

CALIFORNIA COASTAL COMMISSION

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TO: Commissioners and Interested Parties

DATE: May 27, 2011

FROM: Peter M. Douglas, Executive Director
Robert S. Merrill, North Coast District Manager
James R. Baskin AICP, Coastal Planner

SUBJECT: **County of Del Norte LCP Amendment No. DNC-MAJ-1-10, (Extensions of Urban Services).** (Meeting of June 17, 2011, in Marina Del Rey)

SYNOPSIS:

Background:

The impetus for the proposed Local Coastal Program (LCP) amendment follows from the Commission's 2005 consistency determination regarding the placement of the 203.5-acre "Martin Ranch" into public trust by the Bureau of Indian Affairs (BIA) for the Elk Valley Rancheria and its associated development of the Elk Valley Rancheria resort-casino (File No. CD-054-05). The Commission found that the federal action to place the property into trust was consistent with California's coastal management program provided provisions were included for the future review of certain aspects of the development, including the extension of community services water and sewer infrastructure to serve the resort-casino site.

To provide the resort-casino site with community-based domestic water and wastewater collection and treatment amenities as was acknowledged as part of the consistency review, the County LCP would need to be amended in one of two ways. The options include: (1) amending the Urban Services Boundary on the land use plan map to include the Martin Ranch property within the Crescent City Urban Area where such services may be provided; or (2) appending new text to the Land Use Plan's (LUP) "general" public works policy adding a fifth exception to the list of locations where the prohibition on the extension of community services beyond the mapped urban services boundary may be authorized to specifically allow such service extensions to the casino-resort parcel. As discussed further below, citing concerns that revising the boundary to include the site within the urban services area might result in untimely development pressure in the area, the County opted for the more limiting latter option.

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Amendment Description:

The County of Del Norte proposes to amend the LUP text to accommodate the development of the Elk Valley Rancheria's resort-casino project to be located at the intersection of Humboldt and Sandmine Roads, approximately 1½ miles southeast of Crescent City. The subject property is currently delineated on the land use plan map as lying outside of the "Crescent City Urban Area" and, as such, would be prohibited from connecting to the centralized domestic water supply and wastewater collection and treatment systems provided by the nearby Bertsch Ocean View Community Services District and the County of Del Norte's Community Services Area No. 1.

On October 19, 2010, the County of Del Norte Board of Supervisors adopted the amendments and directed its staff to submit the changes for certification by the Commission. As submitted, Del Norte County LCP Amendment No. DNC-MAJ-1-10 would revise the text of General Public Works Policy No. 1 of the County General Plan's Coastal Element (LUP) to include a fifth exception to the prohibition on services extensions beyond mapped Urban Services Boundaries (USB) such that such services could be provided to the resort-casino site. To prevent potential growth inducement impacts, lateral connections to parcels situated between the USB and the casino-resort site would continue to be prohibited.

Summary of Staff Recommendation:

The staff recommends that the Commission, upon completion of a public hearing, **certify the amendment request with suggested modifications**. The County proposes to amend the text of the certified LUP to establish an exception to the prohibition against extending community services beyond the Urban Services Boundary so as to provide for the connection of a resort-casino project, previously approved by the Commission in 2005 via the Coastal Zone Management Act federal consistency review process, to domestic water supply and wastewater collection facilities. The County has included in the text amendment language that would preclude growth inducement on nearby parcels by retaining the prohibition on connections to properties other than the resort-casino site proper. In addition, the County has provided information demonstrating that adequate reserve water and wastewater treatment services capacities exist so that the provision of such services to this development would not supplant or otherwise prevent service to previously authorized or planned-for growth in the County services area, especially with respect to priority uses enumerated in the Coastal Act.

However, since the Commission's consistency determination action in 2005, changes have occurred in the Elk Valley Rancheria's economic development enterprises program which raises issues as to the consistency of the proposed LCP amendment taking into account current conditions. Most notably, in 2010, the Elk Valley Rancheria began the process of similarly placing into trust with the BIA, the two-acre property directly adjoining the Martin Ranch resort-casino development site to the west. As part of the fee-to-trust process, the tribal council has expressed their intent to renovate the existing long-shuttered motel on the property, and put the parcel to a mixture of transient occupation and/or residential housing uses, in conjunction with

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the adjacent resort-casino facility. With certain commitments granted by the Tribe for future review of improvements on the subject parcel including the review of water and sewer infrastructure to prevent discharges that could adversely affect the Crescent City Marsh, on April 18, 2011, the Executive Director concurred with the Negative Determination prepared by the BIA that the trust action for the former motel site would be consistent with the California Coastal Management Program.

Regarding future improvements on the commonly-owned two-acre motel property adjoining the resort casino, questions arise as to whether the existing dated onsite sewage disposal and water supply systems will continue to adequately serve the re-initiated visitor accommodation and residential uses, whether replacement systems will likely be needed, and whether such new systems will meet contemporary water quality standards. The former motel has been shuttered for approximately seven years. Based on County building records, the former motel use was initiated in 1950. The County Community Development Department has indicated it has no records of any permits having been issued or reviews conducted for either the construction of the motel improvements or the onsite water well and sewage disposal systems. The onsite sewage disposal system is very dated and was constructed at a time when impacts to water quality were not rigorously reviewed and protective measures such as the vertical and horizontal separation between leachfields, groundwater, and surface waters were not routinely required. The site lies at a low elevation in relatively close proximity to the ocean, the Crescent City Marsh, and other brackish and seasonal freshwater wetlands in an area with shallow groundwater conditions. Similarly based on information developed by the tribe for the trust placement process, the parcel's water supply consists of a very shallow (18-foot depth) well.

If sewage disposal and water supply replacement systems are determined to be needed but are infeasible to install, the only viable option to discontinuing the transient occupancy and residential uses would be to connect the parcel to the domestic water and community sewer systems intended to serve the adjoining resort-casino site. In its present wording, the proposed amendment to the LUP would not allow for such a connection without a further serial LCP amendment, similar to the present proposed amendment, first being adopted and certified by the Commission. In the interim, both groundwater quality and public health may be adversely affected by inadequate existing systems or the residential and visitor-serving uses at the adjacent, commonly-owned motel parcel would have to be discontinued.

Given the changes in reasonably foreseeable future development associated with the addition of the visitor-serving and residential uses on the parcel adjoining the casino-resort site, there are now aspects of the requested LCP amendment that are not consistent with the Coastal Act with respect to the protection and maintenance of water quality, and the productivity of biological resources within adjoining environmentally sensitive areas, including wetlands. The Suggested Modification recommended by staff would bring the LUP amendment into consistency with the Coastal Act by modifying the scope of the proposed exception to the LUP's urban services extensions prohibition to allow for the future connection of the two-acre former motel parcel should the continued performance of its onsite domestic water well and/or sewage disposal system become a public health and/or environmental impact issue. With this modification: (1) the facilitated extension of services would only support development that would not have

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significant adverse effects, either individually or cumulatively, on coastal resources; (2) the quality of coastal waters would be protected; (3) the productivity of biological resources and adjacent environmentally sensitive habitat areas would be maintained; and (4) protect and enhance priority visitor-serving facilities supporting nearby coastal recreational uses.

In addition, the suggested modification would hasten the provision of lower cost visitor serving facilities at the Ocean Way Motel property by ensuring that any needed extension of municipal sewer services outside of the Urban Services Boundary to serve the motel would be permissible under the certified LCP. As such, the suggested modification would ensure consistency with Section 30213 of the Coastal Act to protect, encourage, and provide lower cost visitor serving facilities.

All affected parties in their respective roles, the County of Del Norte as the local government proposing amendment to its certified LCP, the City of Crescent City as the entity providing the subject water and wastewater services, and the Elk Valley Rancheria, as the recipient of the services, have indicated they are receptive to a suggested modification that would include the site of the former Ocean Way Motel within the scope of the policy exception to the urban services extension prohibition.

The Commission's procedures require that if the Commission wishes to certify an amendment with modifications, the Commission must first deny the LCP amendment request as submitted, and then certify the amendment if modified as suggested incorporating the recommended changes. Therefore, staff recommends that the Commission, upon completion of the public hearing, deny the LCP amendment as submitted, and then certify the amendment if modified as suggested.

The appropriate motions and resolutions to adopt the staff recommendation are found on pages 5 through 6 of this report.

DEADLINE FOR COMMISSION ACTION:

On April 13, 2011, the Commission granted a three-month extension to the time limit for Commission action on the requested certification of County of Del Norte Local Coastal Program Amendment No. DNC-MAJ-1-10 (Urban Services Extensions). The new date by which the Commission must act upon the amendment is July 13, 2011.

Analysis Criteria:

To certify the amendment to the Land Use Plan (LUP) portion of the County of Del Norte Local Coastal Program, the Commission must find that the LUP, as amended, is consistent with the policies of Chapter 3 of the Coastal Act.

Additional Information:

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For additional information about the LCP Amendment, please contact James R. Baskin at the North Coast District Office at (707) 445-7833. Please mail correspondence to the Commission at the above address.

PART ONE:

MOTIONS, RECOMMENDATIONS, RESOLUTIONS, AND SUGGESTED MODIFICATIONS

I. MOTIONS, STAFF RECOMMENDATIONS, AND RESOLUTIONS FOR LCP AMENDMENT NO. DNC-MAJ-1-10

A. DENIAL OF LUP AMENDMENT NO. DNC-MAJ-1-10, AS SUBMITTED:

MOTION I: I move that the Commission certify Land Use Plan Amendment No. DNC-MAJ-1-10 as submitted by the County of Del Norte.

STAFF RECOMMENDATION TO DENY:

Staff recommends a **NO** vote. Following the staff recommendation will result in rejection of the Land Use Plan Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION I TO DENY CERTIFICATION OF THE LAND USE PLAN AS SUBMITTED:

The Commission hereby denies certification of the Land Use Plan Amendment No. DNC-MAJ-1-10 as submitted by the County of Del Norte and adopts the findings set forth below on the grounds that the land use plan as amended does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Land Use Plan Amendment.

B. CERTIFICATION OF LUP AMENDMENT NO. DNC-MAJ-1-10 WITH SUGGESTED MODIFICATIONS:

MOTION II: I move that the Commission certify Land Use Plan Amendment No. DNC-MAJ-1-10 for the County of Del Norte if it is modified as suggested in this staff report.

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

RESOLUTION II TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies Land Use Plan Amendment No. DNC-MAJ-1-10 for the County of Del Norte if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment; or (2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Land Use Plan Amendment if modified.

II. SUGGESTED MODIFICATIONS TO THE LAND USE PLAN

Key for Modifications to County Language:

The attached Exhibit No. 7 presents the complete section of the Land Use Plan as proposed by the County, showing in ~~strikeout~~ and underline how the proposal would alter the existing land use plan text. In this Section, the revised text deletions and additions proposed by the County are shown in ~~single-strikeout~~ and single-underline, respectively. Text deletions and additions suggested by the Commission are formatted in ~~**bold double-strikethrough**~~ and **bold double-underlined** text, respectively.

SUGGESTED MODIFICATION NO. 1: General Public Works Policy No. 1 of Chapter 5 – *Diking, Dredging, Filling and Shoreline Structures* of the County of Del Norte Land Use Plan (LUP) shall be modified as follows:

General Public Works (PW-G)

- 1) There shall be no extension of urban services (water and sewer) beyond the urban-rural boundary as designated in the final certified land use plan. The only exceptions to this general policy shall be:
 - a. The extension of water services beyond the Ship Ashore area;

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- b. The Crescent City water line crossing Jordan Creek at Lake Earl Drive, down Boulder and Hobbs Wall Road to Blackwell Lane westward to Lake Earl Drive/Northcrest Drive and south on Northcrest Drive to the urban boundary around the Crescent City area;
 - c. The extension of water service south of Crescent City approximately 1/2 mile to serve a pocket of visitor serving commercial development on Highway 101 which include an existing motel, restaurant, residence, shop and two vacant parcels (shown on page 3 of Assessors Parcel Book 115;)
 - d. The extension of community services district water outside the Crescent City Urban Area to the Rural Neighborhood 2 units per acre density on the west side of Elk Valley Road at the Norris Street intersection;
 - e. The extension of public water and public sewer services outside the Crescent City Urban Area to serve the Elk Valley Rancheria resort/casino project on the Martin Ranch property (APN 115-020-28) and the adjoining two-acre parcel that was the former site of the Ocean Way Motel (APN 115-020-20). The proposed ~~text amendment~~ This exception specifically ~~ties~~ confines the public utility extension to only those activities proposed on the Martin Ranch property (APN 115-020-28) and the former site of the Ocean Way Motel (APN 115-020-20) with no lateral connections granted to adjacent lands.
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PART TWO:

FINDINGS FOR DENIAL OF AMENDMENT DNC-MAJ-1-10 AS SUBMITTED AND APPROVAL IF MODIFIED

I. ANALYSIS CRITERIA

To approve the amendments to the Land Use Plan (LUP), the Commission must find the LUP, as amended, will remain consistent with the policies of Chapter 3 of the Coastal Act.

As submitted, the proposed LUP amendment is not fully consistent with the policies of the Coastal Act, but if modified as suggested, will be consistent.

II. FINDINGS FOR LCP AMENDMENT

The Commission finds and declares as following for Amendment No. DNC-MAJ-1-10:

A. Area Description/History.

The LCP amendment affects lands along either side of Humboldt Road within approximately ¼ mile of the Urban Services Boundary delineated around the southern perimeter of the Bertsch

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Tract and Ocean View Tract subdivisions (see Exhibit No. 1-4). The subject area represents the urban-rural interface between the developed unincorporated residential suburban periphery of the City of Crescent City along Humboldt Road and the rural resource lands beyond on the southern fringes of the Crescent City Coastal Plain. The Bertsch Tract and Ocean View Tract subdivisions were platted and built out in the 1960s. Community services are provided to the two residential subdivisions by the City of Crescent City's municipal water and wastewater systems through service agreements with the Bertsch Ocean View Community Services District (domestic water) and Del Norte County Service Area No. 1 (sewer).

The rural lands further to the south and west have been in agricultural grazing and hay and floral crop production uses since the area was largely disturbed by mineral sand mining along the South Beach strand and inland timber harvesting beginning in the 1920s. Commencing in 1979, portions of the former Owen Bauer Ranch were acquired by the California Department of Fish and Game for purposes of establishing the Crescent City Marsh Wildlife Area. Beginning in 1988, CDFG in association with the U.S. Fish and Wildlife Service (USFWS) conducted surveys of the property towards preparation of a management plan for the wildlife area and later for developing a recovery plan for the state- (1982) and federal-listed (1994) endangered western lily (*Lilium occidentale*). In 1998, the final recovery plan for the western lily was issued which identified the Crescent City Marsh as one of six refugia areas within the species Southern Oregon-Northern California range in which habitat protection and enhancement efforts are to be concentrated. Over the past thirteen years, CDFG and USFWS staff have conducted a variety of targeted habitat improvements in the marsh for improving western lily habitat, including: (1) culvert and drainage ditch maintenance to reduce impacts associated with stormwater impoundment on emergent wetland sites; and (2) small-scale vegetation control through livestock grazing and hand removal to prevent successional growth of other plants that would shade and crowd out the lilies.

In 2001, the Elk Valley Rancheria acquired title to the former "Martin Ranch," a 203-acre parcel situated on the east side of Humboldt Hill Road at its intersection with Sand Mine Road (APN 115-020-28) just beyond the urbanized Bertsch Ocean View neighborhoods, for purposes of relocating their existing gaming facility and developing related resort amenities. 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 Road. Once the new casino has been constructed, the Rancheria intends to convert the old casino into Tribal administrative facilities.

On September 14, 2005, the Commission conditionally concurred with the Bureau of Indian Affairs' determination that the placement of the Martin Ranch property into trust and development of the resort-casino is consistent with the state's coastal management program. The conditional determination allowed for the placement of the property in trust predicated upon the rancheria's council adopting an ordinance granting a limited waiver of its sovereign immunity and providing an opportunity for the Commission to review and consent to certain aspects of the site development, including detailed project plans, including plans for water quality, hydrology, lighting, signs, roads, sewer and water infrastructure, landscaping and revegetation, and building plans.

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In 2004, the Elk Valley Rancheria acquired title to the adjacent two-acre parcel APN 115-020-20, the site of the former Ocean Way Motel located along the eastern side of State Route 101 at its intersection with Humboldt Road. In 2010, the Elk Valley Rancheria began the process of similarly placing this parcel into trust with the BIA. The intended future use for the property is stated as being a continuation of past recent uses, namely a combination of overnight visitor accommodation and residential occupancy (“as a motel and housing, as needed.”) On April 18, 2011, the Executive Director concurred with the Negative Determination prepared by the Bureau of Indian Affairs, finding based upon the proffering of opportunities to review site improvement plans prior to commencement of construction on the parcel, and the inclusion of a limited waiver of sovereign immunity, the fee-to-trust conversion of the property would be consistent with California’s coastal management program.

B. Impetus for LCP Amendment.

The County of Del Norte’s proposed LCP amendment was adopted at the behest of the Elk Valley Rancheria, owner of the 203.5-acre parcel that is the site for the pending development of the tribe’s relocated gaming facility and related resort guest amenities. The amendment is being undertaken pursuant to the requirements of Section 21.12.040 of the Del Norte County Local Coastal Program Zoning Enabling Ordinance (LCPZEO) which limits the authorization of new development to those consistent with the legal framework of the LCP, namely the policies of the Land Use Plan (LUP) and the development regulations set forth in the zoning designations, other chapters of the LCPZEO, and related portions of the County Code that comprise the LCP’s Implementation Plan (IP). In this case, before a coastal development/grading permit for constructing water and sewer lines within the adjoining public street right of way to provide the resort-casino with these community services may be authorized as being consistent with the LCP, the LUP general public works policy prohibiting such extensions beyond the Urban Services Boundary around the periphery of the adjoining residential subdivisions must first be amended. Instead of amending the Urban Services Boundary land use plan map to include the Martin Ranch, the County has chosen to resolve the issue by adding a new exception to the services prohibition list, identifying a fifth geographic location where extraterritorial service extensions would be permitted.

C. Description of Area(s) Affected by the Proposed LCP Amendment.

As introduced in Section I above, the area affected by the proposed LCP amendment primarily consists of two parcels: (1) APN 115-020-28, the 203.5-acre former “Martin Ranch” parcel currently held in trust by the Bureau of Indian Affairs for the Elk Valley Rancheria, and the site of the rancheria’s resort-casino development project; and (2) APN 115-020-20, the two-acre lot situated between State Route 101 and Humboldt Road, the site of the former Ocean Way Motel, proposed to similarly be placed in trust status. The utility line extensions that would be facilitated by the LCP amendment would also pass by APN 115-020-29, the 332-acre property comprising the majority of the Crescent City Marsh Wildlife Area, held and managed by the California Department of Fish and Game.

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Martin Ranch Parcel

The 203.5 acre Martin Ranch parcel, which is bisected by the coastal zone boundary, is held in trust by the Bureau of Indian Affairs for the Elk Valley Rancheria. The site is slated for the construction of a 40,000-square-foot gaming casino/bingo facility, comprising approximately 400 slot machines and 60 gaming tables, a 500-seat bingo/multi-function room, restaurants, a 20,000-square-foot convention center, a 156-room hotel, approximately 1,250 parking spaces, and associated sewer, water, and other infrastructure improvements. 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 ten feet to 320 feet. The eastern, forested portion of the site, which is not proposed for development, is quite steep. The property contains 28.85 acres of wetlands (based on the Army Corps wetland definition, not the Coastal Act definition). These 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 Road to the state wildlife area. Surrounding development includes the Bertsch Tract and Ocean View Tract residential subdivisions to the north, Highway 101 and the Crescent City Marsh Wildlife Area to the north and north west, private forest land owned by Save-the-Redwoods League to the east, two single-family homes and open space to the south, and the former Ocean Way Motel just across Humboldt Rd. to the southwest.

Ocean Way Motel Parcel

The roughly triangular two-acre former motel lying to the southwest of the Martin Ranch property has dual frontage along both Humboldt Road and Highway 101. Topographically, the property is a continuation of the fen comprising the southernmost portion of the Crescent City Marsh, with elevations ranging from approximately 10 to 14 feet (fill prism) above mean sea level. The subject property is currently developed with an 11-unit motel, one residence, and associated accessory buildings, that have been closed for business for nearly a decade. Surface runoff and groundwater drainage from the developed portions of the property flow in a northerly direction onto the adjoining state property and, in turn, through a culvert under Sandmine Road and into the main portions of the Crescent City Marsh Wildlife Area.

Crescent City Marsh Wildlife Area

To the west across Humboldt Road from the Martin Ranch parcel lies the Crescent City Marsh Wildlife Area, a 339-acre fish and wildlife refuge owned and managed by the California Department of Fish and Game. The portion of the refuge adjoining the affected area is comprised of a mosaic of freshwater, intertidal brackish, and riparian wetlands interspersed with islands of upland that provide habitat to a wide variety of flora and fauna associated with emergent, scrub-shrub, spruce forest and coastal grassland ecotones, including the federal- and state-listed endangered western lily (*Lilium occidentale*).

D. Amendment Description.

The proposed LUP amendment involves a text change to General Public Works Policy No. 1 of Chapter 5 – *Diking, Dredging, Filling and Shoreline Structures* of the County of Del Norte Land

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Use Plan (LUP) as follows (proposed deleted text is shown in ~~single-strikeout~~ font; new language appears in single-underlined text font:

General Public Works (PW-G)

- 1) There shall be no extension of urban services (water and sewer) beyond the urban-rural boundary as designated in the final certified land use plan. The only exceptions to this general policy shall be:
 - a. the extension of water services beyond the Ship Ashore area;
 - b. the Crescent City water line crossing Jordan Creek at Lake Earl Drive, down Boulder and Hobbs Wall Road to Blackwell Lane westward to Lake Earl Drive/Northcrest Drive and south on Northcrest Drive to the urban boundary around the Crescent City area;
 - c. The extension of water service south of Crescent City approximately 1/2 mile to serve a pocket of visitor serving commercial development on Highway 101 which include an existing motel, restaurant, residence, shop and two vacant parcels (shown on page 3 of Assessors Parcel Book 115;)
 - d. the extension of community services district water outside the Crescent City Urban Area to the Rural Neighborhood 2 units per acre density on the west side of Elk Valley Road at the Norris Street intersection;
 - e. The extension of public water and public sewer services outside the Crescent City Urban Area to serve the Elk Valley Rancheria resort/casino project on the Martin Ranch property (APN 115-020-28.) The proposed text amendment specifically ties the public utility extension to only those activities proposed on the Martin Ranch with no lateral connections granted to adjacent lands.

E. Protection of Biological Productivity, Water Quality, and Adjacent Environmentally Sensitive Habitat Areas.

Relevant LCP Policies:

Coastal Act Section 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. [Emphasis added.]

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Coastal Act Section 30231 states that:

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 wastewater discharge 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. [Emphasis added.]

Coastal Act Section 30107.5 defines “environmentally sensitive habitat area as:

... any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240(b) states, in applicable part:

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.

Discussion:

The proposed amendment is intended to provide for the extension of community services to accommodate development of commercial gaming and resort visitor facilities by the Elk Valley Rancheria on the former “Martin Ranch” property held in trust for the Tribe by the Bureau of Indian Affairs. The fee-to-trust conversion action for that property was the subject of a 2005 Coastal Zone Management Act consistency review which the Commission found to be consistent with the state coastal management program (see Consistency Determination No. CD-054-05). That consistency determination was based, in part, on the ability of the subsequent casino-resort development community to be supported by water and wastewater services that would be extended to the site from infrastructure in the adjoining Crescent City Urban Area adjoining the casino-resort site. When the proposed LCP amendment as submitted is reviewed solely in the context of the development planned and anticipated for the Martin Ranch property, the proposal to provide services exclusively to the casino-resort site would be consistent with both Coastal Act Sections 30250 and 30254, as discussed in Findings Section II.F below.

However, since the Commission’s action on the Martin Ranch property, the Rancheria has purchased and is in the process of similarly placing into trust an adjacent two-acre parcel, the site

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of the former “Ocean Way Motel” (see Consistency Determination No. CD-016-11). Stated plans call for redeveloping the currently shuttered facility’s 11 motel units and one residence “as a motel and housing, as needed.” The placement into trust of the property by the BIA for the re-use of the site for visitor accommodations and residential uses has been reviewed by the Commission pursuant to the consistency review authority of the federal Coastal Zone Management Act. With certain commitments granted by the Tribe for future review of improvements on the subject parcel including the review of water and sewer infrastructure to prevent discharges that could adversely affect the Crescent City Marsh, on April 18, 2011, the Executive Director concurred with the negative determination (ND-016-11) made by the BIA pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations (see Exhibit 10).

As discussed in the findings above, the site of the former motel is situated at or near sea level and surrounded by wetlands with shallow groundwater conditions. Coastal Act Section 30240(b) requires the siting and design of new development adjacent to ESHA in a manner that prevents impacts that would significantly degrade such areas, and would be compatible with the continuance of those habitat areas.

Resources within the Crescent City Marsh Wildlife Area

The adjoining wetlands to the north of the former motel site comprise the Crescent City Marsh. According to the California Native Plants Society:

The Crescent City Marsh and environs are home to more than 230 plant species, at least a dozen of which are considered rare, threatened, or endangered. Many of these species are absent or rare elsewhere along California’s coast. Some are plants of montane habitats or more northern latitudes, including vanilla grass (*Hierochloa odorata*), stream orchid (*Epipactis gigantea*), great burnet (*Sanguisorba officinalis*), buckbean (*Menyanthes trifoliata*), Sitka alder (*Alnus viridus*), Arctic starflower (*Trientalis arctica*), white-stemmed gooseberry (*Ribes inerme* var. *inerme*), and slender bog-orchid (*Platanthera stricta*). The Crescent City Marsh consists of 335 acres of coastal freshwater wetlands, open water, brackish marsh, beach and dunes, prairie, coastal scrub, and spruce forest... The area also contains suitable habitat for several threatened and endangered animals, including marbled murrelet, northern spotted owl, bald eagle, Oregon silverspot butterfly, and tidewater goby. Several plant communities occur in the Marsh that are rare in northwestern California: buckbean marsh, Pacific reed grass marsh, and Labrador tea marsh. All three marsh types are home to the endangered western lily...

In addition, according to the U.S. Fish and Wildlife Service (USFWS), the area’s diverse floristic composition and occurrences of plant communities absent or rare elsewhere along other ecologically similar portions of the California coast, together with their wetland mosaic substrate, makes the area:

...arguably the most botanically-unique wetland complex in northwest California and perhaps the entire State.

With specific regard to the presence of western lily within the Crescent City Marsh Wildlife Area (CCMWA), the USFWS states:

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The CCMWA population is the largest population known, yet has been one of the least studied. Until this study, there had been no detailed investigation of the life history, recruitment and population demographics, and browsing impacts for the western lily at any of the populations near Crescent City. The critical importance of the CCMWA population to the species (50% or more of all known flowering plants) warrants a greater understanding of natural browsing impacts, as well as, the general life history of this population...

Based on the ratio of flowering to vegetative plants observed emerging in the L[ife] H[istory] plots this year at CCMWA, the total population likely exceeded the flowering population by a factor of ~9, indicating a total estimated population size of ~12,000 individuals occupying high-density habitat. In 2002, the estimated population size has continued to decline compared with estimated population sizes of ~15,000 in 2001 and more than 17,000 in 1999 (Imper and Sawyer, 2002). This year's results indicate a population decline of ~30% since 1999. The explanation for this decline is not evident, although apparently disease and predation from grazers (deer, slugs, and small mammals) are not important factors.

Threats to the Endangered Western Lily

The federally endangered western lily (*Lilium occidentale*) is restricted to a narrow coastal strip between Humboldt Bay, California and Coos Bay, Oregon. Approximately 20 populations remain, some containing less than 10 flowering plants. Until the end of the last century, the marsh supported more than 75 percent of the total reproductive population for the species. Since then the proportion of the overall species contained in the marsh has declined by a third to one half of historic levels, with the species disappearing entirely from the lowest elevations of the marsh. It is generally thought by staff of the USFWS that this decline is likely due to persistent inundation of habitat areas into the growing season from blocked culverts beneath U.S. 101 that drain the marsh onto adjoining South Beach.

A second factor threatening the western lily in the marsh more directly related to this LCP amendment is encroachment by woody shrubs and trees. Up until its acquisition in the 1980s by the California Department of Fish and Game (CDFG) to establish the Crescent City Marsh Wildlife Area, the entire Crescent City Marsh had been passively grazed by cattle. Over the past ten years, plot monitoring has documented a loss of the early successional habitat the lily favors as mid-seral stage, scrub-shrub and forested vegetative layers became established in the absence of their cropping by cattle. While extinction of western lily is not imminent, the steep decline in this population has potentially significant adverse implications on the species' population genetics, and poses a substantial threat to successful recovery of the species.

Coastal Act Section 30231 directs that the biological productivity and the quality of the marsh's resources, including its waters, wetlands, are to be maintained appropriate to maintain optimum populations of marine organisms and for the protection of human health and, where feasible, restored through such means as minimizing the adverse effects of wastewater discharge and entrainment, controlling runoff, and encouraging waste water reclamation. Moreover, due to both their relative rarity and unique ecological value, and their relative susceptibility to

disturbance and degradation, the plant or animal life and habitats within the Crescent City Marsh Wildlife Area would also constitute “environmentally sensitive habitat area” as defined by Section 30107.5 of the Coastal Act. Coastal Act Section 30240(b) requires the siting and design of new development adjacent to ESHA in a manner that prevents impacts that would significantly degrade such areas, and would be compatible with the continuance of those habitat areas.

Impacts to Crescent City Marsh Wildlife Area from Surrounding Development

The hydraulic impacts of development of the Elk Valley Rancheria’s casino-resort project on the resources within Crescent City Marsh Wildlife Area, both in terms of stormwater runoff quantity (flooding) and quality (pollution loading) constituted a significant portion of the BIA’s environmental analysis and the Commission’s 2005 Coastal Zone Management Act consistency review. These concerns were largely addressed through the incorporation of design features into the development, such as reducing the amount of impervious surfacing, conveying wastewater discharges into public sewer treatment facilities, and developing a stormwater management plan identifying both construction phase and long-term water quality management best management practices to reduce impacts to the hydrology of the marsh to less than significant levels.

However, with regard to the subsequent fee-to-trust conversion of the former Ocean Way Motel property adjacent to the resort casino, the intention is to maintain the existing motel/housing use of the property rather than construct extensive new development on the site. As the former motel’s onsite sewage disposal system and water well were initially constructed over six decades ago with no known upgrades in the intervening period, questions arise as to the system’s current functionality and continued reliability to support the reinitiated uses at the site. A failure of the sewage disposal system could result in the release of nutrient-rich, coli-form bacteria laden effluent into surface runoff and shallow groundwater which, given the area’s drainage pattern, would flow northward off of the parcel and onto the adjoining Crescent City Marsh Wildlife Area and, in turn, onto South Beach. Such releases could adversely affect this adjacent environmentally sensitive area in two ways. First, hikers and other recreational users of the marsh and beach would be exposed to the contaminated water, which, if ingested could result in intestinal disease, infections, and other maladies.

Secondly, the nutrient-rich effluent could effectively fertilize vegetation within the lower portion of the marsh, resulting in further stimulation of the growth of shrub and canopy cover, further shading out and displacing the endangered western lily and other emergent sensitive rare plant species. The Commission also notes that reinitiation of use of the twelve dwelling units on the property for transient accommodation and/or residential occupancy, based upon a typical average of 300 gallons per day of domestic water usage, could reintroduce approximately four acre-feet of water flow annually into and through the adjoining marsh contributing incrementally to the adverse effects of inundation on lily habitat.

In addition, given the relatively shallow depth of the existing domestic water supply well on the property, either a failure of the onsite sewage disposal system or the effects of sea level rise on

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the quality and character of the area's groundwater could render continued use of this facility infeasible.

Thus, the Commission finds that it is necessary to impose suggested modifications to avoid impacts to biological resources and water quality that could occur within the area affected by the LCP amendment inconsistent with the provisions of Section 30231, and 30240(b) of the Coastal Act. Without provisions for the Elk Valley Rancheria's adjacent commonly-owned motel parcel to connect into community water and wastewater systems, in a manner similar to how the LCP amendment would allow for the connection of the Rancheria's adjacent casino/resort hotel project to community services, future failures in the former motel property's antiquated onsite wastewater treatment and/or domestic well systems could result in impacts to coastal resources and human health or necessitate that the identified priority visitor-serving accommodations and/or residential use be discontinued.

Therefore, the amendment as submitted is inconsistent with the Coastal Act policies protecting coastal water quality and adjacent environmentally sensitive habitat areas, and must be denied. However, the Commission finds that if modified to include provisions for the adjacent commonly-owned motel site to be similarly connected to community water and wastewater services, the LUP amendment could be found consistent with Sections 30231 and 30240 of the Coastal Act. Therefore, the Commission attaches **Suggested Modification No. 1** as follows:

SUGGESTED MODIFICATION NO. 1: LUP *General Public Works* Policy #1 shall be amended to read as follows:

General Public Works (PW-G)

- 1) There shall be no extension of urban services (water and sewer) beyond the urban-rural boundary as designated in the final certified land use plan. The only exceptions to this general policy shall be:
 - a. The extension of water services beyond the Ship Ashore area;
 - b. The Crescent City water line crossing Jordan Creek at Lake Earl Drive, down Boulder and Hobbs Wall Road to Blackwell Lane westward to Lake Earl Drive/Northcrest Drive and south on Northcrest Drive to the urban boundary around the Crescent City area;
 - c. The extension of water service south of Crescent City approximately 1/2 mile to serve a pocket of visitor serving commercial development on Highway 101 which include an existing motel, restaurant, residence, shop and two vacant parcels (shown on page 3 of Assessors Parcel Book 115;)

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- d. The extension of community services district water outside the Crescent City Urban Area to the Rural Neighborhood 2 units per acre density on the west side of Elk Valley Road at the Norris Street intersection;
- e. The extension of public water and public sewer services outside the Crescent City Urban Area to serve the Elk Valley Rancheria resort/casino project on the Martin Ranch property (APN 115-020-28) and the adjoining two-acre parcel that was the former site of the Ocean Way Motel (APN 115-020-20.) ~~The proposed text amendment~~ This exception specifically ties confines the public utility extension to only those activities proposed on the Martin Ranch property (APN 115-020-28) and the former site of the Ocean Way Motel (APN 115-020-20) with no lateral connections granted to adjacent lands.

The second sentence of the proposed appended language to the LUP's general public works policy states, "The *proposed text amendment* specifically ties the public utility extension to *only those activities proposed on the Martin Ranch* with no lateral connections granted to adjacent lands." [Emphases added.] This language emphasizes the scope of the proposed LCP amendment rather than the limited scope for which exceptions to the policy's service extension prohibition may be granted. Upon effective certification of the LCP Amendment, the language referring to "the proposed text amendment" becomes obsolete as at that point the adopted language becomes part of the adopted LCP. Therefore, in addition to including provisions to connect the former motel site to be connected to community water and wastewater services, the suggested modification modifies the language of the text change from the "proposed test amendment" to "this exception."

The Commission notes that the future installation of sewer and water lines to both the Martin Ranch casino/resort site and the Ocean Way Motel site facilitated by the LCP amendment as modified will require the review and approval of coastal development permits by Del Norte County. As part of the review of the coastal development permit, the County will need to satisfy the requirements of CEQA for the review of the environmental effects of the project. The County's action on the coastal development permits will also likely be appealable to the Commission pursuant to Section 30603 of the Coastal Act as the developments may constitute major public works facilities and the route of the sewer and water lines may extend through areas within 100 feet of wetlands.

The LUP amendment as submitted is inconsistent with the policies of the Coastal Act protection of coastal water quality and adjacent environmentally sensitive habitat areas, and must be denied. As modified, the proposed LUP Amendment is consistent with Sections 30231 and 30240(b), as these coastal resources will be protected from adverse effects of wastewater discharges.

F. Locating and Planning New Development / Expanded Public Works Facilities.

Applicable Coastal Act Policies

Section 30254 of the Coastal Act states, in applicable part:

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... 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. [Emphases added.]

Discussion

As discussed in Part II, the subject site of the proposed LCP amendment is the rural lands located just beyond the Urban Services Boundary around the southeastern unincorporated periphery of the City of Crescent City. The affected sites lie south of the co-terminus southern boundaries of Bertsch Ocean View Community Services District and Del Norte County Services Area No. 1 which provide domestic water supply and wastewater collection and treatment services, respectively, to urbanized unincorporated areas originating from the City's systems. The subject LCP amendment would modify the LUP policy prohibiting extensions of such services to "rural" lands," being those areas lying beyond the Urban Services Boundary as designated on the land use plan map (see Exhibit Nos. 5 and 6). As discussed under the preceding Findings Section II.B, for purposes of conformity with Coastal Act Sections 30231 and 30240, Suggested Modification No. 1 recommends that the policy exception include the adjoining former motel site similarly being placed in trust.

Coastal Act Section 30254 directs: (1) public works facilities be expanded only if they have been designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions the Coastal Act; (2) in instances where existing or planned public works facilities can accommodate only a limited amount of new development, such expanded services will not preclude service 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; and (3) special districts shall not be expanded except where assessment for, and provision of, the service would not induce new development inconsistent with the Coastal Act.

Provision of Public Works Facilities to Coastal Act-consistent Development and Uses

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The expansion of services that would be facilitated by the proposed amendment to the LUP's general public works policy, as recommended be adjusted by Suggested Modification No. 1, would not result in public facilities being provided to development inconsistent with the Coastal Act.¹ Both the placement in trust of property by the BIA for the development of the casino-resort facility on the Martin Ranch property as well as the placement in trust of property by the BIA for the restoration of the visitor-serving accommodation and residential uses at the former Ocean Way Motel have been reviewed by the Commission pursuant to the consistency review authority of the federal Coastal Zone Management Act (see Consistency Determination Nos. CD-054-05 and ND-016-11, respectively). In the case of the placement in trust of property for development of the casino-resort facility, the Commission concurred that the action of the BIA would be consistent with California's coastal management program. In the case of the placement in trust of property for the restoration of visitor-serving and residential uses at the former Ocean Way Motel, the Executive Director concurred with the negative determination made by the BIA pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations. Both of these determinations were predicated upon the Elk Valley Rancheria's proffered opportunity for the Commission to review and confer on specific aspects of future development plans for the two sites, including: (a) water quality and hydrology; (b) water and sewer infrastructure; (c) landscaping and vegetation or revegetation; (d) building plans; (e) road construction and maintenance; (f) lighting; and (g) signage. In addition, the Rancheria granted limited waivers of sovereign immunity to the Commission to ensure that a mechanism exists to seek redress if these good faith consultations proved ineffective for ensuring consistency with the state coastal management program consistent. Based on these provisions, the Commission finds that the LCP amendment to the LUP's general public works policy, as adjusted by Suggested Modification No. 1A, would be consistent with Coastal Act Section 30254 insofar as the subject expansion of public works facilities have been designed to accommodate needs generated by development or uses permitted consistent with the provisions the Coastal Act.

Priorities for Providing Limited Public Works Facilities

Section 30254 also stipulates that, in cases of limited public works facilities availability that priority be given to certain classes of development and uses, specifically "*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,*" over other forms of development. In the case of both the Martin Ranch and former Ocean Way Motel development sites, there are certain identified future uses and development types which would not be afforded priority under this policy prong, namely the portions of the casino-resort which would not comprise commercial recreation and/or visitor-serving facilities, and the residential use of the former motel site. Thus, the question is raised as to whether there are any limitations to the City of Crescent City's municipal water and wastewater treatment systems for which provisions of such services to the Martin Ranch and Ocean Way Motel sites would preclude similar provision of services to the priority development and use types enumerated in Section 30254.

¹ Section 30008 of the Coastal Act establishes the Act as the State of California's "Coastal Management Program" for purposes of administering the Federal Coastal Zone Management Act (16 USC §1451 *et seq.*)

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Based upon information developed for both the Martin Ranch fee-to-trust conversion, as well as that for the more recent Ocean Way Motel site trust action, the City of Crescent City's domestic water supply system and wastewater collection and treatments both have adequate reserve capacity to serve development planned for both sites by the Elk Valley Rancheria without depriving services to other essential and priority types of development and uses.

Domestic Water Supply Capacity: The Crescent City Water System's source of supply is the Smith River. Through a series of Ranney collector wells, up to approximately 5.2 million gallons of potable water is allocated to be pumped daily through the municipal transmission system for filtration and chemical treatments for distribution through the City's delivery system grid and to the various community service district entities in the unincorporated but urbanized areas surrounding the City, including the Bertsch Ocean View Community Services District adjoining the Martin Ranch. Current water demand for the city and outlying served areas comprises approximately 3.7 million gallons per day (mgd). Based on continuation of the historical one percent annual growth rate, it would take 35 years for the water system to reach its maximum allocated volume without service being provided to the Martin Ranch casino-resort development or reinitiation of the uses on the former motel site. The estimated 60,000 gallons (0.06 mgd) anticipated for the casino-resort together with the anticipated 3,600 gallons per day required for the 11 motel units and residence (0.0036 mgd) would represent approximately one year's growth in demand volume. Accordingly, an approximately 34 years of water system reserve capacity would remain if both the Martin Ranch and former motels developments were to connect into the Crescent City Water System. Therefore, the Commission finds that expansion of the Bertsch Ocean View Community Service District's domestic water supply public works facilities to serve the area that the approved LCP amendment would facilitate would not result in a deprivation of water services to other essential and priority types of development and uses as required by Section 30254.

Wastewater Treatment Capacity: With regard to sewerage, as discussed in the final environmental impact report adopted at the time of the consistency determination for the Martin Ranch federal action (2005) it was determined that first phase improvements to the City's regional wastewater treatment system and savings derived from the installation of industrial pre-treatment facilities at a local cheese manufacturing concern had resulted in reserve capacity for approximately 1,000 "Single Family Residential Equivalent" ("SFRE") connections becoming available. The Martin Ranch casino-resort project is anticipated to generate approximately 150 SFREs of wastewater treatment demand. Similarly, the motel and its residence would represent an additional 12 SFREs if service connections were to be provided to the site at some future time. Thus, based on 2005 data, approximately 848 SFRE wastewater treatment connections would remain available in the Crescent City Regional Wastewater Treatment Facility's system above and beyond that needed to serve planned-for growth in its urban service area. In addition, in 2007, the Commission authorized further improvements to the treatments works to meet anticipated growth identified under the County's and City's 2003 General Plan/LCP updates through the year 2027 (see Coastal Development Permit No. 1-07-002 and LCP Amendment Nos. DNC-MAJ-2-03 and CRC-MAJ-1-03). In addition to the first phase improvements, due to the increases in plant's through-put efficiencies with respect to aerobic digestion volumetric

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limitations and outfall flow constrictions, additional processing capacity can be achieved through future phase improvements to the existing treatment works and in-flow/infiltration upgrades to the collection system if growth rates were to exceed that anticipated for the facility's 20-year planning period.² Thus, the Commission similarly finds that that expansion of the County Service Area No. 1's wastewater collection and treatment public works facilities to serve the development that the approved LCP amendment would facilitate would not deprive water services to other essential and priority types of development and uses, as required by Section 30254.

Induction of Coastal Act-inconsistent Development

Finally, Coastal Act Section 30254 requires that new and expanded public works facilities do not induce development inconsistent with the Coastal Act. Such inconsistent development could include the inducement of premature or discontinuous growth patterns in the area that an extension of sewer and water lines could facilitate and the conversion of adjoining agricultural lands for development of nonagricultural uses that would otherwise be infeasible to develop for a lack of such services. However, with the suggested modification previously discussed, the amendment to the urban services rural extensions exceptions would be limited to providing such connections only to the Martin Ranch and the former motel parcel, and specifically states that there shall be "no lateral connections granted to adjacent lands." This limitation will preclude the approval of coastal development permits for lateral connections to the adjacent lands and thus would minimize the likelihood that the extension of urban services that will be facilitated by this amendment will induce growth inconsistent with Coastal Act policies.

Therefore, the Commission finds the amendment as modified is consistent with Section 30254 of the Coastal Act with respect to ensuring that the provision of community services the amendment would facilitate is appropriately limited in its scope so as not to induce new development inconsistent with the Coastal Act.

G. Visitor-serving Facilities and Upland Areas Supporting Coastal Recreation.

Applicable Coastal Act Policies

Section 30213 of the Coastal Act states, in applicable part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Coastal Act Section 30223 directs that:

² The Commission notes that any such subsequent future phase improvements that resulted in treatment capacity exceeding that authorized by Coastal Development Permit No. 1-07-002 would first require securing a permit amendment of that authorization. See Special Condition No. 1 on pages 8-9: <http://documents.coastal.ca.gov/reports/2007/5/F13d-5-2007.pdf>.

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Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Discussion

In several contexts, the Coastal Act grants protection and priority to the retention of existing, and development of new, visitor-serving facilities. Similarly, the Act affords protections and priorities to, directs the enhancement of opportunities for, and provides for siting supporting facilities to support coastal recreation.

As discussed in the Part Two Area Description/History Findings Section II.A., the Elk Valley Rancheria proposes to redevelop the former Ocean Way Motel site to again provide overnight accommodations in some combination with residential uses on the property. Given the small size of the property, the existing site improvements, and the lack of amenities such as a swimming pool, sports courts and play fields, and the like, the restored motel component will likely take the form of a “lower cost” visitor facility identified in Coastal Act Section 30223 as it was in the past. Moreover, the commonly-owned motel property is situated just east of State Route 101, approximately ¼ mile inland from the open ocean shoreline. The property is in the immediate vicinity of several coastal recreational sites, including the Crescent Beach and Enderts Beach, units of Redwood National Park, and the open strand of South Beach, a popular destination for surfing, kite-flying, and other open shoreline uses.

As discussed in the findings sections regarding the protection of coastal water quality, a potential future failure of the onsite domestic water supply or wastewater disposal systems could result in a closure of any reinstated motel use of the property until feasible repairs to the failed system or connection to urban services were attained. It is also possible that the existing septic system may be determined to be inadequate to serve a new or re-instituted motel before it even opens. Therefore, unless the modification to the proposed amendment to the exceptions for urban services extensions beyond the USB is included as suggested herein, the provision of upland coastal recreational supporting, visitor-serving facilities envisioned for the Ocean Way Motel property could be significantly delayed while a separate future LCP amendment is processed to allow for municipal sewer lines to be extended to the site. Such a delay would be contrary to the directives of Coastal Act Section 30213 and 30223 to protect, encourage, and provide lower cost visitor and recreational facilities. Therefore, the Commission finds that as submitted, the proposed LCP amendment is inconsistent with the requirements of Coastal Act Section 30213 and 30223. However, if modified to provide for future connections of urban services to the Ocean Way Motel property as recommended by Suggested Modification No. 1, lower cost visitor-serving facilities would be protected, encouraged, and provided consistent with Sections 30213 and 30223 of the Coastal Act.

H. Conclusion.

Much of the proposed Land Use Plan amendment is consistent with the Coastal Act, especially as the amendment relates to expanding public works facility to serve targeted priority uses such as commercial recreation and visitor-serving facilities and precluding growth induction as

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required by Section 30254. However, given the recently approved trust conversion of the adjoining former motel property also owned by the same landowner affected by the LCP amendment, as well as wastewater and water supply infrastructure of unknown reliability whose failure(s) could result in significant adverse impacts to coastal resources, there are aspects of the proposed LCP that would be inconsistent with the Chapter 3 policies protecting biological resources, water quality and environmentally sensitive habitat areas. Therefore the Land Use Plan amendment as submitted is not consistent with the Coastal Act and must be denied. However, with the suggested modifications discussed above to facilitate the provision of wastewater service to the adjacent commonly-owned motel site, the LUP amendment is consistent with the Coastal Act. Therefore, the Commission finds the City's Land Use Plan, as modified, conforms with the requirements of Chapter 3 of the Coastal Act pursuant to Section 30512 of the Coastal Act.

**PART THREE:
CALIFORNIA ENVIRONMENTAL QUALITY ACT**

In addition to making a finding that the amendment is in full compliance with the Coastal Act, the Commission must make a finding consistent with Section 21080.5 of the Public Resources Code. Section 21080.5(d)(2)(A) of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

As part of their local action on the subject LCP amendment on November 6, 2010, the County Board of Supervisors adopted a Negative Declaration subject to the California Environmental Quality Act implementation guidelines (14 CCR §§15000), determining the subject LCP amendment to have included features which would reduce adverse impacts to less than significant levels (SCH No. 2010032096). A Notice of Determination was subsequently filed with the County Clerk-Recorder on November 16, 2010. Preceding that action, in June 2006 the U.S. Department of Interior's Bureau of Indian Affairs (BIA) adopted Final Environmental Impact Statement No. 20060394 for the preceding fee-to-trust conversion of the Martin Ranch casino-resort site. More recently, on September 28, 2010, the BIA submitted to the State Clearinghouse for a 30-day review and comment period a "Notice of (Non-Gaming) Land Acquisition" for placing the two-acre site of the former Ocean Way Motel into trust for the benefit of the Elk Valley Rancheria (SCH 2010-10). In addition, in 2010, the Rancheria submitted a Negative Determination to the Commission for the former motel site concluding its consistency with California's coastal management program. All of these documents discussed the relative effects the site development to be facilitated by the trust conversions would have on the environment, including to the coastal resources for the portions of the sites within the Coastal Zone.

DEL NORTE COUNTY LCP AMENDMENT NO. DNC-MAJ-1-10

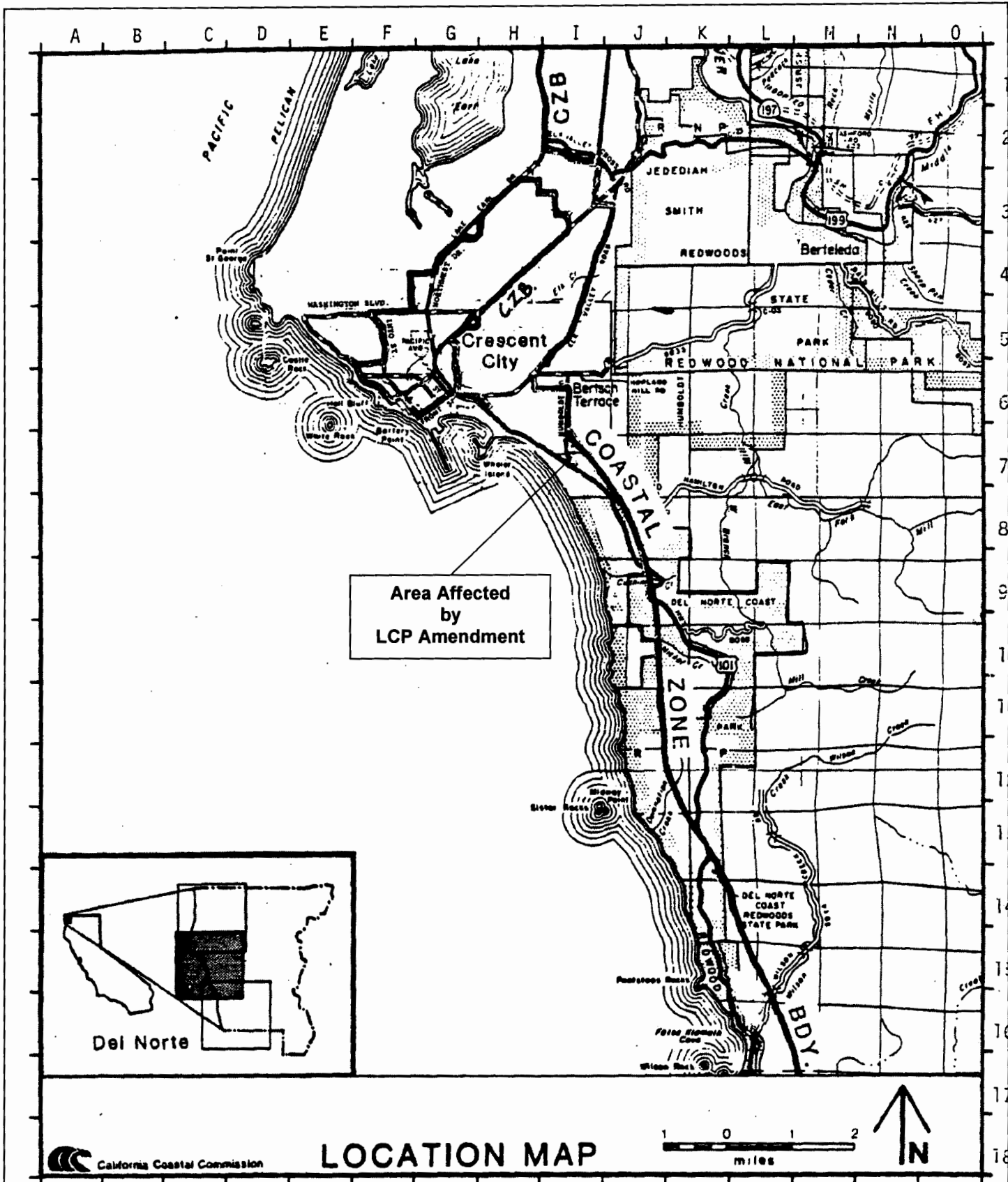
(EXTENSION OF URBAN SERVICES)

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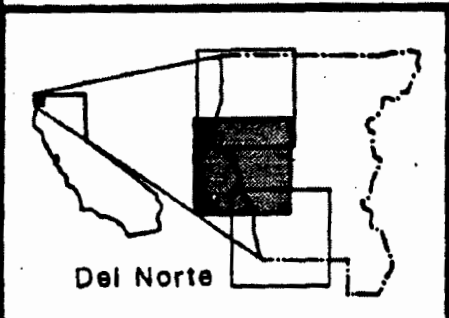
As discussed in the findings above, hereby incorporated herein by reference, the amendment request with incorporation of the suggested modifications is consistent with the California Coastal Act. There are no other feasible alternatives or mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment. The Commission finds that approval of the LCP Amendment with the incorporation of the suggested modifications will not result in significant environmental effects within the meaning of the California Environmental Quality Act.

EXHIBITS:

1. Location Map
2. Vicinity Map
3. Plan View Aerial Photograph of LCP Amendment Affected Area
4. Oblique Aerial Photograph of Affected Area
5. County Services Area No. 1 and Bertsch Ocean View Community Services District Boundary Map
6. Excerpt, Currently Certified Land Use Map (Urban Services Boundary Location)
7. County's Amending Resolution
8. County's Resolution of Submittal
9. CD-054-05 (BIA Fee-to-Trust for Martin Ranch) Adopted Findings
10. ND-016-11 (BIA Fee-to-Trust for Ocean Way Motel) Concurrence Letter
11. Correspondence from LCP Amendment Petitioner and Applicant Supporting Suggested Modification No. 1.



Area Affected
by
LCP Amendment

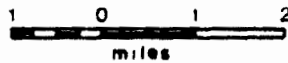


Del Norte



California Coastal Commission

LOCATION MAP



County of Del Norte

EXHIBIT NO. 1
APPLICATION NO.
DNC-MAJ-1-10
DEL NORTE COUNTY LCP
AMENDMENT
LOCATION MAP

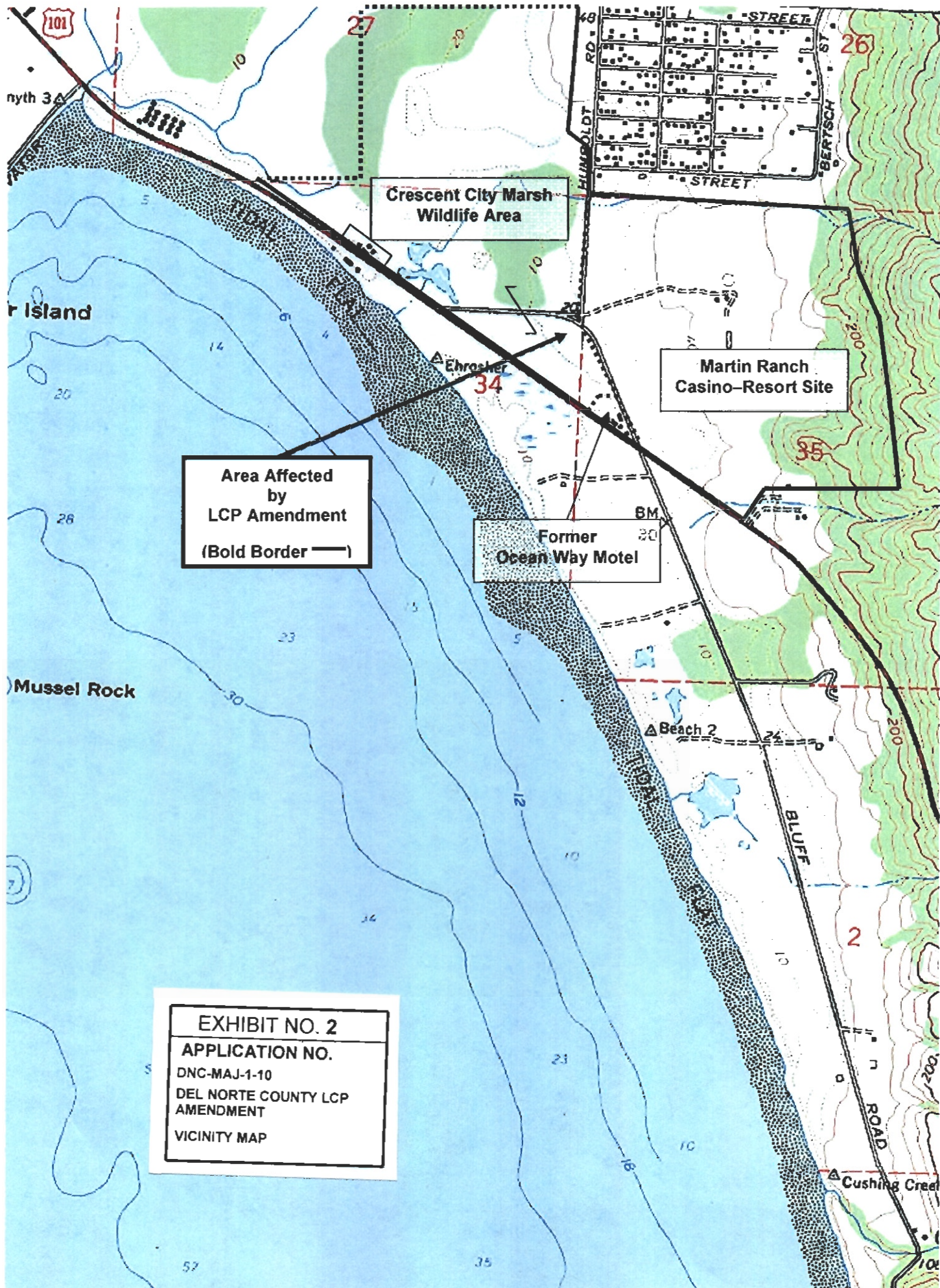


EXHIBIT NO. 3

APPLICATION NO.

DNC-MAJ-1-10 - DEL NORTE
COUNTY LCP AMENDMENT

PLAN VIEW AERIAL PHOTO
OF LCP AMENDMENT
AFFECTED AREA



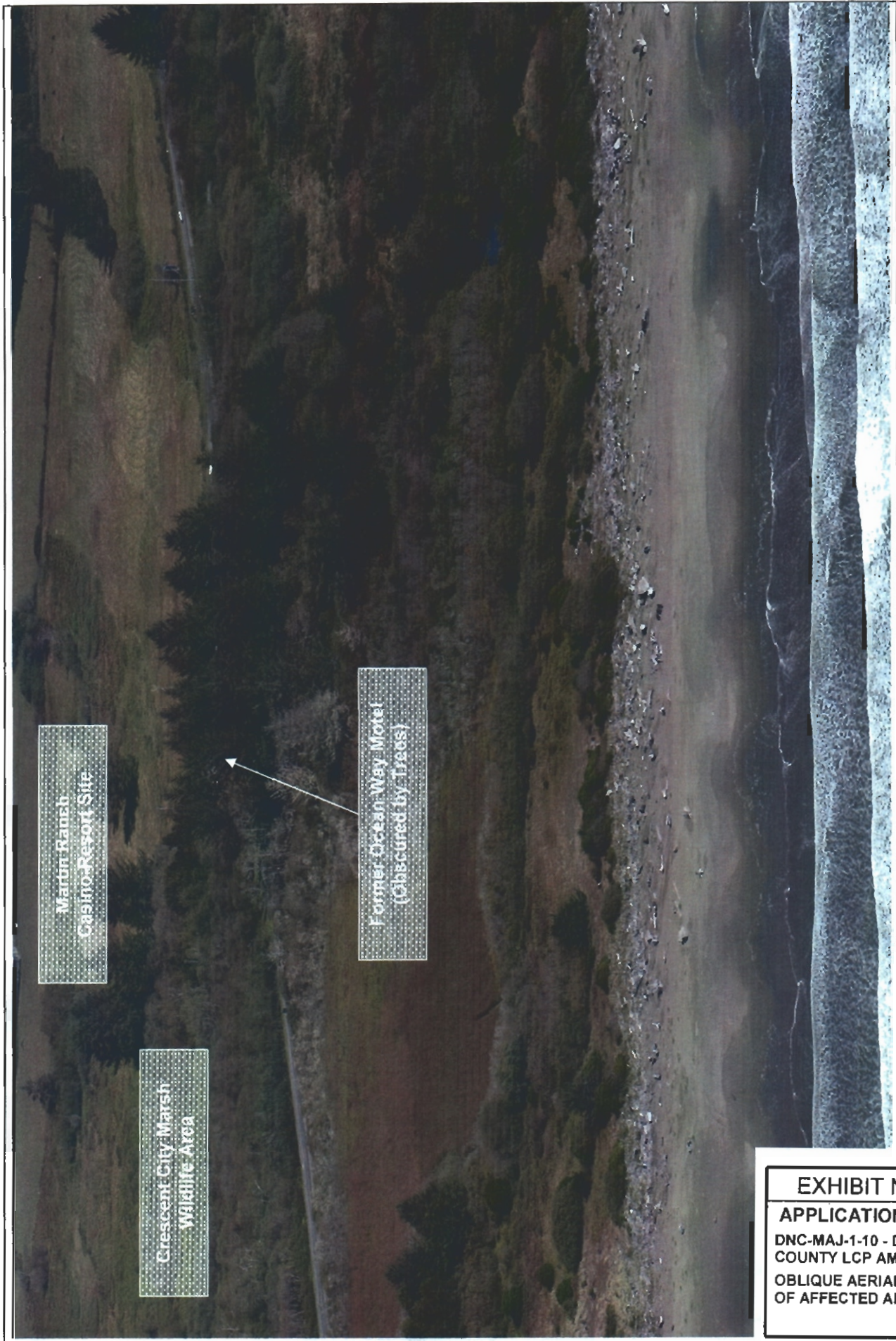
Urban Services Boundary

Martin Ranch
Casino-Resort
Project Site

Former
Ocean-Way Motel
Project Site

Crescent City Marsh
Wildlife Area

Area Affected
by
LCP Amendment
(Bold Border)



Martin Ranch
Casino Resort Site

Crescent City Marsh
Wildlife Area

Former Ocean Way Motel
(Obscured by Trees)

EXHIBIT NO. 4
APPLICATION NO.
DNC-MAJ-1-10 - DEL NORTE
COUNTY LCP AMENDMENT
OBLIQUE AERIAL PHOTO
OF AFFECTED AREA

EXHIBIT NO. 5
APPLICATION NO.
DNC-MAJ-1-10 - DEL NORTE
COUNTY LCP AMENDMENT
COUNTY SERVICES AREA NO.
1 & BERTSCH OCEAN VIEW
COMMUNITY SERVICES
DISTRICT BOUNDARY MAP

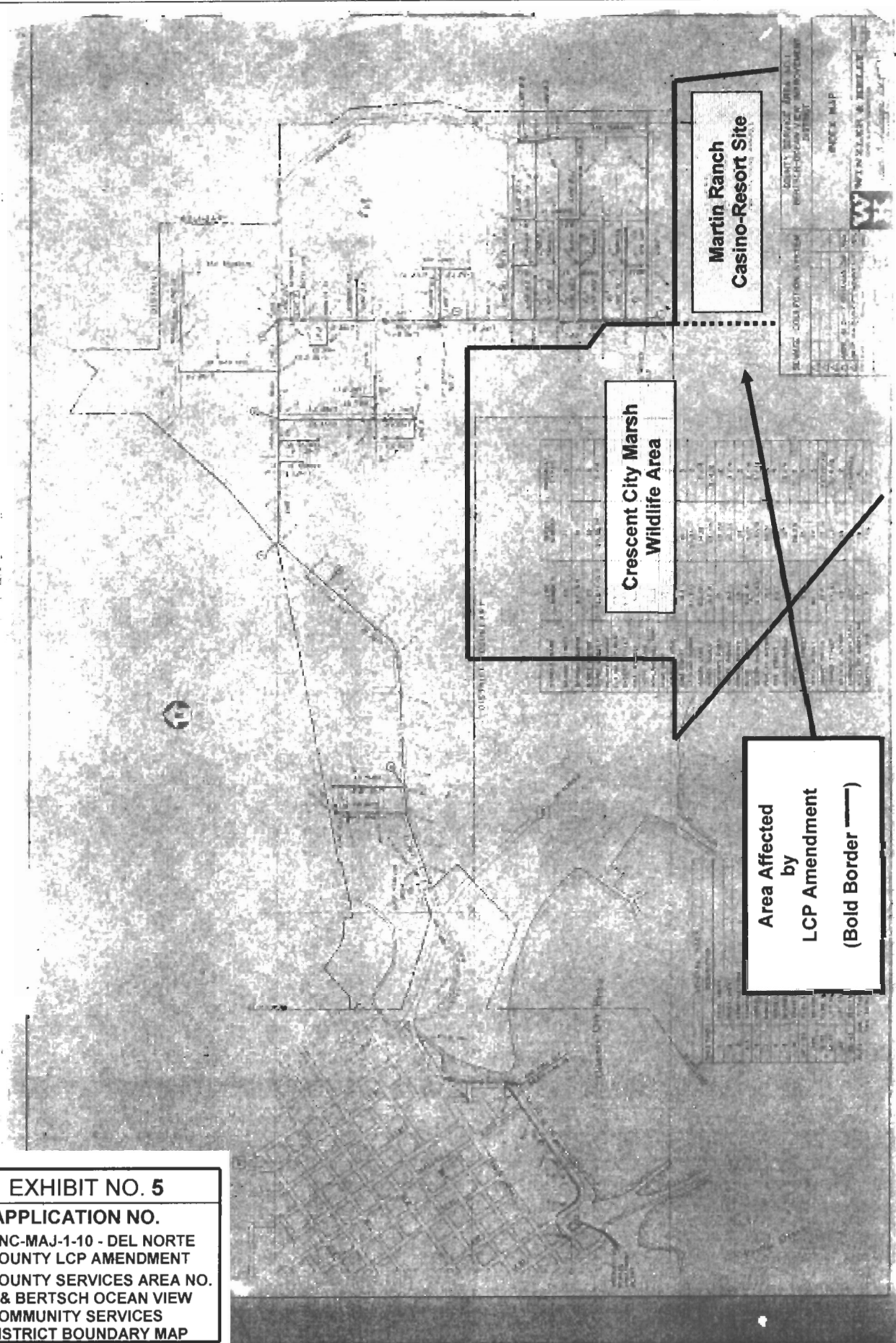


EXHIBIT NO. 6

APPLICATION NO.

**DNC-MAJ-1-10 – DEL NORTE
COUNTY LCP AMENDMENT**

**CURRENTLY CERTIFIED
URBAN SERVICES
BOUNDARY LOCATION**

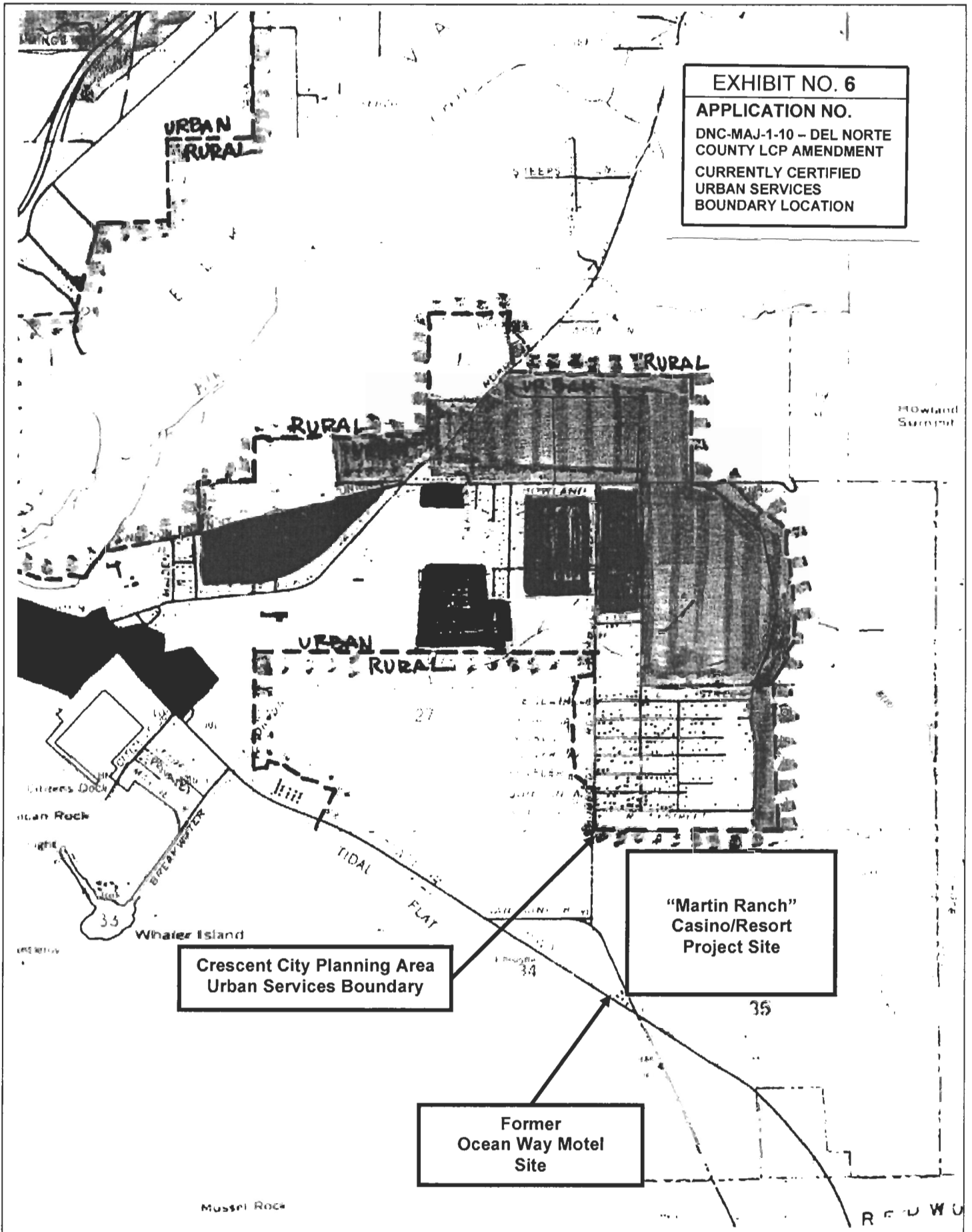




EXHIBIT NO. 7
APPLICATION NO. DNC-MAJ-1-10 DEL NORTE COUNTY LCP AMENDMENT COUNTY'S AMENDING RESOLUTION (1 of 3)

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BOARD OF SUPERVISORS
COUNTY OF DEL NORTE
STATE OF CALIFORNIA

RESOLUTION NO. 2010-059

A Resolution of the Del Norte County Board of Supervisors
Amending the Land Use Text of the Local Coastal Plan Element of the General
Plan

WHEREAS, the adopted General Plan of the County of Del Norte provides
for an amendment process; and

WHEREAS, the City of Crescent City has petitioned for an amendment to the
General Plan text pursuant to the provisions of the local General Plan
Coastal Element; and

WHEREAS, this amendment has been reviewed and processed pursuant to
the provisions of the Local General Plan Coastal Element; and

WHEREAS, a Negative Declaration (SCH#2010032096) was adopted for this
project; and

WHEREAS, this text amendment is intended to be carried out in conformity
with the California Coastal Act and the implementing Local Coastal Program;
and

WHEREAS, public officials and agencies, civic organizations, and citizens
have been consulted on and have advised the County Planning Commission
on said proposed amendments in duly noticed public hearings pursuant to
Section 65353 of the Government Code, and the County Planning
Commission has sent out their written recommendation to the Board pursuant
to Section 65354 of the Government Code; and

WHEREAS, this Board has held duly noticed the public hearing, as required
by Section 65355 and 65856 of the Government Code, on the proposed

38 amendment, at which hearing of the amendment was explained and
39 comments invited from the persons in attendance; and

40 **WHEREAS**, this amendment shall take effect and be enforced thirty (30)
41 days after the passage any companion ordinance, and after the approval of
42 the amendment by the California Coastal Commission, whichever is latest;
43 and

44 **NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors of the
45 County of Del Norte, State of California do hereby approve the changes to
46 the Land Use Text of the Public Works Chapter of the Local Coastal Plan Element
47 of the General Plan as outlined by the attached text amendment (Exhibit A); and

48 **BE IT FURTHER RESOLVED**, that by submission of such changes to the
49 Coastal Commission for certification, the Board of Supervisors is requesting
50 the subject amendment be identified as requiring rapid and expeditious
51 action.

52 **PASSED AND ADOPTED** this 9th day of November 2010 by the Board of
53 Supervisors of the County of Del Norte by the following polled vote:

54 **AYES:** Supervisors McClure, McNamer, Finigan, Sullivan, Hemmingsen


55 **NOES:** None

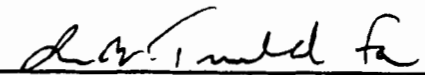
56 **ABSENT:** None

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58 **GERRY HEMMINGSEN**, Chairman
59 Board of Supervisors

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62 **ATTEST:**

APPROVED AS TO FORM:

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68 **Jeremi Ruiz** Clerk of the
69 Board of Supervisors, County
of Del Norte, State of California


DOHN HENION, County Counsel

Date: November 9, 2010

I hereby certify that according to the
provisions of Government Code
Section 25103, delivery of this
document has been made.

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Clerk of the Board
By: 

2013

Exhibit A

Added text is underlined.

The following policy of the Coastal Land Use Plan should be amended as follows:

General Public Works LCP Policy

1. There shall be no extension of urban services (water and sewer) beyond the urban-rural boundary as designated in the final certified land use plan. The only exceptions to this general policy shall be:
 1. the extension of water services beyond the Ship Ashore area;
 2. the alternative Crescent City water line from booster pump No. 1 to the urban area crossing Jordan Creek at Lake Earl Drive, southerly on Lake Earl Drive and into Northcrest Drive and the urban area;
 3. the extension of water service south Crescent City approximately ½ mile to serve a pocket of visitor serving commercial development on Highway 101 which include an existing motel, restaurant, residence, shop and two vacant parcels (shown on page 3 of Assessors Book 115.)
 4. the extension of community services district water outside of the Crescent City Urban Area to the Rural Neighborhood 2 units per density on the west side of Elk Valley Road at the Norris Avenue intersection.
 5. The extension of public water and public sewer services outside the Crescent City Urban Area to serve the Elk Valley Rancheria resort/casino project on the Martin Ranch property (APN 115-020-28). The proposed text amendment specifically ties the public utility extension to only those activities proposed on the Martin Ranch with no lateral connections granted to adjacent lands.



EXHIBIT NO. 8
APPLICATION NO. DNC-MAJ-1-10 DEL NORTE COUNTY LCP AMENDMENT COUNTY'S RESOLUTION OF SUBMITTAL (1 of 3)

**BOARD OF SUPERVISORS
COUNTY OF DEL NORTE
STATE OF CALIFORNIA**

RESOLUTION NO. 2010-060

A Resolution of the Del Norte County Board of Supervisors
Submitting a Text Amendment to the Coastal Land Use Plan Public Works
Chapter to the California Coastal Commission as an LCP Amendment

WHEREAS, the County of Del Norte has adopted an ordinance amending the Local Coastal Plan and Title 21 Coastal Zoning Ordinance; and

WHEREAS, this amendment has been reviewed and processed pursuant to the provisions of the Local Coastal Plan; and

WHEREAS, a Negative Declaration (SCH#2010032096) was adopted for this project; and

WHEREAS, this text amendment is intended to be carried out in a manner in conformity with the Coastal Act and the implementing Local Coastal Plan; and

WHEREAS, this amendment shall take effect and be enforced thirty (30) days after the date of the passage of the companion ordinance, and after approval of the amendment by the Coastal Commission, whichever is late; and

WHEREAS, WHEREAS, the amendments in this resolution supersede any other previously submitted LCP amendments for the affected portions;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Del Norte, State of California do hereby approve the changes to the Land Use Plan Public Works Chapter as outlined by the attached text amendment (Exhibit A); and

39 **BE IT FURTHER RESOLVED**, that by submission of such changes to the Coastal
40 Commission for certification, the Board of Supervisors is requesting the subject
41 amendments be identified as requiring rapid and expeditious action.
42

43 **PASSED AND ADOPTED** this 9th day of November 2010 by the Board of
44 Supervisors of the County of Del Norte by the following polled vote:

45 **AYES:** Supervisors McNamer, Finigan, Sullivan, McClure, Hemmingsen

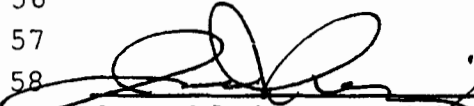
46 **NOES:** None

47 **ABSENT:** None

48 
49 **GERRY HEMMINGSEN**, Chairman
50 Board of Supervisors

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54 **ATTEST:**

APPROVED AS TO FORM:

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57 
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59 **Jeremi Ruiz** Clerk of the
60 Board of Supervisors, County
61 of Del Norte, State of California
62


DOAN HENION, County Counsel

Date: November 9, 2010

I hereby certify that according to the
provisions of Government Code
Section 25103, delivery of this
document has been made.

Clerk of the Board

By: 

Exhibit A

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 1. the extension of water services beyond the Ship Ashore area;
 2. the alternative Crescent City water line from booster pump No. 1 to the urban area crossing Jordan Creek at Lake Earl Drive, southerly on Lake Earl Drive and into Northcrest Drive and the urban area;
 3. the extension of water service south Crescent City approximately ½ mile to serve a pocket of visitor serving commercial development on Highway 101 which include an existing motel, restaurant, residence, shop and two vacant parcels (shown on page 3 of Assessors Book 115.)
 4. the extension of community services district water outside of the Crescent City Urban Area to the Rural Neighborhood 2 units per density on the west side of Elk Valley Road at the Norris Avenue intersection.
 5. The extension of public water and public sewer services outside the Crescent City Urban Area to serve the Elk Valley Rancheria resort/casino project on the Martin Ranch property (APN 115-020-28). The proposed text amendment specifically ties the public utility extension to only those activities proposed on the Martin Ranch with no lateral connections granted to adjacent lands.

CALIFORNIA COASTAL COMMISSION

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

**W 17a****ADOPTED FINDINGS****ON CONSISTENCY DETERMINATION**

EXHIBIT NO. 9
APPLICATION NO. DNC-MAJ-1-10 - DEL NORTE COUNTY LCP AMENDMENT CD-054-05 (BIA FEE-TO-TRUST FOR MARTIN RANCH) ADOPTED FINDINGS (1 of 31)

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 Vote:	9/14/2005
Hearing on Findings:	10/12/2005

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)

PREVAILING**COMMISSIONERS:**

Commissioners Aldinger, Burke, Kram, Kruer, Neely, Potter, Reilly, Secord, Shallenberger, Wan, and Chairman Caldwell

SUBSTANTIVE FILE**DOCUMENTS:**

See Page 31.

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 subsequent responses (prior to the Commission hearing):

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.

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

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.

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 impervious 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.

Prior to the Commission public hearing, the Commission staff identified the following, mostly informational, concerns:

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.

To address these concerns, during the hearing the BIA agreed to modify the project to include the following agreement:

Prior to commencement of construction, the Tribe will prepare Tribal Ordinances or other equivalent mechanism providing for Commission staff review of detailed project plans, including plans for water quality, hydrology, lighting, signs, roads, sewer and water infrastructure, landscaping and revegetation, and building plans, as applicable.

Pursuant to the Tribal Ordinances, the plans shall be submitted to the Commission staff for its review and agreement, and in the event of a disagreement about whether the plans are adequate to protect coastal zone resources (including wetlands and environmentally sensitive habitat), the BIA will continue to play a mediator role.

Further, pursuant to the Tribal Ordinances, in the event of a continuing disagreement, the matter will be brought before the Commission for a hearing regarding the parties' respective positions.

Subject to applicable law the Commission also retains the ability to require additional consistency review if the project no longer remains consistent with the California Coastal Management Program.

The above commitment (to which the Elk Valley Rancheria also agreed during the hearing), was incorporated into the project as part of the BIA's submittal. In addition, during the hearing, the Tribe agreed in concept to a waiver of sovereign immunity for this project; however the Tribe also noted that such a waiver could not legally be provided orally. Therefore the Tribe and the Commission agreed that the appropriate mechanism for such a waiver to be implemented was through its inclusion (in writing) within Tribal Ordinances. Accordingly, the Commission adopted a condition, which provides:

1. **Waiver of Sovereign Immunity.** Within 30 days of the Commission's action the Elk Valley Rancheria will submit a Tribal Ordinance to the Commission staff that includes a waiver of sovereign immunity.

With the above project modification, combined with the above condition, the Commission finds the project, as conditioned, to be 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. As provided in 15 CFR § 930.4(b), should the BIA not agree with the Commission's condition of concurrence, then all parties shall treat this conditional concurrence as an objection.

The Commission's deliberation included an agreement by the Commission staff to hold a local workshop, after the above-referenced plans are provided to the Commission staff for its review, and a subsequent briefing session at a following Commission meeting (during which the public could also comment to the Commission), before any final staff agreement with the plans.

Finally, the Commission also notes that in making several arguments, the BIA relied 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 cited 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. Applicable Legal Authorities.

Section 307 of the Coastal Zone Management Act (CZMA) 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 approved State management programs.

A. Conditional Concurrences.

15 CFR § 930.4 provides, in part, that:

(a) Federal agencies, ... agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under Subpart C ... would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart...

(2) The Federal agency (for Subpart C) ... shall modify the applicable plan [or] project proposal, ... pursuant to the State agency's conditions. The Federal agency ... shall immediately notify the State agency if the State agency's conditions are not acceptable; and ...

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

B. Consistent to the Maximum Extent Practicable.

Section 930.32 of the federal consistency regulations provides, in part, that:

(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.

The Commission recognizes that the standard for approval of Federal projects is that the activity must be “consistent to the maximum extent practicable” (Coastal Zone Management Act Section 307(c)(1)). This standard allows a federal activity that is not fully consistent with the CCMP to proceed, if compliance with the CCMP is “*prohibited [by] existing Federal law applicable to the Federal agency's operations*” (15 C.F.R. § 930.32). The Bureau of Indian Affairs did not provide any documentation to support a maximum extent practicable argument in its consistency determination. Therefore, there is no basis to conclude that existing law applicable to the Federal agency prohibits full consistency.

IV. Staff Recommendation. The staff recommends that the Commission adopt the following motion in support of its decision:

Motion:

I move that the Commission adopt the following findings in support of its conditional concurrence in the Bureau of Indian Affairs’ consistency determination CD-054-05.

Staff Recommendation:

The staff recommends a **YES** vote on this motion. Pursuant to section 30315.1 of the Coastal Act, adoption of findings requires a majority vote of the members of the prevailing side present at the September 14, 2005, hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission’s action on the consistency determination are eligible to vote. A majority vote by the prevailing Commissioners listed on page 1 of this report will result in adoption of the findings.

Resolution To Conditionally Concur With Consistency Determination:

The Commission hereby conditionally concurs with the consistency determination by Bureau of Indian Affairs on the grounds that, if modified as described in the Commissions’ conditional concurrence, the project would be consistent with the enforceable policies of the CCMP, provided the Bureau of Indian Affairs satisfies the condition specified below pursuant to 15 CFR §930.4.

Condition:

1. Waiver of Sovereign Immunity. Within 30 days of the Commission's action the Elk Valley Rancheria will submit a Tribal Ordinance to the Commission staff that includes a waiver of sovereign immunity.

As provided in 15 CFR § 930.4(b), should the BIA not agree with the Commission's condition of concurrence, then all parties shall treat this conditional concurrence as an objection.

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.

Based on the BIA's original submittal, the Commission's concerns were 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

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

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

To address these concerns, during the hearing the BIA agreed to modify the project to include the following agreement:

Prior to commencement of construction, the Tribe will prepare Tribal Ordinances or other equivalent mechanism providing for Commission staff review of detailed project plans, including plans for water quality, hydrology, lighting, signs, roads, sewer and water infrastructure, landscaping and revegetation, and building plans, as applicable.

Pursuant to the Tribal Ordinances, the plans shall be submitted to the Commission staff for its review and agreement, and in the event of a disagreement about whether the plans are adequate to protect coastal zone resources (including wetlands, endangered species habitat, and environmentally sensitive habitat), the BIA will continue to play a mediator role.

Further, pursuant to the Tribal Ordinances, in the event of a continuing disagreement, the matter will be brought before the Commission for a hearing regarding the parties' respective positions.

Subject to applicable law the Commission also retains the ability to require additional consistency review if the project no longer remains consistent with the California Coastal Management Program.

The above commitment (to which the Elk Valley Rancheria also agreed during the hearing), was incorporated into the project as part of the BIA's submittal. In addition, during the hearing, the Tribe agreed in concept to a waiver of sovereign immunity for this project; however the Tribe also noted that such a waiver could not legally be provided orally. Therefore the Tribe and the Commission agreed that the appropriate mechanism for such a waiver to be implemented was through its inclusion (in writing) within Tribal Ordinances. Accordingly, the Commission adopted a condition, which provides:

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.

1. **Waiver of Sovereign Immunity.** Within 30 days of the Commission's action the Elk Valley Rancheria will submit a Tribal Ordinance to the Commission staff that includes a waiver of sovereign immunity.

To enable public input in future plan review, the Commission has also directed its staff to hold a local area workshop, after the above-referenced plans are provided to the Commission staff for its review, and a subsequent briefing session at a following Commission meeting (during which the public could also comment to the Commission), before any final staff agreement with the plans. Also, any future development on the site may require further consistency review (e.g., any activity including federal funding or authorization), and the Rancheria's Tribal Compact with the State may afford further protections for the site's and downstream resources.

With the above project modifications, condition, and considerations, the Commission finds the project, as conditioned, would provide the procedural mechanisms necessary to enable the Commission to be able determine that the project would protect water quality, downstream wetlands and coastal waters, endangered species, and nearby environmentally sensitive habitat. The Commission therefore concludes that the project, as conditioned, is consistent with the water quality, wetlands and nearby environmentally sensitive habitat policies (Sections 30231, 30233, and 30240) of the Coastal Act.

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. Based on the original submittal, the Commission was concerned over the absence of project revisions, plans, or details, and its inability 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 had not explained its rationale for the number of parking spaces proposed; therefore the Commission was originally unable to determine the adequacy of the amount of parking proposed.

To address these concerns, during the hearing the BIA agreed to modify the project to include procedural mechanisms for further staff review of specific plans, including detailed project plans and building plans, as discussed on page 6. This “modification” (to which the Elk Valley Rancheria also agreed), was incorporated into the project as part of the BIA’s submittal. The Tribe agreed in concept to a waiver of sovereign immunity for this project; and as conditioned (see page 7), such a waiver would be provided. With these agreements, combined with the condition, the Commission finds that the necessary mechanisms are in place to enable the Commission to find the project, as conditioned, to be 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, and as initially submitted, the Commission was concerned about the adequacy of sufficient information to find that the consistent with the public services and concentration of development policies (Sections 30250 and 30254) of the Coastal Act.

To address these concerns, during the hearing the BIA agreed to modify the project to include procedural mechanisms for further staff review of specific plans, including detailed project plans and roads, sewer and water infrastructure plans, as discussed on page 6. This "modification" (to which the Elk Valley Rancheria also agreed), was incorporated into the project as part of the BIA's submittal. The Tribe agreed in concept to a waiver of sovereign immunity for this project; and as conditioned (see page 7), such a waiver would be provided. With these agreements, combined with the condition, the Commission finds that the necessary mechanisms are in place to enable the Commission to find the project, as conditioned, to be consistent with the public services and concentration of development policies (Sections 30250 and 30254) of the Coastal Act.

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 needed⁴, 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.⁵ 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).

⁴ The DEIS indicates the possible need for an up to 500,000-700,000 gallon storage tank; however its location is not depicted.

⁵ 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).

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 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 Commission's concerns over the BIA initial submittal were 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 pages 19-21, 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.

To address these concerns, during the hearing the BIA agreed to modify the project to include procedural mechanisms for further staff review of specific plans, including detailed project plans and building plans, as discussed on page 6. This "modification" (to which the Elk Valley Rancheria also agreed), was incorporated into the project as part of the BIA's submittal. The Tribe agreed in concept to a waiver of sovereign immunity for this project; and as conditioned

(see page 7), such a waiver would be provided. With these agreements, combined with the condition, the Commission finds that the necessary mechanisms are in place to enable the Commission to find the project, as conditioned, to be consistent with the public view protection policy (Section 30251) of the Coastal Act.

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 8, 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 project will not displace agriculture in the coastal zone, as it is primarily located outside the coastal zone. Moreover, as the BIA notes, habitat and wetland protection under the Elk Valley Rancheria's to-be-prepared resource management plan may lead to reductions in agricultural activity. To maximize the Commission's ability to assure protection of either or both agricultural and habitat concerns, during the hearing the BIA agreed to modify the project to include procedural mechanisms for further staff review of specific project plans (as discussed on page 6), and to provide that the Elk Valley Rancheria waive sovereign immunity

(as discussed on page 7). As conditioned (see page 7), such a waiver would be provided. In addition, any future development on the site may require further consistency review (e.g., any activity including federal funding or authorization); also, the Rancheria's Tribal Compact with the State may afford further protections for the land. Finally, the "reopener" clause of the federal consistency regulations remains available and has been specifically acknowledged by the BIA and Elk Valley Rancheria in the project modification, which includes the statement that:

Subject to applicable law the Commission also retains the ability to require additional consistency review if the project no longer remains consistent with the California Coastal Management Program.

The Commission interprets the phrase "subject to applicable law" to include, but not be limited to, the provisions of 15 CFR §930.45 (see footnote #3, on page 17 above).

With these agreements, the condition, and the above considerations, the Commission finds that the necessary mechanisms are in place to enable the Commission to find the project, as conditioned, to be consistent with the agricultural resource protection policies (Sections 30241 and 30242) of the Coastal Act.

VI. SUBSTANTIVE FILE DOCUMENTS

1. Administrative Draft EIS, Elk Valley Rancheria, Martin 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.

CALIFORNIA COASTAL COMMISSION

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April 18, 2011

Amy Dutschke
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Room W-280
Sacramento, CA 95825

Attn: John Rydzik

EXHIBIT NO. 10
APPLICATION NO. DNC-MAJ-1-10 - DEL NORTE COUNTY LCP AMENDMENT ND-016-11 (BIA FEE-TO-TRUST FOR OCEAN WAY MOTEL) CONCURRENCE LETTER (1 of 2)

Re: **ND-016-11** Negative Determination, Bureau of Indian Affairs, Placement of APN 115-020-20 into Trust for the Elk Valley Rancheria, Ocean Way Motel Site, south of Crescent City, Del Norte Co.

Dear Ms. Dutschke:

The Coastal Commission staff has reviewed the above-referenced negative determination submitted by the Bureau of Indian Affairs (BIA) for the placement of a two-acre parcel (APN 115-020-20) into Trust for the Elk Valley Rancheria. The parcel is located at the intersection of Highway 101 and Humboldt Rd., south of Crescent City, in Del Norte County. The site is currently developed (although it is not currently in use) and contains an existing motel (the Ocean Way Motel).

The BIA states that no change in use of the property is anticipated, and the Rancheria states "The Tribe plans to continue the current use of the Ocean Way Motel as a motel and for housing, as needed." Because the Commission staff expects improvements to the site will be needed to make it habitable and usable, including infrastructure improvements, the Commission staff requested, and through the BIA the Rancheria has agreed, to provide a mechanism enabling Commission review of future improvements at the site. These have been fashioned in a manner similar to those we (the Commission, the BIA, and the Rancheria) mutually agreed upon during the Commission's review of the nearby "Martin Ranch" BIA Trust Action consistency determination (CD-054-05). For the subject Trust action, on February 16, 2011, the Rancheria adopted an Ordinance entitled "Elk Valley Rancheria Ocean Way Motel Coastal Commission Review" (Tribal ordinance No. 2011-02), which includes the following coordination and Commission review procedure:

§ 5 INFORMATION EXCHANGE

A. The Tribe shall provide to the Coastal Commission the following plans, if any, prior to the commencement of construction of the Project on the Ocean Way Motel:

- 1) water quality and hydrology;
- 2) water and sewer infrastructure;

- 3) landscaping and vegetation or re-vegetation;
- 4) building plans;
- 5) road construction and maintenance;
- 6) lighting; and
- 7) signage.

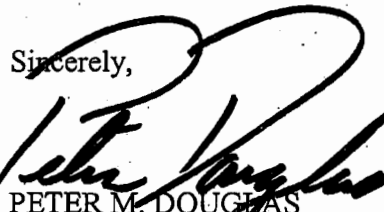
The Ordinance further provides that, if the Commission staff comments on the submitted plans:

- C. The Tribe shall consider any written comments submitted by the Coastal Commission to the Tribe regarding the documents and plans described in Section 5(a), above, and shall make good faith efforts to mitigate any and all significant adverse impacts to Coastal Zone Resources.

The agreement further includes a limited waiver of sovereign immunity by the Tribe, limited in this situation to the above-referenced coordination and consultation procedures as spelled out in the Ordinance, as well as a "Meet and Confer" provision in the event either the Commission or the Tribe believes the other party is not acting in good faith.

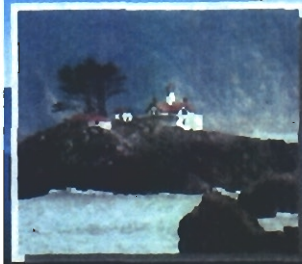
Finally, in a separate planning context, the Commission staff has also been working with Del Norte County and Crescent City to enable sewage hookups to the site if feasible, which should benefit the Crescent City Marsh, as it would replace onsite septic system discharges that could affect the Marsh.

In conclusion, with the commitments for future Commission review of any improvements on the subject parcel, we concur with your negative determination made pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations. Please contact Mark Delaplaine of the Commission staff at (415) 904-5289 if you have any questions regarding this matter.

Sincerely,

PETER M. DOUGLAS
Executive Director

cc: North Coast District Office
Dale Miller, Chairman, Elk Valley Rancheria
Bradley Bledsoe Downes, General Counsel, Elk Valley Rancheria

292



CITY OF CRESCENT CITY
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Mayor Charles Slert * **Mayor Pro Tem Kathryn Murray**
Council Member Rich Enea * Council Member Kelly Schellong * Council Member Donna Westfall
City Clerk Robin Patch * City Attorney Robert N. Black * Interim City Manager Jeannine Galatioto

March 30, 2011

RECEIVED

APR 07 2011

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, California 94105-2219

Re: Item W20b; Del Norte County Local Coastal Program Amendment Hearing (April 13, 2011)

Dear Commissioners:

The City of Crescent City ("City") requests that the Coastal Commission approve the proposed amendment to the Del Norte County Local Coastal Program referred to above. This matter involves a simple text amendment that would add a fifth exception to the prohibition against the extension of water and wastewater infrastructure beyond the Urban Services Boundary.

This matter is of local concern, is consistent with the Coastal Act, and will benefit the entire community. The City supports the proposed LCP Amendment and requests that the Coastal Commission approve the Del Norte County Local Coastal Program Amendment No. DNC-MAJ-1-10.

Thank you for your consideration of the City's position.

Sincerely,

Charles Slert
Mayor

cc: See Attached Mailing List:
North Coast District Office
Bob Merrill, District Manager
710 E Street, Suite 200
Eureka, CA 95501

County of Del Norte
City of Crescent City, City Council
Elk Valley Tribal Council

EXHIBIT NO. 11

APPLICATION NO.

DNC-MAJ-1-10

DEL NORTE COUNTY LCP
AMENDMENT

PETITIONER & APPLICANT
CORRESPONDENCE (1 of 2)

RECEIVED

APR 08 2011

CALIFORNIA
COASTAL COMMISSION



COUNTY OF DEL NORTE
COMMUNITY DEVELOPMENT DEPARTMENT

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April 12, 2011

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James R. Baskin, AICP, Coastal Planner
California Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, CA 95501

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APR 13 2011

CALIFORNIA
COASTAL COMMISSION

Re: Suggested Modification to Del Norte County LCP Amendment No. DNC-MAJ-1-10

Dear Mr. Baskin:

At the request of the Del Norte County Board of Supervisors, I am conveying that the County supports a proposed suggested modification to Del Norte County LCP Amendment No. DNC-MAJ-1-10. The request was made at the April 12, 2011 meeting of the Board of Supervisors (Agenda Item 24) in response to letters received from the City of Crescent City, as the applicant, and the Elk Valley Rancheria, as a project proponent.

The proposed Suggested Modification would add Assessor Parcel Number (APN) 115-020-20 as an additional exception to the County's General Works LCP Policy No. 1 along with the currently requested exception for APN 115-020-28. Approval of the exception will facilitate the extension of public water and sewer to both parcels which are located outside of the County's Urban Services Boundary.

The County requests that the Coastal Commission expeditiously proceed to approve the proposed LCP amendment with the Suggested Modification.

Sincerely,

Heidi Kunstal
Deputy Director of Building and Planning

cc: Del Norte County Board of Supervisors
Charles Slett, Mayor, City of Crescent City
Dale Miller, Chairman, Elk Valley Rancheria, California

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