

APPENDIX AA

*U.S. FISH AND WILDLIFE SERVICE CONCURRENCE
PURSUANT TO SECTION 7 OF THE ENDANGERED
SPECIES ACT*



United States Department of the Interior



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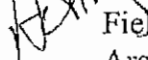

In Reply Refer To:

1-14-2003-1858

AUG 23 2006

Memorandum

To: Director, Pacific Region, Bureau of Indian Affairs,
Sacramento, California

From:  Field Supervisor, Arcata Fish and Wildlife Office,
Arcata, California 

Subject: Informal Consultation on the Proposed Martin Ranch Fee-To-Trust Transfer and Casino/Hotel Project, Elk Valley Rancheria, Del Norte County, California

This memorandum responds to correspondence received in our office on June 19, 2006, requesting the Fish and Wildlife Service's (Service) concurrence with your determination of effects for the Martin Ranch Fee-To-Trust Transfer and Casino/Hotel Project, proposed by the Elk Valley Rancheria, Del Norte County, California. It is our understanding that you determined the proposed action may affect but is not likely to adversely affect the following Federally-listed species: the endangered western lily (*Lilium occidentale*) and the endangered tidewater goby (*Eucyclogobius newberryi*). This response is prepared in accordance with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act) and its implementing regulations (50 CFR §402).

This consultation is based on information provided in the Biological Resources Assessment (BA) dated May 2006, and the Draft Final Environmental Impact Statement and Appendices (DFEIS), dated June 2006, prepared for the project. These documents are hereby incorporated by reference. The DFEIS contains a description of the proposed action, the status of the species, and the effects of the proposed action. A complete administrative record for this consultation is on file in this office.

Consultation History

The Service received a request to initiate consultation pursuant to section 7 of the Endangered Species Act (16 U.S.C 1531-1544, et sec.) for this project in March, 2005. Our response, dated March 24, 2005, identified additional information needed in order for us to initiate consultation.

Description of the Proposed Action

The proposed action consists of placing 203.5 acres into Federal trust for the Elk Valley Rancheria, and development of a hotel and casino complex on the property located at the intersection of Humboldt Road and Highway 101, south of Crescent City. The development would convert 9.3 acres of existing agricultural land to buildings and parking lots in the north portion of the property, located within the watershed to Crescent City Marsh. The marsh is located less than 0.5 miles west of the site. Wastewater generated by the development will be delivered to the municipal wastewater treatment system. A preliminary stormwater drainage plan (DFEIS Appendix B) is proposed, which utilizes a system of vegetated swales and other measures to reduce the hydrological impacts on the Crescent City Marsh to an insignificant level. That design will be refined during the project design phase based on site-specific needs of the development. In addition, an Adaptive (Drainage) Management Plan (DFEIS Appendix X) defines a monitoring program aimed at characterizing the hydrologic conditions both on the project site and downstream prior to, during, and following construction. In accordance with that plan, if surface or subsurface runoff from the site deviate more than 10 percent from the predicted runoff, based on pre-project patterns for constituents that can be attributed to the project, action shall be taken to determine the source and remediate the problem. In accordance with the plan, possible actions may include increasing the number of vegetative swales, or installing collectors in the swales. The Service, working with the tribe has initiated the pre-project monitoring, and will continue to coordinate with the Tribe for a period to extend at least two years following construction, or as long as necessary to ensure that our common goal of avoiding impacts to the marsh is achieved.

Environmental Baseline in the Action Area

The western lily was not detected within the project site, although suitable habitat is present in the northwest corner of the property. The largest known population of western lily occurs within Crescent City Marsh, downstream and west of the project site.

No habitat for the tidewater goby occurs within the project site, and the goby has not been documented within Crescent City Marsh. Surveys for the tidewater goby have not yet been conducted within Crescent City Marsh.

Effects of the Proposed Action

The proposed action will not have any direct impact on potential habitat for the western lily on the project site. Stormwater runoff from the site flows into Crescent City Marsh, which contains the western lily, and may contain the tidewater goby. A change in both the surface and subsurface runoff patterns from the site could significantly alter the hydrological functioning of the marsh, and therefore, the western lily and tidewater goby. However, a Stormwater Drainage Plan and Adaptive Management Plan are included in the proposed action, to reduce any hydrological impacts on Crescent City Marsh to an insignificant level.

Concurrence

The Service concurs with your determination that the proposed action may affect but is not likely to adversely affect the western lily based on the following factors.

1. No suitable habitat for western lily will be removed, degraded or downgraded as a direct result of the project.
2. The proposed action will not result in direct injury or death of any individuals of the species.
3. In accordance with the project Stormwater Drainage Plan, as refined based on site-specific development needs, and the drainage Adaptive Management Plan, any potential hydrological impacts on the Crescent City Marsh will be reduced to an insignificant level. Based on hydrological monitoring conducted before, during, and following construction, any significant change in surface or subsurface flow patterns off of the project site as a result of completion of the project will be mitigated through modifications to the stormwater drainage facilities.

The Service concurs with your determination that the proposed action may affect but is not likely to adversely affect the tidewater goby based on the following factors.

1. No suitable habitat for the tidewater goby will be removed, degraded or downgraded as a direct result of the project.
2. The proposed action will not result in direct injury or death of any individuals of tidewater goby.
3. In accordance with the project Stormwater Drainage Plan, as refined based on site-specific development needs, and the drainage Adaptive Management Plan, any potential hydrological impacts on the Crescent City Marsh will be reduced to an insignificant level. Based on hydrological monitoring conducted before, during, and following construction, any significant change in surface or subsurface flow patterns off of the project site as a result of completion of the project will be mitigated through modifications to the stormwater drainage facilities.

Conclusion

This concludes informal consultation on the proposed Martin Ranch Fee-To-Trust Transfer and Casino/Hotel Project. Unless new information reveals that the proposed action: (1) has resulted in significant changes in the downstream hydrology compared to pre-project conditions, and those changes have not been addressed as called for in the Adaptive Management Plan; (2) the action may affect listed species in a manner, or to an extent, not considered in your correspondence; (3) the action is modified in a manner that causes an effect on the listed species or critical habitat not considered in your correspondence; or (4) a new species is listed or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary.

Please contact staff biologist David Imper at (707) 822-7201 should you have further questions regarding this consultation.

cc:

FWS, RO, External Affairs, Portland, OR (Attn: Scott Aikin)

EPA, Region IX, San Francisco, CA (Attn: Karen Vitulano)

California Coastal Commission, Sacramento, CA (Attn: Mark Delaplaine)

California Department of Fish and Game, Eureka (Attn: Karen Kovacs)

Elk Valley Rancheria, Crescent City (Attn: Ray Martell)