

1 BEFORE THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

2 OF THE STATE OF CALIFORNIA

3 - - -

4
5 IN THE MATTER OF THE PROTEST OF:

6 Antoinette Ballister, et al., FILE: 47-423392
7 P.O. Box 591 REG: 05060025
8 Loleta, CA 95551-0591

9
10 AGAINST THE PERSON TO PERSON AND PREMISES
11 TO PREMISES TRANSFER ON AN ON-SALE GENERAL
12 PUBLIC EATING PLACE LICENSE TO:

13 Bear River Casino
14 11 Bear Paws Way
15 Loleta, CA 95551

16 Respondent(s)\Licensee(s)
17 under the Alcoholic Beverage Control Act

9F0863CA

HEARING OF PROTEST

15

EUREKA, CALIFORNIA

16

October 19, 2005

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20

21 ATKINSON-BAKER, INC.

COURT REPORTERS

22 (800) 288-3376

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23

24 REPORTED BY: JOSHUA W. SCOTT, CSR NO. 4328

25 FILE NO. 9F0863C

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1 HEARING ON PROTEST, taken at 531 K Street,
2 Eureka, California, commencing at 10:12 a.m., Wednesday,
3 October 19, 2005, before Joshua W. Scott, CSR No. 4328.

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6 A P P E A R A N C E S

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ADMINISTRATIVE LAW JUDGE:

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DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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ADMINISTRATIVE HEARING OFFICE

BY: ARNOLD GREENBERG, ESQUIRE

10

2277 Fair Oaks Boulevard

Suite 415

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Sacramento, California 95825

12

FOR BEAR RIVER CASINO:

13

FORMAN & PROCHASKA

14

BY: GEORGE FORMAN, ESQUIRE

4340 Redwood Highway, Suite F288

15

San Rafael, California 94903

16

9F0863CA

FOR THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL:

17

JOHN R. PIERCE, ESQUIRE

18

3927 Lennane Drive, Suite 100

Sacramento, California 95834

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ALSO PRESENT: K. K. Locken and various protestants.

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I N D E X

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EXHIBITS

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NUMBER	DESCRIPTION	PAGE
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(All Exhibits were marked by Judge Greenberg and retained by counsel for Volume II of the hearing.)

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1 ADMINISTRATIVE LAW JUDGE GREENBERG: We're on
2 the record. This is the time and place regularly set
3 for hearing in the matter of the protest of Antoinette
4 Ballister, et al., against the issuance -- can you put
5 the microphone on?

6 Let's go off the record.

7 (The parties went off the record.)

8 ADMINISTRATIVE LAW JUDGE GREENBERG: Again,
9 this is the time and place regularly set for the hearing
10 in the matter of the protest of Antoinette Ballister, et
11 al., against the issuance of a Type 47 license to the
12 Bear River Casino for a premises located at 11 Bear Paws
13 way in Loleta, California. This matter is before the
14 Department of Alcoholic Beverage Control bearing file
15 number 47-423392, Reg. number 05060025.

16 I'm Arnold Greenberg, the Administrative Law
17 Judge assigned to hear this matter.

18 May we have the appearance for the Department
19 of Alcoholic Beverage Control.

20 MR. PIERCE: John Pierce, counsel for the
21 Department.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: May we
Page 9

23 have the appearance of the applicant.

24 MR. FORMAN: George Forman, Forman and

25 Prochaska, for Bear River Casino.

5

1 ADMINISTRATIVE LAW JUDGE GREENBERG: All

2 right. Those who have gathered here to register

3 protests and to pursue and prosecute their protests, I

4 am going to ask you to confer with each other at this

5 moment. We'll go off the record to do so.

6 I would like you to appoint a representative

7 of each of the totality of all of you. I won't ask for

8 objections for everybody who is here. I have a total of

9 41 protests registered. I'm going to ask you to now
10 confer and select one amongst your number to represent
11 the entire body of you.

12 Let's go off the record while they do that.

13 (The parties went off the record.)

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank you
15 for selecting a representative, Mrs. Susan Fregeau. If
16 there is anything that you're going to want Miss Fregeau
17 to represent for you other than what she says, we'll
18 give you a chance to do that.

19 In the meantime, I'll ask you to listen to the
20 questions which are posed to her, her answers given to
21 any question because at the conclusion of the testimony,
22 I'm going to ask you -- well, all of you as a group to
23 notice me if any of your answers to any of those
24 questions would be substantially different from that

25 offered by Miss Fregeau. If it is, I'll be happy to

6

1 take your testimony under oath at that time.

2 In the meantime, the proceedings, because of

3 the number of protestants here, look like they might

4 last for quite a while. If we don't finish today, we

5 will set the matter over for another day of hearing.

6 We'll probably go no later than 4:00 o'clock today.

7 MR. FORMAN: Your Honor --

8 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes?

9 MR. FORMAN: Before we commence testimony, we

10 have two motions the respondent wishes to make

11 concerning the nature and scope of issues and testimony
12 to be presented.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes?

14 MR. FORMAN: We've provided copies for those
15 in the room as well as Your Honor and the Department.
16 One of those is a motion to strike the protest of the
17 Singley Hill Homeowners Association and to exclude any
18 evidence offered on behalf of that protest on the
19 grounds that it is only signed by one individual, Miss
20 Fregeau, not by any of the other individuals identified
21 as members of the association.

22 Second, it is unaccompanied by any certificate
23 or other admissible evidence that the association even
24 exists, except as Ms. Fregeau declares.

25 And third, it's unaccompanied by any

1 certification or other admissible evidence that the
2 association ever acted in any way to authorize
3 Ms. Fregeau to submit anything on the association's
4 behalf, assuming that it exists.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Are you
6 asking me to take up that motion at this time? I'm not
7 through starting this proceeding. I don't think it's
8 appropriate at this time because what you're asking me
9 to do is to strike protests because of the lack of form
10 and I'm not prepared to do that at this juncture.

11 MR. FORMAN: Okay.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

13 you.

14 MR. FORMAN: There is one other matter and
15 that is that both the department -- and we served the
16 protestants with requests for discovery. To date, we
17 have received no response whatsoever. My information is
18 neither has the department received anything in response
19 to discovery questions.

20 For that reason, I would move that any
21 documentary evidence that any protestant may come
22 forward with today be excluded on the grounds of undue
23 prejudice to either the department or the applicant
24 since we've not had a chance to look at it.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: That

1 motion and the basis for it will be deferred until such
2 time as the information is sought to be produced by any
3 of the protestants. In the meantime we'll proceed.

4 MR. FORMAN: Thank you, Your Honor.

5 MR. PIERCE: Your Honor, may I be heard
6 briefly?

7 ADMINISTRATIVE LAW JUDGE GREENBERG: Sure.

8 MR. PIERCE: I have spoken with several of the
9 protestants and I would request that after we do the
10 preliminary matters, we handle this somewhat differently
11 than normal practice by allowing several of the
12 protestants to go forward who have either later
13 conflicts or have taken off work in order to allow them
14 to be heard.

15 I don't think that's prejudicial to anyone in
16 the department. It can put on its investigative report
17 later on. In particular, Supervisor Smith, who is here
18 today does have another hearing as well as many of the
19 protestants who have indicated that they have taken time
20 off. I would request we allow them to proceed initially
21 and then the department can provide its underlying
22 investigation.

23 MR. FORMAN: We have no objection to that.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Then it
25 will be so ordered. We have had the appearance for the

1 applicant and we have the appearance for the department.

2 Mr. Pierce, the record will reflect the

3 application was filed and verified protests were

4 received. The protests together with a Declaration of

5 Service by Mail are included in my file.

6 They will now be marked as Exhibit 1, unless I

7 hear an objection. Exhibit 1 will go into evidence.

8 (The Protests and a Declaration of Service by

9 Mail were marked as Exhibit 1 for

10 identification.)

11 ADMINISTRATIVE LAW JUDGE GREENBERG: There are

12 numerous protests so this may take a little time.

13 MS. FREGEAU: Sir --

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes?

15 MS. FREGEAU: We, as the protestants, were

16 given some legal documentation when we walked in the

17 door this morning that we had never seen before that we
18 are obviously not familiar with. We would like to
19 request the opportunity to go out and hire legal counsel
20 to assist us.

21 we were told that we would be able to speak
22 individually on each of our concerns and we have been
23 given paperwork that says wording that we've never heard
24 of or had a chance to read. We would like to have this
25 hearing postponed for good cause because we feel that we

10

1 need to get legal assistance at this time.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Didn't

3 you understand that there were legal matters involved in
4 this hearing?

5 MS. FREGEAU: We did, sir. We were told we
6 were able to speak.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: You
8 certainly can.

9 MS. FREGEAU: Okay. Thank you.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: There's
11 nobody here that will be gagged at all.

12 MS. FREGEAU: Thank you.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: All
14 right. For the record, there are protests and a great
15 number of them. I'll try and delineate those which
16 we've received, or I've received. Apparently, the
17 Department has also indicated they received these back
18 on March 23rd, 2005 and some on March 22nd and some on

19 March 25th.

20 The first protest is that of Louis Ballister

21 and that is Exhibit 1-A. There's a protest by

22 Antoinette Ballister.

23 MR. KRAHFORST: She has jury duty today.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Are you

25 representing her?

11

1 MR. KRAHFORST: No. She E-mailed me this

2 morning and told me that. I am Noel Krahforst.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: She's not

4 here?

5 MR. KRAHFORST: No, I'm informing you --

6 ADMINISTRATIVE LAW JUDGE GREENBERG: She's not
7 here today?

8 MR. KRAHFORST: Right. She has jury duty.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: That's
10 okay. She's not here because of some other reason which
11 apparently is legitimate. I will take that into
12 consideration. But she has failed to appear to
13 prosecute. It's something that's obvious and that can't
14 be helped at the moment. Her protest, in any event, is
15 Exhibit 1-B.

16 There's a protest by Steve and Maretta
17 Calkins. That's Exhibit 1-C.

18 There are protests by Theodora Costa, a.k.a.
19 Dora Costa. That's Exhibit 1-D. Joint Exhibit 1-D will
20 be the label for Miss Theodore Costa as well as Louis

21 Costa.

22 Exhibit 1-E is the one that's subject to
23 objection but is signed by Suzi Fregeau for the, I
24 guess, Singley Hill Homeowner's Association.

25 Exhibit 1-F is the protest of Mike Holmes.

12

1 Exhibit 1-G is the protest of Valerie Holmes.

2 Exhibit 1-H is the protest of Noel Krahforst.

3 By the way, Mr. Krahforst, the photographs
4 that you sent in were not visible because they were, I
5 assume, copied by a non-color copying machine. They're
6 not at all legible. You can provide them later if you

7 have them.

8 MR. KRAHFORST: Thank you.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: Exhibit

10 1-I appears to be a protest or some information from

11 Streamline Planning Consultants dated January 28th,

12 2005.

13 Exhibit 1-J is a protest by -- it looks like

14 Sherry McGiver, is that correct? That's 1-J. Terry

15 McVicker, actually.

16 Exhibit 1-K is the protest of Kim Nash.

17 That's together, I guess, with the protest of Carrie

18 Nash.

19 Exhibit 1-L is the letter of February 22, 2005

20 by Jimmy Smith. Attached to that letter appears to be a

21 list of names. There is a document which appears to be

22 out of order but it begins with the words "Unlike the

23 Trinidad and Blue Lake Casinos" and it's dated, I
24 believe, March -- it's illegible. It continues for two
25 pages.

13

1 It says, "we believe the tribe has an
2 obligation to contribute to, and be a part of, the
3 broader community." Anybody know whose letter that is
4 or who drafted it?

5 UNIDENTIFIED SPEAKER: That may be part of
6 mine. It doesn't quite sound familiar but these
7 copies --

8 ADMINISTRATIVE LAW JUDGE GREENBERG: It says

9 "We believe."

10 UNIDENTIFIED SPEAKER: The photocopies, my
11 originals, were quite legible.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm not
13 talking about photocopies. I'm talking about what
14 appears to be a two-page letter.

15 UNIDENTIFIED SPEAKER: I had a two-page
16 letter.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
18 want to come forward?

19 UNIDENTIFIED SPEAKER: Sure.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: For
21 purposes of identification here.

22 Miss Locken, that appears to be a document
23 addressed to you. I wonder if pages are appended to
24 that out of order.

25 MS. LOCKEN: May I look?

14

1 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

2 UNIDENTIFIED SPEAKER: I don't know what to

3 say.

4 MS. LOCKEN: Let's see if we can find it in

5 here.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: You can't

7 identify that?

8 UNIDENTIFIED SPEAKER: It looks like mine.

9 MR. FORMAN: Your Honor?

10 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes?

11 MR. FORMAN: That appears actually to be the
12 second page of the Singly Hill Homeowners Association
13 letter.

14 UNIDENTIFIED SPEAKER: That's possible.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
16 want to come forward, please?

17 MS. FREGEAU: Yes.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Off the
19 record.

20 (The parties went off the record from 10:34 to
21 10:36 a.m.)

22 MR. FORMAN: Your Honor, a procedural
23 question. Aren't the only relevant protests those who
24 have requested hearings as opposed to those who may
25 have --

1 ADMINISTRATIVE LAW JUDGE GREENBERG: No, any
2 protest duly registered.

3 MR. FORMAN: Okay.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: Exhibit
5 1-K then is the protest of Kim Nash together with Carrie
6 Nash.

7 The protest of Gordon Stevens together with a
8 number of documents which appear to be signed by some of
9 the protestants I've already referred to doesn't
10 indicate that to which they've sworn under penalty of
11 perjury. I'm wondering how we can identify those.

12 Mr. Pierce, I don't know if you have other

13 copies of them, but they look like they've not been
14 appended to any particular document.

15 MR. PIERCE: This is what I prepared from our
16 base file. I provided them in the order, the way I
17 understood them to be appended to Mr. Forman.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Let's go
19 off the record.

20 (The parties went off the record.)

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Pursuant
22 to the motion by the Department, the labeling of the
23 various pre-protest documents which appear to have been
24 confused in their transmission to me. All of those
25 labels will be stricken. They still will be gathered

1 under Exhibit 1 as a group exhibit.

2 Particular letters assigned to them under
3 Group 1 will be stricken and they will be relabeled at
4 some time we have a break. Is that agreeable?

5 MR. FORMAN: Yes, sir.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: The
7 protests set forth grounds for protest of the issuance
8 of the license of the applied for premises, the grounds
9 which I've been able to isolate at this juncture --
10 there might be others -- are as follows; that there will
11 be disturbance of quiet enjoyment by the increase in
12 noise emanating from the premises or their patrons; that
13 there's an improper zoning for the casino; that there is
14 unsafe road or roads leading to and from the casino

15 property; that quiet enjoyment of the protesters will be
16 disturbed, and that particularly attains to the quality
17 of life presently enjoyed; and additionally that there
18 may be destruction of property, speaking of cattle.

19 Some say that it's a high crime area, children
20 being endangered; that there will be litter and some say
21 their quality of water will suffer a decrease and that
22 there's an undue concentration of licenses in the area.

23 Those are the issues that I've been able to
24 extract from the various protesters in the file. Now
25 the protests that have been filed are as follows. When

1 I call your names, please say ^{9F0863CA}"here" or "not here,"

2 please.

3 Jimmy Smith.

4 MR. SMITH: Here.

5 ADMINISTRATIVE LAW JUDGE GREENBERG:

6 Antoinette Ballister. Louis Ballister. Steven Calkins.

7 MR. CALKINS: Here.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: Maretta

9 Calkins.

10 MS. CALKINS: Here.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Theodora

12 Costa.

13 MS. COSTA: Here.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Miss

15 Fregeau has indicated she is present.

16 Mike Holmes?

17 MR. HOLMES: Here.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Valerie

19 Holmes?

20 UNIDENTIFIED SPEAKER: I am the representative

21 for Valerie Holmes here.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: You are

23 represented by Mike Holmes, is that correct?

24 UNIDENTIFIED SPEAKER: Correct.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Theresa

18

1 McVicker?

2 MS. MCVICKER: Here.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

4 you. Carrie Nash. Kim Nash. Jim McVicker.

5 MR. MCVICKER: Here.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Louis

7 Costa.

8 MR. COSTA: Here.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: Jean

10 Charles.

11 MS. CHARLES: Here.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: Grody

13 Delaney.

14 MS. HUDSON-CRIM: Represented by his spouse,

15 Abigail Hudson-Crim.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Please

17 stand so I can hear you.

18 MS. HUDSON-CRIM: I am Mr. Delaney's fiance.

19 He is working. We live together on Singly Road.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: You're

21 representing him?

22 MS. HUDSON-CRIM: Yes, I am.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: May I

24 have your name again?

25 MS. HUDSON-CRIM: Abigail Hudson-Crim.

19

1 ADMINISTRATIVE LAW JUDGE GREENBERG: Abigail

2 Hudson --

3 MS. HUDSON-CRIM: Crim. I'm also listed on

4 the list.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Crim?
6 MS. HUDSON-CRIM: C-r-i-m.
7 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
8 you.
9 MS. HUDSON-CRIM: You're welcome.
10 ADMINISTRATIVE LAW JUDGE GREENBERG: Kenneth
11 Cunningham? Steven Fregeau?
12 MS. FREGEAU: I'm here representing him.
13 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
14 you. Noel Krahforst.
15 MR. KRAHFORST: Here.
16 ADMINISTRATIVE LAW JUDGE GREENBERG: Rene
17 Delaney?
18 RENE DELANEY: Here.
19 ADMINISTRATIVE LAW JUDGE GREENBERG: James
20 Delaney?

21 MS. DELANEY: I'm representing him. I'm his
22 wife.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: Is there
24 a Gordon Stevens here? Christopher Jones? Morrison
25 James? Christie Wolstrom? Cynthia Moore? Arlene Rose?

20

1 Charles Pero? David Blackley? James Reeves? Virginia
2 Reeves? Mark Miller? Gena Miller? Betty May Nicholas?

3 RENE DELANEY: I'm representing her. She is
4 my mother.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Who are
6 you?

7 RENE DELANEY: I'm ^{9F0863CA}Rene Delaney. My mother is

8 Betty May Nicholas.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: You

10 represent Betty May Nicholas?

11 RENE DELANEY: Yes.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: Tim Daly?

13 Jacob Johnson?

14 MIKE HOLMES: I'm representing Jacob Johnson.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Who are

16 you?

17 MIKE HOLMES: Mike Holmes.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Have you

19 spoken to him about the representation?

20 MIKE HOLMES: Yes.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: So you're

22 Mr. Holmes?

23 MIKE HOLMES: Yes.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: You are

25 representing Jacob Johnson?

21

1 MIKE HOLMES: Yes.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Magan

3 McGee? Steve Gildesgard? Marie Allinger? Donald

4 Figerland?

5 I've mentioned to you the grounds for the

6 protests. Unless other other issues are called to my

7 attention at this time -- this time -- they will be the

8 only issues that will be considered relevant in this

9 hearing.

10 There are no other issues being raised other
11 than those which I have mentioned. In a protest matter,
12 burden of proof and the burden of going forward with the
13 evidence rests with the protestants to establish the
14 grounds set forth in the protests, that they are true
15 and constitute grounds for denial of the license.

16 In other words, you've got the burden, each of
17 you protestants. However, in these types of proceedings
18 it's usually more convenient -- so you understand how
19 the department came to the conclusions -- to have the
20 department proceed first to give us the benefit of any
21 investigation that has been made in this matter and in
22 connection with the application.

23 In the absence of any objection, we'll ask the
24 department to proceed at this time.

25 MR. PIERCE: Your Honor, pursuant to the prior

22

1 motion of the Department and your ruling at that time,
2 because of the conflicts some of the protestants had,
3 they would like to proceed first. The Department has no
4 objection to that.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

6 MR. FORMAN: Your Honor, there's one further
7 motion I would like to make. That is as to any of the
8 protesters who is not here, I would ask that those
9 protests be stricken and that they not be considered
10 because, first of all -- two grounds.

11 One, those that aren't ^{9F0863CA} here have waived their
12 right to be heard. Second, as to those who are claimed
13 to be represented by individuals, we have no
14 authentication of the authority of those individuals.
15 We of course cannot cross-examine those who are not here
16 and, thus, those who are purporting to represent them
17 are unable to testify as to the personal knowledge of
18 those whom they claim to represent.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Regarding
20 the first part of the motion to dismiss the protests of
21 those persons who are here without representation, does
22 the Department have any comments on that matter?

23 MR. PIERCE: Pursuant to statute and practice,
24 they would be deemed abandoned.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Those

1 persons who have failed to appear either personally or
2 through representation, each of those protests are
3 deemed dismissed and abandoned and, therefore,
4 dismissed.

5 with regards to the second ground of the
6 motion -- i.e., as to the validity of the representation
7 of those absent -- those who have appeared here, we'll
8 take that matter up at the time that the protestants are
9 heard.

10 MS. FREGEAU: Sir, some of the people that you
11 named on the list are people that are part of the
12 Homeowner's Association, which you haven't determined

13 whether we exist or not. In that case I'd like to leave
14 their names on the list until you decide whether you
15 hear us as a body or as individuals.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Those
17 persons who have not appeared here to prosecute their
18 case -- those persons who have not been here to
19 prosecute their case -- in fairness to those who have
20 taken the time to appear, those protests, whether
21 they're appended to a general body or general letter or
22 not, they have not appeared and, therefore, those
23 protests are deemed abandoned.

24 Let's proceed. I exclude from that last
25 ruling those who are appearing by representation until

1 such time as we find out whether or not there are
2 validities that go toward that particular presentation.

3 MS. FREGEAU: Thank you.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: We'll
5 take a ten-minute recess.

6 (The parties went off the record from 11:02 to
7 11:17 a.m.)

8 ADMINISTRATIVE LAW JUDGE GREENBERG: We're
9 reconvened. It is my understanding at this time,
10 Mr. Pierce, that there are witnesses -- i.e.,
11 protesters -- who requested to be called out of order
12 because of time constraints.

13 MR. PIERCE: Correct, Your Honor. We would
14 request that Supervisor Jimmy Smith be given the first

15 opportunity to testify.

16 ADMINISTRATIVE LAW JUDGE GREENBERG:

17 Mr. Smith, would you come forward, please.

18 MS. SMITH: Yes.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Raise

20 your right hand, please. Do you solemnly swear that the

21 testimony you are about to give will be the truth, the

22 whole truth, and nothing but the truth?

23 THE WITNESS: I do.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Give your

25 name, please.

2 Supervisor, Humboldt County.

3 ADMINISTRATIVE LAW JUDGE GREENBERG:

4 S-m-i-t-h?

5 MR. SMITH: Correct, sir.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Have a

7 seat, please.

8 MR. SMITH: Thank you, Your Honor.

9 ADMINISTRATIVE LAW JUDGE GREENBERG:

10 Mr. Smith, you have a letter which has been

11 registered as a protest.

12 MR. PIERCE: May I approach, Your Honor?

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank you

14 very much. These aren't labeled in any alphabetical

15 order, are they?

16 MR. PIERCE: They're not labeled in order. I

17 have labeled them and when we ^{9F0863CA} get to the appropriate
18 time, I'll identify them for the record and the other
19 parties so everybody is working off the same batch.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

21 Just a moment, please.

22 Mr. Smith, without regard to that letter which
23 I cannot locate --

24 MR. PIERCE: It's the front page, Your Honor.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: This is

26

1 one of February 22, 2005, addressed to Karen Locken.

2 Apparently one of the major issues which appears to be

3 stressed almost by almost a majority of the protests is

4 the road that provides the access to the travel grounds.

5 You say that could be dangerous for a drinking driver.

6 Can you explain?

7 MR. SMITH: Yes, Your Honor, I can. It is a
8 narrow road. There have been discussions in the past, I
9 believe, with our Public Works staff. To clarify, I am
10 not representing the county today. I am here to
11 represent myself as a representative of the folks that
12 live out on Singley Hill, or at least a large portion of
13 them. My comments are based on the time that I spend
14 out in my district and knowing the conditions of roads
15 all over my district.

16 In particular, one in consultation with Public
17 Works staff does not meet standards for the type of
18 traffic anticipated, I believe, which we're seeing

19 related to the operation of the ^{9F0863CA} casino. My comments
20 were specifically about the road not being up to current
21 standards for that type of traffic and the curvy nature,
22 narrow nature of the road, and the likelihood that we
23 will see a dangerous situation occur there, whether it
24 be because of alcoholic beverages, which I think could
25 lend itself considerably to an accident occurring there,

27

1 or whether it's part and parcel to people who travel
2 through there with busses, large RV's and meet oncoming
3 traffic with folks that are not familiar with the road.

4 I do have some documentation that addresses
5 conversations that took place between our staff and the

6 Bear River bend. I noted earlier on that the attorneys
7 mentioned that they didn't see that as a point of record
8 unless it was submitted in a timely fashion prior to, so
9 I wanted to read a brief statement out of that.

10 However, I don't have to. I've covered most --

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
12 have the document here?

13 MR. SMITH: I do.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Have you
15 shown it to counsel for the Department and counsel for
16 the applicant?

17 MR. SMITH: I have not.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Show it
19 to them.

20 MR. PIERCE: Your Honor, while he's doing

21 that, let me request that when ^{9F0863CA}Mr. Smith continues, that
22 I would ask that he been sworn so that his evidence can
23 be considered -- or so his testimony can be considered
24 as evidence.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: I think

28

1 he was sworn. Were you not listening?

2 MR. SMITH: I was sworn in.

3 MR. PIERCE: My mistake then. I was obviously
4 somewhere else. I thought we were behind. I was the
5 only one behind.

6 MR. FORMAN: No, you were not alone in that.

7 I missed it too.

8 MR. SMITH: Your Honor, part two, if I may
9 proceed while they're looking at the documents --

10 ADMINISTRATIVE LAW JUDGE GREENBERG: Give them
11 a chance to read it. They can't do both at the same
12 time. Very few of us can.

13 MR. PIERCE: Especially me.

14 MR. FORMAN: Mr. Smith, is this your only copy
15 of the document or is this a copy for me?

16 THE WITNESS: That is my only copy.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Off the
18 record.

19 (The parties went off the record.)

20 ADMINISTRATIVE LAW JUDGE GREENBERG: There is
21 a letter from Mr. McKinley sent on March 3, 2005 to -- I
22 guess -- can you tell me what that means?

23 THE WITNESS: I think that's the E-mail

24 address for the Bear River tribe. It's "weott."

25 ADMINISTRATIVE LAW JUDGE GREENBERG: And a

29

1 "cc" to Nicholas, Timmy Smith and Allen Campbell.

2 "Memorandum of Understanding for the Improvement of

3 Singley Road, Bear River Casino." It's marked as Roman

4 Numeral Exhibit 1.

5 Did you receive a copy of this letter? Is

6 this your copy?

7 MR. SMITH: That's it, Your Honor.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: What has

9 happened since that day of March 3, 2005?

10 MR. FORMAN: Excuse me, Your Honor. We will
11 object to the receipt into evidence of that document on
12 several grounds. One, failure to produce it in response
13 to discovery requests. The Department's request was
14 served on or about August 25 of this year. Ours was
15 served over a month ago.

16 Second, the document itself has not been
17 properly authenticated by the author. It is not a
18 letter signed by anybody. It purports to be a copy of
19 an E-mail. There is no documentation that it was ever
20 received by anybody, presumably, other than Mr. Smith.
21 It contains multiple levels of hearsay.

22 It also is a lack of foundation for the
23 document as well as for many of the facts purportedly
24 stated in the document.

12 MR. FORMAN: That is correct.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: You're
14 going for a permanent permit, is that correct?

15 MR. FORMAN: That is correct.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Under
17 that new permit, there are concerns by the protestants
18 as to the safety to the public and to their inhabitants
19 along this road. I think that's a matter of some
20 consideration.

21 Therefore, as to the various objections,
22 number one, the hearsay objection is overruled. And
23 number two, as to the authenticity of the document,
24 we'll go into that.

25 Did you ever meet with Mr. Carlos McKinley?

1 MR. SMITH: I have, Your Honor, but not
2 directly related to that document.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Did you
4 speak with anyone regarding this document?

5 MR. SMITH: Boy, that's a push back in time
6 for me.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: This goes
8 back to March.

9 MR. SMITH: I may have spoke with our CAO,
10 County Administrative Officer, about it.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Did you
12 ever verify as to whether or not this document in truth
13 emanated from Mr. McKinley?

14 MR. SMITH: He told me he would copy me, yes.

15 That happened some months ago.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Was this

17 the copy to which he had reference?

18 MR. SMITH: Yes.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Any

20 questions as to the document?

21 MR. PIERCE: No, not on behalf of the

22 Department, Your Honor.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: Anything

24 further?

25 MR. FORMAN: Nothing further, Your Honor.

1 ADMINISTRATIVE LAW JUDGE GREENBERG: Exhibit 1

2 is admitted, Roman Numeral I.

3 was there ever a traffic engineer employed by
4 any governmental facility to evaluate the feasibility of
5 this particular road to serve the facility once it
6 becomes fully licensed or permanently licensed?

7 MR. SMITH: I believe that the evaluation was
8 performed by the individual on that document. Carlos
9 Mckinley, who is a registered engineer, retired but
10 still is working part time with the County of Humboldt.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Is there
12 any traffic engineer employed by the county or any
13 public authority to evaluate the feasibility of this
14 road serving as an access to and from the facility?

15 MR. SMITH: From the county perspective, I
Page 61

16 don't know, sir.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: I have no

18 other questions. Do you have any questions at all,

19 Mr. Pierce?

20 DIRECT EXAMINATION

21 BY MR. PIERCE:

22 Q. Supervisor Smith, it's my understanding that

23 your concern is essentially related to the road and a

24 potential increase of traffic usage resulting, which

25 could lead to accidents or safety issues.

33

1 A. Exactly.

2 Q. And the other issues raised by other
3 protestants are not ones that you have dealt with
4 directly?

5 A. I think one of significance that I'm concerned
6 about, and the Judge brought forward, is zoning. But
7 other than that, the quality of life issues will be
8 addressed by the other folks that are here. I'm going
9 to stick with the traffic and my concern for health and
10 safety of the neighborhoods.

11 MR. PIERCE: Thank you very much.

12 MR. SMITH: Thank you.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

14 Any questions by the applicant?

15 MR. FORMAN: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. FORMAN:

18 Q. Supervisor Smith, what is the nearest main
19 road to the casino and premises that are to be licensed?

20 A. Highway 101.

21 Q. Is this the freeway you're talking about?

22 A. That's correct.

23 Q. What is the nearest nonfreeway main road to
24 the casino?

25 A. I believe that would -- there are a number of

34

1 sideroads that go through the neighborhoods, but the
2 nearest thoroughfare or artery would be Eel River Drive.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Eel

4 River?

5 THE WITNESS: Eel River. Loleta Drive.

6 BY MR. FORMAN:

7 Q. What is the name of the road that intersects
8 Singley Road at the bottom of the hill where there's a
9 gas station and a market? Or is there any?

10 A. At the bottom of the hill on the westerly
11 side?

12 Q. Yes.

13 A. That's Eel River Drive.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Just a
15 moment. It will help me a lot and I think maybe
16 counsel -- is there some diagram, some plot, something
17 in writing that shows the casino in relation to each of
18 the -- the access to and from the casino? Is there any
19 such document in possession of any of the protestants?

20 UNIDENTIFIED SPEAKER: I have something.

21 MS. FREGEAU: There's not a gas station at the
22 bottom of the road, sir.

23 MR. FORMAN: I misspoke.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Off the
25 record.

35

1 (The parties went off the record.)

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Go ahead.

3 MR. PIERCE: Back on the record. While we
4 were off the record, I've marked the documents that I
5 had prepared of the protests and both Miss Fregeau and

6 Mr. Forman have copies of these.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: Before we
8 get to those, before you introduce them, let me order
9 that the labeling, the prior labeling of each of the
10 protests documents are stricken and we will adopt those
11 protest documents as labeled and stipulated to.

12 MR. PIERCE: The document I'm reading from
13 will become Your Honor's, for the record.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

15 MR. PIERCE: The one page document from
16 supervisor Smith is labeled 1-A. The protest of
17 Mr. Louis L. Costa is 1-B. It consists of the face
18 sheet and a second sheet with approximately eight
19 additional paragraphs and a post-it note relating to the
20 petition being signed by others.

21 As part of that are also twelve pages of
Page 67

22 verifications. The verifications are of Gordon
23 Stevens -- there are approximately three per page --
24 Gordon Stevens, Christopher Jones, Antoinette Ballister,
25 Louis Ballister, Abigail Hudson-Crim, Morrison James,

36

1 Steven Calkins, Maretta Calkins, Christie Walstrom.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Are you
3 labeling them as we proceed?

4 MR. PIERCE: These are the attachments to 1-B.
5 I'm just identifying the names.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Fine.
7 Proceed.

8 MR. PIERCE: Charles Pero, David Blackley,
9 Theodora Costa, Cynthia Moore, Jean Charles, Arlene
10 Rose, James Reeves, Virginia Reeves, Kenneth Cunningham,
11 Brody Delaney, Mark Miller, Gena Miller, Rene Delaney,
12 James Delaney, Steven Fregeau, Betty May Nicholas.

13 It appears to be Tim Delaney, Mike Holmes,
14 Valerie Holmes, Jacob Johnson, Magan McGee, Steve
15 Gildesgard, Noel Krahforst, Marie Allinger, Theresa
16 McVicker, Jim McVicker, Donald Figerland, Carrie Nash
17 and Kimberly Nash.

18 Marked as Exhibit 1-C is a separate protest
19 from Antoinette Ballister.

20 1-D a separate protest of Louis Ballister.

21 1-E a one page protest signed by Steven and
22 Maretta Calkins. Excuse me. That's two pages.

23 1-F is a one page protest individually from
Page 69

24 Theodora Costa.

25 1-G is the Singley Hill Homeowner's

37

1 Association signed by Suzi Fregeau. It constitutes four
2 pages.

3 1-H is Mike Holmes.

4 1-I is Valerie Holmes.

5 1-J is Noel Krahforst. That's one page, one
6 page of four photographs that are almost illegible.

7 Attached also is the letter and diagram on letterhead
8 from Streamline Planning Consultants.

9 MS. FREGEAU: which I'm missing a separate

10 page of.

11 MR. PIERCE: I only have one Page 2.

12 1-K, Theresa McVicker and Jim McVicker. That

13 is two pages.

14 1-L is two pages from Carrie Nash.

15 1-M is two pages from Kim Nash.

16 That's how they are marked and, presumably,

17 for the limited purpose of jurisdiction, subject to the

18 motions pending before Your Honor.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: You say

20 these pages are marked to indicate which letter they

21 pertain to?

22 MR. PIERCE: Not all of them. I'll have to do

23 that over the lunch hour if you wish me to, Your Honor.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes, I

25 would appreciate that. Thank you.

1 MR. PIERCE: Here are the four copies that
2 were made. We can go off the record.

3 (The parties went off the record from 11:45 to
4 11:50 a.m.)

5 ADMINISTRATIVE LAW JUDGE GREENBERG: We'll
6 mark the Mapquest regarding the general area, for
7 identification only as number II. That's Roman Numeral
8 II.

9 (A Mapquest document was marked as Exhibit II
10 for identification.)

11 ADMINISTRATIVE LAW JUDGE GREENBERG: You had

12 questions of the witness then, Mr. Pierce?

13 MR. PIERCE: I was completed, Your Honor.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

15 MR. FORMAN: I have some questions.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Go ahead.

17 FURTHER CROSS-EXAMINATION

18 BY MR. FORMAN:

19 Q. Mr. Smith, what is your understanding of the
20 county's authority, Humboldt County's authority, to zone
21 the land on which the licensed premises would be
22 situated?

23 A. Zero.

24 Q. Do you have any information concerning the
25 relative population density of the Bear River

1 reservation at which the casino and licensed premises
2 are located versus the population density in the larger
3 Singley Hill area?

4 A. The housing that's available for the tribe
5 itself without the additional casino facilities? Is
6 that what you're referring to?

7 Q. Let me be clearer. Is the density of housing
8 on the reservation lands on which the casino is located
9 greater or lesser than the density of housing in the
10 surrounding Singley Hill area?

11 A. It's greater than the immediate area but the
12 same as a subdivision within the unincorporated town of
13 Loleta.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Density
15 of population on the reservation is what you're saying?

16 MR. SMITH: I'm saying the residences, Your
17 Honor, associated with the housing for the tribal
18 members is a higher density than the area directly
19 adjacent to the reservation property, the tribal
20 properties.

21 BY MR. FORMAN:

22 Q. Do you happen to know whether there are any
23 curves in Singley Road between Eel River Road and the
24 entrance to the casino and the intersection of Singley
25 Hill Road or Singley Road and Bear River Road?

1 A. I'm not clear on the description so let me
2 take it in there.

3 Q. Okay.

4 A. From 101 south coming up Singley Road, it
5 isn't real curvy, but it's very narrow. For traffic
6 that would go beyond that, it turns very curvy.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: How far
8 up Singley Road?

9 THE WITNESS: To the north of the casino, it
10 would be roughly, I want to say a quarter mile.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: So from
12 101 to the casino itself, is it curvy?

13 MR. SMITH: Slightly.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Slightly?

15 MR. SMITH: I mean the residents could

16 certainty give you the detail on it.

17 BY MR. FORMAN:

18 Q. Do you know how wide Singley Road is at the
19 entrance to the casino?

20 A. I think it's specified in the document that
21 you have.

22 Q. I'm asking for your knowledge.

23 A. Did I measure it? No. I can tell you that
24 it's narrow. You have the engineer's report.

25 Q. To your knowledge, have any improvements been

41

1 made to Singley Road between the casino and Highway 101

2 since February 22nd, 2005?

3 A. Yes, minimal improvements, surface.

4 Q. Is that all?

5 A. Surface, some mowing.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Mowing?

7 MR. SMITH: Mowing of vegetation.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: We're

9 talking about the road itself, getting rid of the
10 vegetation on the road?

11 MR. SMITH: There was vegetation that grew out
12 on the edge of the road, Your Honor.

13 MR. FORMAN: Did the mowing of vegetation have
14 the effect of making visible more road surface than had
15 previously been visible?

16 ADMINISTRATIVE LAW JUDGE GREENBERG: You're
17 talking about vegetation growing through?

18 MR. FORMAN: No vegetation encroaching in the
19 roadway; having been mown so that it no longer does so,
20 effectively increasing the width of the road available
21 for traffic.

22 Q. Is it a fair statement that that happened?

23 A. No. I think it increased visibility but I
24 don't think it increased traffic capability. That's an
25 unprofessional opinion.

42

1 Q. Are there any deep ditches adjacent to Singley
2 Road between the entrance to the casino and Highway 101?

3 A. There are.

4 Q. Which side of Singley Road?

5 A. The east side.

6 Q. How deep are those ditches, or that ditch?

7 A. It varies. It is very significant on the
8 upper side right near the entrance to the casino. It's
9 a fairly deep ditch and it's part of the reason that I'm
10 concerned about the road. It's dangerous.

11 Q. In your mind, would the road be as hazardous
12 as you believe it to be were there no alcohol served at
13 the casino?

14 A. Well, I think that you know that's relative to
15 one's driving skills, of course. If it's impaired at
16 all, I think it creates a more dangerous situation
17 because there isn't the time to correct.

18 Q. Do you have any evidence that the service of
19 alcohol at the casino would increase the number of

20 vehicles that would otherwise go to the casino?

21 A. No.

22 MR. FORMAN: I have nothing further. Thank

23 you.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Your

25 testimony is that from 101 south up Singley Road, it is

43

1 narrow but not very curvy, only slightly curvy. Singley

2 Road is -- we don't know how wide at the entrance of the

3 casino. The vegetation has been removed, revealing

4 additional surface to the road. However, the deep

5 ditches on the side of the road make it dangerous.

6 Drinking increases the danger but you don't know whether
7 drinking will increase the number of vehicles using the
8 road. Is that right?

9 MR. SMITH: That's correct.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: Any
11 further questions of this witness?

12 MR. PIERCE: Not on behalf of the Department.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: On behalf
14 of the protestants, do you have any questions?

15 EXAMINATION

16 BY MS. FREGEAU:

17 Q. I'd like to ask the supervisor if there's an
18 MOU that will continue to keep the trees and the
19 greenery cut back. I know it's been cut back and it's
20 already starting to grow forward again.

21 Is there a contract that this will continually

22 be maintained at the level it's at when the casino
23 opened?

24 A. I don't know that. I'm going to assume that
25 that's going to come up in later conversations. I have

44

1 not participated in the discussions with our Department
2 of Public Works and negotiations with the tribe's
3 representatives, so I don't know that.

4 Q. Do you know if there's a contract with
5 Caltrans --

6 A. I do not know.

7 Q. -- for maintaining the roads. Thank you.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: All

9 right. Any other questions of the witness?

10 MR. FORMAN: No, sir.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: By the

12 Department?

13 MR. PIERCE: No, Your Honor.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: By the

15 protestants?

16 MS. FREGEAU: No. Thank you.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: You may

18 be released. Thank you.

19 MR. SMITH: Could I add one last thing, Your

20 Honor?

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Go ahead.

22 MR. SMITH: It was in my planned testimony.

23 My other concern related to the road is that the tribe

24 has -- they are actively acquiring a one-hundred acre
25 cattle ranch immediately west of the casino, across the

45

1 road as a matter of fact. I'm concerned related to the
2 traffic if there are other as yet unknown traffic
3 impacts associated with that purchase, that they've not
4 been brought to anyone's attention.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: That
6 would come up in the County Planning Department, would
7 it not?

8 MR. SMITH: We have not been notified.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: Is there

10 any public authority, to your knowledge, that has been
11 notified?

12 MR. SMITH: Not that I know of.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: So this
14 is a possibility that may exist, is that right? It may
15 be in the process of acquiring? You don't know if they
16 will or won't acquire it, is that correct?

17 MR. SMITH: The landowner has spoken to me and
18 told me that the land is being acquired by the tribe. I
19 don't know. I probably shouldn't speak to the deed.
20 The tribe could better do that. But I guess the
21 purchase being made. This cattle ranch is being
22 acquired.

23 MR. FORMAN: Your Honor, I would move to
24 strike all of Mr. Smith's testimony subsequent to the
25 questioning of him as wholly unrelated to this

1 proceeding. It is speculative as a matter of law. It
2 has no bearing on this proceeding.

3 Nothing can be done on that land in fee while
4 it is in fee that would change the use without going
5 through an entire county process because that land is
6 subject to county jurisdiction. It just doesn't belong
7 here.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: "It just
9 doesn't belong here" is not, from what I understand, a
10 legal ground.

11 MR. FORMAN: It's irrelevant.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: That's

13 better.

14 MR. FORMAN: And constitutes hearsay.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

16 Any further information or objection regarding this last

17 testimony?

18 MR. PIERCE: Not on behalf of the Department.

19 ADMINISTRATIVE LAW JUDGE GREENBERG:

20 Protestants?

21 MS. FREGEAU: No, sir.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you

23 have somebody waving his hand in the back?

24 UNIDENTIFIED SPEAKER: Yes. That parcel that

25 Jimmy Smith is referring to is in the tribe's name.

1 That was sold as a matter of county record. why it's
2 relevant is the county asked that the road be widened
3 and the tribe said we don't own adjacent property.
4 well, they do now.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: You're
6 giving me testimony, sir. I can't consider it at this
7 point. Thank you.

8 MR. PIERCE: Let me just say related to that
9 comment, however, that the Department would request that
10 this be admitted for the value it has at this point,
11 subject to further evidence that might be submitted
12 rather than striking it at this time.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: That's

14 what I was planning to do. The objection is overruled
15 and I'll give the recent testimony the weight to which
16 it's entitled at this time, subject to verifications.

17 Thank you, sir.

18 MR. SMITH: Thank you, Your Honor. Thanks for
19 your patience.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: It's five
21 after twelve. Anybody hungry? we'll accommodate those
22 shorter witnesses or otherwise suffering from prejudice.

23 MR. PIERCE: Since those are protestants and
24 I'm not aware of them, either Miss Fregeau or the people
25 who identified themselves who have time issues --

1 ADMINISTRATIVE LAW JUDGE GREENBERG: Who has a
2 time issue and has to really, really leave post haste?
3 Anybody? Everybody is willing to wait and accommodate
4 and get their testimony after the recess?

5 Let me say again based upon the length of
6 testimony and the information given to me by respective
7 counsel as to the number of witnesses, that this
8 possibly, more likely than not, will go over to another
9 day. I can't tell you what day that is at this moment.
10 We'll see what we can do. We'll proceed.

11 Anything further from the Department?

12 MR. PIERCE: Not at this time.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Was there
14 an investigation?

15 MR. PIERCE: Yes, there was, Your Honor. You

16 want to proceed with the department's information?

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

18 MR. PIERCE: Thank you. Before I call a

19 witness, let me have three documents marked for

20 identification.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Just a

22 moment.

23 MR. PIERCE: The first is the Department's

24 investigative report on the form ABC-220. The record

25 will reflect I'm providing copies to the parties.

49

1 ADMINISTRATIVE LAW JUDGE GREENBERG: That will

2 be marked as Exhibit 2.

3 (A form numbered ABC-220 was marked as
4 Exhibit 2 for identification.)

5 MR. PIERCE: The next document --

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Let's
7 call that the investigation report.

8 MR. PIERCE: Yes. The next document is a
9 three-page document, ABC-253, a supplemental diagram;
10 and ABC-257, a premises diagram. Copies are being
11 provided to the parties.

12 MR. FORMAN: I'm sorry, Your Honor, but the
13 investigative report would be Exhibit 3?

14 ADMINISTRATIVE LAW JUDGE GREENBERG: No,
15 Arabic two.

16 MR. FORMAN: Oh, Arabic two.

17 ADMINISTRATIVE LAW JUDGE GREENBERG:

18 Supplemental documents would be marked Exhibit 3.

19 (Supplemental documents were marked as

20 Exhibit 3 for identification.)

21 MR. FORMAN: Thank you.

22 MR. PIERCE: And finally, Petition for

23 Conditions, a two-page document.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: The

25 diagrams are Exhibit 3. The petition is Exhibit 4.

50

1 (The above-referenced Petition was marked as

2 Exhibit 4 for identification.)

3 MR. PIERCE: The Department calls Investigator

4 Karen Locken.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: You have
6 some papers there. If you refer to them, why don't you
7 just take the seat you had.

8 MS. LOCKEN: Okay.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: Raise
10 your right hand, please. Do you solemnly swear that the
11 testimony you are about to give will be the truth, the
12 whole truth and nothing but the truth?

13 MS. LOCKEN: I do.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
15 you. Your name, please.

16 MS. LOCKEN: Karen Locken.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
18 you. Spell the last name.

19 MS. LOCKEN: L-o-c-k-e-n.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Proceed.

21 DIRECT-EXAMINATION

22 BY MR. PIERCE:

23 Q. What is your current employment?

24 A. Investigator II.

25 Q. By whom are you employed?

51

1 A. Department of Alcoholic Beverage Control,

2 Eureka branch office.

3 Q. During the course of your employment, did you

4 conduct an investigation for an application for a

5 license to the Bear River Casino premises, address 11

6 Bear Paws Way, Loleta, California?

7 A. Yes.

8 Q. What type of license is being applied for?

9 A. An On-sale General Eating Place License.

10 Q. What are the privileges of such a license?

11 A. To be able to sell beer, wine and distilled
12 spirits on-sale, with off-sale privileges for beer and
13 wine.

14 Q. What are the requirements limiting the
15 operation of such a license in regards to the service
16 and availability of food?

17 A. That food sales should exceed the Alcoholic
18 Beverage sales.

19 Q. What is the planned operation of the proposed
20 licensed premises?

21 A. The main operation at this location is as an

22 Indian gaming casino.

23 Q. Can you describe the proposed premises?

24 A. It's newly constructed, single story,

25 freestanding. It's erected on Indian trust lands

52

1 measuring approximately 145 feet by 216 feet and located

2 just off of a rural two-lane county road.

3 The interior will include, or does include, a

4 gaming floor, office area\cashier's cage, card room,

5 dining room and lounge.

6 Q. Does the proposed premises have a rated

7 occupancy?

8 A. Yes. The patron capacity has been rated at
9 700 persons and there is sufficient off-street parking
10 provided.

11 Q. What are the proposed hours of operation for
12 the facility?

13 A. From 12:00 noon to midnight each day of the
14 week.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: 12:00
16 noon to when?

17 MS. LOCKEN: Twelve midnight.

18 MR. FORMAN: How many days a week?

19 MS. LOCKEN: Each day, every day.

20 BY MR. PIERCE:

21 Q. Has the proposed premises previously been
22 licensed by the Department?

23 A. They have not.

24 Q. As part of your investigation, did you
25 determine whether or not the proposed premises is either

53

1 properly zoned or requires zoning approval?

2 A. The premises is located on Indian trust land,
3 as I stated before, which means the tribe has authority
4 to establish its own land use laws.

5 Q. Are there any consideration points in the
6 immediate vicinity of the proposed premises?

7 A. No.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm
9 sorry. what was that last answer?

10 MS. LOCKEN: There are not, no. No

11 consideration points.

12 MR. PIERCE: Did you investigate --

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Want to

14 tell the general assembly what a "consideration point"

15 is?

16 MS. LOCKEN: A consideration point is like a

17 church, school or hospital located within a 600 foot

18 radius of the premises.

19 BY MR. PIERCE:

20 Q. Did you investigate to determine whether or

21 not the proposed premises falls within an area of either

22 undue concentration or high crime as defined by statute?

23 A. I did.

24 Q. Does it fall in such a location?

25 A. It does not.

1 Q. As part of your investigation, did you discuss
2 the proposed licensed premises with any local law
3 enforcement agencies?

4 A. I did.

5 Q. With whom did you speak?

6 A. I spoke with Lt. Mike Downey, who is the
7 Operations Lieutenant responsible for Southern Humboldt
8 county.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: What
10 organization?

11 MS. LOCKEN: Humboldt County Sheriff's

12 Department.

13 BY MR. PIERCE:

14 Q. Did he express any concerns or objections to
15 the licensing of the facility?

16 A. He advised that his agency has no objection to
17 license issuance.

18 Q. Did you determine whether there are any
19 residential properties within 100 feet?

20 A. I did.

21 Q. What was your determination?

22 A. There are none. There are no non-tribal
23 residences within 100 feet.

24 Q. Could you describe what you mean by that when
25 you say "no non-tribal residences"?

1 A. Yes. Located on the property surrounding the
2 premises to the south and the east, or there was -- I
3 don't know if there still are because those are movable.
4 There was some tribal housing.

5 MR. PIERCE: Your Honor, could I have Exhibit
6 3, I believe, it is? The diagrams.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

8 MR. PIERCE: Thank you.

9 Q. Handing you Exhibit 3 marked for
10 identification, I ask if you recognize that.

11 A. I do.

12 Q. Can you describe the top sheet of that
13 exhibit?

14 A. The top sheet is a supplemental^{9F0863CA} diagram that
15 shows the premises' location and its surrounding area.

16 Q. How did that come to be produced? Do you
17 know?

18 A. That was submitted by the applicant.

19 Q. Does it describe any residential property on
20 the land that's covered by that exhibit?

21 A. It does.

22 Q. So what you're referring to there are, in
23 fact, tribal premises or residences on the general land
24 at the proposed premises?

25 A. Yes, to the south and the east.

1 Q. All right. Were any objections filed with the
2 Department on behalf of anyone living in any of those
3 units?

4 A. No.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Are they
6 reserved for tribal members?

7 MS. LOCKEN: I assume so. I'm not sure who
8 gets to live there, but I assume just tribal members.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: So
10 anything that says "Tribal Housing Units" on it on
11 Exhibit 3 are those which have been reserved and are
12 occupied by members of the tribe; is that right?

13 MS. LOCKEN: Correct.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay. Go
15 ahead.

16 MR. PIERCE: Did the ^{9F0863CA}Department --

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Just a
18 moment, please, Mr. Pierce. Tribal members only, right?

19 MS. LOCKEN: I can't say for sure. I'm
20 assuming.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: "I don't
22 know," a guess, or something like that?

23 MS. LOCKEN: I don't think I could move in
24 there. I don't know.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

57

1 you.

2 BY MR. PIERCE:

3 Q. Did the Department receive protests and
4 objections to the issuance of this license?

5 A. Yes.

6 Q. Did you investigate the issues raised by
7 protestants?

8 A. I did.

9 Q. What were the issues that you identified as
10 those being raised by the protestants?

11 A. I separated them into nonapplicable issues and
12 applicable issues. Would you like to hear the
13 nonapplicable?

14 Q. What are issues not subject to the
15 Department's jurisdiction?

16 A. The ones that I didn't address because they
17 were not applicable were issues surrounding the

18 overconcentration of licenses. ^{9F0863CA} Since that location is
19 not in an overconcentrated census tract and improper
20 zoning\land use, since it's on --

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Just a
22 moment. "Not applicable" is not subject to Alcoholic
23 Beverage Control jurisdiction, right?

24 MS. LOCKEN: Correct.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: That

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1 means you can't do anything about it, is that right?

2 MS. LOCKEN: That's right.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: So we're
4 talking about -- it's not applicable as to how many

5 licenses there are because there's no overconcentration
6 of licenses; is that right?

7 MS. LOCKEN: Correct.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: No
9 overconcentration of licenses other than what is not
10 applicable?

11 MS. LOCKEN: The zoning is proper because it's
12 on Indian trust land, giving them sole authority for
13 land use issues.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Proceed.

15 MS. LOCKEN: The third issue I didn't address
16 is a consideration point of the school.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: There's
18 no schools, churches, playgrounds and so forth. Is that
19 what you mean?

20 MS. LOCKEN: Correct. ^{9F0863CA}

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Within

22 600 feet?

23 MS. LOCKEN: Yes.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Any other

25 nonapplicable issues?

59

1 MS. LOCKEN: No.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: What

3 applicable issues do we have?

4 MS. LOCKEN: Traffic safety concerns due to an

5 increase in vehicular traffic on Singley Road.

6 BY MR. PIERCE:

7 Q. As relates to that issue, what did you
8 determine or what did your investigation disclose?

9 A. That there, of course, would be an increase in
10 vehicular traffic on Singley Road as a result of the
11 casino being built. But there's no way to determine
12 whether or not an Alcoholic Beverage license would cause
13 an additional amount of traffic on Singley Road,
14 basically.

15 Q. As to Singley Road and the casino, were you
16 able to make a determination as to how far on Singley
17 Road people who were patronizing the casino would
18 typically travel?

19 A. The likely way to get to the casino from the
20 freeway would be to exit the south Singley Road access
21 point. That would cause three-tenths of a mile of

22 Singley Road to be impacted by ^{9F0863CA} traffic.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: This

24 length of Singley Road that you're speaking of goes from

25 where to where?

60

1 MS. LOCKEN: From the freeway up the hill

2 three-tenths of a mile.

3 ADMINISTRATIVE LAW JUDGE GREENBERG:

4 Three-tenths of a mile from 101?

5 MS. LOCKEN: Correct.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: To where?

7 MS. LOCKEN: To the casino.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: Just

9 three-tenths of a mile up, is that right?

10 MS. LOCKEN: To get to the casino, correct.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: It's only

12 three-tenths of a mile from 101 to the casino?

13 MS. LOCKEN: Yes. Or 1500 feet,

14 approximately.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Is there

16 any other access to the casino other than on Singley

17 Road?

18 MS. LOCKEN: Other than Singley? well,

19 there's another northerly access to the casino. Singley

20 Road winds around and comes back out on Highway 101

21 about two miles from the south exit.

22 Even a person coming southbound to approach

23 the casino would, I would say, most likely not exit at

24 the northbound exit and travel ^{9F0863CA} that two-lane road for
25 two miles. They would go to the south Singley Road exit

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1 to only travel three-tenths of a mile.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Is
3 Singley Road like a horseshoe? Is that what you're
4 saying?

5 MS. LOCKEN: Yes. The road is in very bad
6 shape. For somebody to want to travel the length of
7 Singley Road, I don't know why they would choose to do
8 that.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: So
10 southbound traffic might choose the more distant

11 southbound route to the casino?

12 MS. LOCKEN: Yes.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: And

14 that's a much more dangerous road, is that right?

15 MS. LOCKEN: That's where you encounter all

16 the curves and hills and dales that everybody has been

17 talking about; more likely than you would were you to

18 access the casino from the south Singley Hill exit and

19 only travel three-tenths of a mile. Remember how we

20 were talking about going up the slight curves getting to

21 the casino?

22 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

23 MS. LOCKEN: From the highway.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: That's

25 only three-tenths of a mile?

1 MS. LOCKEN: Correct.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Then it
3 continues to curve down in a southward manner?

4 MS. LOCKEN: Yes.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: So
6 there's another entrance to the casino from the
7 southmost portion of Singley Road, is that right?

8 MS. LOCKEN: No.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
10 have the diagram there?

11 MS. LOCKEN: You have it.

12 MR. PIERCE: Your Honor, referencing Exhibit
Page 117

13 Roman Numeral II, the Mapquest --

14 ADMINISTRATIVE LAW JUDGE GREENBERG: All

15 right.

16 MS. LOCKEN: As I understand it -- and the

17 witness can correct me -- the short distance we're

18 talking about would be from what's labeled as Exit 692

19 and the longer one is Exit 694.

20 what is perhaps confusing, Your Honor, is when

21 I retrieved this yesterday, I didn't put in any address.

22 There's a star on that up at the north end which has

23 nothing to do with the hearing today.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: I

25 understand that. It's right near Loleta Drive, is that

1 right?

2 MS. LOCKEN: Yes.

3 MR. PIERCE: It's the northern exit.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: It also
5 provides access, obviously.

6 MR. PIERCE: That's a secondary access, yes.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: How long
8 is that route which is indicated as 694? How long is
9 that particular route?

10 MS. LOCKEN: From the northernmost end of
11 Singley Road to the southernmost end of Singley Road, if
12 that's what you mean --

13 ADMINISTRATIVE LAW JUDGE GREENBERG: No; to
14 the casino.

15 MS. LOCKEN: From the northernmost exit?

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes; from

17 that which is located right below the block saying

18 "694."

19 MS. LOCKEN: If you approached the casino from

20 that direction, you would have to travel, I believe,

21 around two miles or one and a half miles, between one

22 and a half and two miles.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

24 you. That helps.

25 BY MR. PIERCE:

1 Q. What determination, if any, did you make
2 relating to the potential for increased traffic noise
3 going to and from the casino?

4 A. If we are assuming that most of the traffic
5 would come from the freeway south up to the casino --

6 ADMINISTRATIVE LAW JUDGE GREENBERG: 694?

7 MS. LOCKEN: 692.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm

9 sorry. 692, yes.

10 MS. LOCKEN: Then there are only three
11 residences that would be impacted by additional traffic
12 noise, two of which are presently located adjacent to
13 the freeway.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Just a
15 moment. You're saying two of those are located right
16 next to 101, is that right?

17 MS. LOCKEN: Yes.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: How broad
19 is the entrance there?

20 MS. LOCKEN: To the casino?

21 ADMINISTRATIVE LAW JUDGE GREENBERG: From 101
22 to Singley Road. You have to turn right if you're going
23 north?

24 MS. LOCKEN: Yeah. If I recall, it's kind of
25 an interesting off- and on-ramp situation there. What

65

1 was your question? I'm sorry.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: You're

3 going from 101 north to the casino. You're going to
4 turn off 101. There are two residences located that
5 turn off, not impacted by noise. When a car turns right
6 to get on to Singley Road there, how much area does he
7 have available to him to make that right turn at the
8 entrance?

9 MS. FREGEAU: Sir, he wouldn't turn right.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: He
11 wouldn't turn right?

12 MS. FREGEAU: No. It's a big horseshoe and
13 Singley Road is immediately on your left.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: So you've
15 got to go up a horseshoe road?

16 MS. FREGEAU: You come off the freeway, it
17 makes a significant horseshoe and Singley Road is
18 immediately on the left.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: I
20 appreciate that information. I appreciate your giving
21 me that testimony, but this is not the time for it.

22 MS. FREGEAU: Sorry.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: I'll give
24 you a chance to question the witness regarding that.
25 Thank you for the information. Proceed.

66

1 MS. LOCKEN: I really don't recall how that's
2 all laid out down at the freeway.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

4 BY MR. PIERCE:

5 Q. So in addition to the two residential
6 properties that you identified between the freeway and
7 the casino entrance, which are in fact also adjacent to
8 101, are there any other residential properties between
9 the freeway and the casino?

10 A. There is.

11 Q. How many?

12 A. One.

13 Q. What was your determination and/or conclusion
14 related to the impact on that premises?

15 A. That would be the most likely affected
16 residence of all based on traffic noise and that person
17 did not protest. I was told that nobody actually
18 resides there, or if they do it's not full time. So I
19 never actually got to talk to that person.

20 Q. Did you draw a conclusion as to whether or not

21 any potential impact on that location as well as the
22 other two between the freeway and the casino -- the
23 impact would be due to the gaming operation versus the
24 Alcoholic Beverage operation?

25 A. The increase in traffic is going to occur with

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1 or without the Alcoholic Beverage license. How much
2 more so, I don't know how to determine such a thing.

3 Q. Did you investigate or make a determination
4 related to the concern expressed by protestants about
5 the increased potential for driving under the influence,
6 should this license issue?

7 A. Yes.

8 Q. what did you do and/or determine?

9 A. I determined for the same reasons -- it's
10 speculative -- I was told that the tribe was going to
11 provide alternate transportation for people who may have
12 had too much alcohol to consume. There's really no way
13 for me to determine whether or not there are going to be
14 more drunk drivers on Singley Road as a result of a
15 liquor license at the casino.

16 Q. Relating to the fourth issue you identified,
17 your report indicates you felt the protestants were
18 raising the issue that the existing roadway has
19 dangerous curves, hills, blind spots, is narrow and has
20 no shoulder. Did you investigate that?

21 A. Yes.

22 Q. what was your determination of that issue?

23 A. The roadway is that bad. Yes, that's correct.

24 Q. What did you determine related to the effect

25 or impact of the issuance of the license?

68

1 A. Again, there's really no way to determine

2 whether or not more folks are going to be impacted by

3 the bad roadway.

4 Q. How long, again, is the roadway that would be

5 in this condition and impacted by the issuance of the

6 license, should that occur?

7 A. Again, it would be logically three-tenths of a

8 mile that would be traveled. I was informed that the

9 tribe was going to make roadway improvements to that
10 three-tenths of a mile.

11 Q. Based upon your investigation, did you make a
12 recommendation as to how this application should be
13 handled?

14 A. That it should be conditionally issued.

15 MR. PIERCE: If I may have Exhibit number 5,
16 Your Honor -- excuse me -- Exhibit 4. I believe I
17 misspoke. It's Exhibit 4.

18 Q. I'll ask you to look at Exhibit 4 for
19 identification.

20 A. Yes, this is the conditional petition.

21 Q. That has been signed by the tribe?

22 A. It has.

23 Q. How many conditions are proposed?

24 A. Six.

25 MR. PIERCE: Rather than identify them, I know

69

1 you've spoken about this already. I believe they speak
2 for themselves and all parties have those. I have no
3 further questions of this witness.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: May I see
5 the -- just a moment. How many residents live in that
6 area on the diagram, which I believe is Roman Numeral
7 II? How many residents live on that area which shows it
8 serving the tribal premises, but to the north of the
9 entrance on Singley Road, that portion of Singley is a
10 road gaining entrance closest to 694. Do you know how

11 many residents are located there?

12 MS. LOCKEN: Just from driving it, there are
13 sporadic residences. It's a rural area, farm land,
14 cattle land.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Did you
16 examine the road services in that area as compared to
17 the southernmost entrance.

18 MS. LOCKEN: At the time that I took the
19 drive, no improvements had been made between the freeway
20 and the casino on the south end.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm
22 talking about the north end.

23 MS. LOCKEN: Did you want to know if there
24 were roadway improvements on the north end?

25 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm

1 wondering whether the north end of Singley Road, the
2 surface of that road is approximately in the same
3 condition as the south end; three-tenths of a mile.

4 MS. LOCKEN: In general, poor condition, yeah;
5 the entire length of it, from what I recall.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: And it
7 has curves in those shoulders and so forth?

8 MS. LOCKEN: Hills, curves, yeah. I think the
9 roadway surface was also pretty bad as well.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.
11 Was that brought to the attention of any of the tribal
12 members, that Singley Road portion?

13 MS. LOCKEN: No.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: So that

15 northern portion of Singley Road also is curving, hilly

16 and does not have shoulders or turn pockets; is that

17 right?

18 MS. LOCKEN: Yes.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: So why is

20 that northern entrance to the casino not a logical entry

21 as compared with the shorter entry at the south end?

22 Just because it's shorter?

23 MS. LOCKEN: Not only that, but the road is so

24 bad to travel on that I don't know why anybody would

25 want to abuse their vehicle traveling a mile and a half

1 further to get to the casino. But it's a pretty drive.

2 Maybe they want to see the scenery.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: The north

4 portion of the road is unsafe, would you say?

5 MS. LOCKEN: The lower portion?

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Upper

7 portion.

8 MS. LOCKEN: No, it's just your typical county

9 road that's in disrepair. I mean I don't think I could

10 categorize it as being unsafe.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you

12 have any questions of this witness? Any further

13 questions?

14 MR. PIERCE: No, Your Honor.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: It's your
16 chance on behalf of the protestants.

17 EXAMINATION

18 BY MS. FREGEAU:

19 Q. I had a couple of questions. First of all,
20 did you physically go out there and see the area?

21 A. Yes.

22 Q. You actually drove the road in its entirety?

23 A. Yes.

24 Q. Was anybody else with you when you did that or
25 was that just you doing it independently? Did you

1 contact any of the residents when you were there
2 visiting?

3 A. No, I was with another investigator.

4 Q. You sort of told us that you would think that
5 people wouldn't drive to the north when they left the
6 casino. would it be reasonable to think that somebody
7 under the influence of alcohol would drive that road to
8 avoid being on a major highway?

9 A. Sure.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: You mean
11 the long road in?

12 MS. FREGEAU: Yes, the north end.

13 MS. LOCKEN: That would give them a mile and a
14 half further to escape getting to the freeway. Is that
15 what you mean?

16 MS. FREGEAU: Correct.

17 MS. LOCKEN: Yes.

18 BY MS. FREGEAU:

19 Q. Since the casino has opened, even though you
20 don't think people would come in from the north end,
21 have you had the opportunity to visit and to see if
22 traffic was increased at all?

23 A. No, I have not.

24 Q. So you don't know that people are possibly
25 using the north end?

73

1 A. No.

2 Q. You don't know that delivery trucks familiar

3 with the area would possibly use the north end of the
4 road yourself?

5 A. To access the casino?

6 Q. Yes.

7 A. They could. I don't know why they would, but
8 sure.

9 Q. At the bottom of the road -- I'm not sure how
10 to mention this, this is not my area of expertise -- but
11 during the testimony it came out that somebody coming
12 off the freeway would turn right. You would not turn
13 right to go to the casino, is that correct? You would
14 come right off the freeway. Which way did you go to the
15 casino?

16 A. I approached it from the north end, from the
17 south.

18 Q. Coming from the south to get to the casino,

19 how would you do that?

20 A. Take an exit.

21 Q. To your right?

22 A. Yes.

23 Q. And then --

24 A. I just remember there was some curlicue down

25 there. I don't know exactly what. You were describing

74

1 it very nicely.

2 MS. FREGEAU: Your Honor, I have some pictures

3 of the south end of the casino.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: Sure.

5 Show that to the parties. The photographs admitted on
6 behalf of the protestants were marked as Exhibit III,
7 Roman Numeral III.

8 (A group of photographs offered by the
9 protestants was marked as Exhibit III for
10 identification.)

11 MR. FORMAN: I'm sorry. What would be the
12 number?

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Roman
14 Numeral III.

15 MR. FORMAN: That's for identification at this
16 time?

17 ADMINISTRATIVE LAW JUDGE GREENBERG: That's
18 right. The entry to Singley Road, that's for
19 identification.

20 BY MS. FREGEAU:

21 Q. When you were looking at the residence there,
22 the home directly south to the casino, did you contact
23 that individual at all to speak to them about their
24 concerns about the casino? Do you know who that person
25 is?

75

1 A. No.

2 Q. So you're not aware that she's the daughter of
3 the people that have sold the other land to the tribe?

4 A. No.

5 Q. You said you talked to Mike Downey from
6 southern Humboldt?

7 A. No. Lt. Mike Downey is out of the main
8 station but he's in charge of the southern Humboldt
9 operations.

10 Q. He considered Loleta as southern Humboldt?

11 A. That's what he told me his jurisdiction was.
12 I guess he must have.

13 Q. Would the Department have any concern about
14 the Sheriff's Department not voicing an objection when
15 their tribe are contributing to their salaries?

16 ADMINISTRATIVE LAW JUDGE GREENBERG: That does
17 not matter.

18 MS. LOCKEN: I never even thought about that
19 one.

20 MR. FORMAN: Also states facts not in
21 evidence.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: For sure.

23 We could be here three months on that one.

24 BY MS. FREGEAU:

25 Q. One of the things you commented on is that you

76

1 didn't think there would be a potential increase for
2 drunk drivers because of alcohol being served at the
3 casino versus what's there now.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: I don't
5 think that was her testimony.

6 MS. LOCKEN: A potential for an increase in
7 drunk drivers due to the casino.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: She said,

9 I believe, that the number of vehicles on the road would
10 not increase because of the tribe having a license for
11 the sale of liquors. That particular feature of the
12 number of vehicles would not increase.

13 MS. FREGEAU: I misunderstood. I'm sorry.

14 That's all I had to ask.

15 Oh, excuse me. I have one more question.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Sure.

17 BY MS. FREGEAU:

18 Q. On this diagram that, I guess, is numbered
19 III, who drew this diagram? Did you draw the diagram?

20 A. No, the applicant submitted it.

21 Q. Did you visually see the layout of this
22 diagram?

23 A. Yes.

24 Q. Did you not notice that there's a children's

25 playground missing from the diagram? When you went

77

1 there, you saw that?

2 A. Yes.

3 Q. You didn't think that was important to add

4 back in?

5 A. First of all, it was just one apparatus that I

6 saw.

7 Q. But it is a children's playground, right?

8 A. An official children's playground? I was told

9 no, nor is there a school there.

10 MS. FREGEAU: Thanks you. That's all.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: In other
12 words, if a resident has a swing in the backyard, that's
13 not a children's playground.

14 MS. FREGEAU: I would think a fenced-in area
15 with that apparatus might be considered a playground.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: I don't
17 know how it could be, but I don't know. I'm not a
18 planning expert.

19 we'll go off the record for about three
20 minutes.

21 (The parties went off the record.)

22 ADMINISTRATIVE LAW JUDGE GREENBERG: Anything
23 further from this witness?

24 MR. FORMAN: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. FORMAN:

2 Q. When was the last time you were out at the
3 location of the premises at issue, approximately?

4 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm
5 sorry. I didn't get that, counsel.

6 BY MR. FORMAN:

7 Q. Approximately what was the most recent date on
8 which you visited the premises?

9 A. Sometime just prior to the summer.

10 Q. At that time, did you observe whether any
11 changes had been made to the three-tenths of a mile of
12 Singley Road south of the casino?

13 A. No, I did not.

14 Q. Are you aware from any source that since your
15 visit, any improvements have been made to Singley Road
16 between Eel River Road and the entrance to the casino?

17 A. No.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: That's on
19 the three-tenths of a mile?

20 MR. FORMAN: That's right.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Let's
22 call it the three-tenths leg.

23 BY MR. FORMAN:

24 Q. The casino presently has an interim retail
25 permit from the Alcoholic Beverage Control, does it not?

1 A. Correct.

2 Q. Do you know approximately when the casino
3 began serving alcoholic beverages?

4 A. I can't tell you exactly when they started
5 serving but they were allowed to start serving on August
6 2nd, 2005.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: When,
8 please?

9 MS. LOCKEN: August 2nd, 2005.

10 BY MR. FORMAN:

11 Q. Has, to your knowledge, the Department
12 received any complaints about possible violations of any
13 of the terms and conditions of the casino's interim
14 retail permit since August 2nd, 2005?

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Do we
16 have a copy of those conditions? Are they the same
17 conditions contained in Exhibit 3?

18 MR. FORMAN: Actually, Your Honor, it's
19 Exhibit number 4.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm
21 sorry. Okay.

22 MS. LOCKEN: Are you asking if I've had any
23 complaints since the temporaries were issued?

24 MR. FORMAN: Yes.

25 MS. LOCKEN: I have.

1 BY MR. FORMAN:

2 Q. Could you describe what those complaints have
3 been?

4 A. Two citizens' complaints. The first one was
5 regarding a nineteen year old female bartender named
6 Magan who serves miners with no IDs. This came from a
7 mother who overheard her minor daughter and friends
8 talking. It wasn't witnessed but we do take those
9 complaints.

10 The next one was another hearsay sort of a
11 thing regarding drunks, obviously intoxicated patrons.
12 The complainant didn't witness this himself. Something
13 about a truck driver that was drunk and being led out to
14 his chip truck at 0300 hours.

15 MR. PIERCE: Your Honor, I've allowed the
16 questioning on this but there should be no further

17 questions on this matter since these are subject to
18 potential ongoing investigation by the Department. I
19 ask that there be no further examination regarding these
20 two complaints.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes, I
22 think each of the complaints would bear further
23 investigation, but the fact that they've been received
24 is what's important. Any other complaints that have
25 been received and under investigation?

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1 MS. LOCKEN: There are not.

2 BY MR. FORMAN:

3 Q. Has the Department taken any disciplinary
4 action as a result of these complaints?

5 A. No.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Well,
7 they can't unless they're under current investigation.

8 MS. LOCKEN: Correct.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: No
10 disciplinary yet. All right. Any other questions,
11 counsel?

12 MR. FORMAN: No, sir.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Any
14 further questions of this witness?

15 MR. PIERCE: No redirect on behalf of the
16 Department.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Any
18 further questions of this witness?

19 UNIDENTIFIED SPEAKER: Excuse me, Your Honor.

20 Could I ask a few questions?

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Talk to

22 your representative.

23 UNIDENTIFIED SPEAKER: Can I personally ask

24 them?

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Go

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1 through her.

2 UNIDENTIFIED SPEAKER: Your Honor, may I?

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Go ahead.

4 MR. PIERCE: The question relates to asking

5 questions about someone who may ^{9F0863CA} be testifying later that
6 will come in through direct testimony at that time.

7 BY MS. FREGEAU:

8 Q. When you were determining traffic coming in
9 from the south, there was a document that the tribe
10 prepared that indicated that they would expect 50
11 percent of the traffic accessing the casino from the
12 north. Would that have any affect on your
13 investigation?

14 MR. FORMAN: Objection; states facts not in
15 evidence.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: That's
17 true. You say there was a memorandum of the
18 understanding?

19 MS. FREGEAU: It was in their transportation
20 circulation study.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: There's
22 been no testimony as to that study having been entered
23 into or agreed to by anybody or who it was prepared by.

24 MR. PIERCE: If I could make a suggestion,
25 since it is frequently the case of people who are not

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1 normally doing this and trying to solve the mysteries
2 for the first time, Investigator Locken will be here
3 throughout and can come back and answer questions. But
4 the cross-examination is essentially related to the
5 testimony she has given so far and not about evidence
6 that you may wish to be submitting later on in the

7 hearing.

8 If that does raise questions that you want to
9 have her answer later after that testimony has been
10 given, she will be available.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
12 understand that?

13 MS. FREGEAU: Yes.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Any
15 further questions of this witness?

16 MS. FREGEAU: No.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: At this
18 time?

19 MR. PIERCE: No, Your Honor.

20 MR. FORMAN: No, Your Honor.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: On behalf
22 of the protestants, any further questions at this time?

23 MS. FREGEAU: No, sir.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

25 Miss Locken, would you stand by? But for the moment

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1 you're excused.

2 The time is now 1:00 o'clock. We'll take a

3 one hour recess for lunch and resume at 2:00 o'clock.

4 (The parties went off the record from 1:00 to

5 2:12 p.m.)

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Back on

7 the record. Mr. Pierce, is there anything further?

8 MR. PIERCE: Move Exhibit 2 into evidence.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: All

10 right. Exhibit 2 is in evidence.

11 Did you have a chance to segregate out and
12 collate the exhibits in Exhibit 1? Those are the
13 protest letters.

14 MR. PIERCE: No, I gave those back to Your
15 Honor. I will do that. They are in order as I
16 identified them for the record but I didn't -- if those
17 that are multiple page documents, I didn't mark the
18 subsequent pages.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.
20 These are the ones that begin with the -- well, we won't
21 have time and I want to make sure that it's in the
22 record.

23 MR. FORMAN: Your Honor, I believe you
24 misspoke. It's County of Humboldt.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: That's

85

1 the County of Humboldt?

2 MR. FORMAN: Yes.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: This will
4 be Exhibit 1-A.

5 Exhibit 1-B is the protest by Louis Costa.

6 MR. PIERCE: Your Honor, when we had that one
7 time, I did identify those for the record. The Reporter
8 has those. I just haven't marked them.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: The
10 documents?

11 MR. PIERCE: The first ^{9F0863CA} sheet of each portion
12 of Exhibit Roman Numeral I has been identified but those
13 which are multi-paged, the subsequent pages have not
14 been identified.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: You
16 understand it's not Roman Numeral I? It's 1.

17 MR. PIERCE: Oh.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: The
19 protest letters.

20 MR. PIERCE: Okay.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: These are
22 the actual pages designated on the protest letters as I
23 enumerated.

24 Exhibit 1-B is a protest on behalf of Louis
25 Costa, continuing on the second page thereafter. There

1 are numerous other protests that I'll also label Exhibit

2 1-B.

3 Attached to the Costa letter from Gordon

4 Stevens, Christopher Jones, Antoinette Ballister, Louis

5 Ballister, Abigail Hudson-Crim, Morrison James, Steven

6 Calkins, Loretta Ann Calkins, Christie Ann Walstrom,

7 Kristy Jeanene Wolstrom, David Blackley, Theodora Costa,

8 Cynthia Moore, Jean Charles, Arlene Rose, James Reeves,

9 Virginia Reeves, Kenneth Cunningham, Brody Delaney, Mark

10 Miller, Gena Miller, Rene Delaney, James M. Delaney,

11 Steve Fregeau, Betty May Nicholas, Tim Daly, Mike

12 Holmes, Valerie Holmes, Jacob Johnson, Megan McGee,

13 Steve Gildesgard, Noel Krahforst, Marie Aldinger,
14 Theresa McVicker, Jim McVicker, Donald Figerland, Carrie
15 Nash, Kimberly Nash.

16 Exhibit 1-C is protests by Antoinette
17 Ballister.

18 Exhibit 1-D, Louis Ballister.

19 Exhibit 1-E, Steven and Maretta Calkins.

20 Exhibit 1-F is Theodora Costa; a.k.a. Dora
21 Costa.

22 Exhibit 1-G is the Singley Hill Homeowner's
23 Association, together with attached documents.

24 1-G is a group exhibit. Exhibit 1-G also
25 contains a list of the Singley Hill Homeowner's

1 Association.

2 Exhibit 1-H is the protest of Mike Holmes.

3 Exhibit 1-I is the protest of Valerie Holmes.

4 Exhibit 1-J is the protest of Noel Krahforst.

5 Exhibit 1-G also has an appended page,

6 together with several illegible photographs.

7 MR. FORMAN: This would be Exhibit 1-J, Your

8 Honor.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: Let me

10 take a look. Yes, 1-J.

11 There's a letter from -- I don't know if it's

12 from Streamline Planning Consultants, dated January 28,

13 2004 to Noel Krahforst. Exhibit 1-J also includes that

14 letter which appears to leave off a portion of the

15 letter because it ends with the words "again without"^{9F0863CA}

16 and assumes that it continues to the next page.

17 There's attached to Exhibit 1-J also a diagram
18 of an area being the Krahforst residence.

19 Exhibit 1-K is the protest of Theresa and Jim
20 McVicker, to which a page is attached.

21 Exhibit 1-L is the protest of Carrie Nash and
22 that has a page attached.

23 Exhibit 1-M is the protest of Kim Nash,
24 consisting of two pages.

25 Exhibit 1, which includes Exhibits 1-A through

2 MR. FORMAN: Your Honor, we would agree that
3 they are appropriately admitted, but for a limited
4 purpose; and that is solely for the fact that they were
5 received and not for the truth of anything contained
6 therein or admissibility, necessarily, of the contents.

7 For example, there are appended to Exhibit 1-B
8 twelve pages of signatures that do not have any direct
9 connection to the earlier pages, the substantive pages
10 of the document. They contain nothing that would
11 indicate the personal knowledge to which the signers of
12 those pages are averring.

13 As long as it's clear on the record that it is
14 simply the fact that they've been submitted, that is the
15 evidence being admitted, then we have no objection. But
16 to the extent that the substance of any of these

17 documents is to be considered, ^{9F0863CA} then we have major
18 objections on hearsay, foundation, and in some cases
19 relevance.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Your
21 objections are noted. Overruled. They're admitted.

22 Anything further from the Department?

23 MR. PIERCE: Move Exhibit 3 into evidence.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: So
25 admitted.

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1 MR. PIERCE: And move Exhibit 4 into evidence.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: So

3 admitted. Again, is there anyone who cannot appear at
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4 that date on which we have scheduled this matter, that
5 being December 29th? Anybody here?

6 UNIDENTIFIED SPEAKER: I've made a commitment
7 but I don't have it in my calendar. I'm not sure if
8 it's the 29th or the 27th.

9 MR. PIERCE: Excuse me, Your Honor. For
10 clarity of the record, can we have that person identify
11 themselves rather than it being a voice in the audience?

12 MS. CHARLES: Jean Charles.

13 MR. PIERCE: Thank you.

14 MR. KRAHFORST: I wanted to confirm the time.
15 I heard 9:30 and 10:00.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: 9:30 in
17 deference to counsel.

18 MR. KRAHFORST: Ms. Ballister was unable to

19 attend because of jury duty. ^{9F0863CA} Can she attend the 29th
20 hearing?

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes, of
22 course.

23 MR. KRAHFORST: Any other individuals that
24 weren't here today, are they allowed at the subsequent
25 hearing?

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1 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes, they
2 are.

3 MR. PIERCE: Thank you.

4 MR. FORMAN: Your Honor, I must say that
5 allowing protestants a second bite at the apple after

6 their protests have been abandoned would be prejudicial
7 to the applicant. This hearing was scheduled on this
8 day.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: That's
10 not his question. His question was anybody who is here
11 today, can they come at the next scheduled time? No
12 reason why they can't attend. I'm not saying whether
13 they'll be witnesses or not.

14 MR. FORMAN: I don't believe that was his
15 question. He asked whether anybody not here today could
16 attend and testify at the next one.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Members
18 of the public? Absolutely.

19 MR. FORMAN: But as protestants, may they then
20 testify concerning --

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Let's

22 take that up at that time.

23 MR. FORMAN: That makes it difficult to

24 predict, in that case, that we will be able to conclude

25 the hearing on that date. If we are limited to the

91

1 universe of protestants that we have today, then there's

2 no question about it.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: That's

4 correct. But again, counsel, your question is

5 understandable. It's noted. People who are here today

6 could come next time. People who are here this morning

7 can come next time. I'm not saying they'll be allowed

8 to testify, okay?

9 MR. FORMAN: That's fine.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: All

11 right. If the protests have been dismissed, they're

12 dismissed.

13 MR. FORMAN: Thank you.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: All

15 right. The reason I ask the question as to whether

16 somebody who is here today cannot appear next time is

17 because I would take your testimony out of order this

18 time. So if you're going to have problems and want to

19 testify today --

20 UNIDENTIFIED SPEAKER: I'd rather give it to

21 the people who are better prepared than I am, actually.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: So you'll

23 defer any testimony. Anything ^{9F0863CA} further from the

24 protestants?

25 MS. FREGEAU: No, sir.

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1 ADMINISTRATIVE LAW JUDGE GREENBERG: All

2 right.

3 MR. PIERCE: You're going to call witnesses,

4 are you not?

5 MS. FREGEAU: I thought he was discussing this

6 issue on the 29th.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: No, no.

8 I'm talking about if you want to present any testimony

9 at this time, now is the time to do it.

10 MS. FREGEAU: Okay. Do we have to go in any
11 order? Can we start with --

12 ADMINISTRATIVE LAW JUDGE GREENBERG: Whatever
13 you wish. It's your ballgame.

14 MS. FREGEAU: Okay. Then I get to go first?

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Sure.

16 MR. PIERCE: I'd like her sworn in.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes, I
18 thought she would come forward.

19 MS. FREGEAU: Okay.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
21 solemnly swear that the testimony you are about to give
22 shall be the truth, the whole truth and nothing but the
23 truth?

24 MS. FREGEAU: I do.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Your

93

1 name, please.

2 MS. FREGEAU: Suzi Fregeau.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Spell

4 your last name, please.

5 MS. FREGEAU: F-r-e-g-e-a-u.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: First

7 name?

8 MS. FREGEAU: Susan, S-u-s-a-n.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: Miss

10 Fregeau, where do you live?

11 MS. FREGEAU: I live at 1066 Singley Road.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: You are
13 one of the protestants today?

14 MS. FREGEAU: Correct.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: And
16 Singley Road is --

17 MS. FREGEAU: The road that the casino is
18 located on, to the south of where I live.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
20 you. What do you want to provide for us today, Miss
21 Fregeau?

22 MS. FREGEAU: I wanted to address the safety
23 issues of the road. There are areas on that road that I
24 have measured myself that are 14 feet across.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Fourteen

1 feet in width?

2 MS. FREGEAU: Yes, in width, sir. Our home is
3 along that road which don't have driveways or garages.
4 Consequently, cars have to park on the side of the road.
5 I brought a picture of one of those places. May I?

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

7 MS. FREGEAU: Thank you. This is the picture
8 of the cars parked on the side of the road. These were
9 taken in June and July of this year, 2005.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: All
11 right. Proceed. Show them to Mr. Pierce. This is on
12 the three-tenths?

13 MS. FREGEAU: This is on the three-tenths
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14 side.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
16 you. There is a photograph submitted by Miss Fregeau
17 which shows cars parked in the roadway in June or July
18 of this year. Is there more than one, Miss Fregeau?

19 MS. FREGEAU: There are more photographs but
20 not of that particular topic.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: This will
22 be labeled as Protestant's Roman Numeral IV-A.

23 MR. FORMAN: May I ask questions with respect
24 to that photograph?

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes,

1 absolutely.

2 BY MR. FORMAN:

3 Q. Ms. Fregeau, did you take --

4 A. It's pronounced "Fregeau."

5 Q. I'm sorry. Did you take this photograph?

6 A. Yes, sir, I did.

7 Q. where in relation to the casino is the vantage
8 point from which this photograph was taken?

9 A. That photograph is taken just after a very
10 sharp left hand turn, coming from the casino down to the
11 intersection of Singley and Eel River Drive.

12 Q. How far down the road from the casino does
13 this photograph depict?

14 A. I didn't measure it. If we're agreeing that
15 the casino is three-tenths of a mile, perhaps that's

16 one-tenth of a mile.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Beyond

18 or --

19 MS. FREGEAU: Beyond the casino. This would

20 be after you have left the casino parking lot, turning

21 left, coming out of the casino parking lot, turn left,

22 going down to the bottom of the hill where the freeway

23 interchange is.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

25 BY MR. FORMAN:

1 Q. what kind of camera did you use to take this

2 photograph?

3 A. Disposable camera.

4 Q. So you don't know the focal length of the

5 lens?

6 A. Sir, I'm not a photographer. That's not my

7 area of expertise. I don't know anything about focal

8 lenses. I don't know what that means.

9 MR. FORMAN: Thank you.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: Can I see

11 that?

12 MR. FORMAN: Sure.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: One-tenth

14 of a mile after the left turn, right?

15 MS. FREGEAU: Correct, about. I think if you

16 look at that, you'll see that should a car be coming up

17 the road and a car be going down the road and a

18 pedestrian was on the side of the road, it would be
19 extremely hazardous.

20 Anybody under the influence of alcohol would
21 even have more limited ability to be careful. On the
22 north side of the road, the north side of Singley Road,
23 I have a photograph that I took again in the middle of
24 July of a livestock truck. That shows how narrow
25 Singley is. It shows you that it's actually driving on

97

1 the yellow line. If was there a pedestrian walking on
2 the side of the road, they would be in the bushes.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: There is

4 a livestock truck shown going along Singley Road?

5 MS. FREGEAU: Correct.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: How far

7 from the --

8 MS. FREGEAU: This would be north of the

9 casino about 8/10 of a mile. I didn't actually measure
10 it, sir.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Well,

12 there is that road that's only three-tenths of a mile.

13 MS. FREGEAU: That's the other end. We're on
14 the north end.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: The north
16 end of Singley Road?

17 MS. FREGEAU: Correct; where the investigator
18 thought traffic would not go. But I can assure you as a
19 resident there, it does.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: So this
21 is the north end of Singley Road?

22 MS. FREGEAU: Correct. The last photograph at
23 this time is a picture of the school bus showing that
24 when the school bus stops, the children get out
25 literally on people's property. If there's cars coming

98

1 by, there's no place for the children to go.

2 This neighbor actually happens to keep his
3 lawns well manicured. A lot of us don't. A lot of us
4 have shrubs growing right on the road. This shows where
5 the children would be walking and getting on and off the

6 busses.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: This is
8 on the north side?

9 MS. FREGEAU: That's right next-door to my
10 home.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: You live
12 on the north part of Singley Road then?

13 MS. FREGEAU: Correct.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: The one
15 showing the truck on north Singley Road will be marked
16 Exhibit IV-B, the one showing the school bus. This is
17 also on north Singley Road or south?

18 MS. FREGEAU: That's north, sir.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: That will
20 be marked Exhibit IV-C. You took those photographs?

21 MS. FREGEAU: Yes, sir. All these photographs
Page 185

22 I took myself.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: In June

24 or July of this year?

25 MS. FREGEAU: Correct.

99

1 MR. FORMAN: Your Honor, I have one more

2 question by way on IV-A, please.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Sure.

4 BY MR. FORMAN:

5 Q. Does the photograph in IV-A accurately depict

6 the condition of the road surface as it exists today?

7 A. As it exists today?

8 Q. Yes.

9 A. The width of the road, yes, sir.

10 Q. I'm asking about the road surface. Has the
11 road been resurfaced since that photograph was taken?

12 A. The road itself has been resurfaced. It has
13 not been widened.

14 MR. FORMAN: Thank you.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: All
16 right. The surface of the road has been resurfaced?

17 MS. FREGEAU: Yes.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Again on
19 Exhibit IV-A, this is on south Singley Road?

20 MS. FREGEAU: Correct.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: All
22 right. Any other questions on any of these photographs?

23 MR. FORMAN: No, Your Honor. I would object
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24 to IV-A to the extent that it is offered to show the
25 condition of the road as opposed to the dimensions of

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1 the road because by the witness' testimony, it does not
2 accurately reflect the current condition of the road
3 surface in that location.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: Your
5 objection will be noted as to the weight of the
6 evidence. As to its admissibility, it's in.

7 MR. FORMAN: Thank you.

8 MS. FREGEAU: The last photograph I'd like to
9 give you is to the north of the casino. The road has

10 not been maintained or had any resurfacing done. This
11 is the road as it is today.

12 This was taken on a rainy day so I don't have
13 a photograph of a dry day. This is the condition of the
14 road, the soft shoulder. It shows you the ditches on
15 each side of the road.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: This
17 photograph will be labeled Exhibit IV-C. This is on
18 north Singley Road?

19 MS. FREGEAU: Yes, sir. That's north Singley.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Actually,
21 it's IV-D. Exhibit IV-D is the photograph of north
22 Singley Road. It appears to be a home on the left side.

23 MS. FREGEAU: That's the casino.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: That's
25 the casino?

1 MS. FREGEAU: Yes, sir.

2 MR. FORMAN: Your Honor, as to all of these
3 exhibits, as well as a continuing objection to any
4 future documents that the protestants may seek to
5 admit -- we would object on the grounds that they were
6 not timely provided in response to a discovery request.

7 The protestants have had since the end of
8 August to comply with those requests and have failed to
9 do so. On that grounds, I believe that the documentary
10 evidence should be excluded.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Tell me

12 how you've been prejudiced.

13 MR. FORMAN: We've had no opportunity to

14 review any of these materials prior to today.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: How have

16 you been prejudiced by the lack of review?

17 MR. FORMAN: We've not be able, for example,

18 to go out and prepare contrary exhibits or other

19 exhibits. I think that if there is to be integrity to

20 the discovery process in these proceedings, that one

21 side ought not be able to ignore the rules without

22 sanction.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

24 you. Exhibit IV-D is in evidence. You're going to have

25 apple time to come up with any contrary evidence by the

1 next hearing.

2 Miss Fregeau, on Exhibit 1-A I see a sign that
3 looks like a direction sign in the distance. Does that
4 point toward Highway 101?

5 MS. FREGEAU: Yes. It's telling me that
6 Highway 101 again is on the other side of these trees.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: A sign in
8 the distance indicates a portion of Highway 101 and the
9 road that posted there is Eel River Drive, which leads
10 on to Highway 101?

11 MS. FREGEAU: That's correct.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: Exhibit
13 IV-A A through IV-C is a series of -- I'm sorry -- IV-A

14 through IV-C and I think IV-D.

15 IV-A through IV-D will be admitted.

16 MR. FORMAN: May we request copies, legible

17 copies of those prior to the continuation of this

18 hearing?

19 ADMINISTRATIVE LAW JUDGE GREENBERG: You can

20 make them at your pleasure, if you wish.

21 MR. FORMAN: Will Your Honor order the

22 production?

23 ADMINISTRATIVE LAW JUDGE GREENBERG: Of

24 course.

25 MR. FORMAN: Thank you.

1 ADMINISTRATIVE LAW JUDGE GREENBERG: So you
2 consider Singley Road north and south to be dangerous
3 roads, is that correct?

4 MS. FREGEAU: Absolutely. It's an
5 unmaintained county road, very narrow. It has many
6 blind spots. Currently the southern part of Singley
7 Road from the casino area to the south has been -- the
8 vegetation has been removed but it's already beginning
9 to grow back onto the road.

10 The road to the north has vegetation out onto
11 the road which makes it difficult to see traffic coming
12 on you, particularly on a curve. The road is unlit from
13 one end to the other. There are no streetlights at all
14 on that road.

15 During the summer months and the winter

16 months, the fog is so dense in that part of the area you
17 can't even see the front of your car. People driving
18 under the best of circumstances, it's challenging. I've
19 lived there twenty-five years and I drive at five miles
20 an hour when I go up that road during the fog.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: How often
22 do you have fog on that road?

23 MS. FREGEAU: Probably seven or eight months
24 out of the year. This is Humboldt County.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: You

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1 certainly don't expect the Department of Alcoholic

2 Beverage Control to go out and maintain the road, do
3 you?

4 MS. FREGEAU: No, sir, I do not.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Have you
6 approached any public authority to ask them to maintain
7 the road?

8 MS. FREGEAU: I don't have the paperwork, but
9 we have asked Caltrans -- we've contacted them and, in
10 fact, the tribe has had a letter from the county that
11 addressed the traffic problems due to increased
12 automobiles on Singley Road. The county said it was a
13 public safety issue.

14 MR. FORMAN: I'll object to reading into
15 evidence of the document.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
17 have such a letter?

18 MS. FREGEAU: This is my statement. This is
19 just my statement. I didn't know I would have to give
20 it to you.

21 MR. FORMAN: Objection on hearsay grounds.

22 MS. FREGEAU: I've seen the letter. I have it
23 in my possession.

24 MR. FORMAN: Best evidence rule.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: will you

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1 produce the letter when we reconvene?

2 MS. FREGEAU: Yes, sir.

3 MR. FORMAN: I ask it be produced prior to

4 that time to review it before the hearing.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Will you
6 send a letter to counsel?

7 MS. FREGEAU: I'll be happy to.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: And that
9 is a letter from whom to whom, please?

10 MS. FREGEAU: It was a letter from the County
11 of Humboldt to Bear River.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: A letter
13 from Humboldt County to whom?

14 MS. FREGEAU: The tribe.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: What's
16 the date of it? Do you know?

17 MS. FREGEAU: No, sir, I don't.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Was it
19 this year?

20 MS. FREGEAU: No, it's an older letter. When
21 they first started building the casino, they were
22 addressing all the concerns about traffic on that road
23 and the potential for increased traffic. Just with the
24 casino they had concerns. This was even prior to an
25 alcohol license being applied for.

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1 ADMINISTRATIVE LAW JUDGE GREENBERG: Road
2 safety, is that right?

3 MS. FREGEAU: I have a couple of letters that
4 document the county's concerns.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Can you

6 show me? You've produced that letter?

7 MS. FREGEAU: I will bring them.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm just
9 going to ask you to do that next time.

10 MS. FREGEAU: Okay.

11 MR. FORMAN: Your Honor, there's an additional
12 issue here. The county has not filed a protest.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: I
14 understand.

15 MR. FORMAN: And I don't believe that the
16 protestants have standing to argue on the county's
17 behalf.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: She has
19 copies of documents submitted to the applicant which
20 notify them of the danger of a particular road. She
21 doesn't have the document here. What she said was

22 transmitted at this time is hearsay.

23 MR. FORMAN: Right.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: I

25 understand that. There's nothing to object to by way of

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1 documentary evidence. Testimony is from something she

2 observed. When the document is produced you may impeach

3 her on it.

4 MS. FREGEAU: The document is here with

5 another protestant. May I get from it them?

6 ADMINISTRATIVE LAW JUDGE GREENBERG:

7 Certainly.

8 MS. FREGEAU: Excuse me. I'm sorry, sir.

9 This is a letter to the engineers -- well, it is a
10 letter to the engineers regarding the development of the
11 casino and the roads and the improvement that the county
12 was asking for. I don't want to waste your time by
13 looking through them. I will get you the copies and get
14 them to Mr. Forman.

15 The other thing that I wanted to address --
16 and I'll let the other protestants speak --

17 ADMINISTRATIVE LAW JUDGE GREENBERG: This is a
18 copy of a letter from Humboldt County to the tribe
19 regarding road safety to be produced by Miss Fregeau and
20 submitted to Mr. Forman as well, if you could. This was
21 submitted also to Mr. Pierce or will be?

22 MS. FREGEAU: Yes.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

24 MS. FREGEAU: The last thing that I wanted to
25 address is the fact that the school bus comes on Singley

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1 Road approximately four times a day, dropping children
2 off and picking them up. There is no place for these
3 children to stand, no sidewalk. They are standing on
4 the road.

5 Drivers going down the road that live there
6 are aware that the children are on the road. People
7 that are visiting the casino are not aware of this and
8 certainly people under the influence of alcohol would be
9 even less inclined to be.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: This bus
11 comes on the road when?

12 MS. FREGEAU: In the mornings to pick up the
13 children. There's an elementary school bus and a senior
14 high school bus.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: This is
16 south Singley Road?

17 MS. FREGEAU: The entire length of Singley
18 Road.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
20 know the times they drop the children off?

21 MS. FREGEAU: I've been behind the high school
22 bus and that's 3:30 in the afternoon.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: In the
24 morning and into the mid afternoon?

25 MS. FREGEAU: Correct. The morning bus is

1 there at -- I've seen the elementary school bus there at
2 8:00 in the morning. It's pretty prompt.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: It's not
4 there, say, after 3:30?

5 MS. FREGEAU: It's not. It's dropping off
6 children after 3:30.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: After
8 3:30?

9 MS. FREGEAU: Between 3:30 and 4:00 would
10 be -- school let's out, I believe, at 3:10 or something.
11 I have seen the bus there at around 3:30 or 4:00 o'clock

12 myself. I've been behind it.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: But not

14 after 4:00?

15 MS. FREGEAU: No, sir. I'll leave the other

16 topics to the other protestants.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Is there

18 anything else?

19 MS. FREGEAU: No, sir.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you

21 have any questions, Mr. Pierce?

22 EXAMINATION

23 BY MR. PIERCE:

24 Q. Yes, just a couple of points of clarification.

25 First of all, you indicated that you had

1 measured one area of Singley Road to be 14 feet in
2 width?

3 A. Right.

4 Q. Is Singley Road of uniform width its entire
5 length?

6 A. No, sir.

7 Q. If you know, can you give us an idea whether
8 that area that you measured is the most narrow area or
9 the widest or an average?

10 A. It's the most narrow. It's not an average.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: The most
12 narrow, is that 14 feet.

13 MS. FREGEAU: Yes, sir, but it's not an

14 average. It's just one area of road.

15 BY MR. PIERCE:

16 Q. If you're able based upon the area where you

17 did measure it to be 14 feet, can you compare or

18 estimate what the other areas of Singley Road are? Do

19 you have any idea?

20 A. They're just a bit wider, not a whole lot. I

21 would say a couple of feet wider.

22 Q. The other area I wanted to clarify relates to

23 the school bus. You indicated there are school busses

24 four times a day for the elementary and the high

25 school -- I take it in the morning and afternoon for the

1 high school; morning and afternoon for the elementary.

2 Is that correct?

3 A. Yes.

4 Q. Do you know as it relates to the elementary

5 school district's bus, does that serve a year round

6 school or is that a school that is nine months out of

7 the year?

8 A. It's a nine months out of the year school.

9 Q. What about the high school? Is that a year

10 round or --

11 A. I believe the high school is also nine months.

12 MR. PIERCE: Those are the only questions I

13 have.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: From

15 September through June?

16 MS. FREGEAU: September through June, yes.

17 well, actually school starts the last week of August for
18 our children.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Until
20 about mid June?

21 MS. FREGEAU: Right.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: Any other
23 questions?

24 MR. PIERCE: No further questions.

25 ADMINISTRATIVE LAW JUDGE GREENBERG:

1 Mr. Forman, go ahead.

2

3 BY MR. FORMAN:

4 Q. Do you know what time the casino opens for
5 business in the morning?

6 A. I believe they advertise that they open at
7 10:00 a.m. However, I live on that road and I see
8 delivery trucks going there early in the morning when
9 I'm on my way to work. I see what probably would be
10 employees going down there because they're not local
11 residents. There's quite a bit of traffic in the
12 morning even though the casino is not officially open.

13 Q. That would be true whether there was liquor
14 served on the premises or not, correct?

15 A. Correct. Probably wouldn't have the beer
16 truck going down the road, but yes, sir.

17 Q. Is the 14 foot wide section of road about

18 which you testified between the casino entrance and Eel

19 River Road?

20 A. No, sir. It's above it, north of it.

21 Q. How far north?

22 A. Here you go again. Three-tenths of a mile.

23 Q. Are you aware whether there are any signs as

24 one exits the casino parking lot or the casino entrance

25 directing drivers in one direction or another?

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1 A. Yes, sir.

2 Q. What is your awareness as to such signs?

3 A. My awareness to signs or the people following

4 the signs?

5 Q. Your awareness of the signs.

6 A. I'm aware there's a sign that asks people to
7 turn to the left.

8 Q. What does the sign say?

9 A. "101." I think it says "Left Turn Only."
10 Then there's a sign that has the 101 sign.

11 MR. FORMAN: I have no further questions.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: Is there
13 anything further from this witness at this time?

14 MR. PIERCE: No, Your Honor.

15 MS. FREGEAU: I wanted to make a statement to
16 address what he brought up about the left hand turn
17 sign.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Go ahead.

19 MS. FREGEAU: I live on the north end of that

20 road. Just because the sign says "Left Turn," people do
21 not turn left. I worked on my yard last Saturday and I
22 counted 25 cars going by in a three hour period.

23 There are not 25 neighbors living to the south
24 of my house. Anybody coming out of that road, whether
25 they're residents or casino members, should be turning

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1 left, not right.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: That's on
3 the north end?

4 MS. FREGEAU: Yes, sir.

5 BY MR. FORMAN:

6 Q. These 25 cars that you ^{9F0863CA} counted, did you

7 observe them exiting the casino?

8 A. No, but it's not a thoroughfare road. I would

9 assume that they were coming from the casino area. It's

10 not a road people would drive to take to get from point

11 A to point B.

12 Q. You have no personal knowledge where those

13 vehicles originated?

14 A. No. But prior to the casino being there, we

15 did not have that level of traffic even when the highway

16 was closed.

17 Q. What was the level of traffic you had?

18 A. Maybe one or two cars in the afternoon.

19 Q. This is verified by some official traffic

20 count?

21 A. No, I live there. I'm able to count.

22 MR. FORMAN: Thank you. I have nothing

23 further.

24 MS. FREGEAU: Thank you.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Any other

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1 questions of this witness? Okay. This is the time for
2 presentation of additional testimony. I've asked each
3 of the protestants to listen to the questions and the
4 answers given. Is there anybody here who believes that
5 their answers to those questions would be substantially
6 different from that of Miss Fregeau?

7 would you come forward, please? would you

24 MS. MCVICKER: Yes.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: How would

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1 your answers be different than hers?

2 MS. MCVICKER: Well, I've come up the other
3 end, the south end driving up Singley Road and have seen
4 people leaving the casino parking lot and taking a right
5 and going north.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Taking a
7 right turn?

8 MS. MCVICKER: Yes, and going north to exit
9 Singley Road, driving down the north side of that road.

10 There's a sign that says "Left ^{9F0863CA} Turn Only" but they make
11 a right.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: This is
13 on south Singley Road?

14 MS. MCVICKER: Yeah. It's coming out of the
15 casino parking lot and there's a sign right there
16 because we've seen it. It says "Left Turn Only" but
17 people take a right. I mean they see people going up
18 the road so I don't know. All I know is they take a
19 right.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Is there
21 any additional information you wish us to receive other
22 than that?

23 MS. MCVICKER: Well, it's something that she
24 said about the fog. An incident happened several years
25 ago before the casino was up. I was taking a walk in

1 the evening down the road towards where the Bear River
2 Bend Reservation is. It was dark. It wasn't quite
3 nightfall but it was very close to nightfall and it was
4 very foggy.

5 It was normally time people would have their
6 headlights on. I'm walking and all of a sudden, okay --
7 it's in the vicinity of where the -- it's a hill. The
8 hill is right near the reservation but it's not quite
9 where the driveway is.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: On south
11 Singley Road?

12 MS. MCVICKER: South ^{9F0863CA}end, yeah. All of a
13 sudden this car appeared. It was big. It was like an
14 SUV or Jeep or something without their lights on. It
15 was eerily quiet. It just seemed to come out of
16 nowhere. Anyway I just wanted to make a point of
17 letting you know that.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.
19 Anything further?

20 MS. MCVICKER: No. Has Suzi just spoken for
21 all of us?

22 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

23 MS. MCVICKER: Okay. Another thing is we live
24 right by the blind curve 100 yards, approximately, from
25 the blind curve.

1 ADMINISTRATIVE LAW JUDGE GREENBERG: On the
2 south side of Singley Road?

3 MS. MCVICKER: More towards the south. It's
4 almost the middle of the road. We've seen traffic
5 coming up the road. What happens is I don't even
6 know -- I don't know how fast they're driving but
7 they're driving at a speed that in order to take the
8 curve, they swerve into the opposing lane. There's no
9 way of telling if there's another car coming up the
10 opposing lane.

11 we've also seen cars hauling trailers and the
12 trailers are hitched to the car but they're kind of
13 moving, swivelling. They swivel sometimes into that

14 opposing lane as the vehicles ^{9F0863CA} take the curve.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Anything
16 further?

17 MS. MCVICKER: We have animals that sometimes
18 dart in the road, wild animals. Depending on your own
19 personal reactions, you might do this or do that. We
20 have deer, fox, possum, raccoons, skunks. I'm trying to
21 remember. Various animals, sometimes a sheep.

22 We were coming down the road. There was a cow
23 in the road. There was a goat in the road once.
24 Sometimes you don't see them until the last minute or
25 they dart in front of you. That's another hazard in a

1 rural area, as well as dogs, cats, kids. I think that's
2 it.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Any
4 questions of this witness, Mr. Pierce?

5 MR. PIERCE: Yes. Just a couple, Your Honor.

6 EXAMINATION

7 BY MR. PIERCE:

8 Q. You indicated that you had observed persons
9 exiting the casino and turning right on to Singley Road.
10 when did you first make these observations?

11 A. Well, ever since it's opened. But certainly
12 after the sign was up as well.

13 Q. when did it first open?

14 A. The casino?

15 Q. Yes.

16 A. I believe it was August ^{9F0863CA} 10th.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: When?

18 MS. MCVICKER: August 10th.

19 BY MR. PIERCE:

20 Q. This is covering a period of a little over two
21 months?

22 A. Yes.

23 Q. If you can estimate, how many vehicles have
24 you observed turning right out of the parking lot?

25 A. Ten.

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1 Q. Finally, you've indicated that you both

2 endorse the testimony previously made, subject to the
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3 changes you've made, of additional observations and
4 concerns. Were there other specific concerns that you,
5 as a protestant had, that you want the court to
6 consider?

7 A. Yeah. You know, that road to some people
8 looks like a really fun raceway. Our house is very
9 close to the road.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: When you
11 want me to consider something, you can have him consider
12 it, Mr. Pierce, unless you face me here.

13 MR. PIERCE: I don't need to know it.

14 MS. MCVICKER: Okay. There are people who --
15 they must see it as a raceway. You hear them sometimes
16 at two, three or four in the morning going real fast,
17 hear them going by real fast. We've seen them go by

18 real fast on occasion. It seems it's the worst at

9F0863CA

19 night.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

21 MR. PIERCE: No further questions.

22 ADMINISTRATIVE LAW JUDGE GREENBERG:

23 Mr. Forman?

24 MR. FORMAN: I have no questions. Thank you.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank you

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1 very much.

2 MS. FREGEAU: May I ask a question?

3 ADMINISTRATIVE LAW JUDGE GREENBERG: You can.

4 EXAMINATION

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5 BY MS. FREGEAU:

6 Q. I wanted to address how she walks on the road
7 and the front of her house and the roadway where you
8 walk with cars parked on the road. You talked about an
9 accident to a car parked in front of you.

10 A. That's right. In fact, you know what? Could
11 my husband bring up the photographs?

12 ADMINISTRATIVE LAW JUDGE GREENBERG: Sure.

13 MR. FORMAN: Your Honor, I realize we have a
14 lay representative but I would object to the leading or
15 coaching of a witness.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Who is
17 coaching?

18 MR. FORMAN: The leading question that the
19 witness was just asked was leading in the sense it was

20 deliberately intended to fill in an omission to refresh
21 recollection and I believe it was not properly phrased.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: That's
23 probably true. These are lay people.

24 MR. FORMAN: I understand that. But there are
25 limits to the leeway and I hope Your Honor will impose

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1 some parameters.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
3 you.

4 MS. MCVICKER: Do you want to see these?

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

6 (The parties went off the record.)

7 ADMINISTRATIVE LAW JUDGE GREENBERG: Back on
8 the record. Miss McVicker, you're still under oath.

9 MS. MCVICKER: Okay.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: These are
11 two photographs that you submitted to us. We've labeled
12 them Exhibits 6-A and 6-B. They show a school bus in
13 6-A going over the broken yellow line. They show,
14 apparently, a van of some sort parked along side on a
15 shoulder of the road. Are these photographs taken by
16 you?

17 MS. MCVICKER: My husband.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
19 know when they were taken?

20 MS. MCVICKER: The white one was taken August
21 10th. The school bus one I'm pretty sure is the same

22 roll of film. I'm not sure if it was -- I think it was

9F0863CA

23 within that week.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: It's in

25 August anyway?

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1 MS. MCVICKER: Yeah. Well, no, it couldn't

2 have been. It must have been September. I'm sorry.

3 Maybe my husband should testify. They're written on the

4 back.

5 ADMINISTRATIVE LAW JUDGE GREENBERG:

6 Apparently they're processed at Costco. It doesn't say

7 what date that I can see.

8 MS. MCVICKER: On the back, unfortunately,
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9 they didn't print it.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: This is
11 Exhibit 6-B. Exhibit 6-A has no date on it that's
12 discernible -- let me put it that way -- and nothing on
13 the back of it that shows a date. Do you have any idea
14 what month it might have been that they were taken?

15 MS. MCVICKER: The white truck was definitely
16 August 10th. The school bus one was probably late
17 August, probably.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Both in
19 August?

20 MS. MCVICKER: Yeah, it was probably late
21 August when school first started.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: Exhibit
23 6-A and 6-B are so identified. They're proximate to

24 your residence, is that right? 9F0863CA

25 MS. MCVICKER: Yes.

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1 ADMINISTRATIVE LAW JUDGE GREENBERG: Both of
2 them?

3 MS. MCVICKER: Yes.

4 MR. FORMAN: Your Honor, may we get
5 clarification as to the location of that residence in
6 relation to the casino?

7 ADMINISTRATIVE LAW JUDGE GREENBERG: How far
8 are you from the casino?

9 MS. MCVICKER: I believe it's an eighth of a
10 mile.

11 MR. FORMAN: To the north?

12 MS. MCVICKER: Yes.

13 MR. FORMAN: Thank you.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Exhibit

15 6-A and 6-B were taken by you or your husband, is that

16 right?

17 MS. MCVICKER: My husband, yeah.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: You can

19 confirm that?

20 MS. MCVICKER: Yes.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Any

22 questions of this witness?

23 MR. PIERCE: No, Your Honor.

24 MR. FORMAN: None, Your Honor; except that if

25 those will be received into evidence, I'd like a copy.

1 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

2 MS. MCVICKER: Could I ask a question

3 concerning procedure? Some of us are a little confused

4 if Suzi will be testifying more or if everything that

5 people want to say, like, you know, Suzi is talking for

6 all of us -- is she giving all that testimony right now

7 or --

8 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you

9 intend to provide more testimony?

10 MS. FREGEAU: For myself, no; but other

11 protestants, yes.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: I've

13 asked everybody who is a protestant -- that's the
14 problem when you're not represented by somebody familiar
15 with the law. I've asked each of the protestants to
16 append the questions and answers given by your
17 representatives.

18 After she finished testifying, I've asked
19 whether you recall the answers and the questions and
20 whether or not your answers to those questions would be
21 substantially different than hers.

22 If you had substantially different answers, I
23 asked you to let her know so that you can be amply
24 provided time within which -- an opportunity to present
25 that additional testimony. Do you understand that?

1 MR. PIERCE: Your Honor, if I may, some of
2 these confusion may result from comments I have made to
3 Miss Fregeau and the other protestants that I have
4 explained the issue of cumulative evidence and that the
5 court wouldn't be entertaining that.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: That
7 means you're each telling me the same thing regarding
8 any particular issue.

9 MR. PIERCE: And that you have asked them and
10 would be asking them about affirming their understanding
11 of the testimony of Ms. Fregeau and whether or not they
12 had anything -- if their answers would be any different.

13 That's how Mrs. McVicker got here. But I have
14 explained it to the extent that they each have

15 individual different evidence that they want the court
16 to present and that is their right as a party to
17 testify.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Let me
19 tell you what I know. I know that the road apparently
20 is alleged to be dangerous. Apparently some people say
21 that there is no shoulder; that the road is in
22 disrepair; that there are deadends; that the road is too
23 narrow in spots to accommodate heavy traffic or large
24 traffic; that everybody fears that if somebody comes on
25 this road who has had too much alcohol to drink, they

1 will provide a menace and a hazard; and that you folks
2 believe that your quiet enjoyment will be impaired. I
3 understand that.

4 If somebody wants to tell me why the quiet
5 enjoyment is impaired, fine, but it's all redundant.
6 It's repetitive, in other words. I understand that
7 those are issues that you want me to consider.

8 I understand that some of you will testify
9 that there have been accidents in the past regarding
10 people who have had too much to drink or people who are
11 too negligent. I understand that.

12 Anybody have something brand new and
13 different? I'm willing to hear it. Anybody have
14 anything new and different? Is there anything further
15 you have, Miss McVicker?

16 MS. MCVICKER: I just hope it will be
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17 mentioned -- excuse my ignorance about the procedures --
18 but on the blind curve 100 yards from our house, there
19 were three accidents, two alcohol related -- three
20 accidents 100 yards from our house on the blind curve.
21 Two were alcohol related.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: How long
23 ago?

24 MS. MCVICKER: Oh, gosh. Suzi, do you know
25 when those accidents happened?

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1 ADMINISTRATIVE LAW JUDGE GREENBERG: If you
2 don't know, tell me you don't know. I don't want

3 anybody telling me who hasn't been sworn in to tell the
4 truth.

5 MS. MCVICKER: I know it's been in the past.
6 I believe it's three years, two years. We can get you
7 the accurate information. We can get the accurate
8 information to the court.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: You have
10 no such information available at this time?

11 MS. MCVICKER: I assumed someone had it. I
12 also have some notes that I could go look at where I did
13 write about the accidents.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Has any
15 of it occurred in the last year?

16 MS. MCVICKER: I'm not sure if the last
17 accident was in the past year. I'm pretty sure it was
18 the last two years.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Go take a
20 look at your notes.

21 MR. FORMAN: Your Honor, if the witness is
22 going to consult with her notes, we would ask to see
23 those notes.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Bring
25 your notes forward, please. It's a reasonable request,

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1 Mr. Forman.

2 MR. FORMAN: Thank you.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Miss
4 McVicker, bring your notes forward.

5 MS. MCVICKER: Yes.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Show the
7 notes to Mr. Forman.

8 MR. PIERCE: Your Honor, while Mrs. McVicker
9 is showing Mr. Forman the notes, I would note for the
10 record that during the recess at your request, I
11 consulted with Mr. Forman and the applicants and the
12 protestants. All have agreed to have the continued
13 hearing on wednesday, the 28th rather than Thursday, the
14 29th. we will be sending out notices to that effect.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: The
16 calendar clerk has agreed. Mrs. McVicker, you're still
17 under oath. when did the accidents? Do you remember?

18 MS. MCVICKER: Three accidents occurred since
19 1999.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: 1999?

21 MS. MCVICKER: Yes.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: Six years

23 ago?

24 MS. MCVICKER: I'm sorry. I don't have the

25 exact dates. This happened in front of somebody's

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1 house, one of the protestants. I assumed they would

2 have the accurate information.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: They're

4 not Protestants; they're protestants.

5 MS. MCVICKER: I'm sorry.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: They

7 might be Protestants too.

8 Six years ago is the last one? You know that?

9 MS. MCVICKER: I think the first one was six
10 years ago.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: When is
12 the last one?

13 MS. MCVICKER: Oh, gosh.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you
15 know?

16 MS. MCVICKER: No.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
18 you. It wasn't in the last year, is that right?

19 MS. MCVICKER: I don't think so.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
21 you. Any questions of the witness regarding her
22 testimony?

23 MR. PIERCE: No, Your Honor.

24 ADMINISTRATIVE LAW JUDGE GREENBERG:

25 Mr. Forman?

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1 MR. FORMAN: Yes, Your Honor.

2 EXAMINATION

3 BY MR. FORMAN:

4 Q. Miss McVicker, did you observe any of these
5 accidents?

6 A. I observed the aftermath of the accidents. We
7 were coming home after somebody hit the tree and crashed
8 through our neighbor's fence.

9 Q. This was north of the location of the casino?

10 A. Yeah. In fact, I do have a photograph of the
11 tree.

12 MR. FORMAN: Excuse me, Your Honor. A "yes"
13 or "no" answer --

14 MS. MCVICKER: We have a photograph of the
15 tree that was hit.

16 MR. FORMAN: Move to strike as not responsive.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Granted.

18 MS. MCVICKER: It's right next-door to us.
19 It's a hundred yards from our house.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: The
21 question is: Was it on the north side of Singley Road?

22 MS. MCVICKER: You mean north of the casino?

23 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

24 MS. MCVICKER: Yes.

25 MR. FORMAN: Thank you.

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1 BY MR. FORMAN:

2 Q. This was the accident that occurred

3 approximately six years ago?

4 A. This accident, I think -- I'm sorry. I don't

5 have the exact dates. I think it was like a couple of

6 years ago, maybe three at the most. I'm not sure. I'm

7 sorry.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: The

9 answer is she's unsure.

10 MR. FORMAN: Thank you. I have no further

11 questions.

12 MS. MCVICKER: But somebody has those dates.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Miss

14 McVicker, thank you. You're excused.

15 Any other protestants who has new and

16 different information?

17 MS. CALKINS: I could give the exact date.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: We don't

19 know who you are.

20 MS. CALKINS: Maretta Calkins.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: You can't

22 testify from your seat. Please folks, we know it's a

23 little bit difficult to come forward but we want to see

24 and hear what you're saying, particularly the Reporter.

25 Raise your right hand. Do you solemnly swear

1 that the testimony you are about to give will be the
2 truth, the whole truth and nothing but the truth?

3 MS. CALKINS: Yes, I do.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: You have
5 to let me finish. What is your name?

6 MS. CALKINS: Maretta Calkins.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: Have a
8 seat, Miss Calkins. Do you know when the accident to
9 which Miss McVicker had reference occurred?

10 MS. CALKINS: December 18th, 2000.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Is that
12 the last accident you have knowledge of?

13 MS. CALKINS: That's the worst accident I have
14 knowledge of. There was one after that but it was a guy
15 that fell asleep. It wasn't an alcohol-related
16 accident.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
18 you. Anything else?

19 MS. CALKINS: I walk also every day and see
20 the faces of all the residents of the rancheria and I
21 recognize them by face, not by name. I know they're
22 still turning right against the left turn sign. You
23 haven't heard about the pile of bottles under the tree
24 that has been hit several times.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: A pile of

1 bottles?

2 MS. CALKINS: A pile of bottles. It started
3 out when I put a bottle under the tree and somebody took
4 it. It was a bottle I picked up off the road that is
5 thrown off the side of the road. I started picking up
6 every bottle I saw that was alcohol and can and put it
7 under the tree.

8 On Sunday, Labor Day evening, after pitch
9 black, somebody came and took the entire pile. On
10 Monday morning, Labor Day, I started a new pile. The
11 only thing about the alcohol bottles is that somebody
12 else is now picking them up. They have decreased
13 because of my pile that I put where everybody can see as
14 they come down the hill. It's just kind of an

15 experiment.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

17 you. Any questions of the witness?

18 MR. PIERCE: Just a couple of points of

19 clarification, Your Honor.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Full

21 name, again, please.

22 MS. CALKINS: M-a-r-e-t-t-a; Calkins,

23 C-a-l-k-i-n-s.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

25 you. You're talking about refuse and other matters that

1 are thrown from cars?

2 MS. CALKINS: Yes. I walk from 776 Singley
3 Road to Loleta Drive to the freeway and back. This is
4 just what I pick up in that walk.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: How far
6 would you say that is?

7 MS. CALKINS: I would say it's close to two
8 miles.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: That's on
10 north Singley Road?

11 MS. CALKINS: Yes, it's up above the casino.
12 I live on the second worst curve and he lives on the
13 worst curve.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: So it's
15 about how many miles, you say?

16 MS. CALKINS: I would say about two. I'm

17 guessing. I never really mapped it.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: How high

19 is the pile?

20 MS. CALKINS: There's probably 20 to 30

21 bottles.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: What span

23 of time?

24 MS. CALKINS: Every three weeks I pick it up.

25 After Labor Day, after somebody took it, I replenished

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1 it that Monday. I waited two weeks and picked it up and

2 replaced it again. It's been there now three weeks.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: It's
4 right next to the casino?

5 MS. CALKINS: No, it's just above. It's a
6 quarter mile above. North, I guess you would call it.
7 I know the employees still like to come that way. We
8 have beautiful views of the ocean. It's part of the
9 reason people like to go that way rather than the
10 congested intersection at the bottom.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
12 you. Any questions?

13 EXAMINATION

14 BY MR. PIERCE:

15 Q. You indicated that the December 18th, 2000
16 accident was the worst. Have there been one or more
17 accidents at that location since then?

18 A. Just the one after and that was the person

19 that fell asleep.

20 Q. Do you have any idea of the year that that
21 occurred, approximately?

22 A. It was probably 2002, I would think, in
23 January.

24 Q. As far as you're aware, the last accident was
25 in 2002, approximately?

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1 A. On that tree, yes.

2 Q. On that tree?

3 A. I've seen lots of evidence of accidents on
4 Loleta Drive and the Singley intersection.

5 Q. Now as I understand it --

6 ADMINISTRATIVE LAW JUDGE GREENBERG: This is

7 on the north portion?

8 MS. CALKINS: Yes.

9 BY MR. PIERCE:

10 Q. Loleta Drive and Singley would be

11 approximately Exit 694 of the 101?

12 A. Yes.

13 Q. So your walk is from north of the casino along

14 Singley Road towards that intersection?

15 A. Yes.

16 Q. So your walk doesn't take you directly past

17 the casino on a regular basis?

18 A. No. Well, I do walk that way. I have four

19 dogs. I walk one dog to the freeway, two dogs to Echo

20 Lane, which is between Loleta Drive and my house. It's

21 a shorter walk because I have to walk each dog one by
22 one.

23 I take the old dog down in front of the casino
24 but I don't go on their property. I go to the edge of
25 their property. It's a very short walk. And I come

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1 back up and I do pick one or two bottles up as I walk
2 down there also.

3 Q. Just so I'm clear about -- let me call it your
4 social experiment with the bottles -- you've been
5 collecting these as a way of consolidating the trash and
6 then you have removed it to dispose of them?

7 A. Yes.

8 Q. Okay.

9 A. They're in my garage still, but yes.

10 Q. That's the first step of disposal?

11 A. I haven't picked up the actual litter trash

12 and all the other things and the cigarette wrappers and

13 paper cups, but I've always picked up the recycle that

14 you get paid for, the plastic and cans but not the

15 alcohol bottles. You don't get paid for those and

16 they're very heavy and bulky. I just started doing

17 that.

18 MR. PIERCE: Thank you. That's all I have.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Any other

20 questions of the witness?

21 MR. FORMAN: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. FORMAN:

24 Q. Miss Calkins, you just mentioned that you pick

25 up some litter but not other litter. Does some of the

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1 litter that you've observed include food wrappers from

2 MacDonald's?

3 A. Yes.

4 Q. And food wrappers from Burger King?

5 A. No.

6 Q. Soft drink cups?

7 A. Mostly it's MacDonald's.

8 Q. No Coca Cola cups?

9 A. There are a couple. There have been, yes.

10 Q. You've observed these materials before August
11 10th of this year, is that correct?

12 A. It's been an ongoing problem, yes.

13 Q. Correct me if I am wrong, but I believe you
14 said that in some respects the litter problem has
15 decreased since the casino opened; is that correct?

16 A. Yes, I see it when I drive by. I walk the
17 next day and it's not there. This is after Labor Day.

18 Q. Did you witness that December 18th, 2000
19 accident?

20 A. No, I came home upon it with all the flashing
21 lights. We had just moved into our house.

22 Q. You didn't see the accident occur?

23 A. Oh, no, but I dealt with the owner of the car
24 and I knew all the people involved in the wreck -- not

25 all of them. One of them was a man that lived in Loleta

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1 with no last name and nobody knew. Their car insurance

2 would not pay for my fence.

3 MR. FORMAN: I have no further questions.

4 Thank you.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Any

6 further questions, Mr. Pierce?

7 MR. PIERCE: No, Your Honor.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

9 you.

10 MS. FREGEAU: Your Honor, I have photographs

11 of my pile of bottles.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: Of what?

13 MS. FREGEAU: The collection of bottles.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm

15 considering whether or not the casino is responsible for

16 any of that. Apparently there's been a decrease in the

17 trash since then.

18 MS. CALKINS: The whole point is we don't need

19 any more alcohol added to our road. We have enough

20 already.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

22 you.

23 MR. FORMAN: Your Honor, I must object and ask

24 that that be stricken because there's been no evidence

25 at all of alcohol consumption on the road. What we have

1 evidence of is litter that may have been undoubtedly
2 thrown from vehicles, litter consisting of a variety of
3 materials, including empty liquor containers, but that
4 doesn't establish the use of the road as a place for
5 consuming liquor.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Well, I
7 didn't make that inference in any event.

8 MR. FORMAN: All right.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank you
10 very much, Miss Calkins.

11 MS. FREGEAU: I have somebody, sir, that has
12 seen somebody on the road under the influence of

13 alcohol. They actually witnessed the incident that was
14 brought up earlier today.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: When was
16 that?

17 MS. FREGEAU: Two weeks ago, perhaps. It was
18 when the file -- the person is here. Can they testify
19 to that?

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Sure.

21 Could you remove your hat, sir?

22 MR. HOLMES: Sure.

23 ADMINISTRATIVE LAW JUDGE GREENBERG:

24 Mr. Holmes, raise your right hand. Do you solemnly
25 swear that the testimony you are about to give will be

1 the truth, the whole truth and nothing but the truth?

2 MR. HOLMES: I do.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Full

4 name, please.

5 MR. HOLMES: Mike Holmes, H-o-l-m-e-s.

6 ADMINISTRATIVE LAW JUDGE GREENBERG:

7 Mr. Holmes, you have some testimony that your

8 representative wants you to produce?

9 MR. HOLMES: Yes. I'm a resident and a cattle
10 rancher on Singley Road in Loleta. I happen to live
11 there.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: What
13 portion of Singley Road?

14 MR. HOLMES: The north end of Singley Road,

15 the intersection of Echo Lane and Singley Road. We also
16 have approximately three-quarters to a mile of perimeter
17 ranch fence that borders Singley Road.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: You own
19 that property that borders three quarters of a mile on
20 Singley Road?

21 MR. HOLMES: Actually that's a leased ranch.
22 I own the ranch next to it. It's a contiguous piece of
23 property.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Go ahead.

25 MR. HOLMES: Approximately the second week of

1 September, shortly thereafter, ^{9F0863CA} the casino opened. Due
2 to my line of work, on some mornings I have to leave
3 very early, from 3:30 to 5:00 in the morning and return
4 home between 9:00 and 10:00.

5 We were experiencing the heavy traffic flow
6 that came with the opening of the casino. The reference
7 to a "chip truck" and a complaint filed with Alcoholic
8 Beverage Control was in reference to something I
9 witnessed.

10 I think the court needs to understand when I
11 say a "chip truck," I mean a semi-truck, one of the
12 biggest ones you see on the highways. It was coming in
13 every night after 9:00 p.m., northbound down Singley
14 past every one of our houses, parking out on the road in
15 front of two of the neighbors' gates and loading on an
16 adjoining road in front of the casino. The driver was

17 in the casino every night until the next morning. We've
18 called Highway Patrol three times. I know other
19 neighbors have.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Parked in
21 front of your property?

22 MR. HOLMES: No, this is parked in front of
23 the casino on the north side of the road in front of
24 another neighbor's property, blocking their gates and
25 driveway. We have called Highway Patrol several times.

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1 They said they'd respond to it. We've been
2 told that since all the problems on the road started,

3 Highway Patrol wasn't responsible for any incidents on
4 the road.

5 I was leaving early every morning for a month
6 thereafter and I would drive down Singley at four or
7 five in the morning. That chip truck would still be
8 parked there.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: what kind
10 of truck is that?

11 MR. HOLMES: It's a chip truck. In this area,
12 the woodmill trucks, the byproduct.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Oh, wood
14 chips?

15 MR. HOLMES: Yeah. You have to keep in mind
16 this is semi-truck, not a pickup truck. There's about
17 65 feet of truck parked on the shoulder of the road out
18 in the road partially.

19 One of the mornings shortly thereafter at
20 approximately 4:30 to 5:00 in the morning, there was a
21 casino employee and the driver out in front of this
22 truck. The employee was helping an intoxicated driver
23 try to get back in the cab of the truck.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: How do
25 you know he was an employee?

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1 MR. HOLMES: It sure looked like it; someone
2 with what appears to be their dark blue shirts and
3 someone in more of an official capacity. I don't know
4 why anyone else would want to stand in the middle of the

5 road at such an hour.

6 That night that truck had come in southbound
7 because when I came home at 9:30 the night before, it
8 was pointed up singley north. So that driver drove
9 through our community at approximately 5:00 o'clock in
10 the morning, intoxicated, through all the worst turns
11 and passed all of our houses to get back to 101 north.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: How long
13 was he in the casino, would you say?

14 MR. HOLMES: All night long from approximately
15 nine or ten at night until four or five the next
16 morning. I witnessed that for several weeks in a row.
17 That was the reference made earlier to the complaint
18 filed with Alcoholic Beverage Control.

19 I did not call Alcoholic Beverage Control
20 because I've been told that any situation on the road we

21 have to contact CHP; and also the fact that we have been
22 told there is only one California Highway Patrol officer
23 after 10:00 p.m. at night patrolling between Elk River,
24 which is just south of here, and Stafford, which is
25 approaching southern Humboldt County.

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1 If we only have one Highway Patrolman to cover
2 that whole area, it doesn't seem logical to me that
3 Highway Patrol can dedicate the amount of time that our
4 road and the safety situations that are arising would
5 require.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Anything

7 further?

8 MR. HOLMES: I have a lot of things, but I
9 wanted to at least get that in today because I am the
10 eye witness to that.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: You're
12 saying that you want to defer further testimony until
13 the day of continuance?

14 MR. HOLMES: Well, earlier you had mentioned
15 that you need to get out of here at 4:00. It's 4:00
16 now.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: It's not
18 a matter of I have to get out of here. I'm trying to
19 find a decent point in the hearing at which to adjourn.
20 I'm trying to complete your testimony before we do that.

21 MR. HOLMES: I will just keeping going then
22 and try not to touch on any subjects that the others

23 have brought up previously.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank

25 you.

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1 MR. HOLMES: I also notice in the information
2 that we were given earlier today and the Memorandum of
3 Points and Authorities, Factual Background No. 8:
4 School children are picked up and dropped off at the
5 entrance to the reservation and casino.

6 I know children have been brought up and
7 dropped off all along Singley Road. Since that is
8 admitted into this, I also wanted to put this in.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: We're
10 trying to relieve ourselves of anything redundant.

11 MR. HOLMES: Also I would like to ask if the
12 photographs I submitted with my protest letter to
13 Alcoholic Beverage Control are on record and have been
14 admitted into evidence.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: I don't
16 have any photographs on this.

17 MR. FORMAN: We've not seen any photographs
18 from Mr. Holmes.

19 MR. HOLMES: She said she has them. I realize
20 there's been some ambiguity, some problems earlier with
21 not clear photographs and photographs that don't seem to
22 be in our presence. They are our personal vehicles
23 accessing Singley Road and trying to make it back into
24 our driveway and showing unsafe conditions.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Counsel,

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1 I'm trying to find a decent point to break here. I
2 think it will take about fifteen more minutes with this
3 witness, just my own estimate. I don't mind another
4 half hour to adjourn, if that's convenient with you.

5 MR. FORMAN: I am prepared to stay as long as
6 Your Honor is prepared to stay.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: What's
8 your schedule, counsel?

9 MR. PIERCE: I am at your disposal, Your
10 Honor.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: I won't

12 dispose of you.

13 MR. PIERCE: You'll be the first one who

14 doesn't.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Let's

16 take a ten-minute break and come back. In the meantime,

17 Mr. Holmes, consolidate what you want us to consider and

18 if you have those photographs by that time, I would

19 appreciate it.

20 MR. PIERCE: The photographs were submitted as

21 part of his protests. They're in the Eureka District

22 office file.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: Let

24 Mr. Holmes see them then.

25 (The parties went off the record from 4:00 to

1 4:16 p.m.)

2 ADMINISTRATIVE LAW JUDGE GREENBERG: The
3 photographs that have been submitted by Mr. Holmes I'll
4 mark for purposes of identification only.

5 The first photograph shows a sign on the
6 left -- actually, it's a mail delivery receptacle
7 together with a delivery receptacle for newspapers.
8 That will be marked Exhibit number 7-A.

9 I understand the photograph right beneath it
10 is a photograph of Mr. Holmes' truck and trailer. That
11 will be Exhibit 7-B.

12 The last photograph is a photograph of

13 Mr. Holmes' truck and trailer ^{9F0863CA} as it is in the process of
14 making a turn. That will be marked Exhibit 7-C. I'm
15 giving those photographs to Mr. Holmes so that his
16 testimony might indicate further description of those
17 photographs. Go ahead, Mr. Holmes. What does 7-A
18 represent?

19 MR. HOLMES: 7-A represents the perspective
20 from our driveway. We live on the north end of Singley
21 Road facing south. This would be a left hand turn and
22 it shows the short distance to the high point in Singley
23 Road with the traffic that is coming northbound that
24 most cars, when they reach that point, they have already
25 gone through the tight and windy turns and they're

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1 picking up speed.

2 It seems like most drivers, when they hit this
3 high point, begin to accelerate. For us personally,
4 with my livestock trailer hooked up especially, it's
5 difficult to safely pull out into Singley Road because
6 I'm always meeting oncoming traffic.

7 One of the problems is since the casino
8 opened, the traffic coming northbound has increased a
9 great deal; and also with intoxicated drivers, it has
10 become a much more dangerous situation.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: So
12 there's a hill obstructing that view, is that correct?

13 MR. HOLMES: Yes.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: So that

15 drivers proceeding on Singley Road may all of a sudden

9F0863CA

16 find themselves encountering your vehicle?

17 MR. HOLMES: Correct.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: You pull

19 out at all times of the day and night?

20 MR. HOLMES: My schedule -- I can be either

21 leaving home or coming home before dawn and well after

22 dark.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: That was

24 Exhibit 7-A, is that correct?

25 MR. HOLMES: Correct.

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2 7-B represent?

3 MR. HOLMES: Photograph 7-B represents me
4 exiting my driveway with the trailer hooked up, headed
5 northbound on to Singley Road. With the trailer in this
6 photo, it shows how much of the road and, actually, the
7 intersection on to Echo Lane immediately opposite of our
8 driveway -- I have to take up and actually pull into the
9 oncoming traffic lane just to exit my driveway.

10 Meeting traffic coming southbound from the
11 north end of Singley, it's the same situation. It's a
12 hazardous intersection, especially since the trailer is
13 hooked up most of the time. I can't swerve or get out
14 of the road that quickly.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: What
16 about Exhibit 7-C?

17 MR. HOLMES: Exhibit ^{9F0863CA} 7-C is very similar to
18 7-B. However, that is me making the turn southbound on
19 to Singley Road. Here again, I have to pull out into
20 the opposite lane into oncoming traffic to make that
21 turn completely.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: So these
23 photographs merely show the hazard posed to traffic by
24 your entering and exiting on to your property with your
25 truck and trailer and the particular hazard of that hill

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1 which object instructs a motorist's view of your doing
2 so; is that right?

3 MR. HOLMES: Yes, and the hazard posed to
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4 myself and family from the oncoming traffic and the
5 increase in the traffic flow.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
7 you. Is that what you wanted to tell us today?

8 MR. HOLMES: Also I'd like to testify as to
9 the situation of our cattle ranches on Singley Road and
10 the amount of fence we have and the great liability that
11 now has arisen.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: What
13 would that be?

14 MR. HOLMES: The liability of intoxicated
15 drivers and increased traffic flow that when these
16 intoxicated drivers run off the road, they typically go
17 through someone's fence and between the casino.

18 At the intersection of Loleta Drive and

19 Singley Road, there are seven ^{9F0863CA} ranches. Mine happens to
20 be right in the middle of the casino and my driveway is
21 on the most dangerous turns.

22 where the liability comes from is if a car
23 runs off the road and goes through the fence, my cattle
24 are going to get out. As soon as my cattle are on the
25 road, I am liable for any damage that occurs.

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1 ADMINISTRATIVE LAW JUDGE GREENBERG: You mean
2 assuming there's an intoxicated driver, assuming that
3 the intoxicated driver hits your vehicle, assuming that
4 the cattle inside your vehicle escape from the vehicle
5 because of that collision, and assuming that the cattle

6 then pose a hazard to other traffic -- is that what
7 you're saying?

8 MR. HOLMES: No. It's assuming that if an
9 intoxicated driver drives through the fence, if they
10 pull out or even if they don't, the cattle will walk
11 through the hole in the fence and be out on the road.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: If he
13 should somehow destroy that part of the fence to allow
14 cattle to escape, that poses another assumption; is that
15 correct?

16 MR. HOLMES: It's not an assumption. They
17 will get out.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: They will
19 get out, but it assumes that he hits the fence.

20 MR. HOLMES: Yes, which has already happened.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: When did
22 that last happen?

23 MR. HOLMES: The last time it didn't happen to
24 me. It happened to the neighbors. It was right before
25 the casino opened when we were experiencing the biggest

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1 traffic flow. It was at the intersection of Loleta
2 Drive and Singley Road.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Has any
4 such accident occurred since the casino opened?

5 MR. HOLMES: Yes, there has been and there are
6 pictures of it here also. It was on the intersection of
7 Loleta Drive and Singley Road where a vehicle went

8 through another neighbor's fence and into their pasture.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: Did we
10 find out why that driver did so?

11 MR. HOLMES: No, because rarely do they stay
12 around. Typically what happens is you get a phone call
13 in the middle of the night from the Highway Patrol that
14 your cattle are wandering down the road. It's your
15 responsibility to take care of the problem.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: So you
17 don't know how the neighbor's fence was impaired, is
18 that correct?

19 MR. HOLMES: It's obvious when a car goes
20 through the fence.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Did
22 anybody see the car go through fence?

23 MR. HOLMES: Rarely do you see a car go

24 through a fence since it's a rural road.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you

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1 know whether that car originated from the casino?

2 MR. HOLMES: No.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you

4 know where that car came from?

5 MR. HOLMES: No.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

7 MR. HOLMES: But both of these accidents

8 occurred shortly before and shortly after the casino

9 opened when we experienced our increased traffic flow.

10 If you add intoxicated drivers to that situation, it
11 just increases the possibility of a bigger wreck a great
12 deal.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Anything
14 else you want me to consider?

15 MR. HOLMES: No, I think most everyone else
16 who has testified so far has hit on the other major
17 points.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

19 Mr. Pierce, any questions?

20 DIRECT EXAMINATION

21 BY MR. PIERCE:

22 Q. Are you living proof that cowboys never sleep
23 or sleep in their saddles?

24 A. I don't know about saddles. We drive a lot of

25 pickups --

9F0863CA

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1 Q. You don't have to answer that.

2 Let me ask you about your testimony relating

3 to the traffic increases since the opening of the

4 casino, the one comment and then the increase in

5 intoxicated drivers. Let me see if we can drill down to

6 some specifics.

7 what have you observed that leads you to

8 believe traffic has increased?

9 A. Counting 20 cars in less than a minute, a

10 traffic jam the opening night of the casino that

11 completely backed up 101 on probably one of the most

12 dangerous exits -- the entrance and exit to 101 from
13 Fernbridge all the way up Singley Road which was
14 completely stopped.

15 Most of the neighbors here could not drive in
16 their own driveways. Rows of cars parked up and down
17 Singley Road to where you couldn't even drive through.
18 When we leave our driveway having to wait for anywhere
19 from half a dozen to a dozen vehicles to drive past this
20 intersection so we could safely pull out.

21 Q. Would it be a fair inference that these
22 comments that you're making you didn't experience prior
23 to August of this year?

24 A. Yes.

25 Q. Related to the opening and the evidence you've

1 presented about the traffic on Singley Road, was that
2 both on what's been referred to as the south end of
3 Singley Road and the north end, or exclusively on the
4 south end?

5 A. The increase in traffic?

6 Q. Well, the parking lot conditions. You said
7 there was a backup on to 101 and solid traffic on
8 Singley Road. Was that three-tenths of a mile between
9 the casino and 101 or on the other side as well?

10 A. The three-tenths of a mile from the casino, on
11 the southbound end without a doubt experienced the
12 heaviest congestion. However, on that particular
13 evening all of Singley Road was a mess.

14 Q. You indicated -- and I didn't write it down --
15 but I think you said waiting for six to ten cars over
16 the course of a minute.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: When did
18 that happen? All I've got is that there was a traffic
19 jam on the casino opening, an increase in traffic before
20 the casino opened. Since the casino opened, has there
21 been an increase in traffic?

22 MR. HOLMES: Oh, most definitely. It's every
23 day. You pick the day and it tends to pick up in the
24 evening when you would assume most people are getting
25 off work. That's when we see the pick up in traffic

1 coming in on the north end of Singley Road.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Between

3 6:00 and 8:00 p.m.?

4 MR. HOLMES: I'd say 4:30 to 8:00 p.m., 4:30

5 in the afternoon to 8:00 p.m. You have to realize this

6 route coming north on Singley Road, anyone coming from

7 this area of the county, it's easier to access the

8 casino northbound on Singley Road than to go down to

9 off-ramp 692 and cut back across oncoming traffic and

10 come up the hill. That's where we're experiencing the

11 traffic problems.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: On north

13 Singley Road?

14 MR. HOLMES: Yes, and cars are going through.

15 ADMINISTRATIVE LAW JUDGE GREENBERG:

16 Southbound traffic, is that correct?

17 MR. HOLMES: Southbound traffic on north

18 Singley Road.

19 BY MR. PIERCE:

20 Q. So you're suggesting that you've observed an
21 increase of traffic of people coming from at least north
22 of Loleta, Eureka, Arcata, wherever, apparently heading
23 to the casino using the 694 exit and Singley Road?

24 A. Yes. I've stopped people and asked them where
25 they were going and they said they're going to the

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1 casino.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: That's on
3 the three-tenths mile section?

4 MR. HOLMES: No, this is on approximately 1.7
5 to a 2 mile section.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: So this
7 is southbound traffic on 101?

8 MR. PIERCE: Getting off at 694 rather than
9 692.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: The north
11 side of Singley Road?

12 MR. PIERCE: Correct.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: That's
14 where the most congestion occurs?

15 MR. HOLMES: No, the most congestion occurs on
16 the south end, on that three-tenths of a mile stretch
17 from the casino down to off-ramp 692. However, we are

18 experiencing a great deal of increased traffic pressure
19 and accidents north of the casino.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Would you
21 say that's because of northbound traffic.

22 MR. HOLMES: It's casino traffic exiting
23 north, turning right against the left hand turn side.
24 Most of the people that come in in the afternoon or
25 early evening headed south on the northbound road exit

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1 that way also.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: So they
3 exit on to 101, is that right?

4 MR. HOLMES: They eventually will enter 101
5 northbound. But when they come in in the evening,
6 they're headed south and they get off on Loleta Drive,
7 exit 694 and then they come over to Singley Road and
8 head south all the way down Singley Road.

9 MR. FORMAN: Your Honor, I'll ask that this
10 portion of the witness' testimony be stricken as beyond
11 his personal knowledge and calling for speculation on
12 his part. He has no idea where people who are going
13 past his house are actually going and no way to tell
14 unless he's following vehicles, every one that goes by.
15 We're talking about a very amorphous, unquantified
16 phenomenon that is not within this witness' knowledge.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: I assume
18 a lot of this is based upon your assumptions, is that
19 correct? As to where the vehicles are going?

20 MR. HOLMES: No. Actually, my ranch surrounds
21 this casino and I can see the entire thing and the time
22 it takes a car to pass my intersection. I can ride to
23 the other side of my ranch and watch them pull into the
24 parking lot.

25 And yes, I have followed them down there

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1 because when someone cuts us off or someone is breaking
2 the law, we would like to have the problem taken care
3 of. Sometimes you do have to follow someone and this
4 has been on the top of every community member's mind.

5 It's a safety issue for all of our families

6 and unfortunately it's come down to this. Obviously,
7 you know, this case is going to be based on factual
8 matter. If it comes down to expert testimony, I don't
9 know who can be more expert than the people that live
10 there and that are there all day. You can ask several
11 of our neighbors here.

12 I see things and are experienced to more
13 things because of the nature of our work. I'm out and
14 around and out in the open, especially along this road
15 because our pastures are right next to the road and I
16 have to check everything morning and night.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: You're
18 saying you see traffic exiting and entering Singley Road
19 to the casino, is that right?

20 MR. HOLMES: Yes, from both directions. At
21 minimum on a normal day, my family has to drive through

22 the southbound intersection six times a day.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: I'm going

24 to ask you to come forward if you would. I'm drawing a

25 very rough diagram showing the casino at one end, 101 at

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1 the other end. You're saying that you see traffic going

2 to the casino and from the casino both at the north end

3 of Singley and the south end of Singley; is that

4 correct?

5 MR. HOLMES: Correct.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: You see

7 greater traffic occupying the traffic lanes going to the

8 casino from the north part of Singley Road?

9 MR. HOLMES: From my perspective in the end of
10 the road that I live on.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Which is
12 north Singley Road?

13 MR. HOLMES: That's correct.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: And
15 you're about half way down Singley Road from the casino?

16 MR. HOLMES: No, we're probably approximately
17 three-quarters of a mile up the road or a mile up the
18 road from the casino.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: All
20 right. So it's about half a mile below you to 101, is
21 that right?

22 MR. HOLMES: As the crow flies, yes.

23 MS. FREGEAU: It's exactly a mile from 101 to
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24 your residence.

25 MR. HOLMES: Driving.

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1 MS. FREGEAU: Right.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

3 It's about a half mile from the residence to the casino?

4 MR. HOLMES: I'd say half to three-quarters.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: You can

6 see traffic going to and from the casino on north and

7 south Singley, is that correct?

8 MR. HOLMES: Yes.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: And south

10 Singley bears the brunt of most of that traffic, is that
11 right?

12 MR. HOLMES: Yes.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: You're
14 talking about traffic going down north Singley and they
15 turn right instead of left. Is that what you're saying?

16 MR. HOLMES: When they exit the casino, if we
17 were exiting the casino there's a sign that says "Left
18 Hand Turn." This is the three-tenths of a mile stretch
19 of road down to the intersection of 692 where you can
20 access 101. To the immediate right is northbound
21 Singley Road.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: I see.
23 So north and south Singley Road obviously connect
24 because it's part of the same road?

25 MR. HOLMES: Yeah, it's the same road.

1 Actually on this description here if you had this as
2 Singley Road and 101 offset here, it would be more
3 accurate.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: why don't
5 you draw it.

6 MR. HOLMES: Okay.

7 MR. PIERCE: Two things, Your Honor. One is
8 I've already directed Investigator Locken between now
9 and the next hearing to work with me to get some better
10 maps and diagrams so that we can all be working off of
11 the same understanding and page.

12 The second thing I'd comment on is while
13 there's lots of reference to north and south Singley
14 Road, my understanding is it's a single road. When
15 people use "north" and "south" terminology, they mean
16 south of the casino versus the road north of the casino.

17 ADMINISTRATIVE LAW JUDGE GREENBERG: Right.

18 MR. FORMAN: That's been my understanding as
19 well.

20 MR. HOLMES: This is very simplistic.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: This is a
22 diagram drawn by the witness, Mr. Holmes. I'm going to
23 label this Exhibit 8.

24 Echo Lane, that goes off of your driveway?

25 MR. HOLMES: Correct.

1 ADMINISTRATIVE LAW JUDGE GREENBERG: So if we
2 say "north" and "south," we're talking about the north
3 portions of Singley Road as it relates to the casino and
4 the south relating to the south portion of Singley Road
5 relating to the casino?

6 MR. HOLMES: Correct.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: You say
8 there's a sign that says "Left Turn Only," is that
9 correct?

10 MR. HOLMES: At the entrance and exit to the
11 casino.

12 ADMINISTRATIVE LAW JUDGE GREENBERG: At this
13 point here?

14 MR. HOLMES: The sign is actually posted right

15 here in the middle of the road -- on the shoulder.

16 Excuse me. When you pull out of the casino, that's the

17 first thing you see.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: This is

19 the sign saying "Left Turn Only," is that right?

20 MR. HOLMES: Correct.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: That's

22 Exhibit 8.

23 MR. HOLMES: Actually, I do have one more

24 thing to say and it pertains to all this.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Go ahead.

1 MR. HOLMES: One of the last accidents -- and
2 I don't have the exact date -- it happened in the
3 Costa's front yard. An intoxicated tribal member who
4 drove through their fence wrecked his car there, took
5 off running, crossing Singley Road, trespassed across my
6 ranch, back to the rancheria.

7 Our ranch does come down above the casino and
8 for some reason trying to make it back unseen and not on
9 the road and in the public eye, it would be the quickest
10 and most remote way to go.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: When did
12 that happen?

13 MR. HOLMES: That happened, I would assume,
14 probably in August sometime.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: This

16 year?

17 MR. HOLMES: Yes.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Prior to
19 the casino opening?

20 MR. HOLMES: Prior or right around that time.

21 There is a Highway Patrol report on that accident.

22 MS. FREGEAU: Your Honor, it was June 18th.

23 ADMINISTRATIVE LAW JUDGE GREENBERG: You're
24 still under oath when you say that. You understand?

25 MS. FREGEAU: Correct.

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1 ADMINISTRATIVE LAW JUDGE GREENBERG: I just

2 want the record to so reflect.

3 MS. FREGEAU: It's a photograph of the car

4 left at the scene, is what it is.

5 ADMINISTRATIVE LAW JUDGE GREENBERG: Do you

6 want me to receive that?

7 MS. FREGEAU: I'd like you to, yes.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: Would you

9 be kind enough to draw where your ranch is in relation
10 to the casino on this?

11 MR. HOLMES: Sure. From our driveway here, it
12 extends down to Singley Road, then winds back around.
13 There are several neighbors in here and the land comes
14 back around above the casino.

15 where this wreck occurred, it happened roughly
16 right over here in the Costa's front yard. The person
17 fled, crossed Singley Road, crossed our two fences here

18 that are posted and ran all the way back.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: All

20 right. The red outline indicates the approximate border

21 of Mr. Holmes' property. I'll put an arrow indicating

22 "Holmes' property." That, as I indicated, will be

23 Exhibit 8.

24 MR. FORMAN: That would be the diagram?

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes. Now

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1 there's a car that shows the license, illegible. It

2 shows it on pasture land off of a road that will be

3 marked Exhibit 9.

4 MR. FORMAN: Your Honor, we would object to
5 the admission of that photograph as irrelevant to the
6 proceeding here; and also to the testimony by the
7 witness that the individual involved was intoxicated as
8 beyond the witness' personal knowledge. He made
9 reference to a CHP report. Accident reports are not
10 admissible as evidence in California.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: How do
12 you know that the occupant of this vehicle in Exhibit 9
13 was from the reservation?

14 MR. HOLMES: Because Lou knows him.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Who is
16 Lou?

17 MR. HOLMES: Lou Costa, right there. He's one
18 of the protestants.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Let him

20 testify to that.

21 MR. HOLMES: He can take that side of the
22 story. I'm just mentioning the fact that this person
23 trespassed on my property. This is an increased problem
24 we're having also.

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Talking

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1 about trespassing by tribal members on your property?

2 MR. HOLMES: That was a particular tribal
3 member. And increased traffic flow. This isn't only --
4 it's also bicycle traffic, people walking. We have a
5 whole influx of a new population traveling up and down

6 Singley Road. When most of these people see open land,
7 they help themselves to our open ground.

8 ADMINISTRATIVE LAW JUDGE GREENBERG: There are
9 trespassers that you've encountered?

10 MR. HOLMES: Yes.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Since
12 this casino opened?

13 MR. HOLMES: Yes.

14 ADMINISTRATIVE LAW JUDGE GREENBERG: I don't
15 know if security personnel have been vigilant, but we
16 don't expect them to be posted twenty-four hours a day
17 up and down Singley Road. But I'll allow it in for
18 whatever evidentiary value it may have. The objection
19 goes to the weight of the evidence.

20 MR. FORMAN: With respect to the intoxication
21 issue, it's beyond the witness' personal knowledge.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: That's

23 correct. I understand. Okay. Anything further?

24 MR. PIERCE: Yes. I'll resume my examination,

25 if I may have Exhibit 8.

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1 Q. This is the diagram you were making,

2 Mr. Holmes?

3 A. Correct.

4 Q. The red box on the upper half, what does that

5 represent?

6 A. That would represent roughly the Costa

7 residence and their property.

8 Q. That's approximately where the crash occurred
9 and when you previously were commenting to the Judge
10 that it happened here, you were referring to that red
11 box?

12 A. Yes, roughly.

13 Q. And then the red line is the outline of your
14 property boundaries, approximately?

15 A. Correct. Now this isn't to scale or anything
16 near accurate.

17 Q. I'm just wanting someone reading this record
18 later on to know what correlates between the words you
19 have spoken and the diagram they may be viewing.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: Thank
21 you, counsel.

22 BY MR. PIERCE:

23 Q. Going back to where we had started relating to

24 the traffic increases that you personally have observed,
25 let's try again to drill down on that and focus

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1 specifically on any change that you can identify since
2 the opening of the casino.
3 specifically since the beginning of August
4 when they were authorized to sell alcohol under their
5 interim permit, what specifically have you observed that
6 led you to make your prior statement that traffic has
7 increased, excluding the testimony that you've already
8 made about the opening night?

9 ADMINISTRATIVE LAW JUDGE GREENBERG: We don't

10 have that information. You say the interim license was
11 issued when?

12 MR. PIERCE: October 2nd.

13 MR. FORMAN: Miss Locken testified it was
14 issued effective August 2nd of 2005.

15 MR. PIERCE: She testified that that was when
16 they were authorized. She didn't have personal
17 knowledge whether or not they began selling that date.

18 MR. FORMAN: That's correct.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

20 BY MR. PIERCE:

21 Q. Did you understand my question?

22 A. Yes, I did. Not to be redundant, but I'm
23 probably to end up repeating what's already been said.
24 I can give you my personal observance.

25 Q. That's all I want.

1 A. The inability to exit or enter my driveway
2 safely because of the amount of vehicles that are
3 traveling south and northbound on Singley Road; the
4 excessive speeds that they drive at; the times of the
5 day and the evening that I'm out checking cattle and the
6 ranches along the road, along Singley Road; the amount
7 of vehicles that I see.

8 our fence runs right above the two most
9 dangerous turns on the road. The number of vehicles
10 that I see swerving around there; the tires screeching;
11 the sound, the speed of the vehicles.

12 From our house, fortunately, we're not on the
13 road. We're up on a hill above Singley Road. At night
14 we can see the headlights winding up and down the road.
15 By the time it takes a vehicle to come from the southern
16 end of Singley past our driveway, it's easy to tell that
17 they're driving in excess of the posted speed limit.

18 Q. How long have you lived in your current
19 residence?

20 A. Eight years.

21 Q. Now you identified things that you have
22 observed since the opening of the casino -- headlights,
23 screeching tires, the time it takes you to exit or
24 access your property, times when you're out on the
25 pasture and make these observances.

1 Is there any way that you would be able to
2 quantify the difference or the increase from the
3 beginning of August, comparing it to the prior seven
4 years you lived there?

5 A. The greatest increase in traffic and erratic
6 driving that we've experienced in the last eight years
7 started primarily when construction began on the casino,
8 roughly, probably about a year ago at this time, maybe a
9 little before now a year ago.

10 The heavy equipment started coming in. The
11 road was torn apart. Most of the contractors, at least
12 from our observance, tended to leave on northbound
13 singley. Certainly most of the equipment came in that

14 way because the southbound part of Singley Road is so
15 steep, the majority of the trucks try to avoid it.

16 In the last year and a half, this is where we
17 have experienced the greatest increase in traffic.
18 Certainly since the casino opened in August, that's
19 where we have seen the increase in more private
20 vehicles.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Let's
22 take it from the time before the opening of the casino
23 and compare it to the time after the opening of the
24 casino. What percentage do you think traffic has
25 increased?

1 MR. HOLMES: Ninety percent.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: Any other
3 questions?

4 MR. PIERCE: Yes.

5 Q. The other area you mentioned was your
6 observation of an increase in the number of drivers
7 driving under the influence. What specifically have you
8 observed since the opening of the casino?

9 A. That chip truck out on the road.

10 Q. You've testified about that.

11 A. Okay. Just erratic driving up and down the
12 road. I don't know how you would describe it any other
13 way.

14 Q. So it's erratic driving, at least, and you
15 have attributed that to persons being under the

16 influence? Is that a fair characterization of your
17 testimony?

18 A. Yes. And then also as the previous person
19 testified, the amount of liquor containers up and down
20 Singley Road.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: Any other
22 questions?

23 MR. PIERCE: No, Your Honor.

24 ADMINISTRATIVE LAW JUDGE GREENBERG:
25 Cross-examination?

2 BY MR. FORMAN:

3 Q. Mr. Holmes, have you personally observed an
4 increase in the number of liquor containers on the side
5 of Singley Road since the casino opened?

6 A. Yes.

7 Q. Is it your belief that these liquor containers
8 came from the casino?

9 A. It is my belief that they are coming from
10 patrons of the casino.

11 Q. There were liquor containers on the side of
12 the road before the casino opened, correct?

13 A. Correct. But not near the quantity that there
14 are now.

15 Q. You testified earlier about observing an
16 incident involving the driver of a chip truck. You
17 testified that you observed this at some time between

18 4:30 and 5:30 in the morning. Do you remember the date?

19 A. It would be roughly the first week of

20 September.

21 Q. Was it dark when you saw this?

22 A. Yes, it was before dawn.

23 Q. You saw this in the headlights of your

24 vehicle?

25 A. The headlights of my vehicle and the

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1 headlights of the semi.

2 Q. Did you stop your vehicle and go out and

3 interact with the two individuals involved?

4 A. No.

5 Q. So you don't have any personal knowledge that
6 the individual that you believe to be the truck driver
7 was intoxicated, do you?

8 A. From every visible appearance he was
9 intoxicated.

10 Q. This would have been between 4:30 and 5:30 in
11 the morning?

12 A. Yes.

13 Q. Two hours after the casino stopped serving
14 alcohol?

15 A. I don't know when they stopped serving
16 alcohol.

17 Q. Did you observe that individual drive off in
18 the truck at that time?

19 A. No, I didn't at that time. He was still being

20 assisted by someone in front of the truck on the side of
21 the road.

22 Q. The behavior that caused you to believe he was
23 intoxicated was what? An uneven gait?

24 A. It appeared he had an inability to stand up on
25 his own. The other person was obviously supporting him

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1 and helping him stand. He was slumped down to one side.

2 He just looked like a staggering drunk.

3 Q. What is the posted speed limit on Singley Road
4 going past the casino?

5 A. In various places it's 15 miles per hour.

6 Q. Is that the posted speed limit or are those
7 "Caution" signs at particular points on the road?

8 A. I know on the turns it's 15 miles per hour.

9 To be honest, on the vast majority of Singley Road there
10 isn't a posted speed limit. In some places there may be
11 some 25 mile per hour signs.

12 Q. What about going by your house? Is there a
13 posted speed limit?

14 A. No.

15 Q. You testified that you have to cross the
16 center line of Singley Road in order to enter and leave
17 your driveway when you're pulling a stopped trailer, is
18 that correct?

19 A. Correct.

20 Q. Could you avoid having to do so by widening
21 your driveway?

22 A. I have widened my driveway.

23 Q. Could you widen it some more?

24 A. No, I could not.

25 Q. Why not?

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1 A. Because I have neighbors on both sides with
2 hedges and yards and culverts and a PG&E telephone pole
3 that prevents that.

4 Q. So you've widened your property line in both
5 directions?

6 A. Yes.

7 Q. Have you ever used a flagger when entering or

8 exiting your driveway?

9 A. Yes.

10 Q. Do you use one routinely?

11 A. No.

12 Q. Why not?

13 A. Because I enter and exit my driveway with my
14 trailer every day multiple times. It is an agricultural
15 exclusive area.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Other
17 questions, sir?

18 MR. FORMAN: I'm checking, Your Honor. One
19 moment.

20 Q. Is it your testimony that five or six or eight
21 vehicles prevent you from leaving your driveway every
22 time you go in and out of your driveway?

23 A. No. But since the casino opened, the increase

24 and amount of vehicles that we have to wait for to pass

25 our driveway is becoming more and more prevalent.

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1 Q. At four o'clock in the morning you have to

2 wait?

3 A. Sometimes at 4:00 o'clock in the morning.

4 Q. How often at 4:00 o'clock in the morning?

5 A. When I was leaving home that six-week period,

6 I'd say leaving every day between 4:00 and 5:00,

7 probably at least a third of that amount of time I would

8 have to wait for oncoming traffic.

9 Q. This was what time of year?

10 A. A month ago, late August to early October.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: Counsel,
12 this casino has a parking lot?

13 MR. FORMAN: Yes, it does. It holds over 700
14 cars.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: Is there
16 any problem with having any of the security officers
17 asking each entrant to that casino whether they have
18 parked on the premises?

19 MR. FORMAN: It would require an enormous
20 security force.

21 ADMINISTRATIVE LAW JUDGE GREENBERG: How many
22 entrances do you have to the casino?

23 MR. FORMAN: You're saying when people come in
24 the door?

25 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes.

1 MR. FORMAN: It's our experience that with the
2 exception perhaps of opening day, which we stipulate was
3 a nightmare, that is a situation that has not recurred
4 and there will be testimony to that effect.

5 The parking lot has rarely filled. It is not
6 the practice of the casino to encourage people to park
7 outside of the parking lot and casino patrons not
8 wishing to walk any further than they have to have no
9 reason to park outside of the parking lot that's been
10 provided.

11 ADMINISTRATIVE LAW JUDGE GREENBERG: I don't

12 know whether they do or they don't. I assume it's no
13 big burden to say, "Sir, have you parked in the parking
14 lot"?

15 MR. FORMAN: Except when there's a lot of
16 people coming in at once, it probably isn't. But I'll
17 note there is absolutely no evidence in the record of
18 any witness's knowledge that a particular individual has
19 parked on the road and come in to the casino. There's
20 been no evidence to that effect.

21 we have testimony that somebody was
22 observed -- a chip truck was observed parked across the
23 street from the casino and witnesses have assumed that
24 the individual associated with that truck was in the
25 casino.

1 But with respect to any personal knowledge
2 that that individual was in the casino, there is no
3 evidence to that effect. Similarly, there's no evidence
4 that any smaller vehicles have parked on the road and
5 gone to the casino.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: We don't
7 know. We don't know what condition they would enter the
8 casino.

9 Proceed. Any other questions of this witness,
10 Mr. Pierce?

11 MR. PIERCE: No, Your Honor.

12 ADMINISTRATIVE LAW JUDGE GREENBERG:

13 Mr. Forman?

14 MR. FORMAN: No, sir. ^{9F0863CA}

15 MR. HOLMES: Your Honor, if I may add
16 something you just brought up -- that chip truck is not
17 the only vehicle that parks out on the road by casino
18 patrons.

19 ADMINISTRATIVE LAW JUDGE GREENBERG: You know
20 that of your own knowledge?

21 MR. HOLMES: Yes, sir. The road is right in
22 front of their front door. For some people it's easier
23 to park partially in the road and walk up the embankment
24 into the casino instead of making a right hand turn,
25 crossing traffic, making a left hand turn into the

1 casino and then drive all the way to the back, which is
2 a much further walk out.

3 we have called Highway Patrol on several other
4 vehicles parked out there too and I can describe the
5 vehicles to you. At one time we had the license plate
6 numbers written down. This is an ongoing problem.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: Any other
8 questions of the witness?

9 MR. FORMAN: No, sir.

10 ADMINISTRATIVE LAW JUDGE GREENBERG: Any
11 further questions, Mr. Pierce?

12 MR. PIERCE: No, Your Honor.

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Sir,
14 thank you very much.

15 MR. HOLMES: Thank you, Your Honor.

16 ADMINISTRATIVE LAW JUDGE GREENBERG: Any

17 further housekeeping anybody wants to provide?

18 UNIDENTIFIED SPEAKER: I would like to testify

19 on --

20 ADMINISTRATIVE LAW JUDGE GREENBERG: You'd

21 like to testify to what?

22 UNIDENTIFIED SPEAKER: To the impacts to my

23 house. I live next-door to the casino.

24 ADMINISTRATIVE LAW JUDGE GREENBERG: To whom?

25 MR. FORMAN: To the casino, he said.

1 ADMINISTRATIVE LAW JUDGE GREENBERG: We don't

2 know who you are again. When you say "I," I don't know

3 who "I" is -- or rather, the Reporter doesn't know who
4 you are.

5 MR. HOLMES: My name Noel Krahforst.

6 ADMINISTRATIVE LAW JUDGE GREENBERG: We won't
7 take your testimony here today. The time is now 5:00
8 o'clock. This building closes shortly. I close
9 shortly. I have a long drive ahead of me tonight. I
10 want to make sure that we are awake to do that.

11 MR. KRAHFORST: Can I go on record that I have
12 testimony for the next hearing?

13 ADMINISTRATIVE LAW JUDGE GREENBERG: Yes, you
14 may. You're notified that you may appear at the next
15 hearing. We don't want to foreclose you. I want to
16 thank you for your indulgence as to postponing your
17 testimony.

18 Any questions about any housekeeping at all,

19 Mr. Forman?

20 MR. FORMAN: I just want to make sure that I

21 have a proper record of Protestant's Exhibit 5.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: That's a

23 letter from Humboldt County to the applicant regarding

24 road safety. It's Exhibit 5 but there's been no exhibit

25 produced yet.

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1 MS. FREGEAU: It's coming.

2 ADMINISTRATIVE LAW JUDGE GREENBERG: I will

3 leave Exhibit 5 open for the purpose of receipt. If it

4 is not received, I'll strike Exhibit 5.

5 MS. FREGEAU: I do also need to send one to
6 you, sir.

7 ADMINISTRATIVE LAW JUDGE GREENBERG: I would
8 think that's a good idea. Send it to the Office of
9 Administrative Hearings.

10 MR. PIERCE: The only housekeeping matters on
11 behalf of the Department were those previously
12 referenced in terms of the Department will be sending
13 notice to all the parties of the continued hearing now
14 scheduled for wednesday the 28th at 9:30.

15 Secondly, if Your Honor wishes, I will take
16 custody on behalf of the Department of all the
17 photographs that you have marked and have color copies
18 made for all the parties, returning the originals to
19 Your Honor.

20 ADMINISTRATIVE LAW JUDGE GREENBERG: I'll
21 describe those for you. Only from the protestants in
22 this matter so far, those include Exhibits III, Exhibits
23 IV-A, IV-A through D; Exhibit 6, A and B; Exhibit 7, A,
24 B and C; and there's some photographs from McVicker
25 regarding her residence.

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1 MR. FORMAN: I believe those were Exhibits 6-A
2 and B.

3 ADMINISTRATIVE LAW JUDGE GREENBERG: We have
4 that. Thank you. We also have Exhibit 8 which is the
5 diagram. Here's Exhibits 7, A, B and C; and Exhibit 8,
6 the diagram.

7 MR. PIERCE: Other parties may wish this.

8 I'll go ahead and make a copy of that as well.

9 ADMINISTRATIVE LAW JUDGE GREENBERG: And

10 Exhibit 9. All of those exhibits so labeled are

11 given -- all photographs have been given, including the

12 diagram, to Mr. Pierce for copying. Anything further?

13 MR. FORMAN: One more housekeeping matter,

14 Your Honor. We would object now to the reopening of

15 testimony by those who have already testified at the

16 continued session of this proceeding as well as the

17 introduction at that proceeding of documents that could

18 and should have been produced here today.

19 we would go on the record now as objecting to

20 essentially opening all kinds of doors again on matters

21 that should have been concluded today.

22 ADMINISTRATIVE LAW JUDGE GREENBERG: Well,
23 I've asked all of the protestants here to please let me
24 know if there was something new, nonrepetitive that they
25 had to offer. That has been offered. Except for Noel

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1 Krahforst and Mr. --

2 MS. FREGEAU: Mr. Costa has to address the
3 increasing crime. We didn't get to that today.

4 ADMINISTRATIVE LAW JUDGE GREENBERG: I won't
5 foreclose the protestants from continuing the offer for
6 new evidence or whatever evidence may be needed to rebut
7 any testimony or documents that will be produced on
8 behalf of the applicant.

9 Your motion is denied, counsel.

10 MR. FORMAN: In that case, Your Honor, I would
11 ask that the protestants be ordered to supply us in
12 advance of the next session of this proceeding with
13 whatever additional documentary evidence they intend to
14 introduce.

15 ADMINISTRATIVE LAW JUDGE GREENBERG: That's
16 only fair. Does everybody understand that? Anybody who
17 is going to testify from anything, whether it's a
18 writing, a document, anything at all, a photograph,
19 whatever it is -- copies of all of that, each and every
20 document, photograph, or other item must be supplied to
21 applicant's counsel, Mr. Forman.

22 If you have any doubt as to where that
23 information should be directed, please contact the

24 Department. They'll provide Mr. Forman's address. If
25 you know that you're going to do that at the next

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1 hearing, let Mr. Forman know about it now.

2 MR. FORMAN: May we have that at least two
3 weeks in advance of the hearing?

4 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.
5 The hearing is scheduled for the 28th. That would be by
6 the 14th of December.

7 MR. FORMAN: Thank you, sir.

8 MR. PIERCE: Your Honor, could I request that
9 that order extend to the applicants since we have
10 received no documentary evidence in discovery from the

11 applicant as well?

12 ADMINISTRATIVE LAW JUDGE GREENBERG: So

13 ordered.

14 MS. FREGEAU: May we also get a copy?

15 ADMINISTRATIVE LAW JUDGE GREENBERG:

16 Absolutely.

17 MS. FREGEAU: Thank you.

18 ADMINISTRATIVE LAW JUDGE GREENBERG: Okay.

19 The hearing is adjourned.

20 (The parties went off the record at 5:10 p.m.)

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1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF HUMBOLDT)

4

5 I, Joshua W. Scott, Certified Shorthand

6 Reporter Number 4328 for the State of California, do

7 hereby certify:

8 That said proceedings were taken down by me

9 in shorthand at the time and place herein named and

10 thereafter reduced to typewriting under my direction,

11 and the same is a true, correct and complete transcript

12 of said proceedings. I further certify that I am not

13 interested in the outcome of the action.

14 witness my hand this 22nd day of October,

15 2005.

16

17

18 _____

19 JOSHUA W. SCOTT

20 CSR. NO. 4328

21 State of California.

22

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