

APPENDIX Z

*ELK VALLEY RANCHERIA COASTAL COMMISSION
REVIEW ORDINANCE*

ORDINANCE OF THE ELK VALLEY RANCHERIA, CALIFORNIA

CRESCENT CITY, CALIFORNIA

ORDINANCE NO: 2005-04, as revised

DATE APPROVED: October 12, 2005, Revised November 9, 2005

SUBJECT: Elk Valley Rancheria Martin Ranch Coastal Commission Review Ordinance

WHEREAS: the Elk Valley Rancheria did on November 23, 1994, adopt its Tribal Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on December 27, 1994, and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Tribal Council, acting by law, and

WHEREAS: Article IV, Section 1 of the Constitution identifies the Tribal Council as the governing body of the Tribe, and

WHEREAS: Article V, Section 1 of the Constitution authorizes the Tribal Council to conclude agreements with governmental entities and private persons; to expend Tribal funds; and to purchase land;

WHEREAS: the Elk Valley Rancheria was terminated by the federal government and lost its approximately 100-acre Rancheria (reservation), which represented but a fraction of the Tolowa people's aboriginal territory;

WHEREAS: the Tribe was restored to recognition pursuant to the Hardwick v. United States lawsuit and the Tribe re-organized in 1994;

WHEREAS: as a result of restoration, the boundaries of the Rancheria were restored, but the Tribe no longer owned the land within the reservation in trust or in fee;

WHEREAS: the Tribe commenced tribal government gaming in 1995 and now has the financial means to re-acquire land throughout its aboriginal territory, including within the Rancheria and surrounding Del Norte County;

WHEREAS: the Tribe desires to increase its land base within its aboriginal territory – both within the reservation and without the reservation;

WHEREAS: the Elk Valley Rancheria, California ("Tribe") purchased approximately 203.5 acres in unincorporated Del Norte County, California that will allow the Tribe to construct a resort and casino consisting of a 40,000 square foot casino with approximately 400 slot machines and associated amenities, a 156-room hotel, conference facility, and associated parking and related infrastructure (collectively, the "Resort"). The site is located within the unincorporated area of Del Norte County near

the community of Crescent City and east of Highway 101, off of Humboldt Road. The site is commonly referred to as the "Martin Ranch";

WHEREAS: the lands for the Resort are currently held in fee title by the Tribe and the Tribe has applied to the U.S. Department of the Interior, Bureau of Indian Affairs to transfer the Martin Ranch into trust status for the benefit of the Tribe;

WHEREAS: upon acquisition by the United States of America of the Martin Ranch in trust status the Tribe, subject to applicable law, plans to construct and operate the Resort;

WHEREAS: on September 14, 2005, the California Coastal Commission conditionally concurred with the federal Consistency Determination prepared by the Bureau of Indian Affairs (CD-054-05);

WHEREAS: as a condition of the Coastal Commission's concurrence, the Tribe agreed to enact a Tribal Ordinance that would obligate the Tribe to provide certain design plans and specifications to the Coastal Commission for review and agreement in accordance with a Tribal ordinance;

NOW, THEREFORE, BE IT RESOLVED THAT: the enactment of this Ordinance promotes the public health, safety, and welfare and is in the public interest.

BE IT FURTHER RESOLVED THAT: the Tribal Council hereby adopts the following Ordinance in order to comply with the Coastal Commission's September 14, 2005 conditional concurrence of the BIA's Consistency Determination pursuant to the Coastal Zone Management Act.

BE IT FURTHER RESOLVED THAT: the following Ordinance is hereby adopted as part of the Elk Valley Rancheria Tribal Code.

BE IT FURTHER RESOLVED THAT: this Ordinance shall be effective immediately upon adoption by the Tribal Council.

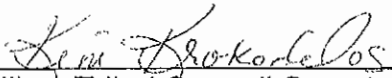
CERTIFICATION

The foregoing Resolution was adopted by a vote of 7 for, and 0 against and 0 abstentions and 1 absent, at a duly called meeting of the Tribal Council, at which a quorum was present, on this 9th day of November 2005.


Dale A. Miller, Tribal Council Chairman

11-09-05
Date of Approval

ATTEST:


Kim Krokodilos, Tribal Council Secretary


Date of Approval

MARTIN RANCH COASTAL COMMISSION REVIEW ORDINANCE

§ 1 PURPOSE

On September 14, 2005, the California Coastal Commission issued a conditional concurrence to the BIA's Consistency Determination (CD-54-05). The Tribe, in order to comply with BIA's Consistency Determination and the California Coastal Commission's conditional concurrence and to further the economic and social welfare of its citizens, enacts this Tribal Ordinance.

§ 2 SCOPE

This Ordinance applies only to the Martin Ranch and is limited to significant adverse impacts on Coastal Zone Resources located within the Coastal Zone.

§ 3 DEFINITIONS

For purposes of this Ordinance:

1. "BIA" means the United States Department of the Interior, Bureau of Indian Affairs;
2. "Coastal Commission" means the California Coastal Commission that is organized and operates pursuant to the laws of California and the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451 et seq.
3. "Coastal Zone" has the same meaning as that term is given in the Coastal Zone Management Act of 1972, 16 U.S.C. § 1453(1).
4. "Coastal Zone Resources" has the same meanings as the terms "coastal resource of national significance" and "coastal waters" are given in the Coastal Zone Management Act of 1972, 16 U.S.C. § 1453(2) & (3).
5. "Martin Ranch" means the area of land more fully described in Exhibit 1, attached hereto and incorporated by reference as if fully set forth herein;
6. "Ordinance" means this Martin Ranch Coastal Commission Review Ordinance;
7. "State" means the State of California;
8. "Tribal Council" means the Tribe's governing body pursuant to the Tribe's Constitution;

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

§ 4 CONDITIONS PRECEDENT

The obligations of the Tribe in Sections 5, 6 and 11 are contingent upon the Martin Ranch being transferred to and accepted by the United States Department of the Interior in trust for the benefit of the Tribe and a determination that the Martin Ranch qualifies as "Indian lands" eligible for gaming in accordance with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*

§ 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 Martin Ranch:

- 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.

B. The Coastal Commission shall have 30 calendar days from receipt of the documents and plans described in Section 5(A), above to provide written comments regarding whether said documents and plans reasonably protect Coastal Zone Resources. In the event that the Coastal Commission does not submit written comments to the Tribe for its consideration, the Coastal Commission's agreement shall be presumed by operation of law.

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.

§ 6 PUBLIC HEARING

The Tribe shall conduct a public hearing regarding its final plans and specifications during the 30-day comment period described in Section 5(B), above. Such public hearing shall be noticed no less than 10 days prior to the date of the

hearing, including publication of a notice in the *Triplicate* on at least two (2) separate dates prior to the hearing.

§ 7 MEMORANDUM OF UNDERSTANDING OR MEMORANDUM OF AGREEMENT

The Tribe hereby authorizes the negotiation and execution of a Memorandum of Understanding or Memorandum of Agreement with the Coastal Commission, as appropriate to effectuate the purposes of this Ordinance.

§ 8 EFFECTIVE DATE

This Ordinance shall be effective upon the date of adoption by the Tribe's Tribal Council.

§ 9 NO GRANT OF STATE JURISDICTION

Nothing in this Ordinance shall grant to the State or any political subdivision thereof any jurisdiction (including, but not limited to, jurisdiction regarding zoning or property use) over the Tribe, the Resort, or its development, management and operation.

§ 10 SEVERABILITY

If any part of this Ordinance is held to be invalid the remainder shall remain in full force and effect to the maximum extent possible.

§ 11 SOVEREIGN IMMUNITY; DISPUTE RESOLUTION

(A) Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, officers, agents, or employees, except to the extent described herein. Nothing herein shall authorize the award of attorney's fees or punitive damages as against the Tribe or any of its enterprises, officers, agents, or employees.

(B) Meet and Confer Process.

1. In the event the Coastal Commission or Tribe believes that the other has committed a possible violation of this Ordinance, it may request in writing that the Coastal Commission and Tribe meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within fifteen (15) days of the date of service of said request.

2. Notice. Notice of any issue arising under this Ordinance requiring the Coastal Commission and Tribe to meet and confer shall be delivered by Certified Mail – Return Receipt Requested on the following representatives of the respective Parties:

If to the Tribe:	Elk Valley Rancheria, California Attn: Chairman 2332 Howland Hill Road Crescent City, California 95531
If to the Coastal Commission:	45 Fremont Street Suite 2000 San Francisco, California 94105-2219

(C) Notice of Disagreement.

If the complaining party is not satisfied with the result of the meet and confer process, the complaining party may within fifteen (15) calendar days provide written notice to the other identifying and describing any alleged disagreement(s) ("Notice of Disagreement") with particularity, and setting forth the action requested to remedy the alleged disagreement.

(D) Response to Notice of Disagreement.

Within fifteen (15) business days of receipt of a Notice of Disagreement, the recipient shall provide a written response either denying or admitting the allegation(s) set forth in the Notice of Disagreement, and, if the truth of the allegations is admitted, setting forth in detail the steps it has taken and/or will take to address the disagreement.

(E) BIA Mediation. In the event that the Coastal Commission and the Tribe are unable to resolve through the meet and confer and Notice of Disagreement processes material differences regarding whether an activity will cause a significant adverse impact to Coastal Zone Resources, the Tribe and Coastal Commission may request in writing that the BIA conduct non-binding mediation ("BIA Mediation") to resolve any disagreement regarding the Tribe's good faith efforts to mitigate any significant adverse impact to Coastal Zone Resources; provided, however, that the Coastal Commission's good faith may also be contested. Any written request for mediation ("Request for Mediation") before the BIA shall be filed with the BIA at: Pacific Region, Attn: Director, 2800 Cottage Way, Sacramento, California 95825, and shall be served upon the non-requesting party within fifteen (15) calendar days of the receipt of the Response to the Notice of Disagreement. The Request for Mediation shall identify and describe any alleged outstanding disagreement(s) with particularity, and set forth the action requested to remedy the alleged disagreement. The BIA Mediation shall be conducted within fifteen (15) calendar days of the Request for Mediation. Any issues resolved through the BIA Mediation shall be reduced to writing in appropriate form and signed by the parties.

(F) Coastal Commission Hearing. In the event that the Coastal Commission and the Tribe are unable to resolve through the BIA Mediation any outstanding differences regarding whether an activity will cause a significant adverse

impact to Coastal Zone Resources, the Tribe and Coastal Commission may request a non-binding public hearing before the Coastal Commission to discuss any disagreement regarding the Tribe's good faith efforts to mitigate any significant adverse impact to Coastal Zone Resources; provided, however, that the Coastal Commission's good faith may also be contested. Any request for a hearing ("Request for Hearing") shall be made in writing within ten (10) calendar days of the conclusion of the BIA Mediation. The Request for Hearing shall identify and describe any alleged outstanding disagreement(s) with particularity, and set forth the action requested to remedy the alleged disagreement. The hearing shall be purely advisory and shall be conducted within thirty (30) calendar days of the Request for Hearing.

(G) Tribal-State Compact Environmental Review; Tribal Environmental Review Ordinance. In the event that the Coastal Commission and Tribe are unable to resolve through Section 11(B)-(F) of this Ordinance any differences regarding whether the Tribe's proposed activities on the Martin Ranch will cause a significant adverse impact to Coastal Zone Resources, the Tribe may proceed to issue a decision regarding the project in accordance with Section 16.030.080 of the Tribal Code. The Tribal Council's decision shall be final and unappealable.

(H) Limited Waiver of Sovereign Immunity To Enforce Ordinance. The Tribe hereby grants a limited waiver of sovereign immunity in favor of the Coastal Commission only, and not in favor of any third party, for the purpose of enforcing the Tribe's obligations contained in Sections 5, 6 and 11 of this Ordinance. The limited waiver of sovereign immunity granted herein is limited to issues solely arising out of Sections 5, 6 and 11 of this Ordinance. Nothing herein authorizes any claim for monetary damages and is limited only to specific performance of Sections 5, 6 and 11 of this Ordinance. This limited waiver of sovereign immunity shall not be effective if any other person or entity other than the Tribe and the Coastal Commission is or is made a party to the action, unless failure to join a third party would deprive the Elk Valley Tribal Court of jurisdiction; provided that nothing herein shall be construed as a waiver of sovereign immunity of the Tribe in respect of any such third party. In the event of intervention by any additional party into any such action without the consent of the Tribe, the limited waiver of sovereign immunity provided herein may be revoked by the Tribe. Should any court action be necessary, the Tribe hereby consents and limits the waiver of sovereign immunity contained herein to the Elk Valley Tribal Court.

12. GENERAL

- A. **Good Faith.** The Tribe and Coastal Commission agree to exercise good faith and to observe the covenants contained herein.
- B. **No Third Party Beneficiaries.** This Ordinance is not intended to and shall not be construed to create any right on the part of a Third Party to bring an action to enforce any of its terms.

- C. Standard of Reasonableness. Unless specifically provided otherwise, all provisions of this Ordinance shall be governed by a standard of reasonableness and no approval or agreement that is required pursuant to this Ordinance shall be unreasonably withheld, conditioned or delayed.
- D. Plain Meaning. Where terms, phrases or words are not defined, they shall have their ordinary accepted meanings within the context with which they are used. The edition current on January 2002 of Webster's Third New International Dictionary of the English Language, Unabridged shall be considered as providing ordinarily accepted meanings.
- E. Captions. The captions of each paragraph, section, or subsection of contained in this Ordinance are for ease of reference only and shall not affect the interpretation or meaning of this Ordinance.

CERTIFICATION

The foregoing Ordinance was adopted by a vote of 7 for, and 0 against and 0 abstentions and 1 absent, at a duly called meeting of the Tribal Council, at which a quorum was present, on this 9th day of November 2005.

Dale A. Miller
Dale A. Miller, Tribal Council Chairman

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