

1 DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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5 In the Matter of the Accusation Against:

6 BEAR RIVER CASINO)
7 dba BEAR RIVER CASINO) File 47-423392
8 11 Bear Paws Way) Reg 08070211
Loleta, California 95551-9684) AB-9047
-----)

9 On-Sale general Public Eating Place License
10 Under the Alcoholic Beverage Control Act
11
12

13 HEARING BEFORE JOHN W. LEWIS

14 Chief Administrative Law Judge

15 Eureka, California

16 Thursday, May 19, 2011
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13 Hearing before John W. Lewis, Chief
14 Administrative Law Judge, at Eureka City Hall, Council
15 Chambers, 531 "K" Street, Eureka, California,
16 commencing at 9:30 a.m., Thursday, May 19, 2011, before
17 Katherine J. Wayne, CSR No. 2854.
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A P P E A R A N C E S:

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DEAN R. LEUDERS, Staff Counsel
Department of Alcoholic Beverage Control
Trade Enforcement Unit
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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1 JUDGE LEWIS: On the record. This is the
2 hearing in the matter of the accusation against Bear
3 River Casino, doing business as Bear River Casino,
4 located at 11 Bear Paws Way in Loleta, California. The
5 file number is 47-423392 and the registration number is
6 08070211.

7 This is a remand from the Appeals Board and
8 the Appeals Board number is AB-9047. And may we have
9 the appearances of the parties for the record, please.

10 MR. FORMAN: Good morning, Your Honor. George
11 Forman, F-O-R-M-A-N, of Forman & Associates,
12 representing Bear River.

13 JUDGE LEWIS: There should be a button there
14 for the microphone. I don't think it's on.

15 MR. FORMAN: Ah, now it is. I'll restate my
16 appearance.

17 George Forman, F-O-R-M-A-N, of Forman &
18 Associates, representing Bear River.

19 MR. VINDING: Michael Vinding of Brady and
20 Vinding, representing the complainant, Singley Hill
21 Homeowners Association.

22 MR. LUEDERS: And Dean Lueders from the
23 Department of Alcoholic Beverage Control is here. We
24 are not an official party to this proceeding, but we
25 are providing the venue for the hearing pursuant to the

1 provisions of the Alcoholic Beverage Control Act.

2 JUDGE LEWIS: Very well. Good morning to you
3 all.

4 I have marked in this matter as Exhibit No. 1
5 the -- the decision following the Appeals Board
6 decision. It's a two-page document from the department
7 and it's dated January 25th, 2011.

8 (Hearing Officer's Exhibit 1 was marked for
9 identification and received into evidence.)

10 JUDGE LEWIS: Mr. Forman, Mr. Vinding, I'm
11 sure you both have a copy of this particular document.
12 This is the reason we're back here today.

13 MR. VINDING: Yes, Your Honor.

14 MR. FORMAN: Yes, Your Honor.

15 JUDGE LEWIS: All right. That's Exhibit No.
16 1.

17 Now, prior to going on the record, I did
18 discuss with Mr. Forman and Mr. Vinding how we are to
19 proceed today.

20 This is an unusual case as it relates to the
21 Department of Alcoholic Beverage Control in that it is
22 a citizen's accusation that is brought. It is not
23 brought by the department itself. Everyone has
24 acknowledged the fact that it is a unique case, even
25 the Appeals Board.

1 As far as our procedure today, according to
2 the order that was given to me by the department, this
3 is the opportunity for the licensee in this case, the
4 Bear River Casino, to present new evidence as it
5 relates to the accusation matter that was heard two
6 years ago by myself in April of 2009.

7 Of course, Mr. Vinding will be given an
8 opportunity to cross-examine any witness and/or
9 evidence presented by Mr. Forman, and as the accuser in
10 this particular instance, Mr. Vinding will be given an
11 opportunity to present any rebuttal evidence that he
12 deems appropriate.

13 Now, with all that having been said, are we
14 ready to proceed?

15 MR. FORMAN: Your Honor, I have a -- a
16 procedural question in terms of the convention for
17 denominating exhibits for this hearing.

18 Would you prefer that our exhibits be BR-1
19 through et cetera, and Mr. Vinding's exhibits be SH, or
20 do you want to continue the numerical sequence from
21 your Exhibit 1?

22 JUDGE LEWIS: Yes, I do. If Mr. Vinding has
23 any as the -- as the accuser in this case, he's going
24 to begin with 2, and I would like you to begin with
25 "A".

1 MR. FORMAN: Ah, okay. Thank you. I'll do
2 that.

3 JUDGE LEWIS: Mr. Forman, it's your show.

4 MR. VINDING: One point of clarification. We
5 have subpoenaed, at the judge's request, Mr. Mattson
6 from the County. He should be appearing at ten
7 o'clock, and we agreed prior that we can take him out
8 of order so as to get him back to his job.

9 JUDGE LEWIS: Yes. That's understood. We did
10 discuss that off the record and I did request
11 Mr. Mattson to come or be subpoenaed.

12 MR. FORMAN: And in the interest of
13 abbreviating the record during my questioning, if I
14 refer to "the casino," it will be, unless otherwise
15 stated, the Bear River Casino.

16 If I refer to "the tribe," it will be, unless
17 otherwise stated, the Bear River Band of Rohnerville
18 Rancheria, which should shorten the questions
19 considerably, if I may use "the tribe."

20 So as long as that's understood, I'll try and
21 be brief.

22 JUDGE LEWIS: As long as no one is offended by
23 that, that's fine with me.

24 MR. FORMAN: Okay. The director's remand to
25 Your Honor gave you broad discretion, as I read it, to

1 determine whether Bear River should be disciplined for
2 failure to comply with every aspect of condition 8 of
3 its license. If so, what that discipline should be.

4 Whether Bear River's proposed plan to modify
5 the Singley Road-Bear River Drive intersection would
6 constitute adequate compliance with condition No. 8,
7 and even whether condition No. 8 should be modified or
8 removed from Bear River's license.

9 As was determined in Your Honor's 2009 order,
10 as of that previous hearing, Bear River had done
11 everything in its power to comply with condition No. 8
12 as written, only to be frustrated at every turn by
13 other government agencies and by the very neighbors who
14 then filed the accusation that Bear River had failed to
15 comply with the condition.

16 Your Honor also surmised in that decision that
17 if Bear River had known of the difficulties it would
18 encounter in its good faith diligent efforts to comply
19 with condition No. 8, it probably never would have
20 agreed to the condition.

21 Your Honor also found correctly that revoking
22 Bear River's license would eliminate any obligation
23 Bear River otherwise might have to discourage vehicles
24 from using the northern portion of Singley Road to
25 access or leave Bear River's lands, whether in

1 connection with the operation of the casino, Bear
2 River's gas station and minimart, or the tribal
3 facilities and residences located elsewhere on those
4 lands.

5 In today's hearing, Bear River will present
6 evidence on two central questions: One, whether Bear
7 River's continuing efforts to develop and implement a
8 plan to modify the intersection of Singley Road and
9 Bear River Drive so as to reduce the number of vehicles
10 turning right onto Singley Road from Bear River Drive
11 to the greatest extent practically and economically
12 feasible, even though service of alcohol at the casino
13 has had and continues to have no measurable impact on
14 traffic on the portion of Singley Road north of the
15 casino, should constitute compliance with condition
16 No. 8.

17 And that if condition No. 8, either as written
18 or substantially as written, is enforced, even if the
19 plan is fully compliant, the members, employees and
20 patrons of Bear River will suffer severe and
21 discriminatory hardship and inconvenience that is
22 grossly disproportionate to whatever marginal benefits
23 might be derived by the handful of complaining
24 neighbors, who actually would be worse off if Bear
25 River's license is revoked for violation of condition

1 No. 8.

2 Based on this evidence, we will contend that
3 Your Honor's recommendation to the director should be
4 the following:

5 First, that implementation of Bear River's
6 proposed plan for modification of the intersection as
7 presented in this hearing will constitute compliance
8 with condition No. 8 and thus, that no discipline
9 should be imposed if Bear River completes
10 implementation of that plan within two years after
11 Humboldt County grants final approval of that plan.

12 And second, that the hardships that will be
13 inflicted on the tribal community and visitors so
14 outweigh any marginal benefit to a small number of
15 nearby residents -- whose real objection is to the
16 existence of the casino, if not to the existence of the
17 entire rancheria -- that condition No. 8 should be
18 removed from the license and the accusation dismissed
19 in its entirety.

20 Thank you. Would Mr. Vinding like an opening
21 statement? If not, I'll call my first witness.

22 JUDGE LEWIS: Mr. Vinding?

23 MR. VINDING: I would like to make a short
24 opening statement.

25 The Singley Hill Homeowners Association takes

1 no issue with the tribe. The Singley Hill Homeowners
2 Association has an issue regarding the health and
3 safety of everyone who travels on that street,
4 including, but not limited to, those folks who live in
5 the area. They have suffered greatly in that their
6 quiet use and enjoyment has gone away.

7 Years ago, they entered into good faith
8 negotiations with the tribe in order to determine how
9 best to resolve the issues, particularly regarding
10 alcohol which was to be served at the casino, and they
11 reached an agreement with the tribe, a good faith
12 agreement, made at arm's length, and they have
13 patiently waited for the tribe to live up to its end of
14 the bargain and construct an entrance such that the
15 people traveling in the area and the folks who live in
16 the area can be protected.

17 The homeowners association challenges the
18 statement that serving -- that the service of alcohol
19 has no measurable impact. Evidence will be presented
20 today regarding the dramatic increase in DUIs, dramatic
21 increase in collisions. Several people will testify
22 that they were almost hit by cars, and that didn't
23 occur prior to the casino being in place.

24 At the conclusion of the day, the homeowners
25 association will ask that Your Honor affirm his prior

1 ruling.

2 Thank you.

3 JUDGE LEWIS: Okay. Mr. Forman?

4 MR. FORMAN: Yes. One other procedural
5 matter, Your Honor. I note at -- at one point prior to
6 the scheduling of this hearing, that the association
7 designated as its representative an individual named
8 Noel Krahforst, if I pronounce the name correctly.

9 JUDGE LEWIS: I couldn't pronounce it right at
10 the last hearing either.

11 MR. FORMAN: Okay. And if that's the case, I
12 would ask that Mr. Krahforst be disqualified from
13 serving in that capacity based on the fact that in
14 April of 2006, Mr. Krahforst formally withdrew his
15 protest to the issuance of the original license, which
16 was issued without -- it was a temporary license at the
17 time, but he withdrew his protest at a time when there
18 was no condition No. 8.

19 And -- and I would offer into evidence as Bear
20 River's --

21 JUDGE LEWIS: Wait a minute. Wait a minute,
22 Mr. Forman.

23 MR. FORMAN: Yes.

24 JUDGE LEWIS: This accusation was brought not
25 by Mr. Krahforst, but by the homeowners association,

1 and Mr. -- the association last time was represented by
2 Mr. Krahforst.

3 I still have difficulty with that name. But
4 today, they're being represented by Mr. Vinding.

5 MR. FORMAN: Well, the --

6 JUDGE LEWIS: I don't care what Mr. Krahforst
7 did or didn't do as far as withdrawal in 2006, because
8 there was no decision that ever became final as a
9 result of that.

10 MR. FORMAN: The -- the problem, Your Honor,
11 is that as far as we know, Mr. Krahforst is no longer a
12 member of the association, because he sold his
13 property.

14 JUDGE LEWIS: Okay.

15 MR. FORMAN: And we've never been able to
16 ascertain -- we tried on earlier occasions -- who is
17 the association? How many people are in it? What does
18 it take to -- to belong to it?

19 At one point, a tribal member tried to -- to
20 join and was refused membership. So we -- we've -- who
21 is our accuser?

22 JUDGE LEWIS: Well, there's a little footnote
23 in the Appeals Board decision saying, "Hey, the
24 association, even though it may be" -- well, I'll read
25 it to you. I'm sure you've read it, sir.

1 MR. FORMAN: I have.

2 JUDGE LEWIS: "There's no requirement that a
3 homeowners association have any formal structure."
4 That's what the Appeals Board told us.

5 MR. FORMAN: I agree.

6 JUDGE LEWIS: So --

7 MR. FORMAN: But they have to have members and
8 they have to exist.

9 JUDGE LEWIS: Whatever it is, it is, that's
10 being brought by the association, whatever that means,
11 and they have hired Mr. Vinding to continue on with
12 this now that Mr. Krahforst is no longer there,
13 apparently. And that's where we're going with it.

14 MR. FORMAN: Very well. I -- my objection has
15 been noted. Thank you.

16 I would call as our first witness John
17 Bergenske, B-E-R-G-E-N-S-K-E.

18 JUDGE LEWIS: B-E-R-G-E-N-S-K-E?

19 MR. FORMAN: B-E-R-G-E-N-S-K-E. Yes, sir.

20 JUDGE LEWIS: Okay.

21

22 JOHN BERGENSKE,

23 having first been duly sworn, was

24 examined and testified as follows:

25 /////

1 JUDGE LEWIS: Please state your full name for
2 the record.

3 THE WITNESS: John Bergenske.

4 JUDGE LEWIS: Mr. Forman.

5 MR. FORMAN: Your Honor, I would -- I would
6 like to -- I would like to have marked for
7 identification as Bear River's Exhibit A a -- a
8 document which is currently labeled Exhibit 1, but that
9 was before I knew we were going to be using letters.

10 And I've given a copy of the exhibit to
11 Mr. Vinding, and I'm giving a copy to the witness.

12 JUDGE LEWIS: Hold on one second there,
13 Mr. Forman.

14 Okay. I have marked as Exhibit A a diagram
15 apparently of Singley Hill Road at Bear River Drive.

16 (Defendant's Exhibit A was marked for
17 identification.)

18 JUDGE LEWIS: Okay. Go ahead, sir.

19
20 DIRECT EXAMINATION

21 BY MR. FORMAN:

22 Q. Mr. Bergenske, would you please state your
23 current occupation and describe the company with which
24 you're associated.

25 A. I'm the chief operating officer and general

1 manager of LACO Associates. LACO Associates is a
2 professional consulting firm. It's been serving
3 Northern California for the last 57 years.

4 We offer engineering services primarily,
5 supported by planning and geologic investigations and
6 construction support services.

7 Q. Do those services also include traffic
8 engineering?

9 A. Yes.

10 Q. Have you worked -- what -- what is your role
11 with LACO Associates and what is your educational and
12 professional background?

13 A. My role is I hold the operations business and
14 finance concerns of the business. Also considered the
15 firm's expert on project management.

16 My education is I have a Bachelor of Science
17 in industrial technology and an MBA.

18 Q. Are you an owner in LACO Associates?

19 A. Yes. I own seven and a half percent of the
20 firm.

21 Q. During your -- the course of your association
22 with LACO -- that's L-A-C-O -- have you become familiar
23 with traffic issues in the vicinity of the intersection
24 of Singley Road and Bear River Drive here in Humboldt
25 county?

1 A. Yes.

2 Q. Are you aware of any --

3 MR. VINDING: Your Honor, I apologize. I'd
4 like to object to the extent that any testimony will be
5 offered by Mr. Bergenske regarding traffic-calming
6 procedures and any engineering, as he has not yet been
7 qualified as an engineer to offer such testimony.

8 MR. FORMAN: He has not yet offered any such
9 testimony.

10 JUDGE LEWIS: Okay.

11 BY MR. FORMAN:

12 Q. Mr. Bergenske, you have in your hands a -- a
13 document which has been marked for identification as
14 Exhibit A. Do you not?

15 A. That is correct.

16 Q. Could you please tell Judge Lewis what Exhibit
17 A represents?

18 A. Exhibit A represents the existing condition of
19 the intersection as it -- as it is currently.

20 Q. Do you know by whom or by what entity Exhibit
21 A was prepared?

22 A. It was prepared by LACO Associates'
23 engineering group.

24 MR. FORMAN: Okay. I would ask that Exhibit A
25 be received into evidence at this time.

1 MR. VINDING: I'd object as there hasn't been
2 any foundation that the witness who is testifying has
3 the qualifications to state that this is a true and
4 correct representation of the intersection as it exists
5 today.

6 JUDGE LEWIS: That's true, Mr. Forman.

7 BY MR. FORMAN:

8 Q. Mr. -- Mr. Bergenske, have you been to the
9 intersection of Bear River Drive and Singley Road?

10 A. Yes.

11 Q. Are you familiar with that intersection?

12 A. Yes.

13 Q. Based on your personal familiarity with this
14 intersection, does Exhibit A accurately depict the
15 existing condition at that intersection?

16 A. Yes, it does.

17 MR. VINDING: I would object again, Your
18 Honor. He hasn't been established as a witness having
19 a sufficient background or knowledge and education to
20 testify that these measurements, for example, are
21 accurate; that this in fact depicts what is out there
22 right now.

23 He could certainly testify as to a picture,
24 for example, that represents his recollection. But
25 this is a very specific diagram offered by consulting

1 engineers, as it says on the front of it. We don't
2 have an engineer here today, and so I would object.

3 JUDGE LEWIS: Your objection is noted for the
4 record, sir. "A" is received.

5 (Defendant's Exhibit A was admitted into
6 evidence.)

7 MR. FORMAN: And we have an engineer who will
8 be giving additional testimony.

9 Q. During the course of your association --
10 excuse me.

11 During the course of your association with
12 LACO, have you managed any projects for the Bear River
13 Band on or near the intersection of Singley Road and
14 Bear River Drive?

15 A. Yes. As LACO Associates' project management
16 representative, I've represented the firm in a project
17 management capacity on a number of occasions.

18 With regard to the Bear River, we were
19 recently awarded the Tish-Non Village development,
20 which I was the project manager, and also their casino
21 expansion and hotel development project.

22 Q. Thank you.

23 MR. FORMAN: Exhibit B.

24 MR. VINDING: Thank you.

25 JUDGE LEWIS: Hold on a minute, Mr. Forman.

1 MR. FORMAN: Yes, sir.

2 JUDGE LEWIS: The copy that you gave me has
3 some writings on it in blue ink.

4 MR. FORMAN: Yes.

5 JUDGE LEWIS: Is that supposed to be that way,
6 sir?

7 MR. FORMAN: Yes.

8 JUDGE LEWIS: Mr. Vinding, do you have the
9 same?

10 MR. VINDING: I have blue ink on mine.

11 JUDGE LEWIS: Why don't you check and make
12 sure it's the same. I don't want you to have a
13 different copy than I do. Okay?

14 MR. VINDING: Thank you.

15 JUDGE LEWIS: Before I mark it.

16 MR. VINDING: It's the same.

17 JUDGE LEWIS: Okay. All right, I've marked as
18 Exhibit B another diagram of -- appears to be that same
19 intersection.

20 (Defendant's Exhibit B was marked for
21 identification.)

22 JUDGE LEWIS: Go ahead, Mr. Forman.

23 BY MR. FORMAN:

24 Q. Mr. Bergenske, I've handed you a document
25 which has been marked as Exhibit B for identification

1 and I would ask that you explain to Judge Lewis your
2 understanding of what Exhibit B represents.

3 A. Exhibit B represents the proposed improvements
4 to the intersection associated with our contract with
5 the Bear River Band to address condition 8.

6 MR. VINDING: I'd object to his testimony as
7 it relates to what the diagram says, as he has not been
8 qualified as an engineer to offer testimony as to what
9 the engineering diagram in fact says.

10 MR. FORMAN: He has thus far been asked simply
11 to identify what the document represents without going
12 into the details of what's in it.

13 JUDGE LEWIS: Exactly. That was my
14 understanding, too.

15 Objection is overruled.

16 BY MR. FORMAN:

17 Q. Mr. Bergenske, do you see on Exhibit B some
18 handwritten markings in blue ink?

19 A. Yes.

20 Q. Do you know who made those markings?

21 A. That was LACO Associates' engineer assigned to
22 the project to address the traffic concerns associated
23 with the intersection.

24 Q. And do you know the name of that individual?

25 A. Netra Khatri.

1 Q. Could you spell that, please, for the
2 reporter?

3 A. N-E-T-R-A K-H-A-T-R-I.

4 MR. FORMAN: I would ask that Exhibit B be
5 introduced into evidence at this time. Mr. Khatri will
6 be testifying later as to the details of this exhibit.

7 JUDGE LEWIS: Well, if we're going to do that,
8 Mr. Forman, why don't we wait until then to offer it.
9 Okay?

10 MR. FORMAN: Sure.

11 Q. Mr. Bergenske, during the course of your --
12 your work with LACO on Bear River projects, did you
13 become aware of any traffic counts that have been
14 performed in the vicinity of Singley Road and Bear
15 River Drive before construction of the Bear River
16 Casino?

17 A. Yes.

18 Q. If so, what traffic counts -- of what traffic
19 counts are you aware, by whom were they conducted, and
20 what did they show?

21 MR. VINDING: Objection. Compound and
22 leading.

23 JUDGE LEWIS: One at a time, Mr. Forman.

24 MR. FORMAN: Okay.

25 Q. Of what traffic counts are you aware of pre --

1 pre-casino construction?

2 A. Prior to the construction of the casino, there
3 was an environmental assessment performed by a firm by
4 the name of AES. In association with that assessment,
5 there was a traffic study performed by Abrams.

6 Q. Have you reviewed that traffic study?

7 A. Yes.

8 Q. And do you recall what the traffic study
9 showed with respect to traffic on -- on Singley Road
10 and Bear River Drive?

11 MR. VINDING: Objection, Your Honor. Two
12 bases.

13 One, the study speaks for itself, and, two,
14 the witness hasn't been qualified to offer testimony on
15 the traffic counts. We're going to have someone here
16 to talk about those that is qualified.

17 JUDGE LEWIS: Do you have this report that
18 you're referring to, Mr. Forman?

19 MR. FORMAN: Mr. Bergenske, do you?

20 THE WITNESS: Yes, I do.

21 JUDGE LEWIS: Are you offering it, sir?

22 MR. FORMAN: I think I'm going to, yes.

23 THE WITNESS: Okay.

24 MR. FORMAN: We'll have to get extra copies
25 made of it, sir.

1 JUDGE LEWIS: Well, since it's almost ten
2 o'clock, maybe you want to wait until I -- until we
3 hear from Mr. Mattson before we even go there, as that
4 may not be necessary.

5 MR. FORMAN: That's an excellent suggestion.

6 JUDGE LEWIS: Because I have -- I -- as we
7 discussed in our conference call a while ago, I wanted
8 Mr. Mattson and I wanted those numbers, and I'm still
9 hoping he's going to bring them.

10 MR. FORMAN: Has Mr. Mattson arrived? Do you
11 know?

12 MR. MATTSON: I showed up. I wasn't requested
13 to bring anything other than show up.

14 JUDGE LEWIS: Mr. Mattson, is that you back
15 there?

16 MR. MATTSON: That's me.

17 JUDGE LEWIS: Good morning to you, sir.

18 MR. MATTSON: Good morning.

19 JUDGE LEWIS: Do you have traffic count
20 numbers for Singley Hill Road?

21 MR. MATTSON: I have some summaries of some
22 random counts the County did, yes.

23 JUDGE LEWIS: Okay. Since he is here and
24 we're taking him out of order, why can't we put
25 Mr. Mattson up now?

1 MR. FORMAN: No reason I can think of not to.

2 JUDGE LEWIS: Come forward, sir. It's been
3 about two years. Good to see you again.

4 MR. MATTSON: You too.

5 JUDGE LEWIS: Let me just swear you in.

6

7

THOMAS MATTSON,

8

having first been duly sworn, was

9

examined and testified as follows:

10

11

JUDGE LEWIS: Let me do some questioning
12 before the attorneys have a shot at you, Mr. Mattson.

13

When we last met two years ago, there was
14 testimony from you with regards to traffic counts on
15 Singley Hill Road beyond the entrance to the casino.
16 And I'm referring to from the 101 freeway. Okay?

17

It's still my understanding from the 101
18 freeway, I hit the entrance to the casino before I go
19 beyond that into the area of the Singley Hill
20 Homeowners Association on Singley Road.

21

My -- my questions are: What you told me last
22 time, from what I remember, is that at the request of
23 the Bureau of Indian Affairs, you had the County
24 conduct a traffic count on Singley Hill Road beyond the
25 entrance to the casino to see what the numbers were.

1 That was at the request of the Bureau of
2 Indian Affairs, and your testimony to me that time two
3 years ago was that you did this study for them and that
4 you found no increase in the traffic on Singley Hill
5 Road.

6 Am I stating your testimony from two years ago
7 accurately, sir?

8 THE WITNESS: I am not sure, because I have
9 not reviewed that testimony. I know we did traffic
10 counts up and down that road, not on a prolonged basis,
11 but on a short-term basis to get snapshots in time, and
12 we had seen a small increase in traffic north of the
13 casino and -- and major increase in traffic south of
14 the casino where the road was improved.

15 JUDGE LEWIS: Okay. And when you say north
16 and south, north would be -- or south would be from
17 between the 101 and the casino?

18 Is that considered south?

19 THE WITNESS: Well, it depends which entrance
20 with 101. The southern entrance to 101 with Singley
21 Road, yes. That is the closest -- that is where the
22 road was improved the shortest distance to the casino,
23 where we're trying to get the traffic directed to go.

24 JUDGE LEWIS: Okay.

25 THE WITNESS: North of the casino is the other

1 entrance, the long and windy narrower portion of the
2 county road.

3 JUDGE LEWIS: Okay. What I want to know is
4 about north of the casino, then. And what I want to
5 know is your recollection of traffic counts that were
6 done on Singley Hill Road north of the casino entrance.

7 THE WITNESS: Our -- my recollection is that
8 the numbers increased about 20 percent. So we're
9 looking about 30 to 40 additional vehicles on that
10 north portion of the road based on just very short
11 traffic counts.

12 JUDGE LEWIS: Okay. Hold on a minute. A 20
13 percent increase since when? As compared to what, sir?

14 THE WITNESS: Well, that -- those -- those
15 numbers came from right before and right after the
16 casino opening.

17 So it went from I believe 160 or 170 vehicles
18 to a little over 200. But again, those were very short
19 snapshots of -- of the traffic.

20 JUDGE LEWIS: And when you say 160 to 200, are
21 you referring per day? What are you referring to?

22 THE WITNESS: Yeah, that would be per day.

23 JUDGE LEWIS: Per day, okay. Okay. And 160
24 to 200, that is -- the 160 was pre-casino?

25 THE WITNESS: Yeah. I -- I believe on the day

1 we counted, it was I believe 167 pre-casino opening,
2 and afterwards, it was 204.

3 JUDGE LEWIS: Okay. And that -- that count,
4 that 200, when was that conducted?

5 THE WITNESS: I believe in November of 2005.

6 JUDGE LEWIS: Okay. Do you -- since then,
7 I'm -- you said that they -- you have done other
8 counts?

9 THE WITNESS: Yeah. We did, I believe,
10 another count in 2008 and it was similar to the -- to
11 the pre-casino count, or around the same number.

12 Again, our counts are not long-term counts.
13 They're just, you know, a -- a day or a snapshot in
14 time.

15 So, you know, I can only tell you what the
16 numbers showed from those specific days that we looked
17 at it.

18 JUDGE LEWIS: Okay. So in 200 -- 2008, if the
19 traffic count that you did -- which was not a long-term
20 thing, just the snapshot, as you indicated -- the
21 average, the daily average was about 160?

22 THE WITNESS: It was around 170, 160 range.

23 JUDGE LEWIS: Now, since 2008, have there been
24 any other random traffic counts done by the County?

25 THE WITNESS: Not by the County, no.

1 JUDGE LEWIS: Are you aware of any traffic
2 counts done by anyone else?

3 THE WITNESS: I believe we issued a recent
4 encroachment permit for LACO to do a traffic count.

5 JUDGE LEWIS: Okay. What does all that mean?
6 You -- I'm a non-engineer here, sir. You've got to
7 help me.

8 THE WITNESS: That means that they applied for
9 a permit to do a traffic count on the county road. To
10 work on a county road, you have to have a permit from
11 the County. And we gave them a permit to do a traffic
12 count on that road, is my understanding.

13 JUDGE LEWIS: Okay. So -- so LACO goes out
14 there and puts that little piece of rubber on the road
15 to count the cars?

16 THE WITNESS: Correct.

17 JUDGE LEWIS: All right. Have you seen the
18 results of their traffic count?

19 THE WITNESS: No, I have not seen their
20 results.

21 JUDGE LEWIS: Do you know when the County's
22 permit was issued?

23 THE WITNESS: Within the last couple of
24 months, I believe.

25 JUDGE LEWIS: Okay. When did the casino

1 open? 2005 or 2006?

2 THE WITNESS: Oh --

3 JUDGE LEWIS: 2005. I see the chairman back
4 there waving.

5 THE WITNESS: Yeah, I would refer -- I believe
6 it was 2005, because the November count I think was
7 right after it opened.

8 JUDGE LEWIS: Okay. And this 2008 number that
9 you were referring to, the 170 per day, that was about
10 the time that -- of the request of the Bureau of Indian
11 Affairs that you testified to last time?

12 THE WITNESS: I -- I believe so. We had had a
13 meeting out there with BIA and, you know, we did a
14 random short-term count just to try to capture what was
15 happening.

16 JUDGE LEWIS: Okay. All right. That was kind
17 of painless, Mr. Mattson. I told you --

18 THE WITNESS: So far.

19 JUDGE LEWIS: I just -- I just wanted to get
20 some -- reconfirm some of the information that you gave
21 me last time and see if there was anything new.

22 But the problem now is the attorneys are going
23 to get a chance to ask you questions. Okay?

24 THE WITNESS: Okay.

25 JUDGE LEWIS: So just be patient. We'll get

1 you out of here as soon as we can.

2 Mr. Forman, do you have any questions for
3 Mr. Mattson?

4 MR. FORMAN: I do.

5 JUDGE LEWIS: Go ahead.

6 MR. FORMAN: Yes, sir.

7

8 DIRECT EXAMINATION

9 BY MR. FORMAN:

10 Q. Mr. Mattson, hello. My name is George Forman.
11 I don't know that we've met.

12 What is the -- what does the term "level of
13 service" mean in traffic engineering jargon?

14 A. Level of service usually relates to the amount
15 of delay that you have on any given road or any given
16 intersection.

17 So the amount of time you have to wait, the --
18 the reduction in -- in free movement of vehicles. You
19 know, level of service "A", for example, is full, free
20 movement of vehicles. You can drive the speed limit,
21 no restrictions.

22 Level of service "F" means you're stopped for
23 a significant amount of time because of congestion.

24 Q. And are you familiar with what the -- the
25 level of service rating is for Singley Road north of

1 the -- of Bear River Drive?

2 A. That would be a level of service of "A",
3 basically. It's a free-flowing road.

4 Q. And would 200 vehicles per day cause a
5 reduction in the level of service on that road?

6 A. Not on that road, no.

7 Q. Do you know what the -- the peak capacity of
8 Singley Hill Road is north of the casino?

9 A. Based on the -- the character, the width
10 and -- and type of the road, it's considered a very
11 low-volume road, which should be safe to handle up to
12 about 400 vehicles a day.

13 Q. And still keep its level of -- level "A" level
14 of service?

15 A. Yes.

16 Q. Did you review any environmental assessments
17 or environmental reports prepared in connection with
18 the construction of the Bear River Casino?

19 A. I reviewed, I believe, a Winzler & Kelly
20 report. I don't know if that was ever adopted.

21 But it's been a long time since I've reviewed
22 anything related to that specific construction project.

23 Q. Did you review any environmental reports that
24 were prepared and circulated in connection with the
25 construction of what has been referred to earlier as

1 the Tish-Non, T-I-S-H-N-O-N, project with the tribe in
2 the vicinity of Bear River Drive and Singley Road? In
3 the vicinity of that intersection.

4 A. I -- I believe our environmental department
5 did review the document, if you're talking about the --
6 the -- moving the trust of the land and the -- the --
7 the new road across the street from the casino.

8 Q. Yes. That's the one to which I'm referring.

9 A. I believe our department did review. I don't
10 recall specifically reviewing it myself.

11 Q. Okay, thank you.

12 MR. FORMAN: I have no further questions of
13 the witness.

14 JUDGE LEWIS: Mr. Vinding?

15 MR. VINDING: Thank you, Your Honor.

16

17 CROSS-EXAMINATION

18 BY MR. VINDING:

19 Q. Mr. Mattson, my name is Michael Vinding. I
20 represent the homeowners association.

21 So I'm clear, you referred to two different
22 studies, right? One in 2005, one in 2008?

23 A. As for traffic counts?

24 Q. Yes, sir.

25 A. Yes, short snapshots that we did.

1 Q. And you -- you call them short snapshots.
2 Would you agree that they're incomplete?

3 MR. FORMAN: Objection. Vague, ambiguous.

4 JUDGE LEWIS: Sustained.

5 BY MR. VINDING:

6 Q. Are the traffic counts of sufficient duration,
7 time, quality, that they could be used or would be used
8 by the County were it involved in the construction of a
9 road?

10 A. No. They were just short snapshots to -- to
11 give us an idea of what the traffic was on a given day
12 or two.

13 Q. But within those given one or two days, you'd
14 agree that there was at least a 20 percent increase in
15 traffic?

16 A. That's what the raw numbers appear to show.

17 Q. And are you aware that a minimart was
18 constructed at the casino site within the last two
19 years?

20 A. Yes, I'm aware that was constructed.

21 Q. Are you aware that it sells alcohol?

22 A. Not that I know. I -- I haven't been up there
23 in a while.

24 Q. You're not aware of any data indicating
25 whether there was increased traffic as a result of the

1 construction of the minimart, are you?

2 A. I have nothing in front of me that I've
3 reviewed that shows anything.

4 Q. Are you aware that the casino is going to
5 undergo an expansion?

6 MR. FORMAN: Objection. States facts not in
7 evidence. It was --

8 JUDGE LEWIS: And it's not something I'm here
9 to hear, Mr. Vinding.

10 BY MR. VINDING:

11 Q. In your capacity with the County, are you
12 aware that there has been an increase in collisions?

13 MR. FORMAN: Objection. Vague and ambiguous,
14 no limit as to place, time.

15 JUDGE LEWIS: Very true, Mr. Vinding. Please
16 be more specific.

17 MR. VINDING: Thank you, Your Honor.

18 Q. In your capacity with the County, are you
19 aware that since the construction of the casino, there
20 has been an increase in collisions north of the casino
21 entrance --

22 MR. FORMAN: Objection. Assumes --

23 MR. VINDING: -- on Singley Hill Road?

24 MR. FORMAN: Assumes facts not in evidence.

25 JUDGE LEWIS: Why don't you let him finish

1 the --

2 MR. FORMAN: Okay, sorry.

3 JUDGE LEWIS: -- question, Mr. Forman, before
4 you object.

5 MR. FORMAN: I apologize, Your Honor.

6 JUDGE LEWIS: Repeat the question. I missed
7 something there.

8 BY MR. VINDING:

9 Q. Do you have any personal knowledge in your
10 capacity with the County as to whether there has been
11 an increase in collisions on Singley Hill Road north of
12 the casino since the casino was constructed?

13 A. We have not analyzed if there's been an
14 increase or a decrease. I do review accident reports
15 that come across my desk and I'm aware of accidents
16 that have happened out there.

17 But at the County, we -- we get lists of our
18 roads that have the highest accidents and those are the
19 ones we look at, and this one is not on that list as of
20 yet.

21 I am aware there are accidents out there, but
22 we have not performed a specific analysis looking at
23 the rate of increase or decrease in accidents.

24 Q. In your capacity with the County, do you get
25 statistics about the number of DUIs?

1 A. We do not get statistics on the number of
2 DUIs. That's a specific analysis that has to be
3 performed. We have not performed that on that road.

4 We get numbers that are basically, you know,
5 county-wide on the increases or decreases.

6 Q. Okay.

7 MR. VINDING: I have nothing further, Your
8 Honor. Thank you.

9 MR. FORMAN: Nothing further. Thank you.

10 JUDGE LEWIS: Mr. Mattson, last time we met
11 two years ago, I -- I'm hearing something that came out
12 of one of the answers. You said there's something
13 going on across the street from the entrance to the
14 casino, because last we met, there was talk about
15 putting a circle in there and all kinds of things.

16 What is the status there, as far as you know,
17 as to construction or whatever?

18 THE WITNESS: As far as my knowledge, it's
19 very limited. I understand that the tribe plans to put
20 housing over there. There has been concepts discussed,
21 but nothing concrete.

22 They did pull an encroachment permit with the
23 County and added a road entrance to that property, but
24 as far as any plans submitted or anything concrete,
25 other than the knowledge that they are planning to put

1 housing on that land, I -- I have nothing concrete.

2 JUDGE LEWIS: But that land is owned by the --
3 by the tribe, on the other side of Singley Hill Road?

4 THE WITNESS: Yes, it's owned by the tribe and
5 they were moving through the process to put it through
6 trust, but -- I think that's been finalized, but I'm
7 not sure at this point.

8 JUDGE LEWIS: Okay. All right.

9 MR. VINDING: Your Honor, may I have a
10 follow-up -- I have two follow-up questions.

11 JUDGE LEWIS: Yes, please. I -- the reason
12 I'm asking these things, it's been two years and I know
13 things have changed. Some progress has been made or
14 not made, whatever.

15 I'm just trying to get myself up to date on
16 what's going on there.

17 Go ahead, Mr. Vinding.

18 MR. VINDING: Thank you, Your Honor.

19

20 RE-CROSS-EXAMINATION

21 BY MR. VINDING:

22 Q. Mr. Mattson, do you know the number of
23 proposals that have been offered by the casino in
24 regard to changes at the entrance to the casino,
25 obviously since the casino was constructed?

1 A. I don't know the absolute number. I know that
2 there have been several different things looked at,
3 several things run up the flagpole, like the, you know,
4 closure of the road, which was one proposal. A -- a
5 turn-around, one way down the road, was another
6 proposal.

7 Right now, they're working on some
8 traffic-calming median barriers.

9 There have been several. I can't tell you the
10 exact number.

11 Q. And the traffic-calming barriers that are out
12 there now, those are temporary. Correct?

13 A. Correct. We have given them an encroachment
14 permit so that they could see what the effect of those
15 would be.

16 Q. Okay. And so as it stands right now, what is
17 your opinion as to the status of the changes, if any,
18 to the intersection? Does it remain substantially the
19 same as it did in 2005?

20 A. Other than -- you know, in -- at the
21 beginning, we had a "No Right Turn" sign out at the
22 casino. They had some channelization there to -- to
23 try to force people to make a left turn coming out of
24 the casino, striping on the road, K-rail on the right
25 side.

1 That was all removed at the request of the
2 BIA, who didn't feel it was necessary. Now that the --
3 the BIA is out of the picture, basically they're trying
4 similar things to channelize and -- and get rid of --
5 try to eliminate the right turn out and left turn in to
6 the casino.

7 Q. But as it presently stands right now, a person
8 leaving the casino could make a right-hand heading
9 north onto Singley Hill Road. Correct?

10 A. Correct.

11 Q. And a person heading south on Singley Hill
12 Road, assuming they were north of the casino, could
13 make a left-hand turn into the casino right now.
14 Correct?

15 A. A very hard left-hand turn, from what I
16 understand. I haven't been out there to see what they
17 put in there, but I believe the barrier was an attempt
18 to make that left-hand difficult.

19 Q. I'd ask that you not speculate, and if I ever
20 ask a question to you in which you have to guess, just
21 please let us know, because I wouldn't want to put you
22 in that position.

23 A. Okay.

24 MR. VINDING: I have nothing further, Your
25 Honor. Thank you.

1 JUDGE LEWIS: All right.

2 MR. FORMAN: I do have --

3 JUDGE LEWIS: I see.

4 MR. FORMAN: -- a question or two.

5 JUDGE LEWIS: I opened up the door, didn't I?
6 Go ahead.

7 MR. FORMAN: Not very far.

8

9 REDIRECT EXAMINATION

10 BY MR. FORMAN:

11 Q. Mr. Mattson, are you involved in the actual
12 review and approval of applications for encroachment
13 permits?

14 A. That's done through our land use division.
15 Primarily through an associate engineer below me.

16 Q. So would it be true to say that you have not
17 been involved in the review of the application
18 submitted by LACO on behalf of Bear River for an
19 encroachment permit that would allow modification of
20 the Bear River Drive/Singley Road intersection, the
21 current plan?

22 A. Not in a full review. I've been, you know,
23 briefed on it by my associate engineer, who has
24 basically said, you know, "This is what they're looking
25 at trying to do."

1 Q. And will you have a -- a voice in whether that
2 plan is approved or rejected?

3 A. Mr. Bronkall is a fully qualified registered
4 traffic engineer and civil engineer in the state of
5 California. He runs that division, and I primarily
6 rely on his knowledge to -- to run that division.

7 Q. But the ultimate plan will be approved by
8 you. Is that correct, or by -- by Mr. Bronkall?

9 A. The -- the general approval encroachment
10 permits come through with Mr. Bronkall's approval.

11 MR. FORMAN: Thank you. I have nothing
12 further.

13 JUDGE LEWIS: All right. Mr. Mattson, I thank
14 you, sir, for coming today. You are excused, sir.

15 THE WITNESS: Thank you.

16 MR. VINDING: Thank you, Mr. Mattson.

17 MR. FORMAN: Thank you.

18 JUDGE LEWIS: Mr. Bergenske? You're back on
19 the hot stand. It's not a seat.

20 Go ahead, Mr. Forman.

21
22 FURTHER DIRECT EXAMINATION

23 BY MR. FORMAN:

24 Q. Mr. Bergenske, when we left off, I believe we
25 were inquiring about traffic reports you have reviewed

1 from a -- a previous environmental document.

2 Do you recall that?

3 A. Yes.

4 Q. Do I recall that correctly? I think so.

5 And you were asked by His Honor whether you
6 had copies of the document with you.

7 A. Yes.

8 Q. And you do?

9 A. Yes.

10 Q. Do you happen to have more than one copy?

11 A. I don't.

12 MR. FORMAN: Okay. We'll have to get copies
13 made for everybody, but for now, with Your Honor's
14 leave, I'd like to have Mr. Bergenske identify the
15 document, mark it, and we'll show it to you and
16 proceed.

17 So you do have that with you now?

18 THE WITNESS: Yes.

19 JUDGE LEWIS: Off the record.

20 (Discussion was held off the record.)

21 JUDGE LEWIS: All right. We had a little
22 short discussion off the record, and I am going to mark
23 what I receive later today, when we get appropriate
24 copies of pages 4-13 through 4-17, labeled
25 "Transportation and Circulation" of the report

1 conducted by LACO.

2 Am I right?

3 THE WITNESS: LACO.

4 JUDGE LEWIS: So any questions now,
5 Mr. Bergenske, will be related to those pages, 4-13
6 through 4-17.

7 (Discussion between the witness and
8 Mr. Forman.)

9 THE WITNESS: Excuse me, Your Honor.
10 Clarification. This study was performed by AES.

11 JUDGE LEWIS: Okay. Who is AES?

12 THE WITNESS: This was an environmental
13 planning consultant that was hired by the Bear River to
14 perform this environmental assessment.

15 JUDGE LEWIS: Okay. But you're basing your --
16 your work -- they were subcontracted by you or -- am I
17 right?

18 THE WITNESS: Subcontracted by the tribe. But
19 it was the basis for LACO's engineers to perform the
20 work.

21 JUDGE LEWIS: Okay. So it's AES who prepared
22 that report, "Transportation and Circulation," that
23 portion which we are going to hear about, pages 4-13
24 through 4-17?

25 MR. FORMAN: Yes.

1 THE WITNESS: That is correct.

2 JUDGE LEWIS: Okay, good.

3 MR. VINDING: Your Honor, I'd just like to
4 lodge an objection for the record that the witness
5 lacks firsthand knowledge, and we haven't -- well, I'll
6 raise another objection shortly regarding the accuracy
7 of the numbers given.

8 Having lacked firsthand knowledge, he can't
9 account for whether the numbers were transposed
10 correctly.

11 JUDGE LEWIS: Your objection is noted,
12 Mr. Vinding.

13 MR. VINDING: Thank you.

14 JUDGE LEWIS: Go ahead, Mr. Forman.

15 (Defendant's Exhibit C was marked for
16 identification.)

17 BY MR. FORMAN:

18 Q. Mr. Bergenske, can you tell Judge Lewis the
19 title of the entire document of which Exhibit C is a
20 part?

21 A. This is the environmental assessment,
22 Rohnerville Rancheria/Fearrien property.

23 Q. Would you spell Fearrien for the reporter,
24 please?

25 A. F-E-A-R-R-I-E-N.

1 Q. Are you personally familiar with the property
2 that is the subject of that study?

3 A. Yes.

4 Q. Would you please describe for His Honor where
5 that property is located.

6 A. That property is located across Singley Hill
7 Road. It's a 113-acre parcel.

8 Q. Are you aware of the -- the current legal
9 owner of that property?

10 A. The current -- on title, I believe the current
11 legal owner is the United States of America held in
12 trust for the Bear River Band of the Rohnerville
13 Rancheria.

14 Q. Thank. Are you familiar with the traffic and
15 circulation section of the report, which -- which
16 section is -- has been marked for identification as --
17 as Exhibit C?

18 A. Yes.

19 Q. Would you please summarize, as best you can,
20 the -- the statement -- the -- the traffic information
21 reflected in that?

22 Or we can simply let the exhibit speak for
23 itself as -- Judge Lewis, as you prefer.

24 MR. VINDING: I would lodge an objection. The
25 document speaks for itself.

1 MR. FORMAN: Okay.

2 MR. VINDING: Witness lacks qualifications.
3 He's an MBA, not an engineer.

4 JUDGE LEWIS: Yes, but he's also an engineer.
5 Aren't you?

6 THE WITNESS: I am not an engineer. Not a
7 licensed engineer.

8 MR. VINDING: No. He's an MBA, Your Honor.

9 JUDGE LEWIS: Pardon?

10 MR. VINDING: MBA.

11 JUDGE LEWIS: Well, that doesn't hurt him.

12 MR. VINDING: No, no, but he's not a P.E.

13 JUDGE LEWIS: No, I understand. That's fine.
14 Mr. Forman's objection to his own question
15 stands.

16 MR. FORMAN: Thank you.

17 Q. More specifically, what -- what has been your
18 role in the work that LACO has done for Bear River in
19 connection with efforts to modify the intersection of
20 Singley Road and Bear River Drive?

21 A. My role has been the project manager of the
22 project and has -- in that role, I've overseen our
23 professional engineers, geologists, surveyors, other
24 technical staff. Coordination of their efforts to
25 fulfill all the obligations of our contracts with the

1 tribe.

2 Q. Are you familiar with condition No. 8 of Bear
3 River's alcoholic beverage license?

4 A. Yes.

5 Q. What, if anything, did LACO Associates do
6 under your management during 2008 in connection with
7 Bear River's attempts to comply with condition No. 8?

8 A. In 2008, LACO's engineers performed two
9 primary efforts, the first being the design of speed
10 tables or speed humps that were placed in Singley Hill
11 Road north of the intersection in -- in question.

12 And LACO's engineers also worked on a road
13 closure option that closed the road at the intersection
14 in question and only allowed either a right turn into
15 the casino or a left-hand turn into the Tish-Non
16 Village property.

17 The other end of the closure was a -- the
18 southbound section of Singley Hill Road, which was to
19 be a cul-de-sac that would basically turn the traffic
20 around and send it back north.

21 Q. What was the -- the result of those efforts,
22 if you know?

23 A. The speed tables were removed at the request
24 of the County of Humboldt, because it was in their
25 right-of-way and they didn't want them there, and the

1 closure was abandoned due to objections from the
2 California Highway Patrol and the California Department
3 of Forestry, stemming from concerns around emergency
4 egress concerns.

5 Q. Going back to Exhibit C for a moment, are you
6 aware whether this document was ever submitted to a --
7 any government agency other than the Bear River Band
8 itself?

9 A. I'm not aware.

10 Q. Okay. What, if anything, did -- did LACO do
11 under your management during 2009 in connection with
12 Bear River's attempts to comply with condition No. 8?
13 And -- and what were the results of those efforts?

14 A. 2009, LACO was working on the roads
15 development in Tish-Non Village. As part of that, we
16 were also looking at the entry into that development.

17 As part of those efforts, we researched and
18 presented options for a roundabout at the intersection
19 that would prevent any through traffic continuing
20 northbound on Singley Hill Road above and beyond the
21 casino.

22 Q. And what -- what happened as a result of those
23 efforts?

24 A. That option was abandoned due to objections
25 from the BIA for the portions of the roundabout that

1 were within their right-of-way, and also concerns from
2 the County of Humboldt with regard to the topography,
3 sloped topography that the roundabout was on.

4 Q. What, if anything, did LACO Associates do
5 under your management in 2010 in connection with Bear
6 River's attempts to comply with condition No. 8?

7 A. In 2010, LACO developed the current traffic
8 island channeling design that is Exhibit A today, and
9 that has been developed and the status is pending.

10 Q. Now, is that Exhibit A or Exhibit B?

11 A. Thanks for the clarification. That is Exhibit
12 B.

13 Q. Are you aware of -- of any further obstacles
14 that -- from the County that have to be overcome in
15 order to get the encroachment permit necessary to
16 implement the plan depicted on Exhibit B?

17 MR. VINDING: Speculation.

18 MR. FORMAN: I asked his awareness.

19 JUDGE LEWIS: He's asking if he's aware of
20 any.

21 THE WITNESS: No.

22 MR. FORMAN: Okay.

23 Q. Any other studies that have to be done in
24 conjunction with the issuance of an encroachment permit
25 for that -- for that project?

1 A. Not that I've been made aware.

2 Q. Okay. Do you have an estimate of -- of what
3 LACO's services have cost Bear River to date in
4 connection with developing the various designs to
5 modify the intersection of Singley Road and Bear River
6 Drive to comply with condition No. 8 of the -- of Bear
7 River's alcoholic beverage license?

8 A. Mr. Forman, could you --

9 JUDGE LEWIS: Mr. Forman, I don't -- I don't
10 really care. Don't really care.

11 MR. FORMAN: Is Your Honor precluding the
12 witness from giving an answer?

13 JUDGE LEWIS: Well, I'm just going to sustain
14 my own objection. How's that?

15 THE WITNESS: Mr. Forman, could you go back to
16 the previous question?

17 MR. FORMAN: Sure.

18 THE WITNESS: Regarding the study.

19 MR. FORMAN: Sure.

20 THE WITNESS: Could you restate that, please?

21 MR. FORMAN: Yes.

22 Q. Are you aware whether any additional studies
23 must be performed in order to obtain County approval of
24 an encroachment permit that would allow implementation
25 of LACO's current design for modifying the intersection

1 of Singley Road and Bear River Drive?

2 A. I -- yes, I am. I neglected earlier to
3 recognize that the tribe and LACO has been made aware
4 by the County that an initial study, CEQA document, has
5 been requested by the County prior to the approval of
6 an encroachment permit which would be necessary in
7 order to construct these improvements.

8 Q. And by CEQA, you mean --

9 A. California Environmental Quality Act.

10 JUDGE LEWIS: Okay. Why -- why don't you
11 speak to us who are non-engineers, and what does all
12 that mean?

13 You've got -- you've still got to get approval
14 from the County, but in order to do so, you've got to
15 get an environmental permit now?

16 THE WITNESS: Yeah. The -- this is actually a
17 function performed by LACO's planning group. It's an
18 environmental compliance.

19 The Environmental Quality Act requires special
20 studies that look into potential impacts associated
21 with the proposed improvements.

22 JUDGE LEWIS: Go ahead, Mr. Forman.

23 BY MR. FORMAN:

24 Q. Are you aware whether Bear River hosted any
25 meetings with the surrounding community concerning the

1 design that LACO developed for modifying the
2 intersection of Singley Road and Bear River Drive to
3 comply with condition No. 8 of its alcoholic beverage
4 license?

5 A. Yes.

6 Q. Did you attend any such meetings?

7 A. Yes.

8 Q. What role, if any, did you play in any meeting
9 or meetings that you attended?

10 A. Primarily facilitation role, presentation, and
11 fielding of questions from the audience.

12 Q. Did you receive any comments from the audience
13 on LACO's proposed design?

14 A. Yes. We received comments on the -- the
15 designs that were presented.

16 Q. Could you summarize the comments that you did
17 receive.

18 MR. VINDING: Objection, hearsay.

19 JUDGE LEWIS: Overruled. I'll allow it.

20 Go ahead.

21 THE WITNESS: To -- to simplify, most -- most
22 of the comments were -- came to us as a -- from a
23 perspective of strict -- strict compliance of condition
24 8, and there didn't seem to be interest -- interest in
25 discussing all the possible solutions outside of what

1 might be construed as just very, very strict compliance
2 with the -- or -- or interpretation of condition 8.

3 BY MR. FORMAN:

4 Q. Would implementation of the -- of the current
5 plan proposed by LACO require the disturbance of any
6 previously-undisturbed ground?

7 A. Yes.

8 Q. Do you know approximately how many square feet
9 of previously undisturbed ground would be affected?

10 A. LACO's engineers calculated that at about
11 4,000 square feet.

12 Q. Do you know the -- the total square footage of
13 unpaved land that would be affected by implementation
14 of LACO's current proposed design, if that's different
15 than undisturbed?

16 A. I -- I don't believe that's different.

17 Q. Okay. Of the total square footage that would
18 be affected by LACO's design, how much of that area is
19 located on Bear River's trust lands?

20 A. Approximately 1,600 square feet.

21 Q. Are you familiar, based on your professional
22 experience, with the scope of projects for which
23 Humboldt County ordinarily requires preparation of an
24 initial statement?

25 A. We had our planner on our team do some

1 research on this matter.

2 MR. VINDING: Objection, Your Honor. That's a
3 legal conclusion that he's attempting to make.

4 CEQA speaks for itself when the County is
5 required to -- anyone, any time there is a -- an act
6 that has to be approved by the County and it affects
7 the land, they have to go through the CEQA process,
8 whoever "they" may be.

9 MR. FORMAN: It is a misstatement of the law
10 to say that an initial study is required for every
11 application for an encroachment permit.

12 JUDGE LEWIS: Repeat the question, please,
13 Mr. Forman.

14 MR. FORMAN: All right.

15 Q. In your professional experience, are you aware
16 of whether Humboldt County commonly requires
17 preparation of an initial statement under CEQA for a
18 project that would affect 2400 square feet of
19 previously undisturbed ground?

20 MR. VINDING: Lacks foundation. The witness
21 lacks firsthand knowledge.

22 JUDGE LEWIS: Well, let's see if he does.

23 Are you aware of any, sir?

24 THE WITNESS: Our planner did research on this
25 and it was not typical, and we could not find an

1 example to compare to this.

2 JUDGE LEWIS: Okay.

3 BY MR. FORMAN:

4 Q. If an initial statement were to be prepared
5 for LACO's currently-proposed project, are you able to
6 say how much time would be needed to prepare the
7 initial statement?

8 A. About four to six weeks to prepare the
9 statement itself.

10 Q. Would you be able to give an amount of time
11 after the statement is prepared to run the statement
12 through the County's approval -- review and approval
13 process?

14 A. An accurate estimate is difficult because of
15 the controversy associated with the project in
16 question.

17 A rough estimate would be four to six months
18 to gain Board of Supervisors' approval.

19 Q. Are you familiar with the area at the southern
20 terminus of Singley -- Singley Road where it meets the
21 on- and off-ramps for Highway 101 and related surface
22 streets?

23 A. Yes.

24 Q. If you know, can you tell us the approximate
25 road mileage between the Singley Road/Bear River Drive

1 intersection and the first place at the end of the
2 southern portion of Singley Road where a passenger
3 vehicle may safely turn around and head back up north
4 on Singley Road toward Bear River Road?

5 MR. VINDING: Objection. Lacks foundation.

6 The witness isn't qualified to testify as to
7 what is safe pursuant to engineering standards. That
8 would be Mr. Mattson, who could easily answer that.

9 JUDGE LEWIS: I think you could go out there
10 and tell me what is safe, Mr. Vinding. I think I could
11 drive it and tell you what's safe or what isn't.

12 I'll take his -- his own personal opinion.
13 Not as an engineer, but I'm assuming you've been out
14 there numerous times, Mr. Bergenske. Am I right?

15 THE WITNESS: Many, many times.

16 JUDGE LEWIS: Okay. You can answer the
17 question, if you remember it.

18 THE WITNESS: Could you restate the question?

19 MR. FORMAN: Would the reporter read it back,
20 please.

21 (The following was read:

22 Q. If you know, can you tell us the
23 approximate road mileage between the
24 Singley Road/Bear River Drive
25 intersection and the first place at the

1 end of the southern portion of Singley
2 Road where a passenger vehicle may safely
3 turn around and head back up north on
4 Singley Road toward Bear River Road?)

5 THE WITNESS: There's a Caltrans stockpile
6 kind of yard area that's approximately a half mile away
7 from the intersection in question that could feasibly
8 be used to turn around.

9 BY MR. FORMAN:

10 Q. Based on your personal observations, would it
11 be safe for a -- a school bus to turn around at the
12 location to which you just referred?

13 A. Just my -- my personal opinion -- this
14 probably would go for most people -- that the area in
15 question is on a curve and line of sight issues would
16 be a concern for me in my personal vehicle, let alone
17 a -- a bus or any commercial vehicle. A bus full of
18 students, kids.

19 MR. FORMAN: Thank you. I have no further
20 questions.

21 JUDGE LEWIS: Mr. Vinding?

22 MR. VINDING: Thank you, Your Honor.

23 /////

24 /////

25 /////

1 CROSS-EXAMINATION

2 BY MR. VINDING:

3 Q. As to the document in front of you, did you do
4 anything to confirm the accuracy of the numbers in that
5 section we talked about early on?

6 A. Are you speaking of the AES documents?

7 Q. Yes, sir.

8 A. No.

9 Q. Okay. Did you have any part in drafting that
10 E.A.?

11 A. No.

12 Q. You spoke earlier about a housing project, and
13 I'll probably mispronounce it, and I apologize.
14 Fearrien? Is that what it's called?

15 A. The project I think that you're referring to
16 is Tish-Non Village.

17 Q. Tish-Non Village. Okay.

18 A. Previously known as the Fearrien property.

19 Q. You testified earlier about some meetings that
20 were held with local residents.

21 Weren't those meetings noticed to concern the
22 encroachment permit?

23 A. That was one of the items on the agenda.

24 Q. Did the notice provide that it would address
25 condition No. 8?

1 A. I don't recall.

2 Q. And the encroachment permit was for the new
3 housing development. Correct?

4 A. No. The encroachment permit was for the
5 proposed improvements.

6 Q. Do you have a copy of the notice with you
7 today?

8 A. The application for encroachment permit?

9 Q. The public hearing notice that -- in which you
10 responded to questions by people.

11 A. No, I don't.

12 Q. You were asked some questions about the amount
13 of previously undisturbed land that would be affected
14 by the proposed intersection.

15 Do you recall that?

16 A. Yes.

17 Q. And you said that was somewhere around, I
18 think, 4,000 square feet?

19 A. Correct.

20 Q. How much undisturbed land will be affected,
21 for example, with the casino expansion?

22 MR. FORMAN: Objection. States facts --
23 assumes facts not in evidence. There's nothing in the
24 record about a casino expansion.

25 JUDGE LEWIS: Sustained.

1 BY MR. VINDING:

2 Q. How about the housing development?

3 A. I -- I don't have those figures available.

4 Q. Based upon your experience in dealing with
5 this for many years, can you give us all a rough
6 estimate as to how much undisturbed land would be
7 affected?

8 A. A very rough estimate would probably be 25
9 acres.

10 Q. And can you put it in terms that we can
11 understand? So, for example, how many square feet
12 would that roughly be?

13 A. Roughly just short of a million square feet.

14 Q. So we're talking 4,000 square feet for an
15 intersection and a million square feet for development
16 of the housing units. Right?

17 A. Very approximately.

18 Q. Sure. Is there any reason that in years past,
19 you or your firm hasn't gone to the County for -- for
20 these approvals that you're now speaking of today?

21 For example, the study that you said that had
22 to be conducted.

23 A. Could you rephrase the question?

24 Q. Sure. It was my understanding you testified
25 that the County is requiring an environmental study for

1 the proposed interchange.

2 A. Correct.

3 Q. Is there any reason why in years past, your
4 firm hasn't begun those discussions with the County?

5 A. Oh, well, it -- it wouldn't -- you know,
6 typically, the application for the encroachment permit
7 would trigger such a request for -- for a study of this
8 nature.

9 We wouldn't -- you know, typically, our
10 planners would advise us that an -- a CEQA initial
11 statement wouldn't be required for such a project.

12 But it has been requested, so we'll -- as the
13 client sees fit, we'll -- we'll proceed.

14 Q. As to those meetings regarding the
15 encroachment permit with the neighbors, how was that
16 publicly announced? Do you know?

17 A. I can't specifically say. I can provide
18 secondhand knowledge in that the tribe handled that and
19 handled the dissemination of that. They could probably
20 speak more specifically about it.

21 Q. Okay.

22 MR. VINDING: If I can have just a moment, I'm
23 trying to eliminate a lot of what I was going to ask.

24 Q. Do you know how many different versions or
25 proposals have been floated since 2005 regarding the

1 interchange?

2 A. I would say it's approaching 10.

3 Q. And have any of those been formally submitted
4 to the County?

5 A. Yes.

6 Q. And how many have been submitted?

7 A. Four.

8 Q. Okay. And what was the County's position on
9 those?

10 A. Varied.

11 Q. Were any of them approved?

12 A. I think that the County did not have issue
13 with the closure and were actually supportive of the
14 closure.

15 They were also supportive of the current
16 proposal.

17 Q. Are you -- well, strike that.

18 You're aware that the tribe, without coercion,
19 entered into the agreement whereby condition No. 8 was
20 inserted into the license that we're all here talking
21 about today?

22 MR. FORMAN: Objection. States a fact not in
23 evidence.

24 JUDGE LEWIS: Sustained.

25 It's there, Mr. Vinding. I know it's there.

1 That's why we're here.

2 MR. VINDING: I have nothing further, Your
3 Honor.

4 THE WITNESS: Thank you.

5 JUDGE LEWIS: Mr. Forman, anything else?

6 MR. FORMAN: No, Your Honor. No redirect.

7 JUDGE LEWIS: I've got a couple of questions,
8 Mr. Bergenske. I hope I'm saying your name right, sir.

9 THE WITNESS: You are.

10 JUDGE LEWIS: First of all, the village.
11 What -- what's the first word, something Village?

12 THE WITNESS: Tish-Non Village.

13 JUDGE LEWIS: Spell it for me.

14 THE WITNESS: T-I-S-H-dash-N-O-N.

15 JUDGE LEWIS: N-O-N. Okay.

16 Now, by Tish-Non Village, you're referring to
17 a housing development that is going to be pursued by
18 the tribe across the -- the street from the entrance to
19 the casino?

20 THE WITNESS: Currently under construction.

21 JUDGE LEWIS: Okay. How many units are we
22 talking about?

23 THE WITNESS: Sixty-four residential units.

24 JUDGE LEWIS: Okay. This, Exhibit B, this is
25 your proposal to deal with the intersection. Am I

1 right?

2 THE WITNESS: Yes, it is.

3 JUDGE LEWIS: Okay. This is the one that you
4 submitted to the County?

5 THE WITNESS: Yes, it is.

6 JUDGE LEWIS: All right. Now, when -- what --
7 this stuff about 1600 feet or 2400 feet of undisturbed
8 land, what are we talking about? I don't get it.

9 THE WITNESS: When you go to make the
10 improvements to the intersection in question, there has
11 to be some demolition of existing sidewalks, some
12 grading of existing lands, and the area of dirt that's
13 disturbed reflects that demolition and grading activity
14 required to construct the improvements that are
15 proposed that you're holding in your hand.

16 JUDGE LEWIS: Is there a reason I need to know
17 that?

18 I mean, these numbers are being thrown about.
19 I'm just trying to figure out why I need to know this
20 stuff.

21 THE WITNESS: It -- it might typically be
22 considered a relatively minor number to trigger an --
23 an initial study.

24 JUDGE LEWIS: Okay.

25 THE WITNESS: Okay?

1 JUDGE LEWIS: I -- I get what you're saying.
2 Now, if I'm looking at this right and my
3 memory serves me correctly, the issue that we were
4 dealing with, I guess if we look at it this way, the
5 compass up here --

6 THE WITNESS: Yes.

7 JUDGE LEWIS: -- that would be where the
8 casino is? Am I right?

9 THE WITNESS: Correct.

10 JUDGE LEWIS: Okay. And going north here is
11 going to the area where the homeowners are?

12 THE WITNESS: That is correct.

13 JUDGE LEWIS: And going south here is going
14 towards the 101?

15 THE WITNESS: Correct.

16 JUDGE LEWIS: All right. Last time I was
17 here, I don't recall an intersection being across the
18 street here.

19 Is that something relatively new?

20 THE WITNESS: Associated with the Tish-Non
21 development, the County approved the encroachment
22 permit for Brenard Road, which is the primarily
23 singular entrance into the development.

24 JUDGE LEWIS: All right. Now, your proposal
25 has an island -- I'm assuming this is an island that

1 I'm pointing to.

2 THE WITNESS: That is correct.

3 JUDGE LEWIS: -- on Singley Road just north of
4 the entrance into the casino. Am I right?

5 THE WITNESS: Correct.

6 JUDGE LEWIS: There are no barriers or
7 anything like that to prevent people from driving north
8 if they so choose?

9 THE WITNESS: Making a right-hand turn and
10 going north?

11 JUDGE LEWIS: Well --

12 THE WITNESS: Or --

13 JUDGE LEWIS: For someone going north.

14 THE WITNESS: Through traffic?

15 JUDGE LEWIS: They can just drive through?

16 THE WITNESS: Correct.

17 JUDGE LEWIS: For someone leaving here where
18 it says "No Right Turn," besides the fact that it says
19 "No Right Turn," is there anything to prevent them from
20 turning right?

21 THE WITNESS: The placement of the islands,
22 which have been placed by an engineer specifically to
23 prohibit, without running into the curbs, to execute a
24 right-hand turn.

25 JUDGE LEWIS: So you're saying it can't be

1 done?

2 THE WITNESS: It's a good question for Netra
3 to speak in detail about. I think a motorcycle could
4 do it, or maybe a very, very small -- maybe the new
5 Nissan Leafs or Chevy Volts may be able to pull it
6 off. Those really small electric cars.

7 JUDGE LEWIS: So the design is making it
8 nearly impossible to make that right-hand turn. Is
9 that what you're telling me?

10 THE WITNESS: It's going to make it -- without
11 going up over the curbs or backing up and doing a
12 multi-point turn, it's going to make it very difficult.

13 MR. FORMAN: Your Honor, Mr. Khatri will
14 testify in considerable detail as to the methodology by
15 which this design was derived and the calculations
16 involved in -- in concluding that this design would be
17 effective. So...

18 JUDGE LEWIS: Okay. All right. Then I'll get
19 to that then with him.

20 But let me ask you: As the project manager,
21 sir, if you jump through all the hoops -- okay? -- you
22 do everything that every governmental agency requires
23 you to do, you go through -- I'm -- I'm assuming you'll
24 have to go through some type of hearing process at the
25 County where the public is allowed to appear and make

1 objection to anything that -- that may be proposed here
2 before a vote is finally taken, and ultimately, it is
3 up to the Board of Supervisors to say yea or nay.

4 Am I right or am I wrong?

5 THE WITNESS: You are correct.

6 JUDGE LEWIS: How long on the low side, how
7 long on the high side, based upon your experience,
8 sir? That's all I want.

9 I -- I know you can't give me a definitive
10 number, but your best guess as to the least amount of
11 time that would take from today and -- and what has
12 been done and what needs to be done, and -- well, I
13 guess ultimately, it could be denied by the
14 supervisors, too.

15 But if it were to be approved, on the low side
16 versus the high side, how much time are we talking?

17 THE WITNESS: Four months on the low side.

18 JUDGE LEWIS: Okay.

19 THE WITNESS: Initially I had said six months,
20 but considering the conditions you're bringing forth in
21 your question, I'd say about eight months.

22 There's quite a bit of controversy that can be
23 brought up in the review period and public comments
24 period.

25 JUDGE LEWIS: And there is, you know, a public

1 hearing aspect to this thing, where the public can
2 appear and voice their concerns. Okay.

3 Let me ask you something. Is there something
4 being done -- I -- I don't get it.

5 Is there something being done for someone
6 leaving here -- okay, they can't make their right turn.
7 Let's say it's -- it's impossible unless they're
8 driving one of those tiny little Smart Cars or
9 something.

10 So -- but is there something being done to
11 prevent them from going straight across the street to
12 the Tish-Non Village and making a U-turn in there?

13 THE WITNESS: No.

14 JUDGE LEWIS: Nothing to prevent that?

15 THE WITNESS: No.

16 JUDGE LEWIS: So they -- what I'm saying, they
17 can go across here, across Singley Hill Road. Go right
18 at the entrance here, they can make a U-turn and from
19 there, they can turn left and go north on Singley Hill
20 Road. Am I right?

21 THE WITNESS: That would be feasible.

22 JUDGE LEWIS: It's not impossible?

23 THE WITNESS: It would be feasible.

24 JUDGE LEWIS: Nothing illegal about it either,
25 from what I can tell.

1 THE WITNESS: Well, you know, I -- I'll let
2 Netra speak to the legality of it.

3 There is a turning pocket there and I'm not
4 sure if there's a double yellow striped line. Netra
5 would know.

6 If there is a double yellow striped line, it
7 would be an illegal U-turn to me.

8 JUDGE LEWIS: Getting back to -- give me a
9 preview, sir, of what I can expect -- because I still
10 haven't seen it. I've marked it officially. Exhibit
11 C, pages 4-13 to 4-17.

12 You have a copy of it. Someone else is going
13 to testify to it. Give me a preview. Let me know what
14 I'm looking at as far as traffic count numbers.

15 What does the report say?

16 I'm not asking you for your opinion. I know
17 you didn't do it. Just what does the report say?

18 THE WITNESS: The -- the outcome of the report
19 reports the intersection in question prior to the
20 casino and after the casino as both a level of service
21 "B".

22 JUDGE LEWIS: "B"?

23 THE WITNESS: "B."

24 JUDGE LEWIS: That's opposed to "A", what
25 Mr. Mattson testified to?

1 THE WITNESS: That's free flowing.

2 JUDGE LEWIS: What about numbers? Do you have
3 numbers there?

4 THE WITNESS: The report does have numbers.

5 JUDGE LEWIS: What's the per-day numbers
6 pre-casino?

7 THE WITNESS: I think it would be best for
8 Netra to speak to that.

9 JUDGE LEWIS: What?

10 THE WITNESS: I want Netra to speak to that,
11 sir.

12 JUDGE LEWIS: Okay. All right. Thank you,
13 sir.

14 MR. FORMAN: Your Honor, if I may.

15 JUDGE LEWIS: Yes.

16

17 REDIRECT EXAMINATION

18 BY MR. FORMAN:

19 Q. Mr. Bergenske, did -- did LACO conduct any
20 traffic studies of its own?

21 A. We did perform some unofficial traffic studies
22 associated with the proposed design.

23 MR. VINDING: Objection. Beyond the scope.

24 JUDGE LEWIS: Yeah, I don't care about
25 unofficial stuff.

1 MR. FORMAN: Well, if you recall, Your Honor,
2 Mr. Mattson testified that LACO obtained an
3 encroachment permit from the County for the purpose of
4 performing traffic counts.

5 And I wanted to follow up with the witness as
6 to whether LACO in fact performed those account --
7 those counts and what they showed.

8 JUDGE LEWIS: Were those counts performed,
9 sir?

10 THE WITNESS: They were.

11 JUDGE LEWIS: All right. Tell me when and
12 where and -- we're talking north of Singley -- of the
13 casino?

14 THE WITNESS: Those counts were performed
15 partly by the tribe and with some support from LACO to
16 track turning movements associated with the design.

17 MR. FORMAN: Okay.

18 Q. And did LACO put counters in the road?

19 A. Yes.

20 JUDGE LEWIS: Were those counters north of
21 Singley Hill Road? Or the casino, I mean.

22 THE WITNESS: Yes.

23 BY MR. FORMAN:

24 Q. And did LACO put counters other than north of
25 Singley -- of -- of Bear River -- Bear River Drive?

1 A. No.

2 Q. Okay. And do you have the results? Are you
3 able to tell Judge Lewis the results of those counts?

4 A. I don't have the results with me.

5 Q. Okay.

6 A. Just to clarify, the other counting data at
7 the intersection was provided by security camera.

8 Q. Right.

9 A. Yeah.

10 Q. I'm talking about just LACO's counters.

11 A. Got it.

12 Q. Right.

13 MR. FORMAN: Thank you. I have nothing
14 further.

15 JUDGE LEWIS: All right. Thank you very much,
16 sir. You are excused, and we're going to take a
17 10-minute recess.

18 Off the record.

19 (Recess taken.)

20 JUDGE LEWIS: Back on the record. Mr. Forman.

21 MR. FORMAN: Our next witness is Netra Khatri,
22 and he'll correct me, because I've pronounced --
23 pronounced it wrong.

24

25 NETRA KHATRI,

1 having first been duly sworn, was
2 examined and testified as follows:

3

4 JUDGE LEWIS: All right. Please state and
5 spell your name, sir.

6 THE WITNESS: My name is Netra, N-E-T-R-A,
7 last name Khatri, K-H-A-T-R-I.

8 JUDGE LEWIS: Mr. Forman.

9

10 DIRECT EXAMINATION

11 BY MR. FORMAN:

12 Q. Mr. Khatri, would you please briefly summarize
13 your educational background and professional
14 qualifications.

15 A. I have a Bachelors of Civil Engineering degree
16 and I'm a registered licensed engineer in the state of
17 California.

18 I work at LACO Associates as a staff engineer
19 and I primarily do traffic impact studies, traffic and
20 circulation plans, and temporary traffic control plans
21 for the projects.

22 Q. In the course of your employment with LACO,
23 have you been involved in designing a project for
24 modifying the intersection of Bear River Drive and
25 Singley Road in Humboldt county?

1 A. Yes.

2 Q. What was your assignment in connection with
3 that intersection modification project?

4 A. The assignment was given to me by my project
5 manager, John Bergenske, to come up with a design to
6 satisfy condition 8.

7 Q. At any point, did -- during your -- let me
8 back up.

9 Did you commence to design a -- a plan to
10 modify the intersection of Singley Road and Bear River
11 Drive?

12 A. Yes.

13 Q. At any point during your work on that design,
14 did you consult with anyone on the staff of Humboldt
15 County?

16 A. Yes, I did.

17 Q. With whom on Humboldt County's staff did you
18 consult?

19 A. I consulted with Bob Bronkall, Public Works
20 director for the land use division.

21 Q. What was the nature of that consultation?

22 A. Well, once we were finalized with the -- the
23 conceptual layout for the intersection, we wanted to
24 run that by the County so we are mutually agreed on the
25 plans that we are proposing.

1 So I wanted to talk to him about the plan that
2 we are proposing.

3 Q. And did you in fact speak with him about the
4 plan you were proposing?

5 A. Yes.

6 Q. Did you do anything more than speak with him
7 about the plan that you were proposing?

8 A. Yes. Once we met, he was agreeing with the
9 whole concept and then he said or he said, "Are we
10 mutually agreed that we should -- before drafting this
11 or before submitting it as the final plan, we should
12 simulate this layout and see if it really works or
13 not?"

14 So to accomplish that, me, myself, and three
15 staff from the County, we met at Redwood Acre
16 Fairgrounds parking lot and we simulated the
17 intersection of Singley Hill Road and Bear River Drive
18 there using the cones, and we drove from Bear River --
19 from those -- from the simulated intersection and to
20 check if we will able to make those turns or not.

21 We did it like three times with three
22 different dimensions.

23 Q. I'm going to show you a document which has
24 been marked as Exhibit A and introduced into evidence,
25 and ask whether you can explain to Judge Lewis, first

1 of all -- well, let me hand you the document and then
2 I'll ask you some questions.

3 A. I have it here.

4 Q. Do you have a copy of Exhibit A there?

5 A. Yes.

6 Q. Do you know who prepared Exhibit A?

7 A. Yes. Our engineering department, with my
8 directions. We prepared this plan.

9 Q. Is it your understanding that Exhibit A --
10 well, what is your understanding as to what is depicted
11 on Exhibit A?

12 A. Well, Exhibit A shows the existing condition
13 at Singley Hill Road and Bear River intersection.

14 Q. Is it your understanding that the -- the
15 numbers depicted on Exhibit A and the distances
16 depicted on Exhibit A are correct?

17 A. Yes, sir. This is a to-scale drawing and the
18 survey was done by our survey department. So I would
19 say yes.

20 Q. Do you have in front of you a document that's
21 been marked for identification as Exhibit B, as in boy?

22 A. Yes.

23 Q. Okay. Can you tell Judge Lewis what Exhibit B
24 depicts?

25 A. Exhibit B depicts the improvements that we are

1 proposing for the intersection of Singley Hill Road and
2 Bear River Drive.

3 Q. Are you the person who designed the
4 improvements depicted on Exhibit B?

5 A. Yes.

6 Q. Could you please sort of walk Judge Lewis
7 through exactly what the improvements are that are
8 proposed and depicted on Exhibit B.

9 A. Yes. Well, --

10 Q. Start -- start with whichever end of Singley
11 Road pleases you.

12 A. I will start from the south side, or I would
13 say south side of Bear River Drive where we started the
14 construction of a sidewalk.

15 So right now, there's an existing sidewalk
16 there which goes to -- which leads to the Singley Hill
17 Road, which will be removed and replaced with a new
18 sidewalk, and there will be an island on Bear River
19 Drive which would be 11 feet away from that sidewalk,
20 and a similar island would be there on the Singley Hill
21 Road, which would be again 11 feet away from the
22 sidewalk.

23 Within the island, there will be accessible
24 walkways and in addition to those, there will be some
25 striping for the crosswalk and striping for no right

1 turn on Bear River Drive and no right turn on Singley
2 Hill Road, southbound movement.

3 In addition to that, there will be Caltrans
4 signage which -- which is called R-32, which -- which
5 shows that not to make a left turn -- will be posted on
6 Singley Hill Road on that island, and a similar signage
7 would be posted on Bear River Drive, which would say
8 not to make a -- a right turn.

9 Q. Okay. What is the next work of improvement
10 that would be constructed under your design?

11 A. I do not understand that question.

12 Q. Okay. You've -- you've described an island.
13 What is the approximate length and width of that
14 island, as depicted on your design?

15 A. The island on Bear River Drive is I believe 35
16 by five with a depression for walkway, and the island
17 on Singley Hill Road is 34 by 10, with a depression
18 again for a pedestrian walkway.

19 Q. That would be, in the case of the Bear River
20 Drive island, 34 feet long and five feet wide? Is that
21 correct?

22 A. I would say 35 --

23 Q. Thirty-five, I'm sorry. I misstated.
24 Thirty-five feet long by five feet wide?

25 A. That's correct.

1 Q. And the island on Singley Road would be how
2 long and how wide?

3 A. It would be 34.

4 Q. Feet?

5 A. Yes, long, and 10 feet wide.

6 Q. Ten feet wide.

7 What is depicted then to the south of the
8 center of the intersection, south of the island in the
9 middle of Singley Road?

10 A. Oh, that is striping to make a left turn
11 pocket for the traffic going towards Brenard Road.

12 Q. And Brenard Road, B-R-E-N-A-R-D, goes where?

13 A. That's an entrance to that Tish-Non Village.

14 Q. Can you explain how the -- the design, if
15 implemented, that -- that is shown on Exhibit B would
16 be expected to reduce or eliminate traffic turning
17 right from Bear River Drive onto Singley Road heading
18 north?

19 A. Well, as I said earlier, we met with County
20 staff at the parking lot of Redwood Acres Fairground
21 and there -- there, we drove -- we created similar
22 lanes in the parking lot using cones or using traffic
23 cones, and we tried to drive through the cones. Tried
24 to make the same turn from Bear River Drive to Singley
25 Road.

1 And we tried different dimensions and the --
2 the dimension depicted on the plans is the dimension in
3 such a way that a passenger car will not be able to
4 make a right-hand turn without driving over the curb,
5 and the curb is six inch deep.

6 Q. Were you in the hearing room earlier when
7 Mr. Mattson testified from the County?

8 A. Yes, I was.

9 Q. And did you hear his testimony?

10 A. Yes.

11 Q. Did you hear him testify about the current
12 level of service rating for Singley Road?

13 A. Yes.

14 Q. What did you understand him to have said with
15 respect to the current level of service rating for
16 Singley Road?

17 A. Well, he said the level of service on the
18 Singley Road was "A," and I believe he's correct.

19 Q. Were you in the hearing room when
20 Mr. Bergenske testified?

21 A. Yes.

22 Q. Did you hear Mr. Bergenske testify about a
23 level of service on Singley Road?

24 A. Yes. He -- I believe he meant the
25 intersection, not the road.

1 Q. I see. And is there a differential in terms
2 of -- of rating of level of service between the
3 intersection and the road?

4 A. Yes, it is.

5 Q. And what is that difference?

6 A. Well, when you talk about intersection and
7 there's a stop control, so it's impossible for a minor
8 street such as Brenard Road to have a level of service
9 "A," because they have to stop for the -- the through
10 movement on Singley Road.

11 So when he said level of service "B" at the
12 intersection, he was right. That level of service at
13 the intersection, not on the road of Singley Hill
14 Road.

15 But the intersection level of service is "B".

16 Q. And that would be true for Brenard Road and
17 Bear River Drive, but not Singley Road?

18 A. That is correct.

19 Q. So Singley Road would stay at level "A"?

20 A. That is correct.

21 Q. Thank you. In -- in developing your design,
22 did you consult with anyone other than your own staff
23 or Humboldt County staff?

24 A. Yes.

25 Q. With whom else did you consult?

1 A. Well, we had some meetings with the tribe and
2 some meetings with neighbors. Some meetings with I
3 think CHP.

4 Q. Would that be California Highway Patrol?

5 A. Yes.

6 Q. Did the design that you produced that's
7 depicted on Exhibit B incorporate any of the
8 suggestions that you received during the course of
9 consulting with persons other than your own staff or
10 the tribe?

11 A. Yes.

12 Q. Are you able to say what elements of the
13 design reflect other persons' suggestions?

14 A. Well, when I say yes on that, a position would
15 be -- not a position, but during the meeting, when we
16 walked out of the meeting, we had to make sure that we
17 met the condition 8. That was my take from our
18 meeting.

19 Q. And with regard to Singley Road, does your
20 design meet condition 8?

21 MR. VINDING: Objection. Legal conclusion.

22 JUDGE LEWIS: Well, I -- I'm going to allow it
23 as to his professional opinion.

24 THE WITNESS: Yes.

25 MR. FORMAN: I would move Exhibit B into

1 evidence at this time, Your Honor.

2 JUDGE LEWIS: Mr. Vinding?

3 MR. VINDING: No objection, Your Honor.

4 JUDGE LEWIS: "B" is received.

5 (Defendant's Exhibit B was admitted into
6 evidence.)

7 BY MR. FORMAN:

8 Q. If the intersection of Singley Road and Bear
9 River Drive were to be modified as proposed in Exhibit
10 B, would you expect such a modification to have an
11 effect on the ability of private passenger vehicles to
12 turn left -- I should say southbound vehicles to turn
13 left onto Bear River Road from Singley Road?

14 A. No.

15 Q. And why would that be?

16 A. Well, when you say the movement of southbound
17 turning left to the Bear River Drive -- is that right?

18 Q. That's correct.

19 A. Because there's a gas station, and we don't
20 want to stop the movement. So that's why we have not
21 put the island there or any sort of curb for that -- at
22 the intersection.

23 So if the person or passenger wants to go --
24 to make this left-hand, he will be able to make it, but
25 he will be violating the law of the signage, which

1 tells him not to make that left-hand turn.

2 Q. Okay. If the Singley Road/Bear River Drive
3 intersection were to be modified as proposed in Exhibit
4 B, what effect, if any, would you expect that
5 modification to have on the volume of passenger vehicle
6 traffic entering Singley Road in a northbound direction
7 from Bear River Drive?

8 In other words, turning right.

9 A. I would say likely there will be no traffic
10 going on northbound after this design is implemented.

11 Q. And would this be true for commercial trucks
12 as well as passenger vehicles, being unable to turn
13 right onto Singley Road from Bear River Drive?

14 MR. VINDING: Objection, leading.

15 JUDGE LEWIS: Overruled. I'll allow it.

16 Go ahead.

17 THE WITNESS: Yes.

18 BY MR. FORMAN:

19 Q. In your professional opinion, if the
20 intersection of Singley Road and Bear River Drive were
21 to be modified in accordance with the design depicted
22 on Exhibit B, what would be the longest double-axle
23 vehicle that could turn left or northbound onto Singley
24 Road from Brenard Road without hitting the curb on the
25 center island?

1 A. Can you repeat the question? I missed that.

2 Q. Yes. In your professional opinion, if the
3 intersection of Singley Road and Bear River Drive were
4 to be modified in accordance with the design depicted
5 on Exhibit B, what would be the longest double-axle
6 vehicle that could turn left or northbound onto Singley
7 Road from Brenard Road without hitting the curb on the
8 center island in the middle of Singley Road?

9 A. From Brenard to southbound Singley Road?

10 Q. No, to northbound Singley Road.

11 A. To northbound Singley Road. At this point, I
12 cannot give you the dimension of the -- the axle.

13 Q. Can you -- can you talk in terms of wheel
14 base?

15 A. Yes. We ran a template which is given in
16 California Highway Design manual for the bus, and we
17 ran that template on top of this design and that bus
18 template will not be able to make that turn.

19 Q. I'm going to show you a -- a document that
20 will be marked for identification as Exhibit D, as in
21 dog.

22 I've given a copy to counsel.

23 A. Thank you.

24 (Defendant's Exhibit D was marked for
25 identification.)

1 BY MR. FORMAN:

2 Q. And I would ask you to explain what -- first
3 of all, who prepared Exhibit D as in dog?

4 A. This document was prepared by our drafting
5 department on my direction.

6 Q. And what does Exhibit D exhibit?

7 A. Well, Exhibit D shows that you can see the red
8 lines. That's the turn-around for that school -- not
9 the school bus, but a bus which is given in the
10 California Highway Design manual template.

11 That shows the track created by that bus on
12 the road. As clearly you can see, those tracks are all
13 over the sidewalk and the curb when it tries to make
14 that turn.

15 JUDGE LEWIS: What kind of bus are we talking
16 about, sir? School bus?

17 THE WITNESS: It's a -- they call it the
18 longest bus on the California Highway Design
19 manual. So the longest school bus would be that bus.

20 JUDGE LEWIS: Thank you.

21 BY MR. FORMAN:

22 Q. And did you have a role in -- in doing the
23 calculations or -- or deciding where these tracks in
24 red should go?

25 A. Yes. In the California Highway Design manual,

1 they give you a direction, how to lay those templates
2 on the design, and according to that, this was done.

3 Q. So this was done either by you or was it done
4 by you or under your direction?

5 A. Under my direction.

6 Q. But you reviewed it, did you not?

7 A. Yes, I did.

8 Q. And as far as you're concerned, it's accurate,
9 is it not?

10 A. I would say yes.

11 Q. All right.

12 MR. FORMAN: I would move Exhibit D into
13 evidence at this time, Your Honor.

14 JUDGE LEWIS: Mr. Vinding?

15 MR. VINDING: Lacks foundation.

16 JUDGE LEWIS: All right. Here's my thing.
17 I -- I'm going to -- I'm going to admit Exhibit D.

18 (Defendant's Exhibit D was admitted into
19 evidence.)

20 JUDGE LEWIS: Mr. Forman, I don't understand
21 why -- why I'm hearing about buses coming from Brenard
22 Road to northbound Singley Road.

23 I thought our concern was vehicular traffic
24 from Singley Road going southbound and turning left
25 onto Bear River Drive and people exiting Bear River

1 Drive and not being able to turn right.

2 I don't -- I didn't hear anybody say, "Okay,
3 this is going to be all buses." These are going to be
4 cars.

5 MR. FORMAN: The -- the purpose, Your Honor,
6 is that, as I said in my opening statement, one of the
7 contentions we are making is that implementing even
8 this solution to condition No. 8 as currently written
9 will impose an immense hardship on the Bear River
10 tribal community, including the children who will
11 reside in the 64 homes in Tish-Non housing -- Village
12 that will be served by a school bus that comes through
13 and picks these kids up, as it does onto the other --
14 the reservation on the other side of the road.

15 And that implementing this design will disrupt
16 the movement of the school bus. It will also prevent
17 the emergency evacuation of numbers of people from the
18 Tish-Non Village in the event that the southern portion
19 of Singley Road is blocked, whether it be a natural
20 disaster or an accident or a fire, and that doing even
21 this, which is -- which is not sufficient, according to
22 the public meeting comments, to satisfy our accusers,
23 even this will impose an enormous hardship on not only
24 the tribe, but visitors to the reservation, patrons of
25 commercial establishments on the reservation, first

1 responders.

2 JUDGE LEWIS: There is no doubt in my mind
3 that -- let me try to put it politely.

4 The tribe has been through hell with this
5 condition No. 8. There's no doubt in my mind, okay?
6 They have done a whole lot to try to remedy the
7 situation.

8 I'm sorry condition No. 8 is there to begin
9 with. It probably should have went to hearing, been
10 fully heard and a decision come down, and I think it
11 would be a whole lot easier to deal with right now.

12 The problem is, both sides agreed to abide by
13 condition No. 8, and I have to deal with that here and
14 now. I know the tribe has been through hell.

15 I don't care about the bus, you know. If
16 there's an emergency, people drive over curbs and
17 everything else in emergencies, and they're going to
18 continue to do that.

19 You know, the whole traffic thing here has to
20 do with the number of cars that are driving through the
21 area north on Singley Road, where the people who are
22 members of the association reside. They don't want the
23 added traffic going back and forth.

24 That's what it's all about. And trying to
25 come -- and I guess condition No. 8 was everyone's way

1 of trying to figure out how to deal with keeping people
2 from using that road.

3 You know, I -- I don't know if this is the
4 answer here. I mean, I -- I've got some questions for
5 him, too. But I don't care about buses so much, sir.
6 I don't think buses are an issue here.

7 The -- the issue has to do with whether or not
8 there is compliance with condition No. 8, and I think
9 it's specifically referring to the passenger car
10 traffic for people who are frequenting the casino and
11 happen to be driving north on Singley Hill Road. North
12 of Singley Hill Road coming in either direction.

13 You know, I -- I'll admit Exhibit D as far as
14 the -- the -- the traffic patterns of the buses, but,
15 you know, it -- it doesn't mean a whole lot to me. It
16 really doesn't. I'm more concerned about the design
17 itself.

18 If there was an issue with buses going to and
19 from the casino, I guess that would be -- it would
20 matter, but I don't think that's an issue.

21 MR. FORMAN: Well, with respect, Your Honor, I
22 think it -- it is, both in the terms of the -- the
23 breadth of the director's charge to you on remand in
24 terms of the scope of the issues, and the relief you
25 can grant or deny or conditions you can impose or not,

1 and -- and it also affects the scope of what -- what
2 the department's authority is with respect to
3 conditioning or disciplining a licensee for an alleged
4 violation of a license that or condition of a license
5 that the licensee at the time the condition was
6 accepted never contemplated would result in these kinds
7 of impacts.

8 Now, I don't know whether the -- the
9 protestants who agreed to condition No. 8 contemplated
10 that or intended that. But as Your Honor heard at the
11 last hearing from Chairman Bowman, the tribe had no
12 idea when it agreed to condition No. 8 that it would
13 prove as impossible or impracticable to -- to fulfill
14 as it has turned out.

15 And I think that it is within Your Honor's
16 discretion to take into account, to take the hardships
17 into account in looking at whether condition No. 8
18 should be modified, whether this design should be
19 treated as substantial compliance for purposes of the
20 department, or whether the futility of even full
21 compliance should render condition No. 8 a nullity.

22 You know, we --

23 JUDGE LEWIS: I understand the dilemma,
24 Mr. Forman.

25 MR. FORMAN: Yeah.

1 JUDGE LEWIS: Believe me, I do. I understood
2 it last time I was here.

3 MR. FORMAN: I know.

4 JUDGE LEWIS: I didn't like it then, I don't
5 like it any more today, but I didn't come up with
6 condition No. 8.

7 MR. FORMAN: No. I --

8 JUDGE LEWIS: And the parties agreed to
9 it. I'm just trying to deal with it at this point in
10 time quite a ways down the road.

11 I thought I dealt with it appropriately last
12 time, but the Appeals Board told me that I need to look
13 into it a little bit further, and that's what I'm
14 doing.

15 So I want to see what, if any, new evidence
16 that you have regarding the compliance with condition
17 No. 8 will affect my decision that I send up to the
18 director.

19 MR. FORMAN: Well, we're --

20 JUDGE LEWIS: And again, buses don't impress
21 me a whole lot. So --

22 MR. VINDING: You know, if I could just put
23 for the record, Your Honor --

24 JUDGE LEWIS: Go ahead.

25 MR. VINDING: -- the buses issue is irrelevant

1 given that at the time of construction of these houses,
2 condition No. 8 had been in place for years and years,
3 as was the minimart.

4 JUDGE LEWIS: Well, the minimart has nothing
5 to do with this, and I'm in amazement from last time as
6 to the fact that the homeowners association and all the
7 homeowners are protesting the license at the casino.

8 However, when the -- the separate license at
9 the minimart went through, there was no protest
10 whatsoever.

11 That -- that -- I -- I don't know what
12 happened there. But it -- it's not logical to me. I
13 don't know why.

14 But it is what it is. I've got to deal with
15 it.

16 Anyway, go -- go ahead, Mr. Forman. Move on.

17 MR. FORMAN: Thank you. I would just add
18 briefly, that is, that as Your Honor has recognized,
19 the tribe has done everything within its power to
20 comply, and the tribe needs to know going forward
21 whether if it does something to modify the -- the --
22 the intersection, whether that will be regarded as
23 compliance or, you know, will the tribe disrupt the
24 road, the lives of people around there, and at the end
25 of the day, be told, you know, "Not good enough." Lucy

1 pulls away the football.

2 And so we need to know that before spending
3 the money, spending the time and resources doing
4 something that has been proposed that the County
5 says -- may -- we hope may say is fine, but as Your
6 Honor --

7 JUDGE LEWIS: One -- one thing I haven't
8 heard, sir, and -- and I'm going to be interested in
9 finding out.

10 See, last time that I was here, there was an
11 entity that was, as far as I was concerned, creating
12 the problems for everyone, and that was the Bureau of
13 Indian Affairs, because they were holding the trump
14 card and they were saying "No, you can't do this. No,
15 you can't do that."

16 And I haven't heard, you know, what's the
17 deal? You know, do they have some say in this thing or
18 is it just the County of Humboldt that -- that's going
19 to approve this thing?

20 I don't -- I don't know. That's the new
21 evidence I want to hear. That's what I want to hear,
22 not buses.

23 MR. FORMAN: We have a witness that will --
24 that will document that the Bureau of Indian Affairs is
25 no longer involved.

1 JUDGE LEWIS: Thank god.

2 BY MR. FORMAN:

3 Q. Mr. Khatri, in your opinion, would
4 modification of the Singley Hill Road/Bear River Drive
5 intersection have any impact on the ability of
6 emergency vehicles to turn right onto Singley Road in a
7 northbound direction from Bear River Drive?

8 A. Yes.

9 Q. And what would that impact be?

10 A. They would have to drive over the island.

11 Q. In your professional opinion, what effect, if
12 any, would modification of the intersection of Singley
13 Road and Bear River Drive in accordance with the design
14 depicted on Exhibit B have on the amount of time needed
15 to evacuate people and vehicles from the tribe's lands
16 along Bear River Drive in the event of a fire or other
17 emergency?

18 A. Moving in a north direction?

19 Q. Yeah. Well, in any direction.

20 A. Moving in a north direction, it will increase
21 the time.

22 MR. FORMAN: I believe that's all I have at
23 this time, Your Honor. Thank you.

24 JUDGE LEWIS: All right. Mr. Vinding, go
25 ahead.

1 MR. VINDING: Thank you, sir.

2

3 CROSS-EXAMINATION

4 BY MR. VINDING:

5 Q. How long have you been with LACO?

6 A. Three years.

7 Q. And have you had any interaction with the
8 Bureau of Indian Affairs during the three years with
9 LACO?

10 A. Yes.

11 Q. And what is your understanding -- well, strike
12 that.

13 What is your understanding at this moment in
14 time as to any impediment from the BIA in processing
15 this particular design or any of the other designs that
16 have been offered by LACO throughout the years?

17 A. Well, when I said I was involved with BIA, it
18 was not on this project. It was on a different
19 project.

20 Q. Okay. Do you have any involvement with BIA on
21 this project?

22 A. No.

23 Q. Okay.

24 MR. VINDING: I have no further questions.

25 JUDGE LEWIS: It's your design, sir, so I'm

1 going to ask you about it.

2 People driving southbound on Singley Hill
3 Road, there's a sign that says "No Left Turn" to go
4 onto Bear River Drive.

5 THE WITNESS: Yes.

6 JUDGE LEWIS: Okay. If they make the
7 left-hand turn and there's a cop nearby, they'll get a
8 ticket. Okay?

9 THE WITNESS: Correct.

10 JUDGE LEWIS: All right. If they make a
11 right-hand -- right-hand turn onto Brenard, that's the
12 entrance to the -- the proposed housing. Is it
13 proposed or they've begun?

14 THE WITNESS: I believe they have begun.

15 JUDGE LEWIS: Okay. Well, that's the entrance
16 there.

17 If they make a right turn and immediately make
18 a U-turn, what's to prevent them from crossing Singley
19 Road and going into Bear River -- Bear River Drive, the
20 entrance there?

21 THE WITNESS: Well, it will be illegal, first
22 of all. They would have to drive over the double
23 yellow line.

24 JUDGE LEWIS: What -- what double yellow line,
25 sir?

1 THE WITNESS: Well, it would be on the Brenard
2 Road, right at the stop sign. There should be a
3 50-feet long double yellow line.

4 JUDGE LEWIS: Okay. Show me where.

5 THE WITNESS: Right where the sign "Stop" is
6 on the Brenard Road.

7 JUDGE LEWIS: Here?

8 THE WITNESS: Yes. On the upper side there.
9 Here, above the stop sign. There should be a double
10 yellow line here. Right above that stop.

11 MR. FORMAN: Perhaps it would help if the
12 witness were to approach.

13 JUDGE LEWIS: Yes, please. I still don't get
14 it. Come on. Would you let him --

15 MR. FORMAN: He's an engineer. He can figure
16 it out. I should have had him help me set up the
17 easel.

18 JUDGE LEWIS: We've got the big one here,
19 because Mr. Vinding is going to want -- come on, guys,
20 you can come up here.

21 THE WITNESS: There should be a double yellow
22 line next to the stop sign.

23 MR. FORMAN: Can you speak up, please, so the
24 reporter can hear you.

25 THE WITNESS: Yes. There should be a double

1 yellow line here at this section.

2 JUDGE LEWIS: I get it, double yellow line
3 there.

4 THE WITNESS: When the guy comes in here, he
5 has to make that turn, he has to cross that double
6 yellow line.

7 JUDGE LEWIS: Okay. But if he goes into the
8 housing development a little bit further, he can pull
9 into someone's driveway and negotiate a legal turn.
10 Right?

11 THE WITNESS: That would be a legal turn, yes.

12 JUDGE LEWIS: Okay. But getting back to my
13 point, if they do negotiate the U-turn, either legally
14 or illegally, what is to prevent them from crossing
15 Singley Road onto Bear River Drive?

16 THE WITNESS: At this point, there's none.

17 JUDGE LEWIS: Okay. And, you know, I -- I am
18 no -- well, let me ask you further.

19 If you -- at the top of the diagram -- it
20 would be going south on Singley Hill Road -- you have
21 marked out a -- some kind of an island.

22 No, no, no. That thing.

23 THE WITNESS: Yes. That's striping.

24 JUDGE LEWIS: That's striping only?

25 THE WITNESS: Yes, that is striping.

1 JUDGE LEWIS: That's not a raised curb at
2 all?

3 THE WITNESS: Not -- not at this point.

4 JUDGE LEWIS: Okay. Now, if you continue
5 beyond the left-hand turn pocket, you see where the --
6 the lines come to a point on top?

7 THE WITNESS: Here?

8 JUDGE LEWIS: Yes. Now, those -- that line
9 there, those points, is that just striping also?

10 THE WITNESS: That is striping also.

11 JUDGE LEWIS: Okay.

12 THE WITNESS: Same with this one.

13 JUDGE LEWIS: Okay, striping only.

14 And on the big island that's on Singley Road
15 there, you see those two lines that -- that go across?
16 Yes. What is that?

17 THE WITNESS: Crosswalk.

18 JUDGE LEWIS: Marked crosswalk?

19 THE WITNESS: Marked crosswalk.

20 JUDGE LEWIS: Okay. And the same is true on
21 Bear River Drive there?

22 THE WITNESS: That is true.

23 JUDGE LEWIS: And you have sidewalks -- is the
24 sidewalk the shaded area or the other area?

25 THE WITNESS: The shaded area. In order to

1 put a sidewalk, they have to cut the pavement, so
2 that's the line shown here.

3 JUDGE LEWIS: How -- how wide is that
4 sidewalk?

5 THE WITNESS: Five feet. That's the sidewalk.

6 JUDGE LEWIS: Okay. And as I asked your boss
7 earlier, if someone is leaving Bear River Road and
8 other than the sign that says "No Right Turn" -- but
9 that sign is actually on tribal land. Is it not?

10 THE WITNESS: That stop sign here?

11 JUDGE LEWIS: No, no, no. The sign that says
12 "No Right Turn."

13 THE WITNESS: That's on tribal lands, yes.

14 JUDGE LEWIS: Okay. How is that enforceable
15 by the Highway Patrol?

16 THE WITNESS: Well, here, there's a stop sign
17 here. Right below the stop sign, there's a sign that
18 says "No Right Turn" on a post.

19 JUDGE LEWIS: Okay. Is that still tribal
20 land? Is it enforceable by the Highway Patrol, do you
21 know?

22 THE WITNESS: No. That -- that stop sign
23 would be on the County right-of-way.

24 JUDGE LEWIS: Okay. Getting back to my -- my
25 question, sir. Do you know if that's enforceable by

1 the Highway Patrol?

2 THE WITNESS: Yes, it is.

3 JUDGE LEWIS: Or the Sheriffs or whoever.

4 THE WITNESS: Yes, it is, but that's on the
5 County right-of-way. It will be.

6 JUDGE LEWIS: Okay. All right. Now, getting
7 back to making that turn, if someone were to choose to
8 do that, you're saying you put up cones on the County
9 fairgrounds and you -- you -- okay, what kind of
10 vehicles can make that turn and what can't?

11 THE WITNESS: We tried with a Sonata, Hyundai
12 Sonata, passenger vehicle. Cannot make that.
13 Mustang --

14 JUDGE LEWIS: The Sonata could not make it?

15 THE WITNESS: Could not make that turn.

16 JUDGE LEWIS: Okay.

17 THE WITNESS: And the Mustang could not make
18 that turn.

19 JUDGE LEWIS: Okay. Now, -- well, they could
20 make this turn. All they've got to do is drive over
21 the curb.

22 THE WITNESS: Yes.

23 JUDGE LEWIS: Six inches?

24 THE WITNESS: Six inches.

25 JUDGE LEWIS: Is that a sufficient deterrent

1 for a driver?

2 THE WITNESS: Well, it will be not comfortable
3 to drive over a six-inch curb.

4 JUDGE LEWIS: Yeah. I see people do it all
5 the time. You know, they're not supposed to make a
6 left-hand turn when it says "No Left Turn," but they
7 still do it, you know. I see that too.

8 All right. You -- you can go back to where
9 you were, sir.

10 THE WITNESS: Thank you.

11 JUDGE LEWIS: Mr. Khatri, you're familiar with
12 the -- the history of this -- this intersection and
13 what has gone on since its inception in 2005, I guess?

14 THE WITNESS: Since 2008, yes.

15 JUDGE LEWIS: Okay. But you're aware of what
16 happened before then?

17 THE WITNESS: Yes. I have got all input from
18 the project manager.

19 JUDGE LEWIS: You've read condition No. 8,
20 sir?

21 THE WITNESS: Yes.

22 JUDGE LEWIS: Okay. Now, let me ask you this,
23 okay? I just want your opinion. I don't want anything
24 else. You're an engineer; I'm not.

25 Is it possible -- is it possible for the tribe

1 to legally comply with condition No. 8?

2 THE WITNESS: Yes.

3 JUDGE LEWIS: Okay. How? Tell me how.

4 THE WITNESS: By this design.

5 JUDGE LEWIS: This design?

6 THE WITNESS: Yes.

7 JUDGE LEWIS: Okay. And you think that this
8 is the only way to comply with condition No. 8?

9 THE WITNESS: Not the only, but this is one of
10 them.

11 JUDGE LEWIS: Okay. I don't think these
12 people know we can hear everything that's going on next
13 door.

14 MR. FORMAN: Or they don't care.

15 JUDGE LEWIS: Did you hear the question
16 earlier, sir, about someone from the north who
17 approaches the intersection and say they're -- they're
18 good citizens and they comply with the law and they
19 don't make a left turn. They keep going straight past
20 Bear River Drive on Singley Road, and then they decide
21 to turn around somewhere else.

22 Did you hear that question earlier?

23 THE WITNESS: Yes. I believe that was
24 answered by John Bergenske.

25 JUDGE LEWIS: Yeah. And is it your

1 understanding that that -- that turnout or whatever he
2 was talking about is another half mile down the road?

3 THE WITNESS: From the intersection? Yes.

4 JUDGE LEWIS: Okay. And what exactly is that,
5 do you know?

6 THE WITNESS: I believe it's a -- it was a
7 lay-down area prepared by Caltrans during their
8 construction. Sort -- it's like a widened area there.

9 JUDGE LEWIS: Okay.

10 THE WITNESS: It's on Caltrans' right-of-way, I
11 believe.

12 JUDGE LEWIS: Okay. Well, Caltrans --
13 Caltrans can block it out if they want to. Is that
14 what you're saying?

15 THE WITNESS: Well, I just wanted to give
16 information that it's Caltrans' right-of-way.

17 JUDGE LEWIS: They said that's a half mile
18 down. How much further is the freeway?

19 THE WITNESS: It's actually beyond the
20 freeway. The freeway goes over that -- over that road,
21 Singley Road.

22 JUDGE LEWIS: So that turn-around --

23 THE WITNESS: Yes.

24 JUDGE LEWIS: -- you would have to go down
25 past the freeway?

1 THE WITNESS: Yeah. It's under the bridge.

2 JUDGE LEWIS: There's no way a car can make a
3 U-turn on Singley Road? There's nowhere between --
4 between -- between the intersection and the freeway?

5 Can -- can a car going south on Singley
6 Road -- is there any spot during that half mile that
7 they can make a U-turn?

8 THE WITNESS: Legally, no. You have to go to
9 somebody's private property or at the intersection
10 of -- on Duran (phonetic) and Singley Road where
11 there's a stop sign, you have to cross the double
12 yellow again.

13 So I would say legally, no.

14 JUDGE LEWIS: And we all know all California
15 drivers obey all the traffic rules all the time. Okay.

16 All right. Thank you.

17 MR. VINDING: Your Honor, I have some
18 follow-up based upon yours.

19 JUDGE LEWIS: I figured you guys would. Go
20 ahead.

21

22 RE-CROSS-EXAMINATION

23 BY MR. VINDING:

24 Q. Mr. Khatri, if a person is heading southbound
25 on Singley Hill Road, but they are north of the casino,

1 is it possibly -- is it possible for them currently to
2 make a left-hand turn into the casino?

3 A. Through Bear River Drive?

4 Q. Yes.

5 A. Yes.

6 Q. And is it currently possible when exiting the
7 casino to make a right-hand turn and head northbound on
8 Singley Hill Drive?

9 A. Currently? With the existing conditions?

10 Q. Yes.

11 A. Yes.

12 Q. So currently, the casino is not in compliance
13 with condition No. 8?

14 MR. FORMAN: Objection. Calls for a legal
15 conclusion.

16 JUDGE LEWIS: Well, that's why we're here.

17 MR. VINDING: He's been asked all day.

18 JUDGE LEWIS: They're not in compliance right
19 now. We understand that.

20 MR. VINDING: Okay.

21 JUDGE LEWIS: We understand that.

22 BY MR. VINDING:

23 Q. Are you familiar with a term "lane
24 channelization"?

25 A. Yes.

1 Q. Are you familiar with the fact that the tribe
2 had proposed lane channelization leaving the casino?

3 A. No, I'm not aware of that.

4 Q. Can you describe to us, what is lane
5 channelization?

6 A. As you can see on my figure, Exhibit B, you
7 see those stripes on the south side on Singley
8 Road. We are shifting the channel lane there.

9 For that speed limit, you have to put them --
10 put the passenger car on the track. So that's why we
11 have to put that striping there, so that when there's a
12 shift-off lane from -- in this case, the shifting is
13 only five feet.

14 So, based on the calculation for a five-foot
15 shift or channelization, we have to put a tapering of
16 75 feet. So that's what this is.

17 MR. VINDING: I'd like to approach the
18 witness, if I could, Your Honor.

19 JUDGE LEWIS: Sure.

20 MR. VINDING: May I show you what I'll be
21 asking about? I'll show you too, of course,
22 Mr. Forman.

23 JUDGE LEWIS: All right. Show him.

24 (A bench conference was held.)

25 MR. VINDING: No further questions, Your

1 Honor.

2 JUDGE LEWIS: Okay. Mr. Forman, any
3 follow-up?

4 MR. FORMAN: No, Your Honor.

5 JUDGE LEWIS: Thank you very much, sir.
6 You're dismissed.

7 THE WITNESS: Thank you. Thank you. I
8 appreciate it.

9 JUDGE LEWIS: We're going to go off the
10 record.

11 (Discussion was held off the record.)

12 JUDGE LEWIS: Back on the record. Mr. Forman?

13 MR. FORMAN: Thank you, Your Honor. I have
14 obtained copies of the Exhibit C, which is still marked
15 for identification.

16 I will be having a witness in a little bit
17 that will be testifying about it, at which time I'll
18 move it into evidence.

19 But I have copies now, so I'd like to provide
20 them.

21 MR. VINDING: Thank you.

22 MR. FORMAN: The only difference is his is in
23 color and ours is -- ours is in black and white. Just
24 the cover.

25 I have multiple black and whites, if you would

1 prefer to have black and white and not a color.

2 MR. VINDING: This was "C"?

3 MR. FORMAN: Yes.

4 MR. VINDING: Thank you.

5 MR. FORMAN: Your Honor, if I -- if I may ask
6 a brief indulgence, I would like to recall Mr. Khatri
7 for the purpose of addressing a comment Your Honor made
8 before the break concerning driving over curbs to
9 explain a little more fully what that would entail with
10 this proposed design.

11 JUDGE LEWIS: Is it really necessary?

12 MR. FORMAN: I think so, to indicate -- to
13 address what I sensed to be some perhaps skepticism as
14 to the efficacy of what has been proposed and why --

15 JUDGE LEWIS: There's no doubt in my mind that
16 Mr. Khatri has a great plan there, but there's also no
17 doubt in my mind that there are people out there who
18 don't care about curbs.

19 If they want to make a turn, they're going to
20 make it anyway, whether it's legal or not.

21 MR. FORMAN: Your Honor, he will testify not
22 to people's willingness to break the law, but to the
23 physical consequences to a vehicle were a vehicle to
24 turn right against his design from -- from Bear River
25 Drive onto Singley Road and why, if somebody does that

1 once, they won't do it twice.

2 Okay. Just two minutes, Your Honor.

3 JUDGE LEWIS: All right.

4 MR. FORMAN: Thank you. Mr. Khatri, can you
5 retake the stand?

6 JUDGE LEWIS: You're still under oath, sir.

7 THE WITNESS: Okay.

8

9 REDIRECT EXAMINATION

10 BY MR. FORMAN:

11 Q. Mr. Khatri, looking at Exhibit B, if you
12 recall Exhibit B, what would a driver choosing to turn
13 right from Bear River Drive onto Singley Road have to
14 overcome in order to complete that right turn?

15 A. Well, as I said earlier, the driver has to
16 drive through over the curb, but not only the one wheel
17 of the passenger car would be on the curb, but his --
18 two wheels at a given time would be on the curb.

19 So it would be a discomfort for a driver.

20 Q. Both -- both the front wheel and the rear
21 wheel?

22 A. Rear wheel, yes.

23 Q. And would this likely cause any physical
24 damage to a normal passenger vehicle?

25 MR. VINDING: Objection. Speculation. Beyond

1 the scope.

2 JUDGE LEWIS: Well, he's an engineer and
3 designs roads for some of those purposes. Let's see
4 what he has to say.

5 THE WITNESS: Yeah. For a passenger car, yes.

6 MR. FORMAN: Thank you. I have no further
7 questions.

8 JUDGE LEWIS: Go ahead. Do you have anything,
9 Mr. Vinding?

10 MR. VINDING: Just two short questions, I
11 hope.

12

13 FURTHER RECROSS-EXAMINATION

14 BY MR. VINDING:

15 Q. One, is it possible for a pickup truck or
16 four-wheel drive to make that right-hand turn?

17 A. No. Not unless he drives over the curb.

18 Q. Okay. And our -- our questions seem to -- to
19 concern whether there's another way to get in or out of
20 the casino.

21 So a patron making a right-hand turn is
22 obviously an issue, and -- to head northbound, or a
23 patron heading southbound and making a left-hand turn
24 into the casino. Right?

25 So we're all on the same page.

1 A. He could make his own left turn with --

2 Q. Are you aware of a driveway heading into the
3 Tish-Non housing development a little bit farther north
4 of Brenard Road?

5 A. Yes. I believe there is a driveway.

6 Q. So it would be possible then for a person to
7 drive in this driveway, come down here and proceed that
8 way. Correct?

9 A. I'm not fully sure if they are connected at
10 this point.

11 Q. At this point?

12 A. Yes, or in the future if there's any plans.
13 I'm not aware of that.

14 MR. VINDING: Nothing further.

15 MR. FORMAN: Thank you, Your Honor. I have
16 nothing further of the witness.

17 JUDGE LEWIS: Thank you, sir.

18 THE WITNESS: Thank you.

19 MR. FORMAN: Call Wil Sand, please. William
20 Sand.

21

22 WILLIAM SAND,

23 having first been duly sworn, was

24 examined and testified as follows:

25

1 JUDGE LEWIS: Please state and spell your name
2 for the record, sir.

3 THE WITNESS: William Sand. W-I-L-L-I-A-M
4 S-A-N-D.

5 JUDGE LEWIS: Thank you. Mr. Forman?
6

7 DIRECT EXAMINATION

8 BY MR. FORMAN:

9 Q. Mr. Sand, what is your current occupation and
10 for how long have you been so employed?

11 A. I currently am the executive gaming director
12 for Bear River Casino. I've been working for the
13 gaming industry for two years.

14 Q. And what do your duties as executive director
15 entail?

16 A. My duties would entail overseeing the rules
17 and regulations for the casino, as well as the
18 direction of the surveillance department and its staff.

19 Q. Excuse me. Is -- is Mr. Sand's microphone on?

20 A. Hello?

21 MR. FORMAN: Thank you. Thank you, Your
22 Honor.

23 JUDGE LEWIS: Maybe I'm trying to tell you
24 something.

25 /////

1 BY MR. FORMAN:

2 Q. In -- in the course of your duties, have you
3 had occasion to direct your staff to collect
4 information about the -- the number of vehicles leaving
5 Bear River Road and entering onto Singley Road?

6 A. Yes.

7 Q. What specific information did you instruct
8 your staff to collect?

9 A. I collect -- I instructed my staff to collect
10 the information as to vehicles leaving the property as
11 well as coming on the property, what -- which
12 establishment they're leaving, be it the tribe, the
13 casino or the gas station, and where is it that they
14 went when they left. Did they turn right or left.

15 Q. During what period or periods of time did you
16 cause such information to be collected?

17 A. We did it on three different occasions. We
18 did it on February 4th and February 5th, as well as
19 February 17th through the 20th, and -- let's see.
20 March 30th to March -- no. March 30th to April 5th.

21 Q. How did your staff go about actually
22 collecting the information that you asked them to
23 collect?

24 A. I asked that they position a camera on the
25 intersection that would cover all the ingress and

1 egress points to the casino, and they recorded it. It
2 was recorded 24 hours a day, seven days a week.

3 And then they reviewed the footage at a slower
4 frame rate so that they could see where each individual
5 car was going and where it was originating.

6 JUDGE LEWIS: So we are talking 2011, are we
7 not?

8 THE WITNESS: Yes, we are. 2011. I'm sorry.

9 JUDGE LEWIS: Thank you.

10 BY MR. FORMAN:

11 Q. Do you know approximately how many hours of
12 staff time was taken to review the -- the -- the video
13 record?

14 A. For every 24 hours of video that we reviewed,
15 it took about 30 hours to review.

16 Q. And have you --

17 JUDGE LEWIS: That's assuming no one fell
18 asleep while they were watching cars coming and going,
19 right?

20 THE WITNESS: Right. We have -- yeah, we're
21 staffed 24 hours a day.

22 BY MR. FORMAN:

23 Q. Did you cause the results of this information
24 collection to be compiled?

25 A. Yes.

1 Q. Please explain what your -- what your
2 information shows about how many vehicles entering
3 Singley Road from Bear River Drive turned right or left
4 and where those vehicles originated.

5 A. Can you repeat the question?

6 Q. Yes. Please explain what the information that
7 your staff collected shows about how many vehicles
8 entering Singley Road from Bear River Drive -- Bear
9 River Drive turned right or left and where those
10 vehicles came from.

11 A. We -- we did a review by the hour and
12 categorized it by the hour.

13 The vehicles that were leaving and -- the
14 majority of vehicles turned left. There were vehicles
15 that turned right during the hours of 7:00 to 7:00,
16 7:00 a.m. to 7:00 p.m., coming from the -- the majority
17 of them were coming from either the gas station or the
18 tribe.

19 During the hours that the tribal offices were
20 closed, there's a significant reduction between the
21 hours of 10:00 -- say 10:00 p.m. and 5:00 a.m., because
22 the casino closes at 5:00 a.m. A significant reduction
23 in cars turning right to the point where there were
24 some hours where there were no cars going at all.

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

1 questions.

2 JUDGE LEWIS: Mr. Vinding?

3

4 CROSS-EXAMINATION

5 BY MR. VINDING:

6 Q. During the -- during the course of your
7 investigation, did you determine whether any of the
8 patrons leaving the casino were intoxicated?

9 A. Patrons that are leaving the casino, if
10 they're intoxicated, are stopped at the door by
11 security officers and they're given a shuttle ride
12 home.

13 Q. What about folks who have checked in their
14 cars with valet?

15 A. Folks that check the car in with the valet
16 also need a sober driver in order to leave the
17 casino.

18 Q. Are you aware of any collisions, say in the
19 last two years, of patrons who have left the casino and
20 headed northbound on Singley Road or folks heading
21 southbound on Singley Road to the casino?

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

24 JUDGE LEWIS: Yeah. This is just an
25 administrative hearing. If he didn't ask it, I will,

1 so -- and I'm not going to overrule my -- your
2 objection to my question.

3 So I'm going to allow it.

4 THE WITNESS: Can you repeat the question?

5 MR. VINDING: Sure.

6 Q. Are you aware of any collisions from patrons
7 leaving the casino heading right, north onto Singley
8 Hill Road, within the next two years?

9 A. I'm not aware of any patrons leaving the
10 casino and getting in an accident going north on
11 Singley Road.

12 Q. And how about any DUIs? Same question with
13 DUIs.

14 A. Going north on Singley Hill?

15 Q. Yes, sir.

16 A. I'm not aware of any of those.

17 Q. Are you aware of any casino workers being
18 involved in any collisions either northbound or
19 southbound on Singley Hill Road that is north of the
20 casino entrance?

21 A. I am not aware of any casino employees that
22 have gotten in a collision going north or southbound on
23 Singley Hill.

24 Q. And same question, DUIs. Any employees who
25 have had DUIs?

1 A. No casino employees.

2 MR. VINDING: Thank you.

3 JUDGE LEWIS: Mr. Forman?

4 MR. FORMAN: I have no redirect.

5 JUDGE LEWIS: Mr. Sand.

6 THE WITNESS: Yes.

7 JUDGE LEWIS: Let's talk numbers. Can you get
8 numbers?

9 THE WITNESS: I do have numbers.

10 JUDGE LEWIS: Okay. The first dates you gave
11 me were February 4th to February 5th.

12 THE WITNESS: Correct.

13 JUDGE LEWIS: That's a 24-hour period you're
14 talking about?

15 THE WITNESS: Yes, it is.

16 JUDGE LEWIS: Okay. And you were counting --
17 you were counting people leaving the tribal area,
18 either the casino or the gas station.

19 THE WITNESS: Correct. As well as the tribal
20 office area.

21 JUDGE LEWIS: What is that?

22 THE WITNESS: The Bear River Drive continues
23 up to our community center that's up there and there
24 are employees as well as citizens who live up there who
25 use that road to get to Singley Hill to go north or

1 south -- or south to the freeway.

2 JUDGE LEWIS: Okay. So for that first 24-hour
3 period, how many people leaving Bear River Drive turned
4 right on Singley Hill Road going northbound?

5 THE WITNESS: The specific number of who
6 turned right?

7 JUDGE LEWIS: Yes.

8 THE WITNESS: I would have to get the -- I'd
9 have to get paperwork to give that. So just one
10 second.

11 JUDGE LEWIS: Do you have that information?

12 THE WITNESS: I do.

13 JUDGE LEWIS: Okay.

14 THE WITNESS: So, for between -- between 1600
15 hours on the 4th to 1600 hours on the 5th, we had 95
16 vehicles turn right going northbound on Singley Hill.

17 JUDGE LEWIS: Okay. That's in a 24-hour
18 period?

19 THE WITNESS: Correct.

20 JUDGE LEWIS: How many turned left?

21 THE WITNESS: 2,074.

22 JUDGE LEWIS: Okay. Let's talk about February
23 17th to February 20th. What are the numbers for that
24 period?

25 THE WITNESS: So February 17th between 1600

1 hours until February 18th between 1600 hours, we had
2 110 right turns coming from the casino or the C-store
3 or the tribal operations, and total vehicles that left
4 the property during that 24-hour period was 1,885.

5 JUDGE LEWIS: Okay. That's the 17th to the
6 18th. Now the 18th to the 19th.

7 THE WITNESS: 18th to the 19th, we had 99
8 vehicles turn right leaving one of those three areas
9 and then had 1,985 leave the property.

10 JUDGE LEWIS: Is that 1985, those all made
11 left turns, not including the 99?

12 THE WITNESS: Left turn -- left turn from the
13 casino or from that -- that area was 1,745.

14 JUDGE LEWIS: Wait a minute. You just -- you
15 said 99 vehicles turned right.

16 THE WITNESS: Correct.

17 JUDGE LEWIS: And we're talking about from the
18 18th to the 19th of February.

19 THE WITNESS: Correct.

20 JUDGE LEWIS: And 1985 vehicles turned left?

21 THE WITNESS: No. 1745 turned left.

22 JUDGE LEWIS: Well, what's the 1985?

23 THE WITNESS: The 1985 is the combination of
24 those -- of those numbers. That's the total number of
25 vehicles that left those three areas.

1 JUDGE LEWIS: Okay. 17 and what?

2 THE WITNESS: 1745. 1,745 turned left.

3 JUDGE LEWIS: Where did the other hundred go?

4 THE WITNESS: 99 of them turned right.

5 JUDGE LEWIS: Yeah, but I thought it was 1985
6 total. Am I missing a hundred cars here or am I adding
7 wrong?

8 THE WITNESS: Okay. So 1,985 of them left the
9 property. We had 1,080 of them came from the C-store;
10 840 of them came from the store (sic); 57 came from the
11 tribe.

12 So I'm getting 1745 for a left turn and 99 for
13 a right turn.

14 JUDGE LEWIS: Yeah, but those two numbers
15 don't add up to 1985. That's my -- that's my question
16 here.

17 You're saying it was 1985 total. The numbers
18 are off. That's -- I'm trying to figure out why.

19 THE WITNESS: There -- there may be a category
20 that may have gotten cut off on my spreadsheet that I'm
21 not counting.

22 Okay. So the vehicles that go straight across
23 for construction aren't counted in the left or right.
24 So if there's vehicles that continue to go straight
25 across, there's no category for that, because we have

1 the construction going on for all the houses, as well
2 as the community center.

3 JUDGE LEWIS: Okay. So 99 turn right, 17 --
4 how many turn left?

5 THE WITNESS: 1745.

6 JUDGE LEWIS: 45, all right.

7 The 19th to the 20th of February, what's the
8 numbers?

9 THE WITNESS: The 19th to the 20th from 1600
10 hours to 1600 hours, we had 85 right turns, 17 -- 1,701
11 left turns.

12 JUDGE LEWIS: Do you have a copy of this thing
13 so I -- I don't have to ask you all these things?

14 THE WITNESS: Yes, I do. Yes, I do.

15 JUDGE LEWIS: Can I get a copy of it,
16 Mr. Forman?

17 MR. FORMAN: Sure. Your Honor, perhaps it
18 would speed things along if I were to ask to be
19 introduced -- asked to be marked for identification our
20 Exhibit E, consisting of Mr. Sand's compilation of the
21 vehicles leaving the -- leaving Bear River Drive onto
22 Singley Road.

23 I haven't counted the pages, but this would be
24 our -- our Exhibit D. "E", excuse me. "E" as in
25 Edward.

1 JUDGE LEWIS: Mr. Sand, if -- if I understand
2 this correctly, each sheet represents a different day?

3 THE WITNESS: Correct. The secondary sheet
4 that follows each one is -- is a half sheet. That
5 actually represents the amount of people who drive by,
6 either coming from 101 going north or coming from 101
7 going south, or originating from the north -- north
8 side of Singley Hill going south past the casino.

9 MR. FORMAN: Would that be the "From Loleta"
10 column?

11 THE WITNESS: Yes. The -- the "Pass By" is
12 the total number of vehicles that pass by the casino
13 without coming to the casino.

14 "From 101" would be going north from 101.
15 "From Loleta" would be coming southbound from the
16 Loleta side of Singley Hill.

17 JUDGE LEWIS: Okay. And the -- this
18 spreadsheet -- okay, just so I understand it later on
19 down the road here, it's broken down by hour?

20 THE WITNESS: Correct.

21 JUDGE LEWIS: Broken down by hour, and what --
22 I'm going to have to ask you what these different
23 things mean.

24 "On property" means what?

25 THE WITNESS: That's a vehicle coming onto the

1 -- onto the property from north or southbound.

2 JUDGE LEWIS: Okay. And -- okay, and then the
3 breakdowns are either going to the casino, to the
4 store, or to the tribe?

5 THE WITNESS: Correct.

6 JUDGE LEWIS: All right. "From 101" means
7 they're going northbound from the 101 and turning onto
8 the property?

9 THE WITNESS: Correct.

10 JUDGE LEWIS: And "From Loleta" means they're
11 coming southbound --

12 THE WITNESS: Correct.

13 JUDGE LEWIS: -- and turning left onto the
14 property?

15 THE WITNESS: Yes, it does.

16 JUDGE LEWIS: "Off property." What's that
17 mean?

18 THE WITNESS: That means the total number of
19 vehicles that have left the property.

20 JUDGE LEWIS: Oh, okay. And -- okay. Then
21 the breakdown from the casino and from the store and
22 from the tribe?

23 THE WITNESS: Correct.

24 JUDGE LEWIS: And then those making right
25 turns and left turns?

1 THE WITNESS: Mm-hm. Yes, sir.

2 JUDGE LEWIS: And the numbers -- the totals
3 are on the bottom for the 24-hour period?

4 THE WITNESS: Correct.

5 JUDGE LEWIS: Pretty consistent for all the
6 samples that you did, sir, as far as numbers?

7 THE WITNESS: Depending on the day, it was
8 consistent in the day.

9 JUDGE LEWIS: Okay. And what does that mean?

10 THE WITNESS: Certain days have heavier
11 traffic than other days.

12 JUDGE LEWIS: Saturdays?

13 THE WITNESS: Correct. A Saturday would
14 have -- would have a heavier day than a Tuesday.

15 JUDGE LEWIS: Okay. I don't know how many
16 pages there are here, but --

17 MR. FORMAN: I count 22 -- 21, Your Honor.

18 JUDGE LEWIS: Okay. I'm not going to count
19 them. I'll take your word for it, Mr. Forman. I am
20 going to try to staple it, though.

21 The City of Eureka is out of staples. Must be
22 another budget cut. Okay.

23 I am marking as Exhibit E this 20 --

24 MR. FORMAN: 21.

25 JUDGE LEWIS: -- 21-page document representing

1 traffic counts, I guess.

2 (Defendant's Exhibit E was marked for
3 identification.)

4 MR. FORMAN: And I will ask that it be
5 admitted into evidence at this time.

6 JUDGE LEWIS: Mr. Vinding?

7 MR. VINDING: Object, foundation. Also I'd
8 like to know if it would be possible to review the
9 underlying tapes that were provided as the basis so we
10 can check our own numbers.

11 MR. FORMAN: Yes. We have DVDs on which
12 they're recorded. You have those with you?

13 THE WITNESS: I have some for a few of the
14 days.

15 MR. FORMAN: Okay. How many gigabytes of
16 material are we talking about?

17 It wouldn't fit on a thumb drive. Otherwise,
18 we would have brought one.

19 THE WITNESS: We're talking 50 gigabytes.

20 MR. VINDING: I have a two-terabyte hard drive
21 in my car.

22 THE WITNESS: I've actually brought it
23 prepared on a hard drive.

24 MR. FORMAN: Oh, okay. We'll be happy to make
25 that information available for you.

1 JUDGE LEWIS: Yes, get it to him. Get it to
2 him.

3 Mr. Sand, -- were you guys done, by the way?
4 I thought you were.

5 MR. FORMAN: Yes. I have no further questions
6 of Mr. Sand.

7 MR. VINDING: I -- I had some, but it was
8 going back -- I didn't think I had a document. Turns
9 out I do, and I wanted to ask him further questions.

10 JUDGE LEWIS: Hold on, then.

11 Mr. Sand, I -- I suppose I should have figured
12 that out, but actually, you're making me aware of
13 something that I was unaware of before.

14 But apparently, if you enter onto Bear River
15 Drive and continue past the gas station and casino
16 area, I guess, it is tribal offices?

17 THE WITNESS: Correct.

18 JUDGE LEWIS: Residences.

19 THE WITNESS: Residences as well.

20 JUDGE LEWIS: And all these people have -- is
21 there any other entrance or exit for the -- for the
22 tribal members who live and work back there?

23 THE WITNESS: That's --

24 JUDGE LEWIS: Other than Bear River Drive. I
25 mean, can they go a little bit further north and turn

1 in kind of thing, or not?

2 THE WITNESS: No, they cannot.

3 JUDGE LEWIS: This is the only egress and
4 ingress that they have?

5 THE WITNESS: Correct.

6 JUDGE LEWIS: Okay, all right. By the way, do
7 you know, where -- where's the schools?

8 THE WITNESS: There's a school in Loleta.

9 JUDGE LEWIS: No. Okay. You've got to
10 remember, I'm a Southern California boy. If I -- if
11 I'm -- if I'm exiting Bear River Drive and I have grade
12 school children, am I going to turn right or left?

13 THE WITNESS: Right.

14 JUDGE LEWIS: If I have middle school
15 children, right or left?

16 THE WITNESS: Left. Actually, I don't know
17 where the middle school is. I won't say. I do not
18 know.

19 JUDGE LEWIS: Okay. How about high school?

20 THE WITNESS: Left, because there's -- Fortuna
21 High School is the only high school.

22 JUDGE LEWIS: Okay. Okay. All right.

23 I'm sorry, Mr. Vinding. Go ahead.

24 /////

25 /////

1 RECCROSS-EXAMINATION

2 BY MR. VINDING:

3 Q. Mr. Sand, do you have surveillance video for
4 January 2nd, 2011?

5 A. January 2nd, 2011? Not -- not pertaining to
6 this data.

7 Q. Okay. Do you know if back in your office, you
8 have that?

9 A. This -- we're not going to have footage from
10 January 2nd, 2011, unless there was a specific
11 incident.

12 Q. Are you aware of an incident on January 2nd,
13 2011?

14 A. No.

15 Q. Do you know who Gregory White is?

16 A. Yes.

17 Q. Who is Gregory White?

18 A. Gregory White was an employee of the casino.

19 Q. And do you know if he was involved in a
20 collision lately on Singley -- Singley Hill Road?

21 MR. FORMAN: Objection, Your Honor. This is
22 going way beyond the scope of condition No. 8. It's
23 not part of the protest.

24 It's not part of the accusation and doesn't
25 belong in this proceeding.

1 MR. VINDING: The under --

2 JUDGE LEWIS: You know, there's a lot of stuff
3 that doesn't belong here, like the bass of that radio
4 I'm hearing.

5 But I'm going to allow both of you a lot of
6 leeway. I have been, and I am going to do it here,
7 because I don't know what this is all about, but I want
8 to hear what it is now.

9 MR. VINDING: Thank you, Your Honor. I'm
10 offering it also for impeachment.

11 Q. Do you recall whether Mr. White was involved
12 in a collision on January 2nd, 2011 on Singley Hill
13 Road?

14 A. I was not involved in the collision with Greg
15 White on Singley Hill Road.

16 Q. Were you aware --

17 A. I wasn't aware. I wasn't involved in any way.

18 Q. Were you aware that a copy of the video
19 surveillance was taken from casino security and
20 provided to the California Highway Patrol?

21 A. There is a possibility that it could have
22 been, if there was footage.

23 Q. Do you know who Anthony Crumley is?

24 A. Anthony Crumley? The name sounds familiar.

25 Q. How about Kellen McKinney?

1 A. Kellen McKinney is one of my employees.

2 Q. And Brad Thrasher?

3 A. Is a security officer.

4 Q. Okay. Did either Mr. McKinney or Brad
5 Thrasher report to you that Gregory White was involved
6 in a single-car collision on January 2nd, 2011 and was
7 arrested for intoxication?

8 MR. FORMAN: Objection. Objection. Hearsay,
9 and also assumes facts not in evidence.

10 JUDGE LEWIS: Overruled. I'll allow it.

11 Are you aware of it, sir?

12 THE WITNESS: I was not. They didn't report
13 it to me.

14 JUDGE LEWIS: Did you ever hear about it?

15 THE WITNESS: I've heard about collisions, but
16 nothing -- nothing regarding anything other than just
17 hearing about it. I don't have any knowledge of it.

18 BY MR. VINDING:

19 Q. Did you -- oh, strike that.

20 Neither one of your employees reported to you
21 that another employee was involved in a collision on
22 January 2nd, 2011, having made a right-hand turn
23 leaving the casino?

24 A. No. They -- they would have reported it to
25 the manager of surveillance.

1 MR. VINDING: What I'd like to do is show this
2 to Mr. Forman, and I'll have a copy made immediately.
3 I also have it on a hard drive, and I'd like to have it
4 marked for evidence, and then I'm going to ask that it
5 be introduced as a record from the State.

6 It comes from the CHP and under 452 (g) and
7 (h), it would be admissible.

8 JUDGE LEWIS: What are we talking about,
9 Mr. Vinding?

10 MR. VINDING: This is to impeach the testimony
11 that no --

12 JUDGE LEWIS: I don't -- what is it you're
13 offering? I don't get it.

14 MR. VINDING: It's the traffic collision
15 report, the CHP report, in which the employee made a
16 right-hand turn, single-car accident, and then left the
17 scene.

18 They caught up to him at the minimart on the
19 -- at the casino, and he was arrested.

20 And it demonstrates also that three employees
21 of the casino were interviewed, provided written
22 statements, and I'm offering it to impeach the evidence
23 that -- that was provided here today by Mr. Sand.

24 JUDGE LEWIS: Well, Mr. Sand said he didn't
25 know about it. Let me -- let me see.

1 MR. FORMAN: Your Honor, under Vehicle Code
2 2013, traffic reports are inadmissible as evidence in
3 this state.

4 MR. VINDING: I'm offering it for impeachment.

5 MR. FORMAN: Mr. Sand has not testified about
6 this incident. He's -- he's offered no testimony --

7 MR. VINDING: I disagree.

8 MR. FORMAN: -- to be impeached.

9 MR. VINDING: He offered testimony that
10 everyone is checked as they leave the casino.

11 JUDGE LEWIS: Hold on, folks. Stop.

12 MR. FORMAN: If I can look over your shoulder,
13 Your Honor.

14 JUDGE LEWIS: Absolutely.

15 We've got a lot of stuff redacted here,
16 Mr. Vinding. What's that all about?

17 MR. VINDING: Penal Code. The -- when the
18 Public Records Act request was made to the CHP, that's
19 how it came.

20 JUDGE LEWIS: You didn't do this, then?

21 MR. VINDING: Oh, no, sir.

22 JUDGE LEWIS: Is it safe to assume that this
23 occurred north of the intersection?

24 MR. VINDING: Yes, Your Honor.

25 MR. FORMAN: I don't know, Your Honor, that we

1 can make that assumption, because we have no admissible
2 evidence.

3 JUDGE LEWIS: We have a diagram here. I
4 just --

5 MR. FORMAN: But it's part -- it's part of a
6 report that the Vehicle Code says is inadmissible as
7 evidence. We don't have a sponsoring -- we don't have
8 a sponsoring witness.

9 There are lots of things that go into public
10 records that are hearsay or false or otherwise
11 unsubstantiated. So we do not have admissible evidence
12 as to where -- as to -- as to this accident or the
13 cause of this accident or the relationship of this
14 accident to condition No. 8.

15 MR. VINDING: I think that the judge has
16 within his power to admit and look at it with a limited
17 purpose of impeachment.

18 We've heard testimony that -- that folks are
19 checked before they leave to make sure they're not
20 intoxicated. That wasn't the case.

21 I have another -- a few more questions to ask
22 on another.

23 MR. FORMAN: Of course, we also don't know
24 what's under the redacted statements, which may or may
25 not be consistent with what is -- what counsel has

1 represented.

2 For example, those statements could say that
3 somebody else, a nonintoxicated driver, had represented
4 that that person was going to be the designated driver
5 and then they switched it after they left the casino.

6 I mean, there's a lot -- there's a lot of
7 things that could -- that could happen here, which we
8 don't know precisely, because the document is not a
9 complete document.

10 JUDGE LEWIS: Yes. It could say his guardian
11 angel was going to take control of the wheel, but
12 decided not to at the last minute.

13 Yes, I know. You know, I am permitted a great
14 deal of leeway. This is an administrative hearing.

15 What I'm going to do is I'm going to mark
16 it. I'm assuming you want it admitted, Mr. Vinding?

17 MR. VINDING: Yes, sir.

18 JUDGE LEWIS: And I am going to admit it and,
19 you know, I'll decide what, if any, weight I'm going to
20 place on this. I'll deal with it in totality.

21 So -- where are we at here?

22 MR. FORMAN: That would be Exhibit 2, then?

23 JUDGE LEWIS: Yes, Exhibit 2, the traffic
24 collision report, and -- I don't know what the report
25 number is on here.

1 MR. FORMAN: Your Honor, may I -- may I see
2 that document again briefly?

3 MR. VINDING: The collision report is in the
4 upper right-hand corner, designated 11-010022, and it's
5 15 pages long.

6 The date on it is January 2nd, 2011, which is
7 a Sunday, and it says 0132, which would be 1:32 in the
8 morning.

9 MR. FORMAN: And is Mr. Vinding proposing to
10 lay a foundation for the authenticity of this
11 document?

12 MR. VINDING: I sent a Public Act request to
13 the CHP. This is what I got back.

14 JUDGE LEWIS: We do have a stamp from the fax
15 of the Highway Patrol.

16 MR. FORMAN: But we don't know who did the
17 redaction and what's under there. And Mr. Vinding is
18 not under oath and he's not in a position --

19 JUDGE LEWIS: He's an officer of the court,
20 sir.

21 MR. FORMAN: He's not in a position of his
22 personal knowledge to testify.

23 JUDGE LEWIS: He's an officer of the court.
24 Okay? I don't expect an officer of the court to come
25 in here and make things up and lie to me. I expect the

1 exact opposite from all.

2 MR. FORMAN: Absolutely.

3 JUDGE LEWIS: All right.

4 MR. VINDING: I'll move on.

5 JUDGE LEWIS: Wait a minute. All right, I've
6 marked -- how many pages?

7 MR. VINDING: Fifteen.

8 JUDGE LEWIS: I've marked that report as
9 Exhibit 2.

10 (Plaintiff's Exhibit 2 was marked for
11 identification.)

12 JUDGE LEWIS: Go ahead, Mr. Vinding.

13 BY MR. VINDING:

14 A. Mr. Sand, are you fam -- strike that.

15 Is it Sand or Sands?

16 A. Sand.

17 Q. Sand, thank you. Mr. Sand, are you familiar
18 with another collision that occurred on July 20, 2010?

19 A. I'm not.

20 MR. FORMAN: Objection, vague as to area of
21 the county. Assuming --

22 JUDGE LEWIS: Let's get down to the
23 nitty-gritty.

24 MR. VINDING: Sure.

25 Q. Mr. Sand, are you familiar with a collision

1 between an employee of the casino and a police officer
2 on January 20th, 2010, on Singley Hill Road just north
3 of the casino entrance?

4 A. I am not familiar -- I'm not aware of any
5 incident with a police officer on Singley Hill Road.

6 Q. Do you know who Jay Curd is?

7 A. Yes, I do.

8 Q. And who is Jay Curd?

9 A. Jay Curd is an employee -- was an employee of
10 the casino.

11 Q. Why was he terminated?

12 A. He was terminated for a collision. Not on
13 Singley Hill Road.

14 Q. Where was the collision at?

15 A. It was on 101.

16 Q. And who was involved in the collision other
17 than Mr. Curd?

18 A. Mr. Curd and a CHP officer.

19 Q. And at -- had Mr. Curd been drinking at the
20 casino prior to the collision?

21 A. I can't say that in all -- in all -- I'm
22 not -- I can't say.

23 Q. Are you refusing to, or are you prohibited for
24 some other reason?

25 A. No. I don't have that information.

1 Q. Did you do an investigation as to how the
2 collision occurred?

3 A. I did. I do recall looking into that. I
4 don't have specifics in front of me to say.

5 Q. Okay. Do you know how many employees have
6 been terminated in the last 18 months from Bear River
7 Casino resulting from collisions following consumption
8 of alcohol at Bear River Casino?

9 MR. FORMAN: Continuing objection, Your Honor,
10 to matters going beyond the scope of condition No. 8.

11 I know Your Honor is going to deny it, but I
12 want to make -- overrule it, but I'd like to make my
13 objection for the record.

14 There has been no accusation filed by the
15 department concerning Bear River's failure to comply
16 with the terms of its license at all, much less
17 condition No. 8, but specifically in terms of
18 overserving or serving minors or otherwise violating
19 the terms and conditions of its license.

20 And for that reason, I think this line of
21 inquiry is beyond the scope of this hearing.

22 JUDGE LEWIS: Okay. Mr. Forman, Mr. Vinding,
23 here's the deal. Okay?

24 Right now, as I stated at the beginning of
25 this hearing, I'm dealing with an accusation that I

1 sustained two years ago, okay? That the tribe was in
2 fact not in compliance with condition No. 8.

3 I am -- I am trying to deal with that and as I
4 stated in the beginning, it was up to you, Mr. Forman,
5 as pointed out to me by the Appeals Board and by the
6 department, to present this new evidence that was
7 unavailable before as it relates to condition No. 8.

8 And I also stated that Mr. Vinding is going to
9 have the right of rebuttal, since they in fact did
10 the -- the homeowners association, I should say, they
11 in fact did present and prosecute the accusation two
12 years ago.

13 So they have the right to rebut any evidence
14 and to -- and in that regard, I'm going to allow
15 Mr. Vinding, you know, some semblance of fairness here
16 to show the reasons why they should be -- they believe
17 that condition 8 should be enforced.

18 And, you know, he's looking for, you know,
19 strict compliance. I understand that. Whether that's
20 possible or not is another question I've got to decide.

21 But in all fairness to the homeowners, you
22 know, I -- to look at it from the standpoint of, you
23 know, they're going to be up in arms and telling me, if
24 they could, that "Hey, these -- these are the reasons
25 why we should -- we believe there should be strict

1 compliance with condition No. 8," for things like this,
2 employees leaving and turning right and getting
3 involved in traffic accidents.

4 And they live up that way. I don't, and the
5 reason that they withdrew their protest many years ago
6 was because everyone agreed to condition No. 8.

7 You know, it -- like I said in the beginning,
8 this is a big catch 22. There's no, you know, no easy
9 way out of any of this stuff.

10 But in -- in all fairness to the homeowners,
11 I -- I think that what Mr. Vinding is trying to show
12 here is that, "Hey, you know, this is my rebuttal to
13 what, you know, the tribe is putting on in the form of
14 their new evidence, and this is the reasons why we
15 believe that there should be this strict compliance
16 with condition No. 8."

17 Now, what I'm going to do with it, I still
18 don't know. You know, I have -- I still don't know. I
19 mean -- you know, but I'm going to allow both of you an
20 opportunity to tell me the things that you want me to
21 consider with great leeway, because it -- as the
22 Appeals Board pointed out, as the department pointed
23 out, this is not a run-of-the-mill case here.

24 This is -- this is unique. This is different.
25 This is not something we deal with on -- on a regular

1 basis by any means.

2 So I -- I need as much help as I can get, and
3 for those reasons, I am allowing some of this stuff to
4 come in, and what I do with it, you know, you'll find
5 out when you see my decision. I -- I may use it, I may
6 not.

7 But I think I need to be made aware of
8 everything in -- in coming up with the decision.

9 MR. FORMAN: Understood, Your Honor. Thank
10 you.

11 JUDGE LEWIS: Just to give you an idea of
12 where I stand with all this.

13 MR. VINDING: Your Honor, I provided to
14 opposing counsel a December 13th, 2010 letter from the
15 police officer, the aforementioned police officer, who
16 was involved with the collision with the intoxicated
17 employee, and I would like to have that marked, and I
18 seek to move it into evidence for both impeachment, but
19 also as it is part of the ABC's file.

20 It was mailed to the director, Steve Hardy, as
21 well as the Appeals Board.

22 JUDGE LEWIS: Okay. Before I -- before I even
23 see this thing, Mr. Vinding, I -- I have -- I have a
24 problem.

25 MR. VINDING: Okay.

1 JUDGE LEWIS: Okay? And hopefully, that
2 document may be able to clear it up.

3 I heard from Mr. Sand here, who I have no
4 reason to doubt at this point in time, that whatever
5 collision this was that was involving the CHP officer
6 occurred on 101.

7 And if in fact that is the case, I'm only
8 mildly interested.

9 MR. VINDING: Okay. I'll move on, Your Honor.

10 JUDGE LEWIS: Okay.

11 BY MR. VINDING:

12 Q. Mr. Sand, are you familiar with incidents on
13 Singley Hill Road north of the casino where mailboxes
14 have been struck by patrons leaving the casino?

15 A. I couldn't tell you. I do not know.

16 Q. Do you ever travel north of the casino
17 yourself on Singley Hill Road to investigate the
18 environment around the casino?

19 A. I have occasionally gone north. I go north to
20 the -- to our offices over there frequently. That's
21 not past anybody's mailbox.

22 Q. So it's fair to say that you've never seen any
23 damage or vandalism to any of the private property
24 owners, say within the last two years, north of the
25 casino on Singley Hill Road?

1 A. It is fair to say that I have not seen it.

2 Q. Okay. Has anyone reported, to your knowledge,
3 to the casino any damage that has occurred to the homes
4 located north of the casino on Singley Hill Road, say
5 within the last two years?

6 A. Not to my knowledge.

7 Q. That would include whether it's mailboxes,
8 fences, gates, anything like that.

9 A. That type of thing wouldn't be reported to me.

10 Q. Who would that be reported to?

11 A. Not -- not me. I -- it -- it depends on who
12 the person talked to. Possibly a security officer.

13 MR. VINDING: I have nothing further. Thank
14 you.

15 MR. FORMAN: I have no redirect.

16 JUDGE LEWIS: Thank you, Mr. Sand. You're
17 excused.

18 MR. FORMAN: Call Bruce Merson, please.

19

20 BRUCE MERSON,

21 having first been duly sworn, was

22 examined and testified as follows:

23

24 JUDGE LEWIS: Please state and spell your
25 name, sir.

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THE WITNESS: B-R-U-C-E M-E-R-S-O-N.

DIRECT EXAMINATION

BY MR. FORMAN:

Q. Mr. Merson, where are you employed?

A. Bear River Casino.

Q. In what capacity are you employed at the Bear River Casino?

A. Chief -- chief financial officer.

Q. In the -- in your capacity as chief financial officer of the casino, do you have occasion to review the performance of the casino in terms of revenues and customer patronage?

A. Yes.

Q. Have you had occasion to cause a compilation to be made of the daily attendance at the casino, as distinct from the revenues at the casino?

A. We've always collected daily attendance data.

Q. And how is that -- how is that information collected?

A. Security officers keep a tally at the door and turn in daily count sheets.

Q. I'm showing you a document that will be marked for identification as Exhibit F, as in Frank, and ask whether you recognize that document.

1 A. Yes. I prepared this document.

2 Q. What does this document purport to show?

3 A. This document was prepared from all the
4 individual day counts. I just summarized it to show
5 the daily average for the months and each month in 2010
6 and the average for the whole year, and then for the
7 days when the bar was closed for remodel.

8 (Defendant's Exhibit F was marked for
9 identification.)

10 BY MR. FORMAN:

11 Q. Okay. So starting on the upper left quadrant
12 of the document, you -- you see three columns: "Date,"
13 "Day," "Est. Head Count"?

14 You see that column?

15 A. Yes.

16 Q. All right. What do the numbers under the
17 "Date" column represent?

18 A. That would be the month, January -- for
19 example, January of 2010.

20 Q. So 2010, and then the next being February
21 2010, et cetera?

22 A. Correct.

23 MR. VINDING: Leading, Your Honor.

24 MR. FORMAN: Okay.

25 JUDGE LEWIS: Okay. He's helping me. I'll

1 let him do it.

2 MR. VINDING: All right.

3 BY MR. FORMAN:

4 Q. And the number in the column that says "Est.
5 Head Count," the numbers below that would represent
6 what?

7 A. That's the sum of all the daily head count
8 numbers for that month.

9 Q. And then the number in the right-hand column,
10 which does not have a heading, what do those numbers
11 represent?

12 A. The average daily traffic.

13 Q. For each month?

14 A. For that month.

15 Q. And then finally, there is a -- another column
16 to the farthest right and it says "2010 AVG."

17 What does that number below that represent?

18 A. It's the sum of the -- sum of the traffic for
19 365 days of the year, 2010, divided by 365.

20 Q. And so what is the -- the average daily
21 attendance for the year 2010, as you calculated it?

22 A. 1,228.

23 Q. Going down the left-hand side of Exhibit A --
24 Exhibit F, do you -- do you see where it says "Bar
25 closed, 2/7-3/16/11"?

1 Do you see that?

2 A. Yes.

3 Q. What does that -- what does that mean?

4 A. The bar at the casino was closed for those
5 dates for remodel.

6 Q. And so what do the numbers that follow that,
7 where we have "Date," "Day," "Estimated Head Count," et
8 cetera -- what -- what do those -- what do those
9 represent?

10 A. That's the traffic data collected for those
11 days when the bar was closed.

12 MR. FORMAN: Thank you. I have no further
13 questions of Mr. Merson.

14 JUDGE LEWIS: Mr. Vinding?

15 MR. FORMAN: And I would ask that "F" be
16 admitted into evidence.

17 JUDGE LEWIS: Well, let him -- let's hear from
18 Mr. Vinding first.

19 MR. FORMAN: Okay.

20

21 CROSS-EXAMINATION

22 BY MR. VINDING:

23 Q. Mr. Merson, during the course of a day, how
24 many people are involved in doing the head count?

25 A. I don't personally supervise them. It's done

1 by security officers. I don't supervise them.

2 Q. So you've not verified that any of these
3 numbers are accurate?

4 A. I would only say that the policy and practice
5 has been consistent for as long as the casino has been
6 open.

7 Q. But you've done nothing to verify these
8 numbers?

9 A. No.

10 Q. Okay.

11 MR. VINDING: I'd object to the introduction
12 as it lacks foundation and lacks firsthand knowledge.

13 MR. FORMAN: Perhaps I can clear it up with a
14 couple more questions.

15 I'm sorry. Go ahead.

16 JUDGE LEWIS: Let me -- let me do this first,
17 if you don't mind.

18 MR. FORMAN: Please.

19 JUDGE LEWIS: Mr. Merson, let's just look at
20 February 17th, 2011. You said the bar was closed.
21 Right?

22 THE WITNESS: Yes.

23 JUDGE LEWIS: And I'm looking at the sheet
24 that you prepared based on the information that was
25 given to you by your security officers. Okay?

1 And I'm talking about Exhibit F, and on
2 February the 17th, you say 1,057. 1057. That was the
3 number of patrons who entered the casino itself?

4 THE WITNESS: That's correct.

5 JUDGE LEWIS: For that 24-hour period?

6 THE WITNESS: From -- that's right. 5:00 in
7 the morning until 5:00 in the morning.

8 JUDGE LEWIS: Okay. Were you here when
9 Mr. Sand was here?

10 THE WITNESS: Yes.

11 JUDGE LEWIS: I asked Mr. Sand. He testified
12 as to the car count. Okay?

13 Now, I know everyone who goes to the casino
14 does not necessarily travel alone. There may be two
15 people in the car, there may be three, four. Who
16 knows.

17 But he's telling me, according to his count in
18 looking at the video during that same period, that
19 1,885 vehicles came into or went out of the
20 premises. The casino, and -- well, the gas station,
21 too.

22 MR. FORMAN: And the reservation.

23 JUDGE LEWIS: And the reservation lands.
24 Okay. That's -- that's a big difference to me.

25 THE WITNESS: It's a lot of traffic to the gas

1 station. It's -- this is only at the casino.

2 JUDGE LEWIS: Six hundred a day?

3 THE WITNESS: I don't personally count it.
4 You'd have to ask Wil.

5 MR. FORMAN: Your Honor, none of the exhibits
6 attempt to identify whether the same vehicles have
7 entered and left the reservation multiple times during
8 the course of the day, as we will have evidence that
9 shows that occurs with great regularity.

10 JUDGE LEWIS: Well, you know, I'm just -- I'm
11 just trying to determine in my own mind how accurate
12 these numbers are.

13 I mean, I -- I have one person that tells me,
14 "Hey, 24-hour period, 1,885 cars either came on to or
15 went -- or left Bear River Drive from Singley Road."
16 1800 cars.

17 But he's telling me they did the count and in
18 that same time, only 1,057 people, people -- not cars,
19 people -- entered the casino.

20 Mr. Merson, where do the employees park? Do
21 they have to go in on Bear River Drive to park,
22 employees?

23 THE WITNESS: They do.

24 JUDGE LEWIS: Okay. Well, that may account
25 for some of this stuff. Anything else that may account

1 for it? For the numbers.

2 THE WITNESS: The employees that come and go
3 could be going up -- going across the street, up to the
4 council office, Tish-Non office. People taking their
5 kids to school, going shopping.

6 JUDGE LEWIS: You mean, tribal members and
7 things like that?

8 THE WITNESS: Tribal members.

9 JUDGE LEWIS: Okay.

10 THE WITNESS: Our maintenance people going to
11 Fortuna to work on our rental properties there. They
12 could make several trips a day.

13 JUDGE LEWIS: Okay.

14 MR. FORMAN: Your Honor, may I ask a question
15 of Mr. Merson that may help?

16 JUDGE LEWIS: Yeah, go ahead. Go ahead.

17

18 REDIRECT EXAMINATION

19 BY MR. FORMAN:

20 Q. Mr. Merson, the numbers that are set forth in
21 our Exhibit F, are these numbers that casino management
22 uses in -- in its management of the casino?

23 A. Oh, we use it for individual trends and when
24 we have marketing activities, to see if it drew more
25 traffic. It's part of the -- the most important report

1 we have, the management report. Flash report.

2 MR. FORMAN: Thank you.

3 JUDGE LEWIS: I take it there's more than one
4 entrance?

5 THE WITNESS: There are. There's a security
6 guard counting at both.

7 JUDGE LEWIS: Okay, all right. And these are
8 numbers that you guys came up with?

9 THE WITNESS: Yeah.

10 JUDGE LEWIS: All right. Okay. Mr. Vinding,
11 were there any other questions of Mr. Merson?

12 MR. VINDING: No, Your Honor.

13 JUDGE LEWIS: Okay. Thank you very much, sir.
14 You're excused.

15 MR. FORMAN: So, Your Honor, is "F" admitted?

16 JUDGE LEWIS: Yes.

17 MR. FORMAN: Thank you.

18 (Defendant's Exhibit F was admitted into
19 evidence.)

20 JUDGE LEWIS: No, wait a minute. Hold on,
21 folks. The CHP report, that was "E", correct?

22 MR. FORMAN: No.

23 MR. VINDING: That would be -- that would be
24 2.

25 JUDGE LEWIS: I'm sorry. 2. 2. I'm sorry.

1 Hold on one second. Mr. Forman?

2 MR. FORMAN: Yes, sir.

3 JUDGE LEWIS: Help me out, will you, please?

4 MR. FORMAN: I'll try.

5 JUDGE LEWIS: I'm looking at Exhibit C.

6 MR. FORMAN: Exhibit C, the environmental
7 report?

8 JUDGE LEWIS: Yes.

9 MR. FORMAN: Uh-huh.

10 JUDGE LEWIS: In glancing at this thing, I
11 thought I was going to get numbers as to traffic count,
12 but I don't see numbers as to traffic count.

13 Can you help me? Or have someone help me?

14 MR. FORMAN: Well, I -- what you see is the
15 analysis that goes into an environmental document to
16 determine whether a project will degrade level of
17 service to an unacceptable level for the purposes of
18 assessing the environmental impact.

19 And this is a summary of level of service, as
20 opposed to specific traffic counts as set forth in the
21 report. The -- the underlying data, I do not have.
22 AES does.

23 JUDGE LEWIS: Quite frankly, that's what I
24 thought I was going to get.

25 MR. FORMAN: I see.

1 JUDGE LEWIS: I thought that's what -- that's
2 why I -- that's why I had Mr. Mattson from the
3 County --

4 MR. VINDING: Yes.

5 JUDGE LEWIS: -- brought in here this morning.
6 I asked you guys, one of you, to subpoena him because I
7 wanted numbers. And I was told that, you know, this
8 was done and this was going to give me the numbers.

9 But I was glancing at this during the recess
10 and -- and I just don't see the numbers there. It's
11 not -- it's not giving me that.

12 Specifically, I wanted to know -- I thought
13 there was some type of traffic count that was conducted
14 by AES north of Bear River Drive to tell me the -- the
15 traffic count.

16 But, anyway, I don't see it, and that's -- I
17 want to bring that to your attention. Okay.

18 MR. FORMAN: Your Honor, if -- if we can lay
19 hands on that underlying data and submit it to
20 supplement the record, would we -- could we have leave
21 to do that? I will do that.

22 JUDGE LEWIS: Well, I'll tell you by the end
23 of the day.

24 MR. FORMAN: Okay.

25 JUDGE LEWIS: I'll tell you whether I've had

1 enough or not.

2 MR. FORMAN: Okay.

3 (Discussion was held off the record.)

4 MR. FORMAN: My next witness is Ed Smith.

5 JUDGE LEWIS: Okay. Is this going to be a
6 short or long witness? I'm just trying to figure out
7 if you guys want to break now or after him.

8 MR. FORMAN: I think it should be -- we should
9 be able to get through it before we take a break.

10 JUDGE LEWIS: Okay. Mr. Smith, come
11 forward.

12

13 EDWIN SMITH,

14 having first been duly sworn, was

15 examined and testified as follows:

16

17 JUDGE LEWIS: Please state and spell your name
18 for the record.

19 THE WITNESS: Edwin Smith. E-D-W-I-N
20 S-M-I-T-H.

21

22 DIRECT EXAMINATION

23 BY MR. FORMAN:

24 Q. Mr. Smith, are you a member of the Bear River
25 Band of Rohnerville Rancheria?

1 A. Yes.

2 Q. Are you an elected officer of the Bear River
3 Band --

4 A. Yes.

5 Q. -- of Rohnerville Rancheria?

6 A. Yes.

7 Q. What office do you hold?

8 A. I am member at large.

9 Q. Member of --

10 A. Of the tribal council.

11 Q. Thank you. Do you have any official duties as
12 part of the government of the Bear River Band apart
13 from your membership on the tribal council?

14 A. I work in the environmental department. I
15 also manage the building and maintenance department and
16 our senior nutrition program.

17 Q. Are you aware whether the United States of
18 America holds any lands in trust for the tribe?

19 A. Yes.

20 Q. Where are those lands located?

21 A. There's -- they're Bear River Band of
22 Rohnerville Rancheria, where the casino is right now,
23 and there's the Fearrien property or Tish-Non Village,
24 which is across Singley Road.

25 Q. What sort of development has been built on the

1 tribe's lands located on the east side of Singley Road?

2 A. Well, we have eight homes, a community center,
3 a wastewater treatment plant, our gas station, a
4 drinking water plant and a casino. And a community
5 center.

6 Q. And the community center has what in it?

7 A. Most of our administrative offices and our
8 kitchen for the senior nutrition program.

9 Q. How many people live on the tribe's lands east
10 of Singley Road?

11 A. Approximately 40.

12 Q. If you know, approximately how many people are
13 employed at or in connection with the Bear River
14 Casino?

15 A. Approximately about 280.

16 Q. And of that number, do you know how many
17 are -- are regularly on site at any one time?

18 A. During the weekdays, there's probably close to
19 80. Weekend is probably like 60.

20 Q. Are you familiar with the Bear River Band's
21 plans for development of the lands on the west side of
22 Singley Road?

23 A. I think we're building 64 new homes. We have
24 a drinking water plant, a new wastewater treatment
25 plant, a community center, eventually a gym, and a

1 softball field.

2 Q. And are those the lands that have been
3 referred to as the Tish-Non Village?

4 A. Yes.

5 Q. I'd like to show you a document that's been
6 marked for identification as Exhibit C and ask whether
7 you recognize that document.

8 A. Yes, I do.

9 Q. What is that document?

10 A. This is a document that was prepared for the
11 fee-to-trust status.

12 Q. For --

13 A. For Tish-Non Village.

14 Q. Was that document approved by the Bear River
15 Tribal Council?

16 A. Yes.

17 Q. What was done with that document after the
18 Bear River Tribal Council approved it?

19 A. It was submitted to the Bureau of Indian
20 Affairs with our fee-to-trust application.

21 Q. And the fee-to-trust application was approved?

22 A. Yes.

23 Q. Where does the -- the Bear River Tribal
24 Council hold its meetings?

25 A. At Tish-Non office, which is the Fearrien

1 house.

2 Q. And where is the Fearrien house in relation to
3 the intersection of Singley Road and Bear River Drive?

4 A. Approximately a tenth of a mile north on
5 Singley Road.

6 Q. Are there also tribal offices in the same
7 building where the tribal council holds its meetings?

8 A. Yes. There's our legal department, our tribal
9 council support staff, and our economic development
10 department.

11 Q. How many persons are -- are regularly employed
12 in that -- in the building where the tribal council
13 holds its meetings?

14 A. Five.

15 Q. Is it common for those tribal employees to
16 travel between the -- the place where the tribal
17 council meets and the other lands of the tribe on the
18 other side of Singley Road, on the -- on the east side
19 of Singley Road?

20 A. Yes.

21 Q. In your opinion, how much of a burden would
22 there be on -- on tribal members and tribal staff if
23 they could not turn north from Bear River Drive onto
24 Singley Road in order to get to the tribal offices on
25 the west side of Singley Road?

1 MR. VINDING: Objection. Speculation.

2 He can testify to his own burden, but I don't
3 think he can testify as to other people.

4 JUDGE LEWIS: Well, he is in a position where
5 he should know. I'm -- I'm going to allow it.

6 THE WITNESS: I think it would be a big
7 burden, because we have a lot of tribal elders that go
8 up there and meet with us on Mondays and we do our
9 economic development meetings on Tuesdays and we
10 usually meet with about six or seven different staff
11 members who have to leave where our community center is
12 at to meet with us, and they have to bring up people
13 with them to meet with us.

14 And trying to make that turn, it's going to be
15 quite difficult, and to have them drive down to the
16 bottom of the hill, turn around and come back would be
17 a big burden.

18 BY MR. FORMAN:

19 Q. Is it -- is it common that tribal employees
20 make more than one trip a day between the Tish-Non
21 tribal office and the offices on the east side of -- of
22 Singley Road?

23 MR. VINDING: Objection, speculation. Vague
24 as to time.

25 JUDGE LEWIS: Overruled.

1 THE WITNESS: Yes, they do. We have our --

2 JUDGE LEWIS: I'll allow it.

3 THE WITNESS: We have our procurement person.
4 She's up to the office about four or five times a
5 day.

6 I travel up there as environmental coordinator
7 and the building manager four or five times a day.

8 BY MR. FORMAN:

9 Q. And how many employees does the tribe have --
10 governmental employees now. Not gas station employees,
11 not casino employees -- that work in the tribal offices
12 on the east side of Singley Road?

13 A. Sixty.

14 Q. And of those 60 employees, can you estimate
15 what percentage, how many of those employees, have
16 occasion during the course of a normal day to come up
17 to the Tish-Non office?

18 A. About 45 to 50 percent.

19 MR. FORMAN: I would move "C" into evidence,
20 Your Honor, based on Mr. Smith's authentication of the
21 document as one approved by the tribal government,
22 submitted to the Bureau of Indian Affairs, and used by
23 the Bureau in evaluating and approving the tribe's
24 application to have the Tish-Non property taken into
25 federal trust.

1 JUDGE LEWIS: Mr. Vinding?

2 MR. VINDING: Well, I -- I would object
3 insofar as the information contained in there, there
4 hasn't been a foundation laid for the information
5 itself.

6 As -- as to the document being approved, I'll
7 stipulate that it was approved by the BIA and the
8 council.

9 JUDGE LEWIS: Well, you know, I'm going to
10 allow it. I mean, it doesn't tell me what I wanted
11 it -- what I thought it was going to tell me.

12 I'll allow it. It's in. Again, I'll just try
13 to figure out what I'm going to do with it. "C" is
14 admitted.

15 (Defendant's Exhibit C was admitted into
16 evidence.)

17 MR. FORMAN: I have no further questions of
18 Mr. Smith at this time.

19 JUDGE LEWIS: Mr. Vinding?

20

21 CROSS-EXAMINATION

22 BY MR. VINDING:

23 Q. Mr. Smith, when were the tribal offices built?

24 A. Which ones?

25 Q. The ones that you were speaking about folks

1 having to come and go several times during the course
2 of the day.

3 A. Community center was built in 2002, I think.

4 Q. And what about the tribal offices where the
5 council convenes?

6 A. I have no clue when the house was built.

7 Q. Earlier, you testified regarding title held by
8 the BIA. Are you involved with the -- well, strike
9 that.

10 Are you aware of the BIA's involvement, if
11 any, in this interchange proposal?

12 JUDGE LEWIS: Are you referring to the current
13 one, which is Exhibit B?

14 MR. VINDING: Yes, sir.

15 JUDGE LEWIS: Okay.

16 THE WITNESS: Which one is that?

17 MR. VINDING: The --

18 JUDGE LEWIS: Why don't you give him a copy.

19 MR. VINDING: Sure.

20 Q. Let me show you Exhibit B. This is the tribal
21 proposal for an interchange at the ingress and egress
22 of the casino.

23 A. As far as I know, the Bureau of Indian Affairs
24 is not involved with this one.

25 Q. You're not aware of the BIA putting any

1 restrictions on the tribe at this time?

2 A. When this one was proposed, the Bureau of
3 Indian Affairs has no jurisdiction over this
4 intersection any longer.

5 Q. Okay. During the course of your travels and
6 also -- strike that.

7 Within the scope of your employment in
8 traveling up and down Singley Hill Road, are you aware
9 of intoxicated employees leaving the casino?

10 A. In my employment as a tribal member or -- I
11 mean, in my environmental department?

12 Q. Within the capacity of you traveling up and
13 down the road on what sounds like a daily basis, were
14 you aware of intoxicated employees leaving the casino?

15 A. As a tribal council member, yes.

16 Q. And on what frequency? How often does that
17 happen?

18 A. As far as I know, once.

19 Q. Okay. What about patrons? Are you aware of
20 any intoxicated patrons leaving the casino?

21 A. Not that I know of.

22 Q. Okay.

23 MR. VINDING: I have nothing further.

24 JUDGE LEWIS: Mr. -- Mr. Smith, it sounds like
25 you have answers to some of the questions I've been

1 waiting to be asked.

2 When I was up here in beautiful downtown
3 Eureka two years ago, the Bureau of Indian Affairs was
4 intimately involved in everything that was happening
5 with this whole case.

6 Since then, I have been informed -- although
7 not formally, I guess -- that the Bureau of Indian
8 Affairs no longer has any involvement with this
9 particular matter.

10 My question to you, sir, is: Is that true?
11 And, you know, tell me what happened since I was here
12 last, as it relates to the Bureau of Indian Affairs, if
13 you know.

14 And I'm assuming if you're a tribal council
15 member, that you have knowledge of it or maybe -- I
16 don't know if you were planning to put this on through
17 the chairman, Mr. Forman, or not. But, you know, I
18 have the witness.

19 MR. FORMAN: Your Honor, I was, but I can
20 certainly do it through Mr. Smith, if you'd like that.
21 It would be quicker.

22 JUDGE LEWIS: Let me hear it.

23 Mr. Smith, what do you know?

24 THE WITNESS: Well, this all happened before I
25 was on the tribal council. I got elected in June, and

1 it's my understanding --

2 JUDGE LEWIS: Okay.

3 THE WITNESS: -- that the tribe filed an
4 application to take --

5 JUDGE LEWIS: Okay. Well, let's -- let's
6 leave it for the chairman. He's waiting to talk to
7 me. I can see it in his eyes.

8 Let's save it for him, then, if you just
9 recently were elected.

10 Okay. That's -- that's fine. Okay. Anything
11 else from anyone for Mr. Smith?

12 MR. FORMAN: No.

13 JUDGE LEWIS: Thank you very much, sir.
14 You're excused.

15 THE WITNESS: Thank you.

16 MR. FORMAN: I would call Chairman Bowman at
17 this time. Or do you want to take a short recess?

18 JUDGE LEWIS: Yes, why don't we do that, sir.
19 Let's take -- let's take ten minutes, please.

20 Off the record.

21 (Recess taken.)

22 JUDGE LEWIS: Mr. Forman, call your next
23 witness, please.

24 MR. FORMAN: Tribal Chairman Len Bowman,
25 please.

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LEONARD BOWMAN,

having first been duly sworn, was
examined and testified as follows:

JUDGE LEWIS: Please state your name for the
record.

THE WITNESS: Leonard Bowman, L-E-O-N-A-R-D
B-O-W-M-A-N.

JUDGE LEWIS: Mr. Forman.

DIRECT EXAMINATION

BY MR. FORMAN:

Q. Mr. Bowman, I'm going to hand you a document
and ask that you identify it, and I will ask that the
document be marked as our Exhibit G.

A. Yes, sir, I do recognize it.

(Defendant's Exhibit G was marked for
identification.)

BY MR. FORMAN:

Q. Could you please tell Judge Lewis, is that
your signature on the last page?

A. Yes, it is.

Q. What is this document?

A. This is a document that takes us away from the
BIA's ruling on the reservation land and puts it into

1 the Department of Transportation. U.S. Department of
2 Transportation.

3 Q. So this is an agreement between the tribe and
4 the U.S. Department of Transportation?

5 A. Exactly.

6 Q. And this is a true copy of that agreement?

7 A. Yes, it is.

8 MR. FORMAN: I would move Exhibit G into
9 evidence at this time.

10 I have no further questions of Mr. Bowman.

11 JUDGE LEWIS: Can I see it?

12 MR. FORMAN: I'm sorry. I thought I gave you
13 a copy. I gave it to Mr. Vinding.

14 JUDGE LEWIS: Mr. Vinding, do you have any
15 questions of the chairman?

16 MR. VINDING: No, Your Honor.

17 JUDGE LEWIS: Mr. Bowman, sir, congratulations
18 on getting rid of one burden.

19 THE WITNESS: Thank you.

20 JUDGE LEWIS: The Department of
21 Transportation, U.S. Department of Transportation, have
22 they been involved in any manner with respect to the
23 proposal in Exhibit B?

24 THE WITNESS: No, sir, I don't think so.

25 JUDGE LEWIS: Okay. Do they have a say in the

1 matter?

2 I mean, what I'm trying to find out is at this
3 point in time, you know, the -- this is -- this is
4 stuff that's being reviewed by the County and needs to
5 be approved by the County and everything else, but does
6 it also need the approval of the Department of
7 Transportation?

8 THE WITNESS: I -- I think they could possibly
9 get involved, but they haven't at this point. If
10 you'll notice from the bottom of the first page to the
11 second page, it will tell you what we're allowed to do
12 under their -- under their rule.

13 JUDGE LEWIS: Okay.

14 THE WITNESS: So we can do any maintenance,
15 highway bridge design, engineering, construction, and
16 anything under the Department of Transportation.

17 JUDGE LEWIS: Is there any other entity -- I
18 can't imagine any, but I have to ask.

19 For the proposal that's in Exhibit B, is there
20 any other entity or governmental agency or -- or
21 anybody or anything that could prevent it from
22 occurring, prevent the project from occurring?

23 Like an example, we know the County can.
24 They're going to end up reviewing this thing. Possibly
25 the Department of Transportation, however unlikely it

1 seems.

2 Is there anybody else?

3 THE WITNESS: None that I know of, sir.

4 JUDGE LEWIS: We have enough players.

5 THE WITNESS: Yes.

6 JUDGE LEWIS: Okay. Thank you.

7 MR. FORMAN: I have no further questions.

8 JUDGE LEWIS: Mr. Vinding?

9 MR. VINDING: No, sir. No further questions.

10 JUDGE LEWIS: Thank you, sir.

11 THE WITNESS: Thank you, sir.

12 MR. FORMAN: And I would move, if I haven't
13 already, -- oh, I did. Okay.

14 I would call next April Medina, please.

15 JUDGE LEWIS: Did I admit it, though? You're
16 talking about "G"?

17 MR. FORMAN: I'm sorry. Yes, I'm sorry. I --
18 if I didn't, I want to move "G" into evidence.

19 JUDGE LEWIS: Okay. While we're at it -- oh,
20 any objection to "G"?

21 MR. VINDING: No, Your Honor.

22 JUDGE LEWIS: "G" is received.

23 (Defendant's Exhibit G was admitted into
24 evidence.)

25 JUDGE LEWIS: And while we're at it, I know I

1 let in "A", B", "C", "D". Did you offer "E"?

2 MR. FORMAN: I did.

3 JUDGE LEWIS: Okay. Any objection to "E"?

4 MR. VINDING: I want to look real quick. I
5 don't remember "E."

6 JUDGE LEWIS: "E" is the -- the traffic count
7 from the video.

8 MR. VINDING: Yeah, be -- because I -- the
9 numbers -- I objected to the count as -- as lacking
10 basic accuracy and therefore foundation.

11 JUDGE LEWIS: You know, I -- I understand what
12 you're saying, Mr. Vinding. However, I'm going -- I'm
13 going to allow it, and I'll take a closer look at it.

14 But I need something, and this is giving me
15 something to look at in the form of raw data and, you
16 know, I'll see what I can make of it.

17 But I -- I am going to allow it because I've
18 got to take a close look at it and I'll determine
19 whether or not to use it.

20 (Defendant's Exhibit E was admitted into
21 evidence.)

22 JUDGE LEWIS: And the same thing is true of
23 the Exhibit F, the head count. You're offering it,
24 sir?

25 MR. FORMAN: Yes.

1 MR. VINDING: Same objection, Your Honor.

2 JUDGE LEWIS: Same objection and same ruling.
3 How's that?

4 MR. FORMAN: We --

5 MR. VINDING: Consistency.

6 MR. FORMAN: If you'd like, if Your Honor
7 would like, we have the underlying tally sheets on
8 which "F" was compiled. But it's a lot of paper, and
9 we didn't think that you would want to further burden
10 the record that way.

11 But we have all that.

12 JUDGE LEWIS: Nor the Southwest Airlines
13 employees. Okay? No, I don't want it.

14 MR. FORMAN: And similarly, we have and are
15 providing to Mr. Vinding the video footage on a
16 high-capacity hard drive, and should Your Honor wish to
17 view that dramatic presentation, we would be more than
18 happy to provide that to you as well.

19 JUDGE LEWIS: I'd doubt if I would get through
20 the first hour, to be honest with you.

21 No, I -- I do not want it. I will -- I may
22 use some of this stuff with some skepticism based upon
23 my own personal experiences, which I can't ignore, in
24 my lifetime, and I've been around a little bit.

25 No, I don't want to do that. I'll look at --

1 I'll look at what's there and I'll deal with it. So
2 I've got "A" through "G" and I have 1 and 2. They've
3 both been admitted.

4 (Plaintiff's Exhibit 2 was admitted into
5 evidence.)

6 JUDGE LEWIS: So all that's in. All right?

7 MR. FORMAN: Thank you.

8 JUDGE LEWIS: And the City of Eureka was kind
9 enough to provide me with staples during the recess, so
10 I'm all set.

11 Okay, next witness.

12 MR. FORMAN: Our next witness is April Medina.

13
14 APRIL FLORIO,
15 having first been duly sworn, was
16 examined and testified as follows:

17
18 JUDGE LEWIS: Please state and spell your name
19 for the record, please.

20 THE WITNESS: April, A-P-R-I-L, Florio, F-as
21 in Frank-L-O-R-I-O.

22 MR. FORMAN: Sorry. It's not Medina.

23 THE WITNESS: Not any longer.

24 JUDGE LEWIS: Now you threw me. Spell the
25 last name again.

1 THE WITNESS: It's F-as in Frank-L-O-R-I-O.

2 JUDGE LEWIS: Mr. Forman.

3 MR. FORMAN: I apologize. I'm behind the
4 times.

5

6 DIRECT EXAMINATION

7 BY MR. FORMAN:

8 Q. Ms. Medina -- Ms. Florio. Old habits.

9 Where -- are you currently employed?

10 A. Yes.

11 Q. And by -- by what person or entity are you
12 currently employed?

13 A. I'm currently employed by the Bear River Band
14 of Rohnerville Rancheria.

15 Q. And in what capacity are you employed by the
16 tribe?

17 A. I work in the legal department.

18 Q. And what do your duties entail in the legal
19 department?

20 A. I oversee more of the day-to-day operations,
21 policy development, implementation. I carry out the
22 tasks that handle -- that the Council delegates me to.

23 Q. Do you, during the course of -- of a normal
24 workday, have a -- let me back up.

25 Which of the tribal offices is the location of

1 your office?

2 A. I work in the Tish-Non administrative
3 building.

4 Q. And where is this building in relation to the
5 intersection of Singley Road and Bear River Drive?

6 A. It is north.

7 Q. About how far north?

8 A. It's about a tenth of a mile.

9 Q. And during the course of a normal workday, is
10 it common for you to go from your office to the tribal
11 offices that are located on lands to the east of
12 Singley Road?

13 A. Yes.

14 Q. How many times a day in the normal day are you
15 likely to do that?

16 A. On a normal day, anywhere between four, on a
17 good day, upwards of eight on a really busy day. And
18 those are round trips.

19 Q. I'd like to show you a document which I've
20 marked for identification as Exhibit H. I've given a
21 copy to Mr. Vinding.

22 MR. VINDING: I don't think I have "H".

23 MR. FORMAN: I didn't give you "H"? I'm
24 sorry.

25 MR. VINDING: No.

1 MR. FORMAN: I thought I did. I apologize.

2 MR. VINDING: No, I haven't. Thank you.

3 (Defendant's Exhibit H was marked for
4 identification.)

5 BY MR. FORMAN:

6 Q. Have you ever seen what has been marked as
7 Exhibit H before?

8 A. Yes, I have.

9 Q. Do you know what it is?

10 A. It is a letter that I composed on behalf of
11 the tribal council to the Singley Hill Homeowners
12 Association.

13 Q. Did you cause that letter to be sent?

14 A. Yes, I did.

15 Q. And was anything else sent with the -- with
16 the cover letter?

17 A. Yes. There was the cover letter, 15 copies of
18 the agenda, which is -- and 15 copies of the map thing.

19 Q. All of which is part of Exhibit H. Is that
20 correct?

21 A. Correct.

22 Q. And what was the -- the purpose of your
23 sending this letter?

24 A. Was to inform the Singley Hill Homeowners
25 Association of the public meeting we were having

1 regarding the intersection or the intersection
2 modification.

3 Q. To your knowledge, did this meeting occur?

4 A. Yes, it did.

5 Q. Did you attend?

6 A. Yes, I did.

7 Q. Approximately how many -- how many people
8 attended this meeting, if you know?

9 A. I believe it was between 15 to 20.

10 Q. And to your knowledge, were any of the people
11 in attendance part of the Singley Hill Homeowners
12 Association?

13 MR. VINDING: Objection, speculation. Lacks
14 foundation.

15 JUDGE LEWIS: Well, I think she -- she could
16 give us a -- an accurate, number since she was
17 attending the meeting, as to non -- let's put it this
18 way, nontribal members.

19 THE WITNESS: That was the 15 to 20. I
20 apologize.

21 BY MR. FORMAN:

22 Q. After the -- when was this meeting?

23 A. It was January 18th.

24 Q. After the January 18th meeting, at any time
25 after, did you receive personally any communications

1 concerning that meeting?

2 A. Yes, I did.

3 Q. From whom?

4 A. I actually received it from Jimmy Smith.

5 Q. And who is Jimmy Smith?

6 A. He is a Board of Supervisors. He sits on one
7 of the County boards.

8 JUDGE LEWIS: You mean Humboldt County Board
9 of Supervisors?

10 THE WITNESS: Mm-hm.

11 BY MR. FORMAN:

12 Q. And what was the -- what was the nature of his
13 communication to you concerning the meeting?

14 A. He -- I don't have a copy of it in front of
15 me, but if I recall correctly, he had been -- he had
16 been requested by a lady named Suzi to forward me her
17 correspondence, which he did.

18 MR. FORMAN: I would ask that Exhibit H be
19 admitted into evidence at this time.

20 JUDGE LEWIS: Any objection, Mr. Vinding?

21 MR. VINDING: No, as long as it's been
22 understood it was established it was mailed, but not
23 necessarily received.

24 JUDGE LEWIS: "H" is received.

25 MR. FORMAN: I would note, Your Honor, that on

1 the last page of the -- the exhibit, there is a -- a
2 certified mail receipt from the Postal Service.

3 JUDGE LEWIS: I've seen it.

4 MR. VINDING: And that receipt is not signed.
5 It's the receipt that you tear off and you keep in your
6 file, not the little square card that you sign off on
7 when it's received.

8 JUDGE LEWIS: Okay. Mr. Vinding, you know, 15
9 to 20 people showed up. I'm sure some of them were
10 from the homeowner association.

11 Let's not be nitpicky about this. Like I
12 said, I'm trying to be fair to everyone.

13 MR. VINDING: Thank you.

14 THE WITNESS: I had that --

15 JUDGE LEWIS: That -- Ms. Florio, who used to
16 go by Ms. Medina, as I see it on the bottom here,
17 that's enough.

18 You wait until you're asked a question,
19 please.

20 MR. FORMAN: I have no further questions of
21 Ms. -- Ms. Florio.

22 (Defendant's Exhibit H was admitted into
23 evidence.)

24 JUDGE LEWIS: See, wasn't that easy?

25 THE WITNESS: Yes.

1 JUDGE LEWIS: Actually, you're not done. Get
2 back there, please. Mr. Vinding's turn.

3 MR. VINDING: Thank you.
4

5 CROSS-EXAMINATION

6 BY MR. VINDING:

7 Q. You testified you used the road four to eight
8 times a day. Is that right?

9 A. Yes.

10 Q. Do you ever walk on the road?

11 A. I have.

12 Q. And you want that road to be safe. Correct?

13 A. Absolutely.

14 Q. Are you aware of folks in the neighborhood
15 walking up and down the street, either with children or
16 animals, things like that?

17 A. I have seen that.

18 Q. Are you aware of intoxicated patrons leaving
19 the casino?

20 A. I have been aware, yes.

21 Q. On what frequency have you seen intoxicated
22 patrons leaving the casino?

23 MR. FORMAN: Objection. Misstates the
24 witness's testimony. She did not testify she saw it.

25 JUDGE LEWIS: It was never -- it was never

1 clarified, okay, whether she was personally aware of
2 observing someone intoxicated or whether she heard
3 about it from someone.

4 She works in the legal department, so I'm sure
5 she's heard about things.

6 BY MR. VINDING:

7 Q. How did you become aware that intoxicated
8 patrons were leaving the casino?

9 A. I've been informed through the course of my
10 duties.

11 Q. And during the course of your duties, what
12 frequency did you learn that intoxicated patrons were
13 leaving the casino?

14 A. Three that I can recall.

15 Q. And within the last, what, year, two years?

16 A. Within the last four and a half years.

17 Q. And same questions regarding employees. Were
18 you made aware of intoxicated employees leaving the
19 casino within the last, say, three years?

20 A. Well, that's -- I only find out about the
21 employees. I don't deal with the patrons. If they are
22 an employee, but they are off the clock, they're
23 considered patrons, so...

24 Q. Were you made aware of intoxicated employees
25 leaving?

1 A. That was the three I was speaking of.

2 Q. Okay.

3 MR. VINDING: I have nothing further.

4 JUDGE LEWIS: Ms. Florio --

5 THE WITNESS: Mm-hm.

6 JUDGE LEWIS: Is that a yes?

7 THE WITNESS: Yes.

8 JUDGE LEWIS: You can't say mm-hm, because the
9 court reporter can't take that down. Working in a
10 legal department, you should know that.

11 Exhibit B, that was the top -- topic of
12 discussion at this meeting on January the 18th, 2011.
13 Right?

14 THE WITNESS: Correct.

15 JUDGE LEWIS: You were present.

16 THE WITNESS: Correct.

17 JUDGE LEWIS: The 15 to 20 people that you
18 were talking about, were any of them -- did you
19 recognize any of them to be members of the homeowners
20 association?

21 THE WITNESS: Yes.

22 JUDGE LEWIS: Okay. During the course of this
23 meeting -- and I just mean during this meeting
24 itself -- I'm assuming that someone explained the
25 details of Exhibit B. Am I right?

1 THE WITNESS: Yes.

2 JUDGE LEWIS: Now, from the audience -- okay,
3 the 15 to 20 people that -- that you were talking
4 about, what was the response, the reaction, if any?

5 THE WITNESS: They weren't happy. They said
6 it didn't comply.

7 JUDGE LEWIS: Okay. Can you give me any more
8 detail?

9 THE WITNESS: Yes. Specifically, they said
10 that we were not preventing traffic from turning left
11 when coming south and they brought up the fact that
12 they could go straight across the street and turn
13 around, as you have, and we had tried to address that
14 with them, but they didn't care. So...

15 JUDGE LEWIS: Okay. All right. And that was
16 at the meeting itself?

17 THE WITNESS: Yes.

18 JUDGE LEWIS: And what's this about -- I
19 didn't get the significance of this guy from the Board
20 of Supervisors.

21 What was that all about?

22 THE WITNESS: He had forwarded me an e-mail,
23 and if I recall correctly, the lady's name was Suzi,
24 that she had sent to him asking to please send it my
25 way, just explaining that they do not accept it, they

1 don't agree with it, and they feel as though it does
2 not comply.

3 And they believe that our housing development,
4 if I remember correctly, across the street is a smoke
5 screen; that the people that live over there will not
6 be working for the tribe or the casino, which is in
7 fact false.

8 JUDGE LEWIS: I missed that last part.

9 THE WITNESS: Which is in fact false, because
10 people that are living across the street do work for
11 us.

12 JUDGE LEWIS: Yes.

13 MR. FORMAN: Your Honor, I have a copy of that
14 e-mail.

15 JUDGE LEWIS: No, not interested. I just
16 wanted to have an idea of what was going on there.

17 Okay. Now, Ms. Florio, you're excused.

18 THE WITNESS: Thank you.

19 JUDGE LEWIS: Thank you.

20 MR. FORMAN: Bear River has nothing further at
21 this time, Your Honor.

22 JUDGE LEWIS: Okay. All right, I did put "H"
23 in. All right.

24 Mr. Vinding? Your turn, sir.

25 MR. VINDING: Thank you, Your Honor. I'd like

1 to call Jennifer Bice, please.

2

3 JENNIFER BICE,

4 having first been duly sworn, was

5 examined and testified as follows:

6

7 JUDGE LEWIS: Please state and spell your

8 name.

9 THE WITNESS: My name is Jennifer Bice.

10 J-E-N-N-I-F-E-R B-I-C-E.

11 JUDGE LEWIS: Mr. Vinding.

12

13 DIRECT EXAMINATION

14 BY MR. VINDING:

15 Q. Have you ever been employed at the casino?

16 A. Yes. I've been employed with Bear River on
17 two separate occasions.

18 Q. When was that?

19 A. I first started working for Bear River I
20 believe June of 2006. I proceeded to work for two
21 years, took a year off, and I went back in 2008 until
22 about 2 -- and my -- my last day working there was May
23 of 2010.

24 Q. During your first -- first stint of
25 employment, what was your job title?

1 A. My job title, I was hired as valet parking,
2 which was linked with the security department.

3 Q. Were you provided a uniform?

4 A. Yes, I was. I was dressed as a security
5 officer, but my main job was valet.

6 Q. And what did your duties include?

7 A. I did perform lots of security duties as well,
8 but my main job was to park valet -- or patrons' cars.

9 Q. During this first stint of employment,
10 approximately how many days a week were you working?

11 A. I was full time, and a lot of overtime. So I
12 was working five days a week.

13 Q. And was there a particular shift that you had?

14 A. I had -- yeah. I mostly did -- most of valets
15 come in at night, so I would work evening shifts. I
16 believe I'd start at sometimes 4:00 or 5:00 and get off
17 at 2:00 a.m.

18 Q. In that capacity as valet, did you ever
19 witness intoxicated employees leaving the casino?

20 A. Yes. Most definitely.

21 Q. How often did that occur?

22 A. That occurred regularly.

23 Q. Can you be more definite than that?

24 A. There's been numerous occasions that I've seen
25 fellow coworkers leave intoxicated, as well as myself.

1 Q. You've left there intoxicated?

2 A. Yeah. I've definitely left there plenty of
3 times intoxicated.

4 Q. Did anyone try to stop you?

5 A. No, except for one occasion. I was stopped
6 and given a Breathalyzer test.

7 Q. Did you pass?

8 A. I did not.

9 Q. What happened after that?

10 A. After that, I proceeded to hang out for about
11 25 minutes and asked if I -- I had valeted my truck at
12 the time, and asked for my keys, and I got them and I
13 left.

14 Q. Were you still intoxicated at the time you
15 left?

16 A. Very much so.

17 Q. Where did you go?

18 A. Since I was so intoxicated, I called my friend
19 and I had went down and took a right and went up
20 Singley and parked at my friend's house that lives up
21 the road.

22 Q. In your capacity as a valet, did you ever
23 witness intoxicated patrons leaving the casino?

24 A. Yes, very much so.

25 Q. Can you give me any examples?

1 A. Yeah. There is lots of examples, followed by
2 incidents that resulted in car crashes and whatnot.

3 Prior -- there was a woman that was highly
4 intoxicated on the table games and she had got cut off
5 and then was asked to leave. She ended up raging down
6 the parking lot and ended up crashing at the bottom of
7 the hill.

8 There was once an intoxicated patron that had
9 left and before he could even get to the bottom, he had
10 crashed into a -- into a -- a company's van that was
11 stocked with energy drinks they were trying to sell to
12 the casino. That was a hit-and-run kind of thing.

13 I've witnessed numerous occasions. I mean, my
14 job as valet back then was being outside and I
15 witnessed a lot of people leaving intoxicated, always.

16 Q. Can you give me a little more definite
17 statement? Are you saying this was one time a month,
18 one time a year, one time a week?

19 A. Oh, incidents occurred, if not daily, but,
20 yeah, at least -- at least there was three to five
21 occasions weekly going on of patrons, you know, --

22 Q. Did you ever witness any employees assisting
23 intoxicated patrons into their car?

24 A. Assisting them into their car?

25 Q. Did you -- were you aware of any employees

1 providing car keys to intoxicated patrons?

2 A. You could say that.

3 Q. Well, how -- how would you say it? I don't --

4 A. Well, I would say that there's been several
5 occasions -- even me hanging out there, and I've known
6 people who have been intoxicated, my friends as well,
7 and they've been passed down their keys just as I was
8 when I was intoxicated there. So, yes.

9 Q. Now, you worked at the casino a second time?

10 A. Yes, I did.

11 Q. What was your capacity? What was your title
12 at that time?

13 A. I was in soft count, and I worked through the
14 auditing department.

15 Q. What is soft count? What does that mean?

16 A. Soft count, we -- we count the money generated
17 on a daily basis through all the departments of the
18 casino and -- and then we turn that information over to
19 the audit department on a daily basis.

20 Q. Now, at some point, it looks like May of 2010,
21 you stopped working at the casino?

22 A. Yeah. May of 2010, I was fired from the
23 casino.

24 Q. Why were you fired?

25 A. I was fired for doing my job, pretty much, I

1 would have to say.

2 Q. What does that mean?

3 A. I had -- prior to me being fired, I had been
4 given the position to oversee soft count and my
5 concerns with soft count were not being met, and by
6 taking that to the board of directors, they overturned
7 my concerns of running a department and fired me.

8 Q. Now, you approached me today earlier in this
9 hearing. Correct?

10 A. Yes, I did.

11 Q. Why?

12 A. Because -- well, I had nothing -- I knew
13 nothing about what was going on up here until I
14 received a phone call from my friend, and so I came up
15 here to listen and check it out and I just -- you know,
16 I've -- I've been -- I was born and raised in this
17 community and I just can't fathom to listen to, you
18 know, some of the people speak, because I know the ins
19 and outs of that casino. I feel I do.

20 I know all these people behind me and I just
21 know something needs to be done about this casino.

22 Q. What do you mean?

23 A. I'm not sure. I just --

24 Q. Well, is -- are you here because you have a
25 vendetta? Are you here because you have concerns about

1 alcohol? Are you here because you're bored?

2 A. No. I'm here because I have concerns about,
3 you know, my community and the people in my community,
4 and I don't feel like the Bear River Casino, you know,
5 pays attention as much as they should be of the
6 well-being of the people that enter the casino.

7 Q. Do you know who Morgan Burris is?

8 A. Yes, I do.

9 Q. Who is she?

10 A. I don't know her personally, but she worked as
11 a cocktail waitress when I was working there. Poured
12 beer at Bear River.

13 Q. Anything happen to her?

14 A. Supposedly she had had quite a bit of drinks
15 and left the casino and ended up crashing that evening
16 after she had left there and a lot -- we didn't know if
17 she was going to make it, live or die, because she's
18 now paralyzed.

19 MR. VINDING: I have nothing further.

20 JUDGE LEWIS: What do you mean, "supposedly"?

21 THE WITNESS: Well, I had heard.

22 JUDGE LEWIS: You have no personal knowledge?

23 THE WITNESS: I was not there. But I -- I --
24 I believe it, you know. There's been lots --

25 JUDGE LEWIS: Well --

1 MR. FORMAN: Your Honor, I'll move to strike
2 the testimony as beyond personal knowledge of this
3 witness.

4 JUDGE LEWIS: You know what, Mr. Forman, it's
5 in there, on the record.

6 MR. FORMAN: All right.

7 JUDGE LEWIS: Your witness, Mr. Forman.

8
9 CROSS-EXAMINATION

10 BY MR. FORMAN:

11 Q. Ms. Bice, who is this friend that told you
12 about today's meeting, today's hearing?

13 A. Kristy Walstrom.

14 Q. And you're here because you -- you care about
15 the safety of the community surrounding the Bear River
16 Casino.

17 Is that right?

18 A. Yes.

19 Q. Is this a newly-found concern you have, or
20 have you always had this concern?

21 A. I've always had this concern.

22 Q. And you had this concern on the occasions when
23 you say that you left the casino behind the wheel of a
24 car in an intoxicated condition?

25 You were concerned about the community then,

1 were you?

2 A. Concerned about myself.

3 Q. But you left the casino intoxicated anyway.
4 Right?

5 A. I -- I did.

6 Q. Okay. When you said earlier that you observed
7 people, patrons, leaving the casino in an intoxicated
8 condition with some frequency, did you conduct any
9 Breathalyzer or other tests on any of these patrons
10 to -- to determine if they were in fact intoxicated?

11 A. I have before.

12 Q. And you allowed them to leave, of course,
13 after you gave them these tests and they were --
14 they -- they appeared to be intoxicated?

15 MR. VINDING: Objection. Misstates testimony,
16 and argumentative.

17 MR. FORMAN: I'm asking.

18 JUDGE LEWIS: It is cross-examination,
19 Mr. Vinding. I'm going to allow it.

20 THE WITNESS: No. Any time I dealt with
21 intoxicated patrons, I handled the situation, whether
22 it be them -- get them a free meal to sober them up or
23 get them a ride or find them a ride or phone them --
24 somebody else.

25 /////

1 BY MR. FORMAN:

2 Q. And in fact, it is the -- the official policy
3 of the Bear River Casino that employees on duty are not
4 to allow -- to give the car keys to a patron whom the
5 employee believes to be intoxicated.

6 Is that correct?

7 MR. VINDING: Assumes facts not in evidence.
8 Lacks foundation.

9 JUDGE LEWIS: Well, she should know. She
10 worked there.

11 THE WITNESS: Yeah, that was -- yes, that was
12 the policy, to try and stop the intoxicated people from
13 leaving.

14 BY MR. FORMAN:

15 Q. And were you here earlier in the day when -- I
16 think it was Mr. Sand who -- who testified about the
17 casino having a policy of offering obviously
18 intoxicated patrons a shuttle ride home?

19 A. Yes.

20 Q. And do you agree that that is in fact what is
21 the policy of the casino?

22 A. No.

23 MR. VINDING: Objection, speculation. She
24 hasn't been employed there for more than a year.

25 JUDGE LEWIS: Well, while you were there.

1 THE WITNESS: No. When I first started
2 working there, yes, they had a great transportation and
3 we were giving numerous people that were intoxicated
4 rides home.

5 But as time went on, there was absolutely no
6 transportation and it wasn't accessible at all, unless
7 we could somehow wake somebody up or -- or if we had
8 enough people on staff, we could give them a ride home
9 in a security vehicle.

10 BY MR. FORMAN:

11 Q. The -- the last time you worked at the casino
12 was May of 2010. Is that right?

13 A. That's correct.

14 Q. So you -- so you have no knowledge, no
15 personal knowledge of what current policies of the
16 casino are with respect to dealing with intoxicated
17 patrons or intoxicated employees, do you?

18 A. No, I don't.

19 Q. While you were employed at the casino, was it
20 the casino's policy that employees were not to consume
21 alcoholic beverages while they were on duty?

22 A. Yes.

23 Q. You said earlier that you -- you were -- I'm
24 paraphrasing, and please correct me -- you feel you
25 were fired in retaliation for expressing concerns to

1 the board of directors about how the -- the soft count
2 was being run.

3 Is that correct?

4 A. That's correct.

5 Q. Okay. Is it true that you attempted to lead a
6 walkout of soft count employees and that is why you
7 were fired?

8 A. No, it is not.

9 Q. Okay. Did you -- which part? Cop-out
10 question.

11 Did you attempt to lead a walkout of soft
12 count employees?

13 A. No, I did not.

14 Q. Did not, okay.

15 A. No. In order for me to speak to the board of
16 directors, I had to put a hold to the next day to form
17 this meeting, which we can do in soft counts, because
18 we can do double drops on the next day.

19 Q. Would you please explain to me the meaning of
20 what you just said, because I frankly don't understand
21 it.

22 What meeting are you talking about?

23 A. The meeting I -- I got together and made with
24 the board of directors.

25 Q. Okay. You're not talking about a meeting with

1 other employees?

2 A. No.

3 Q. No. And so let me be clear on -- on what
4 happened in that -- in connection with that.

5 You -- you notified the board of directors
6 that you wanted to meet with them. Is that right?

7 A. Yes, I did.

8 Q. And you explained why you wanted to meet with
9 them?

10 A. Yes, I did.

11 Q. And you notified your superior that you wanted
12 to meet with the board of directors about your issue?

13 A. Yes, I did.

14 Q. Okay. And it's your opinion that because you
15 notified your superior that you wanted to meet with the
16 board of directors about an issue you had with the way
17 the soft count was being conducted, that you were
18 fired?

19 A. Actually, I tried to meet with my boss, Bruce
20 Merson, and I was supposed to meet with him in his
21 office the next day, and he never got back to me.

22 And so I went above him and got ahold of John
23 McGinnis, which was head of the board of directors at
24 the time, to schedule a meeting to talk about what was
25 going on within the department.

1 Q. When you talked about observing intoxicated
2 employees or patrons leaving the casino, you're
3 basing -- on what are you -- on what are you basing
4 your -- your conclusion that these individuals were in
5 fact intoxicated and not suffering from some other
6 medical condition?

7 A. Because a lot of the people that left the
8 casino intoxicated, I was there, you know, drinking
9 with them as well on numerous occasions, and I knew
10 them personally.

11 Q. And you were drinking while you were on duty?

12 A. Oh, no, never.

13 Q. And what was the name of the -- of the woman
14 that you said had left the casino and had gotten into
15 an accident and been badly injured in the accident?

16 A. Morgan.

17 Q. And where did that accident occur?

18 A. I believe it occurred on -- I can't think of
19 the --

20 Q. Was it on Singley Road?

21 A. No. No, it wasn't.

22 Q. Was it on -- okay.

23 MR. FORMAN: I have no questions for -- no
24 further questions.

25 JUDGE LEWIS: Ms. Bice, you're here because a

1 friend told you about this hearing?

2 THE WITNESS: Yes.

3 JUDGE LEWIS: You were not subpoenaed to be
4 here?

5 THE WITNESS: No.

6 JUDGE LEWIS: All right. Who is your friend?

7 THE WITNESS: Kristy Walstrom.

8 JUDGE LEWIS: Kristy?

9 THE WITNESS: Yes, Kristy with a "K".

10 JUDGE LEWIS: Oh, "K". That's why I always
11 ask.

12 Now, Walstrom, you said?

13 THE WITNESS: Yes.

14 JUDGE LEWIS: Where does Ms. Walstrom live?

15 THE WITNESS: She lives on Singley Road,
16 just --

17 JUDGE LEWIS: Just north of the casino?

18 THE WITNESS: Yes.

19 JUDGE LEWIS: And if I remember your testimony
20 a little earlier, didn't you say something about you
21 would stay with her or go over to her house and stay
22 there?

23 THE WITNESS: No, I've never stayed there.

24 JUDGE LEWIS: You never went there?

25 THE WITNESS: Yeah, I -- I've been to her

1 house numerous occasions. I never stayed there.

2 JUDGE LEWIS: Okay. Is Ms. Walstrom a member
3 of the Singley Hill Homeowners Association?

4 THE WITNESS: I'm not sure.

5 JUDGE LEWIS: You never asked her?

6 THE WITNESS: No, I didn't.

7 JUDGE LEWIS: Okay. Does she own the property
8 on which she resides?

9 THE WITNESS: I believe she does.

10 JUDGE LEWIS: Is she employed by the casino or
11 has she ever been employed by the casino?

12 THE WITNESS: Yes, she has.

13 JUDGE LEWIS: Does she still work there?

14 THE WITNESS: No, she doesn't.

15 JUDGE LEWIS: Was she fired?

16 THE WITNESS: Yes, she was.

17 JUDGE LEWIS: And what for, if you know?

18 THE WITNESS: I believe for racial slurs. But
19 I have -- that's what she told me.

20 JUDGE LEWIS: Ms. Bice, let's be realistic
21 here. Do you have a grudge with the tribe?

22 THE WITNESS: No.

23 JUDGE LEWIS: You just came out here out of
24 the blue saying "I was drunk when I was there"?

25 THE WITNESS: Well, I think --

1 JUDGE LEWIS: For -- for no reason?

2 THE WITNESS: I know that the casino breaks
3 their policies off and on and they're so wishy-washy on
4 how they run their company, that, you know, as a
5 result, I believe that, you know, we have these
6 occurrences.

7 JUDGE LEWIS: You have what?

8 THE WITNESS: That we have these occurrences
9 as far as people getting in accidents and -- and such.

10 JUDGE LEWIS: Okay. Well, I'm -- I'm trying
11 to evaluate you, Ms. Bice, because that's my job.

12 THE WITNESS: That's fine.

13 JUDGE LEWIS: And I have -- I am having
14 difficulty accepting the fact that you don't have a
15 bone to pick with the tribe, and that's why you are
16 here today.

17 I -- I'm having difficulty with that. I
18 really am.

19 THE WITNESS: Yeah. I did once have a bone to
20 pick with the tribe, and now that I'm not working
21 there, I -- I'm just so much in a better place.

22 But I -- I don't now, but I've seen what's
23 went on there firsthand and I don't agree with how they
24 run their business.

25 JUDGE LEWIS: All right. All right,

1 Mr. Vinding, anything else?

2

3 REDIRECT EXAMINATION

4 BY MR. VINDING:

5 Q. You were asked about whether you saw or
6 whether it was a policy regarding drinking on duty as
7 an employee.

8 A. (Nodding head.)

9 Q. Is that yes?

10 A. Yes.

11 Q. Did you ever see any employees that were drunk
12 while they were on duty?

13 A. Yes.

14 Q. Can you tell me about any of those?

15 A. Yeah. On one occasion, there was a slot
16 attendant that had -- was getting intoxicated at work
17 and I witnessed that. I could smell it on his breath,
18 and they took care of the situation.

19 Q. What about within your soft count group?

20 A. Yes. Actually, no. I wasn't there on
21 occasion. I had got word that one of my soft count
22 employees had showed up intoxicated and took a
23 Breathalyzer test and failed.

24 MR. FORMAN: Objection, hearsay.

25 JUDGE LEWIS: We're getting real far afield

1 now, Mr. Vinding.

2 MR. VINDING: Okay. I have nothing further.
3 Thank you.

4 JUDGE LEWIS: Thank you, Ms. Bice.

5 THE WITNESS: You're welcome. Thank you.

6 WOMAN IN AUDIENCE: She just stuck her tongue
7 out at us. How mature, for the record.

8 MR. VINDING: I'd like to call Mr. McVicker,
9 please.

10 JUDGE LEWIS: Okay.

11

12 JIM McVICKER,

13 having first been duly sworn, was
14 examined and testified as follows:

15

16 JUDGE LEWIS: State and spell your name,
17 please.

18 THE WITNESS: First name is Jim, J-I-M,
19 McVicker, M-C-capital-V-I-C-K-E-R.

20 JUDGE LEWIS: K-E-R?

21 THE WITNESS: Correct.

22 JUDGE LEWIS: Okay. Mr. Vinding?

23 /////

24 /////

25 /////

1 DIRECT EXAMINATION

2 BY MR. VINDING:

3 Q. Where do you currently live?

4 A. My wife and I live at 700 Singley Road,
5 approximately, I'd say, two- to three-tenths of a mile
6 north of the casino.

7 Q. How long have you lived there?

8 A. We bought our home in December of 1989. Moved
9 in in January of '90.

10 Q. And how often are you on Singley Hill Road,
11 say on a weekly basis?

12 A. Oh, I'm -- I'm -- I mean, I'm on it daily. My
13 wife and I both walk the road with our dogs, as
14 probably everybody knows in the room. I'm the artist
15 they see out there painting.

16 So I do a lot of paintings on Singley Road.
17 That's the whole reason we moved to that area.

18 Q. And how would you -- well, describe for me
19 the -- the -- the conditions on the road when you would
20 take your walks prior to the construction of the
21 casino.

22 A. Well, I'm -- a lot less traffic is -- is the
23 biggest difference. It was the neighborhood people,
24 including tribal members. Everybody for the most part
25 was very courteous as they drive.

1 Neighborhood people still seem to be very
2 courteous. But it's -- since the casino was built, the
3 -- the traffic has grown enormously.

4 Q. Have you witnessed any collisions on Singley
5 Hill Road north of the casino?

6 A. I've not witnessed actual collisions. I've --
7 I've come after the fact and taken photographs.

8 Q. Were there these type of collisions prior to
9 the construction of the casino?

10 A. I believe there were on -- on record, I think
11 from our first hearing, I believe there were two or
12 three collisions on Singley Road, single cars hitting a
13 tree as they come around the blind curve.

14 It -- if you don't slow down enough, people
15 have been known to run off the road there.

16 But those are the only three I'm -- I'm aware
17 of.

18 Q. What about after the casino was constructed?

19 A. Yes, yes, there have been collisions. I mean,
20 I've -- I've got -- asked for reports from Highway
21 Patrol. Like I said, I've taken photographs.

22 There's been fences run through. There's been
23 single-car collisions, damage just down the road from
24 us, to a wall. Damage to a neighbor's fence.

25 Q. Have you conducted any investigation as to the

1 number of collisions following the construction of the
2 casino?

3 A. Yes. I've -- I've contacted the Highway
4 Patrol and the Sheriff's Department, although Highway
5 Patrol is -- are the people for the most part handling
6 the collisions. But Sheriff's Department as well.

7 Q. Did you obtain any information from the
8 Highway Patrol?

9 A. I have. Mm-hm.

10 Q. Do you have that with you?

11 A. Mm-hm.

12 Q. May I -- is that a yes?

13 A. Yes, it is. Yes.

14 Q. May I see it?

15 A. Shall I give you the --

16 Q. Yes, let me see what you have.

17 A. Those first two are letters I wrote to the
18 Highway Patrol, requesting, and also phone calls I've
19 made.

20 MR. FORMAN: Is this my copy?

21 MR. VINDING: That's your copy. I was going
22 to ask that one of these be marked.

23 JUDGE LEWIS: I do that. That's my job.

24 (Plaintiff's Exhibit 3 was marked for
25 identification.)

1 BY MR. VINDING:

2 Q. Let me first ask you about a February 2011
3 letter.

4 A. Mm-hm.

5 Q. Can you tell me what you --

6 A. February 10, 2011, yes.

7 Q. Can you tell me what you requested from the
8 CHP?

9 A. I wrote the CHP requesting the names and ages
10 of DUI arrestees which occurred on Singley Road between
11 1998 and 2011.

12 Q. Okay. And the CHP responded?

13 A. They did.

14 Q. What did they respond with?

15 A. I think that other one might be there. I
16 mean, these are the arrestees. They gave me a list of
17 arrestees' names, ages.

18 They would not give me any minor names, but I
19 have one, two, three, four, five, six, seven, eight,
20 nine, ten, eleven, ranging in age from 16 to 69.

21 And I -- I would like to say also, prior to
22 the casino, there were -- at least the records they
23 keep, there were zero DUI arrests.

24 MR. FORMAN: Your Honor, before we go further,
25 so to speak, down this road, I would object to --

1 although it hasn't been offered yet, but preemptively,
2 lest we take a lot of time on something that's not
3 admissible, I would note that this is not a record of
4 convictions of DUIs.

5 This is only a record of arrests, and
6 therefore I would submit ought not be received as --
7 because it's not probative of in fact that people were
8 driving under the influence.

9 Secondly, I would note that all three of the
10 names listed occurred subsequent to May of 2009, and
11 thus do not come within the ambit of the referral to
12 Your Honor for new matter, nor I think is it fair
13 rebuttal evidence to any of the evidence that we have
14 offered today.

15 JUDGE LEWIS: Well, Mr. Forman, if a CHP
16 officer goes to the trouble of arresting someone for
17 driving under the influence, that's good enough for me,
18 as far as what I have to deal with here.

19 I don't care whether they were convicted or
20 not. You never know, maybe the CHP officer or some
21 other necessary witness didn't show up, and that's why
22 it was tossed and there was no conviction.

23 But the fact that someone was arrested for DUI
24 by a CHP officer, that's good enough for me for what I
25 have to deal with.

1 What I'm having a problem with, Mr. Vinding --

2 MR. VINDING: Yes, sir.

3 JUDGE LEWIS: -- is where did these -- you
4 know, Singley Hill Road, big deal. What about north of
5 Bear River Drive? That's where I'm concerned with.
6 Not -- not south of Bear River Drive.

7 MR. VINDING: I understand.

8 JUDGE LEWIS: I'm concerned about north,
9 because that's the whole reason for condition No. 8 to
10 begin with, is everything that happens north of this
11 intersection.

12 MR. VINDING: Your Honor --

13 JUDGE LEWIS: This doesn't break it down for
14 me to tell me where it happened on Singley Road, and we
15 all know that there is a portion of the road from the
16 freeway up to Bear River Drive, and then it goes beyond
17 there.

18 MR. VINDING: I can clarify. The reason I was
19 offering it, Your Honor, is Mr. McVicker testified that
20 he walked up and down the road, and I believe that
21 there isn't a barrier at the casino.

22 In other words, he does walk down to the end
23 of the road, but I can clarify that he walks the length
24 of Singley Hill Road.

25 JUDGE LEWIS: That's fine. He walks it, but

1 this -- this is what I'm talking about. Okay? The
2 CHPs made these arrests, okay? They gave him this
3 information, but it doesn't break it down as to where
4 on Singley Hill Road these things occurred.

5 Was it north of Bear River Drive or was it
6 south of Bear River Drive? Okay, because we do know
7 for a fact that by the numbers that have been thrown at
8 me all day, the vast majority of the patrons who come
9 and go -- and I'm talking about patrons, of course --
10 patrons who come and go from the casino exit to the
11 south going towards the 101, and that's the way they
12 come in, too. The vast majority.

13 So I would assume that the majority of
14 these -- how many? One, two, three, four, five, six,
15 seven, eight, nine, ten, eleven. I'm assuming the vast
16 majority of these 11 occurred south of Bear River
17 Drive. Okay?

18 MR. VINDING: Understood.

19 JUDGE LEWIS: But this -- this is not helpful
20 to me as to, you know, where.

21 MR. VINDING: Okay.

22 JUDGE LEWIS: And it's also, you know, 2005.
23 I mean, you know, --

24 MR. VINDING: Well, Your Honor --

25 JUDGE LEWIS: Maybe -- you know, maybe 2010 or

1 2011 might be relevant, but, you know, 2005?

2 MR. VINDING: As an offer of proof, I will
3 provide the court with a 2011 response from the CHP to
4 Mr. McVicker who asked on Singley Hill Road any
5 incidents from January 2011 to March 2011, and they
6 indicated that there were two, and they named the
7 individuals.

8 And I can ask Mr. McVicker whether his Public
9 Records Act request identified or not Singley Hill,
10 north Singley Hill or south Singley Hill. I don't have
11 an answer for Your Honor at this point.

12 MR. FORMAN: Your Honor, there is one more
13 point, and that is it is impossible to tell from this
14 or that whether -- assuming these individuals were
15 intoxicated with alcohol and not some other
16 intoxicating substance, which is pretty prevalent in
17 Humboldt county -- that they consumed the alcohol at
18 the casino, or if they were coming from Loleta.

19 Because Singley Road loops around and the
20 other end of it is closest to the town of Loleta, where
21 there is also licensed premises. They might have
22 consumed it there.

23 MR. VINDING: Okay. If I may short-circuit
24 this, Your Honor, and volunteer, give me a moment and
25 I'll see if I can't wrap this up rather quickly.

1 JUDGE LEWIS: Okay. I need -- I need
2 something more specific, Mr. Vinding.

3 MR. VINDING: Sure.

4 JUDGE LEWIS: You know, the generalities only
5 go so far.

6 MR. VINDING: These are pictures I'm going to
7 show him. I believe he took them. There's two of
8 those, and --

9 May I mark this next in order, Your Honor?
10 There's pictures.

11 JUDGE LEWIS: What about the last one?

12 MR. VINDING: I'm -- I'm not going to move it
13 in or request that it be moved in.

14 JUDGE LEWIS: But I've already marked it. So,
15 okay. Let me do this.

16 For the record, I have marked as Exhibit No. 3
17 a two-page document. First page is dated February
18 10th, 2011, apparently signed by a Capt. Lin --
19 Linschoten, L-I-N-S-C-H-O-T-E-N, of the Highway Patrol,
20 and the second page contains some dates and 11
21 different names.

22 Okay, it's marked only Exhibit No. 3.

23 Now, Exhibit 4?

24 MR. VINDING: Yes, sir.

25 JUDGE LEWIS: Okay, I'm marking as Exhibit No.

1 4 three -- three color copies of photographs. That's
2 Exhibit No. 4.

3 MR. VINDING: Thank you.

4 (Plaintiff's Exhibit 4 was marked for
5 identification.)

6 JUDGE LEWIS: By the way, folks, when we
7 finish here today, no one is leaving until I account
8 for each and every exhibit. Okay? Don't want any
9 lost.

10 BY MR. VINDING:

11 Q. Mr. McVicker, can you tell me what is Exhibit
12 4?

13 A. This is a neighbor's mailbox that, while we
14 were walking the road, had been hit the night before.
15 Obviously, somebody driving off the road.

16 MR. FORMAN: Excuse me, Your Honor, it would
17 be helpful if we divided 4 into A, B, C.

18 JUDGE LEWIS: I should have done that. Top
19 one is "A", second one is "B", next -- 4-A, B, C.

20 BY MR. VINDING:

21 Q. Mr. McVicker, where were those photographs
22 taken?

23 A. Well, they were on the north end of Singley
24 Road, up near what is called Echo Lane. In between
25 Echo and Hay Rake.

1 Q. And when were they taken?

2 A. I don't have the date on here. But these --
3 Terry, do you recall the date?

4 MRS. McVICKER: I think the one you have with
5 the mailbox, that's just from --

6 THE WITNESS: This is from February, I
7 believe.

8 BY MR. VINDING:

9 Q. Of this year?

10 A. Mm-hm.

11 Q. Is that a yes?

12 A. I'm sorry. Yes.

13 Q. Prior to the construction of the casino, did
14 you have mailboxes that were struck by cars?

15 A. Not by cars. There have been vandalism of
16 mailboxes here and there, but nothing by car like this,
17 no.

18 Q. Since the construction of the casino, has the
19 incidents of mailboxes being hit stayed the same,
20 increased or decreased?

21 A. There's certainly been more of them, yes.
22 Increased.

23 Q. In the last two years, approximately how many
24 times have you seen where a mailbox has been struck on
25 Singley Hill north of the casino?

1 A. Three that's coming to my head right now.

2 MR. VINDING: I'd like to move Exhibit 4 into
3 evidence.

4 MR. FORMAN: I'm going to object for lack of
5 proper foundation.

6 JUDGE LEWIS: Who took the photos?

7 THE WITNESS: I took the photos.

8 MR. VINDING: Thank you.

9 JUDGE LEWIS: Mr. McVicker, am I right --

10 THE WITNESS: Yes, sir.

11 JUDGE LEWIS: Am I right when I say that all
12 three photos are of the same mailbox?

13 THE WITNESS: You are right.

14 JUDGE LEWIS: And just so I know, sir, is
15 this -- in -- in this particular photograph I'm looking
16 at, 4-B, I see the mailbox on the right side of the
17 photograph -- right side of the road on the ground.

18 Do you see that?

19 THE WITNESS: Yes.

20 JUDGE LEWIS: Is this photograph looking going
21 northbound or --

22 THE WITNESS: That photograph is looking
23 north, yes.

24 JUDGE LEWIS: Looking going north?

25 THE WITNESS: Looking going north, yes.

1 JUDGE LEWIS: Okay. And this was in February?
2 THE WITNESS: Yes.
3 JUDGE LEWIS: Of 2011?
4 THE WITNESS: I have the exact dates, but I do
5 not have them with me, sir.
6 MR. FORMAN: And, Mr. Vinding, will you be
7 able at a later date to provide me with a copy of 4-B?
8 Because I don't have that.
9 MR. VINDING: Absolutely. Absolutely. And
10 here's another set.
11 JUDGE LEWIS: Okay. You have more?
12 MR. VINDING: Just one more. I'm not going to
13 show any more of this.
14 JUDGE LEWIS: I am going to -- 4-A, B and C.
15 Okay, your objection is overruled. I'm going
16 to admit 4-A, B and C.
17 (Plaintiff's Exhibit 4 was admitted into
18 evidence.)
19 JUDGE LEWIS: Before I get too far here,
20 Mr. McVicker, is this the same mailbox or a different
21 one?
22 THE WITNESS: It's the same mailbox. It
23 happened less than a month later. After it was
24 repaired this time, rather than a wooden post, it was
25 put in with a metal post and about a foot of cement

1 into the ground.

2 And kind of the exact same thing happened
3 again. This person has not put a mailbox back up.

4 JUDGE LEWIS: Time to move the mailbox, I
5 think, huh? All right.

6 BY MR. VINDING:

7 Q. This second set of photos, did you take those
8 pictures?

9 A. I did.

10 Q. And you testified that was about a month ago?

11 A. That -- that's been -- we are in May now. No,
12 that was in March that that happened.

13 JUDGE LEWIS: I've marked them as 5-A, B and
14 C.

15 (Plaintiff's Exhibit 5 was marked for
16 identification.)

17 BY MR. VINDING:

18 Q. Again, this is looking north on Singley Hill
19 Road?

20 A. That is looking north. The photograph is
21 looking north, correct.

22 Q. And it's north of the casino?

23 A. Correct.

24 Q. Looking at 5-A, can you tell me what -- what
25 you saw when you were -- well, strike that.

1 Can you tell me what you see in the
2 photograph?

3 A. Well, the mailbox is approximately -- we
4 measured it at the time. It's approximately 30 feet
5 from the post and the post, which looked like it would
6 handle just about anything, it's -- well, it's been
7 torn out of the ground.

8 And then the tire tracks from the vehicle.

9 MR. VINDING: I'd move this into evidence,
10 Your Honor.

11 JUDGE LEWIS: When -- when did this one take
12 place, sir?

13 THE WITNESS: That was in March, sir.

14 JUDGE LEWIS: Okay. The first set was in
15 February?

16 THE WITNESS: In February. They happened very
17 close to each other.

18 JUDGE LEWIS: And this one was in March.

19 Mr. Forman, do you wish to be heard on that?

20 MR. FORMAN: Well, Your Honor, I think that an
21 adequate foundation has been laid for the authenticity
22 of the photographs.

23 I don't know that a foundation has been made
24 for the relevance, in that there's been no testimony
25 that the hitting of the mailbox was observed by the

1 witness, nor is there any testimony as to the origin of
2 the vehicle that hit the mailbox.

3 Could have been coming up from 101 and never
4 even stopped at the casino.

5 JUDGE LEWIS: You know, the first one might
6 have been some -- some -- well, you could see it might
7 have been some kids playing -- what did they use to
8 call it? Mailbox baseball or something like that.

9 MR. FORMAN: Yes.

10 JUDGE LEWIS: But the tire tracks kind of give
11 it away.

12 And the second one, yeah. Well, they were
13 probably going a little bit faster there too. You
14 know, it is what it is.

15 MR. FORMAN: Exactly.

16 JUDGE LEWIS: Yeah. I understand that -- you
17 know, in all honesty, it could have been one of the
18 other homeowners, too. You know, it could have
19 been. It could have been.

20 It is what it is, and I'm going to leave it at
21 that. I'll -- I'll deal with it. 5 is received.

22 (Plaintiff's Exhibit 5 was admitted into
23 evidence.)

24 JUDGE LEWIS: Go ahead, Mr. Vinding.

25 /////

1 BY MR. VINDING:

2 Q. Mr. McVicker, since the casino has come into
3 existence, have you had to alter or otherwise change
4 your walking routine?

5 A. Well, we -- we try and walk as early as
6 possible to avoid as much traffic as -- as possible.
7 We -- we step off the side of the road.

8 We -- we do continue to walk, but certainly
9 the use enjoyment has -- has definitely diminished
10 considerably, and we don't see other neighbors, at
11 least in our neighborhood -- I've seen people who walk
12 up from downtown -- other neighbors walking the road as
13 they used to.

14 We don't see the dogs walked, we don't see the
15 bicycles, the horses. That used to be a much more used
16 thoroughfare for people on foot and bike.

17 MR. VINDING: I have nothing further, Your
18 Honor.

19 JUDGE LEWIS: Mr. Forman?

20

21 CROSS-EXAMINATION

22 BY MR. FORMAN:

23 Q. Mr. McVicker, is -- is it correct to say you
24 did not see the accidents that led to the decapitation
25 of these mailboxes? Correct?

1 A. Correct. Correct.

2 Q. And is it your understanding that Singley Road
3 is a public road?

4 A. Oh, yes. County road, yes.

5 Q. Do you know what hours alcohol is served at
6 the casino?

7 A. I believe they start -- stop serving at
8 2:00 a.m. I do not recall what time they start
9 serving.

10 That's what I seem to recall from the license,
11 that they do stop at 2:00 a.m.

12 MR. FORMAN: Thank you. I have no further
13 questions.

14 JUDGE LEWIS: As -- as a homeowner, and I'm
15 assuming member of the homeowners association --

16 THE WITNESS: I'm currently the spokesperson,
17 too.

18 JUDGE LEWIS: Okay. Let me -- let me ask you,
19 sir. You've seen the proposal that is Exhibit B?

20 You're shaking your head, but the court
21 reporter doesn't see that.

22 THE WITNESS: Yes, I have.

23 JUDGE LEWIS: Thank you. All right -- well,
24 let's do it this way.

25 I'll start it off by asking you, what, if

1 anything, is your view as it relates to Exhibit B, the
2 Exhibit B proposal?

3 THE WITNESS: And we're talking about the
4 current design that is proposed?

5 JUDGE LEWIS: Yes. The one that we talked
6 about all morning here. Yes.

7 THE WITNESS: Well, my -- my views and the
8 views of the association have, you know, been -- been
9 the same all along. It's that it -- as we talked about
10 in this hearing earlier, somebody could still turn over
11 the top of that six-inch curb.

12 There is still -- there may be striped yellow
13 lines, there may be a "No Left Turn" sign, there may be
14 a "No Right Turn" sign, but all of us have witnessed
15 time and again, time and again, people do not always
16 pay attention to those signs.

17 My -- my -- I mean, one concern is it is
18 three-tenths of a mile down to the freeway onramp, 101
19 going north. About another tenth of a mile, you make a
20 left turn, you're on 101 going south.

21 Why does anybody need to drive through the
22 neighborhood, commercial traffic? And that has been
23 something that I have never been able to understand
24 since the casino's opened and since we've had
25 negotiations with them back in 1996 when they first

1 proposed the casino.

2 And that was always on the table, about people
3 not turning to the right and not coming in from the
4 north. To keep the northern part of the neighborhood
5 safe and the rural atmosphere we have for the
6 neighborhood.

7 And so I still see the same thing happening,
8 with people continuing to come down from the north and
9 continuing to go up.

10 JUDGE LEWIS: Mr. McVicker, as Mr. Forman just
11 asked you, Singley Hill Road is a public road.

12 THE WITNESS: It is a public road. I have --
13 yes.

14 JUDGE LEWIS: Listen to me. It's open to the
15 public, okay? I -- I understand your concerns, sir.

16 THE WITNESS: Mm-hm.

17 JUDGE LEWIS: All right? But let's face some
18 realities here, okay? Reality No. 1, the casino is
19 there and it's not going away.

20 THE WITNESS: Oh, I have accepted that
21 reality. We all have, yes.

22 JUDGE LEWIS: Good. That's good. That's a
23 good start.

24 THE WITNESS: No, there is no question about
25 that at all.

1 JUDGE LEWIS: I am convinced -- I am
2 convinced -- I wrote about it last time from the last
3 hearing, and I have heard nothing today that would
4 cause me to think any differently, but I am convinced
5 that the tribe has gone above and beyond everything
6 humanly possible to try to comply with condition
7 No. 8.

8 No doubt in my mind, okay? They have gone
9 through a great deal of expense, a great deal of
10 trouble. They've hired the experts, if you will, the
11 engineers, to -- and -- and told them to come up with
12 something to minimize the impact as much as possible on
13 the traffic going up and down Singley Road north of
14 Bear River Drive.

15 They've done that, and right now, what we're
16 at is Exhibit B. That's the proposal that's on the
17 table right now.

18 THE WITNESS: Mm-hm.

19 JUDGE LEWIS: Apparently -- and I've listened
20 to the engineers now. Apparently there's nothing
21 better that can be done. It's not perfect by any
22 means, but, you know, life is not perfect either.

23 And I suppose if someone wants to violate the
24 law and ignore the signs, yeah, they can turn left
25 or -- turn left from Singley Hill Road into -- into --

1 on to Bear River, or they can turn right on to Singley
2 from Bear River Drive, you know, if they -- if they
3 choose to, you know, violate the law.

4 But, you know, we know people do it. That
5 doesn't mean they should.

6 Here's my thing. And -- and, you know, I've
7 got to decide. I'm open, I'm listening. What do I
8 do? Do I tell the tribe that, "No, you're still not
9 complying with the condition No. 8, so your license is
10 revoked. Because we have to have strict compliance and
11 if you don't do it, then that's it?"

12 Or do I say, "You know what? You spent a
13 great deal of money. The plan looks good. Yeah, it
14 may not prevent a hundred percent of the things from
15 occurring that -- that is condition 8, but it's going
16 to cut it down dramatically."

17 You know, I don't want to step on anyone's
18 rights by any means. Neither the homeowners
19 association nor the tribe. But, you know, there has to
20 be a happy medium somewhere and where it is, I don't
21 know.

22 Now that we've gotten rid of the Bureau of
23 Indian Affairs, I thought things were going to be a
24 whole lot better. At least we have a proposal on the
25 table that's not objected to by a government agency,

1 which is something, as far as I'm concerned.

2 But, you know, I'll be -- you're speaking
3 as -- as the representative or -- or president of the
4 homeowners association, sir.

5 What is it that you're asking for? Tell me.

6 THE WITNESS: We said this, actual -- actually
7 stopping the traffic with dividers. Something to
8 actually physically keep left turns from happening.

9 I -- I know some of these things. There was a
10 roundabout looked at at one time. I'm not sure what
11 happened with that.

12 There was a one-way leading to the roundabout
13 just north of the casino, so that traffic would not be
14 able to go to the right up a one-way channel.

15 We've -- we've seen various designs like
16 that. I'm not exactly sure what has happened to all of
17 those designs.

18 I agree this -- with -- this would make a
19 difference from what it is without it. I -- I think
20 that it -- to us, it just does not completely comply
21 with the agreement that was made.

22 JUDGE LEWIS: Well, I don't -- I don't think
23 you're ever going to get complete compliance, sir,
24 because that would require them to put barriers to
25 prevent people from going north of Bear River Drive on

1 Singley Road, and we've already learned that the Cal
2 Fire, Department of Forestry, the Sheriff's Department,
3 the County, they said, "No, you can't do any of those
4 things." They tried all that stuff.

5 You know, if -- if they could, they would.
6 They've already tried it. But they can't do it.

7 So should they be punished because some
8 government agency says, "You know what, you can't do
9 that"? That's -- that's -- that's what you're asking
10 for.

11 I mean, I'm not here -- and, you know, if you
12 go back and look at my -- my last decision, you know, I
13 didn't impose any discipline upon the tribe as it
14 relates to that thing, because I believe that they were
15 trying to do everything humanly possible to comply.

16 And -- and I'm stuck in a situation here now
17 where basically you guys are demanding strict
18 compliance, and on the other hand, the tribe is telling
19 me that it ain't going to happen, and I -- I firmly
20 believe that.

21 There will never be strict compliance here,
22 and that's because of all the other governmental
23 agencies involved. The County would never permit
24 barriers up there. Cal Fire is not going to do
25 it. The Sheriff's Department is not going to permit

1 it. Those are county roads.

2 THE WITNESS: I understand.

3 JUDGE LEWIS: So, you know, it's a matter of
4 they've done just about everything humanly possible
5 here. I mean, other than, you know, I -- I understand
6 what the -- what the engineer said about the height of
7 the curb and all that stuff.

8 THE WITNESS: Mm-hm.

9 JUDGE LEWIS: Maybe instead of six inches, 12,
10 you know, for some of these SUVs, to take care of
11 it. Preventing them from making the turn. That's
12 about the only thing that will do it, if -- if they're
13 driving one of those SUVs.

14 But, you know, I -- I'm trying to imagine what
15 else could possibly be done, and, you know, I -- I'm
16 giving these guys food for thought.

17 I hope you guys are listening, and I'm
18 referring to you, Mr. Forman, and you, Mr. Vinding,
19 because I'm going to ask you to do the same thing in
20 your closing arguments.

21 Tell me what I should do here and -- you know,
22 I still don't have an answer. I'm -- I'm at a loss.

23 I -- I'm convinced, and I said this last time,
24 you know, maybe this condition shouldn't be here to
25 begin with, but it is, all right? It is, and I have to

1 deal with -- no one else seems to want to deal with it,
2 but, you know, I'm the one that has to deal with it,
3 and I'm looking at it from the standpoint of had the --
4 had this thing gone to a hearing, maybe the condition
5 wouldn't be here.

6 But then again, on the other hand, the
7 homeowners gave up their rights to a hearing by
8 agreeing to those conditions and -- and, you know, the
9 tribe also agreed to that particular condition.

10 So, you know, either way you go, somebody's
11 rights are going to be stepped on in somebody's mind.
12 But I -- I want to try to be fair.

13 THE WITNESS: I understand.

14 JUDGE LEWIS: And, you know, I -- I'm open to
15 suggestions, sir. I -- I -- I really am, and -- and as
16 the president of the homeowners association, I -- you
17 know, I'd love to hear a good one.

18 THE WITNESS: Well, we -- we have done a rough
19 sketch of an idea for a one-way exit, one-way entry.

20 Now, whether or not it would fly with County
21 approval, I know the Bear River plans, at least -- this
22 isn't a final plan, but a plan we saw where they are --
23 are currently adding on a hotel next to the casino, and
24 that they plan to expand the parking lot, and there was
25 talk of -- in this plan that we received, talk of --

1 of -- of filling wetlands that are right along Singley
2 Road.

3 If those wetlands were filled, they could put
4 a one-way entrance right there from the south. They
5 could have a one-way exit coming out of the south.

6 Anyway, I'm not an engineer, but...

7 JUDGE LEWIS: Here's -- here's the thing with
8 all of that, sir. You know, all this stuff takes time.

9 THE WITNESS: I understand that. Believe me,
10 we understand.

11 JUDGE LEWIS: You know, if it was two years
12 ago when I was here last -- I was hoping that this
13 thing would be resolved in some way, shape or form, you
14 know, two years ago.

15 But it's not, and -- and it's still on the
16 drawing board here, and I -- I cannot issue a decision
17 that says, "You know what, we're going to wait five
18 years to see if the wetlands are filled in," blah,
19 blah, blah.

20 THE WITNESS: I understand.

21 JUDGE LEWIS: That's not going to fly. I've
22 got to deal with it right now, and I don't want a
23 long-range thing. I'm already here -- even for plan
24 "B", we're looking at four to six months easy before
25 the County either approves or disapproves, and if they

1 disapprove, then what? You know, we're -- we're back
2 to a pickle again.

3 Anyway, I haven't -- I haven't -- I didn't
4 want to shut you off. I was looking for suggestions,
5 to be very honest with you. I can't change the plan.
6 The plan --

7 THE WITNESS: Oh, I know you can't change the
8 plan.

9 JUDGE LEWIS: The plan has been what has been
10 presented to me and it's what's on the table right now.

11 THE WITNESS: We can't change your decision,
12 but I --

13 JUDGE LEWIS: Yeah, but there's other people
14 that can.

15 THE WITNESS: That's true. We just have
16 always been concerned with safety on the road out
17 there.

18 JUDGE LEWIS: And I am too, sir.

19 THE WITNESS: That is the issue. That is the
20 whole issue.

21 JUDGE LEWIS: I am, too, and -- but in so many
22 of these -- well, let's just leave it at that. I am
23 too.

24 THE WITNESS: Thank you. Thank you.

25 JUDGE LEWIS: All right. Thank you,

1 Mr. McVicker.

2 MR. FORMAN: Your Honor -- Your Honor, your
3 colloquy has caused me to need to ask three questions.
4 Three questions -- well, four questions -- of
5 Mr. McVicker, if I may.

6 JUDGE LEWIS: Okay.

7

8 RECROSS-EXAMINATION

9 BY MR. FORMAN:

10 Q. Mr. McVicker, in your opinion, is it -- is it
11 safe to drive on Highway 101 at, say, 35 to 40 miles an
12 hour in normal conditions?

13 A. On Highway 101? No, I wouldn't think so.

14 Q. Do you use Singley Road to get from your house
15 to Highway 101?

16 A. I do, yes.

17 Q. And do you use Singley Road to get north from
18 Highway 101 to your house?

19 A. If I'm coming from the north, you're saying?

20 Q. If you're on Highway 101 and you're going
21 home.

22 A. I would take the north exit, yes.

23 Q. On Singley Road?

24 A. On Singley Road, yes.

25 Q. Why, in your opinion, is it okay for you to be

1 able to use Singley Road north and south between your
2 house and the freeway --

3 A. Mm-hm.

4 Q. -- and not okay for members of the tribe who
5 live or work on the reservation to be able to use
6 Singley Road just as freely as you do?

7 MR. VINDING: Objection. Argumentative,
8 misstates facts, and assumes facts not in evidence.

9 JUDGE LEWIS: And besides, it's question 5.
10 You said there was only 4.

11 MR. FORMAN: I thought that was 4.

12 JUDGE LEWIS: I was counting them.

13 MR. FORMAN: No, I can --

14 JUDGE LEWIS: Everybody was watching me count
15 them.

16 MR. VINDING: There's been no testimony that
17 any tribal member would ever be prohibited from using
18 the road. That's not the goal. It's to make the road
19 safe from patrons.

20 JUDGE LEWIS: You know, I -- I still go back
21 to condition No. 8. That's what I've got to deal with,
22 the ingress and egress here.

23 And Mr. McVicker is not the person who is
24 going to be entering and leaving Bear River Drive,
25 because he's going to be driving right past it.

1 So let it -- let it go, Mr. Forman.

2 MR. FORMAN: Absolutely.

3 JUDGE LEWIS: I'll sustain the objection.

4 Besides, like I said, it was question 5.

5 I'm assuming you're done now.

6 MR. FORMAN: I am.

7 JUDGE LEWIS: Okay. Mr. McVicker, thank you,
8 sir.

9 THE WITNESS: Thank you, sir.

10 MR. VINDING: I think I've made the points
11 that I want to make, Your Honor. I have nothing
12 further.

13 JUDGE LEWIS: Okay.

14 MR. VINDING: To the extent that I haven't
15 done so, I'd like to move whatever is left into
16 evidence, but I think we took care of that housekeeping
17 already.

18 JUDGE LEWIS: I had 1 through 5 already in
19 evidence. There was nothing past 5, though?

20 MR. FORMAN: And there was no 3, as I recall.

21 JUDGE LEWIS: I'm sorry. 3 was not -- I
22 marked 3, but it's marked only. It's not admitted. It
23 was not offered.

24 MR. FORMAN: Right.

25 JUDGE LEWIS: Or if it was, it was withdrawn.

1 What we're going to do right now -- let me ask
2 you, gentlemen. Do you need a short break before I
3 hear closing arguments, or are you ready to go forward
4 without?

5 MS. McVICKER: Yes. Yes, we need a short
6 break.

7 MR. VINDING: A short break, please.

8 JUDGE LEWIS: Is that my wife back there?

9 Okay, all right. Why don't we take a -- well,
10 before we go off the record, Mr. Forman, Mr. Vinding,
11 you have heard my concerns. You're aware of what I was
12 instructed to do.

13 I want you to address during your closing
14 arguments the concerns that I have and -- and not just
15 with the -- the route road itself, but with the rights
16 of both parties in this case, that being the homeowners
17 association and the tribe.

18 Because I don't want to -- I -- I'm trying to
19 be as fair as humanly possible here. You heard my
20 dilemma. That's -- that's what I want -- I really want
21 you guys to address. Okay?

22 So with that, we're going to take a 10-minute
23 recess and then we'll hear the closing arguments.

24 Off the record.

25 (Recess taken.)

1 JUDGE LEWIS: Back on the record.

2 All right, we're ready for closing
3 arguments. We're going to begin with Mr. Vinding and
4 then Mr. Forman and of course, since the burden was
5 upon you, Mr. Vinding, to begin with -- this is still
6 an accusation, sir, that I'm dealing with here -- you
7 will actually get the final word here today. Not the
8 final word.

9 So we're going to proceed in that manner. You
10 are up, sir.

11 MR. VINDING: Thank you, sir.

12 I was just speaking with the homeowners
13 association for the last five minutes and the overall
14 theme that I got from them was that they would like to
15 be good neighbors and they would like to be reasonable.

16 They are not out to put the casino out of
17 business and they're not out to cause undue hardship to
18 their neighbors, the people that walk on the street.

19 Your Honor was correct. If you get some smart
20 people together, put their heads together, maybe they
21 can come up with something. Before I talk about that,
22 though, I'd -- I'd like to make a few points.

23 The first is in reading the ruling from May of
24 2009, paragraph 5 begins, "The problem here is the
25 Bureau of Indian Affairs."

1 That problem has been eliminated. We have in
2 one sense moved on quite a bit, because there is a
3 concrete plan, but we have to recall, this is just a
4 plan. It has not been approved. It's an idea that
5 may -- may put us in the right direction.

6 One of the concerns that the homeowners have
7 was taken care of by the prior order, which stayed the
8 effective date for a period of two years so as to allow
9 compliance.

10 They are requesting that that be included in
11 any order, given that the casino will require four
12 months, six months, eight months. I wish them luck
13 with dealing with the County, but they're going to need
14 some time.

15 When we look back on what the condition No. 8
16 was, there was, in my mind, two parts to it. The
17 licensee was required to modify the entrance so that
18 public vehicular ingress and egress is available only
19 to and from the south on Singley Road.

20 I look at that as condition No. 1 within
21 condition No. 8.

22 The second part of condition No. 8 says the
23 modified entrance or separate entrance shall provide
24 access to the premises from the north on Singley Road
25 for emergency vehicles only.

1 Everyone here recognizes that the casino has
2 expended considerable effort in trying to come up with
3 a resolution that satisfies condition No. 8, and to
4 that end, the homeowners association recognizes that
5 there's no reason to have significant amounts of money
6 that are wasted when this again gets us beginning in
7 the right direction.

8 The money has been spent on this design, and
9 it looks as though the County -- excuse me, the casino
10 has engaged the County and that process will play out.

11 One of the things that was testified to here
12 today is that the tribe has, according to my notes,
13 about 80 employees per day. We also heard testimony
14 that there is valet and security available.

15 I have a very simple proposal that adds no
16 appreciable cost to the casino, and that suggestion is
17 on the northeast corner of the intersection where the
18 right turns would be prohibited, a small guard box be
19 put in there.

20 You see them all over the place, where there
21 is one of these employees, one of the valets, one of
22 the security personnel, in there to remind people to
23 simply make a left turn -- excuse me, the left turn as
24 they leave, which would dramatically, dramatically
25 decrease, in my mind and in my clients' minds, the

1 number of people making the right turn.

2 It would have the added benefit of giving the
3 casino instant feedback. "Hey, look, there's Mike in
4 his Suburban. He just made a left-hand turn heading
5 south on Singley Road into the casino. I'm on my
6 radio. Go tell him he can't do that again."

7 That solves that. We already know that
8 there's valet and security that's on staff that is
9 there, and when I began, I said no appreciable cost. I
10 can't imagine in my wildest dreams that constructing a
11 little three-by-three, four-by-four guard box that are
12 at the entrance to all kinds of different places would
13 require any -- any re-engineering whatsoever.

14 And instead, it would provide the tribal
15 members who use the road, it would provide the patrons
16 to the casino, it would provide employees, with an
17 additional degree of safety.

18 It would also provide Your Honor with -- with
19 an easier decision, not having to slice the baby in
20 two, as it were, and choose a side and instead, also
21 avoid having to rewrite engineering plans.

22 I don't think that's a task that anyone wants
23 to take on, particularly given the amount of brain
24 power that's gone into this so far.

25 And so while my clients would like to have

1 strict compliance, because they -- that's the bargain
2 they struck, they don't want to be bad neighbors. They
3 want to come up with a solution that works.

4 Now, ten or so minutes ago, 15 minutes ago, we
5 were charged with consideration of what has been
6 discussed today and what are some possible ways to
7 resolve this. I'll summarize them quickly.

8 Exhibit B would be the plan going forward,
9 with the slight addition of the installation of a guard
10 box utilizing employees that are already there.

11 The BIA has been eliminated. That means that
12 all we need to do is build in time for passage through
13 I would presume Planning Commission and Board of
14 Supervisors and for that reason, we would ask for, as
15 in the prior order, an effective date two years from
16 the date the proposed decision is adopted that would
17 also allow the public process to pay -- play out.

18 And if after two years, this doesn't work out,
19 then -- then that's a risk that's being taken.

20 If -- there are thoughts on the other side
21 about, you know, two and a half years. I mean, I'm
22 trying to figure out four months, three -- that's six
23 times the amount -- the minimum amount required and
24 more than twice the maximum.

25 So with that said, that is a proposal and --

1 and I stress, while they would like strict compliance,
2 whether it -- whether it were a casino or it were a
3 raceway or a concert hall, they simply don't want the
4 intoxicated traffic -- that's the primary issue -- on
5 their road.

6 And they believe with this design that has
7 been offered in good faith and the addition of that
8 guard box, that may solve the problem.

9 Thank you.

10 JUDGE LEWIS: I'll hear from you first,
11 Mr. Forman. I -- I do have a comment I'm going to
12 make, but go ahead.

13 MR. FORMAN: Thank you, Your Honor. I would
14 note that the proposal that has just been offered, by
15 the time it is staffed 24/7, as the homeowners
16 association seems to be suggesting it should be, we
17 would be talking in the neighborhood of a hundred
18 thousand dollars a year for personnel costs for a guard
19 box down at the corner, by the time you have three
20 shifts a day, 24 hours a day.

21 And the association may not regard a hundred
22 thousand dollars as virtually no cost, but the tribal
23 government does, because every dollar that goes to that
24 is a dollar that does not go to the tribe's
25 governmental budget for fulfilling the needs of the

1 community that is dependent upon the tribal government
2 that provides services that no other agency of
3 government provides.

4 That being said, it's gratifying to hear there
5 is at least some room for suggestion.

6 At the outset of today's hearing, I reviewed
7 with Your Honor the very broad reference that the
8 director has made to Your Honor in the words of the --
9 of the reference to "for such further and additional
10 proceeding as may be necessary and appropriate in the
11 ALJ's sole discretion."

12 And as I read that, and as I think Your Honor
13 mentioned on our conference call status conference,
14 that gives you options ranging from simply reinstating
15 your former decision, which we would ask that you not
16 do, to treating this license at this stage -- of
17 treating this proceeding as looking at this license as
18 if there were no condition 8, and would that license be
19 issued in the absence of condition No. 8 had the
20 parties not reached their agreement.

21 We think that that is the most appropriate
22 thing for Your Honor to do, and that looked at from
23 that perspective, the appropriate decision would be to
24 recommend to the director that condition No. 8 be
25 eliminated from the license as serving no useful

1 purpose related to the Alcoholic Beverage Control Act.

2 As Your Honor noted today and in the
3 previous -- previous proceeding, the issue here is not
4 the liquor license.

5 The issue here is traffic related to the
6 casino. Traffic that would exist with a liquor license
7 or without it. Traffic that would be no more or less
8 dangerous with or without it.

9 Interestingly, in Exhibit F as in Frank,
10 regardless whether these average daily head counts are
11 spot on or whether they're off by 30 or 40 percent,
12 there is a consistency that suggests, based on the
13 numbers during the time when the bar was closed, that
14 service of alcohol is not a significant factor in
15 attendance at the casino.

16 And if it's not a significant factor in
17 attendance at the casino, neither is it a significant
18 factor in traffic generated by the casino.

19 I say that because the average daily count for
20 the 38 days that -- that the bar was closed is actually
21 higher than the monthly average for the year 2010.

22 It's not much higher. It's -- it's 1233
23 average per day versus 1228 average per day, but again,
24 even if you attach an error or margin -- a margin of
25 error of 20, 30, 40 percent, it's still a trend and

1 it's still a consistency, and there's no reason to --
2 to assume that it is the service of alcohol that is
3 driving attendance at the casino.

4 So we look at that, and Your Honor has more
5 aptly than could I reviewed the efforts the tribe has
6 made to come into substantial compliance, as much as
7 the law would allow, as much as engineering would
8 allow, I suppose short of digging a tunnel and building
9 a bridge for millions and millions of dollars, which I
10 don't think would be reasonable under any
11 circumstances.

12 The question is what -- what is the best
13 outcome here? Your Honor noted in 2009 that revoking
14 the license would remove any constraints on the tribe
15 in terms of trying to limit traffic northbound on
16 Singley Road.

17 We heard Mr. McVicker say that he wouldn't
18 drive -- he doesn't think it's safe to drive 35 miles
19 an hour on Highway 101.

20 We have elderly members of the community who
21 may not want to drive on the freeway, who don't think
22 that it's safe for them to drive that fast.

23 Having to do the plan that's been proposed and
24 is Exhibit B to satisfy condition No. 8 would force
25 people to drive on the freeway even if they didn't want

1 to.

2 Mr. McVicker goes up and down Singley Road,
3 the north portion to the south portion, and having to
4 do the plan, Exhibit B, to comply with condition No. 8
5 would effectively preclude tribal members from using
6 the same portion of Singley Road as Mr. McVicker can or
7 anybody else who chooses to use Singley Road without
8 stopping at the casino, without stopping at the gas
9 station, without stopping the tribal office, the tribal
10 library, the tribal child care center that Mr. Smith
11 described.

12 So we view bottling up the reservation this
13 way as frankly having a discriminatory effect, as well
14 as a burdensome effect, whether intended or not.

15 That's not my department, it's not Your
16 Honor's department, but it's an effect. It's telling
17 the community that some people can use this public road
18 freely and other people can't use the public road in
19 the same way as everybody else.

20 So our ultimate request and suggestion is that
21 Your Honor recommend to the department that condition
22 No. 8 be removed from the license.

23 Failing that, that condition No. 8 be modified
24 in such a way as to minimize the burden on the tribal
25 community and the rest of the public that happens to

1 visit the reservation, whether it be for the casino,
2 cultural events, to provide a tank of gas, by not
3 requiring this elaborate construction in the middle of
4 the intersection, but putting in signage, and if people
5 want to take a chance of getting a ticket, they're
6 going to take a chance of getting a ticket, but -- but
7 the whole system of licensure by the ABC presumes, has
8 to presume, that people will obey the law, and if they
9 don't obey the law, they will be cited and punished.

10 This county has lots of licensed
11 establishments where people imbibe alcoholic beverages
12 and sometimes they imbibe -- imbibe too much and
13 sometimes they get in their cars and they drive when
14 they shouldn't.

15 That happens all over the state. Nobody has
16 suggested seriously pulling the license of every
17 licensee because some customers drink too much.

18 We've not heard any testimony here today from
19 the department or anybody else about investigations by
20 the department for violation of Bear River's license
21 having to do with anything other than condition No. 8.

22 I assume -- I understand that -- that the
23 Eureka office is pretty diligent about this stuff, that
24 if Bear River were creating a hazard to the public
25 welfare or morals, the department would have taken an

1 active action to stop that. Its silence, I think,
2 speaks volumes.

3 The next worst outcome for us, although it's
4 still pretty bad, would be to determine that the plan
5 proposed in Exhibit B should be deemed adequate
6 compliance with condition No. 8, and that adequate time
7 be allowed to implement the plan.

8 I think that two years is an okay number, but
9 that two years should start from the date the County
10 approves it, not from the date of the decision.
11 Because for all we know, the County approves it. The
12 next thing that happens, the homeowners sue the County
13 under CEQA, saying that -- that they should have
14 required a full EIR, and we're two years of litigation
15 down the road and -- and we don't have a project.

16 We -- we can't build the project until the
17 County says it's okay and we have no control over the
18 County's pace. The people in the association, in a
19 sense, have more control over it than we do, because
20 they are the ones in a position to challenge the
21 decision by the County, and not just them. Anybody can
22 challenge a decision by the County to just build an
23 initial statement, not a full EIR.

24 So, the -- the one thing that I think ought
25 not to be done by Your Honor is to determine that the

1 tribe is in violation or that if it is in violation,
2 that discipline is appropriate.

3 You don't punish somebody when they've done
4 everything humanly possible not to do wrong. We are
5 not talking about any enhancement of the public welfare
6 or the public morals if the -- the plan proposed in
7 Exhibit B is never implemented. We are -- and we're
8 certainly not talking about any threat to the public
9 morals or public welfare if -- if the plan proposed in
10 Exhibit B is implemented.

11 In either case, the public morals and welfare
12 are already being fully protected and will continue to
13 be so. I will reserve everything else until our
14 closing briefs, assuming Your Honor will be receiving
15 closing briefs.

16 JUDGE LEWIS: You're making a big assumption
17 there.

18 MR. FORMAN: I'm sorry. We're not getting
19 closing briefs?

20 JUDGE LEWIS: Well, look. I -- I -- while you
21 both were talking, I -- I had some things cross my mind
22 and No. 1 is, you know, I've been working for ABC since
23 the time before the casinos in California and the
24 licensures of the casinos in California.

25 And I can -- I can honestly tell you, I am

1 dreading the day -- and I hope I'm not around, but I'm
2 dreading the day that California decides to adopt some
3 of the laws of Nevada, and I certainly hope that never
4 happens here, with regard to free alcoholic beverages
5 and, you know, 24/7 and stuff like that.

6 And I can tell you, because my -- my son is an
7 emergency physician in Nevada, in Las Vegas, and the
8 No. 1 problem that he deals with is alcoholism, and
9 it's because of those types of things.

10 So I -- I certainly hope it never gets to that
11 point. But -- and -- and this is, you know, just
12 something that crossed my mind about some of the things
13 you guys were saying.

14 Still, my dilemma here, Mr. Forman and
15 Mr. Vinding, is, you know, you -- Mr. Vinding, you
16 know, great idea. I wish you guys came up with it two
17 years ago. Okay?

18 I wish two years ago, you discussed it with
19 the tribe and -- and, you know, came to some type of
20 agreement that something could be done along those
21 lines. They might have agreed to it at that point in
22 time.

23 But, you know, here you are, giving me this
24 offer. Mr. -- Mr. Forman is asking me, you know, "Hey,
25 you know, go forward with the Exhibit B plan here

1 and -- and put this thing off down the road for years
2 and plan to revisit it in the future."

3 And one thing I didn't think of -- Mr. Vinding
4 (sic) brought it up -- is, yeah, what if the homeowners
5 association decides to sue because of this, that and
6 the other thing and the Exhibit B plan never goes
7 through?

8 Then we're back to square 1 and we're still
9 fighting the same battle here. And that's why I
10 believe, although you -- you may think, Mr. Forman,
11 that it is some form of punishment that I was issuing
12 in my prior decision, it was not.

13 And I -- I pained and -- in searching for an
14 answer to the problem, and as I indicated, it may seem
15 harsh at first, but the one thing that my decision did,
16 my prior decision did, was it brought finality to this
17 thing. Okay?

18 If they couldn't comply, then we go back to
19 square 1. We have a hearing on the protest. The
20 protestants can come forward, and -- and voice their
21 concerns about traffic and whatever, and then it would
22 be determined by an administrative law judge -- and
23 believe me, it's going to be someone other than me,
24 since I make the assignments -- whether or not there
25 should be a condition that's similar to condition

1 8. Believe me, it would never be condition 8, but
2 something similar to.

3 But it would bring finality. But -- but you
4 guys are putting me between a rock and a hard place
5 here, because you're asking me to put this thing off
6 down the road for a couple of years.

7 Quite -- quite frankly, I don't think I have
8 that authority. I know what the order says. But, you
9 know, my discretion only goes so far. It's -- it's not
10 unfettered, by any means.

11 And -- and I firmly believed that my job was
12 to bring finality to this thing, and I haven't heard or
13 seen an offer of finality. I'm -- I'm hearing
14 suggestions, which I'm pleased.

15 I wish they were here two years ago. I didn't
16 quite frankly think of that one. Maybe I would have
17 done something two years ago, had I heard that, along
18 those same lines.

19 I'm -- I'm not opposed to placing conditions
20 when I believe that they are necessary, but, you know,
21 I -- it's finality that I need, that the department
22 needs, that all of you need. Everyone here needs it,
23 and -- and we're not getting it, from what I've seen
24 and heard.

25 And -- and I -- I wish -- I -- I wish there

1 was some way I could do that, but I'll -- it's my job
2 to think of something.

3 Anyway, as I indicated earlier, Mr. Vinding,
4 you do have the final word here today, as it was the
5 association who did bring the accusation.

6 Last thoughts, sir?

7 MR. VINDING: Thank you.

8 The suggestion for the guardhouse could not
9 have been brought about until this document, Exhibit B,
10 was created, and it was an attempt -- and it still is
11 an attempt -- to come up with a resolution that
12 protects the casino patrons, the casino employees,
13 those living on Singley Hill Road, whether they be
14 tribal members or not.

15 We must remember that at no point has the
16 casino been in compliance with condition No. 8. We've
17 heard a lot of testimony, in fact, to the opposite.

18 We also know that the casino is aware patrons
19 are leaving intoxicated and employees are leaving
20 intoxicated. And again, the goal is to provide public
21 protection. It's certainly unfair to public -- excuse
22 me, punish the homeowners association for having
23 reached an agreement only to have not only a loss of
24 their rights, but to have the agreement pulled out from
25 under them.

1 Now, from the casino's standpoint, it can
2 continue to turn a blind eye to a problem, a problem
3 with alcohol, or it can step up and take some
4 responsibility, using employees that we've already
5 heard exist now.

6 I do need to note that the argument that the
7 bottling up of the casino has a discriminatory effect
8 is offensive.

9 It was agreed to. It was not coerced.

10 JUDGE LEWIS: You don't need to go there,
11 Mr. Vinding.

12 MR. VINDING: The conditions, the
13 conditions -- and this was noted in the prior
14 decision. Condition violations are considered serious
15 violations, since without the conditions, the license
16 in all likelihood would not have been issued.

17 Here, we have an agreed-upon condition. There
18 has been no change since '09 save the removal of the
19 BIA from the equation, and as was noted earlier in the
20 decision, the BIA was the problem. It is now time to
21 move forward.

22 And we need to do so in a manner that protects
23 all sides. It has to be done in a way that
24 incentivizes rapid resolution. The suggestion that any
25 date not be set in the future because the -- the

1 homeowners association or someone else may file a
2 lawsuit lacks serious credibility.

3 I am suggesting now that with a minor
4 alteration, we can take steps forward to protect
5 people. I strongly argue that conversely, there -- if
6 there is not a drop-dead date in the future, there is
7 an incentive to do nothing, because if the tribe does
8 not have to submit something to the County -- excuse
9 me, the casino does not have to submit something to the
10 County, then why would they ever submit anything?
11 Status quo, let's go forward.

12 If the goal or one of the goals is finality,
13 that is achieved through adopting the similar
14 provisions as set forth in the prior order from May of
15 2009. Something has to be done to protect the public.
16 We know that there -- we've heard lots of testimony on
17 improper turns.

18 To reach that finality, Your Honor has the
19 authority to go forward and make a decision that
20 protects everyone and does it within a reasonable
21 amount of time.

22 Thank you.

23 JUDGE LEWIS: Okay. I -- I heard -- just
24 heard what you said, sir. Let me ask you this, okay?
25 Maybe I should have done this up-front or maybe I

1 should have done it two years ago.

2 Let me ask you this. Are you saying -- are
3 you saying that if the suggestion regarding a guard at
4 the corner to prevent -- not prevent, but discourage
5 people from turning right on Singley Hill Road -- I
6 don't want somebody jumping out in the middle of the
7 road and getting run over, either -- but to discourage
8 people from turning onto northbound Singley Hill Road,
9 if for some reason, okay, that were put into effect,
10 then the homeowners association would in fact say that,
11 "You know what? They are in compliance with condition
12 No. 8"?

13 Is that what you're saying?

14 MR. VINDING: Say that one more time. I want
15 to be sure I'm understanding this.

16 JUDGE LEWIS: Okay. Your suggestion regarding
17 a guard at the corner who would discourage people
18 leaving Bear River Road from turning right onto Singley
19 Hill Road -- okay? I said discourage. I didn't say
20 prevent.

21 If that were acceptable to the tribe, would
22 the homeowners association turn around and say, "You
23 know what? If they do that, then as far as we're
24 concerned, they are in compliance with condition No. 8
25 and it's over and done"?

1 Yes or no.

2 MR. VINDING: I need one question
3 clarification. That includes the Exhibit B buildout?

4 JUDGE LEWIS: Yes.

5 MR. VINDING: Okay, yes.

6 JUDGE LEWIS: Yes.

7 MR. VINDING: That's what I'm --

8 JUDGE LEWIS: Okay. Look, folks, I don't want
9 to drag this out any longer, you know, than absolutely
10 necessary. I realize that -- that there are some -- a
11 lot of considerations, some of them being financial and
12 everything else.

13 Here's what I'm going to do, okay, in all
14 fairness to everyone concerned. Mr. McVicker, you say
15 you speak on behalf of the association?

16 MR. McVICKER: Yes, sir.

17 JUDGE LEWIS: Okay. Mr. Bowman, sir, do you
18 have someone who can speak on behalf of the tribe?

19 Here -- here's what I'm talking about. Since
20 Mr. Forman says he wants to submit a -- a written
21 brief, normally I -- in this situation, I would say no,
22 but I'm going to say yes.

23 Why? Because it buys me time before I have to
24 render a decision, and here's what I'm hoping: That
25 maybe you guys can get together and come up with a

1 resolution, now that we have a -- a good offer on the
2 table, and you won't have to force me to do something
3 that either one of you may not like. All right?

4 So here's what I -- here's what I'm suggesting
5 and here's what we're going to do.

6 Today is May 19th. I'm going to give you guys
7 until the end of June. What's the -- what's the last
8 Friday in June? Does anyone have a calendar?

9 Wait, I've got one in front of me. Make it
10 July 1st. July 1st is a Friday, okay?

11 Who wants to go first? Mr. -- Mr. Vinding,
12 Mr. Forman?

13 MR. FORMAN: They are the accusers.

14 JUDGE LEWIS: It's his baby, yes. Written
15 brief closing July 1st?

16 MR. VINDING: Sure. Ten-page limit? How
17 long?

18 JUDGE LEWIS: Yes. And the -- since my -- I'm
19 going to be gone that one week with my son's wedding,
20 why don't we make it July 22nd, Mr. Forman.

21 MR. FORMAN: That will be fine.

22 JUDGE LEWIS: Okay. Hold on a minute. Okay.

23 MR. VINDING: And the reply?

24 JUDGE LEWIS: A week later.

25 MR. VINDING: Okay. The 29th?

1 JUDGE LEWIS: Yes. Now, the reason I'm doing
2 that is because maybe my scolding everyone a little
3 earlier was useful. It seems that, you know, we're
4 getting a little bit closer than we were further apart,
5 and -- and I certainly hope that's the case.

6 You know, if -- if you guys can't resolve it
7 in some way, you know, that's fine. Then you'll --
8 you'll hear from me. But in the meantime, I -- I
9 certainly hope that, you know, as the -- the old saying
10 goes, can't we all just get along?

11 Hopefully, that that will occur. Weigh the
12 pros and cons, everyone, of what's going on here, and,
13 you know, take all things into consideration. Let's
14 try to be good neighbors or otherwise, just suffer the
15 wrath of me.

16 So anyway, that buys enough time to hopefully,
17 Mr. McVicker -- or you can actually do it through
18 Mr. Vinding and Mr. Forman. I don't mean to ignore you
19 guys.

20 I'm -- I probably should have said that to
21 begin with. You've got the attorneys involved, you
22 know. They can discuss it between them. You guys can
23 go back to your clients, see if you can come up with
24 something that's mutually acceptable.

25 Mr. Lueders, I take it you would be acceptable

1 to assisting them if they need some assistance, as far
2 as dealing with this issue.

3 MR. LUEDERS: Certainly.

4 JUDGE LEWIS: So you've got some help there
5 too. If not, I'll expect the -- the briefs on the
6 dates that I indicated. Okay?

7 MR. FORMAN: Yes, sir. Thank you very much.

8 JUDGE LEWIS: Mr. Vinding, is that okay?

9 MR. VINDING: Thank you.

10 JUDGE LEWIS: All right. With that, we stand
11 adjourned. Off the record.

12 (The hearing was concluded at 4:46 p.m.)

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CERTIFICATE OF REPORTER

I, KATHERINE J. WAYNE, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the foregoing proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said cause, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

In witness whereof, I have hereunto set my hand this day: May
26, 2011.

KATHERINE J. WAYNE, CSR 2854