commencement of a project, as defined herein" to "adopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of an environmental impact report concerning potential Off-Reservation Environmental Impacts of any and all projects to be commenced on or after the effective date of this Compact." Under Section 10.8.2 of the Compact, a project is defined as "any expansion or any significant renovation or modification of an existing Gaming Facility or any significant excavation, construction, or development associated with the Tribe's Gaming Facility or proposed Gaming Facility . . .".

8. The Council is adopting this Ordinance in order to satisfy the requirements of Section 10.8.1 of its Compact. By enacting and complying with this Ordinance, the Tribe has established a uniform policy for the preparation, circulation, and consideration by the Tribal Council of a document, which evaluates potential Off-Reservation environmental effects of any significant expansion, modification, or renovation of its casino or the construction of a new casino on its Reservation.

9. The goal of the environmental review process established herein is to ensure that, when the Tribal Council makes a final decision as to whether, and under what conditions to proceed with the construction of a new casino or with the renovation, modification, or expansion of its existing casino, it is fully informed regarding the potential Off-Reservation environmental effects of that project in making its decision and in evaluating alternatives, as well as the costs and benefits of the project, and its alternatives.

10. It is the policy of the Tribe to protect the natural environment, including the land, air, water, minerals, and all living things on the Reservation, and to take into account in the Tribal decision-making process the potential Off-Reservation effects of an on-Reservation casino development project undertaken by the Tribe.

11. While it is also an important policy of the Tribe to promote the economic development of the Reservation for the benefit of the Tribe and its members, the Council recognizes that development activities on the Reservation may have an Off-Reservation impact on the environment.

12. The Tribe, therefore, is establishing this comprehensive environmental review process for the purpose of identifying those potential Off-Reservation impacts and considering ways that those impacts could be mitigated by incorporating changes in the design of the project, including considering alternatives to the project.

13. The adoption of this Ordinance is in the best interests of the Tribe and its members.

Section 2. Adoption of a New Ordinance Entitled: "Gaming Facility Off-Reservation Environmental Assessment Ordinance." A new chapter 3 of Title 16 of the Elk Valley Tribal Code entitled "Gaming Facility Off-Reservation Environmental Assessment Ordinance" is hereby adopted and shall provide as follows:

Chapter 3

GAMING FACILITY Off-Reservation ENVIRONMENTAL ASSESSMENT

Sections:

- 16.03.010 Definitions.
- 16.03.020 Preparation of Report.
- 16.03.030 Distribution of Report.
- 16.03.040 Notice to the Public of Preparation of Report.
- 16.03.050 Meeting with County Board of Supervisors.
- 16.03.060 Public Comment Period.
- 16.03.070 Public Hearing on Report.
- 16.03.080 Decision on the Project.
- 16.03.090 Periodic Progress Reports on the Project.

16.03.010 Definitions. As used in this Ordinance, the following terms shall have the following meanings:

1. "Affected Local Agencies" means the County of Del Norte and any city or special district in the County in which Off-Reservation Environmental Impacts may occur or which may provide services to a Casino Project.
2. "Commencement of a Casino Project" means commencing any construction or development activity for a Casino Project that will cause a direct change in the physical environment.
3. "Compact Gaming" means any game authorized by the Tribal-State Gaming Compact between the State of California and the Elk Valley Rancheria, approved by the Assistant Secretary of Indian Affairs and published in the Federal Register on May 16, 2000, or any amendments to said Compact.
4. "Casino Project" means any significant excavation, construction, or development directly related to the construction of a Gaming Facility, or any significant renovation or modification of an existing Gaming Facility.
5. "Environment" means the physical conditions within the area which will be

affected by a Casino Project, including land, air, minerals, flora, fauna, noise, and objects of historic or aesthetic significance, including cultural resources.

6. "Gaming Facility" means any building in which Compact Gaming activities occur and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve Compact Gaming.

7. "Off-Reservation Environmental Impacts" means any physical change in the Environment outside the boundaries of the Elk Valley Indian Rancheria, which will be caused by a Casino Project.

8. "Report" means an informational document which has been prepared by the Tribe or a qualified consultant retained by the Tribal Council for that purpose, which describes the Casino Project, identifies all significant Off-Reservation Environmental Impacts directly caused by a Casino Project, discusses the nature and seriousness of each impact, considers alternative means of mitigating each impact and, to the extent feasible, discusses the views and comments of interested parties and governmental agencies on such impacts and their mitigation.

9. "Rancheria" or "Reservation" means all lands and waters within the exterior boundaries of the Elk Valley Indian Rancheria and any land the title of which is owned by the United States of America in trust for the Tribe.

10. "Tribal Council" or "Council" means the Tribal Council of the Elk Valley Rancheria.

11. "Tribe" means the Elk Valley Rancheria.

16.03.020 Preparation of Report. For every proposed Casino Project, the Tribal Council shall prepare, or cause to be prepared, a Report which shall include and evaluate all Off-Reservation Environmental Impacts to the extent deemed appropriate by the Tribal Council and any Off-Reservation Environmental Impacts identified by members of the public or Affected Local Agencies at the public meeting held pursuant to Section 16.03.070 below.

16.03.030 Distribution of Report. After the Report has been prepared, the Tribal Council shall provide copies of the Report to the Del Norte County Board of Supervisors and the California State Clearinghouse, in the office of Planning and Research, at least 45 days prior to commencement of the Casino Project described and evaluated in the Report. When furnishing a copy of the Report to the County and to the State Clearinghouse, the Tribal Council shall include a written notice inviting comments on the Report and offering to meet with the Board of Supervisors or its representatives to discuss mitigation of significant adverse Off-Reservation Environmental Impacts.

16.03.040 Notice to the Public of Preparation of Report. In addition to distributing the Report as provided in Section 16.03.030 above, the Tribal Council shall cause to be published in a

newspaper of general circulation serving the community of the Rancheria and the surrounding area a notice that the Report is available for inspection and copying during times and at locations set forth in the notice. The notice shall state how members of the public may obtain a copy of the Report. The Tribe may charge a reasonable fee for furnishing a copy of the Report to a member of the public. The notice shall invite comments on the Report and state that the Tribe will respond in writing to comments received within twenty (20) days of the date that the notice is published. The notice shall include the date, time, and location of the Tribal Council meeting at which members of the public may appear and comment on the Casino Project and the Report.

16.03.050 Meeting with County Board of Supervisors. The Tribal Council shall meet with the Board of Supervisors for the County of Del Norte or its authorized representatives to discuss mitigation of significant adverse Off-Reservation Environmental Impacts, if a written request for a meeting from the Board is received by the Tribal Council within twenty (20) days after the Report has been transmitted to the Board of Supervisors pursuant to Section 16.03.030 above.

16.03.060 Public Comment Period. The Tribal Council shall prepare, or cause to be prepared, responses to any written comments to the Report received from the public or any Affected Local Agency provided that the written comments are received within twenty (20) days after the Report is prepared and distributed in accordance with Section 16.03.030 above.

16.03.070 Public Hearing on Report. Either Tribal staff or a consultant retained by the Tribal Council for that purpose, shall submit to the Tribal Council the draft Report, along with any written comments received from the Affected Local Agencies or public and any responses prepared by Tribal staff or the engaged consultant in response to the comments. The Tribal Council will select a day, time, and place on the Rancheria for one public hearing on the Casino Project and the Report and will cause either its staff or the engaged consultant to give notice of the time, place, and location for this hearing to be published in the manner described in Section 16.03.040 above.

At the hearing, the Tribal Council will permit, subject to reasonable limitations, interested members of the public and Affected Local Agencies to present their views and comments on both the proposed Casino Project and the Report, after the Tribal staff or the engaged consultant makes a presentation as to the proposed Casino Project and Report and all written comments previously received.

16.03.080 Decision on the Project. At or after the conclusion of the hearing required by Section 16.03.070 above, if the Tribal Council is satisfied that all relevant information is before it in the forms of the Report, the previously received written comments and responses to comments, and the oral statements of those speaking at the public hearing, the Tribal Council may act on the proposed Casino Project by: (1) issuing a Finding of No Significant Impact ("FONSI") and proceeding with the Project; (2) direct either Tribal staff or the engaged consultant to consolidate all comments and views of both the Affected Local Agency and the public on the draft Report, with appropriate responses to all new information, and submit the consolidated final Report to the Tribal Council, after which the Tribal Council will take one of the actions described in this

section; (3) accept the Report as the final Report and proceed with the Casino Project but subject to a good faith effort to implement whatever conditions or further mitigation measures that the Tribal Council may deem desirable; (4) accept the draft Report but not proceed with the Casino Project at that time; or (5) reject the draft Report and not proceed with the Casino Project.

Whichever of the five (5) actions the Tribal Council may take will be in the form of a written Resolution which, taken together with all supporting documentation and information, shall constitute the Tribe's final decision on the Report and Casino Project. There will be no appeal from such action by the Tribal Council, whose action is final for the Tribe. To the extent that such actions are feasible and consistent with the Tribe's governmental interest, the Tribe will require a good faith effort to implement all mitigation measures recommended in the Report in any action to proceed with the Casino Project. Any such Resolution by which the Tribal Council proceeds with the Casino Project will include findings that state mitigation measures will be implemented, even if some of those mitigation measures are within the responsibility and jurisdiction of another agency.

16.03.090 Periodic Progress Reports on the Project. The Tribal Council shall send periodic reports to the Board of Supervisors for the County of Del Norte on the progress of the Casino Project, the frequency of which shall be determined by the Tribal Council based on the expected duration of construction of the Casino Project. The Tribe shall furnish no less than one progress report to the Board of Supervisors.

In addition, the Tribal Council shall publish or cause to be published in a newspaper of general circulation serving the Rancheria community periodic notices of Tribal Council meetings at which progress reports on the Casino Project will be made. The notice shall include the time, date, and location of the meeting. The Tribal Council shall determine the frequency of the notices and meetings based on the expected duration of construction of the Casino Project. The Tribal Council shall publish or cause to be published no less than one notice and conduct no less than one meeting at which a progress report will be made.

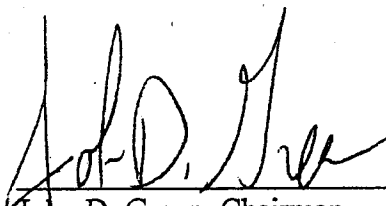
Section 3. Severability. If any part or provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

Section 4. Effective Date. This Ordinance shall become effective on the date that it is adopted by the Tribal Council.

CERTIFICATION


The foregoing Ordinance was adopted at a duly convened meeting of the Elk Valley Tribal Council held on the 18th day of October, 2000, by the following vote:

AYES: 7
NOES: 0
ABSENT: 0
ABSTAIN: 0



John D. Green, Chairman

ATTEST:



Brenda Blake, Secretary of the Tribal Council

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of this 22nd day of January 2002, by and between the ELK VALLEY RANCHERIA, a federally recognized Indian tribe ("Tribe") located at 440 Mathews Street, Crescent City, California 95531, and the COUNTY OF DEL NORTE, a political subdivision of the State of California ("County"), located at 981 H Street, Suite 200, Crescent City, California 95531. The Tribe and County shall be collectively referred to in this Agreement as the "Parties."

1.0 INTRODUCTION

- 1.1 The Tribe is a federally recognized Indian tribe which occupies a reservation ("Rancheria") within County's geographic boundaries.
- 1.2 The historical existence of the Tolowa comprising the contemporary citizenship of the Elk Valley Rancheria, which survived the Gold Rush and subsequent settlement of Del Norte County by non-Indians, has been documented by many historians and the U.S. Department of the Interior.
- 1.3 In 1908, the United States acquired approximately 200 acres, of the original 600,000 acres, in trust for the Elk Valley Rancheria.
- 1.4 In 1953, as part of a federal policy designed to assimilate the nation's Indians, the United States Congress enacted the California Rancheria Act, P.L. 85-671, authorizing the termination of federal trust responsibilities to a number of California Indian tribes, including the Elk Valley Rancheria.
- 1.5 On July 16, 1966, the federal recognition of the Elk Valley Rancheria was terminated and the lands comprising the Elk Valley Rancheria in Del Norte County was sold off to individuals.
- 1.6 In 1988, federal recognition of the Elk Valley Rancheria was restored as well as re-assumption by the U.S. Department of the Interior's trust responsibility for the Elk Valley Rancheria pursuant to a stipulated judgment.
- 1.7 Under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* ("IGRA"), the Tribe may engage in gaming as a means of raising tribal revenues and achieving self-sufficiency. "Class III gaming" requires that the Tribe enter into a Tribal-State Class III Gaming Compact with the State of California ("Compact").
- 1.8 In May 2000, a Compact executed between the Tribe and the State of California in September 1999 became legally effective. Among other things, the Compact authorizes the Tribe to engage in Class III gaming under IGRA and requires the Tribe to meet and confer with local governments on a government-to-government basis with respect to the construction and operation of a gaming project (including mitigation of off-reservation impacts) pursuant to the Compact.

EXHIBIT NO. 15

APPLICATION NO.
CD-54-05

- 1.9 The Tribe has determined that the kind of gaming project envisioned in the Compact would assist it in developing and funding tribal governmental programs which address the educational, elderly, medical, job training and employment needs of the Tribe, as well as funding other tribal governmental programs and benefits. Without a gaming project, such programs and benefits generally would be unavailable to the Tribe or its members, or if available, would only be provided from federal governmental sources that would render the Tribe dependent and insufficiently funded. The Tribe and its members desire to be economically viable and self-sufficient, and the kind of gaming project anticipated in this MOU and under the Compact provides the Tribe with that opportunity. Accordingly, the Tribe has determined that it is in its and its members' best interest to acquire additional land and place such property "in trust" for gaming and other economic development purposes and to relocate its existing casino to said property in order to assist the Tribe in reaching its economic needs and goals.
- 1.10 The Tribe desires to operate its gaming project in a manner that benefits the Tribe, its members and the community as a whole, and the County recognizes the mutual benefit that can be derived if that goal is achieved. Accordingly, the Tribe and the County have participated in a series of meetings with each other to hear and consider the ways in which each government can assist the other in making the project one that is mutually beneficial while being consistent with the Tribe's governmental needs.
- 1.11 This MOU embodies the concepts and agreements developed by the Tribe and the County to date as a result of those meetings and continuing dialogue, and is intended to legally bind the Parties to the obligations and government-to-government framework created in this MOU, so that the Project may better serve the mutual interests of the Tribe and the County and their communities.

NOW, THEREFORE, THE PARTIES HAVE REACHED THE FOLLOWING UNDERSTANDINGS:

2.0 DEFINITIONS

- 2.1 "Commencement Date" means the date the Tribe opens its gaming facility for commercial operation on the Property.
- 2.2 "County" means the County of Del Norte, a political subdivision of the State of California.
- 2.3 "Development" means a change in the density or intensity of use of land; construction, reconstruction, demolition, or alteration of any structure; the placement or erection of any solid material or structure, grading, or substantial surface or subsurface alteration of land.

2.4 "Enterprise" means the commercial gaming business of the Tribe authorized by the IGRA and the Compact and operated on the Property.

2.5 "Facility" means the buildings, improvements and fixtures hereafter located therein or thereon and housed on the Property and within which the Enterprise will be operated. Title to the Property and the Facility shall merge and be held by the United States of America in trust for the Tribe.

2.6 "IGRA" means the Indian Gaming Regulatory Act of 1988, P.L. 100-497, codified at 25 U.S.C. §§ 2701 *et seq.*, and as such may be amended from time to time.

2.7 "Impact Fees" means the funds described in Paragraph 11.1 of this MOU to be paid to the County in exchange for County services to be provided to the Property, including the Enterprise and the Facility.

2.8 "Project" means all Development contemplated by this MOU, including but not limited to the construction and operation of a Tribal casino, resort hotel, conference center or championship golf course.

2.9 "Property" or "Properties" means the parcel(s) of land described in Exhibit A, attached.

2.10 "Tribe" means the Elk Valley Rancheria, a federally recognized Indian tribe.

3.0 EFFECTIVE DATE OF MOU; EFFECT ON PREVIOUS MOUS; TERM

3.1 **Effective Date of MOU.** This MOU shall become effective immediately upon execution by the Parties.

3.2 **Previous MOUs Superseded.** County and Tribe previously entered into a Memorandum of Understanding dated May 9, 2000, describing Tribe's agreement to voluntarily contribute to the County a monetary amount equal to that which was lost due to placement of private property into tribal trust lands. Subject to Paragraph 11.0 of this MOU, to the extent that the May 9, 2000, Memorandum of Understanding is inconsistent with this MOU, it is hereby superseded and is no longer of any force or effect upon the effective date of this MOU.

3.3 **Term.** This MOU shall be in full force and effect until December 31, 2030, or until the Tribe ceases gaming pursuant to the Compact referred to in Section 1.3 of this MOU, whichever is sooner.

4.0 DESCRIPTION OF PROJECT

4.1 **Land to be Taken into Trust.** The Tribe has requested the United States to take into trust for its benefit the parcels described in Exhibit A (the "Properties").

- 4.2 Class III gaming will be conducted only on Rancheria land or on land which otherwise qualifies for Class III gaming under IGRA Section 20, 25 U.S.C. § 2719.
- 4.3 The proposed site for gaming consists of approximately 200 acres of land located near Highway 101 and Humboldt Road – commonly known as the Martin Ranch. The Tribe has applied to the federal government to acquire said Property “in trust” and to use said site for the Project.
- 4.4 **Civil Jurisdiction.** The parties recognize and agree that, upon acceptance of the Property in trust for the Tribe by the United States, the Tribe shall exercise full civil jurisdiction over the Property, including jurisdiction over Gaming pursuant to the IGRA, except as otherwise provided by applicable federal law, the Compact, or this agreement.

5.0 ENVIRONMENTAL STUDY

- 5.1 Pursuant to Section 10.8 of the Compact, the Tribe adopted an Off-Reservation Impact Ordinance which addresses the process for reviewing any off reservation environmental impacts of the Project. In accordance with that Ordinance, an appropriate environmental study will be prepared and circulated to various state and local governmental agencies, and comments received will be considered by the Tribe.
- 5.2 In addition to the formal process outlined in the Ordinance, early informational meetings between the Tribe and various local agencies will be held.
- 5.3 **No Application of CEQA.** The Tribe’s environmental review process is not governed by the California Environmental Quality Act (CEQA), and the Tribe does not agree to submission of any of its projects for discretionary approvals by the County. The Tribe shall be responsible for compliance with the National Environmental Policy Act (NEPA).

6.0 DEVELOPMENT CONSISTENT WITH COUNTY’S GENERAL PLAN

- 6.1 The Tribe has adopted a comprehensive Zoning Ordinance, a copy of which is hereby incorporated by reference and attached hereto as Exhibit B. On or before the effective date of this MOU, the Tribe shall zone the Property Planned Unit Development under its Zoning Ordinance. The Tribe shall give thirty (30) days’ advance notice to the County of the meeting/hearing (“Hearing”) at which the Tribal Council for the Tribe, sitting as the Tribal Planning Commission will consider adoption of a specific plan (“Plan”) for the development of the Property under the Tribe’s Zoning Ordinance. The County shall have the right to review and comment on the Plan and to be present at and submit documents and testimony to the Tribal Planning Commission on the Plan at the Hearing. The Tribal Planning Commission shall, in good faith, consider the County’s comments

and shall make reasonable effort to incorporate the County's comments or recommendations into the Plan. The Plan adopted by the Tribal Planning Commission shall be reasonably consistent with the County's General Land Use Plan subject to the Tribe's purposes in entering into this MOU.

7.0 LAW ENFORCEMENT; PROSECUTION; FIRE; AND EMERGENCY SERVICES

- 7.1 Criminal Jurisdiction.** As a matter of federal law, Public Law 280, most state criminal laws continue to apply on Indian trust lands and the County's Sheriff's Department retains jurisdiction over the enforcement of those laws. The Sheriff shall have authority to enforce all state criminal laws on the Property, except state gambling laws, in the same manner and to the same extent as the Sheriff has such jurisdiction elsewhere in the County. The Tribe and County hereby agree to jointly discuss and develop a protocol prior to opening of the gaming facility regarding notification of the Tribe by the Sheriff's Department regarding entry of the property and investigation or enforcement of state criminal laws.
- 7.2** The Tribe hereby consents to the entry of the Sheriff's Department on the Property for purposes of providing those routine law enforcement services (e.g., service of process) as to which entry is required under Public Law 280. The Sheriff's Department shall seek the Tribe's permission to enter onto the Property for purposes other than such routine services.
- 7.3** All prosecutions for violations of law at the Property and within the Facility itself shall be conducted by the District Attorney for County in state court without regard to whether the charges are filed against Indians (including members of the Tribe) or non-Indians, except as such distinctions are recognized under law.
- 7.4** The Tribe shall have the right to name a liaison person with whom the District Attorney for County may consult with regarding such prosecutions, but prosecutorial decisions and strategies shall be exclusively within the discretion of the District Attorney for County.
- 7.5 Emergency Services.** County shall provide emergency response services to the Project on the same basis and to the same extent it does with respect to the citizens and businesses within the County.
- 7.6 Fire Services.** Crescent Fire Protection District shall provide fire response services to the Project. Should County in the future be responsible to provide fire response services to the Project, County shall provide such services on the same basis and to the same extent it does with respect to the citizens and businesses within the County.

8.0 SEWER, WATER, AND INFRASTRUCTURE IMPROVEMENTS

8.1 The Tribe is responsible for providing or otherwise obtaining all on-site water and sewer services for the Project by contracting as follows:

8.1.1 For water, with the Bertsch Oceanview Community Services District or other sources (including the Tribe); and

8.1.2 For sewer services, with the existing County Service Area #1 sewage collection system or other sources (including an independent sewage treatment plant constructed by the Tribe).

8.2 **Roads.** The Tribe will mitigate traffic and circulation issues in conformity to County's requirements. The Tribe agrees to pay all required traffic mitigation fees consistent with County fee programs/ordinances; provided that the Tribe shall not be required to pay any fees for the development which would not customarily be required of a non-tribal developer.

8.2.1 **Highway 101; County Road Improvements.** Traffic impacts from the Project may affect U.S. 101 which is under the jurisdiction of Caltrans. Tribe agrees to work with Caltrans and the County to ensure these impacts are mitigated as needed.

8.2.2 **County Road Improvements. Intersection of U.S. 101 and Humboldt Road.** Tribe will provide improvements to the intersection of U.S. 101 and Humboldt Road. Improvements shall be made according to current Caltrans and County construction and design standards, and require Caltrans and County permits, as appropriate. Improvements may include a right-turn deceleration lane for northbound vehicles, a southbound left-turn lane, and associated directional signage and road striping. Tribe will be responsible for the full cost of the actual improvements. Tribe will perform necessary traffic studies, designs, and permit applications.

(b) **Intersection of U.S. 101 and Sandmine Road.** Tribe will provide improvements to the intersection of U.S. 101 and Sandmine Road. Improvements shall be made according to current Caltrans and County construction and design standards, and require Caltrans and County permits, as appropriate. Improvements may include sight distance improvements and signage.

8.2.3 **Intersection of Humboldt Road, Sandmine Road and Tribe's Project Driveway.** Tribe shall provide frontage improvements at the intersection of Humboldt Road, Sandmine Road and the Tribe's Project Driveway.

8.2.4 Tribe will be responsible for reasonably complying with approved plans and specifications and will make any reasonable changes as requested by

County staff following construction inspections.

- 8.2.5 County will perform a final inspection of road improvements to verify construction according to County approved permits.
- 8.2.6 Where County is responsible for the balance of project costs beyond the amounts to be paid by Tribe under this Agreement, County will rely upon and will obtain those funds from typical County capital project funding sources such as contributions from new development projects, e.g., Federal Highway Administration (FHWA), Gas Tax, etc.
- 8.2.7 County shall use best efforts to secure funds from the Special Distribution Fund (as provided in the Compact) to mitigate off-reservation impacts of the Project, if any.
- 8.3 **Parity of Municipal Obligations.** The parties intend that the scope of obligations and liabilities of the County to the Tribe and its Enterprise or Facility regarding municipal services shall be on a parity with those obligations and liabilities which normally operate with respect to the citizens and businesses within the jurisdiction of the County.
- 8.4 All approvals required by this section shall not be unreasonably withheld, delayed or conditioned, and the standards referred to in this section shall be substantially identical to those applied to similarly situated users.

9.0 BUILDING AND SAFETY STANDARDS AND SERVICES

- 9.1 The Tribe shall construct the Project in accordance with the then current Uniform Building Code (as adopted at the time of commencement of Development) or as otherwise approved by the Tribe.
- 9.2 The County shall assist the Tribe in implementing the aforesaid building standards by:
 - 9.2.1 Assigning a building inspector as needed on-site to conduct inspections on a timely basis.
 - 9.2.2 By agreeing to the provisions of this Paragraph 9.0, the Tribe is not consenting to the jurisdiction of the County Department of Community Development to enforce County's Building Code or any other local regulation on the Property or against the Tribe. Subject to Paragraph 13.1, the Tribe shall defend, indemnify, and hold harmless the County, its officials and employees, from and against all claims, lawsuits, liabilities and damages arising directly or indirectly out of any inspection conducted pursuant to this Paragraph 9.0 or arising directly or indirectly from any decision by the Tribe to deviate from the County's Building Code or other

local regulation in the Development of the Property.

10.0 FOOD FACILITIES

- 10.1 The Tribe shall adhere to the California Uniform Retail Food Facilities Law and any applicable County ordinances regarding food handling and preparation when operating any facility located on the Property which sells or gives away any food and/or beverages to any persons.
- 10.2 The County Health Department shall conduct all required inspections of the food and beverage facilities located on the Property. Said inspections shall include, but are not limited to, plan checks, on-site inspections, and start up certifications. The generally applicable inspection fees provided for by the County's Master Fee Ordinance shall be paid to the County's Health Department at the time of each inspection or service. By agreeing to the provisions of this Section, the Tribe is not consenting to the jurisdiction of the County to enforce said standards. Subject to Paragraph 13.1, the Tribe shall defend, indemnify, and hold harmless the County, its officials and employees, from and against all claims, lawsuits, liabilities and damages arising directly or indirectly out of any inspection conducted pursuant to this Paragraph 10.0 or arising directly or indirectly from any decision by the Tribe to deviate from the California Uniform Retail Food Facilities Law or related County ordinances in the operation of food or beverage facilities on the Property.

11.0 IMPACTS ON COUNTY SERVICES

- 11.1 **Impact Fees.** If the Tribe is successful in its application for the United States to take the property into trust for gaming purposes, the Tribe shall pay Impact Fees to the County on an annual basis as described in this Paragraph 11.1 in the following amounts:
- (a) Three thousand six dollars (\$3,006) from the date the Property is accepted in trust by the United States until the Commencement Date, which amount represents three-tenths of one percent (.3%) of the assessed value of the Property.
 - (b) Commencement Date through the third anniversary of the Commencement Date: \$25,000.
 - (c) Fourth anniversary of the Commencement Date through the seventh anniversary of the commencement date: \$50,000.
- 11.1.1 **Schedule of payments.** All payments shall be made annually in arrears, the first payment to be made on the fifteenth day of the next month following the acceptance of the Property in trust by the United States and thereafter on or before January 1st of each year following the

Commencement Date.

- 11.1.2 **Re-Negotiations of Payments.** Following the seventh anniversary of the Commencement Date, the parties shall negotiate in good faith regarding continuing payments by the Tribe to the County, provided, however, that in no event shall the agreed-upon payment be less than the amount Section 11.1(c) of this MOU or exceed \$90,000 for the remaining term of this MOU.
- 11.1.3 **Imposition of Property Tax.** In the event that the Property is determined by a final decision of a court of competent jurisdiction to be subject to County's property tax, Tribe agrees to pay said tax; *provided, however*, that nothing herein shall waive the Tribe's right to challenge any related assessment or tax; and *provided further* that the provisions of Paragraphs 11.1, 11.1.1 and 11.1.2 shall immediately be of no further force or effect upon a determination that the Property is subject to County's property tax; *provided further*, that upon a final determination that Property is subject to property tax, Impact Fees previously paid during the period for which property taxes are assessed shall be re-characterized as property tax and credit given for such payments.
- 11.1.4 **Status Under Federal Law – No Liens on Property.** This MOU does not constitute, create or convey an interest or encumbrance in real estate and shall not be recorded in any real estate records. In the event of default by the Tribe hereunder, the County's remedies, other than remedies granted for the purpose of enforcing the Tribe's agreement to arbitrate as herein provided, or for injunctive relief or specific performance to the extent specifically permitted in Paragraph 14, shall be strictly limited to an award or money judgment for damages against the Tribe's interest in the assets identified in Paragraph 14.5.5(a). The Tribe is not granting to or conferring upon the County any regulatory authority with respect to the Properties, Facility or Enterprise which is inconsistent with applicable federal law.
- 11.2 **Transient Occupancy Tax.** If the Tribe is successful in its application for the United States to take the property into trust for gaming purposes, the Tribe shall adopt an ordinance imposing a transient occupancy or bedroom tax on all non-Tribal members who use or occupy any room in any hotel constructed by the Tribe on the Property. The rate of the tax shall be ten percent (10%) of the room rate. The Tribe shall levy and collect the tax and remit ninety percent (90%) of the tax revenues to the County. The Ordinance adopted by the Tribe pursuant to this paragraph shall be in substantially the same form and contain substantially the same provisions as the County's Transient Occupancy Tax Ordinance and shall remain in effect at all times that the Tribe operates a hotel or otherwise makes available rooms to rent.
- 11.3 **Sales, Use & Motor Fuels Tax.** If applicable federal, state, or local law exempts

the Tribe from collecting or remitting to the State of California or the County any state or local sales, use, motor fuels or gasoline tax resulting from any sale to any non-Indian, the Tribe shall enact a Tribal ordinance imposing its own Tribal sales, use, or motor fuels tax and the Tribe shall pay to the County, that portion of the Tribal sales, use or motor fuels tax, that the County would have received if the Tribe had not been granted the exemption.

12.0 SUPPORT FOR TRUST APPLICATION

- 12.1 In consideration for the obligations undertaken by the Tribe herein, the County shall provide correspondence demonstrating the County's support for the Tribe's land into trust applications to the United States Department of Interior, Bureau of Indian Affairs ("BIA"), the State of California and any other governmental agencies or officials whose approval or cooperation must be obtained, as reasonably requested by the Tribe, and shall actively support and do all things reasonably necessary, including but not limited to sending letters, attending meetings and responding to inquiries related to said application, in a form and manner that is consistent with the intent of this Section 12.1.

13.0 LIMITED WAIVER OF SOVEREIGN IMMUNITY

- 13.1 The Tribe agrees to waive its sovereign immunity in favor of the County and no other as to the enforcement of the Tribe's obligations under this MOU. No claims for damages, other than the recovery of payments expressly provided for herein, are contemplated by this limited waiver of sovereign immunity. No other waiver of immunity shall be deemed to be granted, either expressly or impliedly, under this MOU. This waiver shall not be deemed to run in favor of any third party, nor shall this MOU be deemed to be a third-party beneficiary contract of any kind except as to those specific governmental agencies provided for herein. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity consistent with this section and in substantially identical form as attached hereto as Exhibit C.
- 13.2 The County agrees to submit all disputes arising pursuant to this MOU to Arbitration, and agrees to waive any jurisdictional immunities it might otherwise enjoy or be entitled to assert which might prevent an arbitrator from hearing or deciding, or a court from enforcing, an arbitration award or order.
- (a) The County consents to be sued in any of the following: the Superior Court of California in Del Norte County, the California Court of Appeals for the First District, the California Supreme Court, the United States District Court for the Northern District of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court ("Forum Courts"). The parties agree that suit may be brought in any of the Forum Courts for the purpose of compelling compliance with the provisions of this MOU by injunctive relief or specific performance or

compelling arbitration or enforcing any arbitration award or judgment arising out of this MOU.

- (b) The Tribe and the County prefer to have disputes resolved by arbitration as provided in this Paragraph 13. Only to the extent that arbitration does not provide an effective remedy, the parties agree that disputes arising out of the provisions of this MOU shall first be presented to the Forum Courts as hereinafter provided. After a final determination that jurisdiction does not lie with the Forum Courts, and that the only effective jurisdiction lies with the Tribal Court, if and after it is established, the parties agree that the Tribal Court shall then hear and decide the matter.

14.0 DISPUTE RESOLUTION

14.1 Meet and Confer Process.

In the event the County or the Tribe believes that the other has committed a possible violation of this MOU, it may request in writing that the parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within fifteen (15) days of the date of service of said request provided that if the complaining party believes that the problem identified creates a threat to public health or safety, the complaining party may proceed directly to arbitration as provided in Paragraph 14.5 below.

14.2 Notice of Disagreement.

If the complaining party is not satisfied with the result of the meet and confer process, the complaining party may provide written notice to the other identifying and describing any alleged violation of this MOU ("Notice of Disagreement"), with particularity, if available, and setting forth the action required to remedy the alleged violation.

14.3 Response to Notice of Disagreement.

Within fifteen (15) business days of service of a Notice of Disagreement, the recipient shall provide a written response either denying or admitting the allegation(s) set forth in the Notice of Disagreement, and, if the truth of the allegations are admitted, setting forth in detail the steps it has taken and/or will take to cure the violations. Failure to serve a timely response shall entitle the complaining party to proceed directly to arbitration, as provided in Paragraph 14.5 below.

14.4 Threats to Public Safety.

If the County or the Tribe reasonably believes that in violation of this MOU the other's conduct has caused or will cause a significant threat to public health or

safety, resolution of which cannot be delayed for the time periods otherwise specified in this section, the complaining party may proceed directly to the Arbitration Procedures set out in Paragraph 14.5 below, without reference to the Meet and Confer or Notice of Disagreement processes set out in Paragraphs 14.1, 14.2 and 14.3 above, and seek immediate equitable relief. At least twenty-four (24) hours before proceeding in this manner, the complaining party shall provide to the other a written request for correction and notice of intent to exercise its rights under this Paragraph 14.4, setting out the legal and/or factual basis for its reasonable belief that there is a present or an imminent threat to public health or safety.

14.5 Binding Arbitration Procedures.

Subject to prior compliance with the Meet and Confer process set out above in Paragraph 14.1, and the Notice and Response process in Paragraphs 14.2 and 14.3 above, and except as provided in Paragraph 14.4, either party has the right to initiate binding arbitration to resolve any dispute arising under this Agreement. The arbitration shall be conducted in accordance the following procedures:

14.5.1 The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules.

14.5.2 The arbitration shall be held in Crescent City, California, unless otherwise agreed. The arbitrator shall be empowered to grant compensatory, equitable, and declaratory relief. The provisions of California Code of Civil Procedure § 1283.05 are incorporated into, and made a part of this MOU; *provided, however*, that no discovery authorized by said section may be conducted without leave of the arbitrator, who shall decide to grant leave based on the need of the requesting party and the burden of such discovery in light of the nature and complexity of the dispute.

14.5.3 If either party requests an oral hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing.

14.5.4 The resulting award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The costs and expenses of the American Arbitration Association and the arbitrator shall be shared equally by and between the parties.

14.5.5 Limitation of Actions. The Tribe's waiver of immunity from suit is specifically limited to the following actions and judicial remedies:

- a) Damages. The enforcement of an award of money and/or damages by arbitration; provided that the arbitrator(s) and/or the court shall have

no authority or jurisdiction to order execution against any assets or revenues of the Tribe except: (i) undistributed or future Net Revenues of the Enterprise; (ii) the future Net Revenues of any other gaming operations conducted by the Tribe; (iii) the assets of the Enterprise itself. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Tribe other than the limited assets of the Tribe specified in this Section.

- b) Consents and Approvals. The enforcement of a determination by an arbitrator that either party's consent or approval has been unreasonably withheld contrary to the terms of this MOU.
- c) Injunctive Relief and Specific Performance. An action that prohibits any party ("non-performing party") from taking any action that would prevent the other party ("performing party") from performing any duty or obligation pursuant to the terms of this MOU, or that requires any party ("non-performing party") to specifically perform any obligation under this MOU (other than an obligation to pay money which is provided for in subsection (a) above).
- d) Action to Compel Arbitration. An action to compel arbitration pursuant to this Paragraph 14.
- e) Action to Preserve the Status Quo During Disputes. An action to preserve the status quo during disputes pursuant to Paragraph 14.

Those actions specified in subsections c), d) and e), above may be judicially initiated.

15.0 JUDICIAL REVIEW

- 15.1 The parties consent to judicial confirmation and enforcement of any award in arbitration, which enforcement shall be in the United States District, Northern District of California, if it has jurisdiction over the dispute, and if not in the Superior Court of the State of California, County of Del Norte. Service of process in any such judicial proceeding is waived in favor of delivery of court documents by Certified Mail - Return Receipt Requested to the following:

FOR THE TRIBE:

Tribal Chairman
Elk Valley Rancheria
440 Mathews Street
Crescent City, CA 95531
Telephone: (707) 464-4680
Facsimile: (707) 464-4519

FOR THE COUNTY:

Chair, Board of Supervisors
County of Del Norte
981 H Street, Suite 200
Crescent City, CA 95531
Telephone: (707) 464-7204
Facsimile: (707) 464-1165

With a copy to:

Bradley G. Bledsoe Downes
Dorsey & Whitney LLP
650 Town Center Drive, Suite 1850
Costa Mesa, California 92626
Telephone: (714) 662-7300
Facsimile: (714) 662-5576

With a copy to:

County Counsel
County of Del Norte
981 H Street, Suite 220
Crescent City, California 95531
Telephone: (707) 464-7208
Facsimile: (707) 465-0324

16.0 MISCELLANEOUS

- 16.1 **Amendment or Modification.** This MOU may be modified or amended only by a written instrument executed by the Tribe and the County, pursuant to the same authorizations used to execute this MOU in its original form.
- 16.2 **Entire Agreement.** This MOU is the entire agreement between the parties and supersedes all prior written and oral agreements, if any, with respect to the subject matter hereof.
- 16.3 **Time for Annual Payments.** Unless otherwise provided herein, with regard to annual payments required under this MOU, the time for the delivery to the County of such payments shall be no later than January 1st of each calendar year. Payments should be made payable to the "County of Del Norte" and sent to the Tax Collector's Office, County of Del Norte, 981 H Street, Suite 150, Crescent City, California 95531.
- 16.4 **Severability.** Except as otherwise provided in this Paragraph 16.4, the invalidity of any provisions or portion of a provision of this MOU as determined by a court of competent jurisdiction shall not affect the validity of any other provisions of this MOU or the remaining portions of the applicable provisions. If any provision of this MOU is declared invalid by a court of competent jurisdiction which results in the diminution of any payments or financial obligations of the Tribe to the County, then the parties shall use their best efforts to renegotiate the terms of the invalid provisions; in the event that the parties are unable to successfully renegotiate the invalid terms, then they shall resolve the matters at issue through the dispute resolution provisions of this MOU.
- 16.5 **Force Majeure.** In the event of a forced delay in the performance by either party of obligations under this MOU due to the closure of the Project, acts of God or of the public enemy, acts of inaction of the other party or its employees or agents, strikes, lockouts, unusual delay in transportation, unavailability of materials, fires, floods, catastrophic weather or other natural disasters, epidemics, riots, insurrection, war or unavoidable casualties or a change in application gaming laws or the Compact materially diminishing the economics of the Project as anticipated at the time this MOU was executed, the time for performance shall be adjusted or extended, or in the case of a material diminishment in the Project,

renegotiated, in light of such changed circumstances.

- 16.6 **Obligations to Continue During Term.** Unless specifically designated otherwise, all of the parties' obligations under this MOU shall continue throughout the term of this MOU.
- 16.7 **Governing Law.** This MOU shall be construed pursuant to the applicable federal laws and the laws of the State of California.
- 16.8 **Mutual Good Faith.** Throughout the term of this MOU, the parties agree to exercise good faith and to observe the covenants contained herein.
- 16.9 **No Third Party Beneficiaries.** This MOU is not intended to, and shall not be construed to, create any right on the part of a Third Party to bring an action to enforce any of its terms.
- 16.10 **Standard of Reasonableness.** Unless specifically provided otherwise, all provisions of this MOU and all collateral agreements shall be governed by a standard of reasonableness.
- 16.11 **Plain Meaning.** Where terms, phrases or words are not defined, they shall have their ordinary accepted meanings within the context with which they are used. The edition current on January 2002 of Webster's Third New International Dictionary of the English Language, Unabridged shall be considered as providing ordinarily accepted meanings.
- 16.12 **Captions.** The captions of each paragraph, section, or subsection of contained in the MOU are for ease of reference only and shall not affect the interpretation or meaning of this MOU.
- 16.13 **Preparation of MOU.** This MOU was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against either party. This MOU may not be unilaterally amended and shall be strictly construed as set forth herein to accomplish the purposes of the MOU.
- 16.14 **Authorization.** Chairman, Dale Miller, has been authorized by an appropriate resolution of the Elk Valley Tribal Council to execute this MOU pursuant to the Tribe's Constitution, which authorizes the Tribal Council to enter into agreements with local governments to promote the health and general welfare of the Tribe. The County warrants that the Chairman of the County Board of Supervisors, by appropriate resolution of the Board of Supervisors, has been authorized to execute this MOU on behalf of the County.

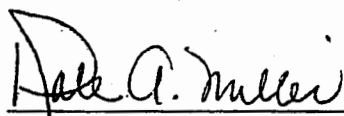
17.0 REVIEW BY THE DEPARTMENT OF THE INTERIOR

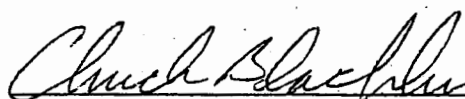
- 17.1 The parties shall submit this MOU to the United States Department of the Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response that this MOU does not require approval under 25 U.S.C. § 81. The County's signature to this MOU is expressly contingent upon the approval called for in this paragraph, and the County has the right to withdraw its support for the MOU if it is not submitted to the Department of the Interior pursuant to this Section or is rejected by the Department of Interior as unacceptable and unenforceable.

Executed and delivered as of the date first written above in Crescent City, California.

ELK VALLEY RANCHERIA, A
FEDERALLY RECOGNIZED INDIAN
TRIBE

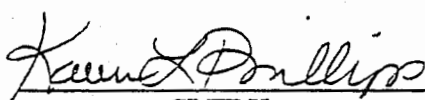
COUNTY OF DEL NORTE, A POLITICAL
SUBDIVISION OF THE STATE OF
CALIFORNIA

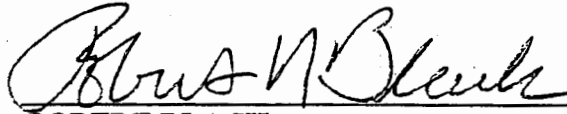
By: 
Its: _____
JAN 22 2002

By: 
Its: Chuck Blackburn, Chairman of the
Board of Supervisors

ATTESTED:

APPROVED AS TO LEGAL FORM

By: 
Its: _____
CLERK of the Board
Karen L. Phillips

By: 
Its: _____
ROBERT BLACK,
County Counsel

SECTION 31 APPROVAL

The undersigned finds that this Memorandum of Understanding between the County of Del Norte and the Elk Valley Rancheria complies with and satisfies the requirements of Title 25 of the United States Code § 81. Accordingly, pursuant to the authority delegated to me by 290 DM8 and 10 BIAM 3, the undersigned hereby approves this Agreement.

APPROVED this _____ day of _____, 200__.

SECRETARY OF THE UNITED STATES
DEPARTMENT OF THE INTERIOR

By: _____
Regional Director of the Pacific Region of the
Bureau of Indian Affairs for the Secretary of the
Interior and the Commissioner of Indian Affairs

Conference Center

A 6,000 square foot conference center is proposed to be built between the casino and hotel. The space would be flexible to serve both large and small groups.

Casino

A 50,000 square foot casino/bingo facility is proposed. This would include up to 350 machines and six table games, a 500-seat bingo/multi-function facility, restaurant and 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.

Parking

For the hotel/conference/casino complex, 600 visitor spaces are proposed as well as 60 additional spaces for staff parking. An additional 55 spaces would be provided for the golf course and clubhouse.

PUBLIC SERVICES

Water Service

The anticipated water demand can be met by the Bertch-Ocean View Community Service District. The District has recently made approximately \$9 million in improvements and upgrades. Discussions with Steve Paynter of Oscar Larson and Associates [(707) 464-9788], the Engineering Consultants for the Water District, indicate that there will be adequate supply to serve the site. The water system model shows existing flow to be 1300 gpm at 102 psi in the existing 8-inch water main located in Roy Avenue along the northern edge of the site.

Estimated peak demand for potable water is about 250 gpm. This includes the hotel, convention center, casino, and clubhouse at the golf course. Fire flow requirements, as per the Uniform Fire Code for a Type II building of 50,000 square feet is 3,250 gpm for a 3-hour duration. This demand can be lowered to 750 gpm if the buildings are protected with fire sprinkler systems.

The water supply system will need to be looped through the site to connect with water mains on Humbolt Road and Roy Avenue in order to provide the most reliable service, particularly for fire protection. (See attached Figure)

Sewer Service

Collection of wastewater is provided by Del Norte County Community Service Area 1 with treatment provided by the city of Crescent City. Sanitary sewers are located in Humbolt Road and in Roy Avenue. An 8-inch, public sanitary sewer would need to be installed in Humbolt

Road to connect with the existing sewer at the intersection of Humbolt Road and Roy Avenue, and 6-inch line installed to the new, on-site facilities. (See attached Figure)

The Crescent City treatment facility is at or over capacity at this time. The Tribe has purchased 17 connections at 235-250 gallons per day per connection for a total of 4,000 to 4,250 gallons per day. The new Community Center uses one of these connections. The existing casino sends an average of 9,525 gallons per day to the treatment plant. It is estimated that the new casino, convention center, hotel and golf course clubhouse will discharge an average of 35,000 gallons per day of sewage. This discharge could be exceeded 50% of the time.

Over the long term, the Tribe is going to partner with Del Norte County and Crescent City to develop a regional sewage treatment facility that would be constructed approximately two miles north of the site. Information pertaining to the wastewater system was obtained from Art Reeve, County Engineer. Mr. Reeve can be reached at (707) 464-7229.

Over the short term, it is recommended that the proposed facilities be served by an on-site treatment facility. Treated effluent could be used for on-site irrigation through a gray water system.

Solid Waste

No major problems are anticipated in the Del Norte Solid Waste Authority providing solid waste collection and disposal services to the site.

Power

Three-phase, 460-volt electric power can be extended to the site from existing Pacific Power lines located along Humbolt Road. High demand may require some system upgrades, and these would become the financial responsibility of the utility. Such a demand is not contemplated. The contact person at Pacific Power is Farrel Bibb [(707) 465-7416].

Communications

Telephone service is provided by Verizon Communications. The local contact is Dave Dunsmore who can be reached at (707) 465-1220. Mr. Dunsmore stated that telephone service is available and the site is within a franchise area. This means that Verizon Communications must provide service. Fiber Optic service is not available.

Cable Television

The local cable television carrier is Charter Communications. The carrier can only be reached via a Customer Service number (1-866-731-5420). The Customer Service Representative stated that cable service was available to the site.



377 J STREET CRESCENT CITY, CALIFORNIA 95531-4025

Administration/Finance: 707-464-7483
Utilities: 707-464-6517

Public Works/Planning: 707-464-9506
FAX: 707-465-4405

October 29, 2004

Honorable Dale Miller
Tribal Chairman
Elk Valley Rancheria
2332 Howland Hill Road
Crescent City, California 95531

Re: Water and Wastewater Service for Proposed Development

Dear Chairman Miller:

This letter shall confirm that the City of Crescent City has embarked upon a program of improvements to our wastewater facility. Said facility will have the capacity to provide wastewater treatment and reclaimed wastewater for the Rancheria's proposed development. The City Council has formally approved this program and we are beginning construction of the improvements. These improvement plans have been designed and engineered to include the specific needs of the Rancheria.

The City also has sufficient capacity in our water system to provide for the potable water requirements of the proposed development. Following a normal approval process, we are confident these services will be available in accordance with the estimated development timeline of the project.

The infrastructure necessary to support the provision of water and wastewater services will be paid for through a combination of direct payment by the Elk Valley Rancheria, grants, and other sources of revenue.

Should you have any questions, please contact Public Works Director, Jim Barnts.

Sincerely,

David M. Wells,
City Manager

EXHIBIT NO. 17
APPLICATION NO.
CD-54-05

SECTION 3

ALTERNATIVE PLANT SITES

BACKGROUND

There are five potential sites for treating the wastewater generated by the new casino resort. The sites are:

- Crescent City WWTP
- Pelican Bay Prison WWTP
- Casino Resort Property
- Stary Ranch Property
- Pappas Property

Each of these alternatives will be discussed to determine the advantages and disadvantages of each. The alternatives that show merit will be selected for further review.

CRESCENT CITY WWTP

The City of Crescent City currently operates a treatment plant that serves the City and County properties in the Crescent City area. The current treatment plant serves a population of 14,387 and treats an average dry weather flow of 1.26-mgd. The plant is at its capacity and is limited on the number of hookups that it can accept. It does not have the available capacity to treat the wastewater generated by the casino resort project.

The City of Crescent City has just completed a Facilities Plan for expansion of the treatment plant. The plan is to expand the treatment plant in three phases to a capacity of 3.48-mgd with the ability to provide service to a population of 27,141. This plan did not consider the flows and loads that would be generated by the casino resort in the planned flows and loads for the upgraded treatment plant.

The current and planned 2027 flows and loads for the Crescent City WWTP are shown in Table 3-1. It can be seen from this table that the increase in average annual BOD load for the treatment plant is 2359 pounds per day (ppd). The proposed average annual BOD load for Phase I of the casino resort is 500 ppd. The casino would use 21% of the planned increase in BOD load.

Based on the Crescent City Facilities Plan there is no opportunity for the EVR resort to hook up to either the current or expanded treatment facility. The City determined that it would be beneficial to the ratepayers and the local economy to partner with the EVR resort to provide both water and wastewater service. A revised plan was developed by the City to develop treatment capacity for the EVR resort in a timely manner, as well as produce reuse water that could be used by the resort for irrigation of the golf course, minimizing the use of potable water.

This plan was approved by the Crescent City City Council on May 4, 2004. A copy of the memorandum to the City Council is located in the appendices. This plan is to provide a phased

MWH

DEIS Appendix M
Excerpts, Alternative Sewer
Service Options Discussion

EXHIBIT NO. 18
APPLICATION NO.
CD-54-05

Table 3-1
Wastewater Treatment Flows and Loads

Variable	Crescent City WWTP		EVR Phase I	EVR Ultimate
	Current	2027		
Design Population	14,387	27,141	2500	5000
Flow (mgd)				
Average Dry Weather	1.26	3.48	0.10	0.20
BOD Load (ppd)				
Annual Average	1411	3770	.500	1000
Max Month	2352	6280	750	1500
TSS Load (ppd)				
Annual Average	2046	4930	292	584
Max Month	2963	7140	438	876

Notes: EVR Resort Only and EVR & BOV population equivalence based on 0.2 lb BOD/capita/day

approach to the expansion of the existing City treatment plant. This option adds an additional 1.2-mgd of treatment capacity to the treatment plant using a membrane bioreactor (MBR). This system will also produce a high level reuse water that can be used for irrigation of the resort landscaping and golf course without restriction.

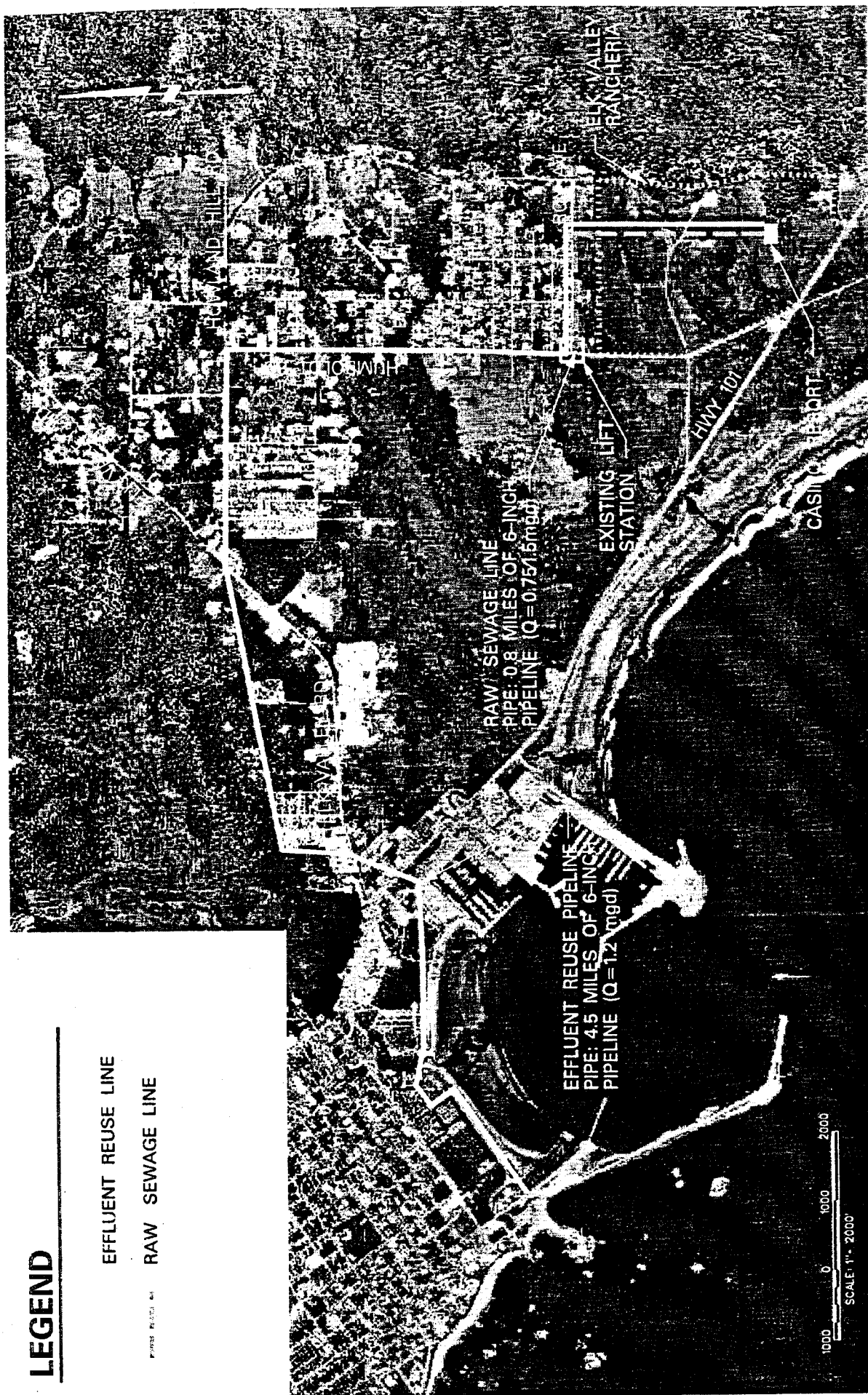
The City will not be able to have the interim treatment plant expansion completed before the EVR resort will need wastewater services. The City has taken additional steps to provide capacity for the EVR resort by reducing the discharge from a local industry (Rumiano). This will be done by providing additional pretreatment of the industry's waste discharge to reduce the load on the treatment plant, resulting in additional capacity that can be provided to EVR for the resort.

The wastewater produced by the EVR resort can be pumped to the City wastewater treatment plant through the existing collection system. The wastewater generated at the resort can be pumped from the resort through a pipeline on an existing County easement up to Roy Avenue. The flow can then either be discharged to the existing line on Roy Avenue or continue on to the existing pump station located at the intersection of Roy Avenue and Humboldt Road. This pump station will then pump the flow to the Elk Valley Road pump station which in turn pumps the flow to the treatment plant. Treated effluent can be pumped from the treatment plant to the EVR resort through a new reuse water system that will follow existing streets and easements. The pipeline routes for the City WWTP alternative is shown in Figure 3-1.

PELICAN BAY PRISON WWTP

The Pelican Bay Prison operates a treatment plant to serve the needs of the prison only. The prison was contacted to determine if there was capacity available to treat additional flow generated by the casino resort or from the county area as an offset to the flows and loads generated by the casino resort.

RAW SEWAGE LINE



**Alternative Plant Sites
City WWTP with Effluent Reuse
Figure 3-1**

SECTION 7 RECOMENDATIONS

It is essential for Elk Valley Rancheria to plan, permit and construct a facility the will provide for collection, treatment and disposal of the wastewater that is generated at the resort. This project must be completed and operational by June 2006 so that the resort development will not be delayed. There are feasible alternatives for EVR to have the facility constructed and operational by the planed startup date. EVR needs to develop a strategy that will not only provide them with their primary plan, but will also give them a fall-back position if the preferred alternative cannot be done due to permitting or some other issue.

PROJECT RECOMMENDATION

The most critical factor to the successful implementation of this project is to have a means for treatment of the wastewater produced by the resort when the resort opens. The secondary and still important factor is to minimize the capital and operating costs of the project. A third factor that must be considered is the ability to obtain a means for disposal of the treated effluent. Various alternatives have been evaluated and the following alternative is recommended as it meets each of the success factors for the project.

Preferred Alternative: Treatment at the City WWTP

The preferred method for EVR is to connect to the Crescent City system. The City is currently in the process of upgrading their treatment plant so that the capacity for the resort wastewater can be treated at the City treatment plant. This upgrade will not be completed by June 2006 when the EVR will need wastewater treatment. The City is currently working with a local industry to provide additional treatment to the industrial discharge that will provide the treatment plant capacity that is required by EVR. This project will be completed by June 2006.

EVR will need to purchase connection EDUs from the City so that the wastewater can be discharged to the City system. EDUs can be purchased as they are required or EVR can purchase the necessary EDUs up front so that they can be reserved for future use. The estimated cost for purchase of the EDUs at \$4,500 per EDU is \$1,876,500 for 417 EDUs. This will provide EVR with the capacity for 100,000 gpd, which is the estimated average daily flow for the resort. The estimated peak flow for the resort is 150,000 gpd. This will require the purchase of 625 EDUs at a cost of \$2,812,500. EVR will not be reaching the peak flow requirements until the resort reaches is maximum usage. EVR will need to determine the amount of capacity that they will need to purchase initially.

EVR will then need to construct the pretreatment and pumping facilities so that the flows can be pumped to the City system. This will require the installation of a grease trap, pH control system, flow measurement, pump station and force main. The estimated cost of these facilities is \$536,600. This includes \$75,000 for the upgrade of the City's pump station, if required.

The City has offered to provide Title 22 reuse water to EVR for the irrigation of resort landscaping and the golf course. EVR will need to construct the reuse pipeline so the reuse

Section 7 - Recommendations

water can be transported to the resort site. The estimated cost for this reuse line is \$1.9M. A schematic of this alternative is shown in Figure 7-1.

The use of the City treatment plant takes EVR out of the wastewater treatment business and allows EVR to spend their efforts in the operation of the resort. The City will have a monthly charge for treatment of the wastewater to cover the operations and maintenance costs at the treatment plant. These costs were estimated at the rate for a Heavy Commercial user, which is the classification for the restaurant and the casino. The hotel can be classified as a light industrial user and receive a lower usage rate. This estimate assumed that the full facility would be at the average daily flow of 100,000 gpd and classified as a Heavy Commercial user. The estimated monthly charge for wastewater treatment was \$19,300. This cost is less than the estimated monthly operating cost for EVR to operate their treatment facility. In addition to this operating cost, EVR will need to pay for the power and chemicals for pH control and pumping from the resort to the City system. In addition, the resort may be required to do some testing of their discharge by the City and for maintenance of the EVR pump station. This operating and maintenance cost is estimated at \$2,750 per month.

Fall-Back: Construct An EVR Treatment Plant at the Stary Ranch Parcel

If EVR cannot reach agreement with the City on the treatment of the resort wastewater at the City treatment plant, a fall-back alternative is for EVR to construct their own treatment plant on the Stary Ranch property.

The Stary Ranch site provides advantages over the other site that was evaluated. Specific issues relating to this site are:

- Large site that allows for little mitigation.
- Site is currently a part of the tribal trust, which minimizes the potential permitting requirements.
- There is a potential for disposal by infiltration basins on this site.
- Effluent reuse on the site is possible during the summer season.

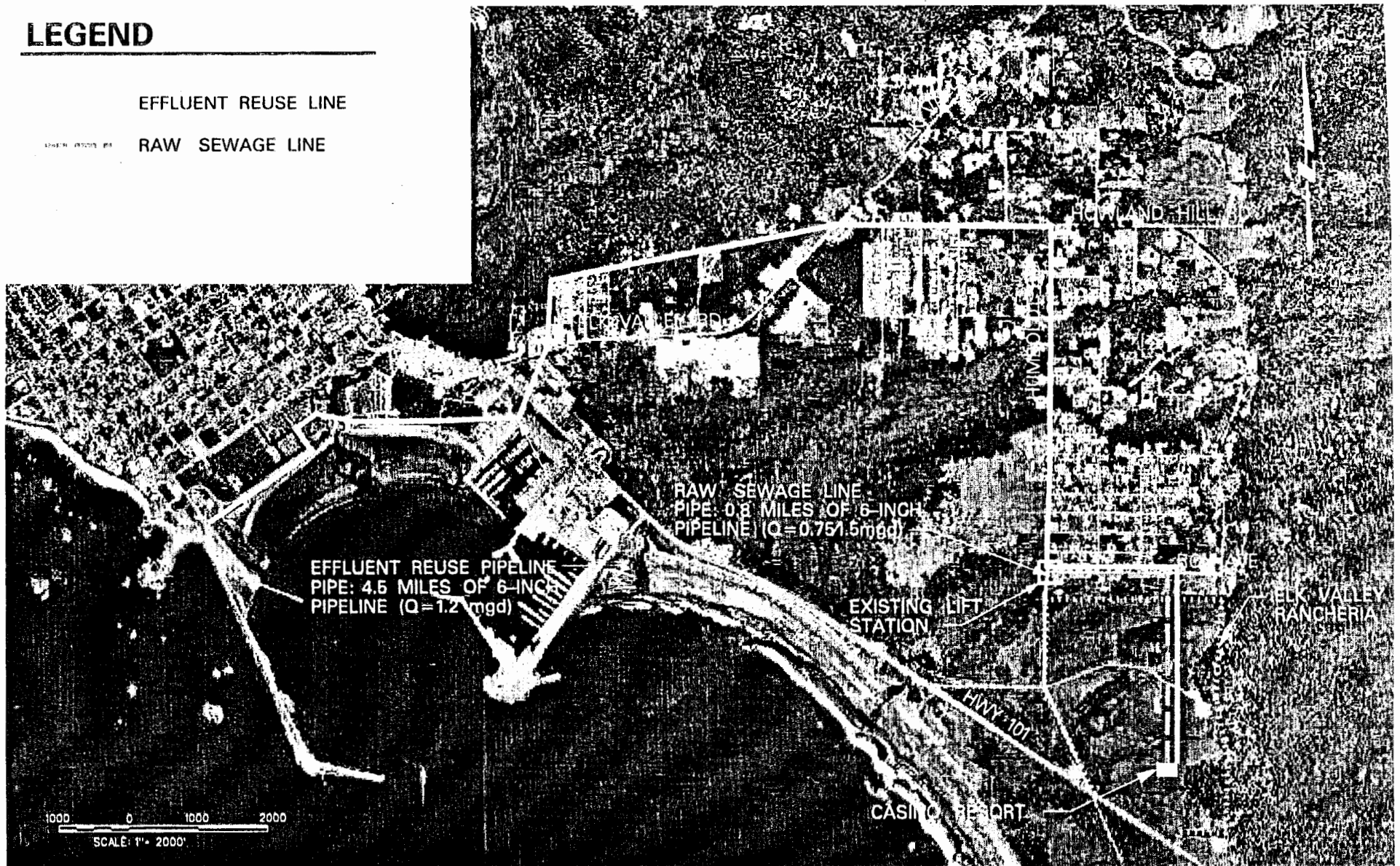
The capital cost to construct a treatment plant on the Stary Ranch site is essentially the same as having the wastewater treated at the City WWTP. This issues that makes this a secondary alternative and not the preferred alternative is that EVR will need to negotiate or permit a method to discharge the treated effluent. In addition, EVR will still need to find a means to get peak flows for irrigation water for the golf course, unless they want to negotiate an agreement with the City for reuse water.

The critical element that needs to be developed prior to use of the Stary Ranch site is development of a discharge point. The capital cost for constructing a treatment plant and the related facilities to treat the resort flows at the Stary Ranch site is \$5.3M. This does not include the construction of the infiltration basins.

LEGEND

EFFLUENT REUSE LINE

RAW SEWAGE LINE



CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



May 12, 2005

Clayton Gregory, Director
Pacific Region
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Attn: John Rydzik, Chief, Division of Environmental Cultural Resource Management and Safety

Re: **CD-054-05** Consistency Determination, Bureau of Indian Affairs (BIA), Placement of Martin Ranch Parcel (APN 115-020-28) into Trust for Elk Valley Rancheria, and development of Elk Valley Rancheria Resort-Casino, east of Crescent City, Del Norte Co.

Dear Mr. Gregory:

On April 15, 2005, we received the above-referenced consistency determination from the BIA for the placement of the 203.5 acre Martin Ranch parcel (which is bisected by the coastal zone boundary) into trust status for the Elk Valley Rancheria, and for the construction of a gaming casino, resort, restaurant, parking and associated improvements. As originally contemplated, the project would have included a golf course in areas of existing wetlands, within the coastal zone. The bulk of the remaining improvements (casino, resort, restaurant, parking) would be located landward of the coastal zone boundary.

We appreciate the BIA's (and the Elk Valley Rancheria's) cooperation in agreeing to delete the golf course from the proposal, as it raised serious coastal zone wetland protection concerns. Nevertheless, we have several questions concerning the remainder of the proposal that need to be answered before we can fully analyze the project's consistency with the applicable Coastal Act policies (which are attached as Appendix A), as follows:

1. **Visual Impact.** The resort and casino buildings would be visible from Highway 101, a major coastal access thoroughfare, and in an area designated as highly scenic in the County's Local Coastal Program. Given the site topography, the project would be within the direct line of sight from Highway 101, and, according to the DEIS, would include a 40,000 sq. ft. casino, a restaurant/conference facility, a 156-room hotel, 18 acres of impervious surfaces (mostly parking), and 112,000 cubic yards of grading, all to be located in what is currently a rural, scenic, relatively undeveloped viewshed. The consistency determination should analyze the project's visual impact from Highway 101 (ideally, including a visual simulation of the view from the highway), and if it would be visible from the shoreline and/or any public parks or other public viewpoints in the coastal zone in nearby areas, its impact from those public locations. The analysis should discuss: (a) any measures intended to screen the resort from

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APPLICATION NO. CD-54-05

these public locations (including, if vegetative screening is proposed, the length of time needed for the vegetation to mature and provide adequate screening); (b) revegetation efforts for slopes disturbed during construction; (c) impacts of any signs along Highway 101 (or otherwise visible from public areas) advertising the resort; (d) any above-ground water storage tanks needed¹, including the degree to which any such tanks would be screened by the resort, and/or by existing vegetation or proposed vegetative screening; and (e) effects on community character. The analysis should include the effects of lighting at night. While the DEIS states that exterior lights would be designed to be shielded to shine only internally and not affect outlying areas, it may not have addressed lighting such as from windows. The consistency determination should describe the visibility of all night-time lighting (including any advertising signs along Highway 101), and perhaps should consider agreeing to defined criteria of residual light outside the project footprint.² The visual/community character analysis should be based on the Sections 30251 and 30253) of the Coastal Act (although the night-lighting discussion may also be applicable to biological impacts).

2. **Traffic**. The DEIS estimates the project would add approximately 3442 additional vehicle trips per day to area roads, the vast majority of which would use Highway 101 to approach or leave the resort. In addition, it appears likely the project would involve physical road improvements within the coastal zone, including: (a) intersection improvements (such as turn signals or acceleration and deceleration lanes at Humboldt Rd./ Hwy. 101 and at Sandmine Rd./Hwy 101); and (b) widening and/or new surfacing along the narrow access road to the proposed resort from Humboldt Rd., (this access road is located within the coastal zone half of the project site). Neither of these improvements are described in the DEIS. The consistency determination should adequately describe these improvements and discuss how they have been or will be designed to reduce or minimize impacts, primarily on recreational traffic on Highway 101. The analysis should also analyze the adequacy of the amount of on-site parking proposed to serve the resort. The traffic and parking analyses should be based on Sections 30250, 30252, and 30254 of the Coastal Act.

3. **Sewer and Water Infrastructure**. The project would involve extending water and sewer lines to serve the resort, and possibly pump stations; these improvements may or may not be within the coastal zone. The locations of these improvements should be depicted. More importantly, the adequacy of the area's sewage systems to accommodate the approximately 100,000 - 150,000 gallons/day (above and beyond the level of the existing Elk Rancheria Casino to the north) of sewage generated by the project needs to be analyzed. The need for this analysis is particularly important because: (a) it is unclear whether such demand can be accommodated under existing infrastructure constraints; and (b) the new demand is quite likely to generate the need for additional physical infrastructure construction within the coastal zone (e.g., expanding the City of Crescent City's treatment plant). As the DEIS notes, Crescent City

¹ The DEIS indicates the possible need for an up to 500,000-700,000 gallon storage tank; however its location is not depicted.

² For example, in our review of the Department of Homeland Security's (DHS') Border Fence project at the U.S./Mexican border, the lighting was to be directionally shielded away from biologically sensitive areas (i.e., outside the immediate project footprint, where it was to be no lighter than the light from a full moon, which was defined as 0.1 foot candles of illumination, based on coordination between DHS and the U.S. Fish and Wildlife Service).

is in the process of undertaking improvements to its sewage system to address an 8+ year old Cease and Desist Order issued by the Regional Water Quality Control Board regarding the inadequacy of its existing sewage treatment plant. The DEIS also acknowledges that proposed (or currently anticipated) improvements to the plant, if they are implemented, may not be on-line when the resort is ready for occupancy. The DEIS examines other alternative ways sewage treatment for the resort could be made available, either temporarily until the City's system is upgraded, or permanently if the City's system would not be able to accommodate the resort. However, none of these alternatives appear to be incorporated into the project at this time, and it remains unclear how the resort would be served, and thus whether adequate sewage capacity will in fact be available for the resort. For example, we note that the DEIS references recently-made-available pretreatment facilities the City is implementing,³ which the DEIS maintains may free up additional capacity that could be available to serve the proposed resort. However it is not clear at this point what the City's plans are for allocating this capacity, and, in fact, whether the City intends to allocate some or all of it to the proposed resort. We therefore request clarification on both the timing and the availability of this capacity for the proposed resort. These infrastructure analyses should be based on Sections 30250 and 30254 of the Coastal Act.

4. **Water Quality/Habitat.** The project is located upstream of sensitive wetlands in the coastal zone, including but not limited to Crescent City Marsh. The DEIS indicates that Best Management Practices would be followed; however the water quality plans have not yet been drafted. Ideally, as we regularly request from federal agencies, in situations where the water quality plans are not available at the consistency determination review stage, we request that the federal agency agree that the water quality control plans will be submitted to the Commission staff for our review and concurrence, prior to commencement of construction, and that the overall goal will be to design them to assure no increases in runoff and sedimentation beyond what occurs at the site currently (i.e., above baseline conditions). The plans should also: (a) address measures to revegetate graded slopes; (b) include measures to be implemented both permanently and during the construction period; (c) explain whether and how parking lot runoff will be filtered; (d) indicate the approximate size and location of the proposed detention basin as mentioned in the DEIS to slow the rate of runoff; and (e) analyze effects on groundwater recharge, including and potential effects on the timing and extent of both surface and groundwater flows to the downstream Crescent City Marsh. This last concern was raised in EPA's July 12, 2004, letter to you (commenting on the previous version of the resort). In that letter EPA noted the small size of the watershed of the Crescent City marsh (339 acres) compared to the large (for the area) amount of impervious surfaces proposed. It also noted that the watershed "... according to the California Native Plant Society, is home to more than half the global distribution of the endangered western lily [*Lilium occidentale*], and at least a dozen other state or federally listed plant species, and plant communities found nowhere else in Northern California." Even without the golf course, the large amount of impervious surfaces could redistribute (both spatially or temporally) groundwater recharge, which could adversely affect the marsh. The analysis should consider use of pervious or semi-pervious, rather than impervious, surfaces for the parking areas if the potential for adverse effects exists.

³ DEIS July 2004, Appendices, Vol. 2, Section 4, Table 4-1: "Reduction in Rumiano discharge load..."

19/3

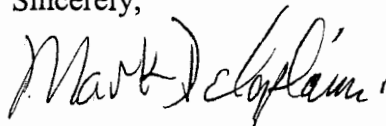
The water quality and habitat analyses should be based on Sections 30231 and 30240 of the Coastal Act.

5. **Agriculture.** According to the DEIS, the property is zoned primarily for agricultural use and is currently used for "grazing and residential uses." The consistency determination should analyze the project's effects on continued agricultural use and viability for the coastal zone portion of the site. The analysis should be based on the Coastal Act's agricultural policies (Sections 30241 and 30242). Note also that under the Coastal Act land use hierarchy, agriculture and coastal dependent uses are accorded higher priority than visitor-serving uses (see Section 30222).

Finally, while the vast majority of the resort is proposed to be located outside the coastal zone, because land held in trust is excluded from the coastal zone the proposed action would remove the approximately half of the 203.5 acre parcel from the coastal zone, and, consequently, from the state regulatory protections currently in place via State and County permit review under the applicable Local Coastal Program. While the Commission would retain some federal consistency jurisdiction in the event any wetland fill were proposed (which would be triggered by the need for a U.S. Army Corps of Engineers permit, and/or any federal funding or other assistance by the BIA), the Commission and the local government would no longer have the ability to regulate development adjacent to those wetlands (e.g., the ability to require adequate buffers would no longer be available through the permit process). The Commission would also lose the ability to regulate development in Coastal Act-defined, but not Corps-defined, wetlands. We understand the Rancheria proposes no development in this area at this time (other than possible access road improvements); nevertheless the consistency determination should discuss the mechanisms in place that will assure the continued protection of these wetlands and any other sensitive wildlife resources on the coastal zone portion of the parcel.

Thank you for your attention to these matters. If you have any questions about these information requests, please feel free to contact me at (415) 904-5289.

Sincerely,



MARK DELAPLAINE
Federal Consistency Supervisor

Attachment: Appendix A - Applicable Coastal Act Policies

cc: North Coast District Area Office
Elk Valley Rancheria, Chairman Dale Miller
OCRM
Crescent City, Public Works Dept.
Del Norte County, Community Development Department
US Fish and Wildlife Service
California Dept. of Fish and Game

19/p.4

EPA
RWQCB, Region 1
Attorney General's Office (Sacramento, San Diego)
Army Corps, San Francisco District (Eureka Field Office)

EX-100-19, p. 5



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

AUG 18 2005

Mr. Mark Delaplaine, Federal Consistency Supervisor
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94106-2219

Dear Mr. Delaplaine:

This letter responds to your letter, dated May 12, 2005, concerning CD-054-05, Consistency Determination of the Bureau of Indian Affairs (BIA) of placement of the Martin Ranch Parcel (APN 115-020-28) into trust for the Elk Valley Rancheria and the development of the Elk Valley Rancheria Resort-Casino, east of Crescent City, Del Norte County. Your comments and questions were based on a review of our previous correspondence and the Preliminary Draft Environmental Impact Statement (PDEIS). Our efforts to respond to your letter have focused on our responsibilities under the National Environmental Policy Act. We will be providing more detailed information to address the Coastal Commission's concerns in the Draft EIS, which we anticipate being released for public review shortly. We have also reexamined our Consistency Determination and believe that no direct effects to the Coastal Zone or its resources would occur due to the acquisition of the property by the United States for the benefit of the Elk Valley Rancheria or as a result of the construction of the proposed resort-casino. We offer the following responses to the specific issues raised in your letter.

- 1. Visual Impact.** The portion of Highway 101 adjacent to the southwest portion of the property is not classified by Caltrans as a Scenic Highway. Visual considerations contained in the Coastal element pertain primarily to views west of Highway 101, toward the Pacific Ocean and not the upland areas to the east. In addition, the proposed development is located outside the coastal zone with the foreground portion of the parcel, within the coastal zone, remaining undeveloped. We do not believe the proposed project will result in significant impacts to the visual character of the coastal zone. Views from Highway 101 toward the proposed resort development would contain the predominant foreground view of the grazing pasture, barn and spruce covered outcropping partially obscuring the resort buildings. The proposed parking structure is planned below the Phase 3 Events Center and would not affect views of passing vehicles on Highway 101. The proposed 500,000 to 700,000 gallon domestic water storage tank will be an at-grade reservoir and located upgradient, to the east of the resort complex buildings. The reservoir will be obscured by landscaping.

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APPLICATION NO.

CD-54-05

Further, in *Sierra Club v. California Coastal Commission*, the California Supreme Court, issued an opinion on May 19, 2005, in support of the Commission's extensive findings that it did not have permit authority or jurisdiction over proposed development outside the coastal zone for a project which straddled the coastal zone boundary. The Commission's concerns as to lighting from windows within the resort appear to be beyond Commission's jurisdiction. Nonetheless, the DEIS recognizes potential visual impact, and impacts from proposed lighting, and has identified mitigation measures in Section 5.0. These measures include: the use of native building materials, sensitive architecture, and earth and forest tone paint to blend with visual/community character, use of native trees as a screen between the housing subdivision along Roy Avenue and placed strategically within the development to provide an established appearance to the resort development, downcast lighting, low-pressure sodium bulbs, minimal removal of existing vegetation and use of fast growing annual and perennial grasses. With the visual impact mitigation measures identified in the DEIS, the proposed project will be consistent with Sections 30251 and 30253 of the Coastal Act.

- 2. Traffic.** The BIA agrees that the proposed resort development will add vehicle trips to area roads, including Highway 101. However, significant impacts to either public safety or intersection performance are not expected. Based on existing plus project traffic volumes and trip distribution patterns contained in the traffic study for the project (DEIS, Appendix C) and the fact that all roadways expected to serve the project are well below capacity, impacts to area roadways would be less than significant. Limited intersection and off-site roadway improvements are proposed in the Coastal Zone as part of the preferred alternative project. Page iii of the DEIS has been revised to describe frontage improvements at the intersection of Humboldt Road, Sandmine Road and the project access road which are partially in the Coastal Zone and proposed to be upgraded and widened. Best Management Practices, within the DEIS, pages 5-2 through 5-5, would reduce impacts to the Coastal Zone to a less than significant level. We believe the limited roadway related improvements within the Coastal Zone are consistent with Sections 30250, 30252 and 30254 of the Coastal Act. Additionally, the Memorandum of Understanding between the Elk Valley Rancheria and Del Norte County addresses potential future non-project improvements subject to the County's and Caltrans permit process.

- 3. Sewer and Water Infrastructure.** Revisions to the Preliminary DEIS have been made to address the Commission's concerns. The DEIS includes the following description: "The City of Crescent City is upgrading its wastewater treatment plant to accommodate additional capacity at a level sufficient to meet the needs of the Tribe. Construction of the outfall project, which will

3

increase capacity, will be completed in the fall of 2005. Other improvements for the wastewater treatment plant have a design deadline of August 2005 (Levi, pers. comm., 2005). In addition, the City is working with a local industry to further treat industrial discharges to free up capacity at the wastewater treatment plant through the enactment of a wastewater pre-treatment ordinance (City of Crescent City, 1993). One of the main industrial contributors, Rumiano, began a pretreatment unit in April 2005, which has freed biological load at the wastewater treatment plant." With the Rumiano pretreatment unit, outfall project, and other improvements, the City projects that it will have the capacity to treat wastewater from the casino and will be consistent with Sections 30250 and 30254 of the Coastal Act.

Additionally, please note that changes to the City wastewater infrastructure are not part of the BIA's federal action, which is confined to the trust acquisition. The City of Crescent City, as the wastewater service provider, will obtain the project approvals needed to construct upgrades to its wastewater treatment plant. Typically, the BIA does not require final design and permitting of a project prior to the decision on trust acquisition. We believe the City of Crescent City's projects should not be considered in the BIA's Consistency Determination.

- 4. Water Quality/Habitat.** Best Management Practices and mitigation for water quality impacts are included in the DEIS as measures to address the Coastal Commission's concerns of increased runoff and sedimentation. The measures will be further specified upon the completion of detailed water quality plans. The DEIS identified mitigation measures which includes: filter fences and barriers, revegetation of disturbed areas, especially on graded slopes, direct stormwater runoff from parking lots to vegetative filter strips, vegetated detention swales at a ratio of 500 feet of swale per acre of impervious surface to be located within parking areas, south of parking areas and roadways, and along the western edge of the fill slope adjacent to the parking area. As the Commission will see in the DEIS, the watershed which drains to the Crescent City Marsh consists of 1,500 acres of which approximately 1,000 acres are currently developed and the remaining 500 acres are undeveloped. Proposed development of 9.3 acres under the Preferred Alternative would represent a 0.6% increase in developed area within the Crescent City Marsh watershed. This amount would not create a significant effect on stormwater runoff to the marsh, however, mitigation measures are specified to further reduce potential impacts to the marsh.

The Commission's request for review and concurrence of the finalized water quality plans, prior to the commencement of construction is outside the ability of the BIA to grant. The BIA is neither the permitting agency for the proposed development nor the applicant under provisions of the Clean Water Act. Additionally, Section 30604(d) of the Coastal Act, states:

20.p.3

No development or any portion thereof that is outside the coastal zone shall be subject to the coastal development permit requirements of [the Coastal Act], nor shall anything in [the Coastal Act] authorize the denial of a coastal development permit by the commission on the grounds the proposed development within the coastal zone will have an adverse environmental effect outside the coastal zone.

Further, in *Sierra Club v. California Coastal Commission*, the California Supreme Court, issued an opinion on May 19, 2005, in support of the Commission's extensive findings that it did not have permit authority or jurisdiction over proposed development outside the coastal zone for a project which straddled the coastal zone boundary.

- 5. Agriculture.** As noted, the Coastal Zone portion of the property is zoned for agricultural use and currently used for grazing purposes. No development, other than proposed access road improvements, is proposed for the Coastal Zone portion of the property. Continued agricultural use of the Coastal Zone portion of the property would not be precluded. Construction of the proposed resort complex would provide the economic means to support the implementation of a resource management program designed to control weed and invasive non-native vegetation. The resource management program would also protect existing wetlands and foreground views to the ocean from the proposed resort. The current grazing use on the property is only marginally economical and may contribute to degradation of habitat and wetlands should the operation be expanded for increased viability.

Our consistency determination was based on the Coastal Act's agricultural policies, specifically Sections 30241 and 30242, prime agricultural land and maintenance in agricultural production as well as conversion of lands suitable for agricultural use. The NRCS, through their Farmland Conversion Impact Rating, determined that 96 acres of the total 203.5 acres proposed fee-to-trust land acquisition are considered prime and unique farmland. None of the 96 acres were considered of Statewide and local important farmland. Since the only development in the Coastal Zone is the proposed access road improvements, a de minimus amount of farmland would be converted.

Additionally, our consistency determination recognizes the Coastal Act land use hierarchy, in Section 30222, where agriculture and coastal dependent uses are accorded higher priority than visitor-serving uses as no such uses are planned in the Coastal Zone portion of the property.

5

Finally, we note the Commission's concern over Elk Valley Rancheria's assumption of jurisdiction and governmental powers for property currently within the Coastal Zone. However, assisting tribal governments in the assumption of governmental powers is an essential function of the BIA, under the authorities of the Indian Reorganization Act. We believe such a transfer of jurisdiction to the Elk Valley Rancheria and removing the property from the Coastal Zone will result in a consistency with the Coastal Act Policies. The Tribe's development and implementation of a proactive natural resources protection plan under tribal ordinance will serve to protect the interests of the Commission, Tribe and the human environment.

If you have any questions, please contact John Rydzik, Chief, Division of Environmental, Cultural Resource Management and Safety (DECRMS) at (916) 978-6042.

Sincerely,



Director, Pacific Region
Bureau of Indian Affairs

cc: Dale Miller, Chairman, Elk Valley Rancheria
David Zweig, Analytical Environmental Services

20,1.5

RECEIVED

AUG 26 2005

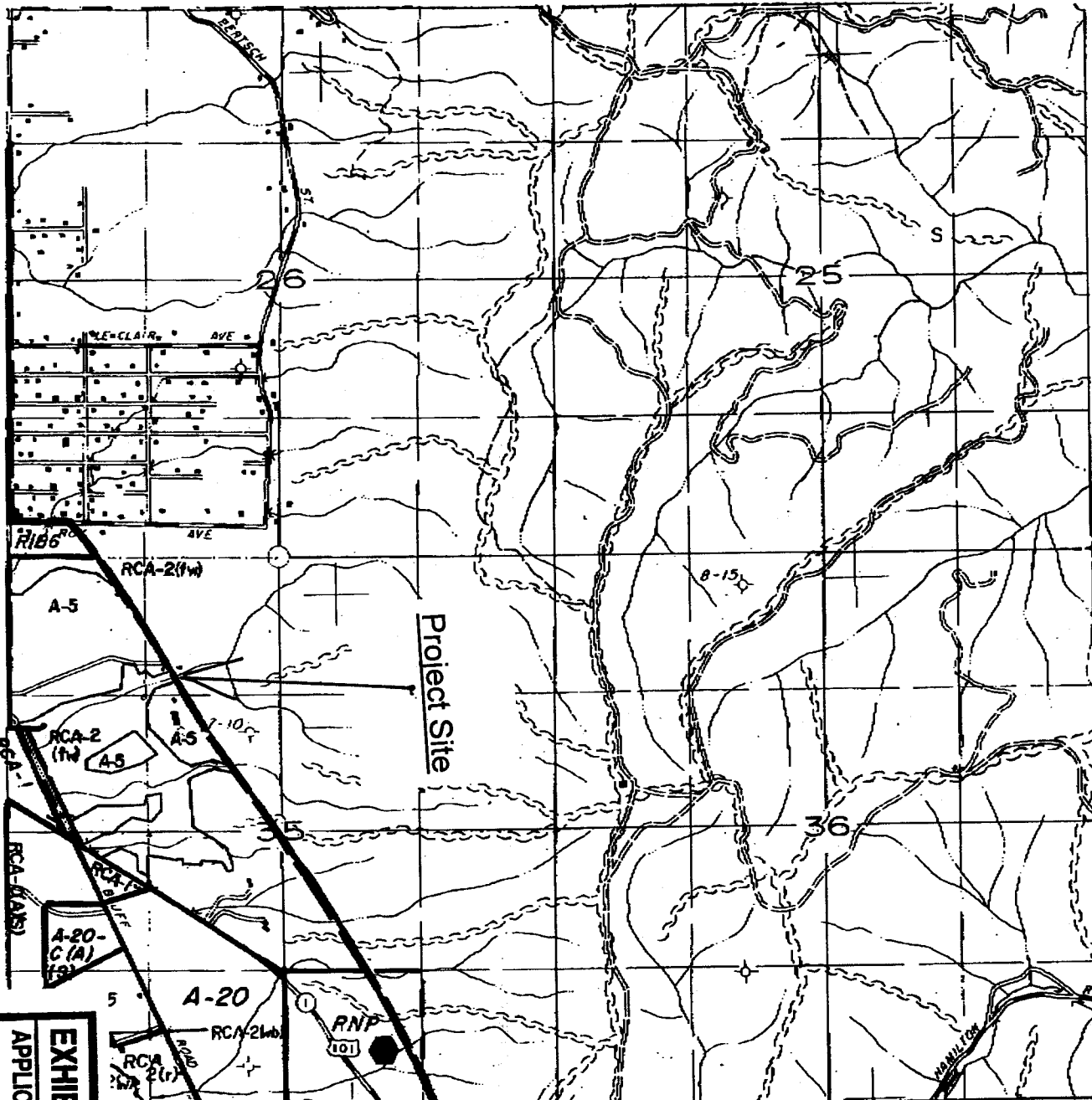
CALIFORNIA
COASTAL COMMISSION

Section 21.06.050 Ordinance 83-
DEL NORTE CO. ZONING MAP
AREA D-10

SECTIONS 25, 26, 35, 36
TWP 16 N RGE 1W HB 8 M
CRESCENT CITY AREA

APPROVED BY PLANNING COMMISSION *[Signature]*
APPROVED BY BOARD OF SUPERVISORS *[Signature]*
COUNTY OF DEL NORTE, CALIFORNIA
83-03-Sept 6, 83

REVISED - 3/23/98



Project Site

Coastal
Zone
Boundary

Zoning
Map

EXHIBIT NO. 21
APPLICATION NO.
CD-5405

YARD WIDTHS		B6 DISTRICT	
ZONE	FRONT	REAR	SIDE
2	25'	10'	5'

RECEIVED

AUG 26 2005

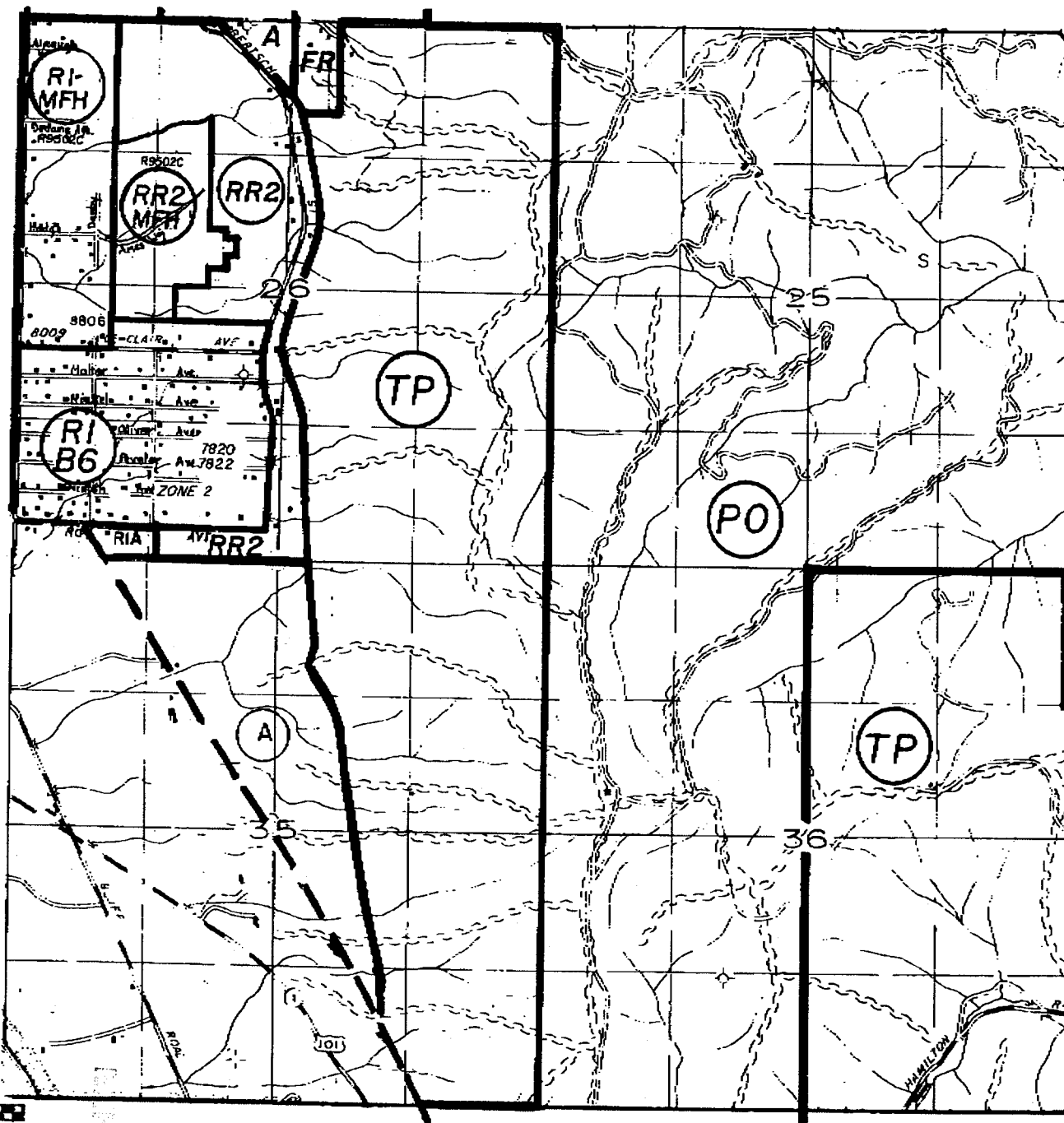
CALIFORNIA
COASTAL COMMISSION

SECTION 3.0104 ORDINANCE 67-10
DEL NORTE CO. ZONING M.
AREA D-10

SECTIONS 25, 26, 35, 36
TWP 16 N RGE 1 W HB&M
CRESCENT CITY AREA

ORDINANCE NO 68-8 PASSED APR 8, 1968
APPROVED BY PLANNING COMMISSION
APPROVED BY BOARD OF SUPERVISORS
COUNTY OF DEL NORTE, CALIFORNIA
REVISED 3/27/95

REDRAWN



219.2

Martin Ranch
Parcel



Crescent
City
Marsh

EXHIBIT NO. 22
APPLICATION NO.
CD - 054-05

