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TESTIMONY  
BEFORE THE COMMITTEE ON RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON H.R. \_\_\_\_ (POMBO), A BILL TO AMEND THE INDIAN  
GAMING REGULATORY ACT TO RESTRICT OFF-RESERVATION GAMING,  
AND FOR OTHER PURPOSES

MARCH 17, 2005

Good afternoon Chairman Pombo, Ranking Member Rahall and Members of the Committee. My name is Jean Quan and I am a Council Member in the City of Oakland, California representing the citizens of the 4<sup>th</sup> Council District. Thank you for inviting me to appear and testify at this oversight hearing. On behalf of my colleagues and our citizens, I extend my deep appreciation for your willingness to address these difficult issues.

Currently, California is experiencing a proliferation of Indian gambling proposals with at least five being proposed for urban areas in the eastern San Francisco/Oakland Bay Area, including one in the City of Oakland. Investigations by the media, criminal and civil authorities, and the committees of Congress are exposing questionable practices related to federal recognition of Indian tribes and the preemption of state and local jurisdiction over our communities by federal officials taking land into trust for casino development. My testimony focuses on what is happening to us and to our community, but I believe our concerns are shared by many other communities throughout the United States.

The City of Oakland opposes any legalized gambling establishment within its municipal borders. The City made that decision after concluding that casino development creates unacceptable risks with severe, detrimental impacts on our densely populated urban community. Those impacts include increased crime, personal bankruptcy, blight, homelessness, domestic violence, child abuse, prostitution, suicide, fraud and traffic congestion. I have submitted with my testimony a copy of the Oakland City Council's resolution expressing those views. Moreover, almost every surrounding jurisdiction – the cities of Alameda, San Leandro, and Berkeley, the Alameda County Board of Supervisors and the East Bay Regional Park District - opposes the proposed casino-hotel project. Under ordinary circumstances, that would be the end of the matter. However, aggressive tribal gaming developers and their lobbyists are trying to circumvent the right of Oakland and other Bay Area citizens to govern ourselves by appealing to federal officials in Washington. Those officials claim the authority to recognize Indian tribes and substitute federal and tribal jurisdiction for state and local jurisdiction over land within our city. The casino advocates would have the Secretary become the de facto Mayor and City Council of Oakland, and the arbiter of our community standards.

The following is some background on the situation in Oakland. In 2004, the Lower Lake Rancheria (also known as the Koi Nation) and the Department of the Interior began the process to locate a large-scale casino-hotel development in the City of Oakland on a 35-acre parking lot adjacent to the Oakland International Airport and Martin Luther King Shoreline Park. The Martin Luther King Shoreline Park encompasses 1,220 acres of land, associated tidal marshes, seasonal wetlands and a shoreline trail. It is part of the Pacific Migratory Flyway, is home to several threatened and endangered wildlife species and has 250,000 – 300,000 visitors annually.

The proposed casino site is within our Port of Oakland's jurisdiction and is subject to several deed and land use restrictions, as well as a Federal Court consent decree addressing environmental issues on the site. City of Oakland has concluded that the site may not be developed for human habitation under any land use criteria, including single or multiple housing. There is a covenant on the title to the proposed site that requires that notice of hazardous substances be placed in any lease or purchase agreement for the property. The City has investigated and classified this property at considerable expense and with the health and welfare of its citizens as the primacy consideration. Now the Interior Department and the Tribe are forcing us to reinvent the wheel in a costly and time consuming process.

The Tribe is "landless", according to the federal government, and has been since the federal government sold off its land in Lake County in 1956. We cannot understand what would lead the federal Indian trustee to consider taking land into trust for Indians that is unfit for habitation. Consider also the health risk to the tens of thousands of hotel and casino patrons who would visit the site. Moreover, consider the safety and national security risks of locating a large, seven story intensive development immediately adjacent to the Oakland International Airport. Because of the environmentally sensitive nature of the adjacent Martin Luther King Jr. Shoreline Park, intense development on the site was intended to be limited. Few uses could be more intensive than a major casino/hotel operating twenty-four hours a day, seven days a week.

From the beginning the Koi Nation's proposal was controversial and contained questionable aspects. First, consider the status of the Tribe itself. We urge the Committee to inquire into whether the 2000 recognition of the Tribe by the prior administration was procedurally or legally correct. The following facts suggest that the Committee should do so. By the Act of March 29, 1956 (Public Law 84-443), the United States converted the sold 140 acres of tribal trust land in Lake County, California (150 miles from Oakland) and, and deeded the remainder in fee simple to an Indian and his spouse who were reportedly the only inhabitants of the land at that time. Nearly a half century later, the Assistant Secretary for Indian Affairs purported to reaffirm the federal status of the Tribe. According to published reports, the Assistant Secretary took that action without processing the matter pursuant to the federal acknowledgment regulations (25 CFR Part 83), and over the strenuous objections of Bureau of Indian Affairs staff experts in charge of implementing the regulations. News reports indicate that the objections were based on legal concerns that the facts related to the Tribe did not justify reinstatement of federal status. (His participation in the legally questionable circumstances under which the Tribe was

recognized, further cloud this because the former Assistant Secretary is now a lobbyist for the Tribe's casino project).

Second, we also request the Committee to look into the propriety of what appears to be an ambiguous and misleading use of the National Environmental Policy Act and trust land acquisition procedures by the Department of the Interior to further Indian gaming development in Oakland. The published Notice (69 Fed. Reg. 68970, November 26, 2004) of the Secretary's intention to prepare an Environmental Impact Statement states only that it is for the purpose of determining the impacts of building a hotel and Indian casino project on the Oakland site. It does not advise the public that the land first has to be taken into trust and that there are significant issues and procedures associated with trust land acquisition that are separate and apart from casino and hotel development. See 25 CFR Part 151. In the parlance of Secretary Norton's cooperative conservation policy, the notice did not properly "communicate" to the public, and so the public cannot have an informed "consultation" with the Secretary about the proposed action.

Third, the Koi Nation's proposal is the ultimate case of "location shopping." The Koi Nation is from Lake County, more than 150 miles from Alameda County where the proposed site is located. And yet, the Tribe is asking for land in Oakland to be placed into trust on the Tribe's behalf.

No one can look at this situation and not see that something is wrong. We request that the Committee ask the Secretary to:

- 1) withdraw the original notice of intent to prepare an environmental impact statement;
- 2) terminate the existing NEPA process; and
- 3) investigate the propriety of prior administration's action to recognize the Tribe the Tribe's federal status has been completed.

Finally, we ask you to support the fundamental concept of local control. Please enact legislation that would prohibit any gaming development on land acquired in trust for an Indian tribe if the state, or any local governments in which the land is located or to which it is adjacent do not consent.

Thank for your attention to our concerns.