

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and Plan.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 3, 2003.

Sam D. Hamilton,
Regional Director.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Regulation of Coastal Armoring by Indian River County, FL.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice

SUMMARY: Indian River County Board of County Commissioners (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempi*), and hawksbill (*Eretmochelys imbricata*) sea turtles, as a result of authorizing the construction and removal of emergency coastal armoring structures along eroding sections of the 22.25 miles of County coastline. Take is also anticipated in instances where the emergency coastal armoring structures are subsequently replaced by permanent armoring structures. The Applicant's Habitat Conservation Plan (HCP) identifies the need to protect up to 31 upland structures with armoring resulting in about 3,196 linear feet of shoreline impacted by construction and presence of armoring structures. Based on coastal erosion modeling, the

Applicant has identified critically eroded sections of beach where armoring structures may be needed over the duration of the requested 30-year ITP.

Sea turtle nests may be impacted during construction of the armoring structures. In addition, once armoring structures are complete they may affect sea turtles by adversely modifying nesting habitat and/or sea turtle nesting behavior. The Applicant proposes to minimize impacts of constructing coastal armoring through implementation of stringent construction timing restrictions and best management practices. To mitigate for unavoidable impacts, the Applicant proposes to implement various actions that will increase sea turtle nesting success. A more detailed description of the minimization and mitigation measures to address the effects of coastal armoring on sea turtles are outlined in the Applicant's HCP, and in the **SUPPLEMENTARY INFORMATION** section below.

The Service announces the availability of the HCP and our Environmental Assessment (EA) for the incidental take application. Copies of the HCP and EA may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This Notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's permit issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to david_dell@fws.gov. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the Service that we have received your Internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review

during regular business hours.

Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the permit application, supporting documentation, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before January 20, 2004.

ADDRESSES: Persons wishing to review the application, supporting documentation, EA, and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960-3559. Written data or comments concerning the application, supporting documentation, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE057875-0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Coordinator, (see **ADDRESSES** above), telephone: 404/679-7313, facsimile: 404/679-7081; or Ms. Sharon Tyson, Fish and Wildlife Biologist, South Florida Ecological Services Field Office (see **ADDRESSES** above), telephone: 772/562-3909 extension 324.

SUPPLEMENTARY INFORMATION: Florida law allows for beachfront homeowners to apply for permits to construct armoring structures to safeguard homes and other eligible structures from damage due to impending coastal erosion. If threats of property damage

are immediate, homeowners may apply for emergency authorization to protect their home and/or other eligible structures. Under existing Florida statutes, county governments may assume emergency coastal armoring permitting authority. To date, Indian River County is the only Florida county to assume this responsibility and since 1996 has issued six permits for emergency armoring, covering 20 upland structures. In the late 1990s, concerns were expressed by the Florida Department of Environmental Protection (FDEP) and Caribbean Conservation Corporation (CCC), a non-profit environmental advocacy group, that Indian River County's implementation of coastal armoring permitting was resulting in the take of sea turtles that nest throughout the shoreline of Indian River County. To avoid immediate litigation, the FDEP, CCC, Applicant, and Petitioners (affected homeowners) entered into an Interim Agreement that required, in part, the Applicant to develop a HCP and apply for an ITP.

Three species of sea turtles nest on the beaches of Indian River County. On average 5,894 loggerhead, 271 green, and 7 leatherback sea turtles annually nest along Indian River County's 22.25 miles of coastline. Neither hawksbill or Kemp's ridley turtles have been documented to nest in Indian River County. Portions of northern Indian River County beaches are considered critically important for loggerhead turtles and some of the highest concentrations of green sea turtles nesting in the State occur within Archie Carr National Wildlife Refuge in southern Brevard and northern Indian River counties.

While the mechanism remains largely unknown, nesting sea turtles return to their natal beaches when they are reproductively mature. Once a gravid female reaches her selected nesting beach, she hauls herself from the sea, crawls to an area above the mean high water line (in Indian River County this is usually at the toe of the primary dune), excavates an egg chamber, deposits 80 to 135 eggs (depending on the species), covers the egg chamber, and returns to the sea. This process typically takes about one and a half hours and for most species occurs at night. Loggerhead turtles nest from late April to mid September, green turtles from late May to mid September, and leatherback turtles from late February to July. Artificial lights, obstructions (*e.g.*, groins, escarpments, beach furniture, and armoring structures), night-time human activity on nesting beaches, and predation are known or suspected to deter turtles from nesting.

Sea turtle eggs incubate within the warm, moist egg chamber for 50 to 75 days (species specific). Incubating eggs are vulnerable to predation, crushing, drowning, or washout. Along Indian River County's coastline, sea turtle nests are depredated principally by raccoons and in some locations predation rates may be as high as 30 percent. Trampling by humans and heavy construction equipment can crush sea turtle nests. Sea turtle eggs can withstand occasional inundation associated with spring tides, but repeated or long-duration inundation typically associated with storm events can drown eggs. During storm events, sea turtle nests are often washed out. Nests deposited between an armoring structure and the sea are more vulnerable to washout.

After hatching, young sea turtles dig upward to the beach surface and immediately crawl toward the sea. Hatchling emergence typically occurs at night. Factors affecting the survival of hatchling sea turtles include compaction of sand on top of the egg chamber, predation, and disorientation due to artificial lighting. Pedestrian traffic and heavy equipment use can cause compaction of sand and create an impenetrable substrate for hatchling turtles which ultimately results in their death. Following successful emergence at the beach surface, hatchlings are vulnerable to terrestrial and aerial predators. Raccoons, domestic cats, ghost crabs, and a variety of sea birds often take hatchling sea turtles. Because hatchling sea turtles orient to ambient light reflected by the sea surface, artificial light sources can interfere with the ability of hatchlings to correctly orient towards the sea. Often, disoriented hatchlings are attracted towards the source of the artificial light and away from the sea. Disoriented hatchlings typically die from desiccation, predation, or exhaustion.

The Applicant proposes to authorize the construction of up to 31 emergency coastal armoring structures on beachfront property used by nesting sea turtles. The 31 armoring structures will impact about 3,196 linear feet of coastline where turtles nest. Over the 30-year period of the requested ITP, the Applicant anticipates taking 1,185 sea turtle nests. The loss of sea turtle nests is expected due to a decrease in the quality of nesting habitat seaward of armoring structures once they are built. Adult sea turtles and their eggs and hatchlings may also be taken during construction of temporary emergency shoreline armoring structures due to the destruction of eggs by equipment and construction materials, mortality of eggs due to relocation actions, mortality of

hatchlings and adults due to entanglement in construction equipment and debris or entrapment in excavated areas, and from harassment due to construction activities. Construction-related impacts to sea turtles and their nests are expected to be minor.

Most of the taking of sea turtles will occur as a result of post-construction impacts of the armoring structures. Once completed, armoring structures can prevent sea turtles from accessing suitable nesting habitat, result in modified nesting behavior, or increase the risk of wash-out of nests constructed seaward of armoring structures. Construction and post-construction impacts are described in greater detail below.

Construction: A variety of emergency armoring structures may be constructed under the Applicant's statutory authority. Possible armoring structures can generally be divided into two categories; soft structures and hardened structures. Soft structures typically refer to the placement of beach-compatible sand into areas that have eroded and may take the form of loose sand or sand temporarily contained by fabric or other materials. Hardened structures usually include "walls" constructed of wood, metal sheetpile, or concrete. These types of structures are sited as landward as possible but can occur within the tidal zone on severely eroded beaches.

Depending on the type of structure to be built, the construction may involve the scraping of sand from lower areas of the beach and using it to create a protective berm. Alternatively, beach-compatible fill from upland sources may also be used in some localities to create a protective berm. Temporary barriers made of sand bags or geo-textile tubes filled with sand may also be used. Existing structures may be reinforced with one or more of the methods described above. The construction of hardened emergency armoring structures requires the driving of pilings and/or sheetmetal into the soil.

During any of these construction activities, sea turtle nests may be smothered, unearthed, or crushed. Additionally, equipment and materials left on the beach overnight may effectively eliminate or prevent nesting turtles from reaching otherwise suitable nesting habitat. Those same materials, as well as holes and debris on the beach, may entrap both adult and hatchling turtles.

Post Construction: An armoring structure can have deleterious effects on nesting sea turtles. Although emergency armoring structures can only remain in place for a maximum of 30 days

pursuant to State regulations, opportunities exist for beachfront homeowners to apply to the State of Florida for a permit to replace temporary emergency armoring structures with permanent structures. Thus, sea turtles could potentially be exposed to the long-term effects of armoring structures and the HCP and environmental assessment assume that all authorized emergency armoring structures subsequently become permanent structures.

Beaches seaward of seawalls and other armoring structures are typically narrower than natural unarmored beaches. As a result, on eroding shorelines seawalls may increase swash velocity, duration and elevation, thereby accelerating erosion in front of the structure. Additionally, buried portions of a seawall may alter beach porosity, permeability, beach groundwater elevation, and beach slope variability. Collectively, these changes in beach characteristics can diminish the quality of the beach as nesting habitat for sea turtles and these areas may be avoided by gravid female sea turtles. Furthermore, the physical presence of armoring structures may decrease the number of emergences by nesting females in front of the structures. Additionally, females that encounter hardened structures are more likely to return to sea without nesting. Females that encounter hardened structures when seeking suitable nesting habitat may wander more than turtles not encountering hardened structures. Behavioral modifications such as these likely increase energy expenditure and decrease fitness of nesting sea turtles.

The Service has worked with the Applicant to design measures to minimize and mitigate the impacts of coastal armoring on nesting sea turtles. Minimization measures proposed by the Applicant include conservation benefits from pre-project proactive planning, stringent pre-construction assessments and permitting, implementation of construction precautions during the nesting season, and requirements for post-construction monitoring during the nesting season. A public awareness program will be implemented to inform beachfront homeowners of coastal erosion and the regulatory process for protecting properties. Homeowners will be encouraged to take proactive steps to protect their property and prevent the need to seek emergency armoring permits. If landowners voluntarily take preventative action by installing armoring structures prior to an emergency situation, impacts to nesting sea turtles could be reduced. Furthermore, in the event emergency

armoring is requested, the Applicant agrees to stringently review the application, identify the most practical, least-impact armoring design and location, and require avoidance or relocation of affected sea turtle nests. During construction, the Applicant will require daily sea turtle nesting surveys at the construction and access sites, marking of nest sites, relocation of vulnerable nests, and minimization of impacts through timing restrictions on use and location of heavy equipment. Following construction, the Applicant agrees to require that sea turtle nesting surveys continue until all construction debris and materials are removed from the beach. Finally, in the event any emergency structure is removed, all of the minimization measures identified above for use during construction will also be implemented.

The Applicant has completed or is proposing a number of mitigation measures that will indirectly or directly benefit nesting sea turtles. Protection of beachfront property, implementation of a predator control program, better light management, and systematic sea turtle nest surveys are expected to result in conservation of turtles and their nests. Several of the proposed mitigation measures will have quantifiable results, including an expected reduction in nest predation from areas currently known to suffer high predation rates. A coordinated effort to educate beachfront homeowners about the effects of light pollution and subsequent modification and enforcement of a county lighting ordinance is expected to be beneficial to nesting turtles and hatchlings. The Applicant has also cost-shared on the acquisition of beachfront property and anticipates that the protection of 1,500 linear feet of shoreline resulting from this acquisition will eliminate future threats (e.g., lighting, armoring, and human disturbance) associated with residential and commercial development that may have existed without public acquisition. These mitigation benefits should total just over 5,100 additional nests of all species combined over the life of the proposed permit compared to the expected cumulative nest success without conservation measures (a ratio of about 4 saved nests per each destroyed or displaced nest). Finally, the Applicant also proposes to administer systematic sea turtle nest surveys for areas not already covered by index nesting-beach surveys. The Applicant intends to act as a clearinghouse for survey information so that consistent biological information is available for use in making decisions

that may affect sea turtles and/or their nests.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of sea turtles along Indian River County's coastline. The Service will also evaluate whether the issuance of a section 10(a)(1)(B) permit complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the Biological Opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 5, 2003.

Sam D. Hamilton,

Regional Director.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Elk Valley Rancheria 203.5 Acre Fee-to-Trust Transfer and Casino/Resort Project, Del Norte County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), with the cooperation of the Elk Valley Rancheria, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the proposed 203.50 acre Fee-to-Trust Transfer and Casino Project in Del Norte County, California. The purpose of the proposed action is to help meet the land base and economic needs of the Elk Valley Rancheria. This notice also announces a public scoping meeting to identify potential issues, topics and alternatives for consideration in the EIS.

DATES: Written comments must arrive by December 30, 2003. The public scoping meeting will be held on December 15, 2003, from 5 p.m. to 8 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments on the scope of the EIS to Clay Gregory, Acting Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Room W-2820, Sacramento, California 95825.