



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JUL 28 2004

OFFICE OF THE
REGIONAL ADMINISTRATOR

Colonel Philip T. Feir
District Engineer, U.S. Army Corps of Engineers
San Francisco District
333 Market Street
San Francisco, California 94105-2 197

Subject: Public Notice No. 28433N, Elk Valley Rancheria, Del Norte County, California


Dear Colonel Feir:

On 12 July 2004, we sent a letter to the San Francisco Corps District raising concerns regarding the proposed Elk Valley Rancheria destination resort. As proposed, the project entails discharging 60,000 cubic yards of fill material into 9.46 acres of jurisdictional waters, including wetlands, across the 203.5acre Martin Ranch parcel. Specifically, we expressed concern that the permit applicant had not demonstrated full compliance with the Federal Guidelines (40 CFR 230) promulgated under section 404(b)(1) of the Clean Water Act. In accordance with the 1992 Memorandum of Agreement (MOA) between EPA and the Department of the Army promulgated under CWA §404(q), we informed you that the proposed project may result in substantial and unacceptable impacts to aquatic resources of national importance.

Since July 12th, my regulatory staff has visited the site of the proposed project, but we have not received any additional information from the applicant or your staff addressing the technical issues raised by EPA (attached), other regulatory agencies, or non-governmental organizations. Therefore, pursuant to Part IV, Section 3(b) of the aforementioned MOA, we have determined the proposed project is a candidate for elevation on the basis that permit authorization **will have** substantial and unacceptable impacts to aquatic resources of national importance (ARNIs). We respectfully object to the proposed project, and we recommend denial of the permit.

Thank you for considering our concerns and recommendations. If you wish to discuss this matter further, please have your staff contact Tim Vendlinski or Michael Monroe of our Wetlands Regulatory Office at (415) 972-3464 or (415) 972-3453, respectively.

Sincerely,

for 
Wayne Nastri 28 July 2004
Regional Administrator

**EPA Comments on Public Notice 28433N
Elk Valley Rancheria Resort Project
Del Norte County, California**

Setting

The project site is approximately one mile southeast of Crescent City in Del Norte County, California. It is adjacent to State Route 101 and Humboldt Road. The 203.5-acre site, known as Martin Ranch, is located on a gently sloping coastal plain and ranges in elevation from approximately 20 feet above mean sea level to approximately 300 feet above mean sea level. Nearby land uses are generally undeveloped rural with the exception of some residential housing near the project site's northern boundary.

The project site supports a mix of vegetation types including Sitka spruce forest, red alder/mixed deciduous woodland, wetland prairie, and annual grassland/pasture. Several intermittent streams extend across the site in an east-west direction; some drain into the adjacent Crescent City Marsh Wildlife Area. Currently, the site is grazed by cattle and supports one residence and associated -buildings.

Project Description

The proposed project consists of placing the Martin Ranch property into federal trust status and developing upon it a destination resort. Proposed resort features include a golf course, hotel, conference facilities, and casino/bingo facility. The 18-hole golf course would have a driving range, practice putting and chipping greens, maintenance area, and a 2500-square foot clubhouse. The three-story hotel would have 156 rooms and would include nine detached, bungalow-style fourplex buildings at ground level. The 20,000-square foot conference facility would serve large and small groups in non-fixed seating. The 40,000-square foot casino/bingo facility would include slot machines and table games, a 500-seat bingo/multi-function facility, a restaurant, & administrative/support space. ~~Also included would be 1100 parking spaces on ground level.~~ *and parking for vehicles*

Discharges to Waters of the United States

According to the public notice, and based on the applicant's March 2004 Delineation of Waters of the United States, the project site supports 30.33 acres of waters of the United States. These waters include 2.01 acres of intermittent streams and 28.32 acres of wetlands. Project construction would involve the discharge of some 60,000 cubic yards of fill material to 9.46 acres of these streams and wetlands. This discharge would be for access road construction, utility lines, and golf course construction.

Compliance CWA Section 404(b)(1) Guidelines

The Corps can authorize the discharge of dredged or fill material to waters of the United States only for projects that comply with EPA's Section 404(b)(1) Guidelines (Guidelines). The Guidelines at 40 CFR 230.1 O(a)-(d) provide independent tests against which an application for a Section 404 permit must be measured. Applicants must comply with the restrictions on discharges described in the Guidelines related to: (a) the analysis of alternatives; (b) water quality and other environmental effects; (c) aquatic ecosystem degradation; and (d) the mitigation of impacts. Based on the information provided, we believe the proposed project does not comply with the Guidelines.

Analysis of Alternatives -- 40 CFR 230.10(a).

To comply with 40 CFR 230.1 O(a), the Corps may only authorize a project that it determines to be the Least Environmentally Damaging Practicable Alternative (**LEDPA**) that achieves the basic project purpose. The Guidelines prohibit the discharge of dredged or fill material if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. Further, when a project that proposes to discharge fill material is located in a special aquatic site (such as the wetlands at Martin Ranch) and is not water dependent (casinos, hotels, and golf courses are not water dependent), it is presumed that practicable alternatives are available. An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.

The Corps Public Notice contains figures of several alternatives the applicant has presumably evaluated. These include: (A-1) Year 2003 golf course design; (A-2) Year 2002 golf course design; (B) Non-gaming alternative; (C) No golf course alternative; and Ender's Beach alternative. Alternative A-1 is the alternative for which the applicant is seeking a permit. The Public Notice does not include any descriptions or analyses of these alternatives and, according to the Corps Project Manager, the applicant has not submitted to the Corps a formal alternatives analysis. Until the applicant submits an adequate alternatives analysis, it will be impossible for the Corps to identify the **LEDPA**.

We understand the applicant is developing additional alternatives that will be included in its Section 404(b)(1) alternatives analysis. We encourage the applicant to evaluate all practicable alternatives that further minimize or avoid altogether discharges of fill material to waters of the United States. The Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement for the project. The Corps Public Notice indicates that the Section 404(b)(1) Guidelines will be addressed in the alternatives section of the DEIS. As a cooperating agency on this EIS, EPA will work with BIA and the Corps to ensure that the document adequately analyzes a range of alternatives -- onsite and offsite -- to meet both the requirements of NEPA and the Section 404(b)(1) Guidelines.

Water Quality -- 40 CFR 230.1 0(b)

Project construction will entail extensive grading for roads, building pads, and the golf course. Given the scale of the project, stormwater pollutant loadings such as oil and grease, heavy metals, nutrients, organic chemicals, pesticides and herbicides, petroleum hydrocarbon components, and sediment could increase significantly. Additional constituents of concern in stormwater discharges, such as total suspended solids, biochemical oxygen demand (BOD) and chemical oxygen demand (COD), may contribute to the degradation of the nearby Crescent City Marsh Wildlife Area and other areas that receive runoff from the site.

As indicated in the public notice, EPA is responsible for certifying under Section 401 of the Clean Water Act that the proposed project will not adversely affect water quality. The applicant has applied to EPA Region 9 for this certification, and we are processing that application. We cannot, however, issue a certification for a project that does not comply with the Section 404(b)(1) Guidelines. EPA also will be responsible for ensuring that the project complies with federal stormwater regulations under purview of Section 402 of the Clean Water Act.

Endangered Species -- 40 CFR 230.1 0(b)

The Guidelines prohibit the authorization of discharges of dredged or fill material into waters of the United States, including wetlands, if it would jeopardize the continued existence of any federally listed threatened or endangered species. According to the U.S. Fish and Wildlife Service (Service), the proposed project may impact the federally endangered western lily. The Service, therefore, has requested formal consultation under the federal Endangered Species Act on this species. The Service also has determined that suitable habitat for the federally threatened marbled murrelet, northern spotted owl, and bald eagle may occur in the project vicinity, and that the proposed project may affect these species. Consultation may be necessary for these three species, as well as for the federally endangered tidewater goby.

We defer to the Service in its recommendations under Section 7 of the Endangered Species Act.

Significant Degradation -- 40 CFR 230.1 0(c)

The Guidelines prohibit discharges that would cause or contribute to significant degradation of the aquatic ecosystem. Not only would the project result in the loss of onsite wetlands, especially in the large areas designated K and N in the applicant's wetland delineation, it also would adversely affect the small, intermittent streams that feed these wetlands.

The project also may induce changes in the hydrological conditions in the nearby Crescent City Marsh Wildlife Area. This area, managed by the California Department of Fish and Game, is comprised of 339 acres of wetlands, grasslands, and other habitats. The Marsh is located on the west side of Humboldt Road and, according to the California Native Plant Society, supports: (1) more than half the known distribution of western lily; (2) at least a dozen other State or federally

listed plant species; and (3) plant communities found nowhere else in Northern California. The site for the proposed destination resort represents about 40 percent of the undeveloped watershed of the Crescent City Marsh Wildlife Area, and the proposed project; especially the golf course, could adversely and permanently affect hydrological conditions in the Marsh.

The proposed project may cause adverse and permanent impacts to several of the “significant degradation” factors listed in the Guidelines (i.e., life stages of aquatic and other wildlife; aquatic ecosystem stability, including loss of habitat and loss of nutrient assimilation and water purification functions; and aesthetic values). Accordingly, we conclude that the project has the potential to significantly degrade waters of the United States **onsite** and **offsite**.

Mitigation -- 40 CFR 230.10(d)

The Guidelines require compensatory mitigation for unavoidable project impacts to waters of the United States. As described in the Conceptual Wetland Mitigation and Monitoring Plan (March 2004), the applicant proposes to undertake compensatory mitigation at Martin’s Ranch and at nearby Endert’s Beach. Mitigation at Martin’s Ranch would consist of creating 3.67 acres of wetland pond. At Endert’s Beach, the applicant proposes to create four acres of wetland habitat, establish a one-acre buffer strip, and preserve 17 acres of coastal wetlands and dunes. The applicant also proposes to deed the entire 22-acre Endert’s Beach parcel to the National Park Service or other suitable conservation entity.

Implementation of the conceptual mitigation plan would result in the creation of 7.67 acres of wetlands. Because the proposed project would fill nearly ten acres of jurisdictional wetlands and other waters, the conceptual mitigation plan is not adequate to offset adverse impacts of the proposed project.

The National Research Council and the Corps’ mitigation Regulatory Guidance Letter 02-02 prescribe a “watershed approach” which considers entire systems and their constituent parts to successfully offset environmental losses resulting from permitted activities. In keeping with this approach, it would be preferable for the mitigation to be in the same watershed as Martin’s Ranch rather than at Endert’s Beach. Although the Endert’s Beach site has potential for wetlands restoration, we see little benefit of enhancing a site that already has high habitat diversity and is **relatively** well protected by environmental laws. It would be preferable to undertake any necessary off-site mitigation closer to Martin’s Ranch and adjacent to the Crescent City Marsh Wildlife Area. We understand there may be parcels adjacent to, or within, the Marsh that may be suitable for acquisition and habitat improvement.

Insufficient Information -- 40 CFR 230.12(a)(3)(iv)

The District Engineer may not make a finding of compliance with the Guidelines if there is insufficient information to determine whether a proposed discharge complies with the substantive requirements related to alternatives analysis, water quality, endangered species,

significant degradation, and/or mitigation. Based on the information presented to date, the applicant has not demonstrated that the project complies **with any** of the restrictions to discharges. We, therefore, conclude that there is insufficient information upon which to make a finding of compliance at this time.