

APPENDIX J

*TRIBAL ORDINANCE REGARDING OFF-
RESERVATION IMPACTS*



ORDINANCE NO. 00-23

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

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

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

1. The Tribe is a federally recognized Indian Tribe organized under the provisions of the Indian Reorganization Act, 25 U.S.C. §476, with a written Constitution establishing the Elk Valley Tribal Council as the governing body of the Tribe.

2. Pursuant to Article V, Section 1, of the Tribe's Constitution, the Council is vested with the authority to enact ordinances for the purposes of promoting the health and general welfare of the members of the Tribe, managing all tribal lands and natural resources, and managing all economic enterprises of the Tribe.

3. The Tribe is the owner and operator of the Elk Valley Casino which is presently located on land leased from a tribal member within the boundaries of the Elk Valley Reservation.

4. The Council contracted with Urban Systems Innovation Group for the purpose of preparing a comprehensive market study to determine the feasibility of constructing a new casino for the Tribe on land purchased by the Tribe and taken into trust outside the boundaries of the Reservation.

5. The market study has determined that a market exists to expand the Tribe's existing casino or build a new casino at a new location.

6. Based upon the market study, the Council has decided to expand the Tribe's

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

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

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

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

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

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

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

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

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

Chapter 3

GAMING FACILITY Off-Reservation ENVIRONMENTAL ASSESSMENT

Sections:

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

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

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

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

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

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

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

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

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

11. "Tribe" means the Elk Valley Rancheria.

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

CERTIFICATION


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

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



John D. Green, Chairman

ATTEST:



Brenda Blake, Secretary of the Tribal Council