

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 DEC 29 PM 12:55

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: January 11, 2005
RE: Request for Council consideration of alternative actions in response to the Proposal by the Koi Nation to Develop a Casino Resort and Spa on a 35 Acre Site with access from Hegenberger Drive.

SUMMARY

The Lower Lake Rancheria Koi Nation, a small, landless tribe with offices in Santa Rosa and Oakland, has initiated a federal process, that, if successful, would result in the development of a casino (including a hotel, spa, parking structure and casino) on a 35 acre site fronting on Hegenberger Road in the City of Oakland (please refer to Attachment A for a site map - "the site"). The site is presently owned by Legacy Partners, who acquired the site from the Port of Oakland. The project is proposed to be constructed in two phases. Phase I would include a 200,000 square foot gaming facility (approximately 2,000 slot machines and 140 table games), an events and entertainment center with approximately 1,500 seats and parking for 3,700 cars in both structured and surface spaces. Phase II would include a 200 room hotel, meeting rooms, spa and support area expansion.

Staff and the City Attorney's Office are still investigating the facts, law, and processes that are applicable to the Koi Nation developing a casino at the site. This staff report presents a preliminary overview of the approval process and actions required to site such a facility and provides options for consideration by the City Council. It is based on the information we have as of the date this report was prepared. We anticipate supplementing this report prior to the special City Council meeting on January 11, 2005.

BACKGROUND

This project involves at least four separate but related processes in order for the proposed Koi Nation Casino Project ("project") to move forward. It is our understanding that the federal government has the authority to accept the proposed 35 acre site for the benefit of the Koi Nation. It is also our understanding that the City has no local land use jurisdiction and no authority to conduct an environmental review under the California Environmental Quality Act ("CEQA"). However, the Koi Nation has: 1) requested the Department of Interior, Bureau of Indian Affairs ("BIA") to initiate an environmental review process under the National Environmental Policy Act ("NEPA"), 2) initiated a federal "fee to trust process" under the authority of the United States Department of Interior, and 3) if the trust process is successful, will pursue a state process to enter into a

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Tribal State Gaming Compact, as required under the Indian Gaming Regulatory Act, for gaming at the proposed site.

The City is not a decision maker in these processes. Rather, the processes are under the authority of the federal and state government. The City Council can choose to participate in these processes in a variety of ways, as further described in the next section of this report. At the local level, the City may choose to enter into an agreement with the Koi Nation called a Municipal Services Agreement (“MSA”), in order to recover the costs of municipal services required or desired to support the casino.

Environmental Review Process. On November 26, 2004, a Notice of Intent to prepare an Environmental Impact Statement (“EIS”) for the casino project was published in the Federal Register. This required environmental review process is accomplished at the federal level through the National Environmental Policy Act (NEPA). Unlike the environmental review process under CEQA, the Bureau of Indian Affairs (“BIA”) is the “lead agency”, charged with the overall management and authority of preparing the EIS. Staff and the City Attorney are still reviewing what is required for environmental review to put the site into trust for the Koi Nation and to approve gaming on the site, including the applicability of NEPA or other environmental review procedures

With the assumption that NEPA applies, a scoping process is required and a meeting was held on December 15, 2004 to help the BIA determine what topics and issues should be addressed in the EIS. The City can participate in the scoping process by submitting its issues and concerns prior to January 21, 2005. Attachment B of this report contains a draft bullet list of environmental concerns and other topics that staff believes should be addressed in the EIS.

When the Notice of Intent is published, the City is also notified about whether it wants to participate as a “cooperating agency.” Such a designation allows the City to be involved with the preparation of the EIS at a closer level (such as being able to review and submit comments on the Administrative Draft EIS and the attached appendices, including technical reports prior to formal publication of the document. This designation does not interfere with the City’s ability to challenge the environmental review process in the future, should the Council decide to do so.

After the scoping period is over, a scoping report is published. The timing of this report depends on the type and number of the comments received about the proposed project. The City is able to review this document and provide further comments, if deemed necessary.

The next step is the publication of the Draft EIS. This report is circulated for a minimum 45 day review period, during which time comments from agencies and the public are received. Subsequently, a Final EIS is prepared, responding to all comments received about the Draft EIS. There is a minimum 30 day wait period after the Final EIS is issued before the record of decision can be approved. Finally, a “record of decision” is

published in the Federal Register, after which legal challenges may be brought regarding the adequacy of the EIS.

Fee to Trust Process. Once the environmental documentation is final, the Koi Nation can move ahead and complete what is known as a “fee to trust process.” This process, which is undertaken at the federal level within the BIA, involves the evaluation and analysis of ethnographic, archeological, and other information establishing that the Koi Nation and their ancestors have an ancestral relationship to the 35 acre site. If successful, the fee title to this site is transferred to the United States of America to be held in trust for the benefit of the Koi Nation. In essence, this site then becomes the Tribe’s sovereign territory – its reservation – and the Koi Nation would have the governmental jurisdiction over the site. On an Indian reservation, federal laws have limited application and state laws have even less application. For example, as a “semi-sovereign” governmental entity, the Tribe would have sovereign immunity from suit, unless the Tribe waives that immunity. This is similar to the state and federal governments who can be sued because they have waived their immunity from suit.

For a tribe to take land into trust for gaming purposes additional considerations are involved depending on the Tribe’s recognition and landless or landholding status. City staff and the City Attorney’s Office are presently researching this aspect of the fee to trust process.

State Gaming Compact. If the land is taken into trust by the United States for the Koi Nation, the tribe will negotiate a Tribal-State Gaming Compact (“Compact”) with the State of California to conduct Class III gaming on the site, in accordance with the requirements of the Indian Gaming Regulatory Act. The compact will likely include a requirement that the tribe pay a percentage of the casino proceeds to the State.

Local Authority. While not a decision-maker in the process of approving gaming at the site, the City does have ability to participate in the process. The BIA may consider the City’s support or objection to gaming at the site. The City may also have points of leverage including access ways, use and alteration of rights of way, and public infrastructure necessary to serve the site (sewer, storm drains, etc.) In addition, an agreement called a Municipal Services Agreement (“MSA”) can be executed between the City and the Koi Nation which provides the means to compensate the City for police, fire, sewer, and other services deemed required to provide appropriate levels of service to the facility. The City is not required to enter into such an agreement, but may choose to in order to compel the tribe to reimburse the City for the tribe’s use of any of these services. The Tribe may be able to put a casino on the site without such an agreement.

KEY ISSUES AND IMPACTS

The key issue for the City Council, at this point, is the extent of involvement the City should exercise in the processes that have been identified. Several Councilmembers

have expressed opposition to the proposal. A resolution opposing the project has been drafted for consideration as a separate agenda item.

Given that the City has no decision making authority over this project, it is important to consider the points of involvement and provide a summary of the potential benefits and risks of that involvement.

Environmental Review Process.

Point of Involvement	Benefits	Risks
Submitting comments during scoping period	Presents City's concerns and issues to be addressed in the EIS	None
Accepting designation as a cooperating agency	Can review and comment on the Administrative Draft EIS without relinquishing the right to future legal challenge.	Could be perceived as cooperating on the project itself, not just the compilation and review of the environmental information.
Submitting comments on the Scoping Report	Enables the City to identify concerns and issues.	None
Submitting comments about the Draft EIS	Enables the City to establish positions on the type and accuracy of the environmental information and analysis; preserves the right to challenge the adequacy of the EIS. If the City successfully challenged the EIS, it could provide a means to gain further mitigation measures to offset identified impacts.	None

Fee to Trust Process. This process essentially occurs at the federal level within the BIA. The points of involvement are not formal, but are essentially ones of influencing the political process involved in such action. From information gained to date, it is apparent that the BIA wants to know that the Koi Nation has the City's cooperation in developing the casino. The BIA will likely take Oakland's point of view into consideration, but the City's cooperation is not required for the Koi Nation to obtain BIA approval.

State Gaming Compact. Similar to the fee to trust process, the City is not formally involved. Governor Schwarzenegger has publicly commented that he does not believe urban gaming is acceptable. If the federal government accepts the land in trust under the Koi Nation's fee to trust application, the Governor may be compelled to negotiate a Compact in good faith. The City must more carefully review and analyze this process. However, mounting state budget deficits may lead to an agreement being negotiated.

Municipal Services Agreement. There is no requirement for a MSA. However, unlike a typical development process, such an agreement would be the only way for the City to gain compensation for various services that may be needed to adequately support the casino operation. Such an agreement can include annual fees to compensate for lost property tax revenues, and for sewer and other infrastructure, public maintenance and operation costs, traffic control and police and fire services. The agreement may also include construction and operational standards that must be met.

The benefit of entering into this type of agreement is that the City would be compensated for any costs for providing services. The risk of initiating discussions concerning an agreement could be a political perception that the City was in favor of the casino. The risk of not entering into discussions is that the casino may be approved and the City would not be compensated for loss of property taxes and the costs of providing services. The timing of entering into negotiations is important, and expert advice is required in order to develop the best strategy for recovering costs. Staff notes that Sonoma County attempted to negotiate a revenue-sharing agreement with the Dry Creek Rancheria Band of Pomo Indians for the River Rock Casino and could not reach an acceptable deal. Instead of millions of dollars, only the Geyserville Fire Protection District has executed a contract for \$ 336,000 for fire and emergency services. Sonoma County has taken many other issues regarding services and compensation to federal court.

CITY COUNCIL OPTIONS FOR ACTION:

The Council has at least five options for action concerning this proposal, as outlined below, and may direct staff to pursue one or a combination of these actions simultaneously:

- 1) To consider and approve the attached resolution in opposition to the Koi Nation casino project. In addition, to authorize the City Administrator and City Attorney to retain appropriate legal counsel and other expertise to aid the City in opposing the project before federal and state authorities.
- 2) To consider whether the City should be designated as a cooperating agency under NEPA. Unless the City Council decides it is adamantly opposed to the casino project, staff believes that there is little downside to being designated as a cooperating agency in order to provide input and technical comments for the EIS.

- 3) To authorize the City Administrator and City Attorney to retain appropriate legal counsel and other expertise so that the City will be in a position to negotiate with the Koi Nation in the future regarding compensation for services and other provisions of a MSA. At this point, it is unclear when the City should begin negotiating, but it is important to gain expert advice about timing in order to preserve options concerning recovering lost property tax and fees for providing municipal services and other costs.
- 4) To submit comments during the federal EIS process, preserving the right to challenge.
- 5) To take no action at this time, but to continue to gather information and assess opportunities to participate in the process so that any future action taken will be based on more complete information and analysis.

SUSTAINABLE OPPORTUNITIES

Economic: In the short-term, the Council may decide to retain outside legal counsel and other expertise to aid in opposing or cooperating with this proposal. Since no funds were previously budgeted to cover these costs, there would be a short term negative impact. In the long run, if the Koi Nation casino project were approved, it could have a potentially positive impact on the City's revenues through the direct and indirect economic benefits of visitors going to a major attraction. Also, there are potential economic benefits stemming from a new major employment base for the City. Conversely, if the City decided not to enter into a MSA and the project moved forward despite the City's opposition, there would be a potential negative impact on the City's revenues because sales tax, property tax or other fees for services could not be recovered.

Environmental: There may be environmental impacts associated with the development of a casino, most likely increased traffic, noise and air pollution along the Hegenberger corridor. Municipal services such as sewers, Police and Fire and other utilities required to serve the site must also be addressed. In addition, the proximity to the Oakland Airport must be carefully examined with regard to building heights. If not carefully considered, public safety may be impacted due to increased demands on the Oakland Police Department as a result of casino operation.

Social Equity: There are serious socio-economic impacts associated with gambling activity, including gambling addiction and financial irresponsibility. Low income communities are often impacted to a greater degree.

DISABILITY AND SENIOR CITIZEN ACCESS

The casino will likely comply with all local and other requirements concerning disabled access because it is in the best interests of the casino operator. Staff notes that as sovereign lands, the casino would not be subject to federal, state or local disabled access requirements.

ACTION REQUESTED OF THE CITY COUNCIL

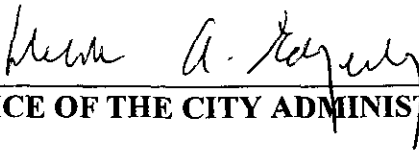
To review and consider the information and options in this staff report, and any public testimony, and provide direction to staff as to any actions required to follow up on the proposal at this time.

Respectfully submitted,



Claudia Cappio, Development Director
Community and Economic Development
Agency

APPROVED AND FORWARDED TO
THE CITY COUNCIL

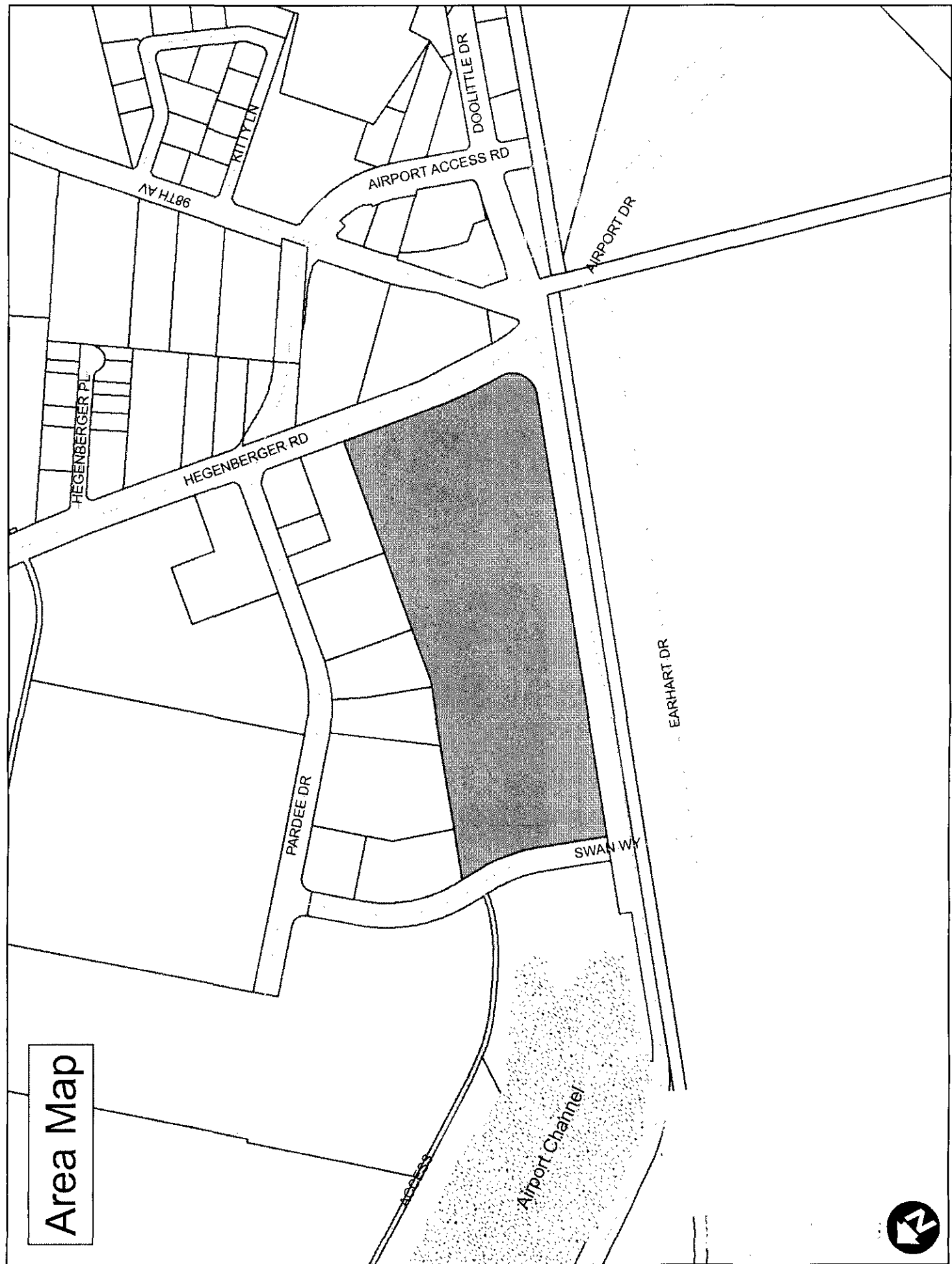


OFFICE OF THE CITY ADMINISTRATOR

Enclosures:

- a. Location Map
- b. Major environmental issues and concerns that could be incorporated into a letter responding to the Notice of Intent to prepare an EIS

1" = 500'



Area Map



Key Environmental Issues that Should be Addressed in the Environmental Review For the Proposed Koi Nation Casino Project

- Traffic Impacts: a comprehensive traffic analysis needs to be prepared, including the required Alameda Congestion Management Agency (CMA) transportation review. Potential congestion along the Hegenberger corridor is particularly important given the regional growth projected for the Oakland Airport. The analysis should include the regional nature of the gaming facility, daily, weekly and seasonal peak traffic patterns, particularly in relation to daily, weekly and seasonal peak traffic patterns for the Oakland Airport and the Coliseum area. Another important element for analysis is to ascertain what routes will likely be used for congestion relief (such as the Edwards Avenue and 98th Avenue corridors) and impacts that would need to be considered accordingly.
- Municipal Services: an analysis of the potential demands for municipal services needs to be included, including police, fire, public works, etc. Given the sovereign status of the 35 acre site and the nature of gaming activity, police response needs to be carefully gauged. Many comments about gaming facilities point out robberies of patrons who leave the site with substantial winnings. Thus, the border or buffer area between the Koi Nation trust lands and City property becomes an important element of ascertaining OPD service demands. In addition, it will be important to review what fire and other life safety building and operational standards will be used for the casino in order to determine the type and extent of OFD demands for service, including emergency medical services. A fiscal analysis of the projected costs and economic benefits of the facility should be included, as is permitted by NEPA.
- Relationship of proposed casino to adjacent and nearby biotic and recreational resources. The 35 acre site is in close proximity to the Arrowhead Marsh area and there are proposed pedestrian and trail connections that need to be considered in the environmental analysis.
- Proximity to the Oakland Airport. Given the close proximity of Oakland Airport, building height restrictions and emergency access need to be considered in the environmental review.
- Socio-economic Impacts. Evidence suggests that gaming activity disproportionately affects low income communities. An analysis of the socio-economic impacts of similarly situated gaming facilities should be included. In addition, an analysis of how this facility would affect the jobs-housing balance in Oakland, particularly given the large employment base that would be generated (preliminary figures suggest 4,400 jobs would be created.) Particularly, the impact on the lower income segments of the housing market should be assessed.