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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 )  
)  
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 )  
)  
\_\_\_\_\_)

FILE: 47-423392  
REG.: 05060025

A0026AEA

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VOLUME III

17

TRANSCRIPT OF PROCEEDINGS

18

TUESDAY, MARCH 21, 2006

19

EUREKA, CALIFORNIA

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

24

25 FILE NO: A0026AE

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DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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12 Loleta, CA 95551 )

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17 Transcript of Proceedings, taken at One

18 Waterfront Drive, Eureka, California, commencing at 10:06

19 a.m., Tuesday, March 21, 2006, before Kristina Hofstad,

20 CSR No. 6912, RPR, CRR.

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2 A P P E A R A N C E S

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4 JUDGE ARNOLD GREENBERG

5

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19 (In Pro Per)

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APPLICANT'S

17

NUMBER	DESCRIPTION	IDENTIFIED	ADMITTED
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B	Agreement between	385	507
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18

sheriff's office  
and Bear River

19

20

C	6/28/05 letter from	386	507
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21

D	Notice of	419	507
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22

authorization of  
the gaming agency

23

24

25

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1

I N D E X (Continued)

2

APPLICANT'S

3	NUMBER	DESCRIPTION	IDENTIFIED	ADMITTED
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E-1	Bear River Casino	447	457
-----	-------------------	-----	-----

4 security department

5 procedures for

6 barring or removing

7 persons

8

E-2	Bear River Casino	447	457
-----	-------------------	-----	-----

9 front door I.D.

10 checks

11

E-3	Bear River Casino	447	457
-----	-------------------	-----	-----

12 gaming floor policy

13

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14 training

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15 overservice of

16 patrons

17

PROTESTANTS'

15	NUMBER	DESCRIPTION	IDENTIFIED	ADMITTED
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16

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18		board of supervisors	A0026AEA
	XIII-R	4/22/96 letter to	370
19		Barbara Orr from	
		John Murray	
20			
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22			
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1 I N D E X (Continued)

2

3 PROTESTANTS'

NUMBER	DESCRIPTION	IDENTIFIED	ADMITTED
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4

A0026AEA

5 XIII-U Document from 374  
department of  
6 public works

7 XIII-V 8/26/97 letter to 375  
Bear River from  
8 department of  
public works

9  
XIII-W 5/3/04 letter to 376  
10 John McGinnis

11 (Exhibits retained by Judge Greenberg)

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1 Eureka, California, Tuesday, March 8, 2006

2 10:06 a.m.

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4 JUDGE GREENBERG: The hearing in the matter of

5 the protest against the person to person and premises to

6 premises transfer of an on-sale general public eating

7 place license to Bear River Casino file 47-423392, Reg.

8 05060025 is reconvened.

9 This is the case of Bear River Casino. I am  
10 Arnold Greenberg, administrative law judge appointed to  
11 hear this matter. May I take the appearances of the  
12 parties.

13 MR. PIERCE: John Pierce, counsel for the  
14 department.

15 JUDGE GREENBERG: Mr. Forman.

16 MR. FORMAN: George Forman, F-o-r-m-a-n,  
17 appearing for the applicant.

18 MS. FREGEAU: Suzi Fregeau on behalf of the  
19 homeowners' association.

20 JUDGE GREENBERG: You are at this point  
21 representing the protestants; is that right?

22 MS. FREGEAU: I am representing them, yes, sir.

23 JUDGE GREENBERG: Thank you. Okay. I think we



24 were in the midst of presenting witnesses on behalf of  
25 protestants. And if I am not mistaken, we have received

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1 Exhibits XIII, being the stuck vehicle on the shoulder.

2 And when we were last talking regarding that  
3 information, I think our last witness was Louis Costa.

4 Do you have any other witnesses, Ms. Fregeau?

5 MS. FREGEAU: I believe, sir, wasn't our last  
6 witness Mr. Krahforst?

7 JUDGE GREENBERG: What is your understanding?

8 MR. FORMAN: My understanding is that the  
9 protestants had basically concluded the presentation of  
10 testimony and Ms. Fregeau was going to present some

11 additional documents, and that was going to be it for the  
12 protestants' case.

13 JUDGE GREENBERG: All those documents have been  
14 presented by way of evidence. The last documents I have  
15 received were those of XIII-P, which was a stuck vehicle  
16 on the shoulder.

17 MS. FREGEAU: You had asked that I bring copies  
18 of the documents that I had already forwarded to  
19 Mr. Pierce and Mr. Forman --

20 JUDGE GREENBERG: Yes.

21 MS. FREGEAU: -- that you have not received, and  
22 I brought them for you.

23 JUDGE GREENBERG: May I have them.

24 MS. FREGEAU: I'm not sure the process. Do I  
25 tell you what each one means or --

1           JUDGE GREENBERG: well, just giving me a bunch  
2 of papers doesn't mean much to me.

3           MS. FREGEAU: The first one I have, sir, is a  
4 letter from the board of supervisors, county of Humboldt  
5 to Terri Hidey-Napa, coordinator for National Indian  
6 Gaming Commission. It is dated February 22, 1996.

7           JUDGE GREENBERG: May I see it. We'll let it  
8 speak for itself.

9           MS. FREGEAU: Where it addresses -- where she --  
10 it is a letter from Stan Dixon to Terri Hidey.

11          JUDGE GREENBERG: Stan Dixon.

12          MS. FREGEAU: who was the supervisor at the  
13 time. He is addressing the issues of the concern about

14 the additional traffic on a very narrow road. And we  
15 were told the number of homes that would be constructed  
16 was 14 to 20 because of those express concerns. This was  
17 when the property was originally purchased for homes.

18 JUDGE GREENBERG: Thank you.

19 MR. FORMAN: We will object to the receipt of  
20 that document into evidence on the grounds of lack of  
21 foundation, lack of relevance. It is not, in fact, a  
22 statement of the county of Humboldt, but represents what  
23 appears to be the personal opinion of a member of the  
24 Board of Supervisors and has no -- for a different  
25 project, not this project. And thus has no part in these

1 proceedings.

2 MS. FREGEAU: I think it goes to the fact that  
3 the road is narrow and it was addressed in 1996 when they  
4 were just proposing homes, sir.

5 JUDGE GREENBERG: Just a moment.

6 MS. FREGEAU: Also --

7 JUDGE GREENBERG: Other testimony. The  
8 objection of counsel goes to the weight of the document,  
9 not to its admissibility. I will mark it for  
10 identification at this point.

11 MR. FORMAN: There is one more point, your  
12 Honor, and it is not --

13 JUDGE GREENBERG: Just a moment. You are  
14 talking about the document?

15 MR. FORMAN: Yes. On the document. It is not  
16 clear that the road to which reference is made in that

17 document is in the same condition today as it was in  
18 1996. This is a 10-year old document, and I submit on  
19 that it really is irrelevant to these proceedings.

20 JUDGE GREENBERG: Yes. It goes to the weight of  
21 the document, not to the admissibility, Counsel.

22 Your objection is overruled.

23 MR. PIERCE: Your Honor, that will be exhibit --

24 JUDGE GREENBERG: XIII-Q.

25 MR. PIERCE: Thank you.

369

1 JUDGE GREENBERG: You said you have other  
2 documents.

3 MS. FREGEAU: Yes, sir. I have a document from

4 the department of public works, <sup>A0026AEA</sup> county of Humboldt to  
5 Barbara Orr, tribal administrator. The letter comes from  
6 John Murray who at the time was the director of the  
7 department of public works. And in this letter to the  
8 tribe, he is addressing the issue of an encroachment  
9 permit for a housing development. And he goes on to say  
10 that, "Please don't construe this permit to be expandable  
11 to other uses such as a casino that is contemplated." He  
12 talks about the county --

13 JUDGE GREENBERG: The document will speak for  
14 itself.

15 MR. FORMAN: Objection. Lack of foundation,  
16 hearsay, lack of relevance. Hopelessly out of date.  
17 There is no authentication for this document. I don't  
18 believe in this case, it is admissible to -- for the  
19 truth of the matter asserted therein, because if so, as

20 was the previous exhibit, it is hearsay.

21 JUDGE GREENBERG: Hearsay is admissible in these  
22 proceedings. However, I will admit it and give it the  
23 weight to which it is entitled. This is a document dated  
24 April 22, 1996 to Barbara Orr from John Murray, director.

25 In that document, there is in the third

370

1 paragraph:

2 "Requirements issued to permits such as you will  
3 need will be part of engineered traffic study to  
4 mitigate the volume of traffic you will generate.

5 An examination of the structural section  
6 capabilities of Singley Road and its south terminus



7 with Highway 101 off ramp and possible northerly if  
8 the traffic study indicates a need."

9 And it says that any improvements necessary for  
10 a projected traffic volume would have to be construed as  
11 a condition of issuance for the encroachment permit and  
12 must be completed prior to occupancy of use.

13 Other document.

14 MS. FREGEAU: My next document, sir, is from  
15 county counsel, Humboldt County. I cannot say her name.  
16 Ms. Chandler. And it addresses the fact that the county  
17 has the authority for regulating encroachment onto county  
18 maintained roads.

19 MR. FORMAN: Same objections. Plus it states a  
20 legal conclusion. And obviously is one that is subject  
21 to dispute, but this is, again, a 1997 document that is  
22 not pertaining to this project. And talks about a road

23 that may or may not be the same condition as it is today.

24 And it is not relevant to the extent it is offered for

25 the truth of the matter asserted. I don't believe it

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1 is -- a proper foundation has been laid for this.

2 JUDGE GREENBERG: Same objection. Same ruling.

3 This is Exhibit Number XIII-S.

4 MR. FORMAN: S or R? What was R?

5 JUDGE GREENBERG: Q, R, S.

6 MR. FORMAN: You didn't do a U?

7 JUDGE GREENBERG: Pardon?

8 MR. FORMAN: There is no XIII-U?

9 JUDGE GREENBERG: S is before U.

10                   MR. FORMAN: Yes. You are right. <sup>A0026AEA</sup>

11                   JUDGE GREENBERG: Do you have another document?

12                   MS. FREGEAU: Yes, sir.

13                   JUDGE GREENBERG: Have each of these documents

14 been given to the respective counsel?

15                   MS. FREGEAU: Yes.

16                   MR. PIERCE: They were provided after the first

17 hearing to all parties part of your discovery order.

18                   MS. FREGEAU: A letter dated April 10, 1997,

19 department of public works, county of Humboldt, Ron

20 walker, Bureau of Indian Affairs in Redding. It is in

21 response to environmental assessment draft for the

22 proposed gambling facility. It came from Donald Tuttle

23 who was the environmental services manager at the time.

24                   JUDGE GREENBERG: Okay. Just a moment. One

25 document.

1 MS. FREGEAU: That is it.

2 JUDGE GREENBERG: Just a moment.

3 MR. FORMAN: Same objection. And in particular  
4 that it appears not to have any bearing on factors to be  
5 considered in approving transfer of the liquor license.  
6 This is comment on an out of-date, never-used  
7 environmental study, a draft study, not a final document.  
8 And making representations with respect to the county's  
9 position when of course the county has not filed a  
10 protest to this transfer. For that reason, too, it is, I  
11 believe, not relevant.

12 JUDGE GREENBERG: The objection, again, goes to

13 weight and not admissibility. <sup>A0026AEA</sup> It will be marked as

14 exhibit next in order. That will be Exhibit XIII-T.

15           There is a great deal in this letter of April  
16 10, 1997 to Ron walker from Donald Tuttle that pertains  
17 to the environment and not necessarily other features  
18 related to the casino. I am able to disregard those  
19 portions in that letter which are not applicable or  
20 relevant and consider only those portions which are  
21 relevant. XIII-T, therefor, dated April 10, 1997 of  
22 Tuttle to walker.

23           Next document.

24           MS. FREGEAU: The next document, sir, is from  
25 the department of public works, again, county of Humboldt

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1 to the Bear River Band of Rohnerville Rancheria, it  
2 addresses concerns of public of works has about traffic  
3 and drainage.

4 It goes on to discuss mitigation issues. June  
5 13.

6 MR. FORMAN: The same objections as previously  
7 stated. This is a hopelessly out-of-date document  
8 talking about another project.

9 JUDGE GREENBERG: Same ruling.

10 A carbon copy of this document, which I have  
11 marked as Exhibit XIII-U, it shows a carbon copy to the  
12 Hoopa tribe.

13 what is their connection to the casino here?

14 MS. FREGEAU: Mr. Olberry who was the original  
15 person who did the environmental assessment, I believe,

16 is also affiliated with the Hoopa<sup>A0026AEA</sup> tribe. I'm not sure if  
17 they have a casino or not, sir. That is just speculation  
18 on my part.

19 MR. FORMAN: The Hoopa tribe has no connection  
20 to this facility.

21 JUDGE GREENBERG: Does the Hoopa tribe have a  
22 casino or one contemplated?

23 MR. FORMAN: The Hoopa tribe does have a casino  
24 in Hoopa Valley, yes.

25 MS. FREGEAU: I believe Mr. Olberry was selected

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1 to do environmental assessments for a lot of casino tribe  
2 gambling casinos in the state of California.

3 JUDGE GREENBERG: Okay.

4 SUZI FREGEAU: That is probably just --

5 JUDGE GREENBERG: Next document.

6 MS. FREGEAU: My next document, sir, is dated

7 August 26, 1997, again, from the department of public

8 works to the Bear River Band. It addresses, again,

9 significant safety problems.

10 MR. FORMAN: Your Honor, Ms. Fregeau's --

11 JUDGE GREENBERG: Don't interrupt.

12 MR. FORMAN: Ms. Fregeau's use of the word

13 "again" prompts yet another basis for objection, which is

14 cumulative. We are now hearing from the county multiple

15 times in '97 basically the same thing.

16 How many different times do we have to document

17 the fact that in 1997 the county was asking the tribe to

18 upgrade the road?



19                   JUDGE GREENBERG: Let me <sup>A0026AEA</sup> read the document dated

20 August 26, 1997 from McKinley to Scott.

21                   This is XIII-V.

22                   MS. FREGEAU: The last document May 3, 2004 from

23 the county of Humboldt from a senior planner to

24 Mr. McGinnis, and it addresses land use issues. "The

25 proposed casino is not compatible with the use of this

375

1 land use designation."

2                   And additionally, he addresses the concerns that

3 the road may not safely accommodate the increased traffic

4 that would result from a project of this scale.

5                   MR. FORMAN: Objection. States hearsay, lack of

6 foundation, states a legal conclusion, which is

7 demonstrably -- is inconsistent with controlling federal  
8 statutes and case law with regard to county jurisdiction  
9 on land use. And again, cumulative with respect to what  
10 the county said back in 1997.

11 MS. FREGEAU: Sorry, sir, this was dated 2004.

12 MR. FORMAN: I would add that those earlier  
13 documents referred to a document which itself is not in  
14 evidence in these proceedings. As your Honor ruled that  
15 goes to weight.

16 JUDGE GREENBERG: The last paragraph of this  
17 letter of May 3, 2004 to McGinnis from Wheeler, which is  
18 labeled Exhibit XIII-W. This is the May 3, '04 letter.  
19 The last paragraph may have some relevance, but, again,  
20 it talks about the department of public works may have  
21 additional comments on the traffic study and analysis,

22 however, the planning division has <sup>A0026AEA</sup> concerns regarding  
23 traffic for a project of this scale that go beyond the  
24 level of service analysis.

25 It talks about Singley Road being a winding road

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1 with many blind spots, and that it can't safely  
2 accommodate increased traffic that results from this  
3 scale of project and requests the tribe coordinate with  
4 the county department of public works to identify  
5 necessary road improvements that would be required as a  
6 consequence of the project.

7 And that paragraph may have some relevance to  
8 these proceedings. Any objection is overruled.

9 Is that the total of the documents?

10 MS. FREGEAU: Yes, sir.

11 JUDGE GREENBERG: Are there any further  
12 witnesses to be on behalf of the protestants?

13 MS. FREGEAU: No, sir.

14 JUDGE GREENBERG: And that is the last of the  
15 exhibits, as you say; right?

16 MS. FREGEAU: Yes, sir.

17 JUDGE GREENBERG: I assume the protestants  
18 therefore rest at this time; is that right?

19 MS. FREGEAU: Yes, sir.

20 JUDGE GREENBERG: Thank you.

21 You may proceed, Counsel.

22 MR. FORMAN: Thank you.

23 MR. PIERCE: Your Honor, if I may, before  
24 Mr. Forman begins. I don't know whether -- I have made

25 copies and provided to all the parties the notice and

A0026AEA

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1 certification of service on this continued hearing that I  
2 would like appended to the jurisdictional documents,  
3 Exhibit 1 on behalf of the department.

4 JUDGE GREENBERG: Fine.

5 MS. FREGEAU: Your Honor, do we have an Exhibit  
6 Number V?

7 JUDGE GREENBERG: Roman numeral V?

8 MS. FREGEAU: Correct. I have a V with a  
9 question mark. I don't know if that means it was not  
10 admitted or it was.

11 JUDGE GREENBERG: Well, I think going back to  
12 March 8; is that right? And let's see if we can go back.

13 The document states Exhibit III, IV being the petition  
14 for provisional license. I don't see a V, no.

15 MS. FREGEAU: Okay. Thank you.

16 JUDGE GREENBERG: I do not see a V.

17 The department has sought to incorporate those  
18 into one additional document. Those documents are  
19 identified as a continued hearing on protest to the  
20 parties by Judy Carlton. Exhibit 1 also includes a  
21 declaration of service by mail to the list of those  
22 persons of protest.

23 And those documents referred to as additional  
24 documents are incorporated as a portion of Exhibit 1.

25 Before we proceed further, I want to call the

1 roll of the protestants if I might.

2 Antoinette Ballister.

3 ANTOINETTE BALLISTER: Here.

4 JUDGE GREENBERG: Louis Ballister?

5 ANTOINETTE BALLISTER: I am here. Louis is not  
6 here.

7 JUDGE GREENBERG: Are you representing him?

8 ANTOINETTE BALLISTER: If I can, I will. He is  
9 my husband.

10 JUDGE GREENBERG: I would assume. Anything that  
11 you say between you is entirely confidential and  
12 privileged.

13 Maretta Culkins.

14 MARETTA CULKINS: Here.

15 JUDGE GREENBERG: Steve Culkins.  
Page 39

16 MARETTA CULKINS: I can speak for him.

17 JUDGE GREENBERG: Jean Charles?

18 JEAN CHARLES: Here.

19 JUDGE GREENBERG: Louis Costa?

20 LOUIS COSTA: Here.

21 JUDGE GREENBERG: Theodora Costa?

22 THEODORA COSTA: Here.

23 JUDGE GREENBERG: Kenneth Cunningham. Kenneth

24 Cunningham.

25 MS. FREGEAU: Not here, sir.

1 JUDGE GREENBERG: No one is representing

2 Mr. Cunningham in these proceedings?



3 Brodie DeLaney. James DeLaney. They are not  
4 present.

5 Renee DeLaney. Not present.

6 Steve Fregeau.

7 MS. FREGEAU: I am representing Steve Fregeau.

8 He is my husband.

9 JUDGE GREENBERG: Ms. Suzi Fregeau is present.

10 MS. FREGEAU: Yes, sir.

11 JUDGE GREENBERG: Mike Holmes?

12 MIKE HOLMES: Here.

13 JUDGE GREENBERG: Valerie Holmes?

14 MIKE HOLMES: I represent her.

15 JUDGE GREENBERG: Abigail Hudson-Crim. Abigail

16 Hudson-Crim. Not present.

17 Noel Krahforst?

18 NOEL KRAHFORST: Here.

19 JUDGE GREENBERG: Jim McVicker.

20 JIM McVICKER: Here.

21 JUDGE GREENBERG: Theresa McVicker?

22 THERESA McVICKER: Here.

23 JUDGE GREENBERG: Cary Brian Nash. Kim Nash.

24 Jimmy Smith. Okay.

25 The roll call has indicated that Kenneth

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1 Cunningham is not present neither Brodie DeLaney, James

2 DeLaney nor Renee DeLaney present. Abigail Hudson-Crim

3 is not present. Cary Brian Nash and Kim Nash are not

4 present. Jimmy Smith is not present.

5 There is no indication that anybody here

6 represents any of those other protestants whom I have  
7 just named.

8 All right.

9 MS. FREGEAU: Sir, representing the Singley  
10 homeowners association, would I not be representing them?

11 JUDGE GREENBERG: No. They would have to be  
12 present.

13 MS. FREGEAU: May I make a note that Jimmy Smith  
14 is a supervisor on the board of supervisors, and has a  
15 meeting which would not allow him to attend this.

16 JUDGE GREENBERG: I understand. Do you think  
17 the supervisors' meetings go on all day?

18 MS. FREGEAU: Oh, ours do, yes.

19 JUDGE GREENBERG: Pardon.

20 MS. FREGEAU: Ours do, yes.

21 JUDGE GREENBERG: And into the night sometimes?

22 MS. FREGEAU: Well, if there is a certain  
23 gentleman that gets up there, yes, it can go on for days.

24 JUDGE GREENBERG: Okay.

25 You may proceed, Counsel.

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1 MR. FORMAN: I'd like to call first Mr. Leonard  
2 Bowman.

3 You can take the care that is slightly forward  
4 of the other chairs.

5 JUDGE GREENBERG: Your name, sir.

6 THE WITNESS: Leonard Bowman.

7 JUDGE GREENBERG: B-o-w-m-a-n?

8 THE WITNESS: Yes.

9 JUDGE GREENBERG: Mr. Bowman, would you be kind  
10 enough to raise your right hand, please.

11

12 LEONARD BOWMAN,  
13 having been duly sworn by Judge Greenberg,  
14 was examined and testified as follows:

15

16 JUDGE GREENBERG: You may proceed, Counsel.

17

18 DIRECT EXAMINATION

19 BY MR. FORMAN:

20 Q. Mr. Bowman, do you have any position with the  
21 Bear River Band of Rohnerville Rancheria?

22 A. Yes, I do.

23 Q. What is that position?

24 A. I am chairman of the tribe.

25 Q. How long have you been chairman of the tribe?

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1 A. It will be two years on the 24th of this  
2 month.

3 Q. Do you also have a position with the Bear River  
4 Casino corporation?

5 A. Yes, I do.

6 Q. What is that position?

7 A. I am also chairman of that.

8 JUDGE GREENBERG: Just a moment. Proceed.

9 BY MR. FORMAN:

10 Q. In that -- in your capacity as chairman of the  
11 tribe, are you familiar with the tribe's determinations

12 concerning land use on the tribe's trust lands?

13 A. Yes, I am.

14 Q. Has the Bear River Band made a determination

15 whether operation of a casino is a permissible use of

16 land within the tribe's jurisdiction?

17 A. Yes, it has.

18 JUDGE GREENBERG: We can probably stipulate to

19 that.

20 MR. FORMAN: Okay.

21 JUDGE GREENBERG: Is that correct?

22 MR. PIERCE: So stipulated.

23 BY MR. FORMAN:

24 Q. Has the tribe made a determination whether the

25 service of alcoholic beverages on its lands is

1 permissible?

2 A. Yes, it has.

3 Q. And what determination has the tribe made in  
4 that regard?

5 A. It has made a determination that the sale of  
6 alcoholic beverages is permitted.

7 Q. Has the tribe made a determination that the  
8 service of alcoholic beverages in the casino on the  
9 tribe's lands is compatible with the other uses of the  
10 tribe's lands?

11 A. Yes.

12 Q. I'd like to show you a document.

13 Actually, I'd like to have marked as the  
14 applicant's next in order. I think we have a couple of



15 them.

16 JUDGE GREENBERG: Just a moment. Let me take a  
17 look. I have an exhibit list going back to March 8 only;  
18 is that correct? Was the first hearing March 8?

19 MS. FREGEAU: First hearing was in October.

20 MR. FORMAN: First hearing was October 19, I  
21 believe.

22 JUDGE GREENBERG: Just a moment.

23 MR. FORMAN: I believe at the last hearing we  
24 marked as Applicant's A the map. I guess this would mean  
25 this would be Applicant's B.

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1 JUDGE GREENBERG: Let me take a look, Counsel.

2           We can go off the record for a moment.

3           (A discussion was held off the record.)

4 BY MR. FORMAN:

5           Q. Mr. Bowman, directing your attention to  
6 Applicant's Exhibit B, can you tell the hearing what that  
7 document represents.

8           A. This is basically an agreement for law  
9 enforcement between Humboldt sheriff's county department  
10 and the tribe.

11          Q. This is a resolution --

12          A. This is a resolution between Humboldt --

13          Q. Excuse me. Let me finish the question so that  
14 the court reporter can get the question, and then she'll  
15 get your answer.

16                 Is this a resolution of the Bear River tribal  
17 council concerning an agreement with the county for law

18 enforcement services?

19 A. Yes, it is.

20 Q. Thank you.

21 This is Applicant's C.

22 JUDGE GREENBERG: Okay. The resolution of June

23 15, 2005, actually, it is a letter from the county of

24 Humboldt sheriff's office, dated June 28, 2005. And it

25 has within it the law enforcement services agreement

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1 between the county of Humboldt sheriff's office and the

2 Bear River Band. That will be marked Exhibit C.

3 BY MR. FORMAN:

4 Q. Mr. Bowman, directing your attention to

5 exhibit -- Applicant's Exhibit C, is this, to your  
6 knowledge, a true copy of the correspondence with the  
7 sheriff's department and board of supervisors concerning  
8 the law enforcement services agreement between the tribe  
9 and the county of Humboldt?

10 A. Yes, it is.

11 Q. And does your signature appear on the third page  
12 of the document, which is entitled Law Enforcement  
13 Services Agreement?

14 A. Yes, it does.

15 Q. Mr. Bowman, has the tribe had any discussions  
16 recently with the county of Humboldt concerning  
17 improvements to Singley Hill Road?

18 A. Yes, they have.

19 Q. How recently have those discussions occurred?

20 A. Quite recently. Within the last --

21 JUDGE GREENBERG: This is between the county and  
22 the tribe?

23 MR. FORMAN: Yes.

24 Q. Within the last month?

25 A. Within the last month.

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1 Q. Have any agreements in principle been reached  
2 concerning improvements to the road that the tribe will  
3 make or fund?

4 A. Yes, they have.

5 Q. And what is the substance of what has been  
6 agreed upon?

7 A. That they will be widened.

8 Q. They -- you are talking about Singley Hill

9 Road?

10 A. Singley Hill Road.

11 Q. What portion of Singley Hill Road will be

12 widened?

13 A. The portion up to the casino, up past the --

14

15 EXAMINATION

16 BY JUDGE GREENBERG:

17 Q. I can't hear you, sir.

18 A. Up to the casino.

19 Q. From where to where?

20 A. From the bottom of Singley Hill Road up past the

21 casino, past the intersection.

22 Q. The intersection we have labeled the south

23 entrance onto Singley Hill Road?

24           A. The intersection at the bottom of the hill down  
25 at Singley Hill intersection up past the casino, 3/10 of

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1 a mile.

2           Q. So the south entrance?

3           A. The south entrance, exactly.

4           Q. The south entrance of Singley Road, consisting  
5 of 3/10 of a mile, the south entrance to the casino.

6 3/10 of a mile will be widened?

7           A. It will be widened.

8           Q. Is this agreement incorporated in any writing?

9           A. It has been in writing. The construction  
10 department is writing it up and Cal-Trans and Winzler

11 Construction.

12 Q. Either I am getting too old or your voice is too  
13 soft.

14 A. My voice is soft.

15 Q. Okay. Try and talk a little louder if you can,  
16 and I will try and watch your lips.

17 A. We have talked to the public works department,  
18 and, yes, we have made the agreements and they are  
19 working on the plans.

20 Q. And the plans are first to be developed and then  
21 an agreement reached in writing with the county?

22 A. Tentative agreements have already been  
23 reached.

24 Q. You have it in writing?

25 A. Tentative agreements, yes.



1 Q. They are in writing?

2 A. Yes.

3 Q. And do you have them here? Do you have them  
4 here?

5 A. No, I do not have them here.

6 Q. So plans and a tentative agreements are in the  
7 process of being memorialized in writing; is that  
8 correct?

9 A. That's correct.

10 Q. Okay. Now, can you recall what the specific  
11 provisions are?

12 A. 14-foot lanes.

13 Q. Each lane will be 14 feet wide?

14 A. I think. Don't quote me on this.

15 Q. I am. I am not only quoting you, I am recording

16 it.

17 So if you say 14 and it is 13, I am quoting you.

18 Do you understand?

19 A. I am only going by my memory, and it ain't very

20 good.

21 Q. We are going to take what we got. We'll use

22 your memory.

23 A. Let me --

24 Q. Do you want to confer with your counsel. Go

25 ahead and confer with your counsel.

1 (A discussion was held off the record.)

2 THE WITNESS: Okay. 11-foot lanes with 5-foot  
3 shoulder.

4 BY JUDGE GREENBERG:

5 Q. Inbound to the casino 11 feet, outbound from the  
6 casino 11 feet and 5-foot wide shoulders on each outer  
7 edge; is that right?

8 A. Exactly. That is the way I understood him to  
9 say. 11-foot lanes with 5-foot shoulders.

10 Q. Are those 11-foot and 5-foot shoulders each to  
11 be permanently surfaced?

12 A. Yes.

13 Q. Is there anything else in the agreement between  
14 the county and the tribe?

15 A. The drainage.

16 Q. Each lane must have sufficient drainage?

17           A. Each -- well, drainage will be sufficient all  
18 the way down to comply with all the drainage problems  
19 that are there.

20           Q. So all drainage problems would be resolved; is  
21 that right?

22           A. Exactly.

23           Q. When you refer to drainage, you are talking  
24 about drainage problems as concerns the 3/10 of a mile;  
25 is that right?

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1           A. That's right.

2           Q. To the 3/10 of a mile roadway. And those  
3 problems are to be cured.

4 Is there anything else that you have by way of  
5 agreement with the county?

6 A. That is all we have right now.

7 Q. When are each of these particular improvements  
8 to be addressed?

9 A. As soon as the plans get worked out. As soon as  
10 we can get the contractors to get the plans worked up,  
11 we'll do it as soon as the weather breaks.

12 Q. As soon as the weather breaks.

13 A. If that ever happens.

14 Q. Well, I have been coming up to this county now  
15 for about 30 years. Maybe you'll tell me whether or not  
16 it is going to quit raining in April or May or June.

17 A. It may never quit raining.

18 Q. That is my experience too.

19 A. But we got Taylor Road done, so we'll get it

20 done.

21 Q. What are we going to do with that other road  
22 that is much larger than 3/10, at least to a couple of  
23 miles.

24 A. I don't know. What do you propose we should do?  
25 I mean, we shouldn't be liable for the whole road.

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1 Q. I think maybe what you should do and we'll  
2 declare a little bit possibly of a recess a little later  
3 so you can confer with the protestants as to what should  
4 or shouldn't be done. We've got three miles of road  
5 there, approximately three miles of road on the north  
6 access to the casino.

7           And you either indicate if the county is willing  
8   and the other authorities are available that that road  
9   either be closed off as access to the casino and there be  
10   sufficient notices to the public that that road is not  
11   available as access to the casino or it be improved so  
12   that the protests of the various parties, the protestants  
13   are addressed.

14           we'll leave that to a -- probably a little  
15   lengthier luncheon discussion. And we'll probably break  
16   for lunch around noon.

17           And you can get together with a representative,  
18   your representative, Mr. Forman. Mr. Forman, you and the  
19   appropriate protestants and their representative can sit  
20   down and try to work things out. Ms. Fregeau and  
21   Mr. Forman can come up with some tentative agreement that  
22   is suitable for all parties. If you can't, then I will

23 make one. We'll see what we can do. If that is  
24 agreeable with you, Mr. Forman, meeting with Ms. Fregeau.

25 MR. FORMAN: If the subject would be

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1 improvements to the northern portion of Singley Road, I  
2 don't think any purpose would be served by such a  
3 meeting, because the tribe is not now legally or  
4 otherwise able to effect such improvements. It is  
5 costing the tribe in the neighborhood of a million  
6 dollars for this 3/10 of a mile.

7 The notion that the tribe can or even should  
8 improve the remaining portion of Singley Road is, I  
9 think, way beyond the appropriate scope of these



10 proceedings. we certainly have <sup>A0026AEA</sup>no problem continuing our  
11 efforts to get Cal-Trans to put a sign in place that  
12 would discourage people from using the northern portion  
13 of Singley Road to access the casino. we can't prevent  
14 people who live uphill from the casino from coming to the  
15 casino from the north.

16           so the tribe is doing what the county back in  
17 1997, one of the exhibits, talked about the tribe doing  
18 in order to get an encroachment permit, doing 11-foot  
19 wide traffic lanes, and if I recall the exhibit, 4-foot  
20 wide shoulders. The tribe is going a foot better.

21           JUDGE GREENBERG: Yes. I can understand that.  
22 what I am thinking about, and I thought about between the  
23 last hearing and today, is whether or not there should be  
24 sufficient signage closing off that northern portion,  
25 which is treacherous, from what I can see and is windy,

1 curving, and this is entirely speculative and may produce  
2 more accidents, closing that off as an access to the  
3 tribe, i.e., access by the public to the casino and  
4 directing the public to use the southerly portion.

5 MR. FORMAN: We would have no problem with that.  
6 We don't have the legal ability to effect such a result.  
7 That is entirely within the control of California  
8 department of transportation and the county of Humboldt.  
9 We have been asking Cal-Trans to do exactly that.

10 JUDGE GREENBERG: What has been their response?

11 MR. FORMAN: They won't put a sign relating to  
12 the casino on the freeway.

13                   JUDGE GREENBERG: Isn't <sup>A0026AEA</sup> there a sign on the  
14 freeway relating to the casino from the south?

15                   MR. FORMAN: No, not to the casino. It talks  
16 about Rohnerville Rancheria.

17                   JUDGE GREENBERG: That is what I mean. I am  
18 talking about the Rohnerville Rancheria. Wouldn't they  
19 be able to erect a sign indicating that Rohnerville  
20 Rancheria is not accessible by reason of that northern  
21 route.

22                   MR. FORMAN: We would hope so, and we would  
23 continue to encourage them to do so. I cannot speak for  
24 Cal-Trans. We can't bind Cal-Trans.

25                   JUDGE GREENBERG: I understand. Is that an

1 approach the tribe is willing to make?

2 MR. FORMAN: Of course.

3 THE WITNESS: We have put signs coming out of  
4 our reservation and out of our casino for left turn only  
5 so they would only go downhill, so that they wouldn't  
6 turn right and go up Singley Hill Road.

7 we put left turns only there, but they still  
8 turn right and go up the hill. People know the road.

9 MR. FORMAN: We'll get to that.

10 JUDGE GREENBERG: This is important. If we get  
11 to it, I'd rather we get to it as soon as possible and  
12 see what -- at least as possible at this juncture of the  
13 proceedings.

14 MR. FORMAN: We will get to it in the context of  
15 a witness who is responsible for overseeing traffic

16 management on the reservation. A0026AEA

17 JUDGE GREENBERG: Fine.

18 MR. FORMAN: And the casino.

19 JUDGE GREENBERG: That is good.

20

21 FURTHER DIRECT EXAMINATION

22 BY MR. FORMAN:

23 Q. Mr. Bowman, have representatives of the tribe

24 met with any of the tribe's immediate neighbors

25 individually to discuss mitigation of their personal

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1 concerns about the casino project?

2 A. Yes, we have.

3 JUDGE GREENBERG: Are you talking about with the  
Page 69

4 protestants?

5 BY MR. FORMAN:

6 Q. Generally -- specifically, have you participated  
7 in any meetings with Mr. Krahforst concerning mitigation  
8 of his concerns?

9 A. Yes, I have.

10 Q. Has the tribe done everything it promised  
11 Mr. Krahforst in connection with mitigation of his  
12 concerns?

13 A. Yes.

14 Q. Were the casino plans or designs modified to  
15 respond to comments, suggestions and concerns received  
16 from members of the public?

17 A. Yes.

18 MR. FORMAN: Thank you. I have no further

19 questions.

20 JUDGE GREENBERG: Any questions by the

21 department?

22 MR. PIERCE: Just briefly.

23 ///

24 ///

25 ///

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1 CROSS-EXAMINATION

2 BY MR. PIERCE:

3 Q. Mr. Bowman, regarding that last issue and a  
4 meeting with Mr. Krahforst, you indicated that you, if I  
5 can paraphrase, believe you have met all of the  
6 requirements of the agreement to mitigate his concerns.

7           Am I correct in understanding that is your  
8   opinion or what you have -- the legal advice you received  
9   from counsel because certainly the testimony of  
10   Mr. Krahforst goes to the thrust that he did not believe  
11   you have complied fully with it. So there seems to be an  
12   ongoing dispute; is that fair?

13           A. I would like to answer that. You have to ask me  
14   a question.

15           JUDGE GREENBERG: The question is:  
16   Mr. Krahforst to the department's question has argued you  
17   haven't completed or remedied all of his concerns. That  
18   was his testimony.

19           Do you disagree with that?

20           THE WITNESS: I disagree with that.

21           JUDGE GREENBERG: Do you remember what his



22 concerns were?

23 THE WITNESS: Yes, I do.

24 JUDGE GREENBERG: Okay. And what were those

25 concerns?

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1 THE WITNESS: His concerns were the noise and  
2 the lights entering his windows from the parking lot  
3 areas and the windows.

4 JUDGE GREENBERG: What have you done to remedy  
5 those two concerns?

6 THE WITNESS: We had actually changed our design  
7 and put up block walls out in the parking lot in  
8 different areas out there and raised them from 6-foot to  
9 seven-foot high to actually block the light from coming

10 from the parking lot areas to go to his house.

11 BY MR. PIERCE:

12 Q. Let me ask you more specifically then: Did the  
13 tribe agree to compensate Mr. Krahforst for the wood  
14 fencing that he had erected?

15 A. No, we did not.

16 Q. Did the tribe agree to compensate Mr. Krahforst  
17 for the, I believe, it was a window -- new windows that  
18 were put in to affect the lighting, if I recall  
19 correctly. Did the tribe agree to compensate him for  
20 that?

21 A. What we did is we had put the block walls in to  
22 stop the lighting from the parking lot so the car lights  
23 would not enter his house.

24 Q. So that was done as an alternative. Excuse

25 me?

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1 A. That was the alternative.

2 Q. And the tribe believes that it fully complied

3 with the agreement as to how far that block wall would

4 extend because his testimony -- his belief was it should

5 have extended farther.

6 Do you believe you fully complied with that part

7 of the agreement as to the block wall?

8 MR. FORMAN: Excuse me. I have to object to the

9 question as assuming a fact not in evidence.

10 Mr. Bowman -- the question I asked was -- excuse me. The

11 question presumes an agreement. And I don't believe that

12 there is evidence of the existence of an agreement.

13           JUDGE GREENBERG: The witness asserts that he  
14 had met with Mr. Krahforst, and he and Mr. Krahforst had  
15 agreed that there was to be a remedy as to the lighting  
16 and the other part of the agreement was regarding the  
17 noise. And this witness has testified that he had  
18 understood that the wall that he erected remedied those  
19 two concerns.

20           Now, the question is: Was the concern of  
21 Mr. Krahforst addressed because Krahforst said the  
22 agreement has not been totally enforced because the wall  
23 doesn't go far enough.

24           So your objection is overruled.

25           THE WITNESS: The wall goes far enough.

1 BY MR. PIERCE:

2 Q. And moving to the agreement between the tribe  
3 and the county regarding the road improvements --

4 JUDGE GREENBERG: Just a moment.

5 Go ahead.

6 BY MR. PIERCE:

7 Q. -- did I understand your testimony correctly,  
8 you have reached an agreement in principle and that  
9 agreement in principle has been reduced to writing; is  
10 that correct?

11 A. Breaching it?

12 JUDGE GREENBERG: No.

13 BY MR. PIERCE:

14 Q. No. An agreement in principle as to the road  
15 widening. You testified that that has happened with the

16 county. And I believe you also testified that that  
17 agreement in principle has been reduced to writing.

18 A. It will be reduced to writing. We have come to  
19 a tentative agreement.

20 Q. That is what I am trying to clarify. Because  
21 your colloquy with the judge made it unclear in my mind.

22 So there is no written documentation at this  
23 point of the agreement between the tribe and the county  
24 as to the road improvements, only an agreement in  
25 principle that is oral?

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1 A. Well, only in some people's mind. If you are  
2 going to be honest -- wait a minute. If you are going to

3 be honest with people and make an agreement, you make an  
4 agreement between two people.

5 Q. I understand that oral agreements can be just as  
6 binding as written agreements. I am not disputing that  
7 at all.

8 A. We made an agreement. We are going to stick to  
9 it.

10 Q. That is fine. I am not disputing it. I want to  
11 make sure the state of where you are now.

12 And as I understand --

13

14 FURTHER EXAMINATION

15 BY JUDGE GREENBERG:

16 Q. Well, I don't understand. Are you saying that  
17 this tentative agreement, the tentative agreement has not  
18 yet been reduced to writing?

19 A. Not by them. We can't get an agreement from  
20 them until they are ready to sit down and sign the paper.  
21 They will not do that until we get the engineers to say  
22 exactly what it is going to cost and exactly what the  
23 amount is going to be from the point of --

24 Q. So the next step --

25 A. -- from the point of where they build to the

401

1 point they end.

2 Q. What we are saying is the engineer -- step one  
3 is the engineer's specifications?

4 A. Exactly.

5 Q. And the engineer's specifications has not



6 been --

7 A. Has not been done yet.

8 Q. Has there been a date set for the submission of  
9 those engineer's specifications?

10 A. As soon as the weather lets up and they can work  
11 out there and find out what it will take. We have to put  
12 barrier walls and everything else up on one side.

13 Q. So the specs have to be done yet.

14

15 FURTHER CROSS-EXAMINATION

16 BY MR. PIERCE:

17 Q. And as I understand your response just then the  
18 development of those specifications requires on-site  
19 investigation and improvement in the weather; is that  
20 correct?

21 A. Right.

22 MR. FORMAN: Excuse me, Mr. Bowman, if you could  
23 keep your voice up and talk to the reporter. As much as  
24 you'd like to talk to Mr. Pierce, it is the judge and the  
25 reporter --

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1 JUDGE GREENBERG: It is natural for people to  
2 try to look at the person who poses the question, but in  
3 this particular case, if you look in the direction of the  
4 reporter, you'll be able to let me hear and Mr. Forman  
5 hear also. Okay. Can you do that?

6 THE WITNESS: All right. I can do that.

7 JUDGE GREENBERG: Thank you. All right.

8 Road improvement, widen specifications,

9 engineer's report not yet available. Dependent on  
10 weather.

11 BY MR. PIERCE:

12 Q. And those specifications are to be developed by  
13 the Humboldt county department of public works in concert  
14 with Cal-Trans. Did I understand that correctly?

15 A. Humboldt county department of public works.  
16 Cal-Trans is only for the intersection down at the bottom  
17 of the hill.

18 Q. That is their participation in the  
19 specifications?

20 A. Exactly.

21 JUDGE GREENBERG: And so Cal-Trans will also  
22 have engineer inputs into the --

23 THE WITNESS: Only in the intersection at the  
24 hill.

25 JUDGE GREENBERG: Cal-Trans input regarding the

403

1 connection with Highway 101; is that right?

2 THE WITNESS: Right.

3 MR. PIERCE: Thank you. That is all I have.

4 JUDGE GREENBERG: Okay. Ms. Fregeau.

5

6 CROSS-EXAMINATION

7 BY MS. FREGEAU:

8 Q. Mr. Bowman, is there a budget that has been set

9 for the engineering plans for the expansion to the

10 southern part of Singley Road?

11 A. No.

12 Q. Should the engineering report come in and the  
13 financial implications exceed what the tribe is able to  
14 pay at this time, is there another plan that you have  
15 that will make these roads meet the standards that you  
16 have proposed?

17 A. We'll be able to handle it.

18 JUDGE GREENBERG: So regardless of --

19 THE WITNESS: If it is a million or a million  
20 and a half, we'll still be able to handle it.

21 BY MS. FREGEAU:

22 Q. If it is 2 million?

23 A. I still think we'll be able to borrow if we  
24 can't handle it ourselves.

25 Q. Did I understand you to say that the proposal is

1 two 11-foot travel lanes with two 5-foot pedestrian lanes  
2 on each side and they would be paved permanently paved?

3 JUDGE GREENBERG: No. He said 5-foot  
4 shoulders.

5 MS. FREGEAU: Excuse me. Shoulders. I think of  
6 pedestrians, you think of shoulders. Sorry.

7 JUDGE GREENBERG: Okay.

8 THE WITNESS: That's right.

9 BY MS. FREGEAU:

10 Q. And Mr. Bowman, are there plans being made to  
11 address the concerns of the protestants for the  
12 intersection at 101 and Singley Road on Eel River  
13 Drive?

14 A. We are working with Cal-Trans on that. There is

15 no -- there is no set deadline for that, but we are  
16 working with them on it. That is a little bit -- that is  
17 a little bit tougher than the road. We are working with  
18 them.

19 JUDGE GREENBERG: Cal-Trans regarding the  
20 connection with Singley Road and Highway 101?

21 THE WITNESS: Yes.

22 MS. FREGEAU: Are you saying the issues are  
23 tougher or Cal-Trans is tougher?

24 THE WITNESS: No. The intersection. The  
25 intersection with 101 and the connecting road and Singley

405

1 Road.

2

3

FURTHER EXAMINATION

4

BY JUDGE GREENBERG:

5

Q. But that is at the south portion of Singley

6

Road?

7

A. The south portion where the junction of the

8

south portion of Singley Road comes down and where the

9

road connects and 101 all come together there. That is a

10

convoluted section of road and it is a little bit harder

11

for Cal-Trans to figure out an off ramp.

12

Q. That particular connection, is there an

13

underpass?

14

A. Yes. There is an underpass just south of

15

Singley Road, plus there is an off ramp that comes around

16

there at 20 mile an hour turn.

17

Q. The underpass goes to Ferndale?



18 A. Yes.

19 Q. Okay. would that entire underpass have to be  
20 reconstructed; is that what they are talking about?

21 A. No. We don't think so. We think they put a  
22 stop sign there and go up to Singley Road and then they  
23 do a -- they want to put a turn -- what they call a  
24 circle, a turn-around or turn-about or whatever the heck  
25 they call them.

406

1 Q. A rotary?

2 A. A rotary-type thing. We think that will just  
3 confuse more people. And it might create more back-up on  
4 the -- off the highway than anything.

5 Q. The design for the connection of Singley Road to  
6 Highway 101 is up in the air; is that right?

7 A. I think it will create more of a problem coming  
8 off of the highway.

9 Q. But I am not an engineer. I guess you're not  
10 either.

11 A. No. But going around Boston creates more  
12 confusion.

13 Q. Boston has that design.

14 A. Boston has that. People get lost in them.

15 Q. I don't know whether I should recuse myself  
16 having experienced the rotary in Boston.

17 A. Yes. That is what might happen right here in  
18 Loleta.

19 Q. Okay. I was jesting. I don't know enough about  
20 that rotary or the connection to Highway 101.

21 MR. FORMAN: I have no further questions.

22 MS. FREGEAU: I am not finished, sir.

23 MR. FORMAN: I'm sorry. I thought you were.

24 BY MS. FREGEAU:

25 Q. Mr. Bowman, who have you been speaking to at

407

1 Cal-Trans? Do you know the name of the gentleman or the

2 woman?

3 A. No. Two guys. I don't remember their names.

4 Q. When was the most recent conversation you had

5 with them regarding the interchange?

6 A. About three weeks ago.

7 Q. And when you say that they propose a

8 round-about, and "We don't feel that that would be in the  
9 best interest." Who do you mean by "we?"

10 A. Tribal council.

11 Q. So the tribal council disputes what Cal-Trans is  
12 recommending?

13 A. We don't dispute anybody. We just don't -- we  
14 don't see how it could work if you put it on paper. If  
15 you put a circle there off 101, it kind of makes it a  
16 very convoluted looking mess.

17 Q. I'd like to ask you a few questions about the  
18 agreement that you entered in with the sheriff's  
19 department.

20 A. Sure.

21 Q. Mr. Bowman, I noted the date of the agreement  
22 between the tribe -- excuse me, the resolution that the  
23 tribe made with the county is dated July 11, '05. And I

24 am wondering when the initial application was filed why  
25 an agreement wasn't entered into with the sheriff to

408

1 address security issues.

2 A. why we didn't?

3 Q. why a resolution was entered into with the tribe  
4 after the protest had been filed for the issuance of a  
5 license.

6 MR. FORMAN: Objection. Relevance.

7 JUDGE GREENBERG: Yeah. I don't understand why  
8 it is relevant. It has been done. And I assume it has  
9 been done for purposes of attending reasonable law  
10 enforcement on the premises.

11           The connection as to why it has been done at  
12   that date or not, I don't think it is relevant. So I  
13   will sustain the objection.

14           MS. FREGEAU: Okay. Thank you.

15           Q. Sir, do you know why the tribe did not enter  
16   into an agreement with the California Highway Patrol  
17   since they are the ones that have jurisdiction over  
18   highways and roadways?

19           MR. FORMAN: Objection. First of all, it states  
20   a legal conclusion, which is not necessarily true; and  
21   second, it is irrelevant; and third, the Highway Patrol  
22   has not protested this application. I believe it has no  
23   bearing at all on these proceedings.

24           JUDGE GREENBERG: I will see if I can help the  
25   protestant representative.

1           was there any attempt to contact the California  
2 Highway Patrol regarding police services?

3           THE WITNESS: The California Highway Patrol was  
4 not contacted, because they always patrol that area  
5 anyway. They are always there.

6           JUDGE GREENBERG: But there is no police  
7 enforcement or presence on the tribal lands; is that what  
8 you are saying?

9           THE WITNESS: No. No more than the sheriff's  
10 department.

11          JUDGE GREENBERG: So that is why you contacted  
12 the sheriff's department?

13          THE WITNESS: That is true.

14 JUDGE GREENBERG: Okay. Thank you.

15 MR. FORMAN: Just to be clear, your Honor, the  
16 California Highway Patrol does not provide ordinary law  
17 enforcement services in unincorporated areas of the  
18 county. The county sheriff's department does that. The  
19 Highway Patrol is primarily responsible for  
20 traffic-related law enforcement services on the state  
21 highway system.

22 And the question was directed, as I understood  
23 it, to law enforcement services on the reservation.

24 MS. FREGEAU: No, sir.

25 JUDGE GREENBERG: Okay. I can tell you that



1 the CHP also has as a function <sup>A0026AEA</sup> protection of state  
2 personnel.

3 MR. FORMAN: Absolutely.

4 JUDGE GREENBERG: That doesn't necessarily  
5 connect with motorway enforcement.

6 MR. FORMAN: They are peace officers and their  
7 jurisdiction extends throughout the state. If we are  
8 talking about primary provision of criminal law  
9 enforcement, non-traffic related in this county as in  
10 elsewhere --

11 JUDGE GREENBERG: I think we ought to get off  
12 the subject because there has been no evidence to show  
13 that the Humboldt County sheriff's department is any less  
14 capable than the CHP.

15 MS. FREGEAU: Sir, the reason I brought that  
16 question up is when there is an accident reported it is

17 the Highway Patrol that responds, not the sheriff's  
18 department. That was the reason I brought that question  
19 up.

20 JUDGE GREENBERG: Maybe that is true. I don't  
21 know. Okay.

22 Are there any other questions?

23 MS. FREGEAU: Yes.

24 ///

25 ///

411

1 FURTHER CROSS-EXAMINATION

2 BY MS. FREGEAU:

3 Q. In previous testimony we had talked about school

4 buses loading and unloading children on the highway --  
5 excuse me, on Singley Road. And we were told that the  
6 casino was not in operation during those hours. And yet  
7 I was -- I have a copy of your application to the  
8 Alcoholic Beverage Control, which I believe is Exhibit 3,  
9 if I have it correctly.

10 JUDGE GREENBERG: Exhibit 3 are diagrams.

11 MS. FREGEAU: Diagrams. And then on the back,  
12 there is the planned operation detail.

13 JUDGE GREENBERG: Plan of operation. There is a  
14 diagram which shows wetlands, Singley Road, Bear River,  
15 the casino, some housing units. And it is Exhibit 3. It  
16 is under Leonard Bowman.

17 MS. FREGEAU: Sir, does it have this attached to  
18 it?

19 JUDGE GREENBERG: Okay. Let's see what you are

20 talking about.

21 MS. FREGEAU: Yes, sir.

22 JUDGE GREENBERG: Is this what you are talking

23 about?

24 MS. FREGEAU: Yes, sir.

25 JUDGE GREENBERG: It is that portion of the

412

1 application, the planned operation. You may proceed. It

2 is part of Exhibit 3.

3 MS. FREGEAU: Did you say I may proceed?

4 JUDGE GREENBERG: Yes.

5 BY MS. FREGEAU:

6 Q. Mr. Bowman, did you complete this application

7 for the Alcoholic Beverage Control <sup>A0026AEA</sup> license transfer?

8 A. I don't even know which one you are talking  
9 about.

10 MR. FORMAN: I'm sorry. I couldn't hear the  
11 answer.

12 JUDGE GREENBERG: He said he doesn't know what  
13 she is talking about.

14 BY MS. FREGEAU:

15 Q. This application. It is attached to the  
16 diagrams that have your signature on them.

17 A. Yes.

18 Q. Sir, may I have you look at section 16 where it  
19 says, "Hours of food service." And could you read me the  
20 hours that breakfast is served at the casino.

21 A. I see that. That is wrong.

22 Q. But what does it say, sir?

23 A. 6:00 a.m. to 11:00 a.m.

24 Q. So when this application was filed with the

25 A.B.C. for the license, you said breakfast would be

413

1 served from 6:00 a.m. to 11:00 a.m.?

2 A. Uh-huh.

3 Q. And lunch hours would be what?

4 A. 11:00 a.m. to 3:00 p.m.

5 Q. And then dinner?

6 A. 3:00 p.m. to 6:00 a.m.

7 when was this made out?

8 Q. But this was the application that was submitted

9 to the Alcoholic Beverage Control, sir?

10 A. April 15 of '05. That would be before the  
11 casino opened.

12 Q. Has there been a subsequent application?

13 A. Yeah. That was understandable because we had no  
14 idea what our hours were going to be at that time.

15 Q. Has there been a subsequent application to the  
16 A.B.C. that would indicate the hours had changed from a  
17 24-hour a day operation to less than 24?

18 A. To a 20-hour. I don't know.

19 MS. FREGEAU: Okay. Thank you.

20 JUDGE GREENBERG: Has been changed?

21 THE WITNESS: Yes. We are only open until 5:00  
22 in the morning now.

23 JUDGE GREENBERG: It was changed from?

24 THE WITNESS: We don't even open the casino  
25 until 9:00 in the morning.

1 JUDGE GREENBERG: From 9:00 a.m. to 5:00 a.m.;

2 is that right.

3 THE WITNESS: That's correct.

4 BY MS. FREGEAU:

5 Q. So then the afternoon school bus traffic would

6 be affected by the activity of the casino, but not the

7 morning traffic?

8 A. Yes.

9 MS. FREGEAU: Okay. That is all I had. Thank

10 you, sir.

11

12 FURTHER EXAMINATION



13 BY JUDGE GREENBERG:

14 Q. Have you determined the -- or has there been any  
15 traffic study since the application as to that -- those  
16 hours of the day when traffic is heaviest or lightest?  
17 Do you know of any traffic studies that have been  
18 conducted?

19 A. I am not sure. I know we did some. I'm not too  
20 sure exactly what time of day they were done.

21 Q. But a traffic study has been completed; is that  
22 correct?

23 A. That is correct, but I'm not sure what time of  
24 the day it was done.

25 Q. Has that traffic study been reduced to

1 writing?

2 A. Yes.

3 Q. Do you know where that writing is?

4 A. One of the offices.

5 JUDGE GREENBERG: Is that available, Counsel?

6 MR. FORMAN: I am not sure, frankly, to what

7 Mr. Bowman is referring. We will have testimony about

8 traffic flows at the casino from another witness who has

9 actually conducted observations.

10 JUDGE GREENBERG: Okay. Fine. So long as it is

11 addressed.

12 MR. FORMAN: It will be addressed.

13 JUDGE GREENBERG: Are there any other questions

14 by way of recross or redirect?

15 MR. FORMAN: None.

16 JUDGE GREENBERG: Anything further from the

17 department --

18 MR. PIERCE: No, your Honor.

19 JUDGE GREENBERG: -- of this witness?

20 MS. FREGEAU: No, sir.

21 JUDGE GREENBERG: Nothing further from the

22 protestants?

23 Okay. Thank you.

24 MR. FORMAN: Call next Mr. Odell Shelton,

25 please.

416

1 JUDGE GREENBERG: Mr. Shelton, would you spell

2 your name for us.

3 THE WITNESS: First name o-d-e-l-l, last name  
Page 107

4 S-h-e-l-t-o-n.

5 JUDGE GREENBERG: Would you raise your right

6 hand, Mr. Shelton.

7

8 ODELL SHELTON,

9 having been duly sworn by Judge Greenberg,

10 was examined and testified as follows:

11

12 JUDGE GREENBERG: Proceed.

13

14 DIRECT EXAMINATION

15 BY MR. FORMAN:

16 Q. Mr. Shelton, do you currently hold any elective

17 office?

18 A. Yes, I do.

19 Q. what office is that? A0026AEA  
20 A. Mayor of city of Fortuna.  
21 Q. Are you employed?  
22 A. Yes, I am.  
23 Q. And how are you employed?  
24 A. Self-employed. I own a lube shop and car wash.  
25 Q. Do you --

417

1 MR. PIERCE: Could I have that answer repeated.

2 I'm sorry.

3 JUDGE GREENBERG: He operates a lube shop and

4 car wash.

5 Is that right?

6 THE WITNESS: Uh-huh.

7 JUDGE GREENBERG: That is automotive?

8 THE WITNESS: Yes, it is.

9 BY MR. FORMAN:

10 Q. Again, Mr. Shelton, I will ask you to keep your  
11 voice up and make sure that the reporter and the judge  
12 can hear what you say as well as the other parties.

13 A. All right.

14 Q. Do you have any connection with the Bear River  
15 Band of Rohnerville Indians?

16 A. Yes, I did do.

17 Q. And what is that connection?

18 A. I am chairman of the gaming commission.

19 Q. This is the tribal gaming commission?

20 A. Tribal gaming commission, yes.

21 Q. Does the tribal gaming commission have any role

22 in overseeing the service of alcoholic beverages at the

23 Bear River Casino?

24 A. Yes, we do.

25 JUDGE GREENBERG: You say you are the chairman?

418

1 THE WITNESS: Yes, sir.

2 BY MR. FORMAN:

3 Q. would you please describe the role of the tribal

4 gaming commission in overseeing the service of alcoholic

5 beverages at the Bear River Casino.

6 A. To make sure that the rules and regulations are

7 followed.

8 Q. And has the -- exhibit next in order.

9 This would be our D, I believe.

10 JUDGE GREENBERG: Yes. It is D.

11 MR. FORMAN: This is the notice of authorization  
12 of the gaming agency. This is a notice from the gaming  
13 agency to employees at the casino regarding gaming agency  
14 policy with respect to proper service of alcohol.

15 JUDGE GREENBERG: Regarding service of alcohol.

16 Okay. Thank you.

17 BY MR. FORMAN:

18 Q. would you please look at what has been marked as  
19 Applicant's Exhibit D, and explain what that represents.

20 A. what this represents is our concern about  
21 overserving of alcohol to any patrons of our gaming --  
22 the casino. we were trying to make it where we did have  
23 rules that people had to understand -- our employees had  
24 to understand not to overserve the customers. That was



25 our main concern there.

419

1           And we felt we need to do something not just  
2 verbal words, but monetary. If you hit -- if you are  
3 hitting the pocketbook, it brings more attention to the  
4 fact. That is the reason we come up with this policy  
5 here.

6           JUDGE GREENBERG: There is a written -- it is a  
7 little difficult to read this.

8           THE WITNESS: Let's see if mine is a little bit  
9 better. Maybe you can read that a little bit better.

10          MR. FORMAN: Maybe you can read it into the  
11 record.

12          JUDGE GREENBERG: I will. Dated January 4,  
Page 113

13 2006.

14 "The Bear River tribal gaming agency has  
15 been authorized by the tribal gaming commission  
16 to immediately impose sanctions on anyone who  
17 contributes to alcohol overservice of patrons.

18 All fines or actions are subject to appeal.

19 First offense: \$100 fine. Second offense:  
20 \$250 fine and/or seven days off. Third offense:  
21 Revocation of license. If you have questions,  
22 please feel free to contact us." That is the  
23 contents of Exhibit D.

24 Proceed.

25 ///

1 BY MR. FORMAN:

2 Q. Mr. Shelton, what is the consequence for an  
3 employee if his or her license is revoked by the tribal  
4 gaming agency?

5 A. No longer has a job.

6 JUDGE GREENBERG: He is fired?

7 THE WITNESS: He is fired.

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

10

11 EXAMINATION

12 BY JUDGE GREENBERG:

13 Q. When you talk about overservice, how do you  
14 determine that?

15 A. That was a question we came up with. How do you  
Page 115

16 determine if somebody has been overserviced.

17 Belligerent, falling down. Just those kind of things.

18 It just -- I really don't know how to explain what we

19 were -- what we were there -- it was just some people can

20 drink a lot and some people can't drink very much at all.

21 We were trying to have a house that was -- where

22 everybody could enjoy themselves without -- the plain

23 truth is without drunks falling all over them.

24 Q. Has there been any attempt to communicate with

25 the Humboldt county sheriff's office as to which sort of

421

1 standards they use to determine whether a person has had

2 too much drink?

3           A. I cannot answer. That is the agency. They are  
4 the ones -- the gaming commission, we do not do that, but  
5 our agency does.

6           MR. FORMAN: Your Honor, we will have testimony  
7 from security and surveillance that will address that  
8 issue.

9           JUDGE GREENBERG: Okay. Thank you.

10          Any questions of this witness by the department?

11          MR. PIERCE: Yes. Thank you, your Honor.

12 Briefly.

13

14                                   CROSS-EXAMINATION

15 BY MR. PIERCE:

16          Q. You anticipated the one question regarding the  
17 definition of overservice. But my -- Exhibit D  
18 references an immediate \$100 fine.

19           How is that imposed? How is it determined  
20 whether or not an employee has overserved a patron?

21           A. By our staff. By surveillance.

22           Q. So there is no hearing. It is imposed by action  
23 of the agency?

24           A. It is an action by the agency with the -- and of  
25 the complaint process.

422

1           Q. Then there is a right to appeal. What is the  
2 appeal process?

3           A. The appeal process is we have within 30 days.  
4 We have a hearing within two weeks.

5           Q. The appeal is to the full gaming agency?

6           A. No. To the -- that would be to the gaming  
7 commission, three-member commission.

8           MR. PIERCE: Okay. That is all I have. Thank  
9 you.

10           JUDGE GREENBERG: Any questions by the  
11 protestants?

12           MS. FREGEAU: Yes.

13

14                                   CROSS-EXAMINATION

15 BY MS. FREGEAU:

16           Q. Who is the Bear River tribal gaming agency? Who  
17 is on the agency?

18           A. Who is on the agency. Michael Acosta is the --

19           Q. What was his name?

20           A. Michael Acosta.

21           Q. Okay.

22 A. Debbie Bishop. I need some help.

23 UNKNOWN SPEAKER: Ernest Tompkins.

24 THE WITNESS: Ernest Tompkins.

25 ///

423

1 BY MR. FREGEAU:

2 Q. So three people on the gaming agency. Who is

3 the --

4 JUDGE GREENBERG: It is tribal agency?

5 THE WITNESS: That is the tribal agency. There

6 are three members on the gaming commission.

7 JUDGE GREENBERG: And the commission -- the

8 gaming commission would be?



9 THE WITNESS: Myself, Robert LaFrankie and  
10 Brenda Bowie.

11 JUDGE GREENBERG: LaFrankie?

12 THE WITNESS: LaFrankie.

13 JUDGE GREENBERG: Brenda Bowie, B-o-u-y?

14 THE WITNESS: B-o-w-i-e.

15 BY MS. FREGEAU:

16 Q. And Mr. Acosta, Debbie Bishop and Ernest  
17 Tompkins, are they residents of Humboldt County?

18 A. Yes, they are.

19 Q. Are they tribal members or non-tribal members?

20 A. Non-tribal members.

21 Q. Okay. I had a question about this, "Attention  
22 employees." This addresses anyone who contributes to the  
23 service of alcohol. How do you monitor patrons passing  
24 alcohol to another patron?

25 A. Visually. We have cameras all over that casino.

424

1 Q. Okay. And when you talk about the third  
2 offense, revocation of license. What license would that  
3 be?

4 A. That is their gaming license.

5 Q. So the employee would lose their gaming  
6 license?

7 A. Yes, they would.

8 Q. So am I to understand each employee has their  
9 own gaming license?

10 A. Yes.

11 Q. Okay. And when you said -- when you were asked

12 how do you determine when somebody has had too much to  
13 drink, you used the expression "belligerent." So would  
14 you think that any time a person is belligerent they have  
15 had too much to drink?

16 A. No.

17 Q. And only when a person is falling down, would  
18 you consider them to have had too much to drink?

19 A. No.

20 Q. Okay.

21 JUDGE GREENBERG: Do I understand that you  
22 haven't arrived at the objective standards yet to  
23 determine whether or not a person should be served  
24 further alcohol?

25 THE WITNESS: I believe we come up with some

1 feelings on that. I am not sure exactly -- our staff is  
2 working on that. We just come up -- we have a policy  
3 that you are seeing right here that we give to our -- it  
4 is in the casino and the staff is working on that.

5 JUDGE GREENBERG: Okay. Thank you. So it would  
6 be a standardized policy.

7 THE WITNESS: Yes, sir.

8 BY MS. FREGEAU:

9 Q. Mr. Shelton, where is this policy posted in the  
10 casino?

11 A. I couldn't tell you where it is exactly posted.  
12 I know it is handed to all the employees.

13 Q. How do you verify each employee has read it and  
14 understands it?

15           A.  When I understand they have read it and signed  
16  it.

17           Q.  Once they have signed it, it is -- what do they  
18  do with it then?

19           A.  I don't know if we keep one copy or -- I don't  
20  know.

21           Q.  So you are not aware if employees sign this and  
22  then you keep it in, like, a personnel file as  
23  verification?

24           A.  I'm sure that somebody can answer that question  
25  better than I can.

1           Q.  Okay.  And are you aware since you are part of

2 the gaming agency or the commission if there is any  
3 ongoing training, such as ongoing in-services that are  
4 mandatory like OSHA?

5 A. Yes.

6 Q. There are?

7 A. Yes.

8 Q. Who conducts those trainings?

9 MR. PIERCE: You have to not talk over one  
10 another for the reporter.

11 JUDGE GREENBERG: Is there ongoing training? I  
12 didn't hear the response.

13 THE WITNESS: We have ongoing training. I think  
14 it was not too long ago they completed some training.

15 MR. FORMAN: I've got to ask for clarification.  
16 Training about what?

17 JUDGE GREENBERG: About overservice.

18 MS. FREGEAU: Service of alcohol.

19 Q. who does this ongoing training, please?

20 A. I need to ask for help on that one.

21 UNKNOWN SPEAKER: A.B.C.

22 THE WITNESS: A.B.C.

23 BY MS. FREGEAU:

24 Q. So the A.B.C.?

25 A. Yes.

427

1 Q. That would be the department represented by

2 Mr. Pierce, that A.B.C.?

3 A. Correct.

4 Q. Regarding alcohol service?

5 A. Yes.

6 JUDGE GREENBERG: Any further questions,

7 Mr. Pierce?

8 MR. PIERCE: No, your Honor.

9 JUDGE GREENBERG: Any further questions

10 Ms. Fregeau?

11 MS. FREGEAU: No, sir.

12 JUDGE GREENBERG: Any redirect?

13 MR. FORMAN: No, sir.

14 I'd like to call in the interest of getting

15 another witness on and off before lunchtime, Ernie

16 Tompkins, please.

17 JUDGE GREENBERG: Spell the last name, please.

18 THE WITNESS: T-o-m-p-k-i-n-s.

19 JUDGE GREENBERG: Would you raise your right

20 hand.



21 ///

22 ///

23 ///

24 ///

25 ///

428

1 ERNIE TOMPKINS,

2 having been duly sworn by Judge Greenberg,

3 was examined and testified as follows:

4

5 JUDGE GREENBERG: Proceed, counsel.

6

7 DIRECT EXAMINATION

8 BY MR. FORMAN:

9 Q. Mr. Tompkins, are you presently employed at the  
10 Bear River Casino?

11 A. I am employed by the Rancheria.

12 Q. Okay. And by the tribe?

13 A. By the tribe itself.

14 Q. And by what department of the tribe are you  
15 employed?

16 A. I am part of the T.G.A. I am director of  
17 surveillance there.

18 Q. T.G.A. stands for?

19 A. Tribal gaming agency.

20 Q. And your capacity within the tribal gaming  
21 agency?

22 A. Is I am the director of surveillance.

23 Q. All right. And what are your duties as the

24 director of surveillance?

25 A. I control 137 cameras of the casino, and I have

429

1 a staff that is there for 24 hours a day, seven days a

2 week.

3 Q. So the staff is there even when the casino is

4 closed?

5 A. Yes, sir.

6 Q. And what does this staff do?

7 A. We are there to inform security of anything that

8 is happening that is against the gaming policies of the

9 Rancheria. And we are there to protect assets of the

10 tribe and protect the employees and the casino patrons

11 and their safety.

12 Q. How large a surveillance staff do you oversee?

13 A. I have 12 people that are underneath my

14 staffing.

15 Q. On average how many on are duty during any given

16 shift?

17 A. We go from two to three people per shift.

18 Q. And is that true when the casino is closed, the

19 same as when it is open?

20 A. When the casino closes, I have one to two.

21 Q. And how does your staff conduct surveillance at

22 the casino?

23 A. In the casino itself, we have mostly P.T.Z.

24 cameras which is point, target and zoom. And we have 23

25 power on that. That means we can pretty well look down

1 and read cards on the tables.

2 JUDGE GREENBERG: How many cameras did you say  
3 you have?

4 THE WITNESS: Total of the casino is 137. That  
5 is inside, outside.

6 BY MR. FORMAN:

7 Q. So those cameras cover the exterior of the  
8 casino as well?

9 A. Yes, sir.

10 Q. What portion of the exterior of the casino  
11 premises are covered by the cameras?

12 A. We have cameras all the way around the casino  
13 itself, plus the parking lots.

14 Q. Are there cameras that cover the bar area?

15 A. Yes, sir. We have five cameras in the bar area,

16 two of them are P.T.Z.'s.

17 Q. P.T.C.?

18 A. Yes. Point, tilt. Zoom. That is the

19 abbreviation for it.

20 Q. P.T.Z.?

21 A. Yes. P.T.Z.

22 Q. And these cameras are connected to what?

23 A. They are run directly into the surveillance

24 department where we have 2 -- I forget. We just had the

25 new monitor. We have 23 monitors that we are watching.

1 So we --

2 JUDGE GREENBERG: You talk about "we." How many  
3 people?

4 THE WITNESS: My surveillance staff.

5 JUDGE GREENBERG: How many in your surveillance  
6 staff?

7 THE WITNESS: We are a total of 12, but on a  
8 shift we average three people on our shift.

9 BY MR. FORMAN:

10 Q. And is any record kept of what is transmitted  
11 from the cameras to the monitors?

12 A. Yes. They are all independently recorded, each  
13 camera, and we have a 14-day record time on them.

14 Q. Could you describe as specifically as you can  
15 the role of the surveillance department in ensuring that  
16 the service of alcoholic beverages in the casino does not

17 result in problems either inside or outside the casino.

18 A. I have a standing policy that is implemented in

19 our P & P's stating that --

20 Q. P & P being --

21 A. Policy and procedures of the casino.

22 Actually my part is that when I have -- after

23 6:00 at night, a console -- we have six, seven consoles

24 right in front of my people. One of them consoles has to

25 have the bar camera on it. So the bar camera is on a

432

1 revolving situation where it is going back and forth

2 among the whole bar. I have two of them doing that.

3 Q. So at least one of the consoles in front of your



4 people is going to be receiving <sup>A0026AEA</sup> signal from the bar?

5 A. Yes, sir. Any time we have abuse situation, I  
6 bring up the rest of the cameras on that review  
7 station.

8 JUDGE GREENBERG: How many cameras on the bar?

9 THE WITNESS: Five, sir.

10 BY MR. FORMAN:

11 Q. And are your staff members that are watching  
12 these monitors instructed to do anything in particular as  
13 they are observing events in the casino?

14 A. We -- I rely a lot on security to inform us if  
15 they see anything that might be happening. But we do  
16 have two people who are constantly roaming the casino  
17 with cameras and if they see a person coming up with  
18 extra drinks in their hand, they pull on that person and  
19 see if they are giving it to another person or they are

20 drinking it themselves. If they have two drinks their  
21 self, both drinks come to them, then we alert security,  
22 and they will take actions from there.

23 Q. When you say these are roaming the casino, the  
24 people aren't roaming the casino --

25 A. No.

433

1 Q. But the cameras are?

2 A. The cameras are.

3 MR. FORMAN: Thank you. I have no further  
4 questions.

5 JUDGE GREENBERG: Any questions by the  
6 department?

7 I have a question. How do you exclude persons  
8 under the age of 21 in drinking at the casino?

9 THE WITNESS: Security has people at the door,  
10 sir, and they check licenses.

11 JUDGE GREENBERG: Okay.

12 THE WITNESS: If any time my people look like  
13 anybody has went through, slipped through somehow, we  
14 send -- we contact security and send them to that spot.

15 JUDGE GREENBERG: Security checks underage.

16 THE WITNESS: Yes, sir.

17 JUDGE GREENBERG: How many security people do  
18 you say you have?

19 THE WITNESS: That is not me.

20 MR. FORMAN: Your Honor, he didn't testify about  
21 security people. He testified about surveillance people.  
22 we will have the security director testify about that.

23 JUDGE GREENBERG: Thank you.

24 Anything.

25 MR. PIERCE: Just briefly to confirm my

434

1 understanding.

2

3 CROSS-EXAMINATION

4 BY MR. PIERCE:

5 Q. All 137 cameras have feeds to a recording

6 device?

7 A. Yes, sir.

8 Q. And the protocol for the tribe is to retain all

9 recordings for a period of 14 days minimum?

10           A. The state requires seven <sup>A0026AEA</sup>days. We go to 14 days  
11 for our own safety or the patrons.

12           MR. PIERCE: That is all I have of this witness.

13           JUDGE GREENBERG: You retain the film or the  
14 images for 14 days?

15           THE WITNESS: Yes.

16           JUDGE GREENBERG: Any questions by the  
17 protestant.

18           MS. FREGEAU: Yes. I have some clarification.

19

20                                   CROSS-EXAMINATION

21 BY MS. FREGEAU:

22           Q. You said you have 137 cameras; correct?

23           A. Yes, ma'am.

24           Q. And I'm confused about the monitors. Could you  
25 help me understand. The 137 cameras like --

1           A. Like you have a monitor right there. I have a  
2 console where I can put any of them 137 cameras on that  
3 one monitor there. I just have to push in the number of  
4 the camera, okay. I have 23 of these monitors in my  
5 room.

6           So at any one time, I can bring up 23 of the 137  
7 cameras. We go as we need -- like, if I have a person  
8 walking on the outside, they are bringing them cameras  
9 up. If I have a person on table games, they have them  
10 cameras up. And we see something happening, we can just  
11 change cameras and get closer if we want.

12          Q. You say you have two or three people per shift.

13 what is a shift?

14 A. Shift -- my shifts overlap. I run 10-hour  
15 shifts. That means at one time during the night, which  
16 is usually between 10:00 and 2:00 to 3:00 in the morning  
17 I have actually four people there.

18 Q. So you have four people monitoring 23 -- four  
19 people monitoring 23 monitors?

20 A. 23 monitors, yes, ma'am. That gives us -- me,  
21 at all times a person doing that work.

22 Q. And of those three -- two or three people, who  
23 makes the decisions on which camera to zoom in on?

24 A. Each person is given a specific direction what  
25 they are supposed to do. Like I have a person directly

1 responsible for table games. I have a person directly  
2 responsible for the rest of the casino area, and I have a  
3 person responsible for the outside cameras. And that is  
4 their direction.

5 The fourth person is fluctuating in between them  
6 all, giving them breaks. But I do have three people  
7 constantly on them cameras.

8 Q. So it is not two or three people per shift then.  
9 I just heard four people mentioned.

10 A. I said between that time. From 9:00 and 10:00  
11 at night until 3:00 in the morning I have four people  
12 there.

13 Q. Okay. What kind of training do these staff  
14 members receive prior to going to work or on-the-job?

15 A. On-the-job training?



16 Q. Uh-huh.

17 A. They -- we have a trainer that has had four  
18 years experience that is training all my people. And it  
19 is mainly just observation. And then you train them  
20 how -- what to look for, what not to look for and how to  
21 respond to it.

22 Q. And what about equipment training on, if I  
23 wanted to zoom in on this camera, is there training for  
24 the staff?

25 A. Well, most of it is hands-on training, ma'am.

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1 Just like if you did any games on video games, you have a  
2 joy stick. That is what we use, a joy stick. And most  
3 people now can use a joy stick. And that has come up

4 through --

5 JUDGE GREENBERG: We'll call these camera  
6 observers.

7 Do these camera observers have immediate and  
8 direct contact with any of the, we'll call it, law  
9 enforcement personnel on the floor?

10 THE WITNESS: Media contact.

11 JUDGE GREENBERG: With security on the floor?

12 THE WITNESS: We have radio communication, sir.

13 JUDGE GREENBERG: Okay. That is what I mean by  
14 immediate. Has there been any testing as to the  
15 effectiveness of communications between the observers,  
16 camera observers and security?

17 THE WITNESS: Yes, sir. If, like, we see  
18 something in the parking lot that looks like we need

19 investigation, we contact security and inform them of the  
20 situation. They respond to it. Where it is like -- in a  
21 casino, surveillance is used to be part of security, but  
22 you cannot have that in an operation where we are  
23 watching money. So they have separated us. But we are  
24 close in terms that we work with each other as closely as  
25 possible. We talk to each other on a daily basis and

438

1 compare notes of what is going on at the casino.

2 JUDGE GREENBERG: Okay.

3 BY MS. FREGEAU:

4 Q. You mentioned a two-drink minimum. If you saw  
5 an individual with more than two drinks, is that a --

6 A. It is just a sign, ma'am. If a patron comes

7 out -- he has two drinks in his hands, he is never  
8 supposed to be served two drinks without another person  
9 being there. That is one of the casino rules. If we see  
10 a person walk down with two drinks, we pull a camera on.  
11 If they stop, if they don't give that drink to another  
12 person we keep the camera on them and find out what is  
13 happening.

14           And then if -- another drink comes up to them --  
15 we have a three-drink max. At three drinks, we contact  
16 security to watch out for this person and evaluate them  
17 if they need to be walked out.

18           JUDGE GREENBERG: Is there a policy of comping  
19 drinks to the patrons?

20           THE WITNESS: I have never seen such a policy,  
21 sir.



10 JUDGE GREENBERG: Maximum.

11 MS. FREGEAU: Maximum.

12 THE WITNESS: Maximum.

13 BY MS. FREGEAU:

14 Q. Per person?

15 A. Per person.

16 Q. How do you monitor that?

17 A. We monitor that mainly by watching the people.

18 And it is up to the servers and the bartenders to call us

19 if they see this happening.

20 Q. Can a person be sitting at a table and order a

21 drink?

22 A. Yes, ma'am. You have a server that comes to

23 your table.

24 Q. would it be possible for me to be sitting at a

25 table and order a drink and be served?<sup>A0026AEA</sup>

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1 A. Yes, ma'am.

2 Q. And it would be possible for me to leave the

3 table and go into the bar and have two drinks?

4 A. Yes, ma'am.

5 Q. And then I could return to a table and possibly

6 order another drink?

7 A. If my camera is on you, you would, ma'am.

8 Q. If your camera was on me?

9 A. But usually after we see a person do that, walk  
10 out, we have another person -- we are sitting right next  
11 to each other. We are seeing the different monitors that  
12 is up there. And my people pretty well recognize what is

13 happening.

14 JUDGE GREENBERG: So they may not see that  
15 person who going from table to bar back to table; they  
16 may not see that continuously?

17 THE WITNESS: Continuously, yes, sir.

18 JUDGE GREENBERG: But they might just on chance  
19 follow that person.

20 THE WITNESS: Right. We watch the actions of  
21 the person when they get up and when they walk. That is  
22 part of my observance of what we train our people to.

23 JUDGE GREENBERG: Any other questions?

24 MS. FREGEAU: I walk with a limp. I'd hate to  
25 be followed with a camera.



1 Q. Do you have surveillance cameras on people  
2 coming into the casino? And do you determine when they  
3 come into the casino if they are under the influence of  
4 alcohol perhaps based on the way they walk?

5 A. Yes, ma'am. We do have surveillance cameras in  
6 front of the casino itself, right on the front door and  
7 the side door. Mainly, security is there at both doors.  
8 They are the ones that advise us.

9 Q. Okay.

10 A. But we can advise them. We have in the past  
11 seen people walking in that looks like they are under the  
12 influence, we have stopped them before the casino and  
13 turned them around.

14 Q. When you turn them around, sir, what do you do  
15 with them?

16 A. We call the sheriff's department.

17 Q. What happened then?

18 A. Sheriff comes and talks to them.

19 Q. Talks to them.

20 A. It is up to their jurisdiction what they do,

21 ma'am.

22 Q. So if you saw a person on what you perceive as

23 under the influence, you would call law enforcement?

24 A. We have security check it out, first, ma'am, per

25 procedure.

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1 MS. FREGEAU: Thank you. I have no other

2 questions.

3 JUDGE GREENBERG: You may see somebody leave the  
4 casino. You have been following them to make a  
5 determination that person is under the influence, and you  
6 see them try to get into their car, what do you do with  
7 them?

8 THE WITNESS: We call security to try to stop  
9 them. Because we have free taxi ride home. And we stop  
10 them. We respond to what security suggests us to do. My  
11 department cannot make a direct --

12 JUDGE GREENBERG: All you are doing is  
13 observing?

14 THE WITNESS: Yes, sir.

15 JUDGE GREENBERG: Gathering information?

16 THE WITNESS: We inform security. They make the  
17 distinction what to do.

18 JUDGE GREENBERG: Okay. Any other questions of  
Page 155

19 the witness?

20 MR. PIERCE: Not on behalf of the department.

21 JUDGE GREENBERG: Ms. Fregeau?

22 MS. FREGEAU: No. I believe it goes to

23 security. Thank you.

24 JUDGE GREENBERG: Redirect?

25 MR. FORMAN: A couple of technical

443

1 clarifications on redirect.

2

3 REDIRECT EXAMINATION

4 BY MR. FORMAN:

5 Q. Mr. Tompkins, are the monitors that your staff

6 observes capable of displaying images from more than one  
7 camera at a time?

8 A. Yes, sir. We have -- actually, I can put four  
9 cameras on one monitor.

10 Q. And in the event of an unusual incident that  
11 occurs in the casino that has been recorded on the  
12 surveillance system, is the retention policy any  
13 different or is it still 14 days and out?

14 A. Any incident that happens, we record it on a DVD  
15 and it is kept right now indefinitely.

16 MR. FORMAN: Thank you. I have no further  
17 questions.

18 JUDGE GREENBERG: Thank you.

19 Is there anything by way of recross?

20 MR. PIERCE: No.

21 MS. FREGEAU: No.

22 JUDGE GREENBERG: Thank you, sir.

23 May I inquire of the applicant as to how many  
24 more witnesses it may have.

25 MR. FORMAN: I have three more witnesses. The

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1 director of security, a surveillance technician who  
2 conducted the traffic observations and the food and  
3 beverage director, who will provide details about --

4 JUDGE GREENBERG: We will probably go some way  
5 into the afternoon, my estimate.

6 MR. FORMAN: As little into the afternoon as  
7 possible. I have an airplane waiting for me at the  
8 airport.

9 JUDGE GREENBERG: I know. What time -- well,  
10 your plane leaves when you get there; isn't that right?

11 MR. FORMAN: Yes. But the meter runs the entire  
12 time.

13 JUDGE GREENBERG: I don't want to have you file  
14 bankruptcy because of a delay here. But I am -- it is  
15 unfortunate that I think we are going to have to have a  
16 full hearing in this matter anyway. And there might be  
17 witnesses that might be called back by Ms. Fregeau.

18 Is that correct?

19 MS. FREGEAU: Yes, sir.

20 JUDGE GREENBERG: Okay. So we can pass the hat  
21 and see what we can do about funding your plane.

22 MR. FORMAN: It would be helpful to have as  
23 short a lunch break as possible so we can resume --

24 MS. FREGEAU: Unfortunately we are not close to  
Page 159

25 very many restaurants.

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1 JUDGE GREENBERG: No. I would say return here

2 at 1:15.

3 MR. FORMAN: That will be fine. Thank you.

4 (A luncheon recess was taken at 12:07 p.m.,.

5 the proceedings to be resumed at 1:15 p.m.)

6

7

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12

13

14

AFTERNOON SESSION

15

(The proceedings were resumed at 1:24 p.m.)

16

17

JUDGE GREENBERG: Okay. We are reconvened. Do

18

you have any further witnesses?

19

MR. FORMAN: Yes, we do. Robert Jimenez,

20

please.

21

JUDGE GREENBERG: would you raise your right

22

hand, sir.

23

///

24

///

25

///

1                                 ROBERT JIMENEZ,  
2                                 having been duly sworn by Judge Greenberg,  
3                                 was examined and testified as follows:  
4

5                                 JUDGE GREENBERG:  Would you state your full name  
6                                 and spell your last name for the record.

7                                 THE WITNESS:  Robert Jimenez, J-i-m-e-n-e-z.

8                                 JUDGE GREENBERG:  You may proceed.

9                                 MR. FORMAN:  Mr. Jimenez, I'd like to show you a  
10                                 document -- well, let's get them on first.

11                                 First document I'm going to show Mr. Jimenez is  
12                                 security department -- they are all three headed Bear  
13                                 River Casino security department.

14                                 JUDGE GREENBERG:  All right.

15           MR. FORMAN: The first document is the bar  
16 policy, as in physical exclusion. The second is the  
17 gaming floor policy, and the third is front door  
18 identification checks. If we can have those marked as  
19 the next three in order.

20           JUDGE GREENBERG: Okay. We will call this a  
21 group Exhibit E. We'll identify it.

22           Exhibit E-1 is the Bear River Casino security  
23 department with procedures for barring or removing  
24 persons.

25           Exhibit E-2 is the front door identification

447

1 checks.

2 Exhibit E-3 is the gaming floor policy.

3

4 DIRECT EXAMINATION

5 BY MR. FORMAN:

6 Q. Mr. Jimenez, are you presently employed at the

7 Bear River Casino?

8 A. Yes, sir, I am.

9 Q. In what capacity --

10 A. I am the --

11 Q. -- are you employed?

12 A. I am the security manager.

13 Q. And were you employed at the Bear River Casino

14 before you became the security manager?

15 A. I was.

16 Q. And in what capacity were you previously

17 employed?

18 A. I was the background investigator for the  
19 tribe.

20 Q. So is that with the tribal gaming agency?

21 A. Yes, sir.

22 Q. So that was under the tribal government as  
23 opposed to casino management; is that correct?

24 A. Yes.

25 Q. Before -- and when did you first start working

448

1 at the casino in any capacity?

2 A. My first employment at the casino was February  
3 27 on the casino side.

4 Q. Of what year?

5 A. of '06.

6 Q. And your employment at the gaming agency?

7 A. I started there in June of '05.

8 Q. So before the casino opened?

9 A. That's correct.

10 Q. Before that, had you had any employment

11 experience in law enforcement?

12 A. I had.

13 Q. And what experience was that?

14 A. I was employed as a traffic officer for the

15 California Highway Patrol from 1979 to November of '01.

16 Q. And in what area or areas of the state of

17 California were you so employed?

18 A. My first initial assignment was in Santa Fe

19 Springs in the Los Angeles area. After that I served --

20 I spent three years in L.A. and then I spent five years

21 in Santa Rosa, in that area. And from '86 to November  
22 of '01, I spent in Humboldt County.

23 JUDGE GREENBERG: So you were first employed as  
24 a CHP when?

25 THE WITNESS: The California Highway Patrol

449

1 from '79 through '01.

2 BY MR. FORMAN:

3 Q. And while you were employed by the CHP in  
4 Humboldt County, did any -- at any time did your beat  
5 include the area that now includes the Bear River  
6 Casino?

7 A. It did.

8 Q. For approximately how long?

9 A. Usually the shifts were done on a monthly basis.

10 If I was working the south end, it would be for the  
11 entire month. So intermittently, I would work south for  
12 about three months and then north for about three  
13 months.

14 Q. So you are familiar, are you not, with road and  
15 traffic conditions in the vicinity of the Bear River  
16 Casino?

17 A. I am.

18 Q. Your current -- in your current position as  
19 director of the security department, what are your  
20 duties?

21 A. My duties are to protect the guests and the  
22 tribal assets of the casino and to ensure the safety of  
23 everybody involved.



24 Q. How large a staff do you supervise?

25 A. Currently I have 22 security officers and four

450

1 valets.

2 Q. What shifts do your security officers work?

3 A. Well, they run --

4 JUDGE GREENBERG: How many valets? I'm sorry.

5 THE WITNESS: Pardon me. Four valets.

6 BY MR. FORMAN:

7 Q. These are parking valets?

8 A. Parking valets to also supplement as security.

9 Q. How are your officers deployed over the course  
10 of the day?

11 A. They have overlapping shifts over a 22-hour  
12 shift.

13 Q. There are how many shifts over 22 hours?

14 A. Three.

15 Q. And are there security officers on the premises  
16 24 hours a day?

17 A. Yes.

18 Q. What is the largest number of security officers  
19 you have on duty during any -- at any one point during  
20 the course of the day when you are open for business?

21 A. During peak hours, I would say seven plus.

22 Q. What sort of training do your security officers  
23 have or are required to have in order to get employment?

24 A. Currently, it is on-the-job training for the  
25 most part. I go over policies with them as far as the

1 door policies, what is expected of them on the casino  
2 floor.

3 We are currently in the process of getting some  
4 first aid C.P.R. for them. Some of them have had that  
5 training.

6 The A.B.C. training some of them have had. We  
7 are currently in the process of getting more training for  
8 the officers through the A.B.C. process.

9 Q. Do any of your officers have state security  
10 guard certifications?

11 A. I don't believe so.

12 Q. Would you please describe the specific functions  
13 of your department that are designed to prevent, reduce

14 or resolve problems related to the service of alcoholic  
15 beverages within and outside the casino.

16 A. We have front door checks at the front door. We  
17 have security posted on both doors during the times that  
18 the casino is open. The officers are informed to  
19 question anybody that appears to be 30 years of age and  
20 younger and check them for I.D. They are requested to  
21 show or produce proof of valid I.D. either from a state,  
22 county or tribal government.

23 Q. Do you have any written procedures that your  
24 officers are to follow at the front door?

25 A. I do.

1 Q. And are those accurately reflected in  
2 Exhibit E-2, a copy of which you have in front of you?

3 A. Yes.

4 MR. FORMAN: I would move E-2 into evidence at  
5 this time.

6 Q. Now, your security staff patrols what portions  
7 of the casino premises?

8 A. We patrol the entire casino, including the  
9 grounds.

10 Q. That would include the parking areas?

11 A. Yes.

12 Q. Does your department have any responsibility for  
13 the control of traffic on the premises?

14 A. We do.

15 Q. And what does your department do in that  
16 respect?

17           A. For traffic control during peak hours, that  
18 would be Friday and Saturday evening between the hours of  
19 12:00 and 2:00 a.m., I have an officer that is posted at  
20 the intersection, the exit intersection of the casino,  
21 that directs traffic to make left turns only as they exit  
22 the casino property.

23           MS. FREGEAU: I'm sorry. What was the time,  
24 please?

25           THE WITNESS: Between 12:00 and 2:00 p.m.

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1           JUDGE GREENBERG: What days?

2           THE WITNESS: Every Friday and Saturday.

3           JUDGE GREENBERG: 12:00 noon to --

4 THE WITNESS: No. 12:00<sup>A0026AEA</sup> p.m. to 2:00 a.m.

5 BY MR. FORMAN:

6 Q. 12:00 midnight to 2:00 a.m.?

7 A. Yes.

8 Q. In your experience is that --

9

10 EXAMINATION

11 BY JUDGE GREENBERG:

12 Q. To turn left?

13 A. To turn left as they exit. In other words, they

14 go south towards 101.

15 Q. Exit to the south only?

16 A. Yes.

17 Q. My next question is: If they exited to the

18 north, they would be going up Singley Road; is that

19 right?

20 A. That is correct.

21 Q. And they would go up to the northern entrance to  
22 Singley Road; is that correct?

23 MR. FORMAN: Your Honor, I must interpose an  
24 objection. They might go that way. But there are also  
25 people that live between that north 101 exit --

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1 JUDGE GREENBERG: Yes, I understand.

2 MR. FORMAN: -- and the casino who may well be  
3 customers of the casino. So not everybody who turns  
4 right goes to 101. They may be going a couple hundred  
5 yards.

6 JUDGE GREENBERG: Yes. Except for residents,



7 let's say.

8 THE WITNESS: Yes.

9 JUDGE GREENBERG: Unless residents are also  
10 patrons of the casino. Then they would be  
11 resident/patrons.

12 THE WITNESS: That is possible.

13 JUDGE GREENBERG: It is always possible.

14 Proceed.

15 And if they wanted to go to the north to get to  
16 their residence, they would have to explain that to the  
17 traffic officer?

18 THE WITNESS: Well, he is not a traffic officer.  
19 He is a security officer who is directing traffic, but,  
20 yes.

21 JUDGE GREENBERG: Okay.

22

23 FURTHER DIRECT EXAMINATION

24 BY MR. FORMAN:

25 Q. Does the security department have a practice

455

1 with respect to the documentation of unusual incidents on  
2 the casino premises?

3 A. Yes.

4 Q. What is that practice?

5 A. It is the policy of security to do a written  
6 report on all incidents that occur on the casino  
7 property.

8 Q. And is that -- is that report kept in some  
9 permanent form?

10 A. Yes.

11 JUDGE GREENBERG: Incidents may be what?

12 THE WITNESS: Incidents could be any criminal  
13 action, any unusual incident.

14 BY MR. FORMAN:

15 Q. Slip and fall.

16 A. Slip and fall. Any injuries, any traffic  
17 collisions on the casino property.

18 Q. Summoning of law enforcement?

19 A. Yes.

20 Q. Summoning of fire or ambulance?

21 A. Yes.

22 Q. While you were employed by the tribal gaming  
23 agency, did you ever have occasion to review incident  
24 reports?

25 A. I did.

1 Q. Was that part of your normal responsibilities?

2 A. It was in so much as I worked for the gaming  
3 agency and the fact that security provided the agency  
4 with the I.R. reports on a daily basis.

5 Q. I.R. being the incident reports?

6 A. The incident reports. I'm sorry.

7 Q. To your knowledge, has casino security had to  
8 summon the assistance of the Humboldt County sheriff's  
9 department since the casino opened?

10 A. There were a couple of occasions that I believe  
11 they were required to respond.

12 Q. And to your knowledge, did any of those

13 incidents involve the consumption of alcoholic

A0026AEA

14 beverages?

15 A. Not to my knowledge, no.

16 Q. Does the security department have a policy for

17 excluding or removing customers who cause problems?

18 A. We do.

19 Q. And is that policy accurately set forth in

20 Exhibit E-1 which you have in front of you?

21 A. It is.

22 MR. FORMAN: I would move that into evidence as

23 well.

24 JUDGE GREENBERG: So admitted. That is security

25 department procedures. As a group Exhibit E is admitted.

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1 I think there is an E-3, is there not?

2 BY MR. FORMAN:

3 Q. Directing your attention to Exhibit E-3, which  
4 is in front of you, does this accurately reflect the  
5 practice of your security department?

6 A. It does.

7 Q. To your knowledge, has the security department  
8 had to summon the assistance of a fire department or  
9 ambulance in connection with an alcohol-related incident  
10 at the casino since its opening?

11 A. Not to my knowledge.

12 Q. Does the casino have a program of providing  
13 transportation to casino customers?

14 A. We do.

15 Q. What is that program?

16           A. We have a shuttle service <sup>A0026AEA</sup> that will provide a  
17 customer transportation if they are too intoxicated to  
18 drive their vehicle.

19           Q. And what is the security department's role in  
20 implementing that transportation program?

21           A. Most of the time, we identify the intoxicated  
22 person and obtain the transportation for them.

23           Q. And is that obtained at the casino's cost?

24           A. It is.

25           Q. Are you aware of whether the Humboldt County

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1 sheriff's department has made any complaints to the  
2 security department about law enforcement problems at the  
3 casino attributable to the sale of alcohol or consumption

4 of alcoholic beverages at the casino?

5 A. I have had no complaints from any of the  
6 deputies.

7 Q. Does a Humboldt County sheriff's deputy live in  
8 the area of the casino?

9 A. Yes.

10 Q. How close?

11 A. I believe a couple miles, within.

12 Q. To the extent that you haven't already answered  
13 this, what, if anything, does the casino do to encourage  
14 patrons to go to and from Highway 101 using the 3/10 of  
15 the Singley Road and --

16 JUDGE GREENBERG: Just a moment, please.

17

18 FURTHER EXAMINATION



19 BY JUDGE GREENBERG:

20 Q. Security service is the one that has the  
21 authority in that regard; is that right?

22 A. Yes.

23 Q. So it is the procedures used by security to  
24 encourage customers to refrain from using the north  
25 branch of Singley Road; is that right?

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1 A. Yes.

2 Q. Is that what you understand?

3 So what do you do?

4 A. We advise the Players' Club and they normally  
5 do --

6 Q. Pardon?

7           A. We normally advise the Players' Club who  
8 normally about every hour broadcast for our guests to  
9 make a left turn at the casino grounds.

10          Q. Would you explain what the Players' Club is.

11          A. The Players' Club is the group inside the casino  
12 group where everyone obtains their little Players' Club  
13 card.

14          Q. It gives information regarding the casino?

15          A. It is a guest services area.

16          Q. So guest services?

17          A. They also have an intercom system.

18          Q. How frequently?

19          A. Hourly they would utilize that intercom system.

20          Q. Broadcast to the patrons to use the south  
21 Singley Road; is that right?

22 A. Yes.

23 Q. Only?

24 A. Yes.

25 Q. This goes on every hour?

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1 A. Hourly.

2 Q. Have you ever been to an airport?

3 A. I have.

4 Q. Ever hear in the airport broadcast every 20  
5 minutes or 30 minutes, keep your eye on your luggage and  
6 report any unusual incidents to security?

7 A. Yes.

8 Q. And after a while, you just don't hear it  
9 anymore?

10 A. Yes.

11 Q. Do you do anything more than hourly broadcast  
12 this message to the patrons?

13 A. Well, we do have our officer out there  
14 directing.

15 Q. There is an officer directing what?

16 A. Traffic at the intersection. We talked about  
17 that. Between 12:00 and 2:00.

18 Q. On Fridays and Saturdays?

19 A. Yes, sir.

20 Q. He directs traffic on a left turn only; is that  
21 right?

22 A. Yes, sir.

23 Q. Then there is a sign saying left turn only; is  
24 that correct?

25 A. That is correct.

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1 Q. I have a question nagging me for quite a while.

2 Has there been any efforts on the part of the tribe

3 either with the department of highways or CHP or whomever

4 to barrier any right turn from that point?

5 A. I'm not sure I understand.

6 Q. A barrier. To erect a barrier so patrons --

7 A. A barrier?

8 Q. -- don't use the right turn.

9 A. I think that that would require a permit from  
10 the county roads to put a barrier there.

11 Q. Has there been any exploration of that?

12 A. Not to my knowledge.

13 MR. FORMAN: Your Honor, I would point out

14 that --

15 JUDGE GREENBERG: I was curious about that.

16 MR. FORMAN: I mean, yeah, it is a public

17 road.

18 JUDGE GREENBERG: I understand.

19 MR. FORMAN: And there are people that live

20 uphill.

21 JUDGE GREENBERG: Yeah. There are people that

22 live up that road. But the people up that road wouldn't

23 necessarily, from what I understand, be patronizing the

24 gambling. The question is: who would be utilizing the

25 road except for the patrons of the gaming facility?

1           MR. FORMAN: Quite the contrary. The people  
2 that live up the hill from the casino would be using that  
3 road whether or not they went to the casino.

4           JUDGE GREENBERG: Using that road to connect to  
5 the southerly entrance?

6           MR. FORMAN: No. To get to their homes farther  
7 up the hill north of the casino. There is only, like,  
8 one house.

9           JUDGE GREENBERG: Maybe I am confused as to the  
10 road itself, okay.

11          MR. FORMAN: Okay.

12          JUDGE GREENBERG: There is a road coming in, I  
13 guess, from the north, isn't there, Singley Road?

14          MR. FORMAN: Yes.

15          JUDGE GREENBERG: Coming from the north. That  
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16 road connects to the Singley Road entrance at the north;

17 is that correct?

18 MR. FORMAN: It connects to Highway 101.

19 JUDGE GREENBERG: At the north end?

20 MR. FORMAN: At the north end of Singley Road.

21 It connects to Highway 101 at the south end. The casino

22 is 3/10 of a mile north of the south end.

23 JUDGE GREENBERG: Right.

24 MR. FORMAN: Most of the residents -- residences

25 on Singley Road and its side streets are north of the

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1 casino. So a barrier would interdict resident traffic.

2 JUDGE GREENBERG: From using the southerly



3 portion of Singley Road?

4 MR. FORMAN: It would prevent them from getting  
5 from the freeway, the shortest, most convenient way to  
6 their houses.

7 MS. FREGEAU: I would argue that would not  
8 necessarily be the shortest, most convenient route, your  
9 Honor. I live up there.

10 JUDGE GREENBERG: You are talking about the  
11 northern end?

12 MS. FREGEAU: Correct.

13 JUDGE GREENBERG: I am trying to orient myself.  
14 I'm not too sure if you took every single resident that  
15 lived on Singley Road and gathered a petition of  
16 signatures as to whether they use the southern edge and  
17 if they were willing, in fact, to forgive or forgot  
18 entrance on the southerly end of Singley Road, I'm

19 certain you might get a good number of signatures to that  
20 petition.

21 I am just assuming that to be the situation. I  
22 don't know if that is true or not true. I don't know  
23 whether there might be some effort on the part of the  
24 tribe to ameliorate the concerns of those residents by  
25 forgiving any sort of entrance, southern entrance to

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1 Singley Road.

2 MR. FORMAN: The tribe does nothing to encourage  
3 people to use the northern portion of Singley Road, but  
4 for those residents who live on the tribe's end of  
5 Singley Road, including the many residents of the tribe's

6 reservation, having to go out two miles on Singley Road  
7 is considerably less convenient than being able to go 3-  
8 or 4- or 5/10 a mile down the tribe.

9 JUDGE GREENBERG: So it is more convenient for  
10 the tribal members to use the southerly entrance of  
11 Singley Road; is that correct?

12 MR. FORMAN: Sure.

13 JUDGE GREENBERG: So Singley Road to the north  
14 would probably be the most convenient exit and access for  
15 those residents on the northern end of Singley Road?

16 MR. FORMAN: Right. Those in the middle,  
17 however, particularly if they are pulling a stock trailer  
18 are going to want to use the shortest, straightest route,  
19 rather than the more circuitous route.

20 JUDGE GREENBERG: I don't know. I don't know.  
21 we'll find out.

22

23

FURTHER DIRECT EXAMINATION

24

BY MR. FORMAN:

25

Q. In your employment as a law enforcement officer,

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1 did you spend any time investigating accidents of other

2 crime scenes?

3 A. I did.

4 Q. Were you experienced in estimating distances?

5 A. I was.

6 Q. Are you able to estimate approximately how far

7 the nearest edge of the casino building is to the nearest

8 occupied dwelling off the tribe's lands?

9 JUDGE GREENBERG: He is talking about the  
10 nearest edge of the parking of the tribe.

11 MR. FORMAN: Casino parking lot.

12 JUDGE GREENBERG: Nearest edge of the casino  
13 parking lot.

14 MR. FORMAN: Yes.

15 Q. To the nearest occupied off-reservation  
16 dwelling.

17 A. Yes.

18 Q. What is that estimate?

19 A. On the north end, I would say, it is  
20 approximately 150 feet. On the south end it is  
21 approximately 450 feet.

22 MS. FREGEAU: I would object to that. That is  
23 estimations, and it is not a fact.

24 JUDGE GREENBERG: It may be, but it is his  
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25 estimate. So it is 150 feet parking lot to the nearest

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1 resident, okay.

2 THE WITNESS: Yes, sir.

3 JUDGE GREENBERG: At the north end of the

4 parking lot.

5 THE WITNESS: Yes, sir.

6 MR. FORMAN: Nearest off-reservation resident.

7 JUDGE GREENBERG: Yes. That is the north end;

8 right.

9 MR. FORMAN: Yes.

10 JUDGE GREENBERG: Go ahead.

11 BY MR. FORMAN:

12 Q. Do you have an estimate of the distance between  
13 the nearest off -- occupied off-reservation dwelling from  
14 the nearest edge of the casino building?

15 A. The closest one would be the south residence,  
16 which would be probably approximately 900 feet.

17 Q. Are there any physical barriers between the  
18 casino parking lot and the nearest off-reservation  
19 residence?

20 JUDGE GREENBERG: Just a moment. You said how  
21 many feet?

22 THE COURT REPORTER: 900.

23 JUDGE GREENBERG: Okay. Thank you. I'm sorry,  
24 Counsel.

25 BY MR. FORMAN:

1 Q. Are there any physical barriers between the  
2 casino parking lot and the nearest off-reservation  
3 residence?

4 A. Yes.

5 Q. And what barriers are those?

6 A. There is a wall on the north end that has been  
7 recently constructed.

8 Q. And what is that wall made out of?

9 A. I believe it is a block, a cinder block, of some  
10 type.

11 Q. Do you know the approximate dimensions of that  
12 wall?

13 A. I do not.

14 Q. Okay. Directing your attention to Exhibit E-3,



15 what does your department do to implement item number 9  
16 on Exhibit E-3?

17 A. The security officers are instructed to look for  
18 intoxicated guests. If they should see one, if it is  
19 necessary, they'll cut them off, cut their drinking off  
20 by advising the drink servers, the mini-bar, the large  
21 bar and the pit if they are at the tables that that  
22 individual has been cut off from drinking.

23 Q. What standard are your officers instructed to  
24 use to gauge the possibility of intoxication?

25 A. If the individual is doing something that is

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1 abnormal, falling, for example, or almost falling as they

2 are walking, slurring their words, they are advised to  
3 use their own judgment, based on the observations that  
4 they see. Spilling of drinks could be an indicator.

5 Q. Are patrons allowed to take any beverage  
6 containers outside the casino?

7 A. Absolutely not.

8 MR. FORMAN: Have we marked this?

9 JUDGE GREENBERG: As Exhibit E-3.

10 MR. FORMAN: I have no further questions of  
11 Mr. Jimenez at this time.

12 JUDGE GREENBERG: All right. Any cross-exam?

13 MR. PIERCE: Yes. Thank you, your Honor.

14

15 CROSS-EXAMINATION

16 BY MR. PIERCE:

17 Q. First of all, let me ask you about the

18 identification checks as elaborated on Exhibit E-2. What  
19 happens if a person who would appear to the security  
20 officer to be in perhaps in their mid-20's asks a person  
21 for their identification and they have no valid  
22 identification as described on Exhibit E-2?

23 A. That person would not be allowed to enter the  
24 casino.

25 Q. So anyone inside the casino would be presumed to

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1 have a valid identification in their possession?

2 A. Yes.

3 Q. Okay. And are there any exceptions to that  
4 rule?

5 A. Yes.

6 Q. What sort of exceptions?

7 A. If a patron comes to the front door with their  
8 family, and they are underage and they advise us that  
9 they are just simply going to the restaurant for dinner,  
10 then they are escorted by security into the restaurant.

11 Q. Okay. And if a person comes for dinner at 6:00  
12 and plans on gambling throughout the evening until  
13 perhaps 2:00 in the morning, a total of six to eight  
14 hours, what would be the maximum number of drinks under  
15 the policy that that person would be allowed to purchase  
16 and consume or is there a maximum?

17 A. It would be determined by the drink servers on  
18 the floor.

19 JUDGE GREENBERG: I thought you couldn't drink  
20 more than three drinks.

21           THE WITNESS: You couldn't walk away with two  
22 drinks at the bar or at the restaurant unless that drink  
23 was intended for another party and that drink server was  
24 aware of that intention.

25           JUDGE GREENBERG: I am not saying that. If you

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1 are a patron and you order more than three drinks while  
2 you are at the bar, can you receive more than the third  
3 drink?

4           THE WITNESS: I would say, yes, you can;  
5 however, it would be determined based on the individual.  
6 For example, a 300-pound man that drinks three drinks  
7 over an eight-hour period would not only not be

8 intoxicated, but would probably be nowhere near  
9 intoxication. If you took a small petite woman that  
10 weighed maybe 90 pounds and she drank three drinks, it  
11 could be a different outcome.

12 JUDGE GREENBERG: I thought there was some  
13 testimony that everyone cut a person off after three  
14 drinks.

15 MR. PIERCE: That was my understanding of  
16 Mr. Tompkins' testimony, that there was a three-drink  
17 maximum.

18 Q. But that is not your understanding, according to  
19 the testimony now.

20 A. My understanding was the three drinks or the two  
21 drinks were at one specific time. You could not walk up  
22 and order three drinks. You couldn't order two drinks  
23 unless you had a specific party that that drink was going

24 to and the drink server was aware of that.

25 Q. So there is no --

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1 JUDGE GREENBERG: I have three drink maximum per  
2 person by Ernie Tompkins.

3 THE WITNESS: Okay.

4 JUDGE GREENBERG: If you have three drinks, it  
5 is three drinks.

6 THE WITNESS: Yes.

7 JUDGE GREENBERG: There is three drinks and a  
8 fourth depending the server's observations of your  
9 conduct?

10 MR. FORMAN: Your Honor, by way of

11 clarification, Mr. Tompkins may have been mistaken with  
12 respect to the total allowed policy. His responsibility  
13 is in surveillance. And what he observes and relays to  
14 security may not be the same thing as what a customer is  
15 allowed to purchase over a period of time.

16 MS. FREGEAU: Your Honor, he also stated that  
17 the two departments meet regularly and discuss policy.

18 JUDGE GREENBERG: Okay. So you have a conflict.

19 MR. FORMAN: We have a difference that may not  
20 be as much of a conflict as it appears.

21 JUDGE GREENBERG: Spoken like a true lawyer.

22 MR. PIERCE: You really did pass the bar exam.

23 MR. FORMAN: The different witnesses' areas of  
24 concentration and expertise may reflect different  
25 interpretations.



1 JUDGE GREENBERG: Yes.

2 MR. PIERCE: That was the point of my question,  
3 because I had reason to wonder about what I had written  
4 down from the prior testimony.

5 Q. You indicated that part of your responsibility  
6 includes making sure that shuttle service is available  
7 for persons if, according to your words, they are too  
8 intoxicated; is that correct?

9 A. That's correct.

10 Q. What do you consider to be too intoxicated?

11 A. Well, in the realm that you have asked, I am  
12 talking about too intoxicated to drive. They wouldn't  
13 safely be able to drive and leave the casino.

14           If you are inquiring about what is too  
15 intoxicated under the penal code, 647(F) of the penal  
16 code indicates that a person that is unable to exercise  
17 care for their own safety is intoxicated. There are two  
18 different standards.

19           Q. At least.

20           And that is part of my question where I want to  
21 get my understanding and make sure the record is clear  
22 about what the standard is that you are using for the  
23 shuttle service.

24           A person clearly can be presumptively under the  
25 influence for purposes of the vehicle code without being

1 in violation of penal code 647(F), <sup>A0026AEA</sup> is that correct, in  
2 your experience and training?

3 A. That is correct.

4 MS. FREGEAU: Can I have clarification of what  
5 647(F) is?

6 JUDGE GREENBERG: As related by the witness, it  
7 is too drunk to care for your own safety.

8 MS. FREGEAU: Okay.

9 JUDGE GREENBERG: If you are under the influence  
10 of intoxicants, you may not be of sufficient ability to  
11 operate a motor vehicle on public roads.

12 MS. FREGEAU: Thank you.

13 BY MR. PIERCE:

14 Q. So what standards and/or training do your  
15 employees use in making that determination?

16 A. Normally, it is observations based on the

17 training that they have had. You know, we talk about  
18 what is too intoxicated is an area that is very broad in  
19 range. So I explain it to them as best I can as far as  
20 what an intoxicated person is.

21 I use the level of driving as intoxicated, not  
22 only 647. Those are real simple and easy to pick out.  
23 Somebody who is too intoxicated to drive, if we see  
24 somebody on the floor that matches that criteria, then we  
25 interject and try to get him a ride home with the shuttle

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1 or a friend.

2 And many times people walk into the casino if  
3 they are not caught at the front door and they are

4 already intoxicated. We will still <sup>A0026AEA</sup> make arrangements for  
5 them to get them home safely.

6 Q. So essentially, if I understand your testimony,  
7 you try to use the .08 standard for this particular  
8 determination on the shuttle service?

9 A. Yes.

10

11 FURTHER EXAMINATION

12 BY JUDGE GREENBERG:

13 Q. Of course you don't take a blood alcohol at that  
14 time, do you?

15 A. We don't.

16 Q. As we are talking about the shuttle service, you  
17 are probably more familiar with the juncture of southern  
18 Singley Road with Highway 101?

19 A. Yes.

20 Q. Is there a public area available for parking  
21 vehicles in that vicinity?

22 A. Not in that immediate interchange.

23 Q. Not in the immediate interchange. You have  
24 roads. But I am talking adjacent to the roads.

25 A. No. You are talking about just parking off the

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1 highway or a public parking area?

2 Q. No. The parking off the road or public parking,  
3 either way.

4 A. There is shoulder wide enough to park off the  
5 roadway. Technically those off ramps and on ramps are  
6 considered part of the freeway, and it would be illegal.

7 Q. That's right.

8 A. But, yes, they can be utilized for that.

9 Q. I am trying to think of whether or not it might  
10 be advisable to increase shuttle service and request the  
11 patrons to park at an area close to Highway 101 so that  
12 they don't traverse even the 3/10 of a mile. Do you  
13 understand what I am saying?

14 A. Yes, sir.

15 Q. To your knowledge, has the tribe made any kind  
16 of inquiry regarding purchase of such a parcel?

17 A. I know they are making inquiries. I don't know  
18 the extent and I don't know exactly where they are at  
19 with that -- whether they are going to purchase or lease  
20 property.

21 Q. For the purpose of having its patrons park their  
22 vehicles there and then provide a shuttle service?

23 A. Shuttle service?

24 Q. From the casino to the parking area.

25 A. Yes. I know that they are looking for a spot.

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1 Q. Seem to be a means of alleviating a lot of  
2 people's concerns if that happened.

3 A. Yes, sir.

4 MR. PIERCE: No further questions on behalf of  
5 the department.

6 JUDGE GREENBERG: Cross-exam on behalf of the  
7 protestants, please.

8

9 CROSS-EXAMINATION



10 BY MS. FREGEAU:

11 Q. Speaking of the shuttle service or taxi service,  
12 how far would you take a person home?

13 A. I know that our shuttle service has taken people  
14 home to Eureka. I know they have taken them home to Rio  
15 Dell. I think it would depend on the circumstances of  
16 the individual.

17 JUDGE GREENBERG: Do you charge for this?

18 THE WITNESS: Absolutely no charge.

19 BY MS. FREGEAU:

20 Q. So if I lived in Arcata and came to your  
21 establishment, and you made a decision that I was  
22 intoxicated because I was slurring my words, you would  
23 offer me a ride home?

24 A. If we --

25 Q. Free of charge?

1           A. It would take a little more than just slurring  
2 your words. It could be a speech impediment. If based  
3 on the totality of the circumstances, we determined that  
4 you were impaired, we would make arrangements for you to  
5 get home, whether it be calling a friend, calling your  
6 mother or transporting you home. We would make sure that  
7 you got home.

8           Q. My mother couldn't respond very well.

9           You were the one that said your standard  
10 observation would be almost falling down, slurring their  
11 words or spilling their drinks. I was trying to get  
12 better clarification on that criteria.

13                   A .08 which is what I believe <sup>A0026AFA</sup> is the legal limit  
14 to drive a car, do you know how many drinks that  
15 constitutes.

16               A. That would depend on the person. You are  
17 talking about impairment versus the drinks or just the  
18 drink --

19               Q. I am asking you as a retired Highway Patrol  
20 officer and your expertise what you have been trained  
21 that .08 would translate into a number of drinks, an  
22 average?

23               A. On the average for a 12-ounce drink, it would be  
24 four drinks.

25               Q. Four drinks?

1 A. Uh-huh.

2 JUDGE GREENBERG: Wouldn't that depend on the  
3 particular individual?

4 THE WITNESS: It would. If the individual --

5 JUDGE GREENBERG: Some can drink a ton of  
6 alcohol and they wouldn't exhibit any outward  
7 manifestations of it; is that right?

8 THE WITNESS: That's right.

9 JUDGE GREENBERG: Some could smell the cork and  
10 be flat on their butt; is that right?

11 THE WITNESS: That is correct. And there is  
12 always the factor of medication involved. Somebody may  
13 take a medication that reacts to the drug, and they may  
14 appear intoxicated when, in fact, it is a reaction to the  
15 medication they have taken. So there are many factors to

16 consider.

17 JUDGE GREENBERG: That is true. Okay.

18 BY MS. FREGEAU:

19 Q. Do you know --

20 JUDGE GREENBERG: That is pretty well

21 established, by the way.

22 BY MS. FREGEAU:

23 Q. Do you know if the Bear River Casino has an

24 off-sale liquor license?

25 A. It is on-sale only.

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1 Q. So the license is limited to on-sale only?

2 A. Yes.

3 Q. You talked about directing traffic between

4 midnight and 2:00 in the morning on Fridays and Saturday  
5 nights.

6           why do you limit it to 12:00 to 2:00 and only on  
7 Fridays and Saturdays? what is the criteria that is  
8 used?

9           A. The criteria used that is the peak hours  
10 everybody is exiting the casino. So we want to make sure  
11 during peak hours when most of the traffic is leaving  
12 that they are being directed to 101 southbound.

13          Q. So you have an individual actually standing out  
14 there at the intersection?

15          A. Yes. We have a security officer posted there.

16          Q. And do they stop every car and talk to the  
17 person and tell them or do they just stand there and wave  
18 them on?

19           A. Most of the time they have a flashlight and they  
20 just wave them to the south.

21           Q. And what do you do if a person disregards you  
22 and turns north?

23           A. Well, there is absolutely nothing we can do. We  
24 are not peace officers, and we cannot follow them and  
25 issue them a citation.

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1           JUDGE GREENBERG: What if you were to erect a  
2 barrier right there?

3           THE WITNESS: Well, again, we are getting into  
4 the county road permit area.

5           JUDGE GREENBERG: Has there been any effort by  
6 the tribe to seek permission of the appropriate

7 authorities to modify the road so as to provide for  
8 traffic to exit on South Singley Road only?

9 THE WITNESS: Not to my knowledge. I think that  
10 you have a lot of obstacles or barriers to cross in order  
11 to do that. For example, law enforcement goes up and  
12 down that road regularly. I see them go through there.  
13 we would have to move the barricade each and every time  
14 law enforcement went through.

15 JUDGE GREENBERG: How often does a state law  
16 enforcement officer travel that road?

17 THE WITNESS: Well, on Friday and Saturday  
18 nights, I see them going through all the time.

19 JUDGE GREENBERG: From North Singley to South  
20 Singley?

21 THE WITNESS: I see them up there all the time



22 and the sheriff. The sheriff stops <sup>A0026AEA</sup> by the security  
23 office.

24 MS. FREGEAU: I would object to that statement,  
25 your Honor. I live there and I have not seen an officer

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1 there but about four times in the last year.

2 MR. FORMAN: I'm going to move that that be  
3 stricken. The witness is not -- this is testimony. That  
4 is argument.

5 JUDGE GREENBERG: Yes. That is argument.

6 MS. FREGEAU: Sorry.

7 JUDGE GREENBERG: Motion to strike is granted.

8 MR. FORMAN: Thank you.

9 JUDGE GREENBERG: well, there must be some way  
Page 225

10 to coordinate with the various law enforcement officers  
11 to provide some sort of movable barrier.

12 MR. FORMAN: Again, your Honor, I have to  
13 interject. You are supposing --

14 JUDGE GREENBERG: All of this is supposition. I  
15 am making a record for the purpose of notifying the tribe  
16 that they may want to look into this. I am not saying  
17 they have to do it. I am saying they may want to  
18 investigate it.

19 BY MS. FREGEAU:

20 Q. Mr. Jimenez, I am sorry, but I know that prior  
21 to working for the casino, you were a Highway Patrolman  
22 until 2001.

23 A. I retired in 2001.

24 Q. Okay.

25 A. And shortly after, I'd say almost a year after

A0026AEA

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1 retirement, I went to work for security at Blue Lake

2 Casino.

3 Q. I have a question about these documents E-2 and

4 E-1.

5 There is no dates on these documents. Do you

6 know when they were put together?

7 A. I believe in February.

8 Q. And is it not customary for you to put the date

9 of a document --

10 A. It is. And it is probably on my computer.

11 Q. I see.

12 JUDGE GREENBERG: So this is in February of  
Page 227

13 2006?

14 THE WITNESS: Yes, sir. February or early

15 March.

16 BY MS. FREGEAU:

17 Q. On document E-3, the second statement reads,

18 "The security department will maintain a compressive list

19 of all persons." I don't know what a "compressive" list

20 is. Could you tell me what that means.

21 JUDGE GREENBERG: Comprehensive list.

22 MS. FREGEAU: I am not sure.

23 THE WITNESS: I believe that is a spelling

24 error. I believe that should be comprehensive.

25 MS. FREGEAU: Comprehensive, thank you.

1 THE WITNESS: Yes.

2 BY MS. FREGEAU:

3 Q. As a security officer, are you aware of any  
4 accident that has ever been involved in the parking lot  
5 of the casino?

6 A. I am.

7 Q. Was that incident caught on tape or did you  
8 document that in any way?

9 A. It was prior to my being the manager of  
10 security. And I believe one incident involved a valet  
11 officer, and I believe we may have had one other shortly  
12 after we opened, to my recollection.

13 Q. But do you keep documents like that?

14 A. Surveillance would.

15 Q. Surveillance would keep that. And are those

16 accidents reported to the Highway Patrol or the sheriff's  
17 department or are they just kept on-site?

18 A. It depends on each individual. There is no  
19 requirements that there be a report filed depending on  
20 the type of collision. Obviously if there is an injury,  
21 it is mandatory. If it is non-injury, it is not  
22 mandatory. The limits were \$500. I believe they were  
23 raised to \$1,000 now for private property damage and it  
24 would be up to the individual that owns the vehicle  
25 whether or not they wanted a report filed with the local

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1 Highway Patrol.

2 Q. Then I wanted to go back to the Exhibit E-2

3 where we were talking about identifying people when they  
4 came into the casino and asking for identification. And  
5 a family could come in with a minor, assuming I brought  
6 my grandson in, who is 20 years, who looks like he is 25  
7 and thinks he is 30. Do you monitor the whole time he is  
8 there or once you verify he has gone into the restaurant  
9 do you just assume I will take responsibility for him?

10 A. They would be monitored if they left that -- the  
11 restaurant area.

12 Q. Who would monitor them?

13 A. Surveillance.

14 Q. So once this minor has entered the casino for  
15 the purposes of going to the restaurant, surveillance is  
16 notified there is a minor in the house and they monitor  
17 that person until the person leaves the building?

18 A. They would monitor them, yes. Security would

19 escort them in. They wouldn't be allowed to enter by  
20 themselves.

21 Q. I understand that part. My question is: Once  
22 they get in the door, getting them out of the door would  
23 be my next -- was where I was going.

24 A. Right. Because they would also be escorted out  
25 when they got ready to leave.

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1 THE COURT REPORTER: Your Honor, I am about to  
2 run out of paper.

3 JUDGE GREENBERG: Take your time. It is now  
4 2:15. We'll take a 15-minute recess.

5 (A brief recess was taken.)



6 JUDGE GREENBERG: Mr. Forman.

7 MR. FORMAN: Yes, sir.

8 JUDGE GREENBERG: You said the form which is the  
9 petition for conditional license, condition 5, that seems  
10 to be in conflict with the testimony of the chairman.

11 MR. FORMAN: I'm sorry. May I look at your copy  
12 for a moment of Exhibit 4. I don't seem to be able to --

13 JUDGE GREENBERG: Please do. Condition 5. He  
14 testified that the hours were to be other than that.

15 MR. FORMAN: He testified that the hours of  
16 operation of the casino --

17 JUDGE GREENBERG: 9:00 a.m. to 5:00 a.m.

18 MR. FORMAN: The operation of the casino, not  
19 the service of liquor.

20 JUDGE GREENBERG: Okay.

21 MR. FORMAN: It says the hours were changed. He

22 didn't specify whether it was casino or liquor premises.

23 JUDGE GREENBERG: So we'll call them casino

24 hours.

25 MR. FORMAN: Yes.

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1 JUDGE GREENBERG: Okay. Alcohol as in

2 Exhibit 4.

3

4 FURTHER EXAMINATION

5 BY JUDGE GREENBERG:

6 Q. Exhibit 4 also, if I might, refers to premises

7 parking area shall be patrolled no less than every hour.

8 So are you going to have somebody out there

9 patrolling it every hour or every portion of every hour  
10 or less than every hour?

11 A. Usually, it is just a walk-around hourly. It is  
12 not -- we don't have a party posted in the parking lot  
13 hourly.

14 Q. But you are saying somebody patrols it every  
15 hour?

16 A. Yes. They walk the perimeter of the parking  
17 area. And not only that, but we have the shuttle that  
18 runs to the top. If they see anything that is amiss,  
19 they report it to us immediately. We have valet that  
20 runs to the top for vehicles.

21 Q. What do you mean by "top"?

22 A. I'm sorry. The north parking lot, the very top  
23 of the parking lot. So they are in and out of the  
24 parking area.

25 Q. So the shuttle operators?

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1 A. Uh-huh. We have two shuttles that run. We have  
2 two valets that are consistently up and down the parking  
3 area.

4 Q. As well as security officers?

5 A. Yes.

6 MR. FORMAN: I would point out, your Honor --

7 BY JUDGE GREENBERG:

8 Q. So inspect as well as patrol or what?

9 A. Inspect the parking lot, make sure that nothing  
10 is out of place.

11 Q. No less than one time each hour; is that

12 right?

13 A. Yes.

14 MR. FORMAN: I would point out to your Honor  
15 that Mr. Tompkins testified that the parking lot is also  
16 under camera surveillance.

17 JUDGE GREENBERG: Yes. I understand that.

18 MR. FORMAN: Okay.

19 JUDGE GREENBERG: The words in the Exhibit 4  
20 talk about patrol. It doesn't talk about surveillance.

21 MR. FORMAN: Right. I just wanted to make sure  
22 it was clear.

23 JUDGE GREENBERG: Okay. Any other questions of  
24 this witness?

25 MS. FREGEAU: Yes, sir.

1                                   FURTHER CROSS-EXAMINATION

2   BY MS. FREGEAU:

3           Q.   Mr. Jimenez, do you know the average response  
4   time for a call to law enforcement when you are in the  
5   Loleta area?

6           MR. FORMAN:  I'm going to object as vague as to  
7   the lack of specificity with respect to the agency  
8   involved.

9

10                                   FURTHER EXAMINATION

11   BY JUDGE GREENBERG:

12           Q.   Okay.  You were with the CHP?

13           A.   Yes, sir.

14           Q.   Were you with the CHP in Humboldt County?

15 A. Yes, sir.

16 Q. Were you in the CHP in such areas of Humboldt  
17 County as Loleta?

18 A. Yes, sir.

19 Q. And from -- if you received a call in Loleta  
20 while you were working for the CHP, how long would it  
21 take you to get to the premises?

22 A. Well, there are many factors involved.

23 Q. Time of day, I know, and so forth.

24 A. Right. Time of day, the location you are at  
25 when you receive the call, the type of call that you

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1 have, whether or not -- if it is a priority call or a

2 non-priority call.

3           If it is an injury accident, we'll get there as  
4 fast as we can. That means red lights and sirens. If it  
5 just a fender bender, parties are waiting out in the  
6 parking lot and they are requesting our assistance we  
7 could be down in Rio Dell, and it will be traffic time  
8 from Rio Dell.

9           Q. Conflict between a patron and a security  
10 personnel.

11           A. If that was the case, we would call the  
12 sheriff's department. Again, it would depend on their  
13 location, the type of conflict, if it is just a verbal,  
14 if they are busy in the process of, say, an enforcement  
15 stop they may complete their stop and then respond.  
16 There is a lot of factors involved. I would say about  
17 the average time is approximately 10 minutes.



18 MS. FREGEAU: Mr. Jimenez --

19 May I go ahead, your Honor?

20 JUDGE GREENBERG: Yes.

21

22 FURTHER CROSS-EXAMINATION

23 BY MS. FREGEAU:

24 Q. How many CHP deputies are on patrol between

25 Eureka and Stafford after 10:00 in the evening?

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1 A. After 10:00, there should be -- I can't say

2 positively. When I was working -- again, there is a lot

3 of factors involved. It would depend on the holiday. If

4 it was a holiday, there is more patrol cars out on the

5 road. If it is a weekend, there are more patrol cars out  
6 on the road.

7 There are a lot of factors that come into play.

8 Most of the time on the average, there would be a minimum  
9 of one car south -- one south and one north of Eureka.

10 Q. Can you tell me in your expert opinion since you  
11 were an officer for such a long time, what is the mileage  
12 between Stafford and north Eureka?

13 A. From Stafford to north Eureka?

14 Q. Right.

15 A. You know -- it depends -- what time of day?

16 JUDGE GREENBERG: What mileage?

17 MS. FREGEAU: It doesn't matter time of day.

18 THE WITNESS: I'm sorry. I thought you meant  
19 driving time. All the way up to Stafford.

20 JUDGE GREENBERG: Where is Stafford?

21 THE WITNESS: South of Rio Dell. It is a long  
22 ways. I would say approximately probably about 40 miles  
23 approximately.

24 BY MS. FREGEAU:

25 Q. So if say a CHP officer was in the northern part

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1 of Eureka and received a call that there was a person  
2 driving under the influence of alcohol that had left your  
3 grounds, it would be reasonable to think that that person  
4 could be well beyond the boundaries of Loleta before the  
5 CHP could respond?

6 MR. FORMAN: Objection. Calls for speculation.

7 It also assumes that CHP is the only agency that would

8 respond to such a call.

9 JUDGE GREENBERG: Let's talk about some law  
10 enforcement agency. Modify your question.

11 BY MS. FREGEAU:

12 Q. Assuming that a law enforcement officer was at  
13 the northern part of Eureka and a call was put in to him  
14 or her asking for assistance because a person under the  
15 influence of alcohol was driving a car off of tribal land  
16 onto county roads, and they wanted to report the car  
17 and/or the driver, what would be an estimate of arrival  
18 time for that officer to get down into that area? And  
19 would it be reasonable to think that the person could  
20 probably be long gone?

21 MR. FORMAN: Objection. Calls for speculation,  
22 and it also --

23 JUDGE GREENBERG: I will overrule.

24 Go ahead.

25 THE WITNESS: There is -- your Honor, there is a

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1 lot of factors involved. Number one, there is other  
2 agencies out there. There is the sheriff's department.

3 JUDGE GREENBERG: Yes. Any law enforcement.

4 THE WITNESS: Fortuna police department could be  
5 there in 10 minutes max.

6 JUDGE GREENBERG: Let me ask a question. I  
7 thought that there was introduced through Mr. Bowman's  
8 testimony an agreement, I believe, with some -- with I  
9 think it was the sheriff's department.

10 MR. FORMAN: That is correct.

11 JUDGE GREENBERG: With the officers, correct.

12 MR. FORMAN: That's correct. It is a payment to  
13 the Humboldt County sheriff's department for the Humboldt  
14 County sheriff's department to use as it sees most  
15 appropriate. It is not to pay for a resident deputy  
16 specific on the reservation.

17 JUDGE GREENBERG: Make the Humboldt County board  
18 of supervisors happy. Is that what you are saying?

19 MR. FORMAN: No. Actually, there is some  
20 history on that. But it is to augment the capacity of  
21 the Humboldt County sheriff's department to respond to  
22 any increase in law enforcement services required by  
23 reason of the operation of the casino.

24 JUDGE GREENBERG: That is correct. Thank you.  
25 That is what I thought it was for.

1 MR. FORMAN: That is what it is for.

2 MS. FREGEAU: Are you thinking the one in effect  
3 for two years?

4 MR. FORMAN: I am speaking about the exhibit  
5 that has been entered into evidence in this proceeding.

6 MS. FREGEAU: Thank you.

7 Q. Mr. Jimenez, as an expert law -- Highway  
8 Patrolman, you are aware of traffic conditions, excuse  
9 me, weather conditions in Humboldt County?

10 A. I am.

11 Q. Are you aware of visibility when we have fog and  
12 rain?

13 A. I am.

14 Q. In your expert opinion, would you consider  
15 Singley Road a safe road to travel at our worst weather,  
16 under our worst weather conditions?

17 A. I would say Singley Road is similar to many  
18 roads in Humboldt County.

19 Q. I am not speaking of other roads, sir. I am  
20 speaking about Singley Road.

21 A. I understand that. And that would be as safe as  
22 all the other roads in Humboldt County like Neelan,  
23 Fickle Hill. There are many roads in the county out in  
24 Samoa, the fog really comes in in Samoa.

25 Q. And Neelan and the other areas?



1 A. Queensland Heights.

2 Q. Those areas, do they have establishments that  
3 serve alcohol?

4 A. They don't have a casino.

5 Q. Do they have establishments that serve alcohol  
6 to the patrons?

7 A. No.

8 Q. Thank you. And then earlier we heard that the  
9 peak hours -- when we were talking about the bus driving  
10 on Singley Road, we were told that the peak hours of  
11 traffic are between 4:00 p.m. and 6:00 p.m. I am  
12 wondering why there is not a traffic person out there  
13 between what you consider peak hours assisting in the  
14 traffic direction at that time.

15 A. We are talking about different levels of  
16 traffic.

17 Q. I see. And even in the fog and rain, a person  
18 would be standing out there on the corner directing  
19 traffic?

20 A. It has been raining; and yes, they have been  
21 standing out there.

22 Q. Probably not too happy about it. What do they  
23 do to make themselves visible?

24 A. They have a flashlight that they carry, and it  
25 is on and they warn traffic.

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1 Q. Flashlight might not be confused with  
2 headlights?

3 A. No. It shouldn't. It is usually moving.

4

5

FURTHER EXAMINATION

6

BY JUDGE GREENBERG:

7

Q. In that regard, does security personnel have any

8

identification that they are security?

9

A. They do. They all have an I.D. badge that they

10

wear.

11

Q. Do they have any clothing distinguishing

12

themselves as being security?

13

A. They do. They have a security uniform much like

14

the one that I am wearing today that has Bear River on

15

it.

16

Q. Is it anywhere on any portion of their clothing

17

indicating that they are security?

18

A. No.

19

UNKNOWN SPEAKER: It says it on their left

20 chest. I am sorry.

21 BY JUDGE GREENBERG:

22 Q. There is no jacket that they have that says

23 security on it?

24 A. There is no specific jacket. It is written with

25 security on it.

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1 Q. So there is no item of clothing that specifies

2 the wearer as being part of security; is that correct?

3 A. Well, other than this small print. It says Bear

4 River Casino.

5 Q. I have to get within infinitesimal to see

6 security on there. I am sorry, but that doesn't seem to

7 fill the bill.

8 MR. FORMAN: Your Honor in making that statement  
9 is referring to some objective statutory or regulatory  
10 standard?

11 JUDGE GREENBERG: I am talking about a simple  
12 yellow jumper or any kind of jacket that has bold letter  
13 "security" on it. I believe if I am not mistaken, there  
14 is something on the application itself that says that  
15 they should be identified as security.

16 In any event that would seem to be the minimum  
17 that would be required.

18 MR. PIERCE: Your Honor, maybe you're referring  
19 to the conditions which refer to uniformed security  
20 personnel.

21 JUDGE GREENBERG: Yes. Well, I don't know. Is  
22 there a difference between uniformed security personnel

23 and security personnel? I don't think so.

24 Okay. Thank you. Any other questions.

25 MS. FREGEAU: Just a couple more, sure.

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1 JUDGE GREENBERG: Proceed.

2

3 FURTHER CROSS-EXAMINATION

4 BY MS. FREGEAU:

5 Q. You had indicated if a person came to the door

6 and was too intoxicated and then you talked about a

7 person being inside the casino if they were obviously

8 intoxicated, could you clarify that for me. Do you allow

9 people to come into the casino that are already

10 intoxicated?

11 A. Absolutely not. If they are intoxicated they  
12 are turned away from the door.

13 Q. What do you do then, just turn them away?

14 A. No. We make sure that they have a ride either  
15 provided or contact somebody for them or the last resort  
16 obviously is to shuttle. Obviously, we can't force them.  
17 We are not law enforcement. If they choose not to accept  
18 our assistance and they drive away, we notify local law  
19 enforcement.

20 Q. What do you tell the -- do you, like, note the  
21 car and the license plate number?

22 A. We try to. Most of the time we can get it.  
23 There are times if they are parked on the south end and  
24 they take off real fast we can't get it. Most of the  
25 time we get it.

1 Q. One final question that has nothing to do with  
2 driving. You talked about a cinder block wall?

3 A. Wall.

4 Q. That was a security wall that had been built by  
5 the tribe. I believe you said it was at the north end of  
6 the parking lot.

7 A. Yes.

8 Q. And how far does that come out to Singley Road  
9 and the homes that are affected directly adjacent to the  
10 property?

11 A. Say that again. Rephrase your question, please.

12 Q. I was afraid you were going to ask me that.



13                    You talked about a cinder <sup>A0026AEA</sup> block wall for

14 security purposes.

15            A. Right.

16            Q. You said it was at the north end of the parking

17 lot?

18            A. Yes.

19            Q. Looking at this diagram, this parking lot is

20 quite long.

21            A. Yes.

22                    JUDGE GREENBERG: which diagram are you

23 referring to?

24                    MS. FREGEAU: I am looking at Exhibit 3. It is

25 the diagram Mr. Bowman drew.

1 Q. What I am asking is how far does this cinder  
2 block, the security wall, which was built, I'm assuming,  
3 for the purposes of protecting the neighbors against  
4 noise and trespassers and such, that is an assumption,  
5 how far does this come to Singley Road? Does it come all  
6 the way out to Singley Road?

7 A. It does not. And because I didn't measure the  
8 block wall, I couldn't give you the exact.

9 JUDGE GREENBERG: You are talking about the  
10 Exhibit 3?

11 MS. FREGEAU: Yes, sir.

12 JUDGE GREENBERG: You are talking about the --

13 MS. FREGEAU: The right side of the paper where  
14 the parking lot ends and there is a sign that says  
15 housing unit 150 feet.

16 JUDGE GREENBERG: I see <sup>A0026AEA</sup> tribal housing units.

17 MS. FREGEAU: May I show you.

18 JUDGE GREENBERG: Sure.

19 MS. FREGEAU: This is the parking lot area.

20 This is where the wall is on this side of the property

21 line.

22 JUDGE GREENBERG: On this side of the property

23 line.

24 MS. FREGEAU: On that side of the property.

25 JUDGE GREENBERG: Is there any objection to

500

1 Exhibit 3 being so marked to indicate the concrete wall?

2 THE WITNESS: I didn't measure the wall.

3 MR. FORMAN: well, the witness should be the  
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4 person who does that.

5 JUDGE GREENBERG: I know that. Since he knows  
6 about it, fine.

7 THE WITNESS: Up the wall here.

8 JUDGE GREENBERG: Do you want to show me where  
9 the wall is, sir.

10 THE WITNESS: Well it is back in this area at  
11 the north parking lot. This is the bottom of the  
12 entrance where we direct traffic. If you were to go up  
13 here by the casino entrance and all the way back up, and  
14 let me see, I am on the wrong side.

15 MR. FORMAN: Perhaps for the benefit of the  
16 reporter --

17 THE WITNESS: Right up to the top. I don't know  
18 that is a good depiction of the parking area.

19 JUDGE GREENBERG: <sup>A0026AEA</sup> We can go off the record.

20 (A discussion was held off the record.)

21 JUDGE GREENBERG: The cinder block wall adjacent  
22 to the parking area stops short of Singley Road. Okay.

23 Thank you.

24 MS. FREGEAU: Thank you.

25 JUDGE GREENBERG: Any other questions of the

501

1 witness?

2 MS. FREGEAU: No, sir.

3 JUDGE GREENBERG: Any further questions from the  
4 department?

5 MR. PIERCE: No, your Honor.

6 JUDGE GREENBERG: Any redirect?  
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7 MR. FORMAN: Redirect.

8

9 REDIRECT EXAMINATION

10 BY MR. FORMAN:

11 Q. Mr. Jimenez, you heard earlier testimony, did  
12 you not, about a three-drink maximum. Did you hear that  
13 testimony by Mr. Tompkins?

14 A. I did.

15 Q. What is your understanding of the significance,  
16 if any, of a patron receiving three drinks?

17 A. That, to me, would mean that that is a warning  
18 that maybe we should be looking at that person. And we  
19 would usually be directed by surveillance to that party's  
20 location and just do a visual inspection to see if he is  
21 in a position where we need to intercede.

22 Q. Now, earlier you were asked about how the  
23 movement of minors within the casino is monitored. Could  
24 you be a little more specific on what, if anything, the  
25 casino does to identify minors that are admitted into the

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1 facility for the purposes of getting to the restaurant  
2 and how the movement of those minors is monitored and  
3 supervised?

4 A. That is done usually in security at the front  
5 door. They will escort a minor and even if he is with  
6 his family to the restaurant. At that point, the hostess  
7 will be notified that there is a minor in the premises.  
8 She will stamp that party's hand. And they are allowed  
9 to enter the restaurant. If that party should exit for

10 any reason, even to use the restroom facilities, that  
11 party would be escorted by security to the restroom and  
12 back.

13 Q. What sort of stamp is imprinted on the minor's  
14 hand?

15 A. I believe it is a red paw that -- it is just a  
16 stamp that they place over the back of the hand.

17 MR. FORMAN: Thank you. I have nothing  
18 further.

19 JUDGE GREENBERG: Any further recross?

20 MR. PIERCE: No, your Honor.

21 MS. FREGEAU: I have one quick question  
22 regarding that.

23 ///

24 ///





13 A. Yes.

14 MS. FREGEAU: Okay. Thank you.

15 JUDGE GREENBERG: Thank you.

16 Next witness.

17 MR. FORMAN: Philip Burns, please.

18 JUDGE GREENBERG: Mr. Burns, have a seat.

19 Philip; is that correct?

20 THE WITNESS: Yes.

21 JUDGE GREENBERG: One L?

22 THE WITNESS: One L.

23 JUDGE GREENBERG: One P.

24 THE WITNESS: One P. No. Two P's. One at the

25 end.

1 JUDGE GREENBERG: Two P's at each end?

2 THE WITNESS: One at each end. Total of two.

3 JUDGE GREENBERG: Raise your right hand, please.

4

5 PHILIP BURNS,

6 having been duly sworn by Judge Greenberg,

7 was examined and testified as follows:

8

9 JUDGE GREENBERG: Please proceed.

10

11 DIRECT EXAMINATION

12 BY MR. FORMAN:

13 Q. Mr. Burns, where are you currently employed?

14 A. Bear River Casino.

15 Q. And in what capacity are you so employed?

16 A. Food and beverage manager.

17 Q. Are you aware whether the persons involved in  
18 the service of alcoholic beverages at the Bear River  
19 Casino have received any training in the -- in such  
20 service with respect to ensuring that customers are not  
21 overconsuming?

22 A. We have ongoing A.B.C. training and we have  
23 in-house departmental policies on training to assure that  
24 there is no overservice.

25 MR. FORMAN: I'd like to have this marked as

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1 applicant's next in order. I believe it would be F.

2 JUDGE GREENBERG: Just a moment. It will be F,

3 right.

4 Exhibit F consists of a certificate of training  
5 of responsible beverage service certification as to a  
6 particular Bear River Casino employee. And it talks  
7 about attending a three and a half hour course on  
8 responsible beverage service. Exhibit F.

9 BY MR. FORMAN:

10 Q. Mr. Burns, are you familiar with the document  
11 that has been marked as Applicant's Exhibit F?

12 A. Yes, I am.

13 Q. And are you aware whether since August of 2005  
14 there have been other training programs for food and  
15 beverage servers that have resulted in the issuance of  
16 similar certificates?

17 A. There was another one on February -- excuse me,  
18 December 19, I believe.

19 Q. And this certificate is maintained at the  
20 casino?

21 A. That's right, yes, it is.

22 MR. FORMAN: I would move that into evidence at  
23 this time.

24 JUDGE GREENBERG: So admitted.

25 There is also a 6/28/05 letter and agreement

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1 between the sheriff and the tribe, a notice to employees  
2 regarding gaming service of alcohol. There is an Exhibit  
3 F, which is this particular certificate. You moved into  
4 evidence Exhibits B, C and D. Do you wish to have those  
5 into evidence?

6 MR. FORMAN: Yes. I thought I already had. But  
7 I will do so now.

8 JUDGE GREENBERG: Okay. Each of those items B  
9 through F inclusive are admitted.

10 MR. FORMAN: One more exhibit.

11 JUDGE GREENBERG: This will be Exhibit G, which  
12 is a notice to food and beverage service staff regarding  
13 overservice of a patron. That is Exhibit G. So  
14 identified.

15 BY MR. FORMAN:

16 Q. Mr. Burns, directing your attention to the  
17 exhibit that is marked applicant's Exhibit G, are you  
18 familiar with that document?

19 A. Yes, I am.

20 Q. Did you prepare that document?

21 A. Yes, I did.

22 Q. And does this document accurately reflect the  
23 policy of the casino with respect to staff members'  
24 obligations to avoid overserving alcohol?

25 A. Yes, it does.

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1 MR. FORMAN: I would ask that it be admitted  
2 into evidence at this time?

3 JUDGE GREENBERG: So admitted.

4 BY MR. FORMAN:

5 Q. Does the casino employ any special equipment to  
6 control the amount of alcohol that is served to  
7 patrons?

8 A. Yes, we do. We have jiggers and sure-pour



9 spouts that are applied to the bottles.

10 Q. what are those devices?

11 A. It is a limited pour device that is set toward a  
12 specific amount of alcohol from a bottle at any one pour.

13 Q. Does the casino give away any alcoholic  
14 drinks?

15 A. No, we do not.

16 Q. Does the casino offer happy hours to  
17 customers?

18 A. No, we do not.

19 Q. Does the casino display any exterior signage  
20 advertising alcoholic beverages?

21 A. No.

22 Q. Does the casino serve food in wrappers bearing  
23 McDonald's or Burger King labels?

24 A. No.

25 Q. What time is the last call in the bar?

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1 A. Last call is at 1:30.

2 Q. Is that the same during the week as it is on the  
3 weekends?

4 A. Yes, it is.

5 Q. Does the casino have a procedure regarding  
6 drinks on the floor at 1:30?

7 A. Drinks on the floor at 1:30 are allowed. We  
8 begin collecting them at 1:30 and drinks are removed from  
9 the floor by 1:45.

10 Q. Do you have a policy on where drinks ordered at  
11 last call must be consumed?

12           A.  If you order them at last call they have to be  
13 consumed in the bar and at the bar.  So you can't take  
14 them to a table.  You have to drink them there.  You have  
15 to sit in the bar and drink them.

16           Q.  Do you serve double shots of liquor?

17           A.  No, we do not.

18           Q.  What is the largest size beer that you serve?

19           A.  16 ounce.

20           Q.  Do you have a maximum number of drinks that a  
21 customer may obtain in a visit to the bar or from a  
22 server?

23           A.  No, we do not.  Well, yes, we do.  Excuse me.  I  
24 misunderstood the question.

25           Q.  What is that maximum?

1           A. Two drinks. However, the server or the  
2 bartender has to be aware of who the second drink is for  
3 and has to see them.

4           Q. Do you --

5           JUDGE GREENBERG: You can order two drinks at  
6 any time?

7           THE WITNESS: That's correct. But not for  
8 yourself. One has to be for your guest.

9           JUDGE GREENBERG: Must be for another patron?

10          THE WITNESS: Yes.

11          JUDGE GREENBERG: Go ahead.

12 BY MR. FORMAN:

13          Q. Does the casino sell beer by the pitcher?

14          A. No.

15 Q. Does the casino maintain a log of patrons that  
16 are cut off, that have been cut off?

17 A. Not in the bar, we do not.

18 Q. What is your staff instructed to do in the event  
19 that a patron is observed to display the signs of  
20 intoxication?

21 A. They are to remove any alcoholic beverages from  
22 the person's possession, alert the other staff members  
23 they are working with, the other bartenders, the other  
24 cocktailers and then call security. And security and  
25 surveillance both monitor the person from that point

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1 forward.

2 MR. FORMAN: Thank you. I have no further  
3 questions.

4 JUDGE GREENBERG: Cross-examination by the  
5 department?

6 MR. PIERCE: Yes. Thank you, your Honor.

7

8 CROSS-EXAMINATION

9 BY MR. PIERCE:

10 Q. Mr. Burns, B-u-r-n-s?

11 A. Yes.

12 Q. I am pondering that last answer about no  
13 pitchers and Exhibit G which says, "No guest shall be  
14 allowed to drink a pitcher of beer alone," which you said  
15 you drafted.

16 A. Yes. We had -- I was trying to be specific  
17 about my answers. We did serve pitchers when I first

18 started. That is when this document was drafted. I  
19 discontinued the use of pitchers because of our attempt  
20 to control alcoholic service, beverage service.

21           It seemed like a difficult thing to control,  
22 because we try and mediate time intervals between service  
23 so if two people sat down with a pitcher of beer, they  
24 could conceivably slam two beers each without our time  
25 interval. So we decided not to continue serving pitchers

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1 and instead that way when they come and request a second  
2 drink we can time them and slow down their drinking.

3           Q. Thank you. That was helpful.

4           Secondly, have you gone through the training

5 course that your employees use?

6 A. No, I have not.

7 Q. Have all of your employees who are currently  
8 working in the food and beverage service department, have  
9 they received training?

10 A. They have received training in our policy that  
11 you were referring to, but they have not received -- not  
12 all of them have received the A.B.C. training.

13 Q. Okay. Do you have a policy as to how soon after  
14 beginning employment they are to have that training or --

15 A. It is at the next available training. And I  
16 wasn't aware that I could schedule those. If I could, I  
17 will. I thought the A.B.C. were the ones who scheduled  
18 those training seminars.

19 MR. PIERCE: I have no further questions.

20 JUDGE GREENBERG: But you mandate A.B.C.



21 training of all employees when the training is available?

22 THE WITNESS: As soon as training becomes

23 available, it is a mandatory meeting.

24 MR. PIERCE: Just for clarification, your Honor,

25 while the department does offer training, and this is

512

1 signed by a former employee, a retired employee of the

2 department, I do not believe this is specifically the

3 department --

4 JUDGE GREENBERG: L.A.I.D.

5 MR. PIERCE: It reports responsible beverage

6 service training, James Brooks, owner, trainer,

7 consultant.

8 MR. FORMAN: Mr. Pierce is correct. This was  
9 not an A.B.C. certificate. This was a consultant, a  
10 former A.B.C. employee, who is in the business of  
11 providing on a private basis --

12 MR. PIERCE: And a former lead trainer.

13 JUDGE GREENBERG: Okay. I assume this training  
14 is available by the department. All servers must attend  
15 as soon as the training is available; is that correct?

16 THE WITNESS: That is correct.

17 JUDGE GREENBERG: Okay. That is all I have.

18 Okay. Any other questions of this witness?

19 MR. PIERCE: None on behalf of the department.

20 JUDGE GREENBERG: Okay. Protestants?

21

22 CROSS-EXAMINATION

23 BY MS. FREGEAU:

24 Q. I had a question, again, on gaming agency  
25 penalties, third offense, revocation of license. what

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1 does an employee do to get a license?

2 A. It is -- you apply to the casino for a position.

3 And if you are accepted, you go through a licensing

4 packet. It is an application packet. It has a security

5 background check. And I don't serve those tests, so I

6 don't know the details on them.

7 Q. what would that license allow an employee to

8 do?

9 A. It would allow them to work in the casino.

10 Q. Okay. I believe you stated that a person cannot

11 order a double?

12 A. That's correct.

13 Q. would you consider one drink with a shot a

14 double?

15 A. No.

16 Q. You would not?

17 A. No.

18 JUDGE GREENBERG: You can order a death charge

19 is what they call it?

20 THE WITNESS: Is that what it is? If you order

21 a drink and a shot, you have to drink the shot on the

22 spot. You can't pour it into your other drink to make

23 your drink into a double.

24 BY MS. FREGEAU:

25 Q. But the consumption is still the same. whether

1 it is put in the same glass or whether they are in two  
2 separate glasses, they are two shots; is that correct?

3 A. That is correct.

4 Q. Thank you. You have a statement here, "A guest  
5 must wait at least 10 minutes before ordering an  
6 additional drink." That would translate into six drinks  
7 an hour; correct?

8 A. It could.

9 Q. And then you address the fact that should a  
10 person -- "If you are aware a guest has had more than a  
11 few drinks in a short amount of time, their drinking  
12 should be slowed down and food allowed before they become  
13 overintoxicated. Hearty food such as nachos or potato

14 skins would be a good idea."

15           what did you base that food group as --

16           A. It is not based on a specific food group. The  
17 concept is when people start to drink quickly if they are  
18 hitting the ten-minute interval and ordering another one,  
19 our goal is to slow down their drinking. They are  
20 instructed to slow it down by either providing slow  
21 service on the drink order. Sometimes I tell them to  
22 take up to 15 minutes to deliver that drink or get the  
23 customer to consume some food so they have something in  
24 their stomach. The choice of foods was just picked off  
25 the menu as a guideline to help the servers, you know,

1 promote the food sale to a drinking <sup>A0026AEA</sup> customer.

2 Q. So you are selling this food to the client, not  
3 necessarily providing it to them?

4 A. That's correct.

5 Q. When was this policy drafted?

6 A. Beginning of January.

7 JUDGE GREENBERG: What exhibit is that, please?

8 MS. FREGEAU: This is G.

9 Q. I wanted to ask you about the certificate of  
10 training from the L.A.I.D. program. Do you know what  
11 entity in California certifies this training program?

12 A. No. The training program happened before I  
13 began working at Bear River Casino.

14 Q. And when you were talking about another training  
15 being held in December of 19, '05, who provided that  
16 training?

17 A. It was the same company both times.

18 Q. The same company meaning --

19 A. I believe it was the same company.

20 Q. Meaning Mr. Brooks?

21 A. I don't know if it was him specifically. It was

22 the same certificate. I didn't arrange for either

23 training.

24 Q. Do you know what type of training is mandatory

25 before a person can present one of these programs?

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1 A. No, I don't.

2 Q. Do you know if there is any kind of a

3 certification program for anybody prior to them giving



4 responsible beverage training service class?<sup>A0026AFA</sup>

5 MR. FORMAN: I am going to object to this line  
6 of questioning as irrelevant.

7 JUDGE GREENBERG: Overruled.

8 THE WITNESS: I don't know what qualifications  
9 you may or may not need in order to instruct the training  
10 seminar.

11 MS. FREGEAU: Thank you. That is all I had,  
12 sir.

13 JUDGE GREENBERG: Anything further from the  
14 department?

15 MR. PIERCE: No, your Honor.

16 JUDGE GREENBERG: Any redirect, sir?

17 MR. FORMAN: No, sir.

18 JUDGE GREENBERG: Thank you, sir.

19 Next witness.

20 MR. FORMAN: John McGinnis, please.

21 JUDGE GREENBERG: M-c --

22 THE WITNESS: G-i-n-n-i-s.

23 ///

24 ///

25 ///

517

1 JOHN MCGINNIS,

2 having been duly sworn by Judge Greenberg,

3 was examined and testified as follows:

4

5 JUDGE GREENBERG: Proceed.

6

7

8 BY MR. FORMAN:

9 Q. Mr. McGinnis, are you employed at the Bear River  
10 Casino?

11 A. Yes, I am.

12 Q. In what capacity?

13 A. I am the general manager.

14 Q. Are you a member of the Bear River Band of  
15 Rohnerville Rancheria?

16 A. Yes, I am.

17 Q. And what do your duties as general manager  
18 include?

19 A. My duties are to oversee every department which  
20 has been brought before you today to make sure that every  
21 department is in compliance, managers are doing their  
22 job.

23 Q. Were you involved in the development and  
24 planning and construction of the Bear River Casino?

25 A. From start to finish, yes, I was.

518

1 Q. Did you participate in any meetings with an  
2 individual named Noel Krahforst concerning mitigating  
3 impacts of the casino on his residence?

4 A. Yes. Every one.

5 JUDGE GREENBERG: Just a moment.

6 I don't see Mr. Krahforst as a protestant.

7 MR. FORMAN: Noel Krahforst testified.

8 MS. FREGEAU: He testified last time.

9 MR. FORMAN: Yes, sir.

10 JUDGE GREENBERG: That was <sup>A0026AEA</sup>my problem.

11 So you conversed with Mr. Krahforst regarding  
12 his problems; is that right?

13 THE WITNESS: Yes.

14 JUDGE GREENBERG: With the casino?

15 THE WITNESS: Yes.

16 JUDGE GREENBERG: Proceed, Counsel.

17 BY MR. FORMAN:

18 Q. To your knowledge, what has been done by the  
19 tribe or the casino and at what cost to respond to the  
20 concerns that Mr. Krahforst expressed in your meetings  
21 with him?

22

23 EXAMINATION

24 BY JUDGE GREENBERG:

25 Q. First, let's talk about problems.

1           A.   Okay.  An E.A. was done and any problems that  
2   were addressed with Mr. Krahforst were light and sound.  
3   And the mitigations that we took were erecting a \$49,000  
4   wall that was 7-foot tall, 150 feet long that ran north  
5   to east.  This was to the approval of Noel Krahforst.

6           Q.  This is what he wanted?

7           A.  This is part of the first steps of the  
8   mitigation.  Next we spent an extra \$15,000.

9           Q.  That was \$49,000?

10          A.  For the masonry wall by S.J. Construction out of  
11   McKinleyville.  Masonry.

12          Q.  That was to dampen the light?

13           A. That was for light and noise. <sup>A0026AEA</sup> Then we spent an  
14 extra 15,000 for the down lighting poles. Instead of  
15 lighting it up like Fort Knox for cheap, we spent an  
16 extra 15,000 for down lighting for the whole casino  
17 parking lot.

18           Q. Down lighting meaning what?

19           A. Instead of having the cascading light effect, it  
20 shoots down and then out once it hits the ground.

21           Q. So --

22           A. So the visibility wouldn't be one big glow to  
23 our surrounding neighbors.

24           Q. So removes the ambien light?

25           A. Uh-huh.

1           Next, we hired Tom Lindquist of Arcata to come  
2 in and do a landscaping plan which he incorporated the  
3 \$5,000 for Mr. Krahforst's property on his fence line at  
4 his direction where to put the trees and shrubs.

5           Q. That was 5,000?

6           A. Yes.

7           we have also had discussions with Noel and  
8 myself of appraisals to the property that we agreed to  
9 pay half of the cost for appraisals of his property.

10          Q. What was the purpose of the appraisals?

11          A. For purchase of the home if he didn't like how  
12 the casino went. If the neighborhood got too out of hand  
13 for him.

14          Q. If he wanted to move?

15          A. Yes. In other words, we would be the first in



16 line.

17 Q. In other words, to buy his property?

18 A. Correct.

19 Q. Okay. Was an agreement ever reached?

20 A. Everything was on a verbal.

21 Q. You know how effective verbal agreements are

22 when it comes to land.

23 A. A man is only as good as his word.

24 MR. FORMAN: I'm not sure the witness fully

25 understood your question.

521

1 BY JUDGE GREENBERG:

2 Q. My question was: Did you understand that any

3 agreements reached with anybody regarding real property

4 is not effective --

5 A. Correct. I understand that.

6 Q. -- unless it -- if it is an oral agreement?

7 A. We met and far exceeded what was in the  
8 environmental assessment to build the casino before the  
9 doors opened. We thought what we had performed to date  
10 is sufficient, which we have a few other loose ends to  
11 tie up with him.

12 Q. There is a loose end that remains?

13 A. Yeah.

14 Q. In other words, there is some of his concerns  
15 which have not been resolved?

16 A. Which to date they will be resolved. There was  
17 the issue of double-paned windows that Mr. Krahforst  
18 purchased. And we had come to an agreement which we had

19 minutes that are at his disposal <sup>A0026AEA</sup> and a check for \$1,000

20 to pay for his windows facing the casino property.

21 Q. That is agreeable to Mr. Krahforst?

22 A. Mr. Krahforst, I informed him. He said we would

23 speak, I would bring it up today and we would speak

24 afterwards.

25 Q. So it was an offer of the tribe?

522

1 A. Yes. A check in his name. I don't know who

2 would receive it.

3 Q. Any other unresolved concerns of Mr. Krahforst?

4 A. None that I am aware of.

5 JUDGE GREENBERG: Okay. Next question?

6

7 FURTHER DIRECT EXAMINATION

8 BY MR. FORMAN:

9 Q. Mr. McGinnis, what is the staffing of food and  
10 beverage servers in the casino Sunday through Thursday?

11 A. Sunday through Thursday, we run on what we call  
12 a skeleton crew where we have one hostess and two servers  
13 on the restaurant side. And then one bartender and one  
14 cocktailer to man the floor or woman the floor, however  
15 you like it.

16 JUDGE GREENBERG: That is regarding the  
17 restaurant only?

18 THE WITNESS: Restaurant and service on the  
19 floor.

20 JUDGE GREENBERG: Floor of the casino?

21 THE WITNESS: Yeah. That is regarding alcohol

22 consumption.

23 MS. FREGEAU: One bartender. I'm sorry. One?

24 THE WITNESS: One bartender on Sunday through

25 Thursday and one cocktailer that works the shift.

523

1 MS. FREGEAU: Cocktailer, yes.

2 THE WITNESS: Yes. Or drink server if you

3 like.

4 JUDGE GREENBERG: One bartender and one drink

5 server.

6 THE WITNESS: Yes.

7 BY MR. FORMAN:

8 Q. What are the peak days and times for the

9 casino's operations?

10           A. The peak days and times for the casino would be  
11 around Friday at 5:30 and it runs until Saturday night  
12 around 2:00.

13           JUDGE GREENBERG: 5:30 p.m. on Friday until  
14 when?

15           THE WITNESS: Until Sunday morning at 2:00 a.m.

16           JUDGE GREENBERG: Go ahead.

17 BY MR. FORMAN:

18           Q. Are you aware how many residences, homes, there  
19 are on the tribe's lands on Singley Road?

20           A. Yes. On the Singley Road from the south to the  
21 north, there are exactly 35 residences, and this I know  
22 from Jeremy King who is the mailman.

23           Q. I'm sorry. Perhaps you misunderstood. I was  
24 asking how many residences there are on the reservation.

25 A. Oh, 15. 15 on the reservation. <sup>A0026AEA</sup>

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1 JUDGE GREENBERG: 15 reservation residences;  
2 right?

3 THE WITNESS: Correct.

4 BY MR. FORMAN:

5 Q. And not counting the residences, the homes, on  
6 the reservation, approximately how many homes are there  
7 on or served by Singley Road?

8 JUDGE GREENBERG: Talking about all of Singley  
9 Road or just --

10 MR. FORMAN: Yes.

11 THE WITNESS: 35.

12 JUDGE GREENBERG: The number of residences --  
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13 MR. FORMAN: Homes.

14 JUDGE GREENBERG: Homes, okay.

15 MS. FREGEAU: I object to that, your Honor. He

16 said it was -- the information was given to him by

17 another person.

18 JUDGE GREENBERG: So you know how much it is

19 worth?

20 THE WITNESS: The information was -- yes, it was

21 taken by Dawn at the post office, Jeremy King and a

22 personal survey by our lead chef at the tribal office.

23 ///

24 ///

25 ///





16 Q. This home on the east side, how far is it  
17 approximate to Highway 101?

18 A. Maybe 2/10 of a mile, 3/10 of a mile. We have  
19 alleviated all of her concerns that she had.

20 MS. FREGEAU: I am not sure. Who is "her"?

21 THE WITNESS: Edith Ferrien's daughter.

22 JUDGE GREENBERG: Ferrien?

23 THE WITNESS: I don't know.

24 MR. FORMAN: F-e-r-r-i-e-n is the spelling of  
25 her name. She is not a protestant.

526

1 THE WITNESS: She is not a protestant.

2 BY JUDGE GREENBERG:

3 Q. The two residences on the west side are --

4 A. Miller and, I think, it is -- is it Ballister?

5 I don't know who lives there.

6 MS. FREGEAU: Ballister.

7 THE WITNESS: The home is up for purchase.

8 BY JUDGE GREENBERG:

9 Q. It is up for purchase?

10 A. Yes. They live north of Singley Road now.

11 Q. So that home of Millers is on South Singley

12 Road?

13 A. On a hillside.

14 Q. On a hillside?

15 A. It is, like, a 1/4 acre lot, maybe less. Big

16 barn.

17 Q. How far is it from --

18 A. Right off the interchange. I mean -- no

19 adequate parking if you are going down that road.

20 Q. I am not going down that road. I am going down  
21 the hill road.

22 How large is the parking area on the reservation  
23 premises?

24 A. We roughly have 365 spots.

25 Q. And Ms. Miller's is how large a piece?

527

1 A. 1/4 an acre. I am uncertain. I know they rent  
2 property from Ms. Ferrien.

3 Q. Well, an acre is 44,000 square feet. Then you  
4 are talking about 11,000 square feet; is that right?

5 MR. FORMAN: If you know.

6 THE WITNESS: Yeah. I'd say half acre.

7 BY JUDGE GREENBERG:

8 Q. A half acre?

9 A. Yeah.

10 Q. Is what they have?

11 A. Yeah.

12 Q. So about 22,000 square feet. You know the house  
13 is up for sale; is that what you are saying?

14 A. When I left to come here this morning, I seen a  
15 for sale sign in the front yard.

16 Q. Do you know how much they want for it?

17 A. I don't know. One side says low because the  
18 casino. It is next to a casino. The other says high  
19 because it is next to a casino. I don't know. It --

20 Q. You are a gambling person it is an attractive  
21 property.

22 A. I don't know.

23 JUDGE GREENBERG: I'm sorry. Counsel, go

24 ahead.

25 ///

528

1 FURTHER DIRECT EXAMINATION

2 BY MR. FORMAN:

3 Q. Does the tribe do anything to alleviate litter  
4 on Singley Road?

5 A. Yes. After a lengthy conversation with Jimmy  
6 Smith, we have created a litter crew that goes out on  
7 Sunday, starting this Sunday, to walk north Singley Road  
8 to south Singley Road, which our elders and our

9 maintenance crew with green vests, neon green vests, and  
10 flagging will do this Sunday. I, myself, included.

11 JUDGE GREENBERG: On Sunday, you have a litter  
12 crew; is that right?

13 THE WITNESS: Yes.

14 JUDGE GREENBERG: How many people?

15 THE WITNESS: We are estimating 10 right now.

16 JUDGE GREENBERG: To remove litter on Sundays,  
17 right, on the entire --

18 THE WITNESS: On the entire Singley Road after  
19 talking with Jimmy Smith.

20 BY MR. FORMAN:

21 Q. Jimmy Smith would be supervisor Smith?

22 A. Supervisor Jimmy Smith.

23 Q. Based on -- how long have you worked at the  
24 casino?

25 A. I have been at the casino since May of 2005.

529

1 Q. When did the casino open?

2 A. It opened August 10, 2005.

3 Q. So you have been with the casino the entire time  
4 it was open?

5 A. The entire time.

6 Q. Do you have a sense based on your experience at  
7 the casino whether the cessation of the service of  
8 alcohol would have an impact on the total number of  
9 people that come to the casino each day?

10 A. It is a minute number. One percent. Smoking is  
11 a different story. Alcohol maybe one percent.



12

13

FURTHER EXAMINATION

14

BY JUDGE GREENBERG:

15

Q. Would still come to the casino --

16

A. No. 99 percent would still come without -- I am

17

saying -- he asked -- the question was how much impact of

18

the sale of alcohol is to our numbers each day coming

19

through those doors.

20

Q. Yes.

21

A. I said roughly one percent coming to have a beer

22

after work.

23

Q. If you didn't serve alcohol you would lose only

24

one percent of your volume; is that right?

25

MR. FORMAN: Of patronage.

1 THE WITNESS: People coming to the door in  
2 dollars.

3 BY JUDGE GREENBERG:

4 Q. So you would lose one percent in patronage,  
5 although your dollar volume may be much less, right, or  
6 may be greater?

7 A. May be greater.

8 Q. And that is because when the person is under the  
9 influence of alcohol, they may gamble more; is that  
10 right?

11 A. No. I am not saying that.

12 Q. Why would you lose more in dollar volume than  
13 you would --

14 A. Well, they may be more apt to drop that \$20 bill

15 on the way out the door if they have had a beer. Some  
16 people -- I mean gambling is an entertainment in  
17 itself.

18 Q. Right.

19 A. Drinking is a social thing. They go hand in  
20 hand. It is social entertainment. That is what we  
21 offer.

22

23 FURTHER DIRECT EXAMINATION

24 BY MR. FORMAN:

25 Q. Now, you don't give away liquor; right?

531

1 A. Absolutely not.

2 Q. So people who come and consume liquor on your  
3 premises purchase liquor; right?

4 A. Purchase liquor, yes.

5 Q. That is part of the dollar volume of your  
6 business?

7 A. Yes. Dollar volume.

8 Q. Is there school bus service on Singley Road on  
9 Saturday and Sunday afternoons?

10 A. No.

11 MR. FORMAN: Thank you. I have nothing further.

12

13 FURTHER EXAMINATION

14 BY JUDGE GREENBERG:

15 Q. Let's talk about the bus transport of children.

16 A. Okay.

17 Q. The bus transport of children is on Monday

18 through Friday?

19 A. Yes.

20 Q. What portion of Singley Road?

21 A. The bus usually comes southbound on Singley Road

22 and turns on to the reservation. That is the only time

23 we ever see it. I don't see it northbound. So it would

24 be coming from the north, it would come on -- it would

25 come off Singley Road to Bear River Drive and pick up our

532

1 children.

2 Q. At what time?

3 A. Roughly 8:00 my son used to catch the bus.

4 Q. Monday through Friday 8:00 a.m.

5 A. Yes.

6 Q. And picks up the children on Singley Road or the  
7 reservation?

8 A. On the reservation. Three stops on the  
9 reservation.

10 Q. This is a public transport?

11 A. Correct.

12 Q. 8:00 a.m.?

13 A. Yeah.

14 Q. And they deliver the children at any particular  
15 time?

16 A. They deliver children back home roughly between  
17 2:30, 2:45 each day.

18 Q. So this bus transport affects only children on  
19 the reservation; is that right?

20 A. Yes. To my knowledge, there is no pick-up of

21 south-children of us.

22 MS. FREGEAU: Your Honor, I object to that

23 statement that they only pick up children from the

24 reservation. The bus comes from the north picking up

25 children on Singley Road.

533

1 JUDGE GREENBERG: Hold on.

2 Q. The bus does not stop on Singley Road except for  
3 the reservation; is that correct?

4 A. Yes. To -- it stops to the north of us, but  
5 after it hits Singley Road and Bear River Drive, there is  
6 no other stops except for the stop sign at the bottom of  
7 the hill.

8 Q. I am going to go back and review the area  
9 traversed by Singley Road if you don't mind.

10 MR. FORMAN: That would be Applicant's A.

11 JUDGE GREENBERG: Thank you. I can't seem to  
12 find it. Do you have a copy of it there?

13 Q. I want you to point out on Exhibit A where Bear  
14 River Casino Drive is.

15 A. This is Singley Hill Road. Where is the  
16 north-south markers on this.

17 Q. This is north.

18 A. This is going north.

19 Q. Top of the page is north?

20 A. So here is Singley Road. Here is Bear River  
21 Drive. Correct. This is Bear River Drive.

22 Q. So they pick up children on Bear River Drive?

23 A. Yeah. They come in through here.



24 Q. So they may avoid children who would be coming  
25 up Singley Road from the north; is that correct?

534

1 A. The bus actually heads south after it leaves the  
2 property and goes to Eel River Drive. There is still  
3 kids on the bus. So this is the last stop, the last  
4 stops are on Eel River Drive.

5 Q. Okay.

6 A. Which is a mile away from us.

7 Q. So there are children aboard that bus other  
8 than --

9 A. Reservation children.

10 Q. Yes. As to Singley Drive itself, there are no

11 pick-ups or drop-off's on the bus?

12 A. After us, that is correct. After it leaves the

13 reservation there is no stops until it hits Eel River

14 Drive.

15 Q. Are there pick-ups and drop-off's on Singley

16 Road if it comes in from, say, that entrance at post

17 694?

18 A. Only in the morning. They only pick up in the

19 morning and drop off in the evening or 2:30.

20 MR. PIERCE: Your Honor, if I may try to

21 clarify. I believe what his testimony is is that that is

22 the last stop before it gets down to the intersection and

23 the ramp or if you are coming that direction, it would be

24 the first stop.

25 JUDGE GREENBERG: Right. Okay.

1 Q. So there are other children aboard that bus  
2 besides reservation children; is that correct?

3 A. Yeah. The last stop is Eel River, yes.

4 Q. Okay. Thank you.

5 You don't know if that bus makes stops on any  
6 portion of Singley Road to pick up or leave children?

7 A. No. The bus makes stops on Singley Road, north  
8 Singley Road to drop children off.

9 Q. Thank you. If we talk about number of patrons  
10 that are at the premises during hours from, let's say,  
11 8:00 a.m. to 4:00 p.m., how much would they -- how  
12 many -- what percentage of your patronage would they be?

13 A. Well, from 8:00 to 9:00 there is zero

14 percentage. From -- and that is the only time kids are  
15 on the road waiting for buses is 8:00 in the morning when  
16 we don't have customers.

17 when they leave the bus, they go straight in the  
18 house. But from 9:00 until -- what was it?

19 Q. From --

20 A. From 9:00 to 3:00 it is probably 15 percent of  
21 our business.

22 Q. Well, the pick-up is 8:00 to 9:00 a.m.

23 A. They are picked up. The last stop leaves the  
24 reservation about 8:02. The doors don't open until  
25 exactly 9:00.

1 Q. And they are dropped off?<sup>A0026AEA</sup>

2 A. Roughly 2:30. From 8:00 in the morning until  
3 2:30, 3:00, that is about 15 percent of our business.

4 Q. So there is relatively an insignificant number  
5 of patrons?

6 A. Very insignificant and they are of the elderly  
7 age which I won't say elderly age. It is older than  
8 me.

9 Q. Don't want to get you in trouble.

10 A. Yeah.

11 Q. Okay. Thank you for your help.

12 You are saying don't go there when we are  
13 talking about purchasing the half acre next to Highway  
14 101?

15 A. What? No. I don't -- I don't do land purchase.  
16 So I just run the casino. Okay. That is another man.

17 JUDGE GREENBERG: Any questions by the

18 department?

19 MR. PIERCE: No, your Honor.

20 JUDGE GREENBERG: Any questions by the

21 protestants?

22 MS. FREGEAU: I had a question.

23 ///

24 ///

25 ///

537

1 CROSS-EXAMINATION

2 BY MS. FREGEAU:

3 Q. Mr. McGinnis, this wall that you had built for

4 Mr. -- that you say that you had <sup>A0026AEA</sup>agreed with

5 Mr. Krahforst to build, does it extend to his property?

6 A. It doesn't actually touch his property. It is  
7 probably roughly to his fence line, eight feet.

8 Q. Does it extend to the front of his house?

9 A. No.

10 Q. And the windows that you were -- that you  
11 said -- you talked about something about you had a check  
12 for \$1,000 to pay for windows facing the casino parking  
13 lot.

14 A. Uh-huh.

15 Q. That does not address the windows from the  
16 roadside traffic?

17 A. In our initial study, it was around 75 to 80  
18 percent the traffic coming from the south. They address  
19 that the impacts were from our parking lot are lighting.

20 And that is why we went with the building directly  
21 facing -- his side of the house that was facing the  
22 casino. That is what we wanted to address.

23 Q. You are saying 75 percent of all of your patrons  
24 come from the --

25 A. No. That was an early estimate.

538

1 Q. What does it figure out now?

2 A. He is next.

3 MR. FORMAN: We have testimony on that.

4 Mr. McGinnis is not the person to testify about that.

5 JUDGE GREENBERG: Okay. Thank you. He is not  
6 your expert.



7 MR. FORMAN: No.

8 JUDGE GREENBERG: All right. Thank you.

9 Any other questions of the witness?

10 MS. FREGEAU: Yes.

11 Q. Mr. McGinnis on Exhibit XIII-K, a letter to you  
12 from the department of transportation, state of  
13 California, Cal-Trans addressed their serious concerns  
14 relating to the increased left turn movements from  
15 northbound off ramp of State 101.

16 what did you do to address that concern?

17 A. What we have done to date is we have had  
18 numerous meetings. We have met with Kathleen Sitorus  
19 from Cal-Trans. And yet it is phenomenal, they will come  
20 up with this plan, we can help. We want to, being the  
21 good-natured people we have been for 1,000 years. They  
22 will put in a turn lane where the left-hand turn goes

23 left and a bypass lane. That is something Cal-Trans

24 already has in the works.

25 JUDGE GREENBERG: Let me take a look at XIII-K

539

1 if I can.

2 THE WITNESS: On that, too, that is another good

3 thing Jimmy Smith brought up is signage he can approve

4 for the roadways.

5 JUDGE GREENBERG: I need a longer desk here.

6 THE WITNESS: It would probably be easier if she

7 shows you her copy.

8 JUDGE GREENBERG: It might be. I can't find it.

9 I have XIII-Q and forward, but not XIII-K.

10 Thank you. Okay.

11

12 FURTHER EXAMINATION

13 BY JUDGE GREENBERG:

14 Q. So if this is from the northbound off ramp of  
15 State Highway 101 onto Singley Road, that is for traffic  
16 coming from there the north. Is that what they are  
17 saying?

18 A. No. It is southbound traffic. So if you are  
19 coming from Fortuna, so you came from the south, you  
20 would pass our casino. It would be on your right-hand  
21 side. Where exit 692 would be it is a sharp loop around,  
22 a quick loop that they are talking about that in the past  
23 they wanted to talk about shutting that down and building  
24 a big roundabout, which --

25 Q. Right.

1           A. which fell through. we had plans. Now they are  
2 talking about cutting off some trees and opening up the  
3 shoulder to have traffic that can flow through.

4           Q. Okay. So that this concern relating to  
5 increased left turn movements would not be a concern  
6 anymore?

7           A. Yes. It has been alleviated. They are in the  
8 works. That was -- that happened my first week in. That  
9 should have been sometime when I was in there in May.

10          Q. That is by Cal-Trans?

11          A. Yes.

12          Q. Present Cal-Trans plans; is that right? Is that

13 correct?

14 A. Correct. Well there was new plans. There was  
15 old plans. Now there are new plans. Old plans is  
16 roundabout. New plans is a passing lane.

17 Q. For a passing lane?

18 A. That's right.

19 JUDGE GREENBERG: Okay. Thank you.

20

21 FURTHER CROSS-EXAMINATION

22 BY MS. FREGEAU:

23 Q. And then in that same vein on XIII-W was a  
24 letter from the county in which they were addressing the  
25 problems of the road. Are you also working with the

1 county?

2 A. Yes. We are working with the department of  
3 public works who once was Harlis McKinley. Now it has  
4 turned into Dan -- Dan. I don't know his last name.  
5 There is Dan. He is working -- we have already hired an  
6 engineer who has been working on --

7 JUDGE GREENBERG: What was this going to be for,  
8 XIII-W?

9 MS. FREGEAU: Yes, sir.

10 THE WITNESS: This was always the concerns of  
11 the road. We did a contract with the county for a phased  
12 project. And everyone threw their arms up saying, "Oh,  
13 we know how a phased project is. They'll open up the  
14 doors and then forget about it." We have laid out  
15 \$100,000 in phase one and now throw a couple more commas

16 in there for phase two.

17 This is something we have been in the works

18 with. Jimmy Smith is on board with us. He will sit down

19 with us in a session shortly to discuss our road

20 improvements.

21

22 FURTHER EXAMINATION

23 BY JUDGE GREENBERG:

24 Q. These are the road improvements mentioned by

25 your chairman?

542

1 A. Yes. These are what we feel are the 99 percent

2 of the concerns with this liquor license. I would say

3 99.9 percent is that road, and we plan on fixing it.

4 Q. The 3/10 of a mile?

5 A. Yes.

6 Q. 11-foot wide lanes and 5-foot shoulders?

7 A. 5-foot shoulders. And current construction is

8 not so good with the rain. But like some of our local

9 forecasters, they work. As soon as we say go, they go.

10 Q. Okay. In rain gear or otherwise?

11 A. Yes.

12 Q. So what stage are you again?

13 A. Planning and approval of plans from Winzler &

14 Kelly.

15 Q. Have they prepared them yet?

16 A. They have prepared them to an extent to widen

17 the shoulders from four to five feet and then those will

18 go back to the county for approval.



19 Q. Those four to five feet <sup>A0026AEA</sup> will be paved; is that  
20 correct?

21 A. Yes. Type A or B asphalt with the culvert  
22 running underneath the Singley Road. I think one of  
23 the --

24 Q. Have they indicated what they estimate as the  
25 possible date of completion?

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1 A. We were shooting for June.

2 Q. Of this year?

3 A. Yeah.

4 Q. So under all circumstances it should be  
5 completed, say, by September 30?

6 A. That is a good day. It will be my birthday. It  
Page 337

7 will be before then.

8 Q. Before then?

9 A. Yeah.

10 Q. That is your --

11 A. We promised before our one-year, and we are  
12 going to deliver.

13 Q. One year of what?

14 A. August 10 is our one-year anniversary.

15 Q. So you are going to deliver by that date?

16 A. Yes.

17 Q. By August 10. August 10, is that the date?

18 A. August 10, 2006.

19 Q. Let's make it August 31 for sure. Is that a  
20 reasonable statement?

21 A. That is very reasonable.

22 Q. That is from Highway 101 to the casino property;

23 is that correct?

24 A. I believe it was -- they estimated it 20 yards

25 past the casino entrance.

544

1 Q. But --

2 A. 60 feet.

3 Q. Essentially from those persons seeking entrance

4 to the casino?

5 A. Yeah.

6 Q. From the south?

7 A. Yeah. Match the same overlay we did, the same

8 length.

9 Q. Do you have a present plan in that regard?

10           A. I gave -- we have a present plan of the overlay,  
11 but we do have a present plan not with us today, but it  
12 is with winzler & Kelly.

13           Q. Okay. So if I say from 101 to the premises I am  
14 accurate?

15           A. Yes. And that entrance is Bear River Drive.

16           Q. To the entrance to Bear River Drive?

17           A. Yes. I don't know if you'll notice the entrance  
18 to the casino is Bear Paws Way.

19           JUDGE GREENBERG: Thank you.

20           You are going to have another witness regarding  
21 the problems that are facing people who live on the  
22 northern portion of Singley Road or is it going to be any  
23 alleviation of those concerns?

24           MR. FORMAN: Our witness will document the

25 actual traffic counts at peak times over a period of

A0026AEA

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1 several months traveling northbound from the casino

2 versus traveling southbound from the casino on Singley

3 Road.

4 JUDGE GREENBERG: Okay. Thank you. Any other

5 question of this witness?

6 MS. FREGEAU: Yes.

7 JUDGE GREENBERG: Okay.

8

9 FURTHER CROSS-EXAMINATION

10 BY MS. FREGEAU:

11 Q. I am totally confused. When Mr. Bowman spoke,

12 he talked about, and I am not sure if we are talking

13 about the same subject, he was speaking of widening the  
14 road to 11-foot travel lanes, two 5-foot shoulders both  
15 permanently surfaced that the engineers hadn't even  
16 prepared a report yet.

17 JUDGE GREENBERG: Well, obviously --

18 MS. FREGEAU: That was based -- they had nothing  
19 in writing. There was nothing -- there were no  
20 documents. And I believe I just heard --

21 JUDGE GREENBERG: What the question is  
22 Mr. Bowman has testified contrary to what you have  
23 testified, i.e. documents memorializing either of these  
24 plans regarding the widening and resurfacing of Singley  
25 Road.

1           THE WITNESS: Well, Mr. Bowman in his defense  
2 is -- our George Bush is our George Bush, he is our  
3 George Bush. He runs a tribe. He runs many programs.  
4 He has got -- he flies to D.C. He flies all over the  
5 country. I am, like, his right-hand man as well as our  
6 other constituents here. We have been involved in all  
7 these meetings. It may have slipped his mind, but there  
8 are documents, and he is well aware of it.

9           MS. FREGEAU: He testified to the contrary. I  
10 was trying to clarify it.

11          Q. So do you have something in writing? There is  
12 actually something in writing from the engineers?

13          A. Not on me. But there is something in writing.  
14 There is a contract with the engineers that we can  
15 produce.

16           MR. FORMAN: Your Honor, for clarification, we  
17 may be talking about two completely different sets of  
18 "agreements."

19           For example, Mr. McGinnis referred to a phased  
20 process with the county. That is different than what the  
21 tribe is entering into now with the county. And, in  
22 fact, my recollection is that initial agreement was sort  
23 of unilateral on the part of the tribe, this is what we  
24 are going to do. The county didn't say that was okay or  
25 not. They wanted different things.

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1           So there may be -- the witness is testifying  
2 about two different ends of the same elephant.



3           JUDGE GREENBERG: All right. What we are  
4 obviously looking for is a statement from the tribe that  
5 these improvements will occur. And is there any such  
6 thing in writing that will support that statement?

7           THE WITNESS: Yes. There is a contract with  
8 Winzler & Kelly for engineering services for our road  
9 improvement.

10          JUDGE GREENBERG: Okay.

11          THE WITNESS: Which depicts my statement that I  
12 made on my testimony.

13          JUDGE GREENBERG: The statement under oath which  
14 is recorded is that there be a culvert under the road  
15 that is 3/10 of a mile from Highway 101 to the tribal  
16 property, that paving of the road and the paving -- in  
17 other words, 11-foot lane and paving of a 5-foot shoulder  
18 of either side of those 11-foot lanes, all of that to be

19 completed from Highway 101 to Bear River Drive by August  
20 31, 2006. Is that correct?

21 THE WITNESS: Correct.

22 MS. FREGEAU: So the engineering report and the  
23 construction work will be completed by August 31?

24 THE WITNESS: Yes.

25 JUDGE GREENBERG: The answer is in the

548

1 affirmative.

2 BY MS. FREGEAU:

3 Q. And then two quick questions. You were talking  
4 about a litter crew starting this Sunday.

5 A. Uh-huh.

6 Q. Is that a binding agreement or just a verbal  
7 agreement?

8 A. We could put it in writing. I mean, this is  
9 something that -- this is our community. We are all  
10 neighbors and it is a neighborly thing to do, be it our  
11 trash or anybody else's trash. We just want to beautify  
12 the neighborhood.

13 we built a conscientious building that we felt  
14 fit into the surrounding even though the enormity of  
15 it -- some people like the serene life of living in  
16 Humboldt County, but times change. So do people.

17 Q. Then your ongoing conversations with Mr. Smith  
18 about other improvements that you are going to make,  
19 anything in writing with that?

20 A. Jimmy Smith. We are scheduled to have a meeting  
21 with Jimmy. And I guess from now on we need to get

22 everything in writing.

23 MS. FREGEAU: Okay. That is all I have.

24 JUDGE GREENBERG: No further questions. Any

25 redirect?

549

1 MR. FORMAN: No, sir.

2 JUDGE GREENBERG: Thank you very much.

3 MR. FORMAN: One final witness. Erik Smith.

4 JUDGE GREENBERG: What is the name, please?

5 MR. FORMAN: Erik Smith.

6 JUDGE GREENBERG: Erik Smith. Come forward,

7 Mr. Smith. You have the honor of being --

8 MS. FREGEAU: Your Honor, I have to take a

9 five-minute break. I'm sorry.

10 JUDGE GREENBERG: Take 10.

11 (A brief recess was taken.)

12 JUDGE GREENBERG: May I have your name,  
13 please.

14 THE WITNESS: Erik Smith.

15 JUDGE GREENBERG: Erik Smith. E-r-i-c?

16 THE WITNESS: K.

17 JUDGE GREENBERG: E-r-i-k.

18 would you raise your right hand, please.

19

20 ERIK SMITH,

21 having been duly sworn by Judge Greenberg,

22 was examined and testified as follows:

23

24 JUDGE GREENBERG: You may proceed.

25 ///

550

1 DIRECT EXAMINATION

2 BY MR. FORMAN:

3 Q. Mr. Smith, by whom are you employed?

4 A. Bear River tribal gaming agency.

5 Q. And how long have you been employed by the Bear

6 River tribal gaming agency?

7 A. Since August 11.

8 Q. Of what year?

9 A. '05.

10 Q. What are your duties with the agency?

11 A. I am the surveillance tech. I handle the

12 maintaining of all cameras and camera equipment and all  
13 recording devices.

14 JUDGE GREENBERG: You maintain and install?

15 THE WITNESS: Install is done by the company  
16 that provides our equipment.

17 BY MR. FORMAN:

18 Q. I would ask you to keep your voice up throughout  
19 your answer.

20 A. Okay.

21 Q. So that the reporter can hear you because you  
22 tend to drop off toward the end.

23 How finely can the cameras in the surveillance  
24 system resolve? For example, can they read the printing  
25 on the shirts worn by staff members.

1 A. Yes, they can.

2 JUDGE GREENBERG: From what distance?

3 THE WITNESS: From approximately half the casino  
4 floor, which I am unsure of the exact distance.

5 BY MR. FORMAN:

6 Q. But they can zoom down to very close?

7 A. Right.

8 Q. Do you know what the casino security officers'  
9 shirts say?

10 A. On the left hand breast, it says customer  
11 service on top. Security on the bottom.

12 Q. Are you aware whether the casino has made any  
13 efforts to monitor traffic movement at the intersection  
14 of Bear River Drive and Singley Road?



15 A. Yes.

16 Q. Please describe the efforts of which you are  
17 aware to conduct that monitoring and your role in those  
18 efforts.

19 A. On Thursday, Friday and Saturday nights, between  
20 the hours of 6:00 p.m. and 2:00 a.m.

21 JUDGE GREENBERG: Between 6:00 p.m. to 2:00  
22 a.m.?

23 THE WITNESS: Right. Our southern most,  
24 out-most camera is directed towards the intersection of  
25 Singley Road and Bear River Drive, which can monitor --

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1 which gives an overview of traffic headed north on

2 Singley and also south towards 101.

3 BY MR. FORMAN:

4 Q. And has any record been made of the images?

5 JUDGE GREENBERG: I'm sorry. This is from the  
6 tribal casino itself?

7 MR. FORMAN: Yes.

8 JUDGE GREENBERG: To the exit from the parking  
9 lot; is that right?

10 MR. FORMAN: I believe the witness said from --  
11 it is focused on the intersection between Singley Road  
12 and Bear -- is it Bear River Drive?

13 THE WITNESS: Bear River Drive.

14 JUDGE GREENBERG: Is that from the actual exit  
15 of the parking lot?

16 THE WITNESS: Yes. You can see the exit of the  
17 parking lot.

18 JUDGE GREENBERG: So that is from the exit of  
19 the parking lot to -- onto Singley Road; is that what you  
20 are saying?

21 THE WITNESS: Yes.

22 BY MR. FORMAN:

23 Q. And have the observations made with that camera  
24 been recorded in any form?

25 A. Yes. They are recorded.

553

1 Q. In what form have they been recorded?

2 A. They are recorded on our digital video recorder  
3 and also transferred onto DVD disk.

4 Q. Have you had any role in either the recording or

5 the viewing of these reports?

6 A. Yes. I am the one who ordered them and also  
7 positioned the camera.

8 JUDGE GREENBERG: Try to keep your voice up at  
9 the end of the sentence, please.

10 BY MR. FORMAN:

11 Q. Did you bring any of the disks on which these  
12 images are recorded with you today?

13 A. Yes.

14 Q. Could you describe the period of time covered by  
15 the materials you brought with you today.

16 A. The materials I have brought start from the  
17 middle of December and run up to this past weekend.

18 Q. That would be December of 2005?

19 A. Yes.

20 Q. Until mid-March 2006?

21 A. Yes.

22 MR. FORMAN: Your Honor, we have -- we had  
23 provided earlier in response to discovery requests a  
24 number of disks to the department and to the protestants.  
25 Since then we have recorded additional information. It

554

1 is quite voluminous. And I would propose that a sampling  
2 be offered into evidence, rather than the entire  
3 collection.

4 And Mr. Smith will give a summary of what he has  
5 observed on the information that is recorded on the  
6 DVD's.

7 JUDGE GREENBERG: Okay. Now, can he tell us

8 from all of these recordings in total how many vehicles  
9 during this period of time went north and how many went  
10 south?

11 THE WITNESS: Yes. I have complete notes.

12 JUDGE GREENBERG: You have those notes?

13 THE WITNESS: Yes, I do.

14 JUDGE GREENBERG: You gathered those notes from  
15 the actual DVD's?

16 THE WITNESS: Yes.

17 JUDGE GREENBERG: So your notes would tell us  
18 the number of each of those vehicles?

19 THE WITNESS: Correct.

20 JUDGE GREENBERG: Okay. Why don't we use  
21 that.

22 MR. FORMAN: Okay.

23 Q. Based on your review of these recordings, have

24 you formed any conclusions about the relative numbers of  
25 cars leaving the casino parking lot by turning right onto

555

1 Singley Road compared to the number of cars leaving the  
2 casino parking lot by turning left?

3 A. Yes.

4 Q. And what conclusions have you reached?

5 A. I have reached that no more than six percent of  
6 the cars exiting this casino have turned right northbound  
7 onto Singley Road.

8 Q. Would that mean that the other 94 percent turn  
9 left?

10 A. Yes.

11 Q. Based on your observations in terms of raw  
12 numbers, are you able to say the greatest number of cars  
13 turning right onto Singley Road over a period between  
14 6:00 p.m. and 2:00 a.m.?

15 A. Yes.

16 Q. What was the greatest number of cars ever  
17 observed?

18 A. I have to take a look at my notes real quick.

19 Q. Sure.

20 JUDGE GREENBERG: When you say southbound, you  
21 are talking about the 3/10 of a mile?

22 THE WITNESS: Right.

23 Over the course of that 8-hour period from 6:00  
24 p.m. to 2:00 a.m., 32 cars is the greatest number that  
25 have gone right up northbound on Singley Road.



1 MS. FREGEAU: In one day?

2 THE WITNESS: In one 8-hour period.

3 JUDGE GREENBERG: 32 cars in one 8-hour period  
4 of time during that period of time?

5 THE WITNESS: Yes.

6 BY MR. FORMAN:

7 Q. Is that vehicles or people?

8 A. Vehicles. It not including vehicles coming from  
9 the tribal property.

10 JUDGE GREENBERG: So 604 vehicles total exiting  
11 from the casino property?

12 THE WITNESS: Correct.

13 JUDGE GREENBERG: Of those 32 went north?

14 THE WITNESS: Correct.

15 JUDGE GREENBERG: Okay.

16 MR. FORMAN: Nothing further.

17 JUDGE GREENBERG: Department?

18 MR. PIERCE: Just one clarification on that last

19 comment.

20 CROSS-EXAMINATION

21 BY MR. PIERCE:

22 Q. You indicated those 604 cars did not include

23 cars exiting the tribal property. Am I correct in

24 understanding that refers to the residences?

25 A. Correct.

1

2

EXAMINATION

3 BY JUDGE GREENBERG:

4 Q. So that excludes the residents?

5 A. Right.

6 Q. How many residents are there?

7 A. I am unsure as to total residents that live on  
8 the Bear River Drive, on the Rancheria.

9 Q. Is there a number we can get?

10 MR. FORMAN: Mr. McGinnis, he is still sworn.

11 JOHN MCGINNIS: 15 residences.

12 JUDGE GREENBERG: 15?

13 MR. FORMAN: How many residents, persons?

14 JOHN MCGINNIS: Roughly 29.

15 JUDGE GREENBERG: So that would be 29 cars?

16 JOHN MCGINNIS: No. I could count real quick in

17 my head. There is 12 cars on the reservation that

18 actually run.

19 JUDGE GREENBERG: 12 in total. Okay. Thank

20 you.

21

22 FURTHER CROSS-EXAMINATION

23 BY MR. PIERCE:

24 Q. You have excluded those, but in your survey, did

25 you note them and the number in that 8-hour period

558

1 exiting from the tribal property and which directions

2 they went?

3 A. No, I did not.

4 Q. And the notes and the observations you made, as

5 I understand it, cover the period mid-March -- or

6 mid-December to mid-March?

7 A. Correct.

8 Q. In the aggregate?

9 A. Total.

10 JUDGE GREENBERG: The 604 only occurred on March

11 10?

12 THE WITNESS: Yes.

13 BY MR. PIERCE:

14 Q. Did you record and review exit patterns from

15 2:00 a.m. to 3:00 a.m. during that period?

16 A. No, I did not.

17 MR. PIERCE: Thank you. I have no further

18 questions.

19 JUDGE GREENBERG: Protestants?

20 MS. FREGEAU: I have just a couple of questions.

21

22 CROSS-EXAMINATION

23 BY MS. FREGEAU:

24 Q. What day of the week was the 10th? I can't

25 count back that far.

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1 MR. PIERCE: It was Friday.

2 MS. FREGEAU: It was a Friday.

3 THE WITNESS: Friday.

4 BY MS. FREGEAU:

5 Q. During the -- did you make a documentation or

6 notation on your records of the time that this traffic

7 control person is at the corner <sup>A0026AEA</sup> directing traffic, how  
8 many of the cars turned north at that time?

9 A. No, I did not.

10 Q. would you estimate that during the time of 12:00  
11 to 2:00 when the traffic person was there that there was  
12 possibly cars turning right?

13 A. Yes. Very little.

14 Q. would you -- thank you.

15 JUDGE GREENBERG: Okay. Any other questions?

16 MS. FREGEAU: No, sir.

17 JUDGE GREENBERG: Yes.

18

19 FURTHER CROSS-EXAMINATION

20 BY MR. PIERCE:

21 Q. On that point, were you able to observe, and  
22 referring specifically to the 10th of March, any of the

23 32 cars that did turn north during the period of time  
24 when there were security personnel and whether or not  
25 there were any conversations between the drivers and

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1 security personnel?

2 A. Yes, there were two or three different  
3 conversations between security and the person exiting the  
4 casino.

5 Q. And if you recall, what did -- what happened  
6 after those conversations? which direction did those  
7 cars go?

8 A. Of the 32 I can remember, I know two of them  
9 went southbound.



10 MR. PIERCE: Thank you. A0026AEA

11 MS. FREGEAU: Your Honor, may I ask another  
12 question?

13

14 FURTHER CROSS-EXAMINATION

15 BY MS. FREGEAU:

16 Q. Is that taking two out of the 32 or would that  
17 have been two in addition to the 32 that would have  
18 turned north?

19 MR. PIERCE: Two or three conversations.

20 BY MS. FREGEAU:

21 Q. Of the 32 cars turning right, there was only  
22 three instances where there was some conversation  
23 between --

24 A. Right. That I can remember.

25 Q. That you can remember, okay.

1           But there was possibly more than two or three  
2 cars that turned right between 12:00 and 2:00?

3           A. There could have possibly been.

4           MS. FREGEAU: Thank you. That is all. Thank  
5 you.

6           JUDGE GREENBERG: Any redirect?

7           MR. FORMAN: No, sir.

8           JUDGE GREENBERG: None?

9           MR. FORMAN: No.

10          JUDGE GREENBERG: Thank you.

11          Anything further from the applicant?

12          MR. FORMAN: We have no further witnesses.

13                   we would, however, ask that <sup>A0026AEA</sup>apparently because  
14   discussions between the county and the engineering firm  
15   and the tribe are in their final stages if your Honor  
16   would like, that the record be left open for a week or so  
17   so that we could submit the contract with the engineering  
18   firm for the work that is actually to be done. There is  
19   apparently some unresolved issues with respect to the  
20   drainage part of the process. And until those issues are  
21   resolved, the actual contract will not be executed.

22                   If it would be helpful, we would ask leave to  
23   submit that. If it wouldn't be material, then there  
24   would be no reason to leave the record open for that  
25   purpose.

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1           JUDGE GREENBERG: Okay. I'm happy to  
2 accommodate counsel in this matter. I am going to make a  
3 further suggestion. This case has gone on since last  
4 October. There has been much testimony and evidence  
5 offered since last October during the many hearings that  
6 we have had. I am going to do it myself, but I would  
7 welcome some assistance in this matter.

8           I would not particularly care for briefing,  
9 okay, as far as legal authorities are concerned. I think  
10 I am fairly well up on them. But if you wish, you can  
11 reference any of the exhibits that are in evidence. What  
12 I am going to ask is if each party would try to congeal  
13 the evidence as has been so separated over these many  
14 months, congeal them so as to provide your side of the  
15 story, using those exhibits and your argument.

16 Do you understand?

17 MS. FREGEAU: Yes.

18 JUDGE GREENBERG: Okay.

19 MR. PIERCE: When you say you don't want briefs,

20 am I correct in understanding, you do not wish legal

21 citations; you merely wish argument and summarization of

22 the state of the evidence?

23 JUDGE GREENBERG: State of the evidence. That

24 is all.

25 MS. FREGEAU: Do I have to list each point I

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1 want to make as relating to the evidence?

2 JUDGE GREENBERG: That is what I would suggest

3 you do, because that is the thing that is most persuasive

4 to me is the evidence.

5 MS. FREGEAU: I understand that part. But,  
6 like, do I have to identify, for example, a document  
7 February '96 as evidence XIII-K?

8 JUDGE GREENBERG: That's right.

9 MS. FREGEAU: How long do I have to do this?

10 JUDGE GREENBERG: How much time do you wish?

11 MS. FREGEAU: Sir, we'd like 30 days to put  
12 together a written closing argument.

13 JUDGE GREENBERG: Would that be enough?

14 MS. FREGEAU: Yes, sir.

15 JUDGE GREENBERG: Are you sure?

16 MS. FREGEAU: Yes, sir.

17 JUDGE GREENBERG: All right.

18 So closing argument, which concerns only the

19 facts in evidence so far presented. <sup>A0026AEA</sup> We will give that to  
20 the applicant if you want to start out because that could  
21 incorporate --

22 MS. FREGEAU: Your Honor, may I ask a question  
23 about the next procedure. There was some testimony given  
24 by one of the applicants that Mr. Krahforst totally  
25 disputes. And I was wondering if we can recall

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1 Mr. Krahforst.

2 JUDGE GREENBERG: Do you want to do that now?

3 MS. FREGEAU: Yes, sir.

4 JUDGE GREENBERG: Okay. I have no objection to  
5 that. It is now 4:20. I would like to wrap this up by  
6 5:00 if we could, particularly since Mr. Pierce has got a

7 long way to travel.

8 MR. PIERCE: I will be home at midnight.

9 JUDGE GREENBERG: Mr. Krahforst. Thank you.

10 You may be considered under oath.

11 THE WITNESS: Okay.

12

13 NOEL KRAHFORST,

14 having been previously duly sworn by

15 Judge Greenberg, was examined and

16 testified as follows:

17

18 JUDGE GREENBERG: Your representative has some

19 questions she wants to ask you.

20 MS. FREGEAU: May we do what we did the last

21 time and just let Mr. Krahforst explain what his



22 understanding of the conversations <sup>A0026AEA</sup> between he and the  
23 tribe were and what he was told versus what has actually  
24 happened.

25 MR. FORMAN: Your Honor, I think that would be

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1 way too time consuming. If there are specific points  
2 that Mr. Krahforst wants to rebut, let him state that.

3

4 EXAMINATION

5 BY JUDGE GREENBERG:

6 Q. Let me go through it, Mr. Krahforst. They have  
7 mentioned that you had concerns. One of the concerns was  
8 the emanation of light from their premises.

9 They say this 7-foot wall that they've erected  
Page 377

10 has provided less ambien light and more direct lighting.

11 Is that true?

12 A. No, sir.

13 Q. That is not true?

14 A. No. My opposition -- my -- I didn't have a

15 complaint against light. It was sound and the view

16 field.

17 Q. And the what?

18 A. View field. I wanted a sound block that blocked

19 the sight of the casino traffic and activities. Light

20 was never an issue for me. It impacts me, but not to the

21 degree that the sight and sounds do.

22 Q. You want the sound wall to prevent sound

23 emanating from the casino?

24 A. And parking lot. And also visual.

25 Q. How do you do that?

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1 A. Well, you make it high enough so that it blocks

2 my --

3 Q. How high is high enough?

4 A. If it were eight feet from grade up, it would

5 probably be adequate, eight to ten. Ten would work.

6 what happened is they started the wall two feet below

7 grade. So at most it was five or seven feet. And it

8 didn't --

9 Q. You won't support a wall that is just erected

10 upon grade with no foundation.

11 A. No. You would need a foundation. What I am

12 saying is the first blocks are two feet below grade. So

13 as far as a block -- the number of blocks or --

14 Q. So you want the wall --

15 A. Ten feet.

16 Q. You want the wall three feet higher.

17 what else?

18 A. Ideally, I would like the equivalent of what

19 their own environmental evaluation called for which is

20 along the length of my property, which is in some

21 respects impractical. That is 419 feet. They agreed to

22 100 only. I took what I could get.

23 Q. So what length of wall do you want?

24 A. 419 feet total.

25 Q. To block all of the property; is that right?

1           A. To block the traffic lanes and -- the way I have  
2   it now, your Honor, on my back porch, I don't need a  
3   traffic count. I can count every car that comes in.  
4   They all shine on the side of my house. I can see them  
5   traverse the entire length of the facility to the upper  
6   parking lot, and I can count them leaving. That can be  
7   lessened with some 419 feet broken up into selected  
8   areas. And that would be acceptable.

9           Q. Who selects the areas?

10          A. Well, I submitted an expert environmental  
11   consultants' report at the first hearing. And I asked  
12   for his recommendations.

13          Q. As to where the wall is to be constructed?

14          A. Yeah. And I called the meeting with the tribe  
15   with the help of Congressman Thompson's office. I

16 initiated it and the result of that meeting was, you are  
17 getting 100 feet like we always told you. I go, well, I  
18 need it where -- in another location. Okay. We are open  
19 to that. So I got my 100 feet. They may have given me a  
20 few extra feet. But it wasn't even exactly where I asked  
21 for it.

22 Q. Okay. So I got down environment consultant  
23 report to govern where the wall is to be erected; is that  
24 right?

25 A. That's right, sir.

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1 Q. Okay.

2 A. And that wall -- a restoration of privacy so if

3 I have to move, I can't tolerate it, I can at least as  
4 a -- the house could be sold to someone that had some  
5 privacy. Right now I don't have any on the whole back  
6 side of my house.

7 Q. So you are saying it has reduced the value of  
8 your home?

9 A. Absolutely, sir.

10 That was also a mitigation -- compensation for  
11 lost property values. It was also a mitigation measure  
12 by an engineering firm hired by the tribe. But that  
13 report, engineering report, was rejected as far as part  
14 of their current evaluation. And I submitted that as a  
15 document. That was XIII-H.

16 As far as the reimbursement -- I will wait  
17 until --

18 Q. I will look it up.

19           A. And XIII-G, your Honor was the environmental  
20 evaluation calling for a wall along the length of my  
21 property. And I believe that is why Ms. Fregeau was  
22 asking does it go to Singley Road. Well, no, it doesn't.

23           Q. What other issues have been unresolved?

24           A. The reimbursement for sound deadening windows  
25 and privacy fencing. Those were XIII-D, E and F.

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1           Q. They want to give you \$1,000 for that?

2           A. That is \$7,000 worth of my money spent to try to  
3 restore some of my privacy. I can't do anything more  
4 now. So \$1,000 is their offer. That is a check in the  
5 mail, sir. That never -- never materialized as a result



6 of the meeting. It was agreed -- the amount wasn't  
7 agreed to. The amount was left open. This is what they  
8 have come up with today.

9 Q. So the sound deadening windows cost you how much  
10 in total?

11 A. 5,000, sir.

12 Q. And they want to give you \$1,000?

13 A. Right, sir. And I didn't hear anything from  
14 Mr. McGinnis as far as reimbursement on \$2,000 worth of  
15 fencing.

16 Q. Why is the fencing necessary?

17 A. For traffic, sir. I get headlights on the  
18 bedroom windows from cars approaching. Most of the  
19 testimony today has been cars leaving the casino. But  
20 there has been nothing to prevent cars arriving from the  
21 north. And that amount is significant enough that I need

22 to put that fence up and I still need it up.

23 Q. How much does the fence cost?

24 A. I believe it is \$1,800, sir. Those invoices I

25 submitted.

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1 Q. Okay. Any other issue?

2 A. The landscaping Mr. McGinnis testifies as was

3 \$5,000 worth of landscaping for screening.

4 Q. Yes.

5 A. My estimate would be \$300, sir.

6 Q. Not 5,000?

7 A. No, sir. They didn't even bring a hose to water

8 the plants. They showed up the day after the casino

9 opened with the trees, six or eight, started to plant  
10 them in. I shoved a hose over to it. I said, "You guys  
11 don't have water?"

12 "We were told not to water them."

13 I said, "You have to water them." within 45  
14 minutes they were gone.

15 Q. I am not interested. All I want to know is what  
16 remains to be done.

17 A. Okay.

18 Q. The fencing?

19 A. Screening in the way of shrubs and trees in  
20 selected areas. Shrubs and trees, sir.

21 Q. How much does that require?

22 A. Oh, I will take \$5,000 worth if that -- I'd like  
23 to see it in selected areas and which can be identified  
24 on the consultant's report, which also is in that report.

25 Q. And that is on XIII-G.

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1 A. Yes, sir.

2 Q. No. No. I'm sorry. The consultant's report  
3 isn't in that series. It is one of the first documents  
4 submitted. You received it through the A.B.C. in  
5 October.

6 Streamline Consulting is the name of the  
7 company.

8 Q. How much are the shrubs and trees, all of this  
9 gardening to rectify the situation?

10 A. I don't know how to estimate that. I'd be happy  
11 to pay for the shrubs if I get them planted, if they

12 could get them into the ground and maintained. It is --  
13 the location is more important than the money on that  
14 one.

15 Q. So you'll pay for the shrubs and the trees?

16 A. I will consider that, but I don't want so much  
17 it will offset my window reimbursement, if I get it. I  
18 don't know how to put a dollar figure on it, your Honor.  
19 That is I guess my problem.

20 Q. You haven't got any estimates of the cost?

21 A. Okay. I will go with his \$5,000 worth.

22 Q. You haven't received that money yet? They are  
23 not going to maintain it, sir, because that is not part  
24 of their agreement.

25 A. No. They have all blown down in the wind. They

1 are all way down. They do nothing.

2 Q. But they -- who will put them in is what you are  
3 talking about. Who will install it?

4 A. I will do it. I don't know if that is agreeable  
5 to the tribe. That is their property.

6 Q. And maintain?

7 A. Well, I'd have to be trespassing on their  
8 property. I would like the tribe to maintain them. But  
9 they'll need to run some water out there. I can work  
10 with them on that. But I need a good faith effort and a  
11 binding agreement.

12 Q. Okay. So \$5,000 for shrubs and trees; \$5,000  
13 for sound deadening windows; \$1,800 in fencing.

14 And we don't know how much more is going -- it

15 will take to put that wall in to the agreed height and  
16 length; is that correct?

17 A. Correct, sir. I'd also like -- I submitted  
18 documentation to what I actually paid out, the figures  
19 Mr. McGinnis submitted \$49,000. I have absolutely no  
20 documentation.

21 JUDGE GREENBERG: Off the record.

22 (A discussion was held off the record.)

23 THE WITNESS: I have a question. When you say  
24 submitting all documents by such and such a date --

25 JUDGE GREENBERG: That doesn't affect you.

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1 THE WITNESS: Doesn't affect me. But for the

2 group.

3 JUDGE GREENBERG: Whatever she wants you to do  
4 is for you to tell her --

5 THE WITNESS: I will do that.

6 JUDGE GREENBERG: -- what the results are of  
7 your conference.

8 THE WITNESS: Can that include -- can that  
9 include a document?

10 JUDGE GREENBERG: Absolutely. All right.

11 MR. FORMAN: I have to ask a question.

12 JUDGE GREENBERG: And of course any copies of  
13 any documents, you are going -- and any conversations you  
14 had with the tribe regarding resolution of your issues,  
15 copies of that, should be sent also to the applicant and  
16 to the department.

17 THE WITNESS: One question, sir. One of the --



18 if I sit down with the tribe and the tribe's attorney,  
19 there was someone who took a minute at our last meeting,  
20 but those minutes weren't able to me. Can there be  
21 minutes made available?

22 JUDGE GREENBERG: Will the tribe consider?

23 MR. FORMAN: Quite frankly, these would be in  
24 the nature of settlement discussions. I don't think it  
25 would be appropriate.

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1 JUDGE GREENBERG: You may destroy them in the  
2 settlement discussions.

3 MR. FORMAN: I think the more fruitful thing  
4 would be if there is an agreement reached that the

5 agreement be submitted. If there is no agreement  
6 reached, we submit a statement to the effect that no  
7 agreement was reached.

8 I think that it would inhibit the discussion  
9 were there a stenographic record kept of the meeting.

10 JUDGE GREENBERG: Do you understand his --

11 THE WITNESS: I disagree, because it would just  
12 be -- we could possibly have the same results we had  
13 before, an acceptable agreement between us.

14 JUDGE GREENBERG: Yes. But what would be the  
15 benefit of having the notes?

16 THE WITNESS: That this is what I asked for and  
17 it is not testified later that he didn't ask for it.

18 JUDGE GREENBERG: I tell you what you do. You  
19 prepare a list of your issues --

20 THE WITNESS: Okay.

21 JUDGE GREENBERG: -- and what you want and  
22 submit it.

23 MR. FORMAN: The question I had off of what  
24 Mr. Krahforst said a moment ago is can he submit a  
25 document. I want to be very clear on what it is we are

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1 talking about in the way of additional documents.

2 THE WITNESS: I would need clarification on  
3 that. Something popped in my head, let's say, a drunk  
4 drives right over the wall into my house.

5 JUDGE GREENBERG: A 7-foot wall?

6 THE WITNESS: This is an exaggeration, of  
7 course, sir. Say something that is pertinent to why I

8 needed these mitigations is documented in --

9 JUDGE GREENBERG: You don't think you need them  
10 or you are not so wrapped up in them, that doesn't make  
11 any difference. It is what you want. It is what you  
12 want, okay. That is submitted to counsel for the  
13 applicant, all right, as well as a copy to the  
14 protestants' representative, as well as a copy to the  
15 department's representative.

16 THE WITNESS: All right. Clear.

17 JUDGE GREENBERG: Okay.

18 Therefore, within 15 days, you will meet with  
19 the department for the purpose of trying to reconcile  
20 your request.

21 THE WITNESS: With the tribe?

22 JUDGE GREENBERG: With the tribe. The tribe and  
23 its counsel if he is available.

24 MR. PIERCE: You got my attention when I thought  
25 they were meeting with us.

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1 JUDGE GREENBERG: No. Not meeting with you.

2 THE WITNESS: This will help.

3 JUDGE GREENBERG: All right.

4 THE WITNESS: Thank you.

5 JUDGE GREENBERG: Not a problem. All right.

6 Therefore, I will repeat it again. Engineering  
7 contract to be submitted by the applicant to all parties.  
8 And that will be received as the exhibit identification  
9 next in order. It has to be submitted by the applicant  
10 by April 5, '06. All evidence summaries to be

11 contemporaneously submitted by the department, the  
12 protestants and the applicant on May 5, '06. Okay. And  
13 when you submit it, you submit it to each party as well  
14 as to the administrative hearing office and the  
15 department.

16 Anything further?

17 MS. FREGEAU: Your Honor, I have one question.

18 JUDGE GREENBERG: Yes.

19 MS. FREGEAU: During the lunch hour I was given  
20 a copy of a letter that was delivered -- that came from  
21 the department of Alcoholic Beverage Control that  
22 addresses a denial of a license, a precedent being set.  
23 I wanted to share this with the counsel. And I am not  
24 sure if it is appropriate or not. It was after I had  
25 given you my information.

1           MR. FORMAN: It was also after the protestants  
2 rested. I think it is entirely inappropriate to  
3 basically reopen that aspect.

4           MS. FREGEAU: I didn't -- I'm not sure I closed  
5 when I was examining Mr. Krahforst.

6           JUDGE GREENBERG: Mr. Krahforst wasn't called  
7 for purposes of cross-examination, but just merely for  
8 the purpose of his issues with the tribe.

9           MS. FREGEAU: Okay, your Honor.

10          JUDGE GREENBERG: That is fine. There are other  
11 cases that pertain to precedents. Not exactly  
12 precedents, opinions by the board as to whether or not  
13 traffic conditions are to be considered in the issuance

14 of a license. So there is plenty of authority.

15 MS. FREGEAU: Thank you.

16 JUDGE GREENBERG: Therefore, I return that

17 letter to the protestant --

18 MS. FREGEAU: Thank you.

19 JUDGE GREENBERG: -- as being irrelevant.

20 Does anybody have any further information?

21 MS. FREGEAU: No.

22 JUDGE GREENBERG: Nothing from the protestants.

23 Anything from the department?

24 MR. PIERCE: No, your Honor.

25 JUDGE GREENBERG: Anything further from the



1 applicant?

2 MR. FORMAN: No, sir.

3 JUDGE GREENBERG: The hearing, folks, is  
4 concluded.

5 I wish to thank each of you for your patience  
6 and the time that you have spent here. Take care.

7 (The proceeding were concluded at 4:44 p.m.)

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REPORTER'S CERTIFICATE

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3

I, KRISTINA HOFSTAD, CSR No. 6912, RPR, CRR,

4 certify:

5           That the foregoing proceedings were taken  
6 before me at the time and place therein set forth,

7           That the testimony of the witnesses, the  
8 questions propounded, and all objections and statements  
9 made at the time of the proceedings were recorded  
10 stenographically by me and were thereafter transcribed;

11           That the foregoing is a true and correct  
12 transcript of my shorthand notes so taken.

13           I further certify that I am not a relative or  
14 employee of any attorney of the parties, nor financially  
15 interested in the action.

16           I declare under penalty of perjury under the  
17 laws of California that the foregoing is true and  
18 correct.

19           Dated this \_\_\_\_ day of \_\_\_\_\_, 2006.

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KRISTINA HOFSTAD, CSR No. 6912

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