

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

RECEIVED

APR 29 2009

Alcoholic Beverage Control
Legal Unit

IN THE MATTER OF THE ACCUSATION AGAINST:

Bear River Casino
dba Bear River Casino
11 Bear Paws Way
Loleta, CA 95551-9684

Respondent,

On-sale General Public Eating-place License.

} FILE: 47-423392
}
} REG: 08 070 211
}
} LICENSE TYPE: 47
}
} PAGES: 180
}
} REPORTER: Katherine Wayne
} Atkinson-Baker Court Reporters
}
} **PROPOSED DECISION**

Administrative Law Judge John W. Lewis heard this matter at Eureka, California, on April 29, 2009.

This accusation was brought by the Singley Hill Homeowners Association [Association] pursuant to Section 24201. Noel Krahforst is a member of the Singley Hill Homeowners Association and represented Association at the hearing.

Respondent Bear River Casino was represented by Michael Acosta, Attorney-at Law.

Complainant Association seeks to discipline Respondent's license on grounds Respondent failed to comply with two conditions endorsed upon its license in violation of California Business and Professions Code¹ Section 23804. (Exhibit 1.)

Department Staff Counsel Dean Leuders was present at the hearing but did not participate as the Department was not a party to this accusation.

Respondent requested a hearing to present its defense to the charges in the Accusation. (*Id.*)

Oral and documentary evidence was received at the hearing and the matter was argued and submitted for decision on April 29, 2009.

¹ All subsequent statutory references are to said Code unless otherwise specified.

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IN THE MATTER OF THE ACCUSATION AGAINST:

Bear River Casino
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11 Bear Paws Way
Loleta, CA 95551-9684

ON-SALE GENERAL PUBLIC EATING PLACE LICENSE

FILE : 47 - 423392

REG. : 08070211

**DECLARATION OF
SERVICE BY MAIL**

under the Alcoholic Beverage Control Act.

The undersigned declares:

I am over eighteen years of age, and not a party to the within cause; my business address is 3927 Lennane Drive, Suite 100, Sacramento, California 95834. I served by **CERTIFIED** mail a copy of the following documents:

CERTIFICATE OF DECISION

on each of the following, by placing same in an envelope(s) addressed as follows:

**Bear River Casino
32 Bear River Drive
Loleta, CA 95551**

**Michael Acosta
Attorney at Law
4050 Cedar St.
Eureka, CA 95503**

**Dean Leuders, Staff Counsel
Headquarters, Legal - Inter Department Mail**

**Noel Krahforst
525 Singley Hill Road
Loleta, CA 95551**

Each said envelope was then, on June 15, 2009 sealed and deposited in the United States Mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 15, 2009 at Sacramento, California.



Declarant

Eureka District Office(interoffice mail)

Division Office(interoffice mail)

FINDINGS OF FACT

1. The Accusation was filed by Singley Hill Homeowners Association on December 24, 2008. (Exhibit 1).
2. Department issued a type 47 (On-sale General Public Eating-place) license to Respondent at the above-identified location [Licensed Premises] on July 26, 2006.
3. There is no record of prior Departmental discipline against Respondent's license.
4. When Respondent submitted the application for this license numerous protests were filed, primarily by members of the Singley Hill Homeowners Association. A hearing was scheduled at that time.
5. A settlement agreement was reached between the Protestants and Respondent prior to the record being opened. In exchange for Protestants withdrawing their protests, Respondent agreed to a set of conditions. The Department then issued the license in July, 2006, subject to those conditions. (Exhibit 2). Among those conditions are the following:
 - “8. The licensee shall modify the entrance from Singley Road to Bear River Drive so that public vehicular ingress and egress is available only to and from the south on Singley Road. The modified entrance or a separate entrance shall provide access to the premises from the north on Singley Road for emergency vehicles only.”
 9. The licensee shall exercise no off-sale privileges pursuant to Business and Professions Code Section 23401.”
6. Thomas Mattson is employed by the Humboldt County Department of Public Works. He is a civil engineer and has been involved with the issues involving the roads near Respondent's casino in some capacity since 2006. Singley Road is a county road and is the only road that leads to Respondent's casino. Humboldt County requires an encroachment permit before any work can be done to a county road. Shortly after this license issued Respondent obtained the appropriate permit and paid to have Singley Road widened as was required by Condition #7.
7. During this same time frame Respondent placed barriers and K-rails on reservation property at Singley Road to prohibit right turns onto Singley Road when exiting the

casino property. This was done to comply with Condition #8. Not long afterwards the United States Bureau of Indian Affairs became aware of the barriers (which were on tribal property) and ordered Respondent to immediately remove the barriers. The barriers were then removed.

8. The United States Bureau of Indian Affairs has ultimate authority to determine what can and cannot be done relating to roads located on reservation property. In other words, Respondent cannot place barriers or modify the roads on reservation property to comply with Condition #8 without the approval of the Bureau of Indian Affairs.

9. Respondent then attempted to close Singley Road from the north to comply with Condition #8. Although this was acceptable to the concerned parties, the California Department of Forestry (Cal Fire) advised all that fire regulations prohibit such a road closure.

10. The Bureau of Indian Affairs then requested Humboldt County to conduct a traffic count to determine if there was any increase in traffic on Singley Road north of Respondent's casino. That count was done and showed no increase in traffic on Singley Road beyond Respondent's casino. (Exhibit B).

11. Currently there are two alternative plans presented by Respondent to comply with Condition #8. Both plans are acceptable to Humboldt County officials. Both alternatives require some encroachment onto tribal lands and therefore approval by the Bureau of Indian Affairs is necessary. Both alternatives have been submitted to the Bureau of Indian Affairs and are awaiting review. Until the time of this hearing no action has been taken by the Bureau of Indian Affairs.

12. Respondent is not now, nor have they ever been, in compliance with Condition #8.

13. In 2008 Respondent applied for a Type 20 (Off-sale Beer & Wine) license for a convenience store / gas station located on tribal property adjacent to the casino. That license was not protested and it was issued by the Department. It is a separate license from that issued to Respondent's casino. (20-468242) This Type 20 license does permit off-sale privileges at the convenience store / gas station. (Exhibit 8).

14. Condition #9 prohibits off-sale privileges at the Type 47 license that covers the casino. No evidence was presented to establish that Respondent violated Condition #9. The Department did receive complaints regarding Condition #9. Those complaints were investigated and determined to be unfounded.

15. Except as set forth in this Decision, all other allegations in the Accusation and all other contentions of the parties lack merit.

CONCLUSIONS OF LAW

1. Article XX, Section 22 of the California Constitution and Section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 23804 provides that violation of a condition placed upon a license constitutes the exercise of a privilege for which a license is required without the authority therefor and is grounds for suspension or revocation of the license.
3. Cause for suspension or revocation of Respondent's license was established in accordance with the Constitutional and code sections cited above and Findings of Fact, paragraphs 4 through 12, for the violations alleged in Count 1 of the Accusation. Continuance of the license without imposition of discipline would be contrary to public welfare and morals.
4. Cause for suspension or revocation of Respondent's license was **not** established in accordance with the Constitutional and code sections cited above and Findings of Fact, paragraphs 13 and 14, for the violations alleged in Count 2 of the Accusation.

PENALTY CONSIDERATIONS

1. Complainant recommends that the Type 20 license held by Respondent be suspended indefinitely until such time as Respondent is in compliance with Condition #8. However, that is not possible since the Type 20 license is not the subject of this Accusation.
2. Respondent requests that a finding be made that it is legally impossible for Respondent to comply with Condition #8 and that it be removed from the Petition for Conditional License.
3. Condition violations are considered serious violations, since without the conditions, the license would in all likelihood not have issued. In 2006 when this matter was scheduled to be heard as a protest matter, numerous protestants appeared at the hearing. Lengthy negotiations resulted in a compromise and the matter was settled instead of conducting the hearing. The Petition For Conditional License (Exhibit 2) was the end result of the settlement. Respondent agreed to accept the conditions and the protestants agreed to withdraw their protests. The license issued subject to those conditions.
4. By all accounts, Respondent has done everything within its power to comply with Condition #8. No one has even suggested that Respondent was "dragging their feet" in any way.

5. The problem here is the Bureau of Indian Affairs. The Department of Alcoholic Beverage Control has no authority over that entity. Nor does Humboldt County, Bear River Casino or the Singley Hill Homeowners Association.

6. In licensing matters before the Department of Alcoholic Beverage Control it is the Applicant who bears the burden of proof in establishing that they are entitled to the license sought. *Coffin v. Alcoholic Beverage Control Appeals Bd. and Barona Tribal Gaming Authority, Real Party in Interest*, 139 Cal.App.4th 471. In this case we do not know whether or not Respondent could have met this burden because of the settlement agreed to by the parties.

7. It does not seem fair to punish Respondent's license because of the inaction of the Bureau of Indian Affairs. However, Respondent did agree to comply with the conditions listed in Exhibit 2. It is unlikely that Respondent would have agreed to the conditions had they known that it was impossible to comply with Condition #8.

8. Complainant is entitled to receive what they bargained for, and that is compliance with all of the conditions. The original protestants, complainant here, relinquished their opportunity to have their objections heard by an administrative law judge and a decision issued in exchange for Respondent's promise to comply with the conditions.

9. If anyone is to attempt to force action by the Bureau of Indian Affairs it seems only appropriate to place that onus on the Respondent since they are the party who sought this license to begin with.

10. The order recommended here may appear harsh at first but it is the only method that will provide finality for all parties. It provides ample time for Respondent to do what is necessary to comply with Condition #8. If Respondent is not able to comply with Condition #8 because of their inability to obtain approval from the Bureau of Indian Affairs then Respondent can seek to obtain a different license. A new investigation can be conducted, protests if any can be filed and a new hearing can be conducted to determine whether or not a license should issue, and if issued, whether or not there should be any conditions placed upon that license.

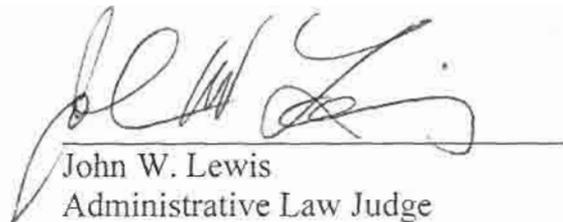
ORDER

Count 1 is sustained and Respondent's On-sale General Public Eating-place License is hereby **revoked** with the following provisions:

1. The effective date of the revocation shall be two years from the date that this proposed decision is adopted;
2. Should Respondent come into compliance with Condition #8 during that two year period then the revocation shall become permanently stayed;
3. The provisions of Rule 66 shall not apply to this premises if the license is in fact revoked;
4. In addition to existing legal notifications and postings, if Respondent seeks a new license or seeks to transfer a license to this premises, then Respondent shall notify each of the original protestants from the 2006 matter that a new license or transfer is being sought so that these individuals may have an opportunity to file protests if they so choose.
5. Such notifications shall be by U.S. Mail with proof of service.

Count 2 is **dismissed**.

Dated: May 20, 2009



John W. Lewis
Administrative Law Judge

STATE OF CALIFORNIA

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

CERTIFICATE OF DECISION

FILE : 47 - 423392

REG. : 08070211

It is hereby certified that the Department of Alcoholic Beverage Control, having reviewed the findings of fact, determination of issues and recommendation in the attached proposed decision submitted by an Administrative Law Judge of the Administrative Hearing Office, adopted said proposed decision as its decision in the case therein described on June 15, 2009.

THIS DECISION SHALL BECOME OPERATIVE AUGUST 6, 2009.

Sacramento, California

Dated: June 15, 2009



Helen McConville

Supervisor, Hearing and Legal Unit

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9 of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 300 Capital Mall, Suite 1245, Sacramento, CA 95814.