

# CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Manager  
Deborah A. Edgerly  
City Manager

(510) 238-3301  
FAX: (510) 238-2223  
TDD: (510) 238-2007

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Clay Gregory, Regional Director  
Pacific Regional Office  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

RE: City of Oakland Comments in Response to Notice of Intent to Prepare an  
Environmental Impact Statement for the Lower-Lake Rancheria Koi Nation  
Casino-Hotel Project.

Dear Mr. Gregory:

On behalf of the City of Oakland, this letter responds to the Bureau of Indian Affairs's Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Lower Lake Rancheria Koi Nation Casino-Hotel Project in Oakland (Casino-Hotel). 69 FR 68970; Nov. 26, 2004. The City's initial comments on the scope of the EIS are based on the information provided in the Notice of Intent and are divided into seven broad areas: general comments, CEQA compliance, notice of intent, alternatives, impacts, mitigation measures and related actions.

### ***General Comments***

The proposed Casino-Hotel gaming project presents critical issues of local, regional and statewide significance that must be fully identified and carefully evaluated. Due to the project's proposed location within the City of Oakland, the EIS and the proposed fee to trust process must fully consider and respect the City's unique interests and special expertise. Although the City has declined to be a Cooperating Agency as defined under NEPA, the Bureau of Indian Affairs (BIA) will need to consult with the City on areas for which the City has expertise in order to ensure that the Casino-Hotel EIS is as detailed and thorough as possible and complies with all legal requirements.

## *CEQA Compliance*

As an initial matter, the City notes that the Casino-Hotel project will undoubtedly require state and local permits or approvals for activities required to implement the project. Among these possible activities are remedying increased traffic congestion and changing the manner in which the City provides public services. Because state and local permits will be required as well as for other reasons, the requirements of the California Environmental Quality Act (CEQA) will apply. The environmental review of the Koi Nation's proposed Casino-Hotel must, therefore, meet the procedural and substantive requirements of CEQA, either through the preparation of an EIS that meets CEQA standards or the preparation of a joint NEPA/CEQA document with the responsible state or local agency. CEQA mandates that this environmental review occur as early as feasible in the planning process. With this in mind, the City urges the project proponents to commence CEQA review as soon as possible. The City also urges the project proponents to work with the BIA to prepare a joint Notice of Intent and Notice of Preparation under CEQA or other appropriate notice for public review and comment. This notice would need to contain a detailed project description sufficient to facilitate scoping under CEQA.

## *Notice of Intent*

The current Notice of Intent is very broad, which provides the BIA with ample opportunity to consider various alternatives to the Casino-Hotel project. Accordingly, as the City learns more about the proposed Casino-Hotel project, it reserves the right to comment further. The City also requests that the BIA inform the City of any refinement in the project goals and the project's purpose and needs statement. As the state and federal processes associated with the Casino-Hotel project will depend upon these critical factors, the City must be provided an opportunity to review and comment on any changes to the project goals and the purpose and needs statement.

## *Alternatives*

As the BIA is well aware, the alternatives section is the heart of an EIS. The EIS must rigorously explore and objectively evaluate all reasonable alternatives. Reasonable alternatives include the proposed action, as well as alternatives that meet the project's goals. Reasonable alternatives specifically include alternatives that are not within the jurisdiction of the BIA. The purpose of the project, as stated in BIA's Notice of Intent, is to "help provide a land base for, and address the socio-economic needs of the Lower Lake Rancheria Koi Nation." There are a wide range of alternatives beyond the proposed Casino-Hotel at this location that could fulfill this purpose, and those alternatives must be evaluated in this EIS. At a minimum, the follow types of alternatives should be evaluated in the Casino-Hotel EIS:

- The Currently Proposed Casino-Hotel Project. The Koi Nation has indicated in public meetings and on their website (<http://www.koination.com>) a preference for a casino-hotel project of a certain size and scope, and these specifications should

be part of the alternatives analysis. Because the casino and hotel are connected actions, their impacts should be evaluated together in the EIS. The EIS may also describe the impacts of phasing the construction of these project elements.

- Casino-Hotel on a Different Site. Constructing a casino-hotel project on different property may meet the project's goals with lesser environmental impacts. The Koi Nation is a landless tribe with apparent asserted ties to wide areas of Northern California and is not tied to the particular parcel identified in the BIA's Notice of Intent. Alternative sites must be evaluated, including, at a minimum, the following: (1) sites outside of Oakland, where gaming will be less likely to exacerbate existing blighted conditions; (2) sites in non-urban areas; and, (3) sites that are demonstrably connected to the Tribe's historic lands.
- Non-Casino Development. Constructing a casino-hotel is not the only means of providing a land base for and addressing the socio-economic needs of the Koi Nation. Other, non-casino development options should be considered in the alternatives analysis, including alternatives that are not tied to the proposed site and alternatives that are not within the jurisdiction of the BIA.
- No-Action. The EIS must contain an analysis of the environmental impacts of a no-action alternative and an evaluation of the effectiveness of the no-action alternative in fulfilling the project's goals.

### ***Impacts.***

The EIS must fully and adequately evaluate all of the direct, indirect, and cumulative impacts of the proposed Koi Nation Casino-Hotel. A Casino-Hotel would be one of the most intensive uses that could be developed on the proposed site. The City concurs that the EIS must include, among other things, a careful evaluation of all areas of environmental concern identified in the Notice of Intent need. Because of the unique nature and the location of the proposed Casino-Hotel, the City believes that the following impacts merit particular scrutiny:

- Traffic and Transportation Impacts. Traffic congestion in the area of the proposed Casino-Hotel, which is adjacent to the increasingly busy Oakland International Airport, is already problematic. The EIS should thoroughly evaluate the traffic impacts that the proposed Casino-Hotel would have on the already strained transportation infrastructure in the area. This includes analysis of the project's unique impacts on local, state and interstate roadway networks. The analysis should evaluate impacts in light of the statewide, area wide and regional significance of the gaming facility and its daily, weekly and seasonal peak traffic patterns, evaluating them particularly in relation to daily, weekly and seasonal peak traffic patterns for the Oakland Airport and the Coliseum area. At a minimum, the Casino-Hotel EIS must include the following:

1. A comprehensive traffic analysis, including a Phase I Land Use Analysis per Alameda Congestion Management Agency (CMA) adopted requirements;
  2. An analysis of potential congestion along the Hegenberger corridor in light of the proposed Casino-Hotel and regional growth projected for the Oakland International Airport;
  3. An examination of what routes will likely be used for congestion relief (such as the Edwards Avenue and 98<sup>th</sup> Avenue corridors);
  4. An evaluation of shifts in traffic patterns and congestion arising from the employment generation anticipated from the project and the related employee trips. This must include an assessment of the income levels of these jobs and how the potential need to find affordable housing outside the Oakland area will change traffic patterns; and,
  5. An analysis of Casino-Hotel impacts on area mass transit systems, such as BART and the AC Transit bus system.
- Municipal Services. The EIS should thoroughly evaluate the City's ability to effectively provide public services and utilities to the Casino-Hotel, in light of the demands of the community as a whole. The EIS must analyze the project's potential to increase demands for the municipal services. For example, the EIS should also carefully determine what additional police and fire resources in personnel and equipment will be needed to service the project and address the need for off site services including:
    1. Police: Given the nature of gaming activity, police response needs to be carefully gauged. For example, at the City's first public hearing on the project, many Oakland residents expressed concern regarding robberies of patrons leaving gaming sites with their winnings. As some of these robberies will inevitably occur off the casino site, the border or buffer area between the Hotel-Casino site and City property becomes an important element of ascertaining Oakland Police Department service demands. The EIS must analyze whether a new police substation in the area and new equipment is needed as well as whether police assisted traffic control may be necessary.
    2. Fire: It will be important to review what fire and other life safety building and operational standards will be used for the casino as these standards will help determine the type and extent of Oakland Fire Department demands for service, including emergency medical services. The size of the proposed Casino-Hotel project should also be evaluated to ensure that proper safety equipment and an adequate fire station is available to reach the site in a reasonable time to address emergencies. A fire flow analysis of the geographic area surrounding the Casino-Hotel site should be also prepared.
  - Public Facilities and Infrastructure. The EIS must evaluate the impacts of the Hotel-Casino on public facilities and infrastructure, including sewer and water capacity and conveyance. For example, the EIS must evaluate whether the sanitary sewer sub-basin in which the project is located has adequate capacity, taking into account any planned or potential construction within that sub-basin. The EIS should also require

an evaluation of the capacity of the sanitary sewer and storm drainage pipes that serve the site. Analysis of the sanitary sewer lines may extend to the Interceptor operated by the California Regional Water Quality Board, which should also be contacted for comment. Analysis of the storm drainage may need to extend to the channel or pipe outlet at San Francisco Bay.

- Socio-economic Impacts. The socio-economic impacts of casino development can be dramatic and widespread, particularly in urban settings. Evidence suggests that gaming activity disproportionately affects low income communities. The EIS should rigorously analyze the socio-economic impacts of the Casino-Hotel on the entire community, including the impacts resulting from removing the property from the City tax roles and the impacts on City services. An analysis of the socio-economic impacts of similarly situated gaming projects should be included with particular attention to increased crime, addiction, domestic violence, prostitution, bankruptcies and other social ills. The EIS should also include, at a minimum, an analysis of the following:

1. The project's effect on the jobs-housing balance in Oakland, in light of the large employment base that would be generated (preliminary figures suggest 4,400 jobs would be created) in an area of existing housing shortage (particularly in affordable housing stock);
2. The project's impact on the lower income segments of the housing market and increased affordable housing demands;
3. The project's impact on local entertainment venues and hotels;
4. The project's impact on local businesses;
5. The project's impact on work absenteeism, suicide, mental health, divorce, poverty and property values;
6. The project's impacts on the City of Oakland's social support programs and budget;
7. The project's impacts on Alameda County health facilities and public assistance programs that are managed through the County;
8. The project's impacts on other health facilities, including local hospitals and emergency care facilities; and
9. The project's impact on rural gaming and other local tribes, including potential to create blight in other redeveloped areas.

Secondary physical effects associated with the project's socio-economic impacts also must be thoroughly evaluated and mitigated. These include the project's contribution to urban decay and blight. In evaluating the socio-economic impacts the EIS should examine the demographics of the anticipated Casino-Hotel patrons, including where they are located, their income, their age bracket and whether they are "convenience" gamblers. The EIS should also examine the anticipated Casino-Hotel employees and whether the anticipated wages and benefits are sufficient in the high cost Bay Area. Special attention should be given to where the anticipated employees will be drawn from, what experience and education level will be required for various jobs and what housing options will be available.

- Biological Resources. The proposed Casino-Hotel site is adjacent to the Arrowhead Marsh. The EIS should contain a robust evaluation of the impacts of the Casino-Hotel on plant and animal species (including listed threatened and endangered species and otherwise) and their habitat in the project area. The EIS must also evaluate the impacts on the Pacific Flyway. Seasonal inventories may be necessary in light of bird migratory patterns. Special attention should be given to the biological impacts of increased litter from the parking lot and increased intensity of use at the project site. The project also must comply with the Endangered Species Act, including consultation with the United States Fish and Wildlife Service and California Department of Fish and Game.
- Water Quality. The EIS must evaluate the water quality impacts to the adjacent Arrowhead Marsh and biological habitat from the intensive use proposed by the Casino-Hotel project. Particular attention should be given to the likely increase in oil and gas residue from the parking facilities because of the nature of Casino-Hotel operations.
- 24/7 Impacts. The EIS must evaluate all the impacts of operating a Hotel-Casino on the proposed project site 24 hours a day, 7 days a week. The EIS should carefully analyze the impacts of continuous light, glare and noise from the proposed project, with particular attention to the impact on the surrounding marsh and wildlife habitat, including nesting birds and other animals. The EIS should also analyze whether the proposed project will be allowed to sell alcohol 24/7 and the impact of such sales on public health and safety.
- Impacts on Recreational Resources and Open Space. The proposed project is adjacent to the Martin Luther King Jr. Regional Shoreline. Proposed pedestrian and trail connections are planned and need to be considered in the environmental analysis. Aesthetic and other impacts related to development at this location must be evaluated.
- Proximity to the Oakland Airport. Given the proximity of the Hotel-Casino to the Oakland International Airport, building height restrictions, emergency access and other public health and safety issues must be considered. The national security implications of locating a large scale casino in that area, so near the airport, must be evaluated. It is the City's understanding that the United States Coast Guard has restricted boat access to the waterways next to the proposed Casino-Hotel site due to national security concerns.
- Schools. The addition of an estimated 4,400 new jobs to Oakland will impact the City's already stressed public school system. The EIS should examine the impact of the project on local schools and school revenues, as well as secondary environmental effects associated with the need for new school facilities.

- Land Use. The proposed Casino-Hotel development may have growth-inducing or development-inducing effects on the surrounding area. It may also have spillover impacts on surrounding businesses. The EIS should contain a comprehensive analysis of these impacts, as well as the ability of the City's current infrastructure to handle Casino-Hotel induced growth and development. Potential land use incompatibilities and the potential for related impacts on the existing community must also be evaluated. The EIS also must evaluate the project's potential inconsistencies with local land use plans, policies and ordinances.
- Environmental Justice: The EIS should evaluate environmental justice issues associated with development of a Casino-Hotel in the proposed location. In particular, the EIS should evaluate whether the proposed Casino-Hotel will lead to disproportionately high and adverse human health or environmental impacts on minority populations or low-income populations in the City of Oakland.
- Fiscal Impacts. The EIS should address the fiscal impacts to the various governmental bodies that will provide on-site and off-site services and improvements to the proposed project.
- Cultural Resources. If cultural resource information identifies other tribes with cultural ties to Oakland, the EIS must consider those impacts.
- Construction Impacts. The construction of the Casino-Hotel itself, apart from its day-to-day operation, will create a separate set of impacts on the environment. The Casino-Hotel EIS should contain a thorough discussion of Casino-Hotel construction impacts in addition to a discussion of Casino-Hotel operation impacts.
- Easements and Other Restrictions on the Property. It is the City's understanding that the Port of Oakland ordinances may apply to the proposed project site as well as several easements from the East Bay Municipal Utility District and other entities. The Port ordinance and easements may significantly impact the proposed development and should be thoroughly analyzed in the EIS. In addition, any development on the property is bound by the terms of purchase and sale agreement between the City of Oakland and Arrowhead Marsh Partners from the April 2004 sale of the property by the Port of Oakland. That agreement should be reviewed and analyzed and any impacts thoroughly discussed in the EIS.
- Other Permits Required. The proposed casino will be required to comply with numerous federal laws and permitting requirements. It may also be required to comply with various state environmental laws and local regulations under the terms of the purchase and sale agreement and conditions on title. At a minimum, the project is likely to require a Section 404 permit under the Clean Water Act, an analysis under the Endangered Species Act and a permit from the Federal Aviation Administration given the proximity to the airport. The EIS should include a discussion and analysis of potential future permits required and whether the EIS is intended to be the environmental compliance for those permits.

- Consistency with Public Trust/Tidelands Trust. The proposed project site is in close proximity to the Arrowhead Marsh area, which is part of the San Francisco Bay. The EIS should evaluate this project's compatibilities with development and land use restrictions associated with the Tidelands Trust. In addition, specific local and state land use policies apply to this proposed development on or near the Bay. The EIS should evaluate the consistency of the Casino-Hotel with those policies, including any requirements by the San Francisco Bay Conservation and Development Commission and the State Lands Commission.
- Cumulative Impacts. The construction and operation of the Casino-Hotel may have impacts that by themselves are not significant, but when considered in conjunction with impacts from other activities in the area (including existing activities and projects, as well as permitted or proposed activities and projects such as the upcoming major expansion of the adjacent Oakland International Airport, the Walmart project and the Oak to 9<sup>th</sup> project) become cumulatively significant.
- Other Project Impacts. The proposed casino is likely to create other significant environmental and social impacts. For example, in addition to the areas discussed above, the project would be expected to cause or contribute to significant air quality, noise, aesthetic impacts and will have potential impacts on open space. Consistency with City adopted plans, policies and ordinances, including building and fire codes, also must be evaluated. Additionally, the City understands the Casino-Hotel intends to purvey alcoholic beverages and the EIS should examine the project's need to comply with state and local liquor laws. The EIS should also examine the effects of alcohol on gaming patrons. The City is also concerned that some Indian Casinos do not comply with state or local smoking laws. The EIS should examine the impact of the Casino-Hotel not complying with laws restricting smoking, including the health and economic impacts.

### *Mitigation Measures.*

The construction and operation of the proposed Koi Nation Casino-Hotel will likely result in significant adverse impacts. The EIS must describe the measures that will be employed to mitigate these impacts; however, these measures may not mitigate all impacts to a less than significant level and do not change the unique nature of the proposed project. At a minimum, the discussion of mitigation measures in the Casino-Hotel EIS should contain the following:

- A description of all practicable means available to avoid or minimize harm from the proposed Casino-Hotel.
- A description of the specific measures to be used to mitigate each significant impact of the Casino-Hotel.

- This analysis should include measures to mitigate the social and economic impacts of the project, including the loss of tax revenues, the impacts on public services, and mitigating the costs of additional public services.
- A determination of which mitigation measures will be located at the Casino-Hotel site or off-site and the party responsible for implementation. The discussion should include the rationale for selecting a particular location and financial responsibility for mitigation purposes.
- An analysis of the technical and economic feasibility (including funding sources) and effectiveness of any proposed mitigation measures.
- A discussion of the entity or entities that will be responsible for monitoring and enforcing the mitigation measures, including: a) ensuring that the mitigation measures selected are implemented; b) evaluating their actual effectiveness at mitigating Casino-Hotel impacts, and c) developing and implementing alternative mitigation measures if the initial measures prove unsuccessful.

#### ***Related Actions.***

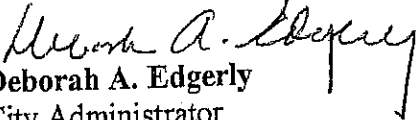
BIA must evaluate whether there are any connected, cumulative or related actions that need to be analyzed either in the EIS or in a separate environmental analysis. For example, BIA should carefully consider the following:

- Connected Actions. The proposed Casino-Hotel project will require implementation and mitigation activities both on and off-site. The off-site activities will likely require state and local approvals and will, therefore, be subject to the requirements of CEQA. As discussed earlier in this letter, the BIA and the project proponents must ensure that the project's environmental review meets CEQA procedural and substantive standards.
- Cumulative Actions. BIA must consider whether combination of the construction and operation of the Casino-Hotel with other projects in the area will lead to significant cumulative impacts. Such impacts must be analyzed in the Casino-Hotel EIS. In particular, the BIA should consider the cumulative impact of developing this Casino-Hotel project in conjunction with the other (currently five) casino projects proposed for the East Bay.

- Related Actions. In preparing the EIS, the BIA should evaluate whether there are any reasonably foreseeable actions occurring in the project area with similar environmental impacts, such as the major expansion of the Oakland International Airport. The BIA should consider consolidating review of such actions into a single EIS.

Thank you for the opportunity to comment on the Notice of Intent.

Sincerely,

  
**Deborah A. Edgerly**  
City Administrator  
City of Oakland