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BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE PROTEST OF: )  
)  
)  
Antoinette Ballister, et al., )  
P.O. Box 591 )  
Loleta, CA 95551-0591 ) FILE: 47-423392  
) REG.: 05060025  
AGAINST THE PERSON TO PERSON AND )  
PREMISES TO PREMISES TRANSFER OF )  
AN ON-SALE GENERAL PUBLIC EATING )  
PLACE LICENSE TO: )  
)  
Bear River Casino )  
11 Bear Paws Way )  
Loleta, CA 95551 )  
)  
\_\_\_\_\_)

A001B73A

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VOLUME II

17

TRANSCRIPT OF PROCEEDINGS

18

WEDNESDAY, MARCH 8, 2006

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EUREKA, CALIFORNIA

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REPORTED BY: KRISTINA HOFSTAD, CSR No. 6912, RPR, CRR

25

FILE NO.: A001B73

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DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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4

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11 Bear Paws Way )

12 Loleta, CA 95551 )

)

13 \_\_\_\_\_) VOLUME II

14

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17 Transcript of Proceedings, taken at 531 "K"

18 Street, Eureka, California, commencing at 10:00 a.m.,  
Page 3

19 Wednesday, March 8, 2006, before Kristina Hofstad, CSR

20 No. 6912, RPR, CRR.

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A P P E A R A N C E S

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JUDGE ARNOLD GREENBERG

5

6 FOR THE APPLICANT:

7 FORMAN & ASSOCIATES

BY: GEORGE FORMAN

8 Attorney at Law

4340 Redwood Highway

9 Suite F228

San Rafael, California 94903

10 (415) 491-2310

11

12 FOR THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL:

13 JOHN R. PEIRCE, Chief Counsel

Attorney at Law

14 3927 Lennane Drive

Suite 100

15 Sacramento, California 95834

(916) 419-2517

16

17 FOR THE PROTESTANTS:

18 SUZI FREGEAU

19 (In Pro Per)

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1 Eureka, California, Wednesday, March 8, 2006

2 10:58 a.m.

3

4 JUDGE GREENBERG: Okay. We'll start the

5 hearing.

6 This is the time and place for the continuance  
7 of the hearing in the matter of the Bear River Casino,  
8 file number 4723392, Reg. 05060025.

9 I'm Arnold Greenberg, administrative law judge,  
10 assigned by the administrative hearing office to hear  
11 this matter.

12 The Department of Alcoholic Beverage Control's  
13 attorney, Mr. Peirce, is present; is that correct?

14 MR. PEIRCE: Correct, your Honor.

15 JUDGE GREENBERG: The applicant's attorney,  
16 Mr. George Forman, is present; is that correct?

17 MR. FORMAN: Yes.

18 JUDGE GREENBERG: And Susan Fregeau who is  
19 appearing on behalf of all of the protestants. Is that  
20 correct, Ms. Fregeau?

21 MS. FREGEAU: Yes, sir.

22 JUDGE GREENBERG: At the last hearing, which I  
23 believe was, according to my notes, October 19, 2005,  
24 photos, including Protestants' Numbers I through VIII  
25 were provided to Mr. Peirce for purposes of copying.

197

1 Those photos have been returned.

2 Is there any problem, folks, regarding their  
3 admission? Mr. Peirce?

4 MR. PEIRCE: No objection.

5 JUDGE GREENBERG: Mr. Forman?

6 MR. FORMAN: Other than lack of foundation and  
7 relevance, no objections.

8 JUDGE GREENBERG: II is admitted into evidence.

9 Objection overruled.

10 III is admitted into evidence. Photos of  
11 Singley Road has already been admitted into evidence.

12 V is a letter from Humboldt County to the  
13 applicant regarding road safety.

14 Is that the document you were talking about?

15 MS. FREGEAU: Perhaps that is the one that -- if  
16 there is no V, then that is the one I was talking about,  
17 the county, and you had asked me to send documentation  
18 that the county had addressed the concerns about the  
19 width of the road. If that is what you are speaking  
20 about, that would be these letters that I just showed  
21 you, all addressing the same issue.

22 MR. FORMAN: As to those, we will object to lack  
23 of foundation, hearsay. They were addressed to tribe.



24 JUDGE GREENBERG: All I am asking, number one,  
25 was that the one in 1997, is that the one we were talking

198

1 about?

2 MS. FREGEAU: Yes, sir.

3 JUDGE GREENBERG: My notes indicate that it has  
4 not yet been admitted into evidence.

5 There were six photos from McGyver at her  
6 residence. Those were admitted. There is a photos of  
7 the Protestant Holmes, which was Exhibit VII, Roman  
8 numeral VII.

9 MS. FREGEAU: VII.

10 MR. PEIRCE: Those are Mike Holmes.

11 MS. FREGEAU: I apologize. I thought you said

12 "home." Yes.

13 JUDGE GREENBERG: Holmes, H-o-l-m-e-s.

14 MS. FREGEAU: Yes, sir.

15 JUDGE GREENBERG: Those are admitted.

16 There is a Holmes diagram, which is Exhibit

17 VIII, and it is admitted.

18 MR. FORMAN: Your Honor, I didn't hear a ruling

19 on Roman Number V.

20 JUDGE GREENBERG: That hasn't been ruled upon.

21 MR. FORMAN: Okay. I just wanted to make sure I

22 didn't miss it.

23 JUDGE GREENBERG: We don't have any information

24 on it, but I have tentatively labeled that as V.

25 MR. FORMAN: So it is marked for identification?

1           JUDGE GREENBERG: It is not even marked for  
2   identification. We'll have to have some testimony about  
3   it.

4           Okay. I'm going to go over the roll call of the  
5   protestants. If you are here, please answer "here."

6           MR. FORMAN: These notes do reflect at the last  
7   hearing you dismissed, I believe, 22 of the protests of  
8   those who were not present at the last hearing. I made  
9   that motion, and I believe your Honor ruled on it.

10          JUDGE GREENBERG: Yes. Antoinette -- let me go  
11   over that so we can have the record clear.

12          At the hearing in October, certain protestants  
13   did not appear. If they do not appear at the hearing, I

14 will entertain a motion that the protest be dismissed for  
15 want of appearance at the hearing.

16 Those persons who were marked as absent are as  
17 follows: Antoinette Ballister, Louis Ballister, Cary  
18 Nash, Tim Nash, Kenneth Cunningham.

19 And that is all I have as absent.

20 MR. FORMAN: I also show as having been absent  
21 Gordon Stevens, Christopher Jones, Morrison James,  
22 Christi walstrom.

23 JUDGE GREENBERG: Let me see.

24 That is true. Gordon Stevens was absent.

25 Christopher Jones was absent. Morrison James was absent.

1 Christi walstrom was absent. <sup>A001B73A</sup> Cynthia Moore was absent.

2 Arlene Rose was absent. Charles Peneau was absent.

3 David Blackly was absent. James Reeves was absent.

4 Virginia Reeves was absent. Mark Miller was absent.

5 Gina Miller was absent. Tim Daily was absent. Meghan

6 McGee was absent.

7 Also absent was Molly Aldinger, Steve

8 Giltsguard. I said Marie -- Merle Aldinger, rather, and

9 Donald Gigland was absent.

10 Are there any other parties that were absent?

11 MR. FORMAN: I believe Pamela Marie Aldinger

12 also was absent unless my notes are in error.

13 JUDGE GREENBERG: I have M. Merle Aldinger. You

14 say Pamela Marie?

15 MR. FORMAN: I believe there is Pamela Marie

16 Aldinger also.

17           And at the last hearing, your Honor, was also  
18 going to consider whether those who were not present but  
19 whom others claimed to be representing them would be  
20 deemed dismissed as well. And that would be Jacob --

21           JUDGE GREENBERG: Several persons. Let me tell  
22 you who they are. But first let me talk about the ones  
23 that were, in fact, absent.

24           So the protest of Antoinette Ballister is deemed  
25 abandoned and dismissed. Protest of Louis Ballister is

201

1 dismissed.

2           MS. FREGEAU: Excuse me, your Honor. Does that  
3 mean that Mrs. Ballister cannot testify?

4                   JUDGE GREENBERG: No. <sup>A001B73A</sup> She can testify. She is  
5 a witness. That is fine.

6                   MS. FREGEAU: I didn't know what dismissed  
7 meant. I'm sorry.

8                   JUDGE GREENBERG: It means their protest will  
9 not be considered.

10                  Louis Ballister, according to my information,  
11 and Antoinette Ballister were not present at the last  
12 hearing.

13                  MS. FREGEAU: Sir, I thought that was not going  
14 to be dismissed because she had jury duty, as well, was  
15 unable to attend. She did not just not come, and I  
16 thought we had talked about not dismissing her protest  
17 because she --

18                  JUDGE GREENBERG: I have no notes showing that  
19 she was on jury duty. I'll reconsider if she testifies

20 under oath that she was otherwise detained on, I assume,  
21 county business.

22 MS. FREGEAU: Thank you, sir.

23 JUDGE GREENBERG: All right. The protest of  
24 Antoinette Ballister will be -- its dismissal will be  
25 considered, reconsidered later.

202

1 But the protest of Louis Ballister is dismissed.

2 The protest of Cary Nash and Tim Nash are  
3 dismissed for non-appearance.

4 The protests of Gordon Stevens and Christopher  
5 Jones are dismissed. The protest of Morrison James is  
6 dismissed, as are the protests of Christi Jean Walstrom



7 and Cynthia Moore, Arlene Rose, Charles Peneau and David

8 Blackly, likewise, their protests are dismissed.

9 Protests of James Reeves and Virginia Reeves,

10 dismissed. Mark Miller and Gina Miller are dismissed.

11 Protest of Tim Daily dismissed. And the protests of

12 Steve Giltsguard, Marie Aldinger, Pam Marie Aldinger and

13 Ronald Gigland are each likewise dismissed.

14 The questions then remain as to whether or not

15 there is representation for other protestants. And for

16 that purpose, I need to talk with -- if you'll come

17 forward and line up, I'll swear you all in at the same

18 time. Valerie Holmes, Mike Holmes. Mr. Mike Holmes.

19 MIKE HOLMES: I represent my wife and Jacob

20 Johnson.

21 JUDGE GREENBERG: I understand. I want it under

22 oath.

23 when you do swear under oath, please remove your

24 hat.

25 ///

203

1 MIKE HOLMES,

2 having been duly sworn by Judge Greenberg,

3 was examined and testified as follows:

4

5 EXAMINATION

6 BY JUDGE GREENBERG:

7 Q. Mr. Holmes, your name is Mike Holmes, and you

8 live in Ferndale?

9 A. Actually that is a mailing address. I live on

10 360 Echo Lane Extension, Loleta. A001B73A

11 Q. You are married to Valerie Holmes?

12 A. Correct.

13 Q. You represent her?

14 A. Correct.

15 Q. For the purpose of this hearing?

16 A. Correct.

17 JUDGE GREENBERG: Thank you.

18 Any examination of this witness?

19 MR. PEIRCE: No, your Honor.

20 MR. FORMAN: None, your Honor.

21 JUDGE GREENBERG: Thank you.

22 THE WITNESS: I also represent Jacob Johnson.

23 That was mentioned at the last hearing also.

24 JUDGE GREENBERG: Jacob Johnson?

25 THE WITNESS: Yes.

1           MR. FORMAN: As to that, I do have some  
2 questions, your Honor. I'm sorry.

3           At the last hearing, Mr. Holmes did not claim to  
4 represent Mr. Johnson.

5           JUDGE GREENBERG: My note shows, "represented by  
6 Mike Holmes."

7           MR. FORMAN: At the last hearing?

8           JUDGE GREENBERG: I don't know if it was the  
9 last hearing or not.

10          It shows Jacob Johnson represented by Mike  
11 Holmes.

12          MR. FORMAN: I'm sorry. You are absolutely

13 correct.

14 In that case, I would ask what proof Mr. Holmes  
15 has of the capacity in which he has been designated  
16 Mr. Johnson's representative. Do we have anything from  
17 Mr. Johnson that confirms Mr. Holmes' representative  
18 capacity and what is the relationship?

19 JUDGE GREENBERG: Is there anything in writing  
20 you have at all from Mr. Johnson?

21 THE WITNESS: No. However, he is a person that  
22 I employ and spends a great deal of time on my ranch and  
23 on Singley Road.

24 JUDGE GREENBERG: Did he ask you to represent  
25 him?

1 THE WITNESS: Yes. There is a witness to him  
2 asking that.

3 JUDGE GREENBERG: Objection overruled.

4 Thank you.

5 THE WITNESS: You are welcome.

6 JUDGE GREENBERG: And is there Abigail  
7 Hudson-Crim here?

8 Is there a Brodie DeLaney who was claimed to  
9 have been represented by Abigail Hudson-Crim. The  
10 allegation of representation is stricken. Brodie  
11 DeLaney's protest is dismissed for failure to appear.

12 Ms. Fregeau?

13 MS. FREGEAU: Yes.

14 JUDGE GREENBERG: Do you know Steve Fregeau?

15 MS. FREGEAU: Yes, sir.

16 JUDGE GREENBERG: Are you a member of the <sup>A001B73A</sup>

17 family?

18 MS. FREGEAU: Yes, sir.

19 JUDGE GREENBERG: who is he?

20 MS. FREGEAU: He is my husband.

21 ///

22 ///

23 ///

24 ///

25 ///

206

1 SUZI FREGEAU,

2 having been duly sworn by Judge Greenberg,

3 was examined and testified as follows:

4

5

EXAMINATION

6

BY JUDGE GREENBERG:

7

Q. You are here on behalf of your husband, Steve

8

Fregeau; is that correct?

9

A. Yes, sir.

10

JUDGE GREENBERG: Any questions of this

11

witness?

12

MR. PEIRCE: Not on behalf of the Department,

13

your Honor.

14

MR. FORMAN: None from me, your Honor.

15

JUDGE GREENBERG: Okay. Representation has been

16

established. Steve Fregeau has appeared.

17

Renee DeLaney. Renee DeLaney here?

18

James DeLaney was supposedly represented by



19 Renee DeLaney. There is no representation by Renee other  
20 than a statement -- not under oath. James DeLaney's  
21 protest is dismissed.

22 Is Betty May Nicols here? She was supposedly  
23 represented by Renee DeLaney. She has not appeared. The  
24 protest of Betty May Nicols is dismissed for  
25 non-appearance. Betty May Nicols is not here. She was

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1 represented by Renee DeLaney.

2 MS. FREGEAU: She is not here, sir.

3 JUDGE GREENBERG: Renee DeLaney is not here.

4 The protest of Betty May Nicols is dismissed.

5 That is all I have by way of representations.

6 Anybody else have any information as to any other party

7 or any other protestant, rather, as to their  
8 non-appearance being excused by reason of representation  
9 by another protestant.

10 Ms. Fregeau, you look bewildered.

11 MS. FREGEAU: I'm not sure if Mr. or Mrs. Porter  
12 signed the original complaint. They are here today  
13 because they have had some property damage since the last  
14 hearing. And I would ask that they be allowed to  
15 testify.

16 JUDGE GREENBERG: Porter?

17 MS. FREGEAU: Porter.

18 MR. FORMAN: They are not protestants.

19 JUDGE GREENBERG: They can testify.

20 MS. FREGEAU: However, they are homeowners on  
21 the Singley Road.

22                   JUDGE GREENBERG: They <sup>A001B73A</sup>can testify, but we can't  
23 consider them protestants as they are not protestants,  
24 if, in fact, their testimony is relevant.

25                   MS. FREGEAU: Thank you.

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1                   JUDGE GREENBERG: All right. Then that  
2 exhausted the roll of protestants as to appearances and  
3 whether those protests are to be dismissed.

4                   Just a moment, please.

5                   I have a Cary Brian Nash and Kimberly Nash. Are  
6 they listed as protestants? I have only got a partial  
7 list of the protestants.

8                   MR. PEIRCE: Earlier you dismissed them for  
9 non-appearance, the Nashes.

10 JUDGE GREENBERG: Thank you.

11 Okay. I think we have most of the housekeeping  
12 done.

13 MR. PEIRCE: One housekeeping matter on behalf  
14 of the department is to have the two notices of continued  
15 hearing appended to department Exhibit 1 for  
16 jurisdictional purposes.

17 JUDGE GREENBERG: All right.

18 MR. PEIRCE: One of which continued the hearing  
19 to December 28 and the second continued it to today's  
20 date.

21 MR. FORMAN: No objection.

22 MR. PEIRCE: For my notes, is it your intention  
23 to just attach these to the Department's Exhibit 1?

24 JUDGE GREENBERG: To Exhibit 1.

25 MR. PEIRCE: Thank you. A001B73A

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1 JUDGE GREENBERG: The two notices of continuance  
2 and their attendant documents are each admitted as  
3 Exhibit 1. Those were showing continuance to December  
4 28, 2005. And the other being the -- I don't have the  
5 actual notice. You have given me the declaration.

6 MR. PEIRCE: Well, I had copies made. For the  
7 one for today?

8 JUDGE GREENBERG: Yes.

9 MR. PEIRCE: Is that true of your copies as  
10 well?

11 MR. FORMAN: No. I have both the cover pages.  
12 I'd be happy to give his Honor my copies. I won't need

13 them today.

14 MR. PEIRCE: Apparently in the collation, there

15 was a --

16 MR. FORMAN: You have the other one, okay.

17 JUDGE GREENBERG: The notice of continued

18 hearing, which is today's hearing of March 8, and its

19 attendant documents are likewise admitted as part of

20 Exhibit 1.

21 MR. FORMAN: Your Honor, I must inquire for

22 clarity of the record, the materials that Mr. Peirce

23 handed me, two separate documents, one of them was not

24 only the notice of continued hearing on protest and

25 declaration of service, but also seems to have a letter

1 appended to it. Is that part of the packet that your  
2 Honor has just received?

3 JUDGE GREENBERG: Well, Exhibit 1, as provided  
4 by Mr. Peirce, is notice of continued hearing on protest  
5 of today's date, together with the declaration of by  
6 mail. The other notice is community hearing on protest,  
7 one of the continuance to December 28, 2005, declaration  
8 of service by mail and a list of protestants.

9 Thank you for calling to my attention the Stand  
10 Up for California letter.

11 MR. FORMAN: That is what I have a problem with.  
12 We'll object to that as being included as an exhibit in  
13 this record at all.

14 MR. PEIRCE: That is included because it was  
15 mailed out at the same time as that notice of hearing and

16 is reflected in the declaration of service. And was done  
17 following the last hearing on questions relating to the  
18 existence or what constituted the Singley Hills  
19 Homeowners' Association.

20 It is because it was sent to me by Stand Up for  
21 California I had included it. It is not for the purposes  
22 of jurisdiction and subsequent use or not by the parties.  
23 I do not believe it is an evidentiary issue at this  
24 point, rather part of the jurisdictional packet.

25 JUDGE GREENBERG: If it was mailed out to the

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1 parties for notice, I am going to include it. Objection  
2 is overruled.



3           MR. FORMAN:  However, your Honor, we -- to the  
4 extent that it is included simply as documentation of  
5 what the department mailed to the parties, we, of course,  
6 have no objection.

7           JUDGE GREENBERG:  That is what the notices of  
8 hearing are.

9           MR. FORMAN:  To the extent that the letter is  
10 intended to be given any evidentiary significance, we  
11 have objections because I don't believe it has been  
12 offered by the protestants.  I don't believe that the  
13 department is in a position to sponsor it as an exhibit  
14 for the content of the letter.

15           JUDGE GREENBERG:  The truth of the matter set  
16 forth therein is not considered, okay.  The only thing I  
17 am considering is the actual notice and information that  
18 was transmitted by the department to all of the other

19 parties, and which was included in their affidavits of  
20 mailing. I can't delete that from the affidavit. I can  
21 only show what is contained in it. Therefore, it is  
22 admitted.

23 MR. FORMAN: Thank you.

24 JUDGE GREENBERG: Of course I'll give it, as we  
25 say, the weight to which it is entitled.

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1 MR. FORMAN: To the extent that the content of  
2 the letter is at issue, I believe that there needs to be  
3 more than mere weighing of the content. The document is  
4 not under oath. It was not timely submitted as a  
5 protest. It contains -- it is replete with hearsay. It

6 has no foundation; and therefore, we would object to it  
7 being part of the evidence at all.

8           It may well be part of the record for  
9 housekeeping purposes because it is something the  
10 department mailed to the parties. But it has no place in  
11 the substantive evidence of this proceeding unless it has  
12 had a sponsoring witness and can survive objection, which  
13 I don't believe it can.

14           JUDGE GREENBERG: I've made my ruling. So  
15 stated.

16           MR. FORMAN: Thank you.

17           JUDGE GREENBERG: Let's proceed.

18           I am not certain where we were at the conclusion  
19 of the last hearing. Ms. Lokhen had testified.

20           MS. FREGEAU: Can we take a few minute break?

21           JUDGE GREENBERG: Yes. Just a few minutes.

22 we'll adjourn for lunch in about half an hour. Go ahead.

23 Five-minute break.

24 MS. FREGEAU: Thank you, sir.

25 (A brief recess was taken.)

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1 JUDGE GREENBERG: Mr. Holmes, would you come

2 forward, please.

3 THE WITNESS: Yes, your Honor.

4 JUDGE GREENBERG: Thank you, Mr. Holmes, you can

5 consider yourself still under oath. Would you take a

6 seat, please.

7 THE WITNESS: Yes.

8

9

FURTHER EXAMINATION

10 BY JUDGE GREENBERG:

11 Q. All right. Mr. Holmes, we had pretty much  
12 completed your testimony. It had been subject to some  
13 cross-examination. I am asking that you not repeat  
14 anything that you testified to previously.

15 A. Yes.

16 Q. You said, I remember, informally during a break  
17 that you had additional information. And you wish to  
18 submit that; correct?

19 A. Yes. Correct.

20 Q. Proceed.

21 A. Okay. On the evening of November 20th, 2005,  
22 approximately between 5:30 and 6:00 on northbound Singley  
23 Road, we were on our way home. It was a very, very foggy  
24 night. The driving conditions on the road, which is very

25 common there, were highly unsafe.

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1 I was traveling northbound on Singley Road just  
2 approaching the McVicker's residence before the first  
3 sharp turn begins. A speeding vehicle leaving the casino  
4 passed me on the inside, it would be my left side,  
5 swerved and went around my trailer and my truck into the  
6 oncoming lane of traffic, struck the McVicker's van that  
7 was parked out on the road in front of their residence.

8 Upon realizing that they had hit it, this person  
9 stopped in the middle of the road blocking both lanes,  
10 jumped out of their car, came back and started to  
11 confront me. And I had my wife and my two children in

12 the truck with us. We were driving at approximately 15  
13 to 20 miles per hour, driving very slow because of the  
14 conditions.

15 This person proceeded to rant and rave and  
16 accost me verbally and my wife. They were just causing a  
17 total scene. This person was obviously intoxicated.

18 I asked him where he had been.

19 He said he was at the casino; however, it was  
20 none of my business. He proceeded to blame me for the  
21 accident. He turned and he looked at Jim McVicker's van  
22 and witnessed the damage he had caused to it.

23 Fortunately he didn't even hit us. I don't know  
24 how he missed us. He continued to park in the middle of  
25 the road. At that time we wrote down his license plate

1 number, called Highway Patrol from our cell phone, and  
2 this person continued for several more minutes to  
3 verbally cuss me out and just act in a very uncivilized  
4 manner and then hopped in his car and sped off.

5           Unfortunately, the Highway Patrol could not find  
6 that person that night. They arrived several minutes on  
7 the scene after he left. Because the vehicle had just  
8 been purchased and the information had not made it  
9 through DMV to CHP to reveal a current address. And the  
10 person was later about two weeks after that arrested for  
11 a hit and run.

12           Q. Is that the additional information you wish me  
13 to receive?

14           A. Yes. And then also information -- I just wanted



15 to make it aware that we had mailed to Mr. Forman, A.B.C.  
16 and your office since the last hearing pertaining to  
17 Highway Patrol reports for incidents that have occurred  
18 on Singley Road in the recent past.

19 Q. Is it on north Singley Road?

20 A. Southbound and northbound Singley Road.

21 Q. I haven't received any such information.

22 A. It would have been in the form of Highway Patrol  
23 copies of incidents along the road.

24 And something else I would like to also mention  
25 is we have been dealing with Highway Patrol for months.

1 And one of the troubles we are having in collecting this

2 data to actually show factually what is happening on the  
3 road, unless residents are personally involved in some of  
4 the accidents, they are at times unwilling to provide us  
5 with the accident reports. And also we are not receiving  
6 the information from Highway Patrol in a timely manner.

7 Q. Well, unfortunately, I don't represent the  
8 Highway Patrol.

9 A. I realize that.

10 Q. Nor have I access to any of their reports. So  
11 unless you have those reports and have copies of them to  
12 show to each party, then we'll receive any objections  
13 regarding those reports, I can't consider them.

14 Is there any other additional information which  
15 we need to receive?

16 A. I have a copy of the accident report that  
17 involved me personally, and then I have a copy of the

18 information Highway Patrol has provided us with so far  
19 showing -- or at least listing the accidents that have  
20 occurred on Singley Road and in the Bear River Casino  
21 parking lot.

22 Q. Since when to when?

23 A. The earliest one goes back to 9/6/05 and my  
24 information ends right about the first week of December.  
25 And we have since requested additional information that

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1 we have not received.

2 Q. Have you shown those reports to each of the  
3 counsel?

4 A. Each of the counsel should have received copies

5 of these reports.

6 JUDGE GREENBERG: Mr. Peirce, have you seen

7 copies of these reports?

8 MR. PEIRCE: Until I can compare and confirm --

9 I have received several different copies of various

10 reports from the sheriff's office, and so I need to

11 confirm the specific report that Mr. Holmes is speaking

12 about so I can compare it to my files.

13 MR. FORMAN: More generally, your Honor, we did

14 receive from the protestants earlier copies of various

15 CHP documents.

16 We would object to the receipt into evidence of

17 any such documents on several grounds -- first of all,

18 under Vehicle Code Section 20013, accident reports may

19 not be used as evidence. Two, conclusions set forth in

20 any such accident reports are inadmissible as hearsay.

21 The opinions, if any, expressed in such accident reports  
22 are also inadmissible as hearsay. And so the documents  
23 themselves may not be received.

24 More generally with respect to Mr. Holmes' just  
25 concluded testimony, we would object specifically to

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1 giving any evidentiary affect to his comments about his  
2 belief as to the intoxicated state of the driver. There  
3 is no evidence, competent evidence, in the record as to  
4 the fact of the driver's intoxication.

5 JUDGE GREENBERG: Well, he said there was a  
6 police report regarding it. Maybe there is something  
7 contained in there.

8 MR. FORMAN: The police report itself would not  
9 be admissible because it is hearsay. And the vehicle  
10 code does not allow the admission into evidence of such  
11 documents. 20013 does not permit that. And, in fact,  
12 20015 specifically prohibits the inclusion in a report of  
13 any determination by the peace officer of fault of the  
14 reporting person. And there is relevance.

15 JUDGE GREENBERG: I am only considering whether  
16 or not it might be hearsay. Objection might be  
17 ameliorated if we are just talking about whether an  
18 accident did occur.

19 MR. FORMAN: We have no reason to question  
20 Mr. Holmes' testimony about the fact that an accident  
21 occurred. What we don't know is anything other than  
22 Mr. Holmes' account.

23 JUDGE GREENBERG: We are talking about the other

24 reports he wishes to consider regarding details of other  
25 accidents. I agree that the details of the other

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1 accident would not be persuasive at all because they are  
2 hearsay and have no testimony. But the fact that an  
3 accident has occurred, I think, is relevant.

4 MR. FORMAN: If, in fact, there is proof that an  
5 accident occurred. A mere report does not rise to the  
6 level of proof.

7 UNKNOWN SPEAKER: I --

8 JUDGE GREENBERG: No, sir. Talk to your  
9 representative. Don't talk to me. You have a  
10 representative.

11 Do we have those reports?

12 THE WITNESS: I have a copy right here, if you  
13 want to see one, your Honor, firsthand.

14 MS. FREGEAU: Your Honor, the vehicle that was  
15 struck is owned by Mr. McVicker, and is here to testify  
16 later on about that. We have a copy of the police  
17 report, the Highway Patrol went to his home, viewed the  
18 accident area and the damage done to his vehicle.

19 JUDGE GREENBERG: That would be cumulative. The  
20 witness's testimony to that has been admitted. It hasn't  
21 been tested by cross-examination yet.

22 MS. FREGEAU: Okay.

23 JUDGE GREENBERG: So we don't need accumulation  
24 of Mr. McVicker.

25 MS. FREGEAU: Okay. We do have the police



1 report.

2 JUDGE GREENBERG: What the police report says  
3 regarding that is not in evidence.

4 Have you read the reports, Counsel?

5 MR. PEIRCE: I have only reviewed it, your  
6 Honor.

7 Do you want this one marked?

8 MS. FREGEAU: We can enter that. We can give it  
9 to the judge.

10 MR. FORMAN: Your Honor, in the interest of  
11 saving time, we don't dispute that the McVicker vehicle  
12 was struck by somebody who apparently left the scene.  
13 However, the testimony that the alleged perpetrator said

14 he was from the -- coming from the casino is hearsay.

15 JUDGE GREENBERG: I am going to exclude the

16 traffic report given to me. And the testimony of the

17 witness is sufficient as regarding the occurrence of the

18 accident and his observations regarding what happened in

19 the course of that accident.

20 MR. FORMAN: That is absolutely correct. That

21 is not hearsay.

22 JUDGE GREENBERG: The report itself will be

23 cumulative as well as some hearsay. And its

24 admissibility is not going to be tested at this time. It

25 is inadmissible.

1 Do you have any questions you have of this  
2 witness?

3 MR. PEIRCE: Just one comment on the ruling,  
4 your Honor, for clarification. And at this point I  
5 understand the exhibit has not been marked so unless  
6 something changes, it will not become part of the record.  
7 But the ruling is based upon its cumulative nature.

8 AS I understand your ruling, since it could be  
9 admissible as administrative hearsay to corroborate  
10 Mr. Holmes' testimony, that doesn't go to the cumulative  
11 nature.

12 JUDGE GREENBERG: Well, there is no  
13 cross-examination of the witness regarding his testimony  
14 so far. So its weight itself at this point need not be  
15 corroborated.

16 MR. PEIRCE: Okay. That is fine.

17 JUDGE GREENBERG: Okay. We will reserve whether  
18 or not after cross-examination Mr. Holmes and Ms. Fregeau  
19 wish to revisit the ruling.

20 Okay. Are you finished with your testimony as  
21 to what occurred subsequent to your last appearance?

22 THE WITNESS: Yes.

23 JUDGE GREENBERG: All right. Do you have any  
24 questions of the witness?

25 MR. PEIRCE: Yes. Just a few, your Honor.

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1

2 CROSS-EXAMINATION

3 BY MR. PEIRCE:

4 Q. Let me make certain that I understand your  
5 testimony. I thought I heard you indicated initially  
6 that the person swerved to try to pass you on the right  
7 or the shoulder and then moved over into the oncoming  
8 lane. Did I understand that correctly?

9 A. No. They moved into the left into oncoming  
10 traffic.

11 Q. So the initial was as if they were going to pass  
12 you despite the conditions?

13 A. Correct.

14 Q. Okay. When the person stopped their vehicle and  
15 approached your car -- which was hauling the trailer at  
16 the time; is that correct?

17 A. Correct.

18 Q. -- did you roll down your window or was it down  
19 or was it up?

20 A. It was up. And as he approached me, I

21 cautiously rolled my window down about halfway.

22 Q. How close did he approach your vehicle?

23 A. He approached to the distance of putting his

24 head in my window.

25 Q. So he actually had his head in your vehicle?

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1 A. Yes.

2 Q. What, if anything, did you observe about him at

3 that time?

4 A. His manner, which was very aggressive. He

5 displayed an obviously intoxicated manner. And then when

6 he did begin to verbally accost us, you know, to use

7 polite terms, the smell of alcohol<sup>A001B73A</sup> on his breath because

8 of his close proximity to us.

9 Q. So you smelled alcohol?

10 A. Yes.

11 Q. Are you a drinker, Mr. Holmes?

12 A. Yes.

13 Q. Okay. So you are familiar with that?

14 A. I think probably most anyone would be if you

15 smelled the breath of a highly intoxicated --

16 Q. I'm trying to get to specific facts and

17 understand what you observed as opposed to your

18 conclusions, if I can draw that distinction.

19 other than his breath, did you observe anything

20 about his -- that you recall today, anything about his

21 clothing, his person, his eyes or anything else that

22 would have -- might have contributed to the conclusion

23 that you drew?

24 A. Slurred speech, the way that he walked and

25 acted, his very aggressive nature, which I understand

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1 with some people when they do drink too much, they become

2 overly aggressive.

3 Q. Let me ask you to elaborate. When you say his

4 walk. What did you observe when he approached your car

5 about his walking?

6 A. An exaggerated stagger. Several times he did

7 stand in the road and wasn't unsure of the local

8 surrounding and what he was going to do next.

9 MR. FORMAN: Objection. Speculation on the part



10 of the witness.

11 JUDGE GREENBERG: Sustained.

12 BY MR. PEIRCE:

13 Q. Where was the McVicker's van parked when it was  
14 struck?

15 A. On the shoulder of the road in front of their  
16 house.

17 Q. And how far off of the pavement was it located,  
18 if you could estimate?

19 A. I cannot estimate feet or inches, but it is  
20 parked as far off the pavement as they possibly can park  
21 it. And they do have orange safety cones out on the  
22 corners of both vehicles.

23 JUDGE GREENBERG: Well, let me ask: Were its  
24 outside wheels on the actual pavement?

25 THE WITNESS: I can't tell you that.

1 JUDGE GREENBERG: That is your answer.

2 BY MR. PEIRCE:

3 Q. Is there any -- would you be able to estimate  
4 the speed of this vehicle when it approached behind  
5 you?

6 A. When I first noticed this vehicle, I would  
7 estimate its speed between 40 and 50 miles per hour.

8 MR. PEIRCE: No further examination.

9 JUDGE GREENBERG: Any further questions?

10

11 CROSS-EXAMINATION

12 BY MR. FORMAN:

13 Q. Mr. Holmes, how far from the <sup>A001B73A</sup>casino entrance did  
14 this accident occur?

15 A. This occurred, I would say, approximately, you  
16 know, just a general guess, maybe --

17 JUDGE GREENBERG: We don't like guesses, just  
18 approximate.

19 THE WITNESS: I would say approximately 1/3 of a  
20 mile away.

21 BY MR. FORMAN:

22 Q. Did you see this vehicle exit -- this vehicle  
23 that was involved in the accident exit the casino?

24 A. No.

25 Q. Was your vehicle entirely on --

1 JUDGE GREENBERG: Did he say he had left the  
2 casino, is that what he said?

3 THE WITNESS: Yes.

4 BY MR. FORMAN:

5 Q. And was your vehicle, as you were traveling  
6 northbound on Singley Road, entirely on your side of the  
7 road or were you across the center line at all?

8 A. I was entirely on my side of the road.

9 MR. FORMAN: Thank you. I have no further  
10 questions.

11 JUDGE GREENBERG: Do you have any redirect of  
12 your witness, Ms. Fregeau?

13 MS. FREGEAU: Yes, sir.

14 JUDGE GREENBERG: Go ahead.

15

16

REDIRECT EXAMINATION

17 BY MS. FREGEAU:

18 Q. Based on your knowledge of -- you said you were  
19 pulling your livestock truck; is that correct?

20 A. My livestock trailer.

21 Q. Based on your knowledge of your trailer, how  
22 wide is that trailer?

23 MR. FORMAN: Objection. Goes beyond the scope  
24 of the direct.

25 JUDGE GREENBERG: No. It talks about

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1 rehabilitation of the witness. I'll allow it.

2 Overruled.

3 THE WITNESS: Seven-feet wide.

4 BY MS. FREGEAU:

5 Q. And where you were traveling, you are familiar  
6 with that part of the road?

7 A. Very familiar with it.

8 Q. When you saw the McVicker's van parked there, is  
9 that a normal place where you would see that car parked?

10 A. Yes.

11 Q. And is there a large shoulder of the road where  
12 the car is parked or is it because -- is there -- do you  
13 know the width of the road at that area?

14 A. No, I do not.

15 Q. Would you say that your vehicle would take up  
16 the entire northbound lane?

17 A. At that particular point, my vehicle and most  
18 likely any other legally sized vehicle will occupy the

19 entire northbound lane.

20 Q. And then for clarification, you were north of  
21 the casino entrance; correct?

22 A. Correct.

23 Q. And the vehicle was coming from the casino,  
24 which would mean the vehicle had turned right at the  
25 casino exit going north?

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1 MR. FORMAN: Objection. Question states facts  
2 not in evidence. The witness testified he did not see  
3 the vehicle leave the casino.

4 THE WITNESS: Correct.

5 JUDGE GREENBERG: Any other questions?

6 BY MS. FREGEAU:

7 Q. And when the vehicle stopped, the vehicle that  
8 was involved in the accident, did it stop because the  
9 person stopped the car themselves or because it hit -- it  
10 was --

11 MR. FORMAN: Objection. Calls for speculation  
12 on the part of the witness.

13 MS. FREGEAU: Your Honor, he could see where the  
14 car was.

15 JUDGE GREENBERG: Overruled.

16 You can answer.

17 THE WITNESS: The driver of the vehicle stopped  
18 his vehicle on purpose.

19 BY MS. FREGEAU:

20 Q. And that was after hitting the McVicker car;  
21 correct?



22 A. Correct.

23 MS. FREGEAU: Thank you. Nothing else, sir.

24 JUDGE GREENBERG: Any further cross?

25 MR. PEIRCE: No recross.

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1 JUDGE GREENBERG: Any further cross?

2 MR. FORMAN: No recross.

3 JUDGE GREENBERG: Thank you, Mr. Holmes.

4 The time is now noon. We'll take a luncheon

5 break until 1:30.

6 MR. FORMAN: Your Honor, can I plead for a  
7 shorter lunch break than that so we can finish today,  
8 perhaps no later than 1:00 reconvene.

9 JUDGE GREENBERG: We'll reconvene at 1:15.

10 MS. FREGEAU: Thank you.

11 (A luncheon recess was taken at 12:02 p.m.,

12 the proceeding to be resumed at 1:15.)

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24 AFTERNOON SESSION

25 (The proceeding were resumed at <sup>A001B73A</sup>

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1 1:21 p.m.)

2

3 JUDGE GREENBERG: Ms. Fregeau, do you have any

4 other witnesses?

5 MS. FREGEAU: Yes, sir, we do. I'd like to call

6 Ms. McVicker, please, Terri McVicker.

7 JUDGE GREENBERG: For what testimony?

8 MS. FREGEAU: She has drawn a -- we have

9 photographs of accidents that have happened since the

10 last hearing. We have photographs of cars that have gone

11 off the road. Terri is an artist, so she drew a map of

12 Singley Road to show where the accidents have happened.

13 we'd like to introduce that as evidence that there has  
14 been a problem.

15 JUDGE GREENBERG: That has not been -- I'm  
16 trying to avoid any cumulative evidence, okay. Have her  
17 come up.

18 MS. FREGEAU: Thank you. She's not back yet.  
19 I'm sorry, your Honor. She is not back yet.

20 JUDGE GREENBERG: Do you have another witness?

21 MS. FREGEAU: Instead of that, may I call  
22 Mr. Costa who actually walked the road with me on a  
23 Sunday taking measurements and photographs of where the  
24 cars had gone off the road.

25 JUDGE GREENBERG: would that diagram show that?

1 MS. FREGEAU: The diagram will show the width of  
2 the road and then we have photographs of cars  
3 corresponding to the diagram.

4 JUDGE GREENBERG: He would be testifying in  
5 cumulation.

6 MS. FREGEAU: In cumulation?

7 JUDGE GREENBERG: In other words, she is going  
8 to say here is where we found the cars going off the  
9 road. He will say yes, here is where we found the cars  
10 going off the road. You need one witness to testify to  
11 one particular fact to establish its truth.

12 MS. FREGEAU: So can I use Mr. Costa instead of  
13 Ms. McVicker?

14 JUDGE GREENBERG: It is up to you.

15 MS. FREGEAU: Okay. I'll do that.

16           Your Honor, I'm not sure how to do this because  
17 this is not what I do.

18           we have had accidents and cars gone off the road  
19 since we had our last hearing. As neighbors, we have  
20 taken photographs of them to document the cars going off  
21 the road because the conditions.

22           Now, I know you have told us that we have  
23 acknowledged that the road is unsafe and that it is  
24 hazardous and it has issues. And I understand what you  
25 are saying about cumulative. I would like you to see

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1 these photographs, but it is not my intent to keep  
2 bringing it up if it is something that you are --

3 JUDGE GREENBERG: Well, yes. If you say that  
4 accidents have occurred on the road, I want to know when  
5 they happened, okay, and if you have no idea how they  
6 happened, but they actually show cars off the road, fine.

7 MS. FREGEAU: All right. Thank you.

8 JUDGE GREENBERG: Maybe cars were abandoned  
9 because of fog or maybe people couldn't get any further,  
10 they ran out of gas. I have no idea.

11 MS. FREGEAU: All right.

12 MR. FORMAN: Your Honor, in advance of testimony  
13 and perhaps by way of a motion in limine, if the  
14 protestants are not able to establish by competent  
15 evidence causation as linked to inherent hazards on the  
16 road, then I believe the testimony would be inadmissible  
17 as not relevant. People can have heart attacks. All  
18 kinds of things can cause vehicles to go off the road

19 that have nothing to do with the condition of the road.

20 In the absence of competent expert testimony as  
21 to the cause of vehicles leaving the road, I don't think  
22 that the information is relevant.

23 JUDGE GREENBERG: Your objection goes to the  
24 weight of the evidence, not to its admissibility.

25 MR. FORMAN: To the extent there is no

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1 foundation, it goes to that as well.

2 MS. FREGEAU: Our argument is because of the  
3 road, the type of the road, the conditions of the road,  
4 people drive off of the road and these are not cars that  
5 are parked and ran out of gas. They are off the road



6 taking down fences.

7 Certainly the addition of alcohol on a road that  
8 is already documented, whether these cars were being  
9 driven by somebody under the influence or not, the  
10 addition of alcohol would only increase these types of  
11 situations. That is our argument.

12 JUDGE GREENBERG: So what we're saying is: Is  
13 there an admission on the part of the applicant or the  
14 department that the road itself because of its narrow  
15 necessary as well as its undulations and the direction  
16 would be dangerous?

17 MR. FORMAN: Not from the applicant's  
18 perspective, no. There is no such admission.

19 JUDGE GREENBERG: Okay.

20 MS. FREGEAU: However, I would -- in that case  
21 I'd like to introduce a letter from the county dated

22 April 30, 2004 to Mr. McGinnis where they state:  
23 "Singley Road is a narrow winding road with many blind  
24 spots. We are concerned that it may not safely  
25 accommodate the increased traffic that will result from

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1 this scale of project."

2 That is pretty clear the county has some serious  
3 concerns that the traffic -- that the road is unsafe.

4 JUDGE GREENBERG: Have you shown copies of that  
5 to counsel?

6 MS. FREGEAU: I believe these were sent to  
7 Mr. Peirce and Mr. --

8 JUDGE GREENBERG: Have you received it?

9 MR. FORMAN: I believe I have.

10 It is not probative. It is not admissible  
11 because it is hearsay. It expresses concerns. It  
12 doesn't state facts. There is no substantiation of the  
13 facts. It is opinion of a witness who is not -- of a  
14 declarant who is not present. It is not under oath. It  
15 is not an admissible document.

16 JUDGE GREENBERG: I'll receive it. Where is it?

17 MR. PEIRCE: Do you have a copy for his Honor?

18 MS. FREGEAU: Yes, I do.

19 MR. FORMAN: Without the author of the document  
20 present to be cross-examined, I submit that offering this  
21 document for the truth of the matter contained therein is  
22 not appropriate. No foundation. No qualification of the  
23 author to offer an opinion, which it clearly is.

24 JUDGE GREENBERG: Is there a document with a

25 signature on it? You have a place for a signature, but

235

1 no signature.

2 MS. FREGEAU: That was sent to me from the  
3 county. I see what you are saying.

4 JUDGE GREENBERG: I'll mark it.

5 MS. FREGEAU: Also I have a copy of a document  
6 that came out of the Rohnerville Rancheria, page 38,  
7 where they state: "Increased traffic flows besides  
8 placing an unplanned burden on the current road capacity  
9 present problems for vehicle, pedestrian and equestrian  
10 traffic."

11 It talks about the tribe will mitigate and some

12 things the tribe had said they would mitigate.

13 JUDGE GREENBERG: What is the date of this

14 document that you have just given me?

15 what is the date of that document?

16 MS. FREGEAU: The last date of the document I

17 have from the environmental assessment is August 8, 1997.

18 MR. FORMAN: We would object. Lack of

19 foundation, hearsay, irrelevance based on being

20 hopelessly out of date.

21 MS. FREGEAU: This is the tribe's own document,

22 sir.

23 MR. FORMAN: It is not the environmental

24 document prepared for this project.

25 JUDGE GREENBERG: This document appears to have

1 a handwritten appendix to the last list of particular  
2 minimization of traffic impacts. "We avoided this by  
3 modifying existing entrance."

4 MS. FREGEAU: That addressed the encroachment  
5 permit. There was a request for an encroachment --

6 JUDGE GREENBERG: That is your interpretation.  
7 I don't know who wrote this.

8 MS. FREGEAU: That is my handwriting then.

9 I have another document dated April 2004, that  
10 Analytical Environmental Services did for the Bear River  
11 Casino project. It talks about the tribe would make good  
12 faith efforts to incorporate the policies of the National  
13 Environment Policy Act, California Environmental Quality  
14 Act and discuss mitigations of significant adverse

15 off-reservation environmental impacts, made good faith  
16 efforts to mitigate off-reservation impacts consisting  
17 government issues.

18 That all addresses the mitigation that we're  
19 asking for to have the road widened and/or other steps  
20 taken to make it safe.

21 JUDGE GREENBERG: So what you are saying is the  
22 protestants prefer to have the road widened; is that  
23 correct?

24 MS. FREGEAU: No, sir. We prefer that there not  
25 be an alcohol license issued because of the safety issues

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1 involved. And we are asking that before a final --

2 JUDGE GREENBERG: Let's limit it to the road.

3 The road seems to be the major issue here, if I am not  
4 mistaken. Isn't that the major issue?

5 MS. FREGEAU: That is the major issue. We are  
6 saying with the addition of alcohol, it will make it even  
7 less safe.

8 JUDGE GREENBERG: How do you make the road safe?

9 MS. FREGEAU: Probably shouldn't have had that  
10 kind of an establishment there in the first place. That  
11 is a judgment statement.

12 JUDGE GREENBERG: Maybe there shouldn't have any  
13 been residences on the road either. Maybe we should have  
14 left it in its pristine forested condition so that maybe  
15 it was just an animal path.

16 That is not what we are talking about. What can  
17 be done to the road? What do the protestants want to be



18 done to the road to make it safe?

19 MS. FREGEAU: Before a license is issued, we'd

20 like the road from the north and south widened with

21 safety features for cars to be able to pull out,

22 pedestrians to walk safely.

23 JUDGE GREENBERG: You want a four-lane highway?

24 MS. FREGEAU: No, sir. Meet the county

25 standards of two 11-foot driveways and two 4-foot

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1 pedestrian pathways, which is what we would be required

2 of any other entity that was building a business there.

3 JUDGE GREENBERG: Two 11-foot driveways.

4 MS. FREGEAU: Two 11-foot driveways, one going

5 north and south.

6 JUDGE GREENBERG: Not driveways. Are you

7 talking about lanes of traffic?

8 MS. FREGEAU: Yes, sir.

9 JUDGE GREENBERG: Bordered by a 4-foot

10 pedestrian way?

11 MS. FREGEAU: Yes, sir. Two 11-foot travel

12 lanes and two 4-foot shoulder areas for bike lanes.

13 JUDGE GREENBERG: Do you have any expert to

14 testify to that being necessary?

15 MS. FREGEAU: I have the letters from the county

16 of Humboldt to the tribe that go back to 1997 when this

17 project was first started that that is what the county

18 would require of any other entity. They were requesting

19 that the tribe meet those too.

20 JUDGE GREENBERG: Why didn't the county object

21 to this? why is this?

22 MS. FREGEAU: why didn't they object to the  
23 license? I can't speak to the county's objection.

24 JUDGE GREENBERG: Lack of objection, which means  
25 to infer that they have waived that requirement.

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1 MS. FREGEAU: I don't agree they waived that  
2 requirement. I believe they felt that there was nothing  
3 that they had the legal right to enforce because the  
4 casino is on tribal land.

5 They asked for an encroachment permit for the  
6 additional traffic, and the tribe chose to use an  
7 existing road so they didn't need another encroachment.

8 There was nothing more the county could enforce legally,  
9 according to what we have been told.

10 JUDGE GREENBERG: By whom?

11 MS. FREGEAU: By our supervisor, Mr. Smith.

12 JUDGE GREENBERG: Mr. Smith did testify, did he  
13 not?

14 MS. FREGEAU: Yes, sir.

15 JUDGE GREENBERG: Your representative, Jimmy  
16 Smith; isn't that his right name?

17 MS. FREGEAU: Yes, sir.

18 JUDGE GREENBERG: He testified that he was  
19 speaking only for the Singley Hill residents.

20 MS. FREGEAU: Right.

21 JUDGE GREENBERG: And that the road need not  
22 have met or meet any standards because of it being a  
23 casino. Isn't that what he testified to?

24 MS. FREGEAU: I'm sorry, sir, could you say that  
25 again.

240

1 JUDGE GREENBERG: According to his testimony and  
2 my notes, he said that standards, other standards are  
3 inapplicable because what we are talking about is a  
4 casino.

5 MS. FREGEAU: Correct. When the county passed a  
6 resolution enforcing federal statutes that govern the  
7 construction and operation of the gaming facility, the  
8 tribe was asked that they enforce federal statutes on  
9 those same -- they passed a resolution regarding the  
10 enforcement of federal statutes on the land in

11 1997 again.

12 MR. FORMAN: A resolution that has not been  
13 introduced into the record in this proceeding.

14 MS. FREGEAU: I'll be happy to introduce it now,  
15 sir.

16 JUDGE GREENBERG: Let's take a look at anything  
17 you have and why don't you come in and testify, all  
18 right.

19 MS. FREGEAU: All right.

20 JUDGE GREENBERG: Aren't you a protestant?

21 MS. FREGEAU: Yes, sir.

22 JUDGE GREENBERG: Well, come on in and protest.

23 MS. FREGEAU: May I have Mr. Costa introduce  
24 those photographs, sir.

25 JUDGE GREENBERG: You want to take that. Yes,

1 we have already asked Mr. Costa. Mr. Costa. I don't  
2 know if we swore you in yet.

3 THE WITNESS: No.

4

5 LOUIS COSTA,

6 having been duly sworn by Judge Greenberg,

7 was examined and testified as follows:

8

9 EXAMINATION

10 BY JUDGE GREENBERG:

11 Q. What is your full name?

12 A. Louis Costa.

13 Q. Spell the last name.

14 A. C-o-s-t-a.

15 Q. Are you a resident of any portion of Singley

16 Hill Road?

17 A. Yes.

18 Q. Where?

19 A. The north portion.

20 JUDGE GREENBERG: Okay. You may proceed to ask

21 your witness questions.

22

23 DIRECT EXAMINATION

24 BY MS. FREGEAU:

25 Q. Lou, in the past few months, have you observed



1 what appear to be automobile accidents or cars leaving  
2 the main -- the main road -- what would you call that,  
3 the main lanes of the road?

4 JUDGE GREENBERG: What road?

5 THE WITNESS: I don't understand the question.

6 BY MS. FREGEAU:

7 Q. On South Singley Road have you observed cars  
8 that have gone off the road?

9 A. Yes.

10 Q. Are these cars parked on the side of the road or  
11 have they been driven off the road in what appears to be  
12 an accident?

13 A. Appears to be an accident. I have photos of  
14 them.

15 Q. Do you have photographs of them?

16 A. Yes.

17 Q. Could we see those, please. And could you  
18 describe them for us.

19 JUDGE GREENBERG: Before you describe them, show  
20 them to each counsel, please. In fact, show all the  
21 photos you intend for me to see to both the attorneys.

22 THE WITNESS: Okay. This was after they put the  
23 sign back up again.

24 MR. PEIRCE: Are those the only two that you are  
25 going to --

243

1 THE WITNESS: No. I have more here.

2 MR. PEIRCE: Are these the only two pictures of  
3 this accident --

4 THE WITNESS: No.

5 MR. PEIRCE: -- that you will be talking about  
6 in your testimony?

7 THE WITNESS: I have more here.

8 MR. PEIRCE: How do you want to handle the  
9 photographs, your Honor?

10 JUDGE GREENBERG: Let's have them in sequence.  
11 Let's mark them as one major exhibit.

12 MR. PEIRCE: All right. Do you want to put them  
13 in chronological order?

14 MR. FORMAN: Your Honor, again, in the interest  
15 of saving time, may I voir dire the witness briefly on  
16 his personal knowledge of the actual accidents that he  
17 claims are depicted in these photographs?

18 JUDGE GREENBERG: I was going to mention that  
19 before you got to it. Okay.

20

21

FURTHER EXAMINATION

22 BY JUDGE GREENBERG:

23 Q. You have taken several photos; is that

24 correct?

25 A. Yes.

244

1 Q. The photos appear of vehicles that did not have

2 any kind of operator in the vehicle.

3 A. Yes, sir.

4 Q. And they were not on the paved surface of the

5 road?

6 A. They were off the road.

7 Q. Do you know what caused <sup>A001B73A</sup> them to be off the road?

8 I don't want your guess or your surmise. I want  
9 to know if you know.

10 A. Several of them were D.U.I. arrests, collision  
11 from the police reports that I have here.

12 Q. Do you know when they happened?

13 A. Yes. This one here in particular happened  
14 October 24, and below the casino.

15 Q. On what road?

16 A. On Singley Road.

17 Q. North or south?

18 A. South of the casino.

19 I have two pictures of it here. And an officer  
20 Nelson responded.

21 Q. You have the police report; is that correct?

22 A. Yes, sir.

23 JUDGE GREENBERG: Is there any other voir

24 dire?

25 MR. FORMAN: Yes.

245

1 VOIR DIRE EXAMINATION

2 BY MR. FORMAN:

3 Q. Without knowing all of the pictures, what I'd

4 like to ask generally is: Did you observe the occurrence

5 of any of the accidents that you contend these

6 photographs depict?

7 A. No, sir.

8 MR. FORMAN: Then I would object to this entire

9 testimony as being beyond the witness's personal

10 knowledge, being based entirely on his <sup>A001B73A</sup> surmise,  
11 speculation. And to the extent that he is relying on  
12 police reports, multiple hearsay because the police  
13 reports themselves are not admissible into evidence and  
14 contain hearsay and do not express admissible findings as  
15 to causation.

16 THE WITNESS: Your Honor, these police reports  
17 are certified. I was told by Mr. Peirce there that if I  
18 obtained proof from the police department and had it  
19 certified that it would be admissible.

20 JUDGE GREENBERG: That is what Mr. Peirce's  
21 opinion is.

22 THE WITNESS: Okay. I don't know if that is  
23 right or wrong, but I obtained certification of all these  
24 proofs of the accidents here.

25 JUDGE GREENBERG: If that is the content of it,

1 is that the extent of your voir dire?

2 MR. FORMAN: Yes. The witness is not  
3 testifying --

4 JUDGE GREENBERG: The answer is yes?

5 MR. FORMAN: Yes.

6 JUDGE GREENBERG: Thank you. The photographs  
7 and any accompanying police reports will be admitted; and  
8 the objection, again, goes to the weight, and not  
9 admissibility.

10 I will give those reports and the photos the  
11 weight to which they are entitled.

12 THE WITNESS: Thank you.



13 May I approach?

14 JUDGE GREENBERG: Yes.

15 THE WITNESS: Here is this accident here.

16 MR. PEIRCE: Your Honor, the reporter will have  
17 a difficult time here.

18 JUDGE GREENBERG: She can't hear you, and she  
19 doesn't know what "here" is. Let me label things for the  
20 record.

21 These appear to be photographs -- these have  
22 been shown to counsel, by the way?

23 THE WITNESS: Yes.

24 JUDGE GREENBERG: It shows a vehicle being a GMC  
25 passenger vehicle. Then it shows somebody off the road

1 with a red hat.

2 THE WITNESS: That is me, your Honor.

3 JUDGE GREENBERG: And being a D.U.I. arrest with  
4 a number, October 24, 2005.

5 And there is a sheet of paper, two sheets of  
6 paper, being area information systems collision 1/24/2004  
7 to 12/2/2005. It shows one highlighted date of 10/24/05.  
8 E.D. Nelson is the officer and a log number 100083.  
9 Singley Road cross street U.S. 101. They consist of two  
10 pages. There is another page two. And it apparently is  
11 the same information.

12 MR. FORMAN: Your Honor, those photographs do  
13 not show an accident. They show a pickup truck sitting  
14 in the road and a guy standing in a different --

15 JUDGE GREENBERG: Yes. I'll let him explain

16 what they represent before we preclude them. Okay. Or  
17 include them.

18 The second page is a declaration that the  
19 document pages are a copy of original document filed with  
20 the California Highway Patrol.

21 THE WITNESS: Your Honor.

22 JUDGE GREENBERG: Yes. Just a moment, please.

23 Let me mark these.

24 There is a -- the photograph of the vehicle, the  
25 GMC vehicle and Mr. Costa is marked as XI-A.

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1 A portion of the photo says D.U.I. 10/24/05. It  
2 shows a stanchion, I believe it is, which is topped --  
3 which has been angled off on a portion of the road. It

4 says log number 2005100083. And that is marked as  
5 Exhibit XI-B.

6 The log report which I have made reference  
7 record to certified by the CHP is marked XI-C.

8 I'll return this to you for purposes of  
9 testimony, but I want you to return it to me before you  
10 leave.

11

12 FURTHER EXAMINATION

13 BY JUDGE GREENBERG:

14 Q. why don't we just talk about XI and tell me what  
15 it represents.

16 A. October 24, sir?

17 Q. Yes.

18 A. Is that what you are talking about?

19 Q. Yes.

20 A. Okay.

21 Q. Go ahead. You can sit down if you like.

22 A. Okay. First of all, I've worked for the road

23 systems, and I've worked on this Singley Road for 16

24 years with the county of Humboldt. And it is a road that

25 drops off in elevation from approximately 500 feet down

249

1 to about 100 foot. So it drops 3- to 400 feet.

2 Q. South Singley Road?

3 A. Yes, sir.

4 Q. And that is from the casino to the Highway 101?

5 A. Yes. Approximately about 1/3 of a mile it drops

6 that much. So it pretty well explains the grade of that

7 hill and it is on a curve too and it is narrow.

8           And I think the condition of that road now even  
9 after a resurfacing job is still narrow and the pictures  
10 show that. And there has been three accidents on that  
11 lower portion since our last meeting. Two of them have  
12 been --

13           Q. Since October?

14           A. Since our first hearing here, sir.

15           Q. Is that what you are talking about?

16           A. Yes.

17           And two of them were D.U.I. arrests?

18           Q. Two were D.U.I.?

19           A. Yes.

20           Q. Okay.

21           MR. FORMAN: I would object to the witness

22       testifying as to matters beyond <sup>A001B73A</sup>his personal knowledge.

23               JUDGE GREENBERG:   Okay.   Thank you.

24               MR. FORMAN:   He has no personal knowledge.

25               JUDGE GREENBERG:   Overruled.   Continue.

250

1               THE WITNESS:   In the 21 years that I have lived  
2       there, I've probably seen an estimated wrecks on that  
3       lower portion, maybe right around 10, basically where  
4       speed was involved, the condition of the road.

5               At the lower part of it, there is a series of --  
6       there is a group of bull pines that drop their needles on  
7       the road.   If you get your tire over on that edge right  
8       there -- to this day they are there, the trees are still  
9       there.   If you put your brakes on, you are going to take

10 off sliding and sailing into the brush there.

11           The overlay project has become a hazard in my  
12 opinion. This is based on 32 years of road experience.

13 They lay crush rock down that consists of sand and pea  
14 gravel in the ditch that plugs up the ditch, the culvert,  
15 when it rains.

16           You get a river, water running through there and  
17 where it plugs up the culvert, it goes over the top of  
18 the road and runs down the road. Gravel and sand on the  
19 road is not good for somebody trying to stop down at the  
20 bottom of the hill.

21           And it should have never been constructed that  
22 way with crush rock. The county comes out and maintains  
23 it, but they are not there all the time. This county  
24 gets a large amount of rainfall.



25 I found out about these <sup>A001B73A</sup> accidents, and I went

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1 down there and took pictures of them. I could see the  
2 problem. It was speed involved and --

3 MR. FORMAN: Objection. Calls for speculation  
4 on the part of the witness.

5 JUDGE GREENBERG: I have let you give your  
6 opinion based upon what records you have, Mr. Costa, but  
7 when you start going off into what you think might have  
8 happened, I have got to preclude it, okay. We don't want  
9 your guesses, your prognoses, your diagnoses. We just  
10 want you to tell us the facts, what you know.

11 THE WITNESS: Okay. Yes, sir.

12 JUDGE GREENBERG: Okay. Proceed.  
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13           THE WITNESS: I just went and observed the  
14 accident sites and took pictures, obtained police  
15 reports.

16           I have talked to the county about the crushed  
17 rock being laid down as a road base and the plugging of  
18 the culverts. And I was just mainly interested who was  
19 going to maintain that portion of the road. I mean it  
20 was obvious the tribe paid for the construction of it,  
21 but at the time I didn't think it was done right.

22           I have pictures of another collision that  
23 happened in the same area. It was a collision and a  
24 D.U.I. arrest too.

25           JUDGE GREENBERG: Do you have something else

1 besides October --

2 THE WITNESS: Yes, sir.

3 JUDGE GREENBERG: -- 2005?

4 THE WITNESS: Yes.

5 JUDGE GREENBERG: October 24, 2005.

6 MR. PEIRCE: Could I ask Mr. Costa to give the  
7 exhibit that has been marked back to you so we don't get  
8 them mixed up.

9 JUDGE GREENBERG: Yes. Let me have Exhibit  
10 XI-A. I'll give you back your folder, sir.

11 MS. FREGEAU: Exhibit XI, that was the October?

12 MR. PEIRCE: October 24.

13 JUDGE GREENBERG: October 24, 2004.

14 MS. FREGEAU: Thank you.

15 THE WITNESS: Your Honor, this collision and  
Page 115

16 D.U.I. arrest occurred on November 4 of '05. Obviously I  
17 wasn't there to see this accident, but I showed up and  
18 took a picture of the tow truck pulling the vehicle out  
19 that went off the road in the opposite lane. He was  
20 headed down the hill --

21 MR. PEIRCE: Excuse me. If I may interrupt,  
22 before -- Mr. Costa appears to have gotten into his  
23 testimony portion if we could have whatever exhibits are  
24 appropriate to be marked for identification so we all  
25 have a frame of reference.

253

1 JUDGE GREENBERG: Thank you for that.

2 Have you shown these to counsel?

3 THE WITNESS: Yes.

4 JUDGE GREENBERG: It appears to be a vehicle  
5 showing it off the road, a tow truck. And then there is  
6 a document dated 11/4/05. And it pertains to Absheer,  
7 M.D. Absheer, file number 200500724 together with an  
8 authentication attached.

9 That will be marked as Exhibit XI-B.

10 MR. PEIRCE: We have an XI-A, your Honor.

11 JUDGE GREENBERG: XI-A is the photos of October  
12 24, 2005. XI-B is those photos and authentication I just  
13 referred to of November 4, '05.

14 MR. PEIRCE: I thought XI referred to the  
15 October 24.

16 JUDGE GREENBERG: It does. That is XI-A. This  
17 is XI-B.

18 MR. FORMAN: Actually, XI-B was a --  
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19 MR. PEIRCE: The stanchion.

20 MR. FORMAN: The stanchion photograph and XI-C  
21 was the police report.

22 MR. PEIRCE: That is what my notes indicate.

23 JUDGE GREENBERG: That is correct. You are  
24 correct. I'm going to renumber the accident of October  
25 24 to XI-A so it is not confusing.

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1 MR. PEIRCE: So those three --

2 JUDGE GREENBERG: Documents I'm referring to --

3 MR. PEIRCE: -- will be XI-A?

4 JUDGE GREENBERG: Exactly. Thank you.

5 MR. PEIRCE: The two documents, the photo and

6 the report now that we are referring to --

7 JUDGE GREENBERG: They are XI-B.

8 MR. PEIRCE: Thank you, your Honor.

9 JUDGE GREENBERG: Thank you.

10 Q. Is there anything further you want to tell me  
11 about this Exhibit XI-B?

12 A. No.

13 Q. You say that the vehicle went off the wrong  
14 lane; is that right?

15 A. Yes, sir.

16 Q. How do you know that?

17 A. He was headed down the hill, and he crossed both  
18 lanes there.

19 Q. How do you know he did?

20 A. I was there when the tow truck was pulling it  
21 out, and that was the word, he was headed down the

22 hill.

23 Q. You don't know whether or not he actually made a  
24 180 and headed down the hill, do we?

25 A. No, we don't.

255

1 JUDGE GREENBERG: So the last portion of the  
2 remark will be stricken as being gratuitous and beyond  
3 the knowledge of the witness.

4 We have XI-B.

5 Q. Do you have any other information, sir?

6 A. Just that the two papers there, your Honor, one  
7 is a collision report and the other one is D.U.I. arrest.  
8 They are not the same. They have different case numbers



9 on it too.

10 MR. FORMAN: We would also object, your Honor,  
11 to the introduction of reports of arrests, because that  
12 proves nothing. That does not prove that there was, in  
13 fact, intoxication. It proves an arrest, and an arrest  
14 is not evidence of the commission of a crime or the  
15 existence of a condition other than the fact of the  
16 arrest.

17 JUDGE GREENBERG: It doesn't even show an  
18 arrest. It shows different log numbers regarding  
19 Mr. Absheer.

20 Thank you for notifying us.

21 THE WITNESS: Does it say on the top up there  
22 D.U.I. arrest?

23 JUDGE GREENBERG: It shows D.U.I. arrest. It  
24 does, yes. It also shows collisions 10/24/2005.

25 THE WITNESS: Your Honor, if a record of D.U.I.

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1 arrests such as that right there doesn't prove that the  
2 person driving that car was arrested for being drunk,  
3 what does?

4 JUDGE GREENBERG: It shows he was arrested. We  
5 don't know if he was drunk at the time of the arrest and  
6 we don't know if he was intoxicated. We have a statement  
7 of many D.U.I. arrests occurring on a particular day. We  
8 don't know whether or not that arrest was properly made.  
9 we don't know whether -- what the facts are behind it, do  
10 we.

11 THE WITNESS: No, sir.

12 JUDGE GREENBERG: All right. Thank you. Have a  
13 seat.

14 Anything further from this witness, Ms. Fregeau?

15

16 FURTHER DIRECT EXAMINATION

17 BY MS. FREGEAU:

18 Q. On the XI-B, I believe, the one with the tow  
19 truck and the CHP in the car, was that at the north end  
20 of Singley Road or the south end of Singley Road?

21 A. That was the south end, below the casino.

22 Q. Okay. The truck accident, when the truck went  
23 into the ditch and took out the fence, was that the south  
24 end of Singley Road?

25 MR. FORMAN: Excuse me.

1           JUDGE GREENBERG: There has been no testimony in  
2 that regard.

3           MR. FORMAN: I would move Ms. Fregeau's remarks  
4 be stricken.

5           JUDGE GREENBERG: So stricken. Motion granted.  
6 We have no testimony in that particular area.

7 BY MR. FREGEAU:

8           Q. What is the location of Exhibit XI-A, which was  
9 the truck off the side of the road?

10          A. The pickup off the side of the road, the two  
11 exhibits that I showed were below the casino.

12          Q. The south end?

13          A. The south end.

14          Q. Do you have any other photographs?

15           A. I have another collision here that happened on  
16 December 10.

17           JUDGE GREENBERG: Have you shown it to --

18           THE WITNESS: Of '05.

19           MR. FORMAN: Your Honor, the exhibit that the  
20 witness has shown me doesn't show a collision at all. I  
21 would object on that grounds even to the extent --

22           MS. FREGEAU: I believe the exhibit shows tire  
23 tracks going into the side of a hill and a post down and  
24 debris on the ground from a car. That would represent an  
25 accident to me.

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1           JUDGE GREENBERG: Have you seen this,

2 Mr. Peirce?

3 MR. PEIRCE: Yes, I have, your Honor.

4 THE WITNESS: Your Honor, this is right straight  
5 across from the entrance to the casino.

6 JUDGE GREENBERG: Nobody can hear you.

7 THE WITNESS: It is across from the entrance and  
8 the exit to the casino.

9 JUDGE GREENBERG: There appears to be a blue  
10 truck.

11 THE WITNESS: That is a beer truck leaving the  
12 casino headed down the hill.

13 JUDGE GREENBERG: There is pavement off to the  
14 left with apparently a postal delivery box.

15 THE WITNESS: That is a residence that sits back  
16 in there.

17 That photograph, your Honor, is pointing south

18 down the hill from the casino.

19 JUDGE GREENBERG: Yes, I understand.

20 Is there anything else connected with this

21 document other than these two photos?

22 THE WITNESS: No, sir.

23 JUDGE GREENBERG: And this is supposedly of

24 December 16 of '05?

25 MR. PEIRCE: Did your Honor say the 16th?

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1 JUDGE GREENBERG: That is what it says.

2 MR. FORMAN: The witness earlier said December

3 10.

4 MR. PEIRCE: That is what my notes indicate as

5 well. We can explore that.

6 JUDGE GREENBERG: Yeah. I think so. These are  
7 photos which include this blue truck with a sign saying  
8 speed limit 30. And attached to that there appears to be  
9 pieces of debris.

10 MR. FORMAN: Your Honor, may I see that  
11 photograph, because that doesn't look like what was  
12 provided to us.

13 As to the debris --

14 JUDGE GREENBERG: Just one moment.

15 MR. FORMAN: I'm sorry.

16 JUDGE GREENBERG: Who put this lettering on the  
17 large apparently a Xerox photo 12/16/05? Who inserted  
18 this legend?

19 THE WITNESS: I did, sir.

20 JUDGE GREENBERG: Do you want to tell me why I



21 should receive this document or these two photos in  
22 evidence or for any purpose whatsoever? what do they  
23 have to do with anything?

24 THE WITNESS: It indicates to me, sir, that  
25 somebody was reckless driving. By the looks of the skid

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1 marks somebody left the casino in a big hurry, couldn't  
2 make the turn into that lane and plowed into the bank  
3 right there. I don't know if he was intoxicated or what.

4 JUDGE GREENBERG: Do you know whether that  
5 occurred? You see a tire track off of the pavement, to  
6 the right of the pavement in the large printed photo.

7 XI-C, that printed photo is made, I assume, by

8 computer. Then you have this smaller photo, XI-C with  
9 some apparently debris on the ground.

10 THE WITNESS: That is the glass.

11 JUDGE GREENBERG: How do you know they were  
12 related, these two photos?

13 THE WITNESS: You could see the glass in this  
14 picture here.

15 MR. PEIRCE: You have to speak up, Mr. Costa.

16 THE WITNESS: Okay. You could see the glass at  
17 the end of the skid marks right there. There is a pile  
18 of glass right there. The smaller picture is a close-up  
19 picture of it.

20 JUDGE GREENBERG: I'll label this large picture  
21 the skid mark, which has been indicated by Mr. Costa.  
22 And where is the debris, Mr. Costa?

23 THE WITNESS: May I look at the picture, sir.

24           If you look here at the bottom of this sign to  
25 the left, you can see kind of a shiny area right there.

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1   That is the glass.

2           JUDGE GREENBERG: You want to show me that  
3 again. I can't see it on the photo. Just point to it.

4           THE WITNESS: Okay. Let's see here. It is  
5 right there, kind of a diamond shaped.

6           JUDGE GREENBERG: I'll label that debris. Okay.  
7 So you saw debris, which was indicated in XI-C, the  
8 smaller photo and which you have indicated in a circle  
9 just to the left of the speed limit sign as well as skid  
10 marks. Okay.

11           That is what you are testifying to; is that  
12 right?

13           THE WITNESS: Yes.

14           JUDGE GREENBERG: You have no knowledge as to  
15 what caused all of this; is that correct?

16           THE WITNESS: No.

17           JUDGE GREENBERG: All you are doing is surmising  
18 as to what might be the remnants of it?

19           THE WITNESS: Yes.

20           JUDGE GREENBERG: Do you have any other  
21 questions of your witness?

22 BY MS. FREGEAU:

23           Q. Do you have any other photographs, Lou?

24           A. No, I don't. Not of that. Excuse me, I have  
25 some -- well, no, I don't.

1 MS. FREGEAU: Thank you. No, sir.

2 JUDGE GREENBERG: Cross-examine, Mr. Peirce?

3 MR. PEIRCE: Yes, thank you. You want to take  
4 your seat, Mr. Costa.

5

6 CROSS-EXAMINATION

7 BY MR. PEIRCE:

8 Q. First of all, are you employed?

9 A. No.

10 Q. Were you previously employed?

11 A. No.

12 Q. What was your vocation?

13 A. Road maintenance worker.

14 Q. And by whom were you employed?

15 A. By the county of Humboldt.

16 Q. How long did you serve in that capacity?

17 A. About 16 and a half years, sir.

18 Q. What were your duties as a road maintenance

19 employee of the county of Humboldt?

20 A. We took care of drainage, paving, graveling of

21 roads, digging out roads and rebasing roads, patching

22 potholes, brush cutting. On and on. I can't think of it

23 all.

24 Q. That is fine.

25 If I may have Exhibit XI, your Honor. Let me

1 begin with the exhibit collectively<sup>A001B73A</sup> marked as XI-A.

2 A. This one here?

3 Q. It is all three documents -- actually two photos  
4 and two pages of a single document --

5 A. All right.

6 Q. -- are collectively XI-A. Let's speak about the  
7 first photograph which includes the car, the GMC car, and  
8 what you have said is you standing off the side of the  
9 road. When was that photograph taken?

10 A. After the collision sometime. I'm not sure what  
11 day.

12 Q. And you are representing that the collision  
13 occurred on what date? That would have been the  
14 October --

15 A. 24.

16 Q. Okay. Could it have been taken on the 24th of

17 October or was it clearly in your memory after that

18 date?

19 A. This picture here?

20 Q. Yes.

21 A. It was clearly after that date.

22 JUDGE GREENBERG: XI-A; is that correct?

23 MR. PEIRCE: Yes, your Honor.

24 Q. What does that represent?

25 A. This picture represents where the car went off

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1 and how deep the hole is right here.

2 JUDGE GREENBERG: By the way, on XI-A there is a

3 page missing which is the authentication. If you could



4 put it together.

5 MR. PEIRCE: If you would hold that under

6 that.

7 Q. All right. Can you describe the area where you

8 are standing.

9 A. It is approximately five feet off of -- five or

10 less feet off the shoulder of the road right here.

11 Q. And you described it as being a hole. Can you

12 give us any further description. Was it something that

13 had been dug out or is it --

14 A. It is eroded drainage.

15 Q. And you have described that as being the

16 location of -- strike that.

17 Referring to the second photograph, what does

18 that depict?

19 A. This depicts -- this is taken right after the

20 wreck, the accident, when the sign was still down.

21 Q. All right. So that shows a sign on its side, a

22 roadway sign?

23 A. Yes.

24 Q. What is the sign depicted in the first

25 photograph, the top photograph?

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1 A. This is a sign put up after the collision or the

2 wreck.

3 Q. Prior to the 24th of October 2005, had you been

4 by that location?

5 A. Yes.

6 Q. Was there a sign located there prior to the 24th

7 of October, 2005?

8 A. Yes.

9 Q. Was it an erect sign?

10 A. Yes. In the same spot.

11 MR. PEIRCE: If the record would reflect that he  
12 referred to the first photograph showing the sign as he  
13 has testified being restored.

14 Q. Did you go by that location at any time where  
15 you observed a vehicle on the side of the road?

16 A. No.

17 Q. Okay. So you did not. As has been pointed out,  
18 you surmised that a vehicle struck that sign and knocked  
19 it over, but you never saw a vehicle there?

20 A. No.

21 Q. Thank you.

22 Let me ask you one further thing: Is that you

23 have described as being on the south portion of Singley

24 Road between the casino and Highway 101; is that correct?

25 A. Yes.

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1 MR. PEIRCE: I'll give XI-A back to your Honor

2 so you can put it together while I refer to the second

3 one.

4 Q. Asking you to turn your attention to Exhibit

5 XI-B and the photograph. When was that photograph taken,

6 if you know?

7 A. After the collision. I think it was the date --

8 I believe it was the day after.

9 Q. And the day after, what was -- what date would

10 that be?

11 A. 24th. So this must have been the 25th.

12 JUDGE GREENBERG: Are you talking about XI-B  
13 now?

14 MR. PEIRCE: Yes.

15 Q. You said the 24th. There is a highlighted  
16 portion on one of the reports. What is the date  
17 contained in that that is highlighted?

18 A. Oh, December 4.

19 Q. 11/4, wasn't it?

20 MR. PEIRCE: Can you read those.

21 JUDGE GREENBERG: Can you tell me what the date  
22 was again.

23 BY MR. PEIRCE:

24 Q. What numbers are those?

25 A. The file numbers?

1 Q. No. The date.

2 A. The date is December 4.

3 Q. It doesn't say December, does it?

4 A. Or, excuse me, yeah, November.

5 Q. All right. What are the actual numbers on that

6 highlighted of the date under the date column?

7 A. 11/04/05.

8 Q. Okay. If that represents the 4th of November,

9 would it be your testimony that this photograph was taken

10 on the 5th of November, 2005?

11 A. Yes.

12 Q. Okay. Did you take this photograph?

13           A. You know, John, I took <sup>A001B73A</sup>so many pictures, I don't  
14 remember if I took this or somebody took it for me and  
15 gave it to me.

16           Q. All right. Did you observe what is represented  
17 here in the photograph -- well, did you ever observe the  
18 car depicted in this photograph on the side of the road  
19 actually on the side of the road on either the 4th of  
20 November or the 5th of November?

21           A. No, I don't think I did. I must have got the  
22 picture from somebody else then.

23           Q. Okay.

24           MR. PEIRCE: Giving you XI-B, your Honor.

25           Q. All right. Just to confirm, the two photographs

1 that comprise Exhibit XI-C, did you take those  
2 photographs?

3 A. Yes.

4 Q. And on what date were they taken?

5 A. Sometime after this date here, December 16.

6 Q. All right. You had previously referenced when  
7 you were speaking about these -- an accident on the 10th  
8 of December. Do you remember making that statement when  
9 referring to these?

10 A. I think I do.

11 Q. Were you confused or is -- what is the correct  
12 date, to the best of your knowledge, being made aware now  
13 of the discrepancy?

14 A. For this one?

15 Q. Yes.





4 questioning. This witness has not been adequately  
5 qualified as an expert, accident reconstruction expert.

6 These skid marks could have as easily occurred when  
7 somebody made a U-turn, back up the bank and --

8 JUDGE GREENBERG: Your objection goes to the  
9 weight of the testimony, Counsel. Overruled.

10 MR. FORMAN: Okay.

11 BY MR. PEIRCE:

12 Q. I am mostly interested, since you already  
13 testified about the skid marks, to the portion off of the  
14 pavement area. Based upon your experience, what does  
15 that represent to you?

16 A. It represents an accident where somebody skid  
17 across the road, plowed into the bank and left debris on  
18 the bank.

19 Q. I understand that that <sup>A001B73A</sup>is what you -- that is  
20 the conclusion you have drawn. I am trying  
21 specifically -- do you understand those or do those  
22 appear to be tire marks and ruts created by a vehicle off  
23 the pavement?

24 A. Yes. These tire marks here represent to me --

25 MR. FORMAN: Objection. Goes beyond the -- not

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1 responsive. It goes beyond the scope of the question  
2 asked.

3 JUDGE GREENBERG: Let's hear the response, shall  
4 we.

5 THE WITNESS: These skid marks are from a car  
6 being towed away from the bank, being pulled away from

7 the bank. The tires are turned and they are leaving  
8 streaked marks this way like the wheels are like this and  
9 it is being pulled backwards with the wheels in that  
10 position.

11 JUDGE GREENBERG: Directing your attention to  
12 the small photograph of the glass, in your experience as  
13 a road maintenance worker, did you observe the aftermath  
14 of vehicle crashes and accidents?

15 THE WITNESS: Yes, sir.

16 JUDGE GREENBERG: Is that debris consistent with  
17 auto safety glass?

18 THE WITNESS: Yes, sir.

19 MR. PEIRCE: Thank you. I have no further  
20 questions of this witness.

21

22

23 BY MR. FORMAN:

24 Q. Mr. Costa, referring to the Exhibit XI-B

25 photograph of the car being towed or extricated by a tow

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1 truck, you indicated on cross-examination in response to

2 a question from Mr. Peirce that you did not actually take

3 this photograph; is that correct?

4 A. Yes, sir.

5 Q. Did you observe the tow truck extricating the

6 vehicle on the date that photograph was taken?

7 A. I don't remember.

8 Q. You have indicated on cross-examination that you

9 must have gotten that photograph from someone else; is

10 that correct?

11 A. Yes.

12 MR. FORMAN: I would move to strike that  
13 photograph as lacking adequate foundation. This witness  
14 did not take it. He got it from someone else. He did  
15 not see the scene so he is not in a position to testify  
16 of his own knowledge what, in fact, the scene accurately  
17 should have -- or that the photograph is an accurate  
18 depiction of the scene. And therefore, I think the  
19 photograph is not properly admitted.

20 MR. PEIRCE: Yes, your Honor. As to -- it is  
21 the department's position it should not be stricken at  
22 this point. Its admissibility is still subject to  
23 foundation from whoever did take that photograph or if  
24 there is a protestant who can and will testify

25 subsequently to making observations consistent with what

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1 is depicted in XI-B.

2 So it is the department's position it is

3 premature to have a ruling at this point.

4 JUDGE GREENBERG: I agree with Mr. Peirce. The

5 photo itself may have been taken upon some other road.

6 we don't have any foundation for that photo as yet. I am

7 willing to infer its admissibility until such time as the

8 representative of the protestants is exhausted, the

9 proper testimony of those protestants.

10 MS. FREGEAU: Thank you.

11 BY MR. FORMAN:

12 Q. Mr. Costa, directing your attention to Exhibit

13 XI-C, the picture that you testified a moment ago depicts  
14 skid marks left by a vehicle being towed from the side of  
15 the road. Did you observe the towing of that vehicle?

16 A. No.

17 Q. Are you trained as --

18 JUDGE GREENBERG: That is XI-B you are referring  
19 to?

20 MR. FORMAN: No. Actually, I think that was  
21 XI-C.

22 MS. FREGEAU: I thought XI-C was the police  
23 report.

24 MR. PEIRCE: Okay. Let me straighten this up.  
25 Two photos December 16, '05. Skid marks and debris



1 location, that is Exhibit XI-C.

2 MR. FORMAN: Right. XI-B referring to a small  
3 pickup being towed off the road by a tow truck together  
4 with the reference to D.U.I. arrests and the  
5 authentication of that record.

6 Exhibit XI-A shows a GMC vehicle, the witness  
7 and apparently a road sign lying on its side together  
8 with the collision reports and authentications. That is  
9 XI-A.

10 JUDGE GREENBERG: which photos are you referring  
11 to?

12 MR. FORMAN: XI-C.

13 JUDGE GREENBERG: XI-C refers to this blue  
14 truck, debris and skid marks.

15 MR. PEIRCE: Do you want me to give the witness

16 that?

17 MS. FREGEAU: May I see that, Mr. Peirce? Okay.

18 Thank you.

19 BY MR. FORMAN:

20 Q. Mr. Costa, do you have Exhibit XI-C?

21 A. I do.

22 Q. Do you have training as an engineer, sir?

23 A. No.

24 Q. Do you have training in identification of

25 automobile glass?

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1 A. I've got experience.

2 Q. Are you able to tell us what type of vehicle was

3 the source of the, what you describe as, glass in the  
4 smaller photograph that is part of XI-C, what you said  
5 was debris next to the road?

6 A. There is a large amount of glass here consistent  
7 with what you would see in a windshield.

8 Q. Are you able to testify of your personal  
9 knowledge that this glass is from a vehicle windshield?

10 A. It looks like it is.

11 Q. That wasn't the question. Of your personal  
12 knowledge -- did you preserve any of this glass?

13 A. No, I didn't.

14 JUDGE GREENBERG: Can I ask one question.

15 MR. FORMAN: Yes, sir.

16 JUDGE GREENBERG: These photos in XI-C show a  
17 date of occurrence of 12/16/05.

18 MR. FORMAN: Yes.

19 JUDGE GREENBERG: Is there any testimony that an  
20 accident occurred on the 15th, 14th or any other period  
21 of time other than on 12/16.

22 MR. FORMAN: Not that I have heard.

23 ///

24 ///

25 ///

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1 FURTHER EXAMINATION

2 BY JUDGE GREENBERG:

3 Q. You don't know when that accident, if any,  
4 occurred, do you?

5 A. This one here, sir?

6 Q. Yes.

7 A. Here is a log number to it right here.

8 Q. I understand. That log number was made by

9 whom?

10 A. It was responded by CHP.

11 Q. The log number is imprinted on the photos.

12 A. Yes, sir. May I approach?

13 Q. Sure. Who put that log number on the top of it?

14 A. I did.

15 Q. Okay.

16 A. I had the police report, but I don't know where

17 it is at now.

18 Q. There is 12/16/05. You put the log number on

19 it?

20 A. Yes.

21 Q. There is nothing put on either of these photos

22 by any public authority, is there?

23 A. No. I don't know if Mr. Peirce or Mr. Forman

24 has had a police report. I seem to have lost it here. I

25 don't know where it is at.

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1 Q. You have given me a folder here, sir. Is the

2 report you are talking about contained in this folder?

3 A. No, I don't see it.

4 JUDGE GREENBERG: Thank you. You can keep the

5 folders.

6 Mr. Forman.

7

8 FURTHER CROSS-EXAMINATION

9 BY MR. FORMAN:

10 Q. Mr. Costa, do you have any knowledge of how the  
11 car that you believe was towed as indicated by the skid  
12 marks you believe are depicted in XI-C came to be in the  
13 position from which it had to be towed?

14 A. No, I don't.

15 JUDGE GREENBERG: I don't know if there is a tow  
16 truck indicated in XI-C.

17 MR. FORMAN: The witness testified that these  
18 marks are consistent with a vehicle having been towed  
19 from the side of the road. I am asking based on his  
20 assumption.

21 THE WITNESS: The only information I have is, I  
22 believe it was Steve Fregeau, that seen the tow  
23 vehicle -- the tow truck towing the car off the bank and  
24 loading it on a low boy trailer to be hauled off.

25 MR. FORMAN: Objection. Move to strike on

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1 grounds of hearsay.

2 JUDGE GREENBERG: It will be so stricken.

3 MR. FORMAN: And I will renew our motion to

4 strike, if I didn't make it before, I'll make it, to

5 strike or deny admission to XI-C on the grounds that

6 there has been no testimony to show either that there was

7 an accident or that the accident, if it occurred, was in

8 any way related to the condition of Singley Road.

9 JUDGE GREENBERG: Well, my ruling in that regard

10 will be the same as my prior ruling regarding XI-B, that

11 your request is premature. Let's see what happens at the



12 conclusion of the -- of all the testimony of the  
13 protestants as elicited by Ms. Fregeau.

14 BY MR. FORMAN:

15 Q. Mr. Costa, do you have any personal knowledge  
16 that the debris that you say is depicted in one of the  
17 photographs in XI-C came from the vehicle that you  
18 believe to have been towed as indicated by what you have  
19 identified as skid marks in the other photograph of  
20 XI-C?

21 A. I don't have any proof of it, but I'm sure it  
22 came from that vehicle.

23 MR. FORMAN: Move to strike as non-responsive.

24 JUDGE GREENBERG: The last portion of the  
25 testimony will go out as being stricken.

1           MR. FORMAN: I have no further questions of this  
2 witness.

3           JUDGE GREENBERG: Any further redirect of this  
4 witness?

5

6                               REDIRECT EXAMINATION

7 BY MS. FREGEAU:

8           Q. Mr. Costa, how long were you working for the  
9 county roads?

10           JUDGE GREENBERG: He said 16 years.

11 BY MS. FREGEAU:

12           Q. In that time, did you have opportunities to  
13 clean up or maintain a road similar to Singley Road?

14           A. Yes.

15 Q. Did you have opportunities to see debris on the  
16 road from -- similar to what is depicted in those  
17 pictures?

18 A. Yes.

19 Q. Do you have knowledge of where some of that  
20 debris would have come from?

21 A. They are automobiles in the accident.

22 Q. And did you know that because of your job and  
23 your responsibilities as a county employee to maintain  
24 the roads?

25 A. Yes.

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1 Q. Thank you. Oh, excuse me, I have one more

2 question.

3 In that one particular photograph, I believe it  
4 is XI-C, would there be any reason with your experience  
5 and working on county roads to believe a person would  
6 make a U-turn in that area?

7 MR. FORMAN: Objection. Calls for speculation  
8 far beyond any possible expertise this witness may  
9 have.

10 JUDGE GREENBERG: Sustained.

11 MS. FREGEAU: Thank you.

12 JUDGE GREENBERG: Any other questions?

13 MS. FREGEAU: No, sir.

14 JUDGE GREENBERG: May I have XI-C back, please.

15 Do you have any other witnesses?

16 THE WITNESS: Sir, I have another incident here  
17 that happened at the casino.

18 MR. FORMAN: I'll object, your Honor, as  
19 reopening direct.

20 JUDGE GREENBERG: Talk to your counsel,  
21 Mr. Costa. If she wants you to come back, fine.

22 BY MS. FREGEAU:

23 Q. Do you have any additional information you'd  
24 like the share?

25 MR. FORMAN: Again, going beyond the scope of

280

1 the direct examination.

2 JUDGE GREENBERG: I understand, but for the  
3 purpose of expediency, we'll allow it.

4 THE WITNESS: I just --

5 JUDGE GREENBERG: Do you have any other  
6 documents regarding any other problems on that road?

7 THE WITNESS: Not on the road, but inside the  
8 casino parking lot there was an incident where a drunk  
9 driver, patron, left the casino, got in his car,  
10 attempted to leave and smashed into three cars in there.  
11 And I have the police report for it too. He was  
12 arrested. I have the certified documents of the  
13 collision and the arrest report.

14 JUDGE GREENBERG: Well, this was not on the  
15 road, was it?

16 THE WITNESS: No, sir.

17 JUDGE GREENBERG: I am really not very much  
18 interested in that. You are talking about a person who  
19 had too much to drink destroying property on the casino  
20 property.

21 THE WITNESS: Your Honor, it proves that they  
22 are overserving their patrons when somebody leaves the  
23 parking lot drunk like that.

24 JUDGE GREENBERG: It doesn't prove anything.

25 THE WITNESS: Okay.

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1 JUDGE GREENBERG: You don't know whether that  
2 person may have had 25 drinks before he came to the  
3 casino.

4 MS. FREGEAU: would not an arrest record  
5 indicate that there was alcohol -- he was arrested for  
6 alcohol?

7 JUDGE GREENBERG: It doesn't matter what he was

8 arrested for. He probably was arrested from taking too  
9 much alcohol. From the casino or from other places, we  
10 don't know, do we?

11 THE WITNESS: Your Honor, we got a certificate  
12 from Mr. Forman here where their staff has been trained  
13 to recognize people entering and leaving their  
14 establishment too drunk. If that person made it through  
15 the doors, it is my indication that they are not doing  
16 their job and that diploma they sent, Mr. Forman sent us  
17 means nothing.

18 JUDGE GREENBERG: Thank you. That is by way of  
19 argument, sir.

20 You have no other facts to which you have any  
21 testimony, do you?

22 THE WITNESS: No.

23 JUDGE GREENBERG: Thank you.



24 Anything further from this witness?

25 MS. FREGEAU: No thank you.

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1 JUDGE GREENBERG: Mr. Peirce?

2 MR. PEIRCE: No, your Honor.

3 JUDGE GREENBERG: You are excused.

4 Mr. McVicker.

5

6 JAMES THOMAS McVICKER,

7 having been duly sworn by Judge Greenberg,

8 was examined and testified as follows:

9

10 EXAMINATION

11 BY JUDGE GREENBERG:

12 Q. May I have your full name, sir.

13 A. James Thomas McVicker, Jr.

14 Q. Spell your last name.

15 A. M-c capital V-i-c-k-e-r.

16 Q. What is your profession, sir?

17 A. I'm an artist, professional artist, painter.

18 Q. Thank you. Have a seat.

19 A. Okay.

20 JUDGE GREENBERG: Your witness, Ms. Fregeau.

21

22 DIRECT EXAMINATION

23 BY MS. FREGEAU:

24 Q. Have you -- can you tell us where you live,

25 please.

1           A. I live at 700 Singley Hill Road, approximately  
2   3/10 of a mile north of the casino.

3           Q. Have you had some activity happen to your  
4   vehicles?

5           A. Well, as Mr. Holmes said earlier, it was my  
6   vehicle that was hit by the hit and run driver. And I  
7   spoke with the Highway Patrol and filled out the  
8   report.

9           Q. Can you tell us what you told them?

10           MR. FORMAN: I'm going to object to this as  
11   cumulative.

12           JUDGE GREENBERG: It is cumulative. What is the  
13   purpose of this witness, please?

14 MS. FREGEAU: He has photographs of the  
15 accident.

16 THE WITNESS: well, not of that particular  
17 accident. I have photographs from the last three  
18 months -- well, actually two months, January until just  
19 two days ago that I think show -- I believe show evidence  
20 of reckless driving on the road. There are signs knocked  
21 over that I have photographs of. One that was just  
22 knocked over two days ago.

23 JUDGE GREENBERG: Okay. This is new evidence,  
24 okay.

25 THE WITNESS: Yes.

1 JUDGE GREENBERG: We are talking about the  
2 accident in which your vehicle was involved. We've  
3 already covered that. We've already covered that. I  
4 don't want to hear it.

5 THE WITNESS: This is all now. I have  
6 photographs for each, yourself and everyone.

7 JUDGE GREENBERG: Have you given them the  
8 photographs?

9 THE WITNESS: I will right now.

10 MR. PEIRCE: While he is distributing the  
11 photographs, your Honor, my suggestion that since  
12 Mr. McVicker is a party to this matter, it might be, and  
13 with all due respect to Ms. Fregeau, who is a lay person,  
14 it might be better to try to elicit whatever testimony  
15 and evidence Mr. McVicker has by allowing him to testify  
16 in the narrative and then allowing her to examine him if

17 he has something further and allowing Mr. Forman and  
18 myself to cross-examine.

19 JUDGE GREENBERG: No problem with that. Thank  
20 you.

21 Just tell us what you found, tell us when you  
22 found it.

23 THE WITNESS: Are we talking about these  
24 photographs or my vehicle?

25 JUDGE GREENBERG: All the photographs that you

285

1 have.

2 MR. PEIRCE: If we could have those marked then  
3 and he can reference them specifically.

4                   JUDGE GREENBERG: Okay. <sup>A001B73A</sup> I will do that. This  
5 will be Exhibits XII. We'll have to prepare another  
6 exhibit list.

7                   We can take a few moments.

8                   Proceed.

9                   MR. FORMAN: Your Honor, again, in the interest  
10 of possibly saving time, it would be useful, I think,  
11 before we go through each of these exhibits and even  
12 narrative testimony if Ms. Fregeau could provide  
13 something in the way of an offer of proof of what she  
14 intends to establish through this witness so that your  
15 Honor could get a threshold sense of whether what you are  
16 about to hear is relevant.

17                  JUDGE GREENBERG: We have four photos dated  
18 3/7/06. We have five photos regarding January 15, 2006.  
19 We have five photos regarding blind curve on Singley Road

20 February 11, '06. We have four photos dated

21 February '06. I think that is all we have.

22 MS. FREGEAU: Yes, sir.

23 JUDGE GREENBERG: I'll mark them so we know what

24 we are talking about. The photo for 3/7/06 will be

25 marked XII-A.

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1 The photos regarding 1/15/06 marked III-B.

2 MR. FORMAN: I think you misspoke. Is it XII-B?

3 JUDGE GREENBERG: Oh, XII-B. I'm sorry. XII-B

4 are the photos regarding January 15, '06.

5 XII-C are photos regarding blind curves on

6 Singley Road, February 11, '06.



7 XII-D are photos apparently taken at various  
8 times in February '06. We'll call those assorted  
9 photographs from February '06. That is XII-D.

10 Now that they have been suitably marked, you may  
11 proceed Ms. Fregeau.

12 MS. FREGEAU: I thought we were going to allow  
13 him to do a narrative.

14

15 FURTHER EXAMINATION

16 BY JUDGE GREENBERG:

17 Q. They represent Singley Road. They represent the  
18 hazards and accidents happening on this road?

19 A. Exactly. I mean, I feel they show obvious signs  
20 of reckless driving.

21 Q. Tell me what they represent, when you took.

22 A. The first shot, I just shot those yesterday.

23 Q. Regarding March 7, '06?

24 MR. PEIRCE: I'll allow him to use those copies.

25 Those are the order and marked.

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1 THE WITNESS: This is the southern exit. If you  
2 were coming from the north to go to the casino using the  
3 exit that their advertisement states patrons should use,  
4 the exit we prefer they use.

5 BY JUDGE GREENBERG:

6 Q. This is coming from the north?

7 A. Yes. You would get off the freeway and you can  
8 see the bottom photograph shows where the ramp -- what it  
9 does is it curves at that point. And they come to a stop

10 sign, which you can see the stop <sup>A001B73A</sup> sign in the top  
11 photograph. Then the patron or anybody driving that way  
12 would need to make a left turn at that point and then  
13 they would make a right turn on to Singley Road. That is  
14 the northern -- the beginning of the northern entrance to  
15 the casino.

16 Q. So north of Singley Road should use this  
17 northern entrance?

18 A. This is the exit from Highway 101, correct.

19 And I don't know exactly when this happened, but  
20 it didn't look this way over the weekend. I saw it  
21 Tuesday, and I took a photograph of it. Obviously  
22 somebody lost control of their vehicle and knocked over  
23 the sign.

24 Q. Because the caution sign has been snapped off?

25 A. It not a caution sign. Well, it is a caution

1 sign warning about a 15.6 foot clearance of the  
2 underpass. They need to go over on the freeway.

3 Q. Okay. Proceed. Tell me more.

4 A. On the next page, this is --

5 Q. XI-B. I'm sorry. XII-B.

6 A. The 25 mile per hour sign is approximately 100  
7 yards, I would say, north of our house. And you can see  
8 in the bottom photograph that is our vehicle parked in  
9 front of our house and you can see the red cones by it.  
10 That is our neighbor's mailbox in between. And that is  
11 the 25 mile per hour sign that was put up because of that  
12 curve. You really can't see traffic coming from the

13 north as you are heading north.

14 And so that sign, I took that -- let's see.

15 This photograph for some reason doesn't have the date on

16 it that I gave you. I think maybe Mr. Forman --

17 Q. It says January 15.

18 A. Yes. I shot that photograph January 15. So it

19 either happened the evening of the 14th or 13th, but I

20 noticed it on January 15 and shot that photograph in the

21 morning.

22 Q. It shows a vehicle on the bottom?

23 A. That is the road crew replacing the broken sign.

24 And that photograph is shot at a later date. I don't

25 recall the date, but it is later in January. They came

1 approximately a week after the sign was hit.

2 Q. So you are saying one of the photos is, I think

3 it is the one in the lower left-corner, is to show that

4 there is a curve on that road; is that right?

5 A. The sign points to the curve, yes.

6 Q. No. No. The road itself.

7 A. Well, that is looking south. That photo on the

8 bottom is looking south. The blind curve is to your

9 back. It is to the north.

10 Q. So it is in back of the person taking the

11 photo?

12 A. That's right. I am taking the photo, and it is

13 behind me.

14 Q. What was the photo to illustrate?

15 A. It is to illustrate that somebody ran over the

16 sign and went off the side of the <sup>A001B73A</sup> road.

17 Q. To illustrate broken sign?

18 A. Yes. Yes. You can see their tire tracks are a  
19 good three or four feet off the track. That sign did a  
20 complete flip. They hit it pretty hard.

21 Q. Tire tracks --

22 MR. FORMAN: I object. I would ask that the  
23 remark with which the sign was struck and the gyrations  
24 of the sign after being struck as be stricken as beyond  
25 the witness' knowledge and calling for speculation.

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1 JUDGE GREENBERG: Technically your objection is  
2 correct.

3 THE WITNESS: It doesn't take much knowledge to  
Page 183

4 see that that sign was flipped over.

5 JUDGE GREENBERG: It will help if we don't argue  
6 about what you didn't actually witness, okay.

7 Q. Just tell me what these things represent. You  
8 said they were tire tracks.

9 A. Yes.

10 Q. Can you point them out to me?

11 A. Can I come up there and point them out?

12 Q. Sure.

13 A. You can see it --

14 THE REPORTER: Pardon me?

15 JUDGE GREENBERG: He said, "This is the tire  
16 track coming up through here."

17 Q. The photo on the lower left-corner of Exhibit  
18 XII-B will be marked so as to indicate the area which has



19 been pointed out by the witness. A001B73A

20 A. The vehicle was traveling from the south to the  
21 north.

22 Q. Okay. Then we come to XII-C.

23 A. XII-C is, okay, you can see the two photographs  
24 on top, one -- the one on the left I am looking south,  
25 and that is a whole other incident that happened on --

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1 well, I shot the photograph February 11, and it happened  
2 sometime during the night February 10 or the morning of  
3 the 11th.

4 You can see the sign has been replaced. The  
5 silver sign you see in the photograph on the left is the  
6 25 mile per hour sign warning of a curve coming up.

7 Q. Okay. Are you saying a sign on the left?

8 A. May I show that to you?

9 Q. Sure.

10 A. This sign up there is the replaced sign, the  
11 replaced 25 mile per hour. That was the one that was  
12 knocked down earlier.

13 Q. All right. I'll put a mark around that. Okay.  
14 New 25 mile per hour sign.

15 A. I have turned completely around and now you are  
16 looking north on the photograph on the right and you see  
17 the same tire that has gone off the road. And that is  
18 the blind curve that the 25 mile an hour speed limit sign  
19 is asking people to slow down for.

20 Q. So XII-C is to show the blind curve; is that  
21 right?

22           A. Yes. Yes. This is to show the curve. That is  
23 what is to my back. I am looking north in the photo on  
24 the right. I'm looking south on the photo on the left.

25           Q. Then we have three other photos remaining on the

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1 bottom of XII-C.

2           A. These on the bottom are at the very top of where  
3 Loleta Drive meets Singley Road. And that is the very  
4 north -- well, not the very north end. That is the  
5 northern part of Singley Road where if somebody coming to  
6 the casino or all the residents live on the road that we  
7 go to downtown Loleta or back or we go to Eureka, that is  
8 the route we come in to our home and numerous people come  
9 in who are patrons of the casino.

10           And this --

11           Q.   From Loleta Road?

12           A.   From Loleta Drive.  That is Loleta Drive exit.

13   That is the northern exit.  And this shows --

14           MR. FORMAN:  Excuse me, I'm going to object to  
15   the witness' characterization of numerous patrons of the  
16   casino using this.  There has been no evidence as to the  
17   quantification.

18           JUDGE GREENBERG:  Let's hear what he has to say.

19           THE WITNESS:  I have lived there since 1989, and  
20   there is a considerable more amount of traffic on the  
21   northern part of Singley Road since the casino opened.  I  
22   have insomnia sometimes, and I've counted as many as 20  
23   vehicles passing our house between 2:00 and 4:00 in the  
24   morning.  So there is still a numerous amount of traffic

25 using the north end.

A001B73A

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1           But this photograph, February '06, was shot -- I  
2    don't remember the exact date. My wife Terri shot the  
3    photograph with our camera. And this shows -- I did not  
4    witness this. But there are the remains of skid marks --  
5    see, when you come up from Loleta Drive, Singley Road  
6    comes to a T-shape and if you are not familiar with the  
7    road, you are coming up a hill. This isn't the first  
8    time this has happened where somebody all of a sudden,  
9    you are at this "T." And if you were driving at a high  
10   rate of speed, you have no recourse except to slam into  
11   the side there. And this, to me, is evidence of what --  
12   somebody was speeding, missed the turn was not aware they

13 were coming up to a "T."

14 BY JUDGE GREENBERG:

15 Q. Are you talking about the photo?

16 A. I'm talking about the two photos on the lower  
17 left.

18 Q. Lower left?

19 A. Yes. The lower left of Exhibit XII-C, is it?

20 Q. Well, you are going to have to show me that  
21 because there are apparently a lot of shadows on this  
22 photo.

23 A. Well, there are a lot of shadows on the photo  
24 that was shot. But these -- this, you can see where a  
25 car or truck could have run into this bush. These are

1 skid marks.

2 Q. Let me see what you think are skid marks.

3 A. With the pen?

4 Q. On XII-C, yes.

5 A. Mark in between those black marks.

6 Q. Indicate skid marks.

7 A. And then you can see where --

8 Q. In the lower right-hand corner?

9 A. This is just where another vehicle has gone off  
10 the side of the road. I just want to show that  
11 vehicles --

12 MS. FREGEAU: Jim, could you speak up, please.

13 THE WITNESS: I am saying this is again the  
14 north end of the road and just shows where another  
15 vehicle tire mark has gone off the pavement.

16 MS. FREGEAU: Thank you.

17 JUDGE GREENBERG: This is off the pavement at  
18 the T-intersection.

19 THE WITNESS: This is before the "T." This is  
20 near Echo Lane.

21 BY JUDGE GREENBERG:

22 Q. "This" being the lower right-hand corner?

23 A. Yes.

24 Q. Okay. Then there is XII-D?

25 A. well, this is basically showing some debris that

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1 was dumped on the road.

2 Q. Debris and --



3           A. And some repairs, very kind of half-baked  
4 repairs done on the north end of the road, some patch  
5 jobs. And just a couple casino matchbooks I found not  
6 too far from my house that were lit on fire and probably,  
7 I'm guessing, thrown out a window.

8           MR. FORMAN: Your Honor, at the risk of being  
9 premature with respect to Exhibit XII-D, I would submit  
10 that that is absolutely irrelevant to any issues before  
11 this.

12           JUDGE GREENBERG: It is surmised. And it refers  
13 to litter on the road is what he is trying to say.  
14 Litter on the road caused by patrons of the casino. Is  
15 that what you are referring to?

16           THE WITNESS: Well, yes, it is showing traffic  
17 coming north.

18           JUDGE GREENBERG: For whatever evidentiary  
Page 193

19 meaning that may have, I'll consider it. Go ahead.

20 MR. FORMAN: Bricks and lawn clippings, your  
21 Honor? I mean they don't serve those. There has been no  
22 evidence that those are served at the casino. That is  
23 going far afield.

24 THE WITNESS: I am talking about the matchbook  
25 covers.

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1 BY JUDGE GREENBERG:

2 Q. What do the other top photos indicate on XII-D?

3 A. Just a hazard of debris being on the road. I  
4 don't know who dumped it there. I am not saying it is  
5 part of the casino. It is just a photograph of debris.

6 We have people coming into the neighborhood who have  
7 never come here before and who knows what is -- you know,  
8 it is uncomfortable.

9 JUDGE GREENBERG: Okay. Any other questions of  
10 this witness, other testimony regarding these photos?

11 MS. FREGEAU: No, sir.

12 JUDGE GREENBERG: Cross-examine, Mr. Peirce.

13

14 CROSS-EXAMINATION

15 BY MR. PEIRCE:

16 Q. Thank you. Because it is not totally clear to  
17 me at least with my vision on XII-D, the matchbooks that  
18 are depicted, have the matches been lit or --

19 A. Yes.

20 Q. Okay.

21 JUDGE GREENBERG: Have the matches been lit all

22 together?

23 THE WITNESS: Yeah. It looked like --

24 JUDGE GREENBERG: Were there one or two matches

25 that weren't lit?

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1 THE WITNESS: No. It was somebody lit a whole

2 book of matches, two books of matches.

3 MS. FREGEAU: Jim, are these the matches?

4 THE WITNESS: Are they? Were those brought in?

5 MS. FREGEAU: These were brought in.

6 THE WITNESS: Those are the very matches.

7 MS. FREGEAU: Your Honor, we have -- I don't

8 know if this is appropriate or not. We have the matches

9 and a cash-out ticket from the back by a person who  
10 testified last time and was unable to come today.

11 JUDGE GREENBERG: That would be cumulative. He  
12 testified the matchbooks were lit and burned at one  
13 time.

14 MS. FREGEAU: And a cash-out ticket that has the  
15 Bear River Casino. So it shows litter on the road on the  
16 north end of the road.

17 JUDGE GREENBERG: I think that is redundant.

18 THE WITNESS: Okay. Thank you.

19 MR. PEIRCE: I think that is the only  
20 clarification I did have.

21 Q. I remember one other thing I wanted to ask you  
22 about. There has been testimony regarding the -- your  
23 van being damaged. Has that been repaired?

24 A. I did not repair the van. It was minor damage,  
Page 197

25 and I got an estimate on the van. It was \$150, but I

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1 have not repaired it.

2 MR. PEIRCE: Okay. Thank you. That is all I

3 have, your Honor.

4 JUDGE GREENBERG: Okay. Mr. Forman.

5

6 CROSS-EXAMINATION

7 BY MR. FORMAN:

8 Q. Mr. McVicker, directing your attention to the

9 two lower left-photographs in your Exhibit XII-C, which

10 are photographs depicting the north end of Singley

11 Road --

12 A. Yes.

13 Q. -- is it correct that you did not observe a  
14 vehicle make what you have described as the skid marks in  
15 that photographs.

16 A. That is correct.

17 Q. And you don't know whether those skid marks were  
18 laid down by a vehicle skidding to a stop or a vehicle  
19 accelerating rapidly from the dirt, do you?

20 A. I would lean 95 percent towards skidding and not  
21 accelerating. I checked it out pretty well. But I am  
22 not an expert. I don't think it really takes an expert  
23 to figure that out.

24 Q. This is getting a little bit too much like My  
25 Cousin Vinny, if you recall that. In any event --

1           And the picture on the lower right-hand portion  
2 of Exhibit XII-C, you don't know the circumstances under  
3 which that tire track was laid down in the mud on the  
4 side of the road, do you?

5           A. Can I see that? No, I do not.

6           I didn't witness any of these. These were all  
7 after the fact, and I just took the photographs.

8           MR. FORMAN: Thank you. I have no further  
9 questions.

10          JUDGE GREENBERG: Any further questions of your  
11 witness?

12          MS. FREGEAU: No, sir.

13          JUDGE GREENBERG: Okay. You may be excused.

14          We are going to take a 15-minute recess at this



15 time.

16 (A recess was taken at 3:10 p.m.,

17 the proceedings were resumed at

18 3:29 p.m.)

19 JUDGE GREENBERG: We are reconvened. There has

20 been prepared by counsel, including Ms. Fregeau, an

21 approval of an outline of a map showing the exit of exits

22 692/694, Singley Lane, Singley Hill Road and the location

23 of the tribal property.

24 I have labeled that as Exhibit A for applicant.

25 Unless there is an objection, I would propose we admit

300

1 that document.

2 Any objections?

3 MR. PEIRCE: No, your Honor.

4 MR. FORMAN: No.

5 JUDGE GREENBERG: It will be admitted as

6 Applicant's A.

7 Do you have any other witnesses?

8 MS. FREGEAU: I have two more, sir. Last time  
9 we were here, Mrs. McVicker testified to some terminology  
10 of tracking, which addressed livestock or long bed trucks  
11 driving on the road and the need to cross over onto  
12 oncoming traffic just because of their length. She has  
13 brought you a detailed map to show you how that works  
14 with an engineer's report. We'd like to share that with  
15 you.

16 JUDGE GREENBERG: I think I have it. I  
17 understand that when you -- I don't remember whether you

18 back out or he came out forward onto the road, but you  
19 couldn't get out of that area in which his property is  
20 located without going into and blocking off the road  
21 entirely in order to get his cattle trailer on the proper  
22 road.

23 MS. FREGEAU: And also driving the road. If you  
24 were driving a livestock truck, you would have to cross  
25 over onto oncoming traffic to be able to make some

301

1 turns.

2 JUDGE GREENBERG: I understand.

3 I think we are pretty well convinced it is not  
4 the safest road in existence for the particular burdens

5 placed upon it.

6 MS. FREGEAU: Yes, sir. All right. Thank you.

7 THERESA MCVICKER: I think this is important.

8 MS. FREGEAU: Ms. McVicker has a template from  
9 the engineers that she feels it is important to enter  
10 into evidence to show --

11 JUDGE GREENBERG: why?

12 THERESA MCVICKER: We live --

13 JUDGE GREENBERG: Come up here, please.

14 Be kind enough to raise your right hand.

15

16 THERESA MCVICKER,

17 having been duly sworn by Judge Greenberg,

18 was examined and testified as follows:

19

20 EXAMINATION

21 BY JUDGE GREENBERG:

22 Q. You are the wife of James McVicker?

23 A. Yes.

24 Q. What is it you'd like me to see?

25 A. Last time I was here I testified to

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1 off-tracking, and I couldn't explain what it was. You  
2 asked us when we came back to bring back proof concerning  
3 off-tracking and what off-tracking is exactly is the --  
4 when a tractor-trailer or a farm vehicle which is trailer  
5 size drives down the road at certain intervals on the  
6 road, they are forced because of the size of their  
7 vehicle to -- and the layout of the road to actually go

8 into the other lane. It is not a bad choice. It is the  
9 only choice. And I just had a -- I just wanted to show  
10 you -- I brought xeroxes of the road to --

11 Q. I understand. What you just told me is  
12 understandable.

13 A. It is. I just brought the template to show how  
14 far the trucks are forced to go into the other lane  
15 that -- and during the fog and the rain, you can't see  
16 it. And on the blind curve --

17 Q. Okay. That is the burden that you as a  
18 homeowner place upon the road; is that correct?

19 A. No. That is the burden that is a rural -- we  
20 have a rural zoning, an agricultural community, and the  
21 road was never engineered by an engineer or the county.  
22 It is a road that was originally formed by horses and  
23 wagons in our rural community and then eventually paved

24 over by the county.

25 And what I have witnessed, but I have not been

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1 there with a camera every time it happened, is at our  
2 blind curve and other curves, the farm vehicles or the  
3 vehicles delivering to various people, including the  
4 casino, are forced -- it is not bad driving. It is not  
5 they are making a mistake. They actually are in --

6 Q. If you are going to engage in farm and  
7 agriculture, you are going to have vehicles other than  
8 compact vehicles. You are going to have to have trucks.  
9 You are going to have to have machinery and so forth.  
10 when you do that, you place a burden on the road that you

11 are using for access; isn't that correct?

12 A. It is not burden. It is not just burden. What

13 I am trying to say if I could just show you. It will

14 take 30 seconds to show you what I am talking about

15 because I made an enlarged version of the road.

16 Q. Save time. Let me see what you have.

17 THE WITNESS: Okay. Suzi, could you get that

18 chart from behind your chair.

19 should I bring this over to your --

20 BY JUDGE GREENBERG:

21 Q. Let me see. No. That is not necessary. I am

22 not going to receive that in evidence.

23 A. I want to show you what it does.

24 Q. Giving me something 4 x 3 feet --

25 A. This is the Cal-Trans -- an engineer gave me



1 this. This is what happens when a semi or a  
2 tractor-trailer turns the corner. As you can see, they  
3 have to -- it is not bad driving. It is just physics.

4 Q. Nobody is saying it is bad or good driving?

5 A. Okay. I just wanted to show the evidence that  
6 that is indeed what happened.

7 Q. If you are going to use the road for farm  
8 vehicles, you have to go into the opposite lane. Is that  
9 what you are saying?

10 A. Exactly.

11 JUDGE GREENBERG: Anything further from this  
12 witness?

13 Mr. Peirce?

14 MR. PEIRCE: No, your Honor.

15 JUDGE GREENBERG: Mr. Forman?

16 MR. FORMAN: No, your Honor.

17 JUDGE GREENBERG: Thank you very much,

18 Mrs. McVicker.

19 MS. FREGEAU: Mr. Krahforst is my next witness,

20 so Noel.

21 Can we do the same thing we did last time.

22 MR. PEIRCE: I believe so. I think that would

23 make it quicker.

24 ///

25 ///

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A001B73A  
NOEL KRAHFORST,

having been duly sworn by Judge Greenberg,  
was examined and testified as follows:

EXAMINATION

BY JUDGE GREENBERG:

Q. Your name, please.

A. Noel Krahforst.

Q. Spell your last name, please.

A. K-r-a-h-f-o-r-s-t.

Q. Noel; right?

A. Right. That is it

Q. Mr. Krahforst, consider yourself to be sworn.

Have a seat.

You may proceed, Counsel.

MR. PEIRCE: Could I renew the suggestion of the

17 last witness. I think it will be more --

18 JUDGE GREENBERG: To give his testimony

19 narratively?

20 MR. PEIRCE: Yes, please. I think it will be

21 conserving time for the court.

22 BY JUDGE GREENBERG:

23 Q. Mr. Krahforst, let me understand your position

24 as a homeowner here. When we had testimony previously,

25 we had testimony that your home is located, its

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1 structure, your residence is located approximately 150

2 feet from the property line of the premises of the tribe;

3 is that correct?

4           A. Your Honor, I have thought about it. I am  
5 really not sure. It could be closer to 100. I'll leave  
6 it to the ruler in A.B.C. to determine exactly what it  
7 is.

8           Q. You defer to A.B.C.'s judgment in this?

9           A. Yeah. If they are good with a ruler.

10          Q. I think I was too in the third grade, but that  
11 doesn't mean that you are required to defer to them.

12                    what you are saying is you have no opinion  
13 about --

14          A. No. I believe it is right within their  
15 parameters. It might be a little out so they can discard  
16 my close proximity. But if it is out, it is not out by  
17 much.

18          Q. You agree it is approximately 150 feet?

19          A. I think it is less now. I think it is closer to

20 100. I'm not sure where that is.

21 Q. It is not 100 or under?

22 A. I don't believe so.

23 Q. Okay. Mr. Krahforst, what do you have to say

24 that you want me to consider?

25 A. Well, I'll follow what procedure, I think, I've

307

1 been hearing is submit documents with testimony with each

2 document.

3 Q. That would be fine.

4 A. And I don't know whether -- I only have one

5 copy. I have submitted these same documents, mailed them

6 directly to Mr. Forman and Mr. Peirce. And so I can show

7 each of those gentlemen and then <sup>A001B73A</sup> finally you the document

8 and then comment on it. Is that the way --

9 Q. It would.

10 MR. PEIRCE: I would suggest getting them marked  
11 first, and then we can follow along.

12 THE WITNESS: Okay.

13 JUDGE GREENBERG: whichever you prefer.

14 Have you got them in order?

15 THE WITNESS: I have them in this order here  
16 except for last three. But these follow that order.

17 JUDGE GREENBERG: Let's go through this. I'll  
18 mark the documents in order as they appear, but I won't  
19 describe them. Because I don't know what they are.

20 Each of the documents that Mr. Krahforst wishes  
21 me to consider have been so marked. And I haven't  
22 identified them. I don't know what they are. I will

23 give them to Mr. Krahforst so he can explain what they

24 are.

25 These are more?

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1 THE WITNESS: These are already marked.

2 MR. FORMAN: Your Honor, will all of these be

3 subsets of XIII.

4 JUDGE GREENBERG: Under XIII, A through P.

5 Go slowly so we can understand what you are

6 talking about. If you don't mind standing here while you

7 do that so we can see what you are talking about.

8 MR. PEIRCE: You need to speak loudly enough for

9 all of us to hear and understand.



10 THE WITNESS: Okay. The one <sup>A001B73A</sup> Exhibit XIII-A, if

11 Mr. Forman and Mr. Peirce don't have that, let me know.

12 But it is this set of photographs right here.

13 This is a photograph -- these are photographs

14 from my house. These are from my kitchen, daylight

15 pictures from my kitchen window. They are not telephoto.

16 They are exactly as the eye sees.

17 And the two on the left are either -- also not

18 telephoto. They are along my fence line at night. This

19 is the view from the Krahforst residence and back yard.

20 BY JUDGE GREENBERG:

21 Q. And the two on the right?

22 A. Krahforst kitchen.

23 Q. So two on the right are taken from the window,

24 two on the left at night?

25 A. Yeah. I have labeled the group at the top.

1           Also XIII-B. Mr. Peirce, XIII-B. A view from  
2 my resident dining room and kitchen window. It is a view  
3 to the casino upper parking lot.

4           These are not telephoto lenses. This is as the  
5 eye sees. I have a mark on the camera that determines  
6 that.

7           Another XIII-B, three photos of a fence.

8           Q. What does it pertain to?

9           A. These pictures --

10          Q. Of XIII-B?

11          A. Of the fence.

12          MR. FORMAN: would this be C?

13 JUDGE GREENBERG: No. B. <sup>A001B73A</sup>

14 THE WITNESS: These three pages of photo are

15 XIII-B.

16 JUDGE GREENBERG: XIII-B is also three photos

17 from the fence.

18 MR. PEIRCE: So there are two sheets.

19 THE WITNESS: Three sheets. This is XIII-B

20 also --

21 MR. PEIRCE: That is the second sheet.

22 JUDGE GREENBERG: Second sheet. That is XIII-B

23 and this is also XIII-B.

24 MR. FORMAN: Your Honor, I think --

25 JUDGE GREENBERG: This is XIII-A.

310

1           It is confusing. It has been labeled right on  
2 the photo.

3           THE WITNESS: Sorry.

4 BY JUDGE GREENBERG:

5           Q. XIII-B is three photos and not two photos. They  
6 are from his -- that is your fence; is that correct?

7           A. Yes.

8           Q. That separates what from what?

9           A. That separates me from casino traffic coming in  
10 from the north as far as headlights and privacy.

11           And I am submitting these pictures because the  
12 criteria, as I understand from the A.B.C. criteria, for  
13 protest is that the enjoyment, comfort or peace and quiet  
14 of neighborhood homes is to be considered by the A.B.C.

15           I'd like some mitigation in that regard.

16 Mitigation for the fence and walls<sup>A001B73A</sup> or something that will  
17 lessen the impact of a bar/casino right next door.

18 Q. Go ahead.

19 A. XIII-C is four photos showing a couple wrecker  
20 tow trucks and an abandoned car below.

21 The photos above, I believe, were submitted by  
22 Lou Costa and there was some question of who took the  
23 photo or what that was all about. The date November 4 is  
24 correct. I took the photos. I wasn't there when this  
25 pickup ran off the road. I was there when these wreckers

311

1 were trying to pull it out.

2 Q. Just a moment.

3 A. And a Highway Patrol responded to that.

4 Q. Yes. Just a moment, please. You have a number  
5 of photos, and I'm trying to keep them separate.

6 I am trying to find Mr. Costa's photos.

7 MS. FREGEAU: I believe that was XI-B, your  
8 Honor.

9 JUDGE GREENBERG: Yes. I'm trying to locate the  
10 photos.

11 If you'll look at your documents, folks, and see  
12 if you have Exhibit XI, I'd appreciate it.

13 I've got it. XI-B.

14 MR. PEIRCE: Correct, your Honor. That is the  
15 one that Mr. Costa testified he did not take, but someone  
16 sent to him.

17 JUDGE GREENBERG: The photo is identical.

18 MS. FREGEAU: Right.

19 THE WITNESS: Should I <sup>A001B73A</sup>continue, sir?

20 JUDGE GREENBERG: Just a second.

21 Q. Proceed.

22 A. In XIII-C the photos below are of an abandoned  
23 vehicle that was halfway in the road and the Highway  
24 Patrol determined it to be a hazard and had it towed off.

25 Q. XIII-D is what?

312

1 A. An invoice from Eureka Glass Company to me for  
2 sound deadening windows.

3 JUDGE GREENBERG: XIII-D.

4 THE WITNESS: Paid by me to deaden the noise  
5 from the traffic and the casino parking lot and the  
6 operations.

7 BY JUDGE GREENBERG:

8 Q. Go ahead.

9 A. XIII-E is a paid invoice from Taylor Made  
10 Fencing. Actually, it is several invoices and it is a  
11 couple thousand dollars for privacy fencing that was in a  
12 previous photograph submitted.

13 Q. Okay. Go ahead.

14 A. XIII-G is --

15 Q. XIII-F? Maybe that wasn't marked.

16 A. Unless it is on a second page. I'm sorry.

17 XIII-F is the second of the invoices from Eureka Glass,  
18 paid.

19 Q. That is for glass?

20 A. Yes.

21 Q. Because of the noise?



22 A. Right.

23 Q. Go ahead.

24 A. XIII-G is the casino's environmental evaluation

25 document that names me by name on page one, two and calls

313

1 for the construction of eight-foot tall concrete wall

2 along the Rancharia south of the Krahforst residence.

3 That is 91-foot property line.

4 Q. What is the date of that?

5 A. The date of the evaluation is June 2004.

6 MR. FORMAN: Your Honor, could I get some

7 clarification on E and F. Mr. Krahforst said that F was

8 a second invoice from Eureka Glass.

9 JUDGE GREENBERG: To deaden the noise.

10 MR. FORMAN: I know what he said. But the  
11 information that he provided showed two invoices from  
12 Taylor Made Fencing, I'm wondering whether --

13 THE WITNESS: Mr. Forman, you are correct. E  
14 and F are Taylor Made Fencing. I'm sorry.

15 MR. PEIRCE: Thank you, George.

16 BY JUDGE GREENBERG:

17 Q. Go ahead.

18 A. XIII-G is the tribe's environmental evaluation  
19 calling for eight-foot wall along my property line, not  
20 implemented.

21 I would like that to be part of the mitigation  
22 contained as a condition in the alcohol license to afford  
23 me the privacy that has been compromised as you can see  
24 from the previous submitted photographs.

25 Q. This is an E.I.R.

314

1 A. They call it an environmental evaluation.

2 MR. FORMAN: Just for clarification, your Honor,

3 will Mr. Krahforst confirm that the handwritten notation

4 about 2/3 of the way down the page is something he wrote

5 and that was not in the original document?

6 THE WITNESS: What page of the document?

7 MR. FORMAN: Well, this is the first page.

8 THE WITNESS: Yeah. That is me.

9 MR. FORMAN: And the same would be true on page

10 3-10?

11 THE WITNESS: Correct.

12 JUDGE GREENBERG: Can I take a look at the  
Page 227

13 document, please.

14 THE WITNESS: Sure.

15 BY JUDGE GREENBERG:

16 Q. This document was prepared by whom for whose  
17 benefit?

18 A. This was prepared by Analytical Environmental  
19 services for the tribe's benefit.

20 Q. In other words, who paid Analytical?

21 A. The casino.

22 Q. XIII-H.

23 A. XIII-H is an engineering report prepared by  
24 Winzler & Company engineers for the tribe for the casino  
25 and paid for by the casino. It is an environmental

1 impact analysis for a proposed gaming facility October  
2 1999. The reason I want to submit this, this is a much  
3 more good faith effort to mitigate impacts to adjacent  
4 neighbors and the road.

5 I'll just read off some of the verbiage in here  
6 that --

7 MR. FORMAN: Your Honor, are we going on through  
8 identifying all the exhibits before we have testimony  
9 about that?

10 JUDGE GREENBERG: That is all we will do is  
11 identify them. You don't have to tell me the reasons you  
12 have them in there. You'll be able to comment on them  
13 later. Just identify them, what they are.

14 THE WITNESS: Okay. Then I'll leave it at that.

15 Although, I have highlighted areas that I thought were

16 important, but I'll leave that commentary until another  
17 time.

18 JUDGE GREENBERG: Okay. Fine. XIII-I.

19 THE WITNESS: XIII-I is a confirmation e-mail  
20 from congressman Mike Thompson's office, my  
21 representative, who was at a meeting between the tribe  
22 and myself.

23 MR. FORMAN: Objection. This goes beyond  
24 identification of the exhibit.

25 BY JUDGE GREENBERG:

316

1 Q. It is a confirmation from congressman --

2 A. Mike Thompson.

3 Q. In response to something that you sent to him?

4 A. That mitigation was agreed to from the tribe,  
5 mitigation to me, specifics are in the e-mail.

6 Q. XIII-J.

7 A. XIII-J because the mitigations contained in the  
8 e-mail were not implemented or not completely, Mike  
9 Thompson sent a letter.

10 Q. What is the date of the letter?

11 A. November 30, 2005.

12 Q. Yes. Go ahead.

13 A. Sent a letter to the tribal chairperson,  
14 Mr. Bowman saying, so, where is Mr. Krahforst's  
15 reimbursement for windows and the completion of the other  
16 mitigation items.

17 MR. PEIRCE: That is I?

18 THE WITNESS: That is J.

19 MR. PEIRCE: So what was I?

20 JUDGE GREENBERG: I was a confirmation of an

21 e-mail.

22 THE WITNESS: E-mail confirmation.

23 MR. PEIRCE: I don't know that I have that.

24 MR. FORMAN: I have not seen that.

25 JUDGE GREENBERG: Do you have it there.

317

1 MR. PEIRCE: It is not in my packet. Let me

2 look, if I may.

3 THE WITNESS: I have the letter from the

4 congressman, but I don't believe I have that.

5 JUDGE GREENBERG: May I see this, please.



6 MR. PEIRCE: I don't either.

7 BY JUDGE GREENBERG:

8 Q. Let me see. The letter which would be J. So  
9 all you are talking about from the tribe is the windows;  
10 is that right?

11 A. Windows and wall.

12 Q. According to this Exhibit XIII-J, I understand  
13 from Mr. Krahforst that the tribe has partially completed  
14 the list of items that were agreed to, specifically, the  
15 construction of a block wall perimeter fencing along a  
16 portion of the upper parking lot and the planting of  
17 vegetation.

18 A. If you read the e-mail that preceded that, you  
19 will see that the wall, you won't see. The wall was  
20 supposed to go to the corner of my property and the  
21 landscaping was supposed to be completed well before the

22 casino opened.

23 And it wasn't put in until the day the casino

24 opened and they didn't come back to finish the job. When

25 she says partial completion, she means partial on two

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1 items and non-completion on the fence, on the -- on the

2 windows.

3 MR. FORMAN: I would object and ask that the

4 record be stricken as to Mr. Krahforst's characterization

5 of what the alleged author of that document meant. He is

6 speculating.

7 JUDGE GREENBERG: It is speculative. The

8 document speaks for itself. That is XIII-J.

9 XIII-K.

10 THE WITNESS: Your Honor, this is also a XIII-J.

11 I don't know if it is mislettered or not.

12 JUDGE GREENBERG: Let's call it XIII-J-1, okay.

13 XIII-J-1 is an office memo to Sherry Willis from

14 Rex Jackman, dated September 22, 2004.

15 It is from the business transportation housing

16 agency, which includes a lot of documents --

17 organizations, department of transportation, just one.

18 MR. FORMAN: To the extent that this is -- if

19 this is going to be identified separately, as it should

20 be, it is probably confusing to tie it to XIII-J, which

21 apparently pertains to correspondence from Thompson's

22 office; whereas, this is from a state agency. It seems

23 this would be more logically identified as K.

24 JUDGE GREENBERG: We have another document

25 already designated as K.

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1           But XIII-J-1 since it merely is correspondence  
2 going back and forth pertaining to the problems with the  
3 tribe and its environment, I have labeled it as part of  
4 J. I am not saying it is thereby tied to any other  
5 exhibit.

6           I would think that the folks here would take  
7 note of the third page of the update of September 23,  
8 2004, this J-1, XIII-J-1. It talks about the tribe  
9 should hire a new consultant, conduct a traffic impact  
10 analysis which includes an assessment of the following  
11 options and includes in the third one, any other

12 mitigation fact options which may be effective, including  
13 signage to direct vehicles to use a route other than the  
14 northbound off ramp. Apparently an agency refusing to do  
15 that should have been made aware of this memorandum  
16 regarding the department of transportation.

17           Okay. That is XIII-J-1.

18           Go ahead.

19           THE WITNESS: XIII-K is another Cal-Trans  
20 department of transportation letter to the tribe, casino  
21 regarding mitigations. They are highway mitigations,  
22 free mitigations they are concerned about.

23 BY JUDGE GREENBERG:

24           Q. And that is what date?

25           A. 05/6/2004.

1           MR. FORMAN: Again, for clarification I see on  
2 what was provided to us some handwritten notations on the  
3 lower right-hand portion that appear to make factual  
4 assertions independent of what is set forth in the  
5 letter, assuming the letter is otherwise admissible.  
6 we'll get to that in a little while.

7           JUDGE GREENBERG: Sure. We'll make note of that  
8 so you can --

9           who made this -- for my information who made the  
10 handwritten note on the lower right-hand corner of  
11 Exhibit XIII-K?

12           MR. PEIRCE: If the record would indicate,  
13 Mr. Krahforst is pointing to himself.

14 BY JUDGE GREENBERG:

15 Q. Did you make those notes?

16 A. Yeah.

17 Q. XIII-L?

18 A. XIII-L is a letter from the casino to the county

19 department of public works.

20 Q. Date?

21 A. 03/4/2005.

22 Q. A letter from the --

23 A. Tribe, the casino to the county public works,

24 saying that we believe the interest of all concerned

25 would be served by widening and further improving Singley

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1 Road.

2 Q. It also says the Bear River Band will not have  
3 the means with which to pay for these initial  
4 improvements.

5 A. Correct.

6 Q. Go ahead.

7 A. XIII-M is a local paper report on the day after  
8 or so that the casino opens detailing the impact to  
9 traffic, the road and that freeway off ramp Cal-Trans was  
10 concerned about.

11 Q. May I see it?

12 A. Yes.

13 Q. XIII-N.

14 A. N, I've got three N's.

15 Q. XIII-M is the newspaper article.

16 A. So these are also --

17 Q. I thought they were all part of that.



18 All right. We'll make a XIII-M-1. What is

19 XIII-M-1?

20 MR. PEIRCE: I would note that is cumulative to

21 XIII-M.

22 JUDGE GREENBERG: I understand. We have XIII-M,

23 which is the newspaper article. XIII-M-1 is an excerpt

24 from the Federal Register.

25 MR. FORMAN: No. I believe XIII-M-1 was the

322

1 second newspaper article, at least in --

2 JUDGE GREENBERG: No, it's not.

3 THE WITNESS: There is some truth to what he is

4 saying. That is what I submitted to the two gentlemen

5 here, but it didn't make it to your packet.

6 JUDGE GREENBERG: I don't have anything except

7 what you gave me.

8 THE WITNESS: So it is missing.

9 JUDGE GREENBERG: There is another newspaper

10 article.

11 MR. PEIRCE: It is a web link to a different

12 newspaper article.

13 JUDGE GREENBERG: From Schmit to Schmit, Friday,

14 August 12. I have that.

15 THE WITNESS: There is a second one. I think

16 that is two newspapers.

17 JUDGE GREENBERG: Are they both about the same

18 thing?

19 THE WITNESS: They are both about the same

20 thing.

21 MR. FORMAN: One is from the Eureka Times  
22 Standard. One is from the Eureka Reporter. Two  
23 different newspapers covering the same thing.

24 JUDGE GREENBERG: They say essentially the same  
25 thing. There is no reason to --

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1 THE WITNESS: I have no objection to that.

2 JUDGE GREENBERG: We are talking about XIII-M-1,  
3 and that M-1 caused a problem, failure to provide the  
4 documentation.

5 THE WITNESS: This is from the Federal Register.  
6 And the only reason I submitted it was it is a statement  
7 on behalf of the tribe that they believe the issuance of

8 an alcohol license would be in the best interest of the  
9 tribe, the residents of tribal trust lands and the  
10 surrounding community.

11 JUDGE GREENBERG: I only have one page. Is that  
12 correct?

13 THE WITNESS: This is a change.

14 JUDGE GREENBERG: This is -- that is the Federal  
15 Register; is that correct?

16 THE WITNESS: That I just spoke of.

17 MR. FORMAN: For your Honor's information, that  
18 would appear to be a portion of the tribe's liquor  
19 ordinance enactment of which has the undersecretary of  
20 the interior approval, which was required for the  
21 introduction of spiritous liquors into the reservation.

22 JUDGE GREENBERG: So this is department of  
23 interior policy regarding those license approvals?

24 MR. FORMAN: No, sir. This is -- under federal  
25 law, the introduction or possession of alcoholic

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1 beverages in Indian country is prohibited unless the  
2 tribe has enacted an ordinance authorizing and regulating  
3 same.

4 That ordinance has been approved by the  
5 department of the interior and published in the Federal  
6 Register, which is -- a portion of which is this. And  
7 third, the introduction and sale is conducted in  
8 accordance with the laws of the state in which the  
9 tribe's lands are located.

10 So this is tribal law, as published in the

11 Federal Register that authorizes and provides for the  
12 regulation of the possession, sale and consumption of  
13 alcoholic beverages on Bear River's tribal trust lands.

14 JUDGE GREENBERG: Are you saying it is  
15 prohibited unless the state --

16 MR. PEIRCE: It is a federal crime to possess  
17 spiritous liquors on tribal property. The document, as  
18 Mr. Forman was indicating is what is required as a  
19 condition precedent adopted by the tribal council,  
20 approved by the department of interior, published in the  
21 Federal Register, to allow the state in which the  
22 property is located to license alcohol on the tribal  
23 land.

24 MR. FORMAN: So this is a portion of the tribe's  
25 own liquor ordinance as has been approved by the

1 secretary of the interior and published in the Federal  
2 Register.

3 JUDGE GREENBERG: All right. Thank you.

4 MR. FORMAN: And so is that N as in Nancy?

5 JUDGE GREENBERG: Yes.

6 MR. FORMAN: Thank you.

7 JUDGE GREENBERG: That is XIII-M-1. Okay.

8 XIII-M like in milieu.

9 MR. FORMAN: Thank you.

10 JUDGE GREENBERG: We have XIII-M-1. From the  
11 department of alcoholic beverage control with a mission  
12 statement. XIII-N like in Nellie.

13 THE WITNESS: I only have -- my only remaining

14 documents are XIII-O and P.

15 JUDGE GREENBERG: Take a look.

16 THE WITNESS: We can relabel these if you want

17 to.

18 JUDGE GREENBERG: What are those?

19 THE WITNESS: O and P, the last two.

20 JUDGE GREENBERG: We'll take care of that right

21 now.

22 The department of alcoholic beverage control

23 mission statement through organization we will mark as

24 XIII-N.

25 Then we have O and P.



1                   THE WITNESS:  O and P.  <sup>A001B73A</sup>XIII-O is two  
2    photographs of an SUV stuck in the ditch south of the  
3    casino on Singley Road and being pulled out or attempting  
4    to be pulled out.

5                   JUDGE GREENBERG:  Go ahead.  That was O.

6                   THE WITNESS:  XIII-P, two photographs of the  
7    same part of the road south of the casino, this time on  
8    the other side on that shoulder, a vehicle is stuck and  
9    abandoned.  I don't know what the story is on that.

10                  JUDGE GREENBERG:  Are those the same vehicles  
11  depicted in XIII-O?

12                  THE WITNESS:  No.

13                  JUDGE GREENBERG:  Additional vehicle?

14                  THE WITNESS:  Yes.

15                  JUDGE GREENBERG:  The vehicle is stuck in the --

16                  THE WITNESS:  Stuck on the shoulder.  Okay.

17 MR. FORMAN: I would object to the  
18 characterization at this point of stuck. I would say  
19 there is no evidence to support it. What we have is a  
20 picture of a vehicle sitting off of the paved area on the  
21 shoulder of the road. Whether it is stuck or not,  
22 whether it is parked there, we don't know that.

23 BY JUDGE GREENBERG:

24 Q. Do you know why they were parked there? Were  
25 they left there voluntarily or were they left there

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1 because they couldn't move from there?

2 A. I don't know how it got there, sir. I just know  
3 that part of the road, it is so soft and drops off so

4 abruptly, if I -- if that were me <sup>A001B73A</sup> parked there, I  
5 couldn't pull out. How it got there, I don't know.

6 Q. Okay. Thank you. You took out these photos?

7 A. Yes, sir.

8 Q. You want to make a statement regarding documents  
9 that have been labeled Exhibit XIII?

10 A. Yes, sir, I would.

11 Almost all of it has to do with mitigation that  
12 I have requested from the casino to offset the impact of  
13 a bar/casino and all the traffic that alcohol license has  
14 generated, and I would like to see this type of  
15 mitigation included in a conditional license so that it  
16 gets addressed.

17 MR. PEIRCE: Mr. Krahforst, excuse me for  
18 interrupting. I had hoped to do it before you started  
19 testifying about the exhibits. I apologize to the court,

20 but I want to get a clarification on the exhibits.

21 We have XIII-M as in Mary, which I understand to  
22 be the Times Standard casino opening story.

23 JUDGE GREENBERG: Yes.

24 MR. PEIRCE: And then the document which is from  
25 the website and purports to be from the Eureka Reporter

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1 was not marked as an exhibit; is that correct?

2 JUDGE GREENBERG: That's correct because I don't  
3 have it.

4 MR. PEIRCE: Okay.

5 JUDGE GREENBERG: K is the letter from the  
6 department of transportation, dated 5/6/2004. Exhibit L

7 is from the Bear River Band of <sup>A001B73A</sup>Rohnerville Rancheria to  
8 the department of public works. And Exhibit XIII-M is  
9 the article in the newspaper. Exhibit XIII-N is the  
10 policy of the Department of Alcoholic Beverage Control.

11 MR. FORMAN: XIII-M-1 is the Federal Register  
12 notice.

13 MR. PEIRCE: I wanted that clarification. I  
14 apologize. I thought you had held this up at one point  
15 during the discussion. So if it not marked, I don't need  
16 any further clarification.

17 JUDGE GREENBERG: Okay. Thank you.

18 Q. So you are essentially here for saying, "Look, I  
19 am suffering because of this operation, and I want  
20 compensation for my out-of-pocket costs"?

21 A. More so. For me personally because I am next  
22 door. That road has been an issue and that is documented

23 not just from the previous testimony, but from  
24 documents.

25 Q. what would make you happy about the road?

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1 A. widen it and put a paved shoulder on either  
2 side. That is what was called for by the county over the  
3 last 10 years repeatedly. It is a reasonable request,  
4 sir.

5 And the tribe has acquired the property rights  
6 for the right-hand side as you go down the hill. They  
7 own that land. They could widen it there and realign it.

8 Q. okay.

9 A. I'd like the alcohol -- I'd like to go on record

10 to say that the alcohol board made a recommendation to  
11 approve this license with conditions before they received  
12 our documentation.

13 In fact, our documentation when we submitted our  
14 complaints, protest letters, was refused by the local  
15 office as not the time to submit it. And subsequently,  
16 they made a ruling, and I asked Karen Lokhen, the local  
17 A.B.C., "How did you come to that conclusion?"

18 She said we didn't have enough documentation to  
19 deny a conditional license. I had no answer to that  
20 because she wouldn't accept our documentation.

21 So the A.B.C. is not listening to our issues,  
22 and none of the conditions in the alcohol conditional  
23 license they are recommending address the road, address  
24 the privacy, closeness of the neighbors, address the  
25 issues that we did in detail as individuals and also in

1 our group letter from the Singley Hill Homeowners  
2 Association. It was the cart before the horse.

3 I wish they would reopen the investigation, look  
4 at the issues with the documentation they now have and  
5 put something in here that addresses this thing. I fully  
6 realize it is not a -- against the casino. We are stuck  
7 with the casino, but the casino serves alcohol from --  
8 you can correct me if I'm wrong -- 10:00 in the morning  
9 to 2:00 in the morning the following morning.

10 They serve it in the restaurant. They serve it  
11 in the gaming hall. They serve it in their bar. They  
12 have a separate sports bar. You can drink and listen to



13 entertainment, and I believe they <sup>A001B73A</sup> have the right to sell  
14 off-sale liquor. All of those are bringing in the  
15 crowds. I think alcohol license is part and parcel to a  
16 casino as most people understand it. And it is impacting  
17 us.

18           And I think it was premature for the alcohol  
19 board to make a recommendation that didn't consider us or  
20 investigate us. No one talked to us. No one came out to  
21 talk to me personally, see from my side of the casino.  
22 You can't determine my situation from a drive-by. Or  
23 wanted to -- all the documentation I have submitted today  
24 was in my personal letter and in the group letter  
25 referenced Cal-Trans and county and so forth. And none

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1 of that was asked for.

2           So we'd like to invite the alcohol board and  
3 you, sir, if you'd like to come out and visit.

4           MR. FORMAN: I have to object. This is not  
5 proper testimony directed to the issues before your  
6 Honor. This is argument. It is attacking --

7           JUDGE GREENBERG: I understand, Counsel.

8           MR. FORMAN: Okay.

9           JUDGE GREENBERG: This is for purposes of  
10 expediency only.

11          MR. FORMAN: Thank you.

12          JUDGE GREENBERG: It is not factual. It is  
13 based upon what he believes to be right and just.

14          Q. Anything further?

15          A. If I can just briefly read my notes and make

16 sure I didn't forget anything. A001B73A

17 Q. Go ahead.

18 A. I would also like the A.B.C. to investigate the  
19 accidents that were -- with the dates that were brought  
20 up today. I think they are capable, maybe more capable  
21 than us to access that information as part of a thorough  
22 investigation.

23 I'd like to tag on to your comments about using  
24 the Ballister corner property as shuttle parking. The  
25 tribe has bought -- in addition to that 1/3 acre, they

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1 have 125 acres they purchased last spring that could be  
2 used for parking in that back location.

3 Q. But they would have to use Singley Road to get  
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4 there, wouldn't they?

5 A. Yes. They could use -- they could tag on --  
6 they could enter there or they have a number of options.  
7 They own all the way up the hill just past the first two  
8 houses and behind those first two houses is all theirs.

9 Q. Trying to avoid the traffic on Singley Road you  
10 wouldn't want traffic on Singley Road in order to get to  
11 a parking lot for purposes of them being available to  
12 shuttle to the property?

13 A. I'm sort of seeing the conflict, but I'm not 100  
14 percent clear. I just was trying to say that 1/3 of an  
15 acre didn't seem adequate for a parking lot. In reality  
16 it would be adjacent to 125 acres they already own.

17 Q. All right. Thank you. Anything further?

18 A. And in earlier testimony, it was -- you pointed

19 out that the tribe had, by other <sup>A001B73A</sup> jurisdictions, access to  
20 this property that was not your jurisdictional area. And  
21 I agree. But they were given access to that property for  
22 purposes of a housing HUD subdivision. It was never  
23 envisioned --

24 MR. FORMAN: Your Honor, I've got to object to  
25 this. This is absolutely irrelevant to this

333

1 proceeding.

2 JUDGE GREENBERG: That they were given property.  
3 Reason for the establishment of the tribal premises is  
4 not an issue right now, okay.

5 THE WITNESS: Then I'm done except I just have a  
6 question on procedure here. If we reconvene here at

7 another time, am I allowed to testify again or be  
8 cross-examined?

9 JUDGE GREENBERG: Let's see if we can finish  
10 your testimony right now, sir.

11 THE WITNESS: Okay.

12 JUDGE GREENBERG: Anything further from this  
13 witness?

14 MS. FREGEAU: No, sir.

15 JUDGE GREENBERG: I can't hear you.

16 MS. FREGEAU: No, sir.

17 JUDGE GREENBERG: Mr. Peirce?

18 MR. PEIRCE: Yes. Just some items of  
19 clarification, if I may. And I need to look at the  
20 exhibits, if I may.

21 JUDGE GREENBERG: Sure. All of XIII?

22 MR. PEIRCE: Yes. All of the XIII's.

23 If we can go off the record for a moment.

24 JUDGE GREENBERG: Sure.

25 (A discussion was held off the record.)

334

1 MR. PEIRCE: As I just indicated to your Honor  
2 off the record, I had gone through the Exhibits XIII, and  
3 reviewed them, and I do not have any cross-examination of  
4 this witness.

5 JUDGE GREENBERG: Okay.

6 Mr. Forman?

7

8 CROSS-EXAMINATION

9 BY MR. FORMAN:

10 Q. Mr. Krahforst, very briefly, and is it Krahforst  
11 or Krahforst?

12 A. Correct as you just said it.

13 Q. Krahforst?

14 A. Yes.

15 Q. You mentioned earlier today that you believed  
16 the tribe had acquired title to some land adjacent to  
17 Singley Road between the casino and the bottom of the  
18 hill; correct?

19 A. Yes.

20 Q. Are you aware of the zoning on that land?

21 A. I believe it is still in fee.

22 Q. That wasn't my question. Are you aware of how  
23 the county has zoned that land?

24 A. I believe it is agriculture and possibly



25 agriculture-residential. I'm not <sup>A001B73A</sup>100 percent sure.

335

1 Q. If the board were to deny the application to  
2 transfer the liquor license to the casino, would the  
3 impacts on you and your residence be any different than  
4 they are now, putting aside the road?

5 A. Oh, I believe they would be significantly  
6 diminished.

7 Q. Why is that?

8 A. Because I don't think it would draw the number  
9 of customers without the different alcohol venues.

10 Q. Assuming that the place was just as busy without  
11 a liquor license as with, would there be any difference  
12 in the impacts upon your residence and people therein

13 than there is now?

14 A. If I understand your question, if there was no  
15 change, there would be no change in the impact.

16 JUDGE GREENBERG: what he is saying is if  
17 alcohol was not served, would your circumstances be any  
18 different?

19 THE WITNESS: I thought they would be. He is  
20 making the assumption that if the license were denied and  
21 it was as busy as it is today with the license, would I  
22 be impacted any different -- no, it would be the same  
23 number of people with or without under the -- if I  
24 understand the question, under the proposition or  
25 whatever you want to call that.

1           MR. FORMAN: Thank you. I have no further  
2 questions.

3           JUDGE GREENBERG: Anything further from your  
4 witness, Ms. Fregeau?

5           MS. FREGEAU: I'd like to ask him a question.

6           JUDGE GREENBERG: Sure.

7

8                                 DIRECT EXAMINATION

9 BY MS. FREGEAU:

10          Q. Do you feel people driving under the influence  
11 of alcohol on that road would have a higher degree of a  
12 potential accident than those that would not be  
13 impaired?

14          A. Yes, of course.

15          Q. So if the alcohol license was not issued, the

16 opportunity for accidents, do you feel, they would lessen  
17 or remain the same?

18 MR. FORMAN: Objection. Calls for speculation  
19 given that there is no assurance that people won't bring  
20 their own.

21 MS. FREGEAU: Sir, you just asked the same --

22 JUDGE GREENBERG: I agree, but I'll permit the  
23 question. Do you understand the question?

24 THE WITNESS: I believe I don't want to  
25 contradict my answer.

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1 JUDGE GREENBERG: In other words, if no alcohol  
2 was served, would there be as large a number of

3 accidents?

4 THE WITNESS: No. I think the potential would  
5 be diminished.

6 MS. FREGEAU: Thank you.

7 Q. And I have one other question. Do you feel  
8 that, since you had brought up mitigation, that there  
9 would be any other mitigation at this point, if that is  
10 the way that we went, would help public safety?

11 A. Could you ask that again.

12 Q. You talked about some situations that you felt  
13 that if were mitigated would relieve some of the impact.

14 A. Yes.

15 Q. I'm asking you, were there any other mitigations  
16 that you would look at that would help public safety?

17 A. Yes. One in particular that has nothing to do  
18 with me or the county road, and that is the Cal-Trans

19 intersection that customers and residents have to cross,  
20 a freeway on ramp, essentially, to get to the casino.

21           And that is -- there have been fatal accidents  
22 there before. I just hope there is nothing tragic there,  
23 but there is nothing in place to prevent that.

24           JUDGE GREENBERG: That is the southern entrance?

25           THE WITNESS: Yeah. Where it becomes a freeway

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1 access.

2           JUDGE GREENBERG: At the southern entrance.

3           THE WITNESS: Right. To Singley Road.

4           JUDGE GREENBERG: So that is a very hazardous  
5 situation right now regardless of whether or not the

6 tribe had land or regardless of whether or not alcohol  
7 was served by the tribe; is that right?

8 THE WITNESS: Yes. Yes.

9 JUDGE GREENBERG: Okay.

10 MS. FREGEAU: That was all, sir.

11 JUDGE GREENBERG: Any questions of this witness?

12 MR. PEIRCE: No, your Honor.

13 MR. FORMAN: Nothing further, your Honor.

14 JUDGE GREENBERG: Thank you very much, sir.

15 All right. The time is now two minutes until  
16 5:00. If you wait just a moment, I will see whether or  
17 not the 21st is available. I think it would be.

18 MR. FORMAN: Your Honor, before we adjourn,  
19 would it be possible that the protestants finish their  
20 case today.

21 JUDGE GREENBERG: It depends upon if you want to  
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22 go later, I'll go later.

23 MR. FORMAN: It would be worth it to get the  
24 protestants' case done so we don't get into a situation  
25 whenever we reconvene that we don't finish again. Our

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1 case will not take very long.

2 JUDGE GREENBERG: Well, how many more witnesses  
3 do the protestants have?

4 MS. FREGEAU: Sir, I just had information that  
5 you had asked me to bring to come up and testify to, and  
6 I believe some of it has already been given to you. So I  
7 was just going to give you documents for your review, and  
8 then we're finished.



9 JUDGE GREENBERG: So there is no live protestant  
10 except yourself that is going to testify?

11 MS. FREGEAU: Not that I am aware of, sir.

12 JUDGE GREENBERG: Pardon me?

13 MS. FREGEAU: Not that I am aware of.

14 JUDGE GREENBERG: Anybody here have any  
15 information they wish me to receive other than that which  
16 has already been produced by your fellow protestants?

17 There is not a single hand raised; therefore,  
18 the only information that would be necessary would be  
19 that of Ms. Fregeau, which she said would be extremely  
20 brief consisting of documentation.

21 Is that correct, Ms. Fregeau?

22 MS. FREGEAU: Correct.

23 JUDGE GREENBERG: There is no reason we can't  
24 have that testimony presented at the continued date.

25 MR. PEIRCE: I would request that we go through

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1 Exhibit XIII and get rulings on that prior to recessing  
2 today so that if Mr. Krahforst is unavailable, we will  
3 have dealt with the documents that he has provided to the  
4 court.

5 JUDGE GREENBERG: We have a number of documents  
6 that have been marked as exhibits, including Exhibits  
7 XII, Exhibits XI and their subparts. I don't know if any  
8 other exhibits have been marked as identification only.  
9 I think we are only talking about X, XI and XII, as well  
10 as XIII.

11 MR. PEIRCE: That is correct.

12 JUDGE GREENBERG: X was the traffic collision  
13 report.

14 MR. PEIRCE: Correct.

15 JUDGE GREENBERG: Any objection to that  
16 document?

17 MR. FORMAN: Yes, sir.

18 JUDGE GREENBERG: Yes.

19 MR. FORMAN: vehicle code 20015 makes the  
20 traffic collision reports inadmissible. And apart from  
21 the statute, it is hearsay to the extent it is offered  
22 for the truth of the matter asserted. And it is also  
23 irrelevant insofar as the -- what is before your Honor in  
24 terms of whether to allow the transfer of this license.

25 There is nothing in that report that is tied to

1 the service of alcoholic beverages at the casino. There  
2 is nothing to suggest in that report that the casino is  
3 not fully compliant with all of the terms and conditions  
4 of the conditional license of the existing interim  
5 permit. And it doesn't prove anything that is properly  
6 before your Honor.

7 JUDGE GREENBERG: Well, Exhibit X is pretty much  
8 known. All it is is a repetition from the information  
9 provided by sworn witness. So it is cumulative.

10 MR. FORMAN: That too.

11 JUDGE GREENBERG: For that reason, I don't  
12 believe its probative value would be any greater -- much  
13 greater than that which might be prejudicial. And for  
14 that reason, it is rejected.

15 MS. FREGEAU: Your Honor, if we subpoenaed the  
16 officer who came in who wrote the report, would that be  
17 appropriate? Then it is no longer hearsay.

18 JUDGE GREENBERG: You can do what you want. We  
19 are not talking about the authenticity of the report so  
20 much as what it contains. It contains repetitive  
21 information that has already been provided by a witness.

22 MS. FREGEAU: Okay.

23 MR. PEIRCE: Your Honor, just for purposes of  
24 the record and not to reconsider your ruling, the  
25 department's position would be that this would be

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1 admissible administrative hearsay to corroborate the

2 direct testimony of Mr. Holmes.

3           You have made your ruling, so I just wanted to  
4 make the record --

5           JUDGE GREENBERG: I think his testimony stands  
6 as it is. I don't think it is in need of  
7 corroboration.

8           MR. PEIRCE: That is fine. I just wish to put  
9 that on the record.

10           JUDGE GREENBERG: Exhibit XI-A, photos and the  
11 log pertaining to them. Any question of that? So it is  
12 admitted.

13           MR. FORMAN: Excuse me, your Honor. Was that --  
14 were you talking about XI now or XI-A? I don't believe  
15 XI has been admitted.

16           JUDGE GREENBERG: XI-A. What about XI? There  
17 is XI-A.

18 MR. FORMAN: Okay.

19 JUDGE GREENBERG: Two photos and a log.

20 2/24/05.

21 MR. FORMAN: XI-A, we would object to the police  
22 report. We have no objection to the photos because I  
23 think somebody else authenticated them.

24 For the same reason, the police report is not  
25 admissible, it contains hearsay. At least to the extent

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1 it is offered for the truth of the matter stated therein,  
2 it is not properly received.

3 JUDGE GREENBERG: It was said there was a D.U.I.  
4 arrest and that document itself appears to be

5 authenticated on 2/12/05. That is admitted.

6 Then you have XI-B, photos and the log

7 regarding --

8 MR. FORMAN: Same objections, your Honor. It is

9 not connected to the casino. There is no evidence

10 connecting it to the casino. There is no evidence to

11 causation. There is no proof of actual intoxication and

12 in terms of the cause of the collision, same with the

13 photograph --

14 JUDGE GREENBERG: The photographs, I think, have

15 been attested to by other witnesses.

16 MR. FORMAN: But what they show is not relevant

17 to what is before your Honor since there is no -- there

18 is no evidence of causation. We don't know why that car

19 came to be where it is or how and whether the safety or

20 unsafety of the road had anything to do with that



21 particular incident.

22 JUDGE GREENBERG: Well, I'll admit it and give  
23 it the weight to which it is entitled.

24 XI-C, two photos regarding December 16, '05.

25 And that was supposedly a collision with a log reference.

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1 Any objection?

2 MR. FORMAN: Same objections, your Honor --

3 JUDGE GREENBERG: Same ruling.

4 MR. FORMAN: -- as previous.

5 JUDGE GREENBERG: Admitted.

6 XII-A, which appears to be four photos with a  
7 date of 3/7/06. Any objection?

8           MR. FORMAN: We don't object to the extent that  
9 they depict what they depict, but to the extent that they  
10 are offered to show hazardous condition or an accident,  
11 we don't believe that there is any -- there has been no  
12 testimony to support the use of the photographs for that  
13 purpose.

14           MS. FREGEAU: It clearly shows that there was an  
15 accident and the post was knocked down, and you can see  
16 the tire tracks leading right up to the post. I think  
17 that goes to the issue of safety in that area and cars  
18 not being driven in a safe manner.

19           MR. FORMAN: For all we know, this individual  
20 was swerving to avoid a deer. We have no reason to imply  
21 or impute to this incident any hazardous condition. We  
22 see tire tracks in the grass and a sign that got knocked  
23 over.

24 JUDGE GREENBERG: Again, your objection goes to  
25 the weight of those photos. I'll admit it and give it to

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1 the weight to which it is entitled. XII-A is admitted.

2 XII-B, the photos regarding January 15, '06.

3 MR. FORMAN: No objection.

4 JUDGE GREENBERG: They are admitted.

5 XII-C, photos regarding February 11, '06.

6 MR. FORMAN: No objection.

7 JUDGE GREENBERG: Admitted.

8 XII-D assorted photos regarding February '06.

9 MR. FORMAN: We object to these on grounds of  
10 relevance. There simply is no relevance in any of these

11 pictures to what is before your Honor. There is nothing  
12 in here about the hazardous nature of the road. There is  
13 nothing in here about perils of serving alcohol.

14 We see that somebody, who knows who, dumped some  
15 bricks and some yard waste in a ditch and that somebody  
16 attempted a repair somewhere on the northern end of  
17 Singley Road and somebody littered. Those are not  
18 factors that are relevant to the board in deciding  
19 whether to approve the transfer of the license.

20 JUDGE GREENBERG: Your objection is well taken.  
21 Exhibit XII-D is rejected.

22 MR. PEIRCE: Your Honor, if I may be heard on  
23 that.

24 JUDGE GREENBERG: Yes.

25 MR. PEIRCE: To the extent that the one

1 photograph on XII-D indicates matchbooks and litter, my  
2 notes from the first hearing when your Honor opened it,  
3 the issues you said to be presented included litter, and  
4 so I believe that one portion --

5 JUDGE GREENBERG: Is that true?

6 MR. PEIRCE: I beg your pardon.

7 JUDGE GREENBERG: I don't know. I don't  
8 recall.

9 MR. FORMAN: Those were issues that the  
10 protestants raised.

11 MR. PEIRCE: Yes. This is the protestants'  
12 exhibit. So I believe the matchbooks which clearly -- or  
13 I will say certainly by inference relate to the casino

14 and the testimony of Mr. McVicker placed them as litter  
15 on Singley Road or seem to me to go to one of the issues  
16 of the protest. I agree, relating to the other three  
17 photos and have no problem with your ruling. But I  
18 believe the one photo is probative.

19 MR. FORMAN: I don't believe your Honor  
20 indicated that that was an issue properly to be  
21 considered in connection with the --

22 JUDGE GREENBERG: We have two photos showing  
23 litter of all of the photos submitted.

24 MR. FORMAN: which only one relates to the  
25 casino.

1                   MS. FREGEAU: I believe <sup>A001B73A</sup> photos in the previous  
2 hearing that showed all the alcohol bottles were picked  
3 up on the road. And during that testimony, that is when  
4 the litter issue came up. This is just additional litter  
5 that has been picked up since the last hearing and  
6 clearly it was marked with Bear River Casino. I think  
7 that is why we wanted to have it entered in.

8                   MR. FORMAN: And those prior photos, at least  
9 if -- in large measure if not entirely, predated the  
10 opening of the casino.

11                  JUDGE GREENBERG: My ruling stands. There has  
12 been sufficient testimony without the necessity of this  
13 corroboration.

14                  XII-D. And we have --

15                  MR. FORMAN: Excuse me, your Honor. Is the  
16 entire XII-D admitted or just the last photograph showing

17 the matchbooks?

18 JUDGE GREENBERG: XII-D is not admitted.

19 MR. FORMAN: Okay. Thank you.

20 JUDGE GREENBERG: There has been testimony as to

21 actually seeing the matchbooks, all the matches have been

22 lighted and thrown into the brush. And I think -- and I

23 know there has been no necessity for corroboration of

24 that testimony.

25 Okay. We come to XIII-A through O, inclusive.

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1 Is there any objection to any of those photos or

2 documents?

3 MR. FORMAN: Your Honor, we have no objection to



4 the photos. We do object to D, <sup>A001B73A</sup>XIII-D, the invoice.

5 JUDGE GREENBERG: Hold on.

6 MR. FORMAN: The invoice from Eureka Glass.

7 JUDGE GREENBERG: He testified that is what his  
8 out-of-pocket expenses were; is that right?

9 MR. FORMAN: That's right. We don't challenge  
10 that on hearsay or foundation. Our objection is to  
11 relevance. The same objection as to E. The same  
12 objection as to F, the two Taylor Made Fencing invoices.

13 The same objection -- not the same objection.  
14 Excuse me. I'll wait for a ruling on those and then  
15 we'll go on.

16 JUDGE GREENBERG: Wait just a moment, folks.  
17 There is a magic to this desk is that when the time is  
18 right, it will cause the disappearance of various  
19 documents.

20 MR. PEIRCE: If I may, your Honor.

21 JUDGE GREENBERG: Yes. Maybe it is in there. I

22 am looking for the exhibit list.

23 MR. PEIRCE: I did not see one when you asked me

24 to organize.

25 JUDGE GREENBERG: There was an exhibit list. I

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1 know there was. I have XII and there is another page XII

2 somewhere.

3 Sorry to delay you folks. It will just take a

4 second. We'll make another list of notes. I won't delay

5 you any further.

6 what is your objection to, Counsel? I'm sorry.

7 MR. FORMAN: Okay. <sup>A001B73A</sup> Objection to XIII-D.

8 JUDGE GREENBERG: Like in David.

9 MR. FORMAN: Yes. The Eureka Glass invoice. E,  
10 the Taylor Made Fencing invoice and F, the second Taylor  
11 Made Fencing invoice.

12 JUDGE GREENBERG: Those three documents.

13 MR. FORMAN: Yes. Those three documents.

14 JUDGE GREENBERG: Any other objection regarding  
15 the extensive Exhibit XIII?

16 MR. FORMAN: Yes. Objection to G, the excerpt  
17 from the A.E.S., June 2004 document to the extent that it  
18 has been altered for presentation to this forum with  
19 Mr. Krahforst's handwritten notes. It is not a true copy  
20 of the document.

21 JUDGE GREENBERG: Just a moment. The memorandum  
22 on XIII-G is stricken as having been altered by the

23 witness.

24 MS. FREGEAU: Your Honor, is that the one that

25 addressed the construction of the concrete wall?

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1 JUDGE GREENBERG: Yes.

2 MS. FREGEAU: I have one that has not been  
3 stricken. I have a copy of that same document that does  
4 not have Mr. Krahforst's handwriting on it.

5 JUDGE GREENBERG: Bring it up.

6 MR. PEIRCE: Page 3-10 is the third sheet, and  
7 it has handwriting on it as well or printing.

8 JUDGE GREENBERG: You have handwriting on the  
9 second page, 1-2.

10 MS. FREGEAU: 1-2 I have <sup>A001B73A</sup>with no handwriting on

11 it. If you want me to bring it up, I have no objection.

12 I'm sure counsel wouldn't object.

13 JUDGE GREENBERG: Part of it is highlighted.

14 Shows construction of 8-foot fence, 1-3. Doesn't have

15 3-10. What does 3-10 look like?

16 Just a minute, sir.

17 Do you have 3-10?

18 MS. FREGEAU: I am looking. I don't have 3

19 anything.

20 JUDGE GREENBERG: My copy of Exhibit XIII-G will

21 be admitted with the handwritten notes of the witness

22 stricken from it. Okay. Those are three pages.

23 MR. FORMAN: XIII-H, lack of -- we object on

24 grounds of relevancy, lack of foundation.

25 JUDGE GREENBERG: Notes of the witness

1 themselves and they are relevant. They are notes taken  
2 to Liz Murgilo.

3 MR. FORMAN: I'm sorry. I thought XIII-H was  
4 1999 --

5 JUDGE GREENBERG: H or I?

6 MR. FORMAN: H. I was talking about H.

7 JUDGE GREENBERG: Environmental impact analysis  
8 1999.

9 MR. FORMAN: Right. It was for a different  
10 project, not this project. And there has not been a  
11 proper foundation laid for the receipt of that document.

12 JUDGE GREENBERG: I don't even have it here.

13 Did you see it, Counsel?<sup>A001B73A</sup>

14 MR. PEIRCE: I have a copy in my packet.

15 MR. FORMAN: I thought that was H.

16 JUDGE GREENBERG: All right. H is the  
17 environmental impact analysis. There are several  
18 comments in that.

19 MR. FORMAN: We don't know whether this -- I'm  
20 sorry.

21 JUDGE GREENBERG: It is for proposed gaming  
22 facility at Rohnerville Rancheria.

23 MR. FORMAN: That's right. Not at this  
24 particular location at Singley Road.

25 It was for this location, not this project.

1 This is not the project that was built, the project that  
2 is described here. We also don't know from the witness  
3 whether this was a final or a draft document.

4 JUDGE GREENBERG: I suggest that it be received.  
5 And if you have any contradictory comments regarding its  
6 accuracy, that you propose -- that I propose, rather,  
7 that you provide information in rebuttal to it.

8 MR. FORMAN: Okay. Fair enough.

9 JUDGE GREENBERG: Okay. XIII-H.

10 MR. FORMAN: The letter from the congressman.

11 MR. PEIRCE: No. XIII-I is an e-mail.

12 MR. FORMAN: That is the one that we don't have.

13 I'm sorry. I thought that was J.

14 MR. PEIRCE: J is the letter.

15 JUDGE GREENBERG: XIII-I is the memorialization



16 of the e-mail.

17 MR. FORMAN: I would object to that, although we  
18 did not receive it and I don't have a copy, but my brief  
19 review of it when your Honor was looking at it is it  
20 contains hearsay. It is the alleged author's  
21 recollection of what was discussed, but the author isn't  
22 here. There is, I think, a failure properly to  
23 authenticate. And on those grounds as well as relevance  
24 on those grounds, it is objectionable.

25 JUDGE GREENBERG: Objection overruled.

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1 MR. FORMAN: But is it not the recollection of  
2 somebody who was present here. It is somebody else's,  
3 and we have no way to test the accuracy of that.

4 JUDGE GREENBERG: He says, "I understand the  
5 tribe to have offered me."

6 MR. FORMAN: Right. I'm sorry. Maybe I am  
7 looking at the wrong document. May I see that.

8 MR. PEIRCE: There are two e-mails contained on  
9 that page.

10 JUDGE GREENBERG: Do you want to withdraw your  
11 objection?

12 MR. FORMAN: I do. I would ask that we be  
13 provided with a copy of that e-mail because we have not.

14 JUDGE GREENBERG: Exhibit J, letter from  
15 Thompson.

16 MR. FORMAN: We would object to that in that it  
17 is hearsay. It is -- and relevance.

18 JUDGE GREENBERG: Exhibit J-1, office memo of

19 9/23/04.

20 MR. FORMAN: Lack of foundation, hearsay and  
21 relevance.

22 JUDGE GREENBERG: Exhibit L, March 4, '05 letter  
23 from the tribe to public works.

24 MR. FORMAN: Well, we would object to K as well.  
25 Was that not the May 6, '04 letter from Cal-Trans?

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1 JUDGE GREENBERG: Yes. I'm sorry.

2 MR. FORMAN: We object to that on lack of  
3 foundation, hearsay and relevance.

4 JUDGE GREENBERG: L, M and N -- same. L, M-1  
5 and N, O and P on the same grounds.

6 MR. FORMAN: We object to L on the same grounds,  
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7 M on the same grounds.

8 M-1 under federal law you are required to take  
9 notice of documents in the Federal Register. We have no  
10 objection to that.

11 N, the A.B.C. mission statement, we don't see  
12 the relevance of that, but we have no objection to it.

13 JUDGE GREENBERG: O, P?

14 MR. FORMAN: O and P, relevance. Other than  
15 that, no objection.

16 JUDGE GREENBERG: Each of the objections as to  
17 Exhibits XIII-A through P inclusive are overruled, and  
18 each of those items are admitted.

19 Okay. Anything further?

20 MR. PEIRCE: Not on behalf of the department at  
21 this time.

22 JUDGE GREENBERG: Okay. <sup>A001B73A</sup> We stand adjourned

23 therefore until the 21st of March.

24 MR. FORMAN: At what time, your Honor? May we

25 start before 10:00?

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1 JUDGE GREENBERG: 9:30.

2 MR. FORMAN: Thank you.

3 (The proceedings were adjourned at 5:27 p.m.)

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