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

CERTIFIED COPY

In the Matter of
the Accusation Against:

AB 9047

BEAR RIVER CASINO
BEAR RIVER CASINO
11 Bear Paws Way
Loleta, California
95551-9681

FILE: 47-423392
REG.: 08070211

LICENSE: On-Sale General
Public Eating Place

HEARING BEFORE HEARING OFFICER JOHN LEWIS

Eureka, California

Wednesday, April 29, 2009

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Public Eating Place

Hearing before Hearing Office John Lewis,
taken at 1 Marina Drive, Eureka, California, commencing
at 10:10 a.m., Wednesday, April 29, 2009, before
Katherine J. Wayne, CSR No. 2854.

1 A P P E A R A N C E S:

2
3 THE HEARING OFFICER:

4 JOHN LEWIS
5 Post Office Box 348210
6 Sacramento, California 95834
7 (916) 263-7963

8 THE COMPLAINANT:

9 NOEL KRAHFORST
10 525 Singley Hill Road
11 Loleta, California 95551

12 REPRESENTING THE TRIBE:

13 MICHAEL ACOSTA, Executive Director
14 Bear River Band Gaming Commission
15 27 Bear River Drive
16 Loleta, California 95551
17 (707) 733-1900

18 ALSO PRESENT:

19 DEAN R. LEUDERS
20 State of California
21 Department of Alcoholic Beverage Control
22 3927 Lennane Drive, Suite 100
23 Sacramento, California 95834
24 (916) 419-2522
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1 HEARING OFFICER LEWIS: On the record. This
2 is the hearing in the matter of the accusation against
3 Bear River Casino located at 11 Bear Paws Way in
4 Loleta, California. File No. is 47-423392. The
5 Registration No. is 08070211.

6 My name is John Lewis. I've been assigned to
7 hear this matter. This morning, we have present
8 Mr. Noel Krahforst, who is the person who brought this
9 accusation, and he's indicated -- and we'll get into
10 that a little bit more -- that he's bringing the
11 accusation on behalf of the Singley Hills Homeowners
12 Association.

13 Representing the Bear River Casino is
14 Mr. Michael Acosta. Staff counsel, Dean Leuders from
15 ABC, is present at the hearing today, although he is
16 not participating in this particular hearing because
17 the department is not a party to it.

18 Now, prior to going on the record, we did have
19 some discussions about how we're going to proceed here
20 today and what's going to be done.

21 Mr. Krahforst, I informed you that you in fact
22 carry the burden of proof and that you're going to have
23 to in effect act as district attorney and move the
24 facts related to the charges that you've brought in
25 this accusation.

1 There are two counts and you need to do what
2 is necessary to prove up those two counts.

3 Mr. Acosta will defend the Bear River Casino,
4 and because you carry the burden, Mr. Krahforst, you
5 will get an opportunity to rebut after Mr. Acosta's
6 defense has been presented.

7 Now, there were some items that you gentlemen
8 wanted to discuss on the record. Well, we're on it
9 now, so, Mr. Krahforst, I'll hear from you first.

10 MR. KRAHFORST: All right, Your Honor. The
11 original alcohol license that contains these
12 conditions, would that help you in getting an overview?

13 HEARING OFFICER LEWIS: It sure will.

14 MR. ACOSTA: Your Honor, as a preliminary
15 matter -- are we doing preliminary matters or are we
16 hopping right into evidence?

17 HEARING OFFICER LEWIS: You've got to
18 understand, Mr. Acosta, Mr. Krahforst is not an
19 attorney. I want to give him as much leeway as I can.
20 When it's necessary to rein him in, I will, but I'm --
21 I'm going to -- I'm going to try to be as understanding
22 as possible.

23 I want him to have an opportunity to try to do
24 it his way. Okay?

25 MR. ACOSTA: Okay. Can we make our

1 preliminary statement about the parties and standing
2 before we get into the evidence?

3 HEARING OFFICER LEWIS: Okay. Why don't we do
4 that. Hold on to that for a second, Mr. Krahforst.

5 Go ahead, Mr. Acosta.

6 MR. ACOSTA: Yes. Michael Acosta representing
7 the Bear River Casino, and we would like -- we would
8 object to Mr. Krahforst's representation of the Singley
9 Hills Homeowners Association on the basis that there is
10 no resolution authorizing such representation, and we
11 would like a ruling that he is here in his individual
12 capacity only.

13 HEARING OFFICER LEWIS: Mr. -- Mr. Krahforst,
14 why don't you indicate on the record. Your presence
15 here today is in what capacity, sir?

16 MR. KRAHFORST: Representing the Singley Hills
17 Homeowners Association.

18 HEARING OFFICER LEWIS: Not as an individual?

19 MR. KRAHFORST: No.

20 HEARING OFFICER LEWIS: Okay. Mr. Acosta, I'm
21 going to accept that as such. I don't expect
22 Mr. Krahforst to come in here and intentionally lie as
23 to his capacity. That would be an unwise thing to do.

24 I'll accept him at his word that he is in fact
25 representing the homeowners association. It would have

1 been beneficial, sir -- and I understand you're not an
2 attorney, but it would have been beneficial if in fact
3 you had something which indicated as such.

4 But no matter what, okay, that's the way we're
5 going to go with it. Anything else?

6 MR. ACOSTA: And we would like to object to
7 the admission of a letter attached to the accusation
8 which is a letter signed by Mr. Krahforst indicating
9 that he does in fact represent them on the basis that
10 it lacks foundation, is hearsay.

11 HEARING OFFICER LEWIS: Well, that's the
12 only -- I need to get into this for a minute here, but,
13 Mr. Krahforst, here's what I'm going to do. I should
14 give you this right up front.

15 I'm marking as Exhibit No. 1 a packet of
16 documents which includes what I was given prior to this
17 hearing, and Exhibit No. 1 consists of the notice of
18 hearing.

19 And, by the way, thank you all for finding
20 this place, because I had trouble. There is no such
21 thing as 1 Waterfront Drive.

22 But the notice of hearing, the proof of
23 service, the accusation, which is two pages, and a
24 letter which is dated December the 15th, 2008 from the
25 Single Hill -- Singley Hills Homeowners Association

1 signed by Mr. -- Mr. Noel Krahforst.

2 (Complainant's Exhibit 1 was marked.)

3 HEARING OFFICER LEWIS: Sir, I'm going to ask
4 you, take a look at the Exhibit No. 1 there, and
5 especially the very last page.

6 Is that your signature on that letter?

7 MR. KRAHFORST: Yes, sir.

8 HEARING OFFICER LEWIS: Okay. And you did
9 submit that letter to ABC?

10 MR. KRAHFORST: Correct, sir.

11 HEARING OFFICER LEWIS: Okay. All right. And
12 why don't you take a look at it, Mr. Acosta, and unless
13 either one of you have an objection, I am going to
14 admit Exhibit 1 for jurisdictional purposes only,
15 especially in light of the fact that the address was
16 wrong on there and everyone here managed to get here
17 anyway.

18 MR. ACOSTA: Your Honor, I would object just
19 to the final page as stated, on the basis that it still
20 lacks a foundation that's proper. His testimony was
21 not under oath right now and he has no minutes or
22 resolution from this organization, nor has he proved
23 that this organization exists in any form, and we'll
24 object to that particular attachment.

25 HEARING OFFICER LEWIS: Okay. Your objection

1 is overruled. Exhibit No. 1 is accepted for
2 jurisdictional purposes only.

3 (Complainant's Exhibit 1 was admitted.)

4 HEARING OFFICER LEWIS: Okay. Now, are we
5 done with those two things? Is there anything else,
6 sir?

7 MR. ACOSTA: No, sir.

8 HEARING OFFICER LEWIS: Okay. Mr. Krahforst,
9 now it's your turn.

10 MR. KRAHFORST: To start things off, this
11 is -- this hearing is a result of a -- a -- an alcohol
12 license, and these are the conditions of that alcohol
13 license, and I've highlighted the two conditions that
14 brought us here.

15 MR. ACOSTA: Your Honor, I would also object.
16 Mr. Krahforst is not presenting this through a witness,
17 and if he wants to take a stand to testify -- I would
18 also at this point make a motion to sequester all
19 witnesses prior to opening statement.

20 HEARING OFFICER LEWIS: Okay. I'm going to
21 grant that request and, Mr. Krahforst, Mr. Acosta has a
22 right to have the witnesses excluded except when
23 they're giving testimony.

24 So the individuals that you intend to call as
25 witness -- as witnesses are going to have to wait

1 outside until they are called.

2 MR. KRAHFORST: If that's the way it is --

3 HEARING OFFICER LEWIS: That was his request,
4 to exclude witnesses.

5 MR. KRAHFORST: Do I have to honor that
6 request?

7 HEARING OFFICER LEWIS: Yes, I am honoring
8 that request. So I am going to have to ask your
9 witnesses -- and, of course, Mr. Acosta, if you have
10 any also, I'm going to ask them to stand outside.

11 MR. ACOSTA: Understood.

12 HEARING OFFICER LEWIS: But all witnesses, all
13 people that are going to testify in this matter as
14 witnesses, I'm going to have to ask them to step
15 outside.

16 MR. KRAHFORST: I understand what you're
17 saying. Is that what Mr. Acosta said just now, that
18 he's requesting all witnesses for both sides get out of
19 here?

20 HEARING OFFICER LEWIS: Yes, yes. Yeah, it's
21 pretty standard.

22 MR. ACOSTA: It's standard.

23 HEARING OFFICER LEWIS: It's not unusual by
24 any means. I wouldn't expect anything otherwise, to be
25 very honest with you.

1 MR. KRAHFORST: Okay.

2 HEARING OFFICER LEWIS: So anyway, if anyone
3 here is planning to -- well, you know who you're going
4 to call as witnesses, Mr. Krahforst. You know who
5 you're going to call as witnesses.

6 What I suggest you do is you have them wait
7 outside, because if they remain in the room, they're
8 not going to be able to testify. Okay?

9 MR. KRAHFORST: I understand.

10 HEARING OFFICER LEWIS: All right. You know,
11 if they're -- if they're not going to testify, this
12 hearing is open to the public. You can stay here and
13 watch all you want.

14 MR. KRAHFORST: I understand completely.
15 Should I start that off?

16 HEARING OFFICER LEWIS: Well, I would have
17 them go outside, if I were you.

18 MR. KRAHFORST: Okay. That would be Jimmy and
19 Tom and Robert Farrar. Terry and Brian and Mike. And,
20 sorry, Marie. And Mr. Bowman.

21 MR. ACOSTA: He's under subpoena. Sorry.
22 It's a standard motion we make to --

23 (Witnesses left.)

24 HEARING OFFICER LEWIS: Okay. I've been
25 handed a four-page document which includes a -- an

1 order of the department dated July 24th, 2006 and three
2 pages of a petition for conditional license which bears
3 the file number we're concerned with here, 47-423392,
4 and there are in fact nine numbered conditions
5 associated with this license.

6 Now, I understand that this is not a certified
7 copy, Mr. Acosta. However, I am going to overrule your
8 objection and accept this. This does not appear to be
9 anything other than an order and a petition for
10 conditional license.

11 MR. ACOSTA: Probably self-authenticating,
12 since it's a record.

13 HEARING OFFICER LEWIS: Yeah. Basically,
14 yes. I mean, I realize it's a copy and it's not
15 certified, but I'm assuming, you know, based on what
16 everybody has told me so far, there are conditions on
17 the license and I'm assuming these are them.

18 And if these are not the conditions that are
19 on the license, then I'm sure you'll show me something
20 that says otherwise.

21 I will mark that as Exhibit 2, that being the
22 order and the petition for conditional license.

23 MR. ACOSTA: Did Mr. Krahforst have copies for
24 counsel of these exhibits?

25 HEARING OFFICER LEWIS: You are supposed to

1 produce them for the other side also. Not just me,
2 Mr. Krahforst.

3 MR. ACOSTA: I have not examined the exhibit,
4 Your Honor.

5 MR. KRAHFORST: Understood, and I have a copy
6 for Mr. Acosta.

7 HEARING OFFICER LEWIS: Why don't you give him
8 a copy of this, the one you just gave me.

9 MR. KRAHFORST: Okay.

10 (Complainant's Exhibit 2 was marked.)

11 MR. KRAHFORST: That was Exhibit No. 2.

12 HEARING OFFICER LEWIS: Yes.

13 MR. KRAHFORST: Okay.

14 MR. ACOSTA: I'll just verify it compares with
15 mine. Thank you. All right.

16 HEARING OFFICER LEWIS: Okay, Mr. Krahforst,
17 I've marked Exhibit 2.

18 MR. KRAHFORST: If I understood, that I don't
19 need to prove I represent the association, or I need to
20 do that?

21 HEARING OFFICER LEWIS: Not to me. Not here
22 and now.

23 MR. KRAHFORST: Okay.

24 MR. ACOSTA: You know, is there going to be
25 testimony from Mr. Krahforst at this point?

1 HEARING OFFICER LEWIS: If you're going to
2 testify, Mr. Krahforst, I'm going to have to swear you
3 in, but if you're just presenting evidence and calling
4 witnesses, then I -- I'm not going to do that. All
5 right?

6 MR. KRAHFORST: There might be an opportunity
7 I will need to testify. Can I initiate --

8 HEARING OFFICER LEWIS: I'm not discounting
9 the fact that that may be the case, sir. Just when
10 you're ready to do it, tell me, because I have to swear
11 you in first.

12 MR. KRAHFORST: I understand.

13 HEARING OFFICER LEWIS: Because if you tell me
14 something prior to you being sworn in, it doesn't mean
15 a hill of beans. Okay?

16 MR. KRAHFORST: Can I -- I don't want to get
17 myself in hot water. If I say something and you have
18 to discount it because I wasn't sworn in, can I turn --
19 what if I just swear in right now and then I'll have
20 that contingency covered?

21 HEARING OFFICER LEWIS: Is that what you wish
22 to do right now? Don't forget, once I swear you in as
23 a witness, I give you a chance to testify, Mr. Acosta
24 has an opportunity to cross-examine you. You
25 understand that?

1 MR. KRAHFORST: Understood.

2 HEARING OFFICER LEWIS: Okay, stand up. Raise
3 your right hand, please.

4

5

NOEL KRAHFORST,

6

called on behalf of the Complainant, was first duly

7

sworn and testified as follows:

8

9

HEARING OFFICER LEWIS: Have a seat,

10

Mr. Krahforst. Let me do this. Let me tell you that

11

at this point in time, if in fact you have an attorney

12

here representing you or the homeowners association or

13

whoever, that attorney would take this opportunity to

14

ask questions of you regarding these -- this particular

15

accusation and have you testify and answer those

16

questions.

17

What I am going to do -- and I am trying to --

18

I'm going to try to be as -- I'm going to try to give

19

you every opportunity that I can to get out the

20

information that you want to get out, as long as it's

21

relevant. Okay?

22

MR. KRAHFORST: Right.

23

HEARING OFFICER LEWIS: I'm going to give you

24

an opportunity to basically testify in a narrative

25

fashion, which is never done anywhere else.

1 MR. KRAHFORST: Okay.

2 HEARING OFFICER LEWIS: But you don't have an
3 attorney, so there's no questions going to be asked.

4 You tell me what you think I need to know.
5 I'll tell you or Mr. Acosta will tell me or object to
6 it if he thinks it's necessary, but if you start
7 getting far afield, we'll let you know. Okay?

8 So go ahead.

9 MR. KRAHFORST: Okay.

10 HEARING OFFICER LEWIS: This is your -- this
11 is your opportunity to take your best shot.

12 MR. KRAHFORST: Okay. I believe that all the
13 documents -- documents, exhibits we have to present and
14 the witness testimony we have to present will establish
15 that -- that the condition No. 8, the entrance
16 modification, has been an issue going way back to 1996
17 and remains unresolved.

18 And when the casino applied for an alcohol
19 license, it resurfaced again, and it appears as
20 condition No. 8 here in a negotiated settlement for us
21 to drop our protest.

22 And we -- 7, 8 and 9 were added after a series
23 of four hearings, 2005, 2006. Right actually here in
24 this room was the last one, and we dropped our protest
25 against their existing alcohol license.

1 MR. ACOSTA: Objection, Your Honor. Lack of
2 foundation. Who is "we"?

3 HEARING OFFICER LEWIS: Overruled. Go ahead.

4 MR. KRAHFORST: In exchange for --

5 HEARING OFFICER LEWIS: I'm going --

6 Mr. Acosta, I'm going to try to give him as much leeway
7 as I can.

8 MR. ACOSTA: I'll wait for documents or
9 exhibits.

10 HEARING OFFICER LEWIS: Okay.

11 MR. KRAHFORST: And we are accusing -- of the
12 three conditions we added, 7, 8 and 9, one was road
13 widening. They had to do with public safety and public
14 welfare, and they did complete condition No. 7,
15 probably 2008, maybe still into 2009.

16 But the other two, they haven't -- No. 8, they
17 haven't completed, and they applied for an off-sale
18 alcohol license at -- at another address and we're
19 accusing them that it -- in effect, that's the same
20 address, for purposes of -- of -- of inserting that in
21 the first place.

22 And that is -- is what I believe the testimony
23 of -- of my witnesses will -- will support.

24 HEARING OFFICER LEWIS: Well, okay. I
25 didn't -- you're giving me what basically is an opening

1 statement, is what you intend to prove here.

2 MR. KRAHFORST: Okay.

3 HEARING OFFICER LEWIS: But let me see if I
4 can -- let me see if I can get to the nitty-gritty
5 here.

6 MR. KRAHFORST: Sure.

7 HEARING OFFICER LEWIS: Mr. Acosta, if I
8 understand what you said earlier off the record, in
9 effect the licensee is saying that, "Hey, we're not in
10 compliance with condition No. 8, but the reason we're
11 not in compliance is because of the County"?

12 MR. ACOSTA: No, that's not correct, Your
13 Honor.

14 We are -- we are in compliance in so --
15 insofar as we have actively and diligently pursued
16 No. 8. There is no timeline stated in No. 8, and that
17 was discussed at the original hearing, whether a
18 timeline would be applicable.

19 The condition does not state "By 2009, January
20 1, this must be done." So I don't read it as, you
21 know -- it says "shall modify," meaning we will in the
22 future modify it, and we have -- if there was a
23 deadline on it, I would say, yes, we were in
24 violation.

25 But it was subject to the County's

1 encroachment limits. I don't read it as having a
2 particular deadline. In fact, what Mr. Krahforst
3 referred to, No. 7, took two years because -- it was a
4 1.2 million dollar road project.

5 HEARING OFFICER LEWIS: So three years to
6 change an entrance?

7 MR. ACOSTA: Yes, Your Honor. Because there
8 was a decision made to bifurcate those two, because
9 there was an agreement about widening the road. That
10 was easy.

11 There was no agreement about how to modify the
12 intersection. So with the County, we decided to go
13 forward on that condition, finish the bulk financially
14 of the work.

15 MR. KRAHFORST: Can I object, Your Honor?

16 HEARING OFFICER LEWIS: Not yet.

17 MR. KRAHFORST: Okay.

18 HEARING OFFICER LEWIS: I'm trying to get to
19 the nitty-gritty here. I want -- I want to find out
20 what it's really all about.

21 MR. ACOSTA: No. 7 was a 1.2 million dollar
22 project, which is now in as-built phase. No. 8 was
23 bifurcated because we did not have a design that was
24 agreeable, and so we worked for two years on the 1.2
25 million dollar project.

1 No. 8 is more like a hundred thousand dollar
2 project at most. So from a financial standpoint, we've
3 completed most of the work. But the encroachment
4 permit for No. 7 did not include work to be done on
5 No. 8.

6 HEARING OFFICER LEWIS: All right. I
7 understand what you're saying, Mr. Acosta, but what
8 you're saying is as of today, us sitting here right
9 here and now, the modifications described in condition
10 No. 8 have not been fulfilled?

11 MR. ACOSTA: They have not, because we do not
12 have the encroachment --

13 HEARING OFFICER LEWIS: Okay, they have not
14 been fulfilled.

15 MR. ACOSTA: Yes.

16 HEARING OFFICER LEWIS: So we'll stipulate in
17 effect that count 1 of the accusation is true and
18 correct, except for the fact that you have a reason why
19 those modifications have not been met, made, and -- and
20 that is because you need the County's permission in
21 order to do so?

22 MR. ACOSTA: If that gets us to the end of the
23 hearing quicker, Your Honor, I would, but I hesitate to
24 do that, because again, there was a specific discussion
25 in the original hearing about timelines and having a

1 side agreement about how long this would take.

2 Judge Lowe --

3 HEARING OFFICER LEWIS: Well, you know what?
4 It doesn't matter to me what Judge Lowe or anyone else
5 agreed to way back when. Unless it's part of Exhibit
6 No. 2, this petition for conditional license, it is a
7 lot of hearsay.

8 MR. ACOSTA: Right.

9 HEARING OFFICER LEWIS: That has nothing to do
10 with anything that I can use.

11 MR. ACOSTA: But by Your Honor's reading of
12 No. 8, we were in violation of No. 8 the day after the
13 liquor license hearing.

14 HEARING OFFICER LEWIS: I understand that. I
15 understand that. I'm not saying -- I'm not saying,
16 sir, that the license should be taken away. I'm not --
17 there has to be some type of remedy.

18 MR. ACOSTA: So we would just stipulate the
19 work is not done for 8. We would stipulate to that
20 particular fact. Not that it's a violation of our
21 liquor license, but the work is not done.

22 HEARING OFFICER LEWIS: Count 1, "From July
23 26th, 2006 to the present, respondent/licensee violated
24 a condition placed upon the license in violation of
25 Business & Professions Code 238.04" -- which deals with

1 conditions -- "and other applicable California laws,
2 compacts, orders and regulations; to wit," and then it
3 repeats that particular condition, No. 8.

4 "The licensee shall modify the entrance from
5 Singley Road to Bear River Drive so that public
6 vehicular ingress and egress is available only from the
7 south on Singley Road.

8 "The modified entrance or a separate entrance
9 shall provide access to the premises from the north on
10 Singley Road for emergency vehicles only."

11 And I think that's exactly what condition
12 No. 8 says. Now, if you're willing to stipulate -- I'm
13 going to give you an opportunity to provide a defense,
14 say, "Hey, look. You know, here's people from the
15 County. They won't let us do it until we do this, that
16 or the other thing."

17 Believe me, you're going to have every
18 opportunity to do it. But are we going to make
19 Mr. Krahforst prove that you haven't done it since 2006
20 when in fact, you're telling me you basically haven't
21 done it?

22 But there's reasons for it. I understand
23 that.

24 MR. ACOSTA: I understand the justification
25 and if -- that's why I offered before the hearing to

1 settle that one and not present evidence on it.

2 HEARING OFFICER LEWIS: You know what,
3 apparently there's some feelings about settlements that
4 have taken place in the past, so I'm not going to force
5 anyone to do anything.

6 You know, this is everyone's opportunity to
7 have their day in court, so to speak, and I'm not going
8 to prevent anyone from doing that.

9 MR. ACOSTA: Your Honor, by the wording of
10 count 1, it says we violated a condition by not
11 modifying the road and again, we would have been in
12 violation the day after we got our first license.

13 HEARING OFFICER LEWIS: And it says that.
14 "From July 26th, 2006."

15 MR. ACOSTA: You're right, it does. So we
16 were put into violation the first day after the
17 hearing.

18 From that perspective, if that's what Your
19 Honor wants us to stipulate to --

20 HEARING OFFICER LEWIS: I'm not an
21 unreasonable person, Mr. Acosta. I'm not -- I'm not
22 saying that, "God, we need to chop off everyone's
23 head."

24 MR. ACOSTA: Right.

25 HEARING OFFICER LEWIS: Because they're -- you

1 know, I -- I have to figure out what an appropriate
2 remedy is --

3 MR. ACOSTA: Right.

4 HEARING OFFICER LEWIS: -- at some time.

5 MR. ACOSTA: Okay.

6 HEARING OFFICER LEWIS: Okay? But, you know,
7 I mean, if you want to talk to your client and -- and
8 discuss this, it may be a better way to go.

9 MR. ACOSTA: Again, I could advise my client
10 that we would stipulate to the fact that the
11 modification is not complete, but I wouldn't stipulate
12 that it violated a condition, because again, that would
13 have meant we were in violation the first day we
14 received the license.

15 So I can stipulate to half of what you're
16 saying, the fact that it's not done. And if Your Honor
17 takes that as then I'm going to have to form a remedy
18 on that --

19 HEARING OFFICER LEWIS: You can tell me,
20 "Okay, it hasn't been done." I think I can sit here
21 and safely assume it hasn't been done from day 1.

22 MR. ACOSTA: Your Honor, there's evidence
23 going to be presented that we did modify the road and
24 we were told to not do it without permission.

25 HEARING OFFICER LEWIS: Okay. I think that

1 all goes back to -- okay. Trying to come up with some
2 type of remedy for this thing.

3 MR. ACOSTA: Right. I mean, we -- we put
4 barriers on Bear River Drive and the BIA, the federal
5 government tells us, "It's a federal road. You can't
6 do that without permission."

7 So we tried to modify it.

8 HEARING OFFICER LEWIS: I understand --
9 understand there's lots of roadblocks that are thrown
10 up by lots of different agencies and you get county
11 officials, state officials and federal officials
12 involved and everybody has got their own little set of
13 rules. However, --

14 MR. ACOSTA: Maybe Your Honor can give us a
15 preliminary ruling on that, what your remedy would be.

16 HEARING OFFICER LEWIS: I'm not going to tell
17 you what my remedy would be, because I haven't heard
18 everything yet. But obviously -- and I haven't heard
19 from the County yet either.

20 I need to find out what the problem is in
21 order to fashion a remedy.

22 MR. ACOSTA: Okay.

23 HEARING OFFICER LEWIS: I mean, let's be
24 reasonable about it.

25 MR. ACOSTA: Sure.

1 HEARING OFFICER LEWIS: I -- I think the
2 homeowners association, if this was a concern to them
3 and this was a -- a reason which caused them to
4 withdraw their protest three years ago, it was
5 important to them then. It appears to be important to
6 them now.

7 You know, it needs to be addressed sooner or
8 later, you know.

9 MR. ACOSTA: Sure.

10 HEARING OFFICER LEWIS: And, you know, just
11 putting it off and letting the County -- but see, I
12 don't know what type of roadblocks they're throwing up.

13 MR. ACOSTA: It wasn't --

14 HEARING OFFICER LEWIS: "Roadblocks" may be a
15 bad word.

16 MR. ACOSTA: We are going to show active
17 negotiations with the County and the BIA to resolve the
18 issue, and that's going to take a day to present.

19 But that's why I thought -- Noel knows what
20 the score is. He knows it's not yet done. He probably
21 knows the attempts we have made and the designs we've
22 looked at.

23 That's why I offered to say, let's cut to the
24 chase and say, "Let's choose a design and implement it
25 within a timeline."

1 MR. KRAHFORST: I think I already stated that
2 I would rather it got presented here in the testimony.

3 HEARING OFFICER LEWIS: Okay. I -- you know,
4 I'm just -- I don't want to hear a whole lot of
5 testimony about this, other than -- Mr. Krahforst, I
6 don't think you have to present a whole bunch of
7 witnesses saying, "You know what? This hasn't been
8 done."

9 Mr. Acosta is telling me it hasn't been done.
10 He's telling me there's reasons for it beyond his
11 control and beyond the licensee's control. But I don't
12 want to hear a whole lot of testimony from people
13 saying, "Hey, you know, I filed a protest. I wanted
14 this condition and they haven't done it."

15 I'm hearing him telling me it isn't done.

16 MR. KRAHFORST: I agree.

17 HEARING OFFICER LEWIS: Good. I'm trying to
18 shorten it.

19 MR. KRAHFORST: I don't intend to present
20 testimony to try to re-establish something that's
21 already established.

22 I would object to what Mr. Acosta is saying
23 that the -- the County and other agencies have -- that
24 they've tried to do due diligence to complete the
25 conditions.

1 HEARING OFFICER LEWIS: We'll see about that.

2 MR. KRAHFORST: Okay. With -- with that, was
3 my summary statement adequate to -- to get started?

4 HEARING OFFICER LEWIS: Oh, yeah. I know
5 where we're coming from. I'm getting more familiar as
6 each minute passes.

7 MR. KRAHFORST: And I don't need to establish
8 that we are a recognized homeowners association?

9 HEARING OFFICER LEWIS: No. I don't want to
10 hear it.

11 MR. KRAHFORST: Then maybe I would like to
12 simultaneously introduce documentation -- not argue
13 that it hasn't been completed, but -- from the County,
14 that the witnesses can testify to, and just start her
15 off like that.

16 HEARING OFFICER LEWIS: Do you have a
17 representative of the County here?

18 MR. KRAHFORST: Yes, sir.

19 HEARING OFFICER LEWIS: And he's going to
20 testify as to the -- the road widening that's -- the
21 road modification that's indicated in Exhibit 8?

22 MR. KRAHFORST: I intend to ask him those
23 questions.

24 HEARING OFFICER LEWIS: Bring him in.

25 MR. ACOSTA: Your Honor, I thought I would

1 have an opportunity to cross-examine Mr. Krahforst,
2 since he was sworn in.

3 HEARING OFFICER LEWIS: You know what,
4 Mr. Acosta, I'm going to give you an opportunity to do
5 that. Not right now.

6 MR. ACOSTA: Okay.

7 HEARING OFFICER LEWIS: It was more of an
8 opening statement that I heard.

9 MR. ACOSTA: That's right.

10 HEARING OFFICER LEWIS: Like I said, I'm
11 trying to give him as much leeway as I can.

12 MR. KRAHFORST: I have a question. I have two
13 witnesses. Are you telling me I can bring them
14 together?

15 HEARING OFFICER LEWIS: No, you're going to
16 bring one at a time. We don't take witnesses'
17 testimony from two at a time.

18 MR. KRAHFORST: Okay. Then do I fetch my
19 witnesses?

20 HEARING OFFICER LEWIS: Absolutely. That's
21 your job, sir.

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THOMAS K. MATTSON,

called on behalf of the Complainant, was first duly
sworn and testified as follows:

HEARING OFFICER LEWIS: Please be seated.

State and spell your name for the record, please.

THE WITNESS: Thomas K. Mattson,
M-A-T-T-S-O-N.

HEARING OFFICER LEWIS: And, Mr. Mattson, who
are you employed by?

THE WITNESS: Humboldt County Department of
Public Works.

HEARING OFFICER LEWIS: Mr. Krahforst, now is
your opportunity to ask questions of Mr. Mattson.

MR. KRAHFORST: I'd like to start by giving
you, sir, a document, and Mr. Acosta a document.

HEARING OFFICER LEWIS: Mr. Krahforst, do you
have any documents that are not highlighted? Do you
have a copy of this that's not highlighted?

MR. KRAHFORST: No, sir. I don't believe that
I do.

HEARING OFFICER LEWIS: Did you give one to
Mr. Acosta?

MR. ACOSTA: Not yet.

HEARING OFFICER LEWIS: That one is

1 highlighted too?

2 MR. KRAHFORST: I didn't want to, you know,
3 step out of line, but I thought it would --

4 HEARING OFFICER LEWIS: All right. In the
5 future, when you start representing someone, don't
6 highlight documents that you want to be used as
7 evidence, okay? That's not --

8 MR. KRAHFORST: Understood. All right. I
9 thought it would speed things up if I -- if I
10 highlighted the point I -- I wanted to make.

11 HEARING OFFICER LEWIS: Hold on, sir. Wait,
12 wait.

13 Okay, I am marking as Exhibit No. 3 a two-page
14 document, which is a letter dated April 22nd, 1996 from
15 the County of Humboldt Department of Public Works and
16 it's signed by -- appears to be signed by an individual
17 by the name of John Murray. It's Exhibit 3.

18 (Complainant's Exhibit 3 was marked.)

19 HEARING OFFICER LEWIS: Okay, Mr. Mattson has
20 Exhibit No. 3. Go ahead, Mr. Krahforst.

21 MR. KRAHFORST: In the way of testimony, can I
22 introduce the situation here that this letter refers
23 to?

24 HEARING OFFICER LEWIS: Well, this is your
25 opportunity to ask him questions. So --

1 MR. KRAHFORST: Okay. I can do it that way.
2 HEARING OFFICER LEWIS: -- ask him questions.

3

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DIRECT EXAMINATION

5

BY MR. KRAHFORST:

6

Q. This letter refers to a -- an encroachment
7 permit for an entrance. Is that correct, Mr. Mattson?

8

MR. ACOSTA: Objection. Your Honor, lack of
9 foundation and authentication.

10

HEARING OFFICER LEWIS: Boy, it's going to be
11 a long day.

12

Mr. Krahforst, I'm going to try to help you a
13 little bit with the first witness. Okay?

14

MR. KRAHFORST: Sure.

15

HEARING OFFICER LEWIS: But after this, it's
16 going to be up to you. All right?

17

Mr. Mattson, you have Exhibit No. 3 before
18 you. Have you ever seen it before?

19

THE WITNESS: I believe I have.

20

HEARING OFFICER LEWIS: Okay. And what is
21 your understanding of Exhibit No. 3?

22

THE WITNESS: It's a letter written by the
23 then Director of Public Works to the tribal
24 administrator regarding their proposed casino and the
25 existing encroachment.

1 HEARING OFFICER LEWIS: Okay. What was your
2 involvement, if any, in this -- what's discussed in
3 Exhibit 3?

4 THE WITNESS: This was two years before I was
5 hired by the County. I was not involved in this
6 letter.

7 HEARING OFFICER LEWIS: Okay. Have you been
8 involved in it since you've been hired by the County?

9 THE WITNESS: Yes.

10 HEARING OFFICER LEWIS: How so?

11 THE WITNESS: With the encroachments that have
12 come forth and the projects they have done -- the tribe
13 has done on the County road since I've been with the
14 County.

15 HEARING OFFICER LEWIS: That's during the past
16 two years?

17 THE WITNESS: Yes.

18 HEARING OFFICER LEWIS: Go ahead,
19 Mr. Krahforst.

20 MR. ACOSTA: Your Honor, we still object on
21 hearsay, lack of authentication, foundation, because we
22 don't know that John Murray really wrote this letter.
23 It was written before Mr. Mattson's employment and it's
24 hearsay.

25 HEARING OFFICER LEWIS: Okay. It is a lot of

1 those things, sir, but I'm going to permit it anyway.

2 MR. ACOSTA: Okay. All right.

3 HEARING OFFICER LEWIS: Go ahead,
4 Mr. Krahforst.

5 BY MR. KRAHFORST:

6 Q. Mr. Mattson, would you agree or -- agree that
7 this entrance is the same entrance referred to in
8 condition No. 8? Entrance modification, condition No.
9 8 of the alcohol license?

10 HEARING OFFICER LEWIS: Well, you're going to
11 need to let him look at condition No. 8, sir.

12 Okay, I'm handing you, Mr. Mattson, Exhibit
13 No. 2, and he's asking you about No. 8 right there.

14 THE WITNESS: I believe it to be, but I also
15 believe that there is another entrance that also serves
16 the facility.

17 So I'm -- based on what the letter says, I'm
18 pretty positive it refers to the entrance that
19 currently serves the casino.

20 BY MR. KRAHFORST:

21 Q. Okay. And -- and what did that entrance that
22 currently serves for the casino -- what purpose did it
23 serve prior to the casino construction?

24 A. Per Mr. Murray's letter, it served the housing
25 development.

1 HEARING OFFICER LEWIS: Well, you have no
2 personal knowledge of that. Right?

3 THE WITNESS: No, I do not.

4 HEARING OFFICER LEWIS: He wasn't even hired
5 there and working for the County at that point in time,
6 Mr. Krahforst.

7 So, you know, you're going to have to confine
8 your questions to what this man can testify to, and
9 he's only been working with them for the past two
10 years.

11 MR. KRAHFORST: He wanted to say something.
12 Can I allow him to do that?

13 HEARING OFFICER LEWIS: What, Mr. Mattson?

14 THE WITNESS: I've been working for the County
15 ten years. I've been in my position for three years.

16 HEARING OFFICER LEWIS: Within the same
17 department?

18 THE WITNESS: Yes.

19 HEARING OFFICER LEWIS: Okay. But have you
20 been involved with this project at the Bear River
21 Casino for more than two years?

22 THE WITNESS: Basically since September of
23 2005 when I took the position, it's been ongoing.

24 HEARING OFFICER LEWIS: Okay. All right. Go
25 ahead, Mr. Krahforst.

1 BY MR. KRAHFORST:

2 Q. So are you familiar with the history of that
3 modification -- that entrance as having served as a
4 subdivision entrance, housing entrance in the past?

5 A. My familiarity with that entrance goes back to
6 when the encroachment permit was being discussed for
7 converting it to the casino, basically in -- several
8 years after this period of time.

9 Q. Okay. What is an encroachment permit,
10 Mr. Mattson?

11 A. Any time you propose to do anything to a
12 County road, you are required to get a permit from the
13 County to allow you to do anything that you may
14 propose, whether it's a road, driveway, a sign.

15 Q. In this case, it could be -- this is a
16 driveway essentially, or entrance drive. Correct?

17 A. Correct.

18 Q. Okay. Is -- is -- has the County permitted
19 the tribe to use this entrance, that was apparently
20 permitted under John Murray for a subdivision, to be
21 used for its present purpose as a casino?

22 MR. ACOSTA: Objection, Your Honor.
23 Relevance. Not talking about the legality of the
24 casino on a parcel of land.

25 MR. KRAHFORST: I agree.

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HEARING OFFICER LEWIS: Yeah, we're not, Mr. Krahforst. Where are we going with this?

MR. KRAHFORST: I want to -- I believe the intersection of Singley Road and Bear River Drive is the County's jurisdiction because it encroaches on County property, as Mr. Mattson testified, and that's their jurisdiction.

If they permitted it for one reason in the past, I'm asking Mr. Mattson, do different reasons, use reasons, in the future fall under that initial permit or do they need a second permit? Or an additional permit.

THE WITNESS: The permit is basically issued on the use that they propose to us. However, once they have an access point to the road, they have an access point to the road. They proposed to improve the access points to the road, so we issued them a subsequent permit for that improvement.

BY MR. KRAHFORST:

Q. Has that been issued, subsequent permit for the --

A. Well, it's been issued, apparently the housing permit. We did issue a permit for additional work to widen and improve the driveway.

We issued additional encroachment permits for

1 the roadwork that they performed.

2 Q. Have you issued an encroachment permit to
3 comply with condition No. 8 in the license?

4 A. Without having a history of the permits laid
5 in front of me specifically, you know, I don't -- I
6 don't have those permits sitting right in front of me.

7 I have issued an encroachment permit that
8 dealt with expanding the existing driveway that was
9 there, or the department has.

10 Q. Has it been finalized?

11 A. We have an outstanding permit that hasn't been
12 finalized yet.

13 Q. Oh, there's an application out there? Is
14 that --

15 HEARING OFFICER LEWIS: Well, wait a minute,
16 Mr. Krahforst.

17 Mr. Mattson, are you saying that a permit was
18 issued permitting them to do or use this particular
19 access, ingress and egress, off of the County road?

20 THE WITNESS: There was a permit issued.

21 HEARING OFFICER LEWIS: Okay. Is it valid?

22 THE WITNESS: They are currently working on
23 completing the conditions of that permit. Yes, they
24 have a valid permit.

25 HEARING OFFICER LEWIS: Okay. So there's

1 nothing improper about what's going on right now as far
2 as the County is concerned?

3 THE WITNESS: As far as the County is
4 concerned and the existing permit that they are working
5 under, no, there is nothing improper.

6 HEARING OFFICER LEWIS: Okay.

7 BY MR. KRAHFORST:

8 Q. To change the use of the -- of that existing
9 permit requires engineered drawings for your approval?

10 MR. ACOSTA: Objection, Your Honor. Lack of
11 foundation. Talking about a federal -- a parcel owned
12 by the United States of America. The federal
13 preemption applies. That would be beyond --

14 HEARING OFFICER LEWIS: I don't know what
15 we're talking about.

16 Do you have any idea what he's talking about,
17 Mr. Mattson? Maybe you can help me.

18 THE WITNESS: Generally when somebody applies
19 for an encroachment permit, we require them to tell us
20 what they're going to do with the land so that we can
21 make sure the encroachment is built to serve that use,
22 that it doesn't -- and that the road is built to serve
23 that use and it doesn't damage the road.

24 Doesn't mean they can't change the use and it
25 doesn't mean they can't get a permit without really

1 telling us the full gamut of what they are going to do,
2 as long as they comply with the County regulations for
3 an encroachment permit.

4 BY MR. KRAHFORST:

5 Q. So the County, from your -- from your
6 perspective as the public works director, has no
7 objection to -- to -- to using the -- the existing
8 permitted entrance without fulfilling condition No. 8
9 of the license? Is --

10 A. The County has no authority, under my
11 understanding, to enforce condition No. 8. The County
12 is more than willing to work with the community and the
13 tribe to issue an encroachment permit that meets the
14 intent of condition No. 8.

15 HEARING OFFICER LEWIS: Understand, Mr. --
16 something, Mr. Krahforst. Maybe it will benefit you in
17 your questioning here.

18 This condition No. 8 means nothing to anyone
19 except ABC, okay? The County doesn't care about
20 condition No. 8. The federal government doesn't care
21 about condition No. 8.

22 The Department of Alcoholic Beverage Control
23 is the only one who has anything to do with condition
24 No. 8. Okay?

25 MR. KRAHFORST: I -- I understood, Your Honor,

1 that Mr. Acosta says the federal government had -- had
2 a say-so in the matter.

3 HEARING OFFICER LEWIS: Well, they may have a
4 say-so in the matter, but they don't enforce it. They
5 can't penalize the tribe for violating condition No. 8.

6 MR. KRAHFORST: Oh, I see. Enforcement.

7 HEARING OFFICER LEWIS: The only one that can
8 do that is ABC.

9 MR. KRAHFORST: I'd like to ask Mr. Mattson --
10 I think there's a jurisdictional issue here throughout
11 this thing.

12 HEARING OFFICER LEWIS: I'm sure there is.
13 There always is. I've -- I've done enough of these
14 down south to know that.

15 BY MR. KRAHFORST:

16 Q. Singley Road is under your jurisdiction, the
17 County's jurisdiction.

18 A. The County maintains the portion of Singley
19 Road as identified, and the road law that's put in by
20 the State of California is under the jurisdiction of
21 the County of Humboldt.

22 Q. Bear River Drive is under the jurisdiction, to
23 your -- in your opinion, is under the jurisdiction
24 of --

25 A. Bureau of Indian Affairs.

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THE REPORTER: I'm sorry?

THE WITNESS: Bureau of Indian Affairs.

BY MR. KRAHFORST:

Q. How about the intersection of the two?

A. The encroachment within the jurisdiction of the County right-of-way is under the jurisdiction of the County of Humboldt.

Q. So would it be fair to say that Singley Road is here, County jurisdiction; Bear River Drive is here, BIA jurisdiction; but the intersection is under the County's jurisdiction for anyone who wants to put through a driveway or -- or -- or improve or change a driveway?

That -- that intersection is under the jurisdiction of the County?

HEARING OFFICER LEWIS: Hold on -- hold on a minute, Mr. Krahforst. Somebody is going to have to clue me in. Okay?

Does anyone have a diagram of what we're talking about here?

MR. ACOSTA: Sure.

MR. KRAHFORST: Sure.

HEARING OFFICER LEWIS: Otherwise, I'm in the dark.

MR. KRAHFORST: Sure. We should have done

1 that.

2 MR. ACOSTA: Well, this is -- I'll represent
3 that this is what we're talking about. Singley Road,
4 Bear River Drive.

5 HEARING OFFICER LEWIS: You want to maybe use
6 just the page?

7 MR. ACOSTA: It's part of a larger exhibit,
8 Your Honor. Can we just mark the whole thing as an
9 exhibit? There's several drawings.

10 This is how -- the current state of it, and
11 these are proposed. So do you want to mark that?

12 HEARING OFFICER LEWIS: Okay, give it to me.

13 MR. KRAHFORST: Can I get a copy?

14 MR. ACOSTA: Let me see if you -- I'll let you
15 examine it and see if you have it. Otherwise, I'll get
16 you a copy.

17 MR. KRAHFORST: You don't have a copy for me?

18 MR. ACOSTA: I think I do. Or we can take
19 that one page out and use it, if you agree that's --

20 MR. KRAHFORST: I'd like to see the whole
21 packet, if that's going to be submitted.

22 MR. ACOSTA: It's going to be submitted as
23 part of my case. I'm trying to accommodate -- I was
24 going to do it through John Bergenske.

25 MR. KRAHFORST: May I look at it?

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MR. ACOSTA: Of course.

HEARING OFFICER LEWIS: All right. I am marking as Exhibit A a multiple-page document -- okay, 13 pages.

(Respondent's Exhibit A was marked.)

HEARING OFFICER LEWIS: Basically, it's entitled -- it's dated January 30th, 2006, and it's a letter and some drawings regarding the Singley Road intersection design. It's marked as Exhibit A.

The page you're referring to, Mr. Acosta, is what?

MR. ACOSTA: Page 3, Your Honor.

HEARING OFFICER LEWIS: Page 3. I'm going to mark it in the lower right-hand corner as page 3. First I'm going to give Mr. Krahforst an opportunity to take a look at it. Okay?

Mr. Mattson, I'm showing you page 3 of Exhibit A, and hopefully you can shed some light on this for me. Everybody's talking about intersections here and whatever. What --

THE WITNESS: Our right-of-way is here to here.

HEARING OFFICER LEWIS: Okay.

THE WITNESS: Those lines through.

HEARING OFFICER LEWIS: Okay.

1 THE WITNESS: Any work that the tribe does
2 within those lines, we have regulation authority over
3 under the encroachment permit.

4 HEARING OFFICER LEWIS: Okay.

5 THE WITNESS: So this work that the --

6 HEARING OFFICER LEWIS: Just to make an
7 extension of the -- I don't know what's north and south
8 or what here.

9 But basically, all you're talking about
10 through -- I'm assuming that this whole area which
11 consists of the intersection is paved in some manner?

12 THE WITNESS: Yes.

13 HEARING OFFICER LEWIS: Okay. But the only
14 thing that the County has jurisdiction over is the --
15 on Singley Road is the extension through the
16 intersection, but not extending further --

17 THE WITNESS: Right.

18 HEARING OFFICER LEWIS: -- either side. Just
19 the width of Singley Road?

20 THE WITNESS: We have standards on what they
21 need to do to attach to the road --

22 HEARING OFFICER LEWIS: Right.

23 THE WITNESS: -- which may require they do
24 things on their property.

25 HEARING OFFICER LEWIS: Mm-hm.

1 THE WITNESS: However, we only have really the
2 -- the authority and the ownership and maintenance of
3 what is in the right-of-way. We tell them how they can
4 connect to the road.

5 HEARING OFFICER LEWIS: Okay. Where is the
6 entrance, I guess -- they're talking about ingress and
7 egress.

8 Where is the entrance to the Bear River
9 Casino?

10 THE WITNESS: Okay. This would be the
11 entrance to the casino.

12 HEARING OFFICER LEWIS: That's what I --

13 MR. ACOSTA: Yes, he's correct. Okay.

14 HEARING OFFICER LEWIS: Okay. All right.
15 I've got -- I've got a good picture of it now.

16 MR. KRAHFORST: I think Mr. Mattson could
17 clarify.

18 Q. If I understand correctly, Mr. Mattson, Bear
19 River Drive is BIA; Singley Road is County?

20 A. Correct.

21 Q. And the connection of the two is County?

22 A. Jurisdiction of the encroachment permit is the
23 County.

24 Q. Good, good, good. That's -- that's the
25 statement I wanted to have.

1 I want to introduce another --

2 HEARING OFFICER LEWIS: Let me make sure I
3 understand. I -- I hate to repeat myself, but I -- I
4 want to make sure I understand.

5 MR. KRAHFORST: Sure.

6 HEARING OFFICER LEWIS: The intersection
7 beyond the extension of Singley Road is -- in fact
8 requires a County permit for -- even though it's not
9 County land, but because it -- it connects to Singley
10 Road, which is County -- a County road, then the County
11 has a say into what happens?

12 THE WITNESS: We have a say on how it
13 approaches the road, with design standards based on
14 turning radiuses, et cetera, which may require work be
15 done outside of the County right-of-way so that when it
16 hits the County right-of-way, it hits it at the right
17 geometric --

18 HEARING OFFICER LEWIS: Okay. And that's the
19 responsible of the landowner, not the County?

20 THE WITNESS: Correct.

21 HEARING OFFICER LEWIS: In this case, the
22 tribe?

23 THE WITNESS: Yes.

24 HEARING OFFICER LEWIS: Okay, I've got it.

25 MR. KRAHFORST: Next document, Your Honor, I'd

1 like to introduce is -- excuse me for the highlighting.

2 HEARING OFFICER LEWIS: Well, you'll be better
3 at it next time. Right?

4 MR. KRAHFORST: Absolutely. Sir, are we going
5 to assign a number to that? A page number to that?

6 HEARING OFFICER LEWIS: Okay. What am I
7 dealing with here, Mr. Krahforst?

8 MR. KRAHFORST: This is a -- a local
9 engineering consulting firm prepared a -- prior to the
10 casino development, an impact analysis and recommended
11 on the next page that measure 16-2(a) basically conform
12 to the same thing as -- as condition No. 8 in the
13 license.

14 HEARING OFFICER LEWIS: So why do I need this
15 as an exhibit?

16 MR. KRAHFORST: To show you that the -- that
17 the very wording of that condition goes back to at
18 least 1999.

19 HEARING OFFICER LEWIS: I don't care.

20 MR. KRAHFORST: Okay.

21 HEARING OFFICER LEWIS: All I care is what's
22 on the condition itself. Yeah, it has some history.
23 I'm -- I'm sure it came from somewhere. But, you know,
24 if it -- even if it's worded differently, I can't use
25 it.

1 I can only use what's in this condition. So I
2 really don't need it, sir.

3 MR. KRAHFORST: The -- the reason I'm
4 submitting it, it's in there for public safety, public
5 welfare, traffic control.

6 HEARING OFFICER LEWIS: You know, anything to
7 do with roads, I -- I understand that.

8 MR. KRAHFORST: Okay. Well, your discretion.
9 Okay.

10 HEARING OFFICER LEWIS: Let's save a tree.
11 I've seen enough of them coming up here.

12 BY MR. KRAHFORST:

13 Q. Mr. Mattson, do you recall a meeting at your
14 office in September 2006, roughly in there, with
15 myself, the tribal attorney, Mr. Acosta, and tribal
16 engineer Alex Culick?

17 I may not be pronouncing that right. We three
18 and the tribal engineer met in your office.

19 A. Yeah, I recall meeting in our office.

20 Q. Okay.

21 A. The specific date, I don't recall.

22 Q. Was it regarding the modified entrance?

23 A. I believe that was the subject of the meeting,
24 yes. I believe that was the subject of the meeting,
25 yes.

1 MR. KRAHFORST: Okay. I'll have this in a
2 second, Your Honor.

3 HEARING OFFICER LEWIS: Okay. Mr. --
4 Mr. Krahforst.

5 MR. KRAHFORST: Yeah, I'd like to give this --

6 HEARING OFFICER LEWIS: Why do I need this?

7 MR. KRAHFORST: This is a -- do you have that
8 copy with you? This is a --

9 HEARING OFFICER LEWIS: No, I'm asking you,
10 sir. Why do I need this? I understand it's a letter
11 from Mr. Acosta.

12 MR. KRAHFORST: Sure.

13 HEARING OFFICER LEWIS: I understand it's a
14 memorandum with no signatures on it.

15 MR. KRAHFORST: Sure. This is --

16 HEARING OFFICER LEWIS: And there's a drawing
17 attached.

18 MR. KRAHFORST: This is conceptual drawings
19 attached.

20 HEARING OFFICER LEWIS: Okay.

21 MR. KRAHFORST: That's being offered as a
22 fulfillment of condition No. 8 by the -- by the tribe
23 to the Singley Hills Homeowners Association after the
24 conditional license.

25 HEARING OFFICER LEWIS: Okay. So what?

1 MR. KRAHFORST: Mr. Acosta wants to testify,
2 he said, that -- that the tribe has done due diligence
3 to meet that condition.

4 HEARING OFFICER LEWIS: Okay. Well, he's
5 going to have to prove it up. I understand what the
6 condition --

7 MR. KRAHFORST: Yeah. And I just wanted to
8 make sure that -- that there were no issues at that
9 meeting brought up that would not make this -- that
10 wasn't accepted or not acceptable after meeting when
11 this -- when we all met with Mr. Mattson here, this was
12 never followed through with, this proposal, and I want
13 to establish why not. Be -- because -- whether it was
14 due diligence on the part of the tribe or not.

15 HEARING OFFICER LEWIS: All right. I'm
16 marking as Exhibit No. 4 a three-page document. Don't
17 give him that one.

18 (Complainant's Exhibit 4 was marked.)

19 HEARING OFFICER LEWIS: It's a -- first page
20 is a letter signed by Mr. Acosta. Second page is a
21 memorandum of agreement with no signatures, and the
22 third page is a diagram.

23 Collectively, it's marked as Exhibit No. 4 and
24 I'm handing Exhibit 4 to the witness.

25 Go ahead, Mr. Krahforst.

1 MR. ACOSTA: Can I get a copy of that at lunch
2 maybe?

3 MR. KRAHFORST: Sure.

4 Q. Mr. Mattson, this was the subject of that
5 meeting. Is that correct?

6 MR. ACOSTA: Objection, Your Honor. Lack of
7 foundation.

8 MR. KRAHFORST: I'm asking.

9 HEARING OFFICER LEWIS: Hold on. If you know,
10 sir.

11 THE WITNESS: I believe we did discuss
12 something similar to this at that meeting.

13 BY MR. KRAHFORST:

14 Q. Do you recall what the -- whether it was
15 acceptable or not acceptable?

16 A. I believe that we discussed that in concept,
17 it was acceptable. It's not a construction
18 application, but in concept, it looked reasonable.

19 Q. So it's a conceptual drawing. Was a follow-up
20 engineering drawing submitted to you?

21 A. I don't recall offhand --

22 Q. You --

23 A. -- whether I got another drawing on this or
24 not.

25 Q. You don't know? All right. If there -- all

1 right.

2 So you don't -- you don't know whether an
3 encroachment permit was -- was given based on an
4 engineered drawing? You just don't know if you have
5 one or whether you got one?

6 A. This -- this is not --

7 Q. They haven't modified the entrance. They
8 haven't --

9 A. This is not an engineered drawing. That is a
10 conceptual plan.

11 Q. Do you have an engineered drawing?

12 A. For the encroachment that they have, that
13 they're working on? Yes, we have --

14 Q. No, for a modification for condition No. 8.

15 A. They have an existing encroachment permit.

16 Q. Do they -- do you have -- do you have
17 engineered drawings -- this is conceptual -- refining
18 this or -- or duplicating this in a more formal
19 matter?

20 This design, this pro -- proposed design.

21 A. No.

22 Q. Okay.

23 A. We do not have a new design application or
24 encroachment permit application at this time.

25 Q. Thank you.

1 HEARING OFFICER LEWIS: Okay. Off the record.

2 (Discussion was held off the record.)

3 (A break was taken.)

4 HEARING OFFICER LEWIS: Okay. Are we ready?

5 MR. KRAHFORST: Sure.

6 HEARING OFFICER LEWIS: Back on the record.

7 Go ahead, Mr. Krahforst.

8 MR. KRAHFORST: I think we left off that --
9 that you haven't received an engineered drawing to
10 follow up on that conceptual drawing we just looked
11 at.

12 THE WITNESS: Correct. Not for that specific
13 design.

14 MR. KRAHFORST: Okay.

15 Q. Have you received other conceptual drawings as
16 alternatives to a modified entrance? For instance, a
17 round-about?

18 A. Yes.

19 Q. Have you ever received an engineered drawing
20 of a round-about?

21 A. Not fully engineered, ready for permit
22 application, no.

23 Q. Okay. So if -- if I understand, a conceptual
24 drawing is not good enough for an encroachment permit.
25 It requires an engineered drawing?

1 A. Correct.

2 Q. Okay. So we haven't received an engineered
3 drawing for -- that's been looked at for a
4 round-about.

5 How about for a one-way traffic diversion?
6 Engineered drawing?

7 A. Not fully engineered.

8 Q. Okay. So that process, and -- and any attempt
9 by you or the tribe to comply with condition No. 8,
10 hasn't been completed in whatever, engineered drawing,
11 and the process is not complete?

12 MR. ACOSTA: Objection, Your Honor. Condition
13 No. 8 can be interpreted more than just these -- these
14 particular drawings that have been presented.

15 HEARING OFFICER LEWIS: Well, let's put it
16 this way, Mr. Krahforst. The reason I'm here is
17 because condition No. 8 has not been complied with as
18 far as the -- well, what was needed in the form of
19 egress and ingress of the road and everything else.

20 Mr. Acosta has already said it hasn't been
21 complied with.

22 MR. KRAHFORST: I guess what I'm trying to --
23 to establish is what it -- how far did attempts go by
24 the tribe to -- to do that?

25 And so far, I'm hearing conceptual drawings,

1 but they were never followed up with engineered
2 drawings, which is a necessary step, I understand, to
3 get a permit to -- to perform this work.

4 HEARING OFFICER LEWIS: Okay, and I'm sure
5 when Mr. Acosta gets to ask him some questions, we're
6 going to find out why we haven't gotten to that point.

7 MR. KRAHFORST: Okay.

8 HEARING OFFICER LEWIS: I -- I understand
9 that.

10 MR. KRAHFORST: Okay.

11 HEARING OFFICER LEWIS: I understand it hasn't
12 been done yet.

13 MR. KRAHFORST: Okay.

14 Q. Did the tribe ever submit engineered drawings
15 regarding condition No. 7, which is the road widening?

16 A. Yes.

17 Q. Okay. Were these drawings finalized?

18 A. Yes.

19 Q. And the project approved?

20 A. Yes.

21 Q. Project completed?

22 A. I believe there's still a couple of pending --
23 pending items before the permit can be closed out.

24 Q. For the most part completed?

25 A. Yes, substantially completed.

1 Q. So there was no objection from the BIA in
2 that -- in that process?

3 A. Not on that specific project, no.

4 Q. No. Okay. There was no problem with the
5 tribe accusing the County of -- of hindering widening
6 of the road?

7 MR. ACOSTA: Objection, Your Honor. Not in
8 evidence.

9 HEARING OFFICER LEWIS: Mr. --

10 MR. ACOSTA: Assumes facts.

11 HEARING OFFICER LEWIS: Mr. Krahforst, I don't
12 care.

13 MR. KRAHFORST: Okay.

14 HEARING OFFICER LEWIS: There's no --
15 condition 7 is not before me.

16 MR. KRAHFORST: Okay.

17 HEARING OFFICER LEWIS: I'm assuming there was
18 compliance. Otherwise, it would be before me. Okay?

19 MR. KRAHFORST: Okay.

20 HEARING OFFICER LEWIS: If it's done, it's
21 done. Move on.

22 MR. KRAHFORST: Okay. I'd like to, with your
23 permission, ask Mr. Mattson what the scale of that
24 completed project is in comparison to the entrance
25 modification.

1 HEARING OFFICER LEWIS: I don't care,
2 Mr. Krahforst.

3 MR. KRAHFORST: You're not --

4 HEARING OFFICER LEWIS: Don't care. It has --
5 it has nothing to do with the charges I have to figure
6 out here.

7 MR. KRAHFORST: Okay. Could -- could those
8 issues be raised after Mr. Acosta says, "Hey, we" --
9 you know, whatever?

10 HEARING OFFICER LEWIS: You know, I'm not
11 going to say "whatever."

12 MR. KRAHFORST: Okay.

13 HEARING OFFICER LEWIS: Let's put it this
14 way. As far as I'm concerned, I don't need to know.
15 Condition 7 is not before me.

16 MR. KRAHFORST: Okay.

17 Q. What would be your cost estimate of completion
18 of condition No. 8?

19 MR. ACOSTA: Objection, lack -- lack of
20 foundation. There's been multiple --

21 HEARING OFFICER LEWIS: Sustained. I don't
22 care how much it costs, Mr. Krahforst. That's not my
23 concern.

24 MR. KRAHFORST: Okay.

25 Q. In -- in submitted conceptual drawings for

1 compliance with condition No. 8, the entrance
2 modification, was a factor in -- in submitting drawings
3 that the cross traffic to the Fearrien property was --
4 was essential to maintain?

5 A. I believe that has come up in discussions,
6 yes.

7 Q. Okay. Is that -- as you read condition No. 8,
8 was that a -- a part of that condition, that cross
9 traffic be maintained as a condition of compliance?

10 MR. ACOSTA: Objection, Your Honor. Lack of
11 foundation, assumes facts not in evidence.

12 The road he's referring to wasn't in existence
13 when that condition --

14 HEARING OFFICER LEWIS: Mr. Krahforst, I'm
15 going to sustain the objection. Exhibit 8 says what it
16 says. I don't care what his interpretation of it is,
17 to be very honest with you, at this point in time.

18 The document speaks for itself. The condition
19 is there. That's what was agreed to, that's what I'm
20 going to deal it. Okay?

21 Right now, you've got to worry about what my
22 interpretation of it is, I guess.

23 MR. KRAHFORST: Thank you, Mr. Mattson. I'd
24 like to call my next witness.

25 HEARING OFFICER LEWIS: No. You --

1 MR. KRAHFORST: Oops.

2 HEARING OFFICER LEWIS: Now -- now you get to
3 sit and wait. Go ahead, Mr. Acosta.

4 MR. KRAHFORST: Okay. Could I just have a
5 procedural question?

6 So when Mr. -- this is not -- I'm the district
7 attorney. When -- when Mr. Acosta now cross-examines
8 Mr. Mattson --

9 HEARING OFFICER LEWIS: Yes.

10 MR. KRAHFORST: -- is -- it's not my chance
11 now to -- to come back and -- I don't cross-examine
12 Mr. Mattson?

13 HEARING OFFICER LEWIS: You may get to do a
14 follow-up question when Mr. Acosta is done.

15 MR. KRAHFORST: All right.

16 HEARING OFFICER LEWIS: Okay?

17 MR. KRAHFORST: Good.

18 HEARING OFFICER LEWIS: Mostly as long as it's
19 within reason. I'm trying to be patient.

20 MR. ACOSTA: Okay. My turn?

21 HEARING OFFICER LEWIS: Yes.

22 MR. ACOSTA: Thank you, Your Honor.

23 /////

24 /////

25 /////

1 CROSS-EXAMINATION

2 BY MR. ACOSTA:

3 Q. Mr. Mattson, looking back at page 3 of
4 Exhibit -- marked as Exhibit A, when you reviewed this
5 picture of Singley Road and Bear River Drive
6 intersection, you said that the County only has
7 jurisdiction over the casino road portion.

8 Does the BIA have jurisdiction, to your
9 knowledge, over the eastern portion at some survey
10 point?

11 A. I believe so, yes.

12 Q. And is it your understanding that Bear River
13 Drive, which is the other road in the intersection, is
14 a BIA jurisdictional road, a federal road?

15 A. It's my understanding.

16 Q. And it's included -- are you aware that it's
17 included in the inventory of BIA roads that are subject
18 for improvement by BIA funds?

19 A. I believe it is.

20 Q. And therefore, the County does not maintain
21 from which point on that road?

22 A. From the right-of-way line of Singley Road.

23 Q. How many --

24 A. Anything outside of the right-of-way line, the
25 maintenance is a responsibility of the underlying fee

1 owner.

2 Q. How many feet from Singley Road into Bear
3 River Drive does the County have jurisdiction?

4 A. Our right-of-way I believe is 40 feet.

5 Q. From the center?

6 A. From the center line.

7 Q. So when we talk about restricting ingress and
8 egress at this intersection, would it require on the
9 eastern side some cooperation with the Bureau of Indian
10 Affairs?

11 A. Yes.

12 Q. Have you had any conversations or your staff
13 had any conversations with the BIA regarding their
14 cooperation in resolving this intersection design?

15 A. Yes.

16 Q. And what have those conversations -- how many
17 of those conversations have you had?

18 A. My staff member met out there regarding some
19 things that had been placed on the BIA road to
20 encourage traffic not to make the right turn movement
21 out of the casino, and BIA in no uncertain terms let us
22 know that they would not allow those things to remain
23 on their road.

24 Q. And what were those things?

25 A. I believe we had some "K" rail and some

1 signing and some other things that were on basically
2 BIA jurisdictional area.

3 Q. And who placed those devices on the road to
4 modify the intersection?

5 A. I believe the tribe did.

6 Q. And is it your understanding that the BIA, by
7 written correspondence, ordered the removal of those
8 devices from that portion of the intersection?

9 A. Yes.

10 Q. And who is the staff member that went to the
11 meeting regarding these barriers?

12 A. Mr. Bob Bronkall.

13 Q. And he is an engineer?

14 A. Yes.

15 Q. Okay. Did the County at any point contest
16 that the BIA had a right to remove those barriers and
17 other devices from the Bear River Drive portion of this
18 intersection?

19 A. No.

20 Q. So there's no contest as to their
21 jurisdiction.

22 Okay. Did the BIA at any point request a
23 traffic study or a traffic count, I should say, as a
24 basis for an engineering diagram for this intersection?

25 A. I believe they demanded that information to do

1 anything.

2 Q. So it was -- it was a precondition of the
3 BIA's cooperation that a traffic count be done?

4 A. Well, we did a traffic count, yes.

5 Q. And when was that traffic count done?

6 A. I don't remember the date offhand. It was
7 several days before your gas station opened.

8 Q. Was it this year?

9 A. I believe it was '08. May have been '09.
10 I'm -- I'm not sure of the exact date.

11 Q. Okay. So it was late '08 or '09?

12 A. Yeah.

13 Q. And when was the meeting with the BIA?

14 A. I don't recall offhand. It was several months
15 ago, I believe.

16 Q. Late '08?

17 A. Would be.

18 Q. Okay. When were the -- when were the devices
19 and "K" rails placed on the Bear River Drive portion of
20 the intersection?

21 A. Date-wise, I can't tell you. I can tell you
22 they'd been there for a significant amount of time. A
23 year, two years.

24 Q. Okay. And those devices would restrict
25 traffic going from the north into Bear River Drive,

1 eastbound Bear River Drive, or exiting?

2 A. The intent was to encourage people that were
3 exiting to make a left turn out of the casino, not a
4 right turn.

5 Q. Okay. Now, was there a decision back in 2006,
6 possibly 2007, to bifurcate the implementation of
7 condition 7 and 8 because the design for condition 7
8 was easier and less controversial than condition 8?

9 I can rephrase. Was -- was the original
10 concept to issue an encroachment permit for both
11 condition 7 and 8?

12 A. That was the original concept we were working
13 on at the time, I believe.

14 Q. And then at some point, we -- the County and
15 the tribe agreed to pursue condition No. 7 because
16 there was no dispute as to how it should be improved?

17 A. I don't think the County decided to pursue
18 only No. 7 or 8. The County is not a party to 7 or 8.
19 We are just trying to facilitate them getting done.

20 Based on what was happening at the time, you
21 provided a -- a design that met all of our standards.
22 We issued an encroachment permit for that, irregardless
23 of which condition it resolved.

24 Q. And how many conceptual drawings has -- have
25 you looked at, different conceptual drawings, regarding

1 the issue of Bear River Drive and Singley Road?

2 A. Four or five.

3 Q. And that -- would one include a full road
4 closure on the north end of Singley Road?

5 A. Correct.

6 Q. And that would be a hundred percent barrier --
7 a hundred percent effective as to ingress and egress
8 from southbound, ingress into Bear River Drive and
9 westbound -- I guess northbound on Singley Road from
10 Bear River Drive?

11 It would be a hundred percent block?

12 A. Correct.

13 Q. How long did the County and the tribe pursue a
14 hundred percent full road closure?

15 A. Probably a year.

16 Q. Okay. It took a year -- are you saying it
17 took a year of meetings and correspondence to attempt
18 to get these parties together to agree to that full
19 road closure?

20 A. I believe so.

21 Q. And what other parties ended up stopping that
22 attempt?

23 A. California Department of Fire & Forestry. Cal
24 Fire.

25 Q. Okay. And did the CHP concur, or were they in

1 favor of doing it?

2 A. At one time, the CHP was against it. Later
3 on, they were okay with it. But ultimately, it's a --
4 it's a fire safety issue.

5 Q. And do you recall having earlier -- early
6 conversations in 2006 regarding the full road closure
7 as being effective for the residents and the tribe with
8 the CDF director or manager who said -- who had
9 indicated that he would be in favor of road closure?

10 A. I don't recall the specific conversations. I
11 do know personnel changed.

12 Q. So the personnel change affected their
13 position?

14 A. Times change, personnel change. It changed a
15 lot.

16 Q. So the CDF -- there was a meeting at the
17 tribal building in approximately early 2008, I believe,
18 that you attended with the CHP and CDF?

19 MR. KRAHFORST: Could I object at this point,
20 Your Honor? What does this have to do with -- with the
21 wording of condition No. 8, road closure? Two-way,
22 one-way?

23 MR. ACOSTA: That would completely --

24 HEARING OFFICER LEWIS: I am -- I'm going to
25 overrule your objection, Mr. Krahforst. I think what

1 Mr. Acosta is attempting to do is indicate or try to
2 show me why there has not been full compliance with
3 condition 8, and I'm getting a big picture.

4 MR. KRAHFORST: Okay.

5 HEARING OFFICER LEWIS: Go ahead.

6 BY MR. ACOSTA:

7 Q. So there was a meeting at the tribal building
8 hosted by the tribe for CDF, CHP, the County -- meaning
9 yourself, Supervisor Smith and -- to discuss the road
10 closure on northbound Singley Road?

11 A. I recall meeting at the tribal headquarters to
12 discuss that issue with a lot of parties. I don't
13 recall if CHP was at that meeting or not.

14 Q. Okay.

15 A. But I do recall the one with CDF.

16 Q. CDF was there, and at that meeting was the
17 first indication we had that they would object to a
18 road closure?

19 A. That was their solid indication, that they
20 would not even consider it.

21 Q. And at that meeting, you had opened the
22 meeting speaking to the CDF manager that you had a
23 preliminary conversation and you thought an agreement
24 with his predecessor that the road closure would be
25 acceptable to CDF?

1 A. I don't recall that statement.

2 Q. Well, as a professional engineer, did you --
3 did you see any County regulation or other engineering
4 reason why a road closure wouldn't work to resolve the
5 issues of condition No. 8?

6 A. The pure and simple issue is the fire safety
7 regulations.

8 Q. Okay. So the -- the fire -- CDF raised the
9 fire regulations as being an obstacle to road closure?

10 A. Yes. There are -- there are fire regulations
11 related to public roads.

12 Q. And at some time at that meeting or after that
13 meeting, we didn't -- you didn't immediately abandon
14 the concept of a road closure. Is that correct?

15 Let me rephrase it. Did Jimmy Smith represent
16 to you that he would pursue some agreement with CDF to
17 at least get a break-away barrier on -- as opposed to a
18 full blockade?

19 A. He may have.

20 Q. Okay. Do you remember the discussion
21 regarding a break-away barrier as being an
22 accommodation to CDF?

23 A. The -- what I recall from the meeting was that
24 CDF was in objection to any rigid barrier simply
25 because if there was a major fire up there, people may

1 not, even if it was a break-away, think they could get
2 out that way in a panic situation, which would lead to
3 the loss of life.

4 Q. And so do you remember that the break-away
5 barrier was discussed at that meeting?

6 A. I believe it was.

7 Q. Okay. So in the end, that -- that particular
8 concept was pursued for a year and was shot down by the
9 CDF?

10 A. Right.

11 Q. Okay. Subsequent to that attempt, year-long
12 attempt, was there a meeting that you attended at the
13 agricultural building in Eureka, California?

14 A. Yes.

15 Q. And what -- approximately what season was that
16 and year?

17 A. Spring, I believe.

18 Q. Of --

19 A. I think it was '08.

20 Q. '08?

21 A. '07, '08.

22 Q. And at that meeting you, Jimmy Smith,
23 Mr. Krahforst, and myself were in attendance?

24 A. Yes.

25 Q. Okay. And at that meeting, knowing that the

1 full road closure was probably not going to happen by
2 objection of the CDF, a second concept was discussed,
3 including a round-about. Is that correct?

4 A. Yeah. I recall the discussion on the
5 round-about.

6 Q. And there was actually a drawing that everyone
7 appeared to agree to. Is that correct?

8 A. Correct.

9 Q. Okay. That -- that drawing was never given --
10 was it ever given to you as a conceptual drawing from
11 the tribe engineers?

12 A. It was provided to our department and we
13 provided comments on it.

14 Q. Okay. And who -- who submitted that to your
15 department? LACO or Winzler-Kelly?

16 A. I think it was LACO.

17 Q. Okay. The round-about -- well, let me -- at
18 that point, who was the assigned engineer on the
19 Singley Road project?

20 A. Everything on Singley Road is going through
21 our land use division, which is under the jurisdiction
22 of Bob Bronkall.

23 Q. Was Doug Jackson the field inspector for the
24 condition 7 road inspection?

25 A. He was the construction inspector for the

1 County on one of your road projects, yes.

2 Q. Was he also involved in the comments or -- or
3 the critique of the round-about?

4 A. He could have been underneath Bob, yes.

5 Q. And was it his opinion that the round-about
6 didn't work from an engineering standpoint?

7 A. Not that I'm aware of. Not based on the
8 letter we sent.

9 Q. Do you think that the slope -- is there a
10 slope requirement for doing a round-about as an
11 engineer?

12 A. There's all kinds of different requirements
13 for anything you may do, yes.

14 Q. Do you believe that the slope of Singley Road
15 would accommodate a round-about?

16 A. Based on the comment letter we sent, it could
17 have been constructed.

18 Q. If it had been -- okay.

19 You were handed what has been marked as
20 Exhibit 4, which includes a letter from me, a
21 memorandum of agreement, and yet another drawing. I
22 think an earlier drawing Mr. Krahforst referred to.

23 Have you seen -- was this an earlier drawing
24 than the road closure or the round-about?

25 A. This was after initial discussions of the road

1 closure, but we still had not closed out the theory
2 that the road closure could work.

3 Q. Okay. This was done by Winzler & Kelly.
4 Correct?

5 A. Yes, it's in their --

6 Q. All right. And were there any engineering or
7 conceptual reasons why this design couldn't work?

8 A. I don't recall any. I mean, there may have
9 been minor issues, but I don't recall any.

10 Q. But this one wasn't pursued specifically
11 because it was the opinion of some of the residents,
12 some of the members of the tribe, that a full road
13 closure would be more effective?

14 A. Yes.

15 Q. Okay. Recently, jumping to -- oh, by the way,
16 was Doug Jackson taken off the assignment of the Bear
17 River Casino projects at some point?

18 A. I'm not sure. That's a staffing decision
19 under Bob Bronkall.

20 Q. During the construction of the road, in the
21 times of condition No. 7, was there temporary speed
22 bumps placed on the north end of Singley Road above
23 Bear River Drive?

24 A. Yes.

25 Q. Those were funded by whom?

1 A. They were -- some were purchased by the
2 tribe. Some I believe were purchased by the County or
3 were installed by the County.

4 Q. Okay. And the County consented to the tribe
5 and the County paying for temporary speed bumps,
6 placing them on the north end of Singley Road to
7 restrict traffic coming from the north during the --
8 the southern construction project?

9 A. It's to re -- reduce traffic speeds and
10 hopefully encourage people to take the other way, yes.

11 Q. So it was one means of encouraging people to
12 not egress and ingress from the north of Singley Road?

13 A. Yeah. It was to mitigate construction traffic
14 impacts.

15 Q. And those were only temporary speed bumps, but
16 post -- who took those out, by the way?

17 A. The County took those out.

18 Q. Did the County have to take them out at that
19 point?

20 A. The construction was over. They were
21 specifically installed for the construction traffic
22 impacts.

23 Q. And that's your -- your standard operating
24 procedure?

25 A. That was a specific condition of that project.

1 Q. Okay. Was there an attempt by the County and
2 the tribe to put in permanent speed bumps on the north
3 end of Singley Road to restrict ingress and egress from
4 the north to Bear River?

5 A. The tribe offered to pay for that -- for that,
6 if the -- if the citizens supported it. So we sent out
7 the survey forms and didn't get the support necessary.

8 Q. What was the rule on the support necessary?

9 A. I believe it's two-thirds of the people that
10 own parcels had to support it.

11 Q. So two-thirds of the residents in the Singley
12 Hills Homeowners Association area did not agree with
13 putting speed bumps on the north end of the road?

14 A. No, I didn't say that.

15 Q. All right.

16 A. Two-thirds would have to agree that -- that
17 owned parcels served by that road.

18 Q. So the County sent out a survey. What were
19 the results?

20 A. I don't recall the numbers offhand that we got
21 back, but the total number --

22 HEARING OFFICER LEWIS: 65 percent or less?

23 THE WITNESS: The total number that we got
24 back was less than 65 percent -- 67 percent of the
25 total that would --

1 BY MR. ACOSTA:

2 Q. Was that surprising to you?

3 HEARING OFFICER LEWIS: I'm going to object.
4 Come on, Mr. Acosta. Let's move on here.

5 BY MR. ACOSTA:

6 Q. The next question is: Did -- did the people
7 representing the Singley Hills Homeowners Association
8 feel that would fly through as a mitigation effort with
9 the rest of the residents?

10 A. I really don't know what they felt.

11 HEARING OFFICER LEWIS: Leave it at that.
12 That's calling for speculation.

13 MR. ACOSTA: Okay.

14 Q. Was there other forms of mitigation done to
15 prevent people from ingressing and egressing from the
16 north to Singley Road? Signage?

17 A. We did speed surveys and posted speed limits
18 before, a long time ago. We've tried signage around
19 the casino that BIA objected to.

20 Q. Did the County place a "Left Turn Only" sign
21 at that intersection?

22 A. Yes, we did.

23 Q. Okay. And that was also an attempt to prevent
24 ingress and egress from the north?

25 A. No. That was --

1 Q. Or egress.

2 A. Yeah. It was the -- it was the egress sign.

3 Q. Egress sign?

4 A. I believe. It was "No Right Turn."

5 Q. "No Right Turn." It said "Left Turn Only" so
6 that people --

7 A. People would come out of the casino and head
8 straight down to the highway.

9 Q. And was that a legally enforceable sign?

10 A. No.

11 Q. The County placed it, but it was not legally
12 enforceable?

13 A. It was an attempt to encourage people.

14 Q. Okay. Are you familiar with one other signage
15 attempt to discourage people from ingressing from the
16 north to Bear River Drive, which is a CalTrans sign
17 that was placed preventing people from using the -- the
18 north exit to Singley Drive?

19 A. I don't believe there's a sign that prevents
20 people from exiting and using that road.

21 Q. Is there a sign that encourages people to use
22 exit 692, which is the southern --

23 A. Yes. There is a sign that encourages people
24 to do that.

25 Q. And that was placed by CalTrans?

1 A. Yes.

2 Q. That was placed during this period since 2006?

3 A. It was placed recently.

4 Q. So again, it's not illegal to get off on the
5 north of Singley Road, but it attempts to restrict
6 people or discourage them from using the north route of
7 Singley Road?

8 A. Right.

9 Q. Now, seeing as the full closure was abandoned,
10 what have been the recent discussions between the tribe
11 and the County regarding restricting traffic at that
12 intersection?

13 A. The County is in possession of two -- not
14 fully engineered, but two different options, both of
15 which will require BIA approval.

16 The County is fine with either option. One is
17 a one-way coming down the hill towards the casino,
18 which would prohibit the right turn movement legally
19 with a cul-de-sac for people to come up the hill to
20 turn around.

21 The other is a more rigid structure extending
22 out into the road that basically goes back to what was
23 there before with the "K" rails, but much more enhanced
24 to try to force people -- curve the lane out from the
25 left to try to make people make that left turn decision

1 rather than the right turn decision.

2 Q. And so the tribe has submitted those
3 conceptual drawings and they're under consideration?
4 They're acceptable by the County?

5 A. Either one moved forward with full engineering
6 plans would be acceptable to the County, but they have
7 to have BIA sign-off, because both require work within
8 the BIA jurisdiction.

9 Q. And the BIA -- you stated the BIA position is
10 that they wouldn't agree to do any modification unless
11 the traffic count or study justified it?

12 A. The BIA's position is the BIA's position. We
13 may have engineering differences. However, they have
14 control of what can be done on their road.

15 Q. Okay. So did the traffic count that was
16 recently done classify the traffic as a class "B"?

17 Do you use those classifications?

18 A. The traffic count does not classify anything
19 other than the volume of vehicles using certain
20 sections of roads.

21 Q. Okay. That -- what are the -- what is the
22 classification of -- of this intersection based on that
23 traffic --

24 A. Are you talking about level of service?

25 Q. Yes.

1 A. Your engineer has provided something that
2 shows a level of service of "B".

3 Q. "B". And what does that mean?

4 A. It means it's an acceptable level of service.
5 You have a certain amount of time delay at that
6 intersection before you can enter the main lane road.

7 Q. Okay. So from a traffic count -- do you
8 disagree that it would be a class "B"?

9 A. I'm not sure what you're referring to as class
10 "B".

11 Q. The level of service.

12 A. Level of service?

13 Q. Yes.

14 A. No. I do not disagree at all with that level
15 of service "B".

16 Q. Does that mean from an engineering perspective
17 that the current design of the intersection is adequate
18 for the level of service?

19 A. Yes, if the level of service is the only thing
20 you are concerned about.

21 Q. All right. And would that -- well, would that
22 indicate or has the BIA expressed that that level of
23 service would not justify a modification to Bear River
24 Drive?

25 A. That's BIA's position, I guess. They have not

1 given us anything other than, you know, told us to
2 provide them traffic numbers. So --

3 Q. Okay. It was your understanding that when you
4 sent Bob Bronkall to meet with the BIA and the tribe
5 fairly recently, late 2008, that the BIA would not
6 cooperate at all unless that traffic count justified a
7 modification?

8 A. That is my understanding.

9 Q. Okay. And are you familiar with an attempt to
10 reach the congressman to influence the BIA's position
11 on that matter? Mike Thompson.

12 HEARING OFFICER LEWIS: I don't care,
13 Mr. Acosta.

14 MR. ACOSTA: Okay, I'm sorry.

15 Q. So at this point, an encroachment permit
16 hasn't been issued, but we are -- where is it at at
17 this point? How do we get this done?

18 A. You need to specify which encroachment permit
19 you're talking about.

20 Q. Okay. How -- how -- what are the steps
21 necessary for the tribe now to modify this
22 intersection, either by closing one lane or by doing a
23 round-about or any other design?

24 A. You would submit, same as in the past, the
25 engineering design for what you want to do to that

1 intersection through our encroachment permit
2 application process.

3 We would review it. If it met the engineering
4 standards, we would issue the permit. If it did not,
5 we would send you back a list of things that you need
6 to do to resubmit to get the permit.

7 Q. Okay. That's probably the wrong question.

8 Of all the design, the conceptual drawings
9 you've seen for this intersection, is there any one of
10 them that would not require BIA approval?

11 A. Of everything I reviewed at this point, no.

12 Q. So we could be at an impasse with the BIA's
13 lack of cooperation?

14 A. Correct.

15 Q. Okay. Other than possibly it's within the
16 County's power to issue an encroachment permit to
17 restrict egress outside of the BIA's jurisdiction,
18 meaning a one-way closure?

19 A. Yes, because that specifically deals with the
20 County road. But it requires a turn-around, which
21 requires --

22 Q. BIA approval?

23 A. -- BIA approval. And it has to deal with
24 lands outside of what the County owns.

25 Q. Okay. Would the County approve a one-way

1 without a turn-around?

2 A. No, that would not meet County standards. We
3 could not do that.

4 Q. Okay. Is there any way to modify ingress from
5 Singley Road north to the east side of Bear River Drive
6 without getting the BIA's consent?

7 A. Could you repeat that?

8 Q. Is there any way, is there any drawing you've
9 seen from an engineering perspective that would
10 restrict ingress into Bear River Drive from northbound
11 Singley Road that -- that could be implemented without
12 the BIA's approval?

13 A. Nothing that's been submitted so far that I
14 recall.

15 Q. And you said you looked at five or six
16 different conceptual drawings for this intersection?

17 A. Yes.

18 Q. Okay. How long on average do these sorts of
19 things take to -- to resolve when you have conflicts
20 regarding intersections with different jurisdictions?
21 CDF, CHP.

22 A. It can take five years, it can take two
23 months.

24 Q. So -- so three years isn't an anomaly,
25 necessarily? Three years -- it can take five years,

1 you said, to get everyone on the same page?

2 A. Anytime you're talking about doing something
3 outside of the existing paved right-of-way, you're
4 opening yourselves up to a long timeline based on
5 whatever issues may come up and have to be resolved.

6 Q. And it is your opinion that the tribe
7 diligently pursued the implementation of 7?

8 A. You know, I'm not going to define "diligent."
9 I can say that the tribe pursued and came, you know, to
10 the County and completed a widening project that we had
11 requested going back to the beginning, yes.

12 Q. And there was only one design submitted for
13 that and no objections. Correct?

14 A. I don't know if it was kicked back for minor
15 comments or not, but basically, yes, an application was
16 made and it was followed through and an encroachment
17 permit was issued.

18 Q. And so the -- so if you can say it's a better
19 case scenario or a good -- a case of no major issues,
20 no major agency disagreements, how long did it take to
21 complete condition No. 7?

22 A. A few months, I believe, once everything was
23 submitted.

24 Q. Well, from conceptual drawings to as-builts
25 filed and performance bond returned, how long is that

1 process?

2 A. Depends on how long it takes for you guys to
3 finish up, you know. The contractor -- I don't know
4 how long your engineer was working on it before.

5 Q. Well, let me --

6 HEARING OFFICER LEWIS: Let it go, Mr. Acosta.

7 MR. ACOSTA: Okay.

8 Q. So do you think that there is any -- what
9 would be your recommendation to resolve this
10 intersection design, short of having to have the BIA's
11 cooperation? Your professional recommendation.

12 A. If you do not want BIA's involvement, you have
13 to instruct your engineer to present something to us
14 that meets that -- the intent without affecting
15 anything on BIA lands.

16 Q. And is it possible then for us to restrict
17 fully ingress and egress without the BIA -- you said
18 that we could probably get away with restricting egress
19 without the BIA -- submit a design to restrict egress
20 without the BIA's approval, outside of their
21 jurisdiction.

22 You've seen a design that doesn't include the
23 BIA's jurisdiction to restrict egress from --

24 A. I don't believe I said that. What I have
25 seen, everything shows something going back onto Bear

1 River Drive.

2 Q. I'm sorry. I forgot about the cul-de-sac. I
3 didn't know that was required.

4 And so basically, we can't even do the one-way
5 closure without the BIA's approval?

6 A. No.

7 Q. Of all the drawings submitted, can we do
8 anything without the BIA's approval?

9 A. Not that I see.

10 MR. ACOSTA: I have nothing further, Your
11 Honor.

12 HEARING OFFICER LEWIS: Mr. Krahforst.

13

14 REDIRECT EXAMINATION

15 BY MR. KRAHFORST:

16 Q. Mr. Mattson, the alternatives that you guys
17 have been discussing to the initial -- which one of the
18 alternatives is closest to the condition No. 8?

19 Would it be the round-about, full road
20 closure, half -- partial road closure, or modified
21 entrance? What is --

22 A. It's not the County's --

23 Q. Well, I'm -- I'm just asking from an
24 engineer's -- from a road person's view, which one is a
25 modified entrance?

1 Is a road closure a modified entrance?

2 Designed modified entrance, as -- as --

3 A. It's not a modification of the specific
4 entrance to the facility.

5 Q. Is a road closure a modification of the
6 intersection of Bear River Drive and Singley Road?

7 A. Depends if -- if you're talking about the road
8 closure of Singley Road. That is a modification of
9 Singley Road which would require a modification --

10 Q. Is it a modification of those areas --

11 HEARING OFFICER LEWIS: Let him finish,

12 Mr. Krahforst.

13 THE WITNESS: It depends where it's closed.
14 If it's closed here, it will require modification of
15 this intersection.

16 MR. KRAHFORST: Okay. But if it's closed --

17 THE WITNESS: If it's closed here, it will
18 require modifications wherever it is in order to have a
19 turn-around that a school bus, a fire truck or truck
20 could turn around in, which requires more land than the
21 County owns.

22 BY MR. KRAHFORST:

23 Q. I see. So that -- that's where the BIA is
24 objecting, that any road closure will -- will encroach
25 on BIA jurisdictional lands?

1 A. I don't know if BIA has objected to that
2 specific --

3 Q. Okay. I -- I guess what I'm getting at, could
4 the County approve -- if the BIA stepped aside, could
5 the County approve something like this first diagram?
6 It's a modified entrance. Could --

7 A. We could approve it. Our -- our approval is
8 not conditioned upon BIA approval.

9 Q. Okay. So from a --

10 A. They may not be able to build it because BIA
11 would not approve --

12 Q. Sure. But with --

13 A. -- this modified --

14 Q. Without BIA's interference, the concept is --
15 is good?

16 A. Yeah.

17 Q. Okay. And when you go to alternatives like
18 speed bumps, permanent speed bumps, we introduce a
19 new -- or a road -- if you go to a road closure as an
20 alternative, you go to CDF. Yet another agency gets
21 involved?

22 A. Correct.

23 Q. Emergency services. And -- and pos --
24 possibly a consensus among homeowners, whether they
25 want the road closed at all? Is that --

1 A. (Nodding head.)

2 Q. Okay. So there's a neighborhood consent and
3 the -- the CDF involvement in a road closure
4 alternative.

5 How about permanent speed bumps? Would
6 there -- would there be a -- well, I think we heard
7 testimony, there is a neighborhood consent thing. It
8 didn't fly.

9 A. Right.

10 Q. So -- but the -- those two -- again, the BIA
11 apparently is involved in all of this, but if we remove
12 the BIA, we could go back to a modified entrance --

13 HEARING OFFICER LEWIS: If we can remove the
14 BIA, we wouldn't be here today, Mr. Krahforst. I'm
15 getting that picture loud and clear.

16 MR. KRAHFORST: Okay, then I have a question
17 for -- for Mr. Acosta, if I may.

18 HEARING OFFICER LEWIS: No.

19 MR. KRAHFORST: Okay.

20 HEARING OFFICER LEWIS: You're not here to ask
21 him questions. You're here to ask the witness
22 questions.

23 MR. KRAHFORST: Okay. Thank you, Mr. Mattson.

24 HEARING OFFICER LEWIS: I've got a question
25 for you, sir.

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First of all, are you a traffic engineer?

THE WITNESS: I'm a registered civil engineer.

HEARING OFFICER LEWIS: Civil engineer, okay.
I was a business major and I went to law school.

THE WITNESS: Traffic is a specialty of civil.

HEARING OFFICER LEWIS: I understand. Now,
Mr. Mattson, tell me if I'm wrong.

What I'm hearing loud and clear is the tribe
has suggested many ways to comply with condition No. 8
so that -- I understand that nobody wants traffic to
continue beyond the entrance to the casino. Is that
it?

THE WITNESS: The issue is people leaving the
casino and traveling this stretch of road or using this
stretch of road to enter the casino.

This stretch of road is a third of a mile to
Highway 101.

HEARING OFFICER LEWIS: Okay.

THE WITNESS: This one winds through a very
rural residential area for a mile and a half.

HEARING OFFICER LEWIS: So we want everybody
to use this part.

THE WITNESS: Encourage everybody to use this
part.

HEARING OFFICER LEWIS: Except for the

1 residents?

2 THE WITNESS: And the people that have always
3 used it.

4 HEARING OFFICER LEWIS: Okay. Now, in an
5 attempt to comply with condition 8, the tribe put up
6 "K" rails and barriers to prevent people from turning,
7 coming out of here and going this way. Am I right?

8 THE WITNESS: Yes.

9 HEARING OFFICER LEWIS: And everybody said,
10 "Uh-oh, you can't do that"?

11 THE WITNESS: No, BIA said that.

12 HEARING OFFICER LEWIS: BIA said, "You can't
13 do that." They had to take them down?

14 THE WITNESS: Yes.

15 HEARING OFFICER LEWIS: It wasn't something
16 the tribe wanted to do. It was something the tribe was
17 told to do?

18 THE WITNESS: That's my understanding.

19 HEARING OFFICER LEWIS: Okay, I'm -- fair
20 enough. That's all I wanted.

21 Now, the tribe has submitted proposal -- other
22 proposals to try to comply with condition 8 without --
23 and one of them had to do with a -- a barrier where CDF
24 said "Uh-uh, can't do that."

25 THE WITNESS: Correct.

1 HEARING OFFICER LEWIS: So now we got CDF and
2 BIA saying, "No, you can't comply with condition 8" the
3 way they wanted to?

4 THE WITNESS: With those specific proposals.

5 HEARING OFFICER LEWIS: All right.

6 Now, there are two more proposals before you.
7 One of them is a round-about. I don't know what the
8 other one is, something about a one-way.

9 But according to your testimony, the County is
10 okay with either one of the two. Is that right?

11 THE WITNESS: Correct.

12 HEARING OFFICER LEWIS: You have to -- you
13 have to answer verbally for the court reporter.

14 THE WITNESS: Correct. We are --

15 HEARING OFFICER LEWIS: And you're telling me
16 that beyond that, it's -- it's out of your hands, and
17 unless BIA gives them an okay, they cannot construct
18 either one of those proposals?

19 THE WITNESS: That is my understanding.

20 HEARING OFFICER LEWIS: Now, from a civil
21 engineer standpoint, sir, is there any way that you are
22 aware of that the tribe can comply with condition No. 8
23 without having to get approval from BIA?

24 THE WITNESS: Not that I'm aware of. Not that
25 I've been able to lay out.

1 HEARING OFFICER LEWIS: Can't physically be
2 done?

3 THE WITNESS: We don't have sufficient
4 right-of-way.

5 HEARING OFFICER LEWIS: Because of the --
6 you're just the width of the road, and that's it?

7 THE WITNESS: Yeah.

8 HEARING OFFICER LEWIS: And the ingress and
9 egresses are beyond the intersection there? A little
10 -- forty feet beyond in each way?

11 THE WITNESS: Right.

12 HEARING OFFICER LEWIS: That's what I
13 figured. Okay.

14 But you're okay with the two proposals that
15 are before -- that have been presented, one of which is
16 the round-about?

17 THE WITNESS: Both of them are reasonable
18 traffic alternatives.

19 HEARING OFFICER LEWIS: You've been involved
20 with this for -- since its inception about 2006. Am I
21 right, one way or another?

22 THE WITNESS: Yes.

23 HEARING OFFICER LEWIS: Has this been a
24 constant ongoing process, sir?

25 THE WITNESS: In and out. I mean, it has its

1 peaks and valleys.

2 HEARING OFFICER LEWIS: Well, let me -- let me
3 ask you. I'm going to ask you quite -- quite frankly.
4 Has the tribe been dragging their feet?

5 THE WITNESS: I don't believe so.

6 HEARING OFFICER LEWIS: I didn't think so, but
7 I wanted to hear it from you. Okay. All right.

8 You are excused sir. Get up and run. Get up
9 and run.

10 THE WITNESS: Am I going to need -- am I going
11 to be called back? Just completely done?

12 HEARING OFFICER LEWIS: You're completely
13 done.

14 MR. ACOSTA: Thank you, Mr. Mattson.

15 HEARING OFFICER LEWIS: Get your next witness,
16 Mr. Krahforst.

17 (A break was taken.)

18 HEARING OFFICER LEWIS: Raise your right hand,
19 please.

20
21 JIMMY SMITH,
22 called on behalf of the Complainant, was first duly
23 sworn and testified as follows:

24
25 HEARING OFFICER LEWIS: Please be seated.

1 Could you state and spell your name for the record,
2 please.

3 THE WITNESS: Jimmy Smith. J-I-M-M-Y
4 S-M-I-T-H.

5 HEARING OFFICER LEWIS: And how are you
6 employed, Mr. Smith?

7 THE WITNESS: I'm employed by Humboldt
8 County. I'm the First District County Supervisor.

9 HEARING OFFICER LEWIS: Okay. Mr. Krahforst.

10

11

DIRECT EXAMINATION

12

BY MR. KRAHFORST:

13

Q. Mr. Smith, how long have you been a county
14 supervisor?

15

A. Eight years.

16

Q. Eight years?

17

A. Mm-hm.

18

Q. Has the intersection of Bear River Drive and
19 Singley Road been an issue you have been involved in
20 since being elected?

21

A. Yes.

22

Q. Was it an issue for your predecessor?

23

A. I don't know that. I don't --

24

Q. Was it an issue for Stan Dixon? You don't
25 know?

1 A. No, I don't. I think when I came on, the
2 casino was -- there was a little shell of a spot there,
3 but there wasn't any --

4 Q. Okay. Has the issue been resolved?

5 A. Not fully.

6 Q. Okay. How would you describe your
7 relationship with or treatment by tribal consultants,
8 like representatives of environmental analytical? Do
9 you recall them?

10 MR. ACOSTA: Objection. Relevance, Your
11 Honor.

12 HEARING OFFICER LEWIS: Sustained. I don't --
13 I don't care about that, Mr. Krahforst. You know,
14 let's confine our questioning to the two issues and the
15 two counts in the accusation.

16 MR. KRAHFORST: I can't ask Mr. Smith about
17 the BIA, his relationship or meetings with the BIA?

18 HEARING OFFICER LEWIS: Do you have someone
19 from the BIA that's going to testify here?

20 MR. KRAHFORST: Do you?

21 MR. ACOSTA: It's your case.

22 MR. KRAHFORST: I don't, no.

23 HEARING OFFICER LEWIS: Okay. Well, you know,
24 I -- I'd like to tell the federal government what to
25 do. Believe me, I would. But I don't have that

1 authority. Neither do you, neither does Mr. Smith and
2 neither does Mr. Acosta.

3 BY MR. KRAHFORST:

4 Q. Will you agree it's been difficult with them
5 involved in this intersection issue?

6 A. With the BIA? Yes.

7 MR. ACOSTA: We'll stipulate to that fact,
8 Your Honor.

9 HEARING OFFICER LEWIS: Yeah, I think we all
10 would. That picture is pretty clear.

11 BY MR. KRAHFORST:

12 Q. In your capacity as county supervisor, have
13 you ever coordinated meetings with representatives with
14 divergent and conflicting interests?

15 A. On a daily basis almost.

16 Q. Okay. How would you describe the outcome of
17 those meetings in comparison with meetings with the
18 BIA?

19 A. Well, the only one I had with the -- with the
20 Bureau present was -- the outcome was not very
21 positive. Communications were not complete enough to
22 really proceed in a manner that would be beneficial for
23 everyone involved, including -- including the tribe.

24 They were somewhat perplexed by the meeting we
25 had.

1 MR. KRAHFORST: I don't have any further
2 questions for Mr. Smith.

3 HEARING OFFICER LEWIS: Mr. Acosta?

4 MR. ACOSTA: Just briefly, Your Honor.

5

6

CROSS-EXAMINATION

7

BY MR. ACOSTA:

8

Q. You've been involved dating back to the
9 original issuance of the liquor license at the casino,
10 and do you believe that the tribe has at least on a
11 monthly basis consistently worked on both the road
12 improvement project and the intersection issues?

13

A. I think the -- for the most part, and -- to be
14 really specific about this would be difficult, because
15 everybody had these immense amount of responsibilities.

16

It's hard to connect all the time, and we
17 sometimes went longer lengths of time than I was
18 comfortable with, and I'm more than able to take my
19 share of blame for that, for not being able to get
20 everybody in the right spot at the right time.

21

But it sometimes is a challenge to meet a 30-
22 or 45-day time period. We could all do better at that.

23

Q. And even within the County staff, you've known
24 that there have been miscommunications and misfires
25 between, let's say, Doug Jackson, Bob Bronkall, Tom

1 Mattson on issues like the removal of speed bumps or
2 other sort of coordination issues?

3 HEARING OFFICER LEWIS: Mr. Acosta --

4 MR. ACOSTA: No?

5 HEARING OFFICER LEWIS: I don't care.

6 MR. ACOSTA: Okay.

7 HEARING OFFICER LEWIS: That has nothing to do
8 with this.

9 BY MR. ACOSTA:

10 Q. You've seen the improved road, Singley Road.
11 The southern section of Singley Road.

12 A. Yes.

13 Q. And that -- do you think that that constitutes
14 a benefit to the public, that the tribe had done that?

15 A. Yes.

16 Q. And do you think that the tribe -- well, do
17 you think the tribe has made -- has made reasonable
18 efforts in presenting conceptual designs and
19 coordinating with various agencies to try to mitigate
20 the intersection of Bear River and Singley Road over
21 the last three years?

22 A. Yes. It's been problematic, though. "Yes"
23 would be my answer.

24 HEARING OFFICER LEWIS: But they've been
25 trying?

1 THE WITNESS: Yes.

2 HEARING OFFICER LEWIS: Okay.

3 BY MR. ACOSTA:

4 Q. And it's not just problematic on the tribe
5 side. It's BIA, County and other -- CDF. Other
6 agencies have been involved, correct?

7 A. Which has made it highly -- if not
8 problematic, very difficult to have all those people
9 agree to a design.

10 Q. Yes.

11 A. And then try -- I went beyond your question.
12 I'm sorry.

13 Q. Let me focus on specific design. Full road
14 closure. We pursued that for -- how long was that
15 pursued?

16 A. I want to say over a year.

17 Q. Over a year. And you were very positive in
18 the early phases that that would occur?

19 A. Yes.

20 Q. And were you surprised yourself that the CDF
21 ultimately shot it down?

22 A. Yes.

23 Q. Okay. Did you represent after the meeting
24 with the CDF at the tribal office that you thought
25 maybe you could do some work with the person above that

1 representative to get it through?

2 A. Yes.

3 Q. And did you make those attempts?

4 A. You recall that? That's good. I did.

5 Q. You did make those attempts?

6 A. Yes.

7 Q. And who did you communicate with above that
8 person?

9 A. That -- I believe that person retired. It was
10 the chief at the time. Anyway, from -- at that time,
11 California Department of Forestry & Fire Protection,
12 and it was moved back to the level for fire protection
13 locally.

14 Q. So that attempt by yourself to intervene above
15 the CDF representative -- representative was
16 unsuccessful?

17 A. Yes.

18 Q. And did you also attempt to, you know,
19 persuade the BIA through the congressman to sort of get
20 in line with what the County's plans were for this
21 intersection?

22 A. I believe -- now, that's a stretch of the
23 memory, but his office knows, is well aware of our work
24 together to try and come up with a --

25 Q. Are you --

1 A. -- a compromise.

2 Q. Are you familiar with the letter sent by
3 Congressman Mike Thompson to -- to try to persuade the
4 BIA to come to some agreement regarding this
5 intersection?

6 A. Yes.

7 Q. And that was also unsuccessful to -- to date,
8 at least?

9 A. Yes.

10 MR. ACOSTA: I have nothing further.

11 HEARING OFFICER LEWIS: Any follow-up,
12 Mr. Krahforst?

13 MR. KRAHFORST: For Mr. Smith, no.

14 HEARING OFFICER LEWIS: All right. Thank you
15 very much, sir. You are excused.

16 THE WITNESS: That's it. I don't get to say
17 anything?

18 MR. KRAHFORST: Unless you have a statement.

19 HEARING OFFICER LEWIS: No, no, no, no. This
20 is not a Board of Supervisors meeting. No, he's here
21 to answer questions. So...

22 THE WITNESS: Okay.

23 HEARING OFFICER LEWIS: Thank you.

24 MR. ACOSTA: Thank you, Supervisor.

25 HEARING OFFICER LEWIS: Your next witness,

1 sir, if you have a short one. And I don't mean short
2 in stature. I mean short in time.

3 MR. KRAHFORST: Of course. Let me see if I
4 can --

5 (A break was taken.)

6 HEARING OFFICER LEWIS: Would you raise your
7 right hand.

8
9 MIKE HOLMES,
10 called on behalf of the Complainant, was first duly
11 sworn and testified as follows:

12
13 HEARING OFFICER LEWIS: Please be seated.
14 Would you state and spell your name for the record,
15 please.

16 THE WITNESS: My name is Mike Holmes.

17 HEARING OFFICER LEWIS: Is it Michael?

18 THE WITNESS: Okay, we can go with Michael.

19 HEARING OFFICER LEWIS: No, I -- I don't want
20 to talk you into changing your name, sir, but is it
21 Michael?

22 THE WITNESS: It depends on which type of
23 document.

24 HEARING OFFICER LEWIS: When you sign your
25 paycheck, is it Mike or Michael?

1 THE WITNESS: Mike, usually.

2 HEARING OFFICER LEWIS: Okay.

3 THE WITNESS: Holmes, H-O-L-M-E-S.

4 HEARING OFFICER LEWIS: Thank you. And your
5 occupation, sir?

6 THE WITNESS: Cattle rancher.

7 HEARING OFFICER LEWIS: Okay. Mr. Krahforst.

8

9 DIRECT EXAMINATION

10 BY MR. KRAHFORST:

11 Q. Mr. Homes, have you ever witnessed a -- an
12 alcohol traffic-related incident on Singley Road to the
13 north of the casino?

14 MR. ACOSTA: Objection. Relevance, Your
15 Honor.

16 HEARING OFFICER LEWIS: Where are we going
17 with this, Mr. Krahforst? And how does it relate to
18 count 1 or count 2?

19 MR. KRAHFORST: Public safety on the road to
20 the north and the need for implementation --

21 HEARING OFFICER LEWIS: Okay. We have the
22 condition that's in existence. I understand. That's
23 why the condition is there, I'm sure, for public safety
24 reasons. Okay?

25 If there's an incident on the road, so what?

1 I mean, it's unfortunate. I understand that, but how
2 does that -- how does that deal with the two counts
3 that you have alleged here?

4 MR. KRAHFORST: Are you saying, Your Honor,
5 that -- that we don't need to establish that there's
6 safety issues to the north of the casino?

7 HEARING OFFICER LEWIS: No. That's why the
8 condition is there. That's my understanding, sir.

9 MR. KRAHFORST: Okay. I was just -- I
10 understand where you're going. I was just trying to
11 make sure that this process doesn't turn into a -- a
12 repeal of that condition, as if the public safety
13 issues didn't exist.

14 HEARING OFFICER LEWIS: Well, here's my
15 problem, Mr. Krahforst. How, how, how can we get two
16 parties that want the same thing -- and it's completely
17 out of your control, and I don't work for the federal
18 government and I'm not an appointee of President Obama,
19 where I can go in and say, "You know what? You guys in
20 Bureau of Indian Affairs need to go out there and make
21 sure this is done right. Because everybody wants to
22 make it done right, except you. You're dragging your
23 feet."

24 There's my problem.

25 MR. KRAHFORST: Am I hearing right, that if

1 the parties can pull the BIA into a cooperative mode,
2 we -- we --

3 HEARING OFFICER LEWIS: I wouldn't be here.

4 MR. KRAHFORST: I agree.

5 HEARING OFFICER LEWIS: If they would agree to
6 something, I wouldn't be here. They're not agreeing to
7 anything and I can't force them to do that, sir.

8 MR. KRAHFORST: Okay.

9 HEARING OFFICER LEWIS: Mr. Acosta can't force
10 them to do it. President Obama might be able to do it,
11 but I can't.

12 MR. KRAHFORST: So I --

13 HEARING OFFICER LEWIS: Whether he witnessed a
14 traffic event on that road, I don't care. I mean, it's
15 unfortunate. I'm sorry and everything else, but I
16 understand the reason for this condition is to prevent
17 a lot of traffic from going in that direction for
18 safety reasons and for peace and quiet enjoyment of the
19 residents that live up that road.

20 I fully understand why that condition is
21 there.

22 MR. KRAHFORST: Okay.

23 HEARING OFFICER LEWIS: And if you look,
24 sir -- if you look -- and that's why they put these
25 things on there. Most people ignore them, but if you

1 look at the first page of the petition for conditional
2 licensing, you got all those whereases on there, and
3 you start reading some of those things and you find out
4 the reasons why the conditions were imposed.

5 Okay? They're all listed right there.

6 MR. KRAHFORST: All right. Well, if -- if
7 it's -- if you agree that it's in everyone's interest
8 and public safety and public welfare to keep --

9 HEARING OFFICER LEWIS: I understand it's in
10 the interest of public safety to restrict the flow of
11 traffic out of the casino going to the -- what
12 direction is that?

13 MR. KRAHFORST: North.

14 HEARING OFFICER LEWIS: North. Mr. Acosta
15 will stipulate to that.

16 MR. ACOSTA: I'll stipulate to that.

17 MR. KRAHFORST: How about --

18 HEARING OFFICER LEWIS: You don't need any
19 more. Once they stipulate to it, that's all we need.

20 MR. KRAHFORST: How about traffic coming to
21 the casino from the north?

22 HEARING OFFICER LEWIS: That's not part of
23 that condition.

24 MR. KRAHFORST: Well, I believe it is.

25 HEARING OFFICER LEWIS: No. The condition is

1 "Public vehicular ingress and egress is available only
2 to and from the south."

3 MR. KRAHFORST: Well, and what I'm saying,
4 exiting to the south, we all agree. How about entering
5 from the -- from the -- entering only from the south?

6 The point I'm making is -- is there's a
7 two-way thing. Traffic can't come through the
8 neighborhood to arrive at the casino, can't leave the
9 casino and go through the neighborhood. That was the
10 intent there.

11 HEARING OFFICER LEWIS: That may have been the
12 intent, sir. I understand what you're saying. I
13 understand what -- what Mr. Mattson also testified to
14 here today. Okay?

15 And from what I'm -- well, let's put it this
16 way. I've already told you that public safety is a
17 concern, okay? No question about that.

18 Accidents happen. It's unfortunate that this
19 witness may have witnessed one and -- and saw that and
20 whatever, and it happened in the other direction.

21 Well, what if it happened to the south? Going
22 towards the freeway, I guess, whatever it is. You
23 don't care about that, do you?

24 MR. KRAHFORST: No, no.

25 HEARING OFFICER LEWIS: Well, you know what,

1 other people do. And -- and, you know what --

2 MR. KRAHFORST: I mean for purposes of the
3 condition, we don't.

4 HEARING OFFICER LEWIS: But it is a factor.
5 Public safety is a factor, sir.

6 MR. KRAHFORST: Oh, sure.

7 HEARING OFFICER LEWIS: And it's something
8 that I'm going to consider, and whether or not he
9 witnessed an accident, quite frankly, not material to
10 what I have to decide here.

11 MR. KRAHFORST: Thank you, Mike. I don't have
12 any -- I don't know if he has questions.

13 MR. ACOSTA: No.

14 HEARING OFFICER LEWIS: No. You didn't ask
15 any, so he has nothing to cross-examine. Thank you,
16 sir.

17 THE WITNESS: You're welcome.

18 HEARING OFFICER LEWIS: Okay, we're going to
19 go off the record.

20 (Lunch break was taken from 12:25 p.m. to
21 1:19 p.m.)

22 /////

23 /////

24 /////

25 /////

1 EUREKA, CALIFORNIA, APRIL 29, 2009, 1:19 P.M.

2
3 HEARING OFFICER LEWIS: Mr. Krahforst, are you
4 ready with your first witness of the afternoon?

5 MR. KRAHFORST: I'll see where he is.

6 HEARING OFFICER LEWIS: Step forward, sir.
7 Raise your right hand, please.

8
9 LEONARD BOWMAN,
10 called on behalf of the Complainant, was first duly
11 sworn and testified as follows:

12
13 HEARING OFFICER LEWIS: Please be seated.
14 State and spell your name for the record,
15 please.

16 THE WITNESS: Leonard Bowman.

17 HEARING OFFICER LEWIS: Would you spell it for
18 us?

19 THE WITNESS: Pardon?

20 HEARING OFFICER LEWIS: Spell your name,
21 please.

22 THE WITNESS: L-E-O-N-A-R-D B-O-W-M-A-N.

23 HEARING OFFICER LEWIS: And what is your
24 position, sir?

25 THE WITNESS: I carry two positions. One is

1 tribal chairman.

2 HEARING OFFICER LEWIS: Okay.

3 THE WITNESS: The other is chairman of the
4 board of directors.

5 HEARING OFFICER LEWIS: All right. Mr. --
6 Mr. Krahforst.

7

8 DIRECT EXAMINATION

9 BY MR. KRAHFORST:

10 Q. Mr. Bowman, you're familiar with condition
11 No. 8 of the alcohol license?

12 A. Yes, I am.

13 Q. And you did sign that alcohol license,
14 agreeing to that condition?

15 A. Yes, I think we did.

16 Q. Did you believe you were agreeing to a new
17 entrance?

18 A. A new entrance? I don't think we were
19 agreeing to a new entrance. We were agreeing to a
20 modified entrance.

21 Q. Okay. Was -- was there an expense issue with
22 a new entrance?

23 Was there an expense issue with a new
24 entrance?

25 MR. ACOSTA: Objection, Your Honor. He just

1 said he wasn't talking about a new entrance.

2 HEARING OFFICER LEWIS: He's right,
3 Mr. Krahforst.

4 BY MR. KRAHFORST:

5 Q. So you believed you were agreeing to a
6 modified entrance?

7 A. Yeah. Same road.

8 Q. Okay.

9 A. We were just modifying the road.

10 Q. Is -- do you have an issue, an expense issue,
11 with a modified entrance?

12 A. No, there was no expense issue with it.

13 Q. Okay.

14 A. It was just getting everybody to agree to some
15 issue that everybody else could agree on.

16 Q. Is there an expense issue now with the
17 modified entrance?

18 A. No expense issue, not even now. If we get the
19 County and the BIA to both agree on it, we'd do it.

20 Q. Okay. Okay. When you signed that agreement,
21 were you aware that the Bureau of Indian Affairs could
22 perhaps make it unenforceable?

23 A. No.

24 Q. No?

25 A. (Shaking head.)

1 Q. Did your attorney advise you that that was a
2 possibility?

3 MR. ACOSTA: Objection, Your Honor.
4 Attorney-client privilege.

5 HEARING OFFICER LEWIS: Yeah, it certainly
6 is. That's privileged information.

7 MR. KRAHFORST: Oh, okay.

8 HEARING OFFICER LEWIS: Mr. Krahforst, you're
9 not entitled to that.

10 MR. KRAHFORST: So -- all right.

11 Q. So to your knowledge, the BIA had no say-so in
12 your signing that agreement? You felt that you -- that
13 could be enforced without BIA interference?

14 MR. ACOSTA: Objection, Your Honor. Assumes
15 facts not in evidence.

16 HEARING OFFICER LEWIS: I -- I think that's --
17 that's basically what he's saying. He didn't have a
18 problem with the condition.

19 MR. KRAHFORST: Okay.

20 HEARING OFFICER LEWIS: And -- and they were
21 willing to go along with it and pay for it.

22 Am I right, sir?

23 THE WITNESS: That's correct.

24 MR. KRAHFORST: Okay. Just for the record.

25 Q. So you have no objection to modifying the

1 entrance per the agreement yourself?

2 A. I have no problem doing the -- the
3 modification to the -- to the road, but I have to have
4 both companies agree to it, the County and the BIA.

5 I can't modify it on my own.

6 Q. But this was not knowledge to you when you --
7 well, the County was knowledge, of their --

8 The BIA's signing on, getting on board, was
9 not -- you -- you didn't have that knowledge when you
10 signed this agreement?

11 A. No, I did not.

12 Q. Okay. And you're saying -- weren't -- that
13 you have no objection apart from your -- you don't have
14 any objections yourself, expense or otherwise?

15 MR. ACOSTA: Objection. Asked and answered,
16 Your Honor.

17 HEARING OFFICER LEWIS: It's been asked and
18 answered a few times.

19 MR. KRAHFORST: Okay.

20 HEARING OFFICER LEWIS: And that's -- that's
21 basically what he's telling you.

22 MR. KRAHFORST: Okay. I just want to
23 establish that -- that --

24 Q. Did you ever require assistance from the BIA
25 regarding enforcement of the modified entrance

1 condition?

2 A. No.

3 MR. KRAHFORST: I don't have any further
4 questions.

5 HEARING OFFICER LEWIS: Mr. Acosta?

6

7

CROSS-EXAMINATION

8

BY MR. ACOSTA:

9 Q. I think what I heard, Mr. Bowman, in your
10 testimony was that you were willing to do this
11 condition, implement it, at the time you signed it.
12 Correct?

13 A. Yes.

14 Q. Did you have an engineer advise you on that
15 day as to the feasibility, from an engineering
16 standpoint, of designing something to accomplish No. 8?

17 A. Say that again.

18 Q. Specifically, did you -- did Alex Culick of
19 Winzler & Kelly advise you on the feasibility of
20 constructing something at the intersection to comply
21 with No. 8?

22 A. Yes.

23 Q. And on that basis, an engineer's assessment,
24 you entered this agreement?

25 A. Yes.

1 Q. Okay. Later on, sometime in the last year,
2 you were informed that the BIA didn't think any
3 intersection modification was necessary, based on
4 traffic counts. Correct?

5 A. That's correct.

6 Q. Okay. And -- and also at the time you signed
7 that, you didn't know that the CDF, CHP or any other
8 government agency would have any objection to a road
9 closure?

10 A. That's correct.

11 Q. So it was purely entered into upon Winzler &
12 Kelly's engineering assessment?

13 A. That's correct.

14 Q. Not on jurisdiction -- jurisdictional
15 assessments?

16 A. Yeah.

17 Q. Okay.

18 MR. ACOSTA: Your Honor, I'm going to save
19 this for my case in chief, because it's beyond the
20 scope of his direct.

21 So I have no further questions.

22 HEARING OFFICER LEWIS: Well, you know what,
23 if -- if it will expedite matters and --

24 MR. ACOSTA: It will.

25 HEARING OFFICER LEWIS: -- and not have --

1 force him to come back, why don't we just deal with it
2 now?

3 MR. ACOSTA: Okay. That's fine, Your Honor.
4 I'll have this marked as Exhibit B.

5 HEARING OFFICER LEWIS: All right. I have
6 marked as Exhibit B a two-page document, a letter
7 dated -- I know there's a date. There's got to be a
8 date on here.

9 MR. ACOSTA: December 12, Your Honor. On the
10 top, "Received December 12th." That's a received
11 stamp.

12 HEARING OFFICER LEWIS: You know, it's
13 interesting. You know, these people won't do anything
14 on time, and I guess I know -- understand why.

15 It's from the Department of Interior, Bureau
16 of Indian Affairs, and it's not even dated. But
17 there's a -- a date stamp I guess when it was received
18 of December 12th, 2008.

19 And I'm marking that as Exhibit B.

20 (Respondent's Exhibit B was marked.)

21 HEARING OFFICER LEWIS: Please go ahead.

22 BY MR. ACOSTA:

23 Q. Mr. Bowman, you were carbon copied on the
24 letter received by the tribe December 12th, 2008 from
25 Regional Director Dale Morris of the Bureau of Indian

1 Affairs. Correct?

2 A. That's correct.

3 Q. And that is the letter you're looking at that
4 has been marked as Exhibit B?

5 A. Yes.

6 Q. Okay. And to your knowledge, this was in fact
7 sent by the Department of Interior, Bureau of Indian
8 Affairs in objection to any action being taken by the
9 BIA on the intersection. Correct? Let me --

10 A. That's correct.

11 Q. Okay. Specifically on paragraph marked No. 2,
12 the last sentence states that "Therefore, there is no
13 need for any action to be taken by either the tribe or
14 the BIA."

15 Is that your understanding of the BIA's
16 position with respect to the intersection?

17 A. That's right.

18 Q. Is that correct?

19 A. Yes.

20 Q. To your knowledge, how did Congressman
21 Thompson get involved in this issue?

22 A. I was under the understanding that he was
23 contacted by Jimmy Smith and he got into it.

24 Q. And so this letter represents the BIA's
25 response to the congressman of our district concerning

1 Jimmy Smith's concerns?

2 A. It was -- it was -- as far as I can
3 understand, it was something to do with the homeowners
4 association. Yes, sir.

5 MR. ACOSTA: Okay. No further questions, Your
6 Honor.

7 HEARING OFFICER LEWIS: May I see that, sir?

8 Okay. Mr. Krahforst, do you have any
9 questions of the witness regarding this letter? Or any
10 follow-up. I'll give you that opportunity too.

11 MR. KRAHFORST: Only a -- an understanding of
12 what it -- what it's saying.

13

14 REDIRECT EXAMINATION

15 BY MR. KRAHFORST:

16 Q. Is it saying due to -- I'm asking you,
17 Mr. Bowman.

18 Is it saying due to traffic counts, there's no
19 need for the BIA to try to modify the entrance? Is
20 that what it's saying?

21 HEARING OFFICER LEWIS: Well, the document
22 speaks for itself, sir, and, yeah, that's my
23 understanding of what BIA is saying.

24 Is that your understanding, sir?

25 THE WITNESS: I just wondered if he was

1 talking to me.

2 HEARING OFFICER LEWIS: He was talking to you.

3 MR. KRAHFORST: Yeah.

4 HEARING OFFICER LEWIS: I cut him off. I can
5 do that, except with my wife.

6 THE WITNESS: As far as I understood what the
7 letter is saying, that's basically what I took it to
8 say.

9 BY MR. KRAHFORST:

10 Q. Okay. Does that mean, in -- in -- in other
11 words, that the tribe has no obligation to modify the
12 entrance?

13 A. Well, that's --

14 HEARING OFFICER LEWIS: That's not -- that's
15 being argumentative, Mr. Krahforst.

16 MR. ACOSTA: Objection.

17 HEARING OFFICER LEWIS: You know, he's --

18 MR. KRAHFORST: Is it -- is -- am I saying the
19 same thing I just asked? Or -- or --

20 HEARING OFFICER LEWIS: No, no. You're --
21 you're not saying -- the tribe has -- and I haven't
22 seen anything to the contrary, any evidence to the cont
23 -- contrary.

24 The tribe has been attempting to comply with
25 condition No. 8. However, they have been prevented

1 from doing so by forces beyond their control.

2 You know, it's not that they have not been
3 attempting. It's not that they have been dragging
4 their feet, and like I told you before the lunch break,
5 even your own witnesses have admitted that they have
6 been trying.

7 So don't argue with -- with the witness.

8 MR. KRAHFORST: I'm just --

9 HEARING OFFICER LEWIS: Well, I'll just leave
10 it at that. Go ahead.

11 MR. KRAHFORST: I was just trying to determine
12 if there was -- this lets the tribe off the hook from
13 doing --

14 THE WITNESS: No.

15 HEARING OFFICER LEWIS: Nobody said that,
16 sir.

17 MR. KRAHFORST: Okay.

18 HEARING OFFICER LEWIS: Nobody said anything
19 about that, sir.

20 MR. KRAHFORST: I was asking the witness, Your
21 Honor.

22 HEARING OFFICER LEWIS: And I'm telling you,
23 nobody said that.

24 MR. KRAHFORST: Okay.

25 HEARING OFFICER LEWIS: All right? And I'm

1 telling you that by asking him that question, that's
2 being argumentative. That's cause for objection. I'm
3 going to object to it myself.

4 MR. KRAHFORST: I was just --

5 HEARING OFFICER LEWIS: Which I can do.

6 MR. KRAHFORST: Okay. It was just
7 clarification on my part.

8 I'd like to submit this document into
9 evidence.

10 HEARING OFFICER LEWIS: What do we have, sir?

11 MR. KRAHFORST: This is a --

12 HEARING OFFICER LEWIS: Is this supposed to be
13 the letter that led up to this response, which is
14 Exhibit B?

15 MR. KRAHFORST: I've never seen Exhibit B,
16 Your Honor.

17 HEARING OFFICER LEWIS: Okay. Well, why don't
18 we start by you taking a look at Exhibit --

19 MR. KRAHFORST: No, I mean I haven't seen
20 Exhibit B before today.

21 HEARING OFFICER LEWIS: Okay. Well, let's
22 hold off and let me take a look at this.

23 This letter, Mr. Krahforst, is not telling me
24 anything that I haven't already been told.

25 What's -- what's the purpose of this?

1 MR. KRAHFORST: I -- I would like it to go
2 into the record, just -- just because it's -- they were
3 a party to this.

4 HEARING OFFICER LEWIS: Just because what?

5 MR. KRAHFORST: Congressman Thompson was a
6 party to this -- this --

7 HEARING OFFICER LEWIS: Well, I know that,
8 because this letter was addressed to him from the
9 Bureau of Indian Affairs.

10 MR. KRAHFORST: It's entirely up to you, sir,
11 if you want to accept it.

12 HEARING OFFICER LEWIS: Well, I'll tell you
13 what I'm going to do, Mr. Krahforst. Okay?

14 I -- I tried to tell you before the lunch
15 break, I've heard enough about count 1. Okay? And
16 unless you have something new regarding count 1 -- and
17 I'm not going to prevent you from putting on something
18 new or something contrary to what I've heard already.
19 Okay?

20 These letters don't do that. I'm going to
21 mark it for you. I'm going to put it as part of the
22 record.

23 I didn't say whether I'm going to admit it as
24 evidence, but it doesn't tell me anything contrary to
25 what I heard this morning.

1 MR. KRAHFORST: All right, Your Honor. I
2 thought it had importance.

3 HEARING OFFICER LEWIS: And tell me how. I
4 mean, I don't -- if you think it's important, tell me
5 how. I mean, change my mind, you know. I -- I don't
6 see it.

7 MR. KRAHFORST: Okay.

8 HEARING OFFICER LEWIS: Tell me how it's
9 important, sir.

10 MR. KRAHFORST: It's -- it's one more party
11 that's trying to resolve this situation, and I
12 wanted -- you know, I thought it should go on the
13 record.

14 MR. ACOSTA: We'll stipulate to admit it, Your
15 Honor.

16 HEARING OFFICER LEWIS: Listen -- listen to
17 me, sir. Listen to me.

18 This letter that I've already marked as
19 Exhibit B was obviously written by the Bureau of Indian
20 Affairs in response to this letter from the congressman
21 that you're handing me now.

22 In other words, the letter that you just
23 handed me came prior to.

24 MR. KRAHFORST: It -- it did.

25 HEARING OFFICER LEWIS: Okay. And it -- and

1 it caused this response. I know the congressman is
2 involved. It's addressed to him.

3 MR. KRAHFORST: All right. I see the
4 reference.

5 HEARING OFFICER LEWIS: You see what I'm
6 getting at? It doesn't tell me anything contrary to
7 that which -- you know, what we discussed this morning
8 and I already know.

9 You want it in the record, I'll put it in the
10 record. Okay? And it's being marked for the record as
11 Exhibit 5. How's that?

12 (Complainant's Exhibit 5 was marked.)

13 MR. ACOSTA: Are you done with this witness?

14 HEARING OFFICER LEWIS: Hold on now.

15 Okay, anything else, Mr. Krahforst?

16 MR. KRAHFORST: No.

17 HEARING OFFICER LEWIS: Mr. Bowman --

18 THE WITNESS: Yes, sir.

19 HEARING OFFICER LEWIS: -- you know, I've read
20 most of this stuff. Not in detail, because I'm seeing
21 it for the first time today, but I've heard some
22 testimony regarding this.

23 From what I understand, the Bureau of Indian
24 Affairs is preventing any modification of that
25 intersection because basically it gets into tribal

1 lands.

2 THE WITNESS: On tribal land.

3 HEARING OFFICER LEWIS: It's on tribal land.
4 And -- and what the Bureau of Indian Affairs is saying
5 is the traffic count doesn't justify doing what
6 everyone else wants to be done.

7 THE WITNESS: That's correct.

8 HEARING OFFICER LEWIS: And if I understand
9 correctly, the Bureau of Indian Affairs can, in a
10 situation like this, tell the -- your particular tribe,
11 I guess it is, what you can and can't do with your
12 land.

13 THE WITNESS: That's absolutely true.

14 HEARING OFFICER LEWIS: As far as putting
15 roads in, as far as building upon and everything else?

16 THE WITNESS: Absolutely right.

17 HEARING OFFICER LEWIS: You can't do it
18 without getting a "Mommy, may I"?

19 THE WITNESS: That's right.

20 MR. ACOSTA: With respect to the roads, that
21 is. Correct?

22 THE WITNESS: The roads are under their
23 control.

24 HEARING OFFICER LEWIS: Okay. All right.
25 Thank you, sir. You're excused.

1 THE WITNESS: Okay.

2 MR. ACOSTA: Mr. Bowman, you can stay in the
3 room now.

4 HEARING OFFICER LEWIS: Yes, if you wish.

5 Mr. Krahforst?

6 MR. KRAHFORST: I'd like to call my next
7 witness.

8 HEARING OFFICER LEWIS: Sure. This would be
9 involving count 2?

10 MR. KRAHFORST: Count 2.

11 HEARING OFFICER LEWIS: Okay, good. Let's
12 move on.

13 Raise your right hand, please.

14

15 ROBERT FARRAR,

16 called on behalf of the Complainant, was first duly
17 sworn and testified as follows:

18

19 HEARING OFFICER LEWIS: Be seated. State and
20 spell your name for the record.

21 THE WITNESS: Robert Farrar, F-A-R-R-A-R.

22 HEARING OFFICER LEWIS: And how are you
23 employed, sir?

24 THE WITNESS: I'm the district supervisor for
25 the Department of Alcoholic Beverage Control.

1 HEARING OFFICER LEWIS: Okay. Mr. Krahforst.

2 MR. KRAHFORST: I'd like to submit some
3 documents in -- in combination with testimony from
4 Mr. Farrar.

5 HEARING OFFICER LEWIS: Okay.

6 MR. KRAHFORST: These are all photographs.
7 I'll let you number them however you want.

8 HEARING OFFICER LEWIS: Which order do you
9 want them in, sir?

10 MR. KRAHFORST: 1, 2, 3, 4, 5, like that.

11 HEARING OFFICER LEWIS: Okay. Let me -- have
12 you seen these, Mr. --

13 MR. ACOSTA: No, Your Honor.

14 HEARING OFFICER LEWIS: Why don't you take a
15 look at them first.

16 MR. ACOSTA: Separately mark them?

17 HEARING OFFICER LEWIS: I'm not sure how to do
18 this.

19 MR. KRAHFORST: I'd like to submit one that's
20 not a photograph, and that's it.

21 HEARING OFFICER LEWIS: Separately, sir? Let
22 me -- let me do these diagrams.

23 MR. KRAHFORST: Sure.

24 HEARING OFFICER LEWIS: You're going to ask
25 this witness about these diagrams? Okay. And these

1 photographs, I take it you have some way of
2 authenticating them?

3 Did you take the pictures, sir?

4 MR. KRAHFORST: Yes. Well, I didn't take the
5 aerial ones.

6 HEARING OFFICER LEWIS: Well, how did you get
7 them?

8 MR. KRAHFORST: Google.

9 HEARING OFFICER LEWIS: Okay. That seems to
10 be the way of doing things anymore.

11 MR. ACOSTA: Your Honor, I'd ask that we
12 authenticate them with the witness before we present
13 them to another witness who didn't take them and
14 doesn't know about them.

15 HEARING OFFICER LEWIS: Well, I think most of
16 these, we can probably -- I take it you've been to this
17 location once or twice?

18 THE WITNESS: Yes.

19 HEARING OFFICER LEWIS: I'll take them.

20 Okay, here's what we're going to do. I
21 have -- I've got five. Is that right, Mr. Krahforst?

22 MR. KRAHFORST: Correct.

23 HEARING OFFICER LEWIS: Okay. I'm going to
24 mark them as -- let's see. We're going to start with
25 6-A.

1 MR. ACOSTA: But it's not -- the truth of the
2 matter is not here.

3 HEARING OFFICER LEWIS: Yeah. It's -- we're
4 dealing with location here.

5 MR. ACOSTA: Sorry.

6 HEARING OFFICER LEWIS: Is that where the gas
7 station is?

8 THE WITNESS: I believe that's where the gas
9 station is, yes.

10 BY MR. KRAHFORST:

11 Q. Okay. And this document shows the proximity
12 to the -- to the casino. Is that correct?

13 A. Correct.

14 Q. And to get to -- to go to the casino, do you
15 have to pass by the -- really, we're talking about an
16 alcohol license, a combination gas station/minimart.
17 So for our purposes, I'm just saying minimart, because
18 that's what -- that's what the outlet is, off-sale.

19 HEARING OFFICER LEWIS: Well, hold on a
20 minute. I'm dealing with a -- a type 47 license.

21 MR. KRAHFORST: Off -- off-sale.

22 HEARING OFFICER LEWIS: Type 47 is an on-sale,
23 sir. That's the -- this accusation, that's the license
24 number. You see it on top, it says "47-" under your
25 file number. That's an on-sale license.

1 THE WITNESS: May I interject something?

2 HEARING OFFICER LEWIS: In a minute --

3 THE WITNESS: Okay.

4 HEARING OFFICER LEWIS: -- when I tell you.

5 THE WITNESS: Go ahead.

6 BY MR. KRAHFORST:

7 Q. Is there a gas station -- a minimart connected
8 with that gas station that we just -- we just pointed
9 out in this photograph?

10 A. Yes.

11 Q. Do they have a separate license?

12 A. Yes.

13 Q. Is that an off-sale license?

14 A. Yes.

15 Q. Is -- is that off-sale privileges that the
16 license -- the judge referred to, that -- that does not
17 have -- how can I make this more clear?

18 The license on that document the judge is
19 referring to does not have off-sale privileges. Is
20 that correct?

21 A. Type 47 license does have off-sale privileges
22 for beer and wine. However, for the Bear River Casino,
23 they have a condition not to sell beer and wine to go.

24 Q. I see the distinction. And that privilege
25 is -- is being exercised under a separate license. Is

1 that correct?

2 MR. ACOSTA: Objection, Your Honor. The
3 privilege is --

4 HEARING OFFICER LEWIS: No, no, no, no, no.
5 Mr. -- Mr. Krahforst, you're -- I think you're
6 confusing the matter here, and I think I finally
7 figured out what's going on here.

8 There is a -- is there a separate license for
9 this gas station?

10 THE WITNESS: Yes.

11 HEARING OFFICER LEWIS: And it's a type 20?

12 THE WITNESS: Correct.

13 HEARING OFFICER LEWIS: You're dealing with
14 two different licenses, Mr. Krahforst.

15 MR. KRAHFORST: I understand that.

16 HEARING OFFICER LEWIS: Okay? Now, unless
17 you -- they can sell all the beer and wine they want
18 out of this minimart in the gas station.

19 There's nothing that forbids them. As a
20 matter of fact, the license permits them to do so.
21 Okay? You want to buy a six-pack of beer and take it
22 home, you're more than free to do so.

23 But -- but the accusation you brought is
24 against the -- I guess the casino itself. I haven't
25 seen the 257 or 253, but I'm thinking that the -- these

1 are listed separately?

2 THE WITNESS: Yes.

3 HEARING OFFICER LEWIS: Okay. This type 47 is
4 for the casino. It's not for the gas station. Okay?

5 So unless you have someone who has been buying
6 beer at the casino and taking it home, then they're not
7 in violation of the condition.

8 MR. KRAHFORST: Well, I'd like to make the
9 argument that -- that they're in violation of the
10 spirit of the condition.

11 HEARING OFFICER LEWIS: Okay. You can make
12 that argument at the end, sir. All right?

13 But the conditions that were placed on this
14 license -- and believe me, I wasn't here when this
15 happened. The conditions that were placed on this
16 license, this type 47 license, prohibits them from
17 selling beer or wine to be taken off the premises from
18 the casino itself.

19 Now, if you take the time -- did we bring --
20 anyone bring a base file, by chance?

21 THE WITNESS: Yes, I have.

22 HEARING OFFICER LEWIS: Do you have the -- for
23 both of them?

24 THE WITNESS: Yes.

25 HEARING OFFICER LEWIS: Do you have the 257s

1 and the 253s? And I don't know which one I'm asking
2 for. The one with the diagram of the licensed
3 premises.

4 THE WITNESS: The 257.

5 HEARING OFFICER LEWIS: Can we look at it,
6 please? Maybe we can put it --

7 MR. KRAHFORST: Can I ask a question off
8 record?

9 HEARING OFFICER LEWIS: Well, on or off.
10 We're still on.

11 MR. KRAHFORST: I just want to -- these
12 numbers don't mean anything to me.

13 HEARING OFFICER LEWIS: I want you to see the
14 diagram, sir. I want you to see what we're -- what I'm
15 dealing with here.

16 I have to comply with the law, okay? I have
17 to do what the law says. The tribe, when they're given
18 the license, they have to comply with the conditions,
19 they have to comply with the law in order to get the
20 license and everything else, and as the --

21 MR. KRAHFORST: With the numbers --

22 HEARING OFFICER LEWIS: As the -- as the
23 district attorney who is putting on this case, which
24 you brought, sir -- you brought it -- you have to prove
25 to me that they in fact violated the conditions on this

1 type 47 license.

2 And I'm assuming -- he's getting the diagrams
3 for me that were submitted of what is in fact the
4 licensed premises, and if it does not consist of the
5 gas station -- which it shouldn't, because the gas
6 station is an off-sale license, where -- where this one
7 is --

8 MR. KRAHFORST: Are you talking about
9 engineering drawings, like --

10 HEARING OFFICER LEWIS: No. We're talk --
11 talking about drawings that were submitted as far -- as
12 part of the application process.

13 MR. KRAHFORST: Maybe it would be good if I
14 look at the diagram of that.

15 HEARING OFFICER LEWIS: You'll find out. We
16 don't have any copy machines around here, do we?

17 MR. ACOSTA: There is one out there, Your
18 Honor, if you'd like to have copies.

19 HEARING OFFICER LEWIS: They have one?

20 MR. ACOSTA: The clerk has one.

21 HEARING OFFICER LEWIS: Let's see what we've
22 got here.

23 THE WITNESS: You're going to have to give me
24 a moment.

25 HEARING OFFICER LEWIS: Okay. Yeah. Don't

1 mess up the file.

2 (Mr. Acosta left the deposition room.)

3 THE WITNESS: You want me to go make copies?

4 HEARING OFFICER LEWIS: Let me look at it
5 first, please.

6 THE WITNESS: That's the type 20.

7 HEARING OFFICER LEWIS: I normally see
8 these -- wait a minute. Well, where -- where is it for
9 the 47?

10 Yeah. Well, normally, isn't that in red?
11 Usually outlined in red?

12 THE WITNESS: Karen doesn't do it in red.

13 HEARING OFFICER LEWIS: This is not helping
14 me. Is there a 257 for the type 47?

15 THE WITNESS: That is the 257.

16 HEARING OFFICER LEWIS: Well, this says 253.
17 As a matter of fact, it says "Supplemental diagram."

18 Okay, much better. That's more like it. All
19 right. Just give me one more second. I'll give them
20 all back to you.

21 This 257 is for the Bear River Casino, which
22 is type 47, and it's signed by Mr. Bowman and it's
23 dated February 15th, 2005.

24 This you've got from the base file. What does
25 that represent?

1 THE WITNESS: This represents the layout of
2 the casino.

3 HEARING OFFICER LEWIS: Okay. And does that
4 represent where in fact alcoholic beverages may be sold
5 and consumed?

6 THE WITNESS: Yes.

7 HEARING OFFICER LEWIS: And what about if it's
8 outside the designations of that background?

9 THE WITNESS: Alcohol is not allowed outside
10 the area.

11 HEARING OFFICER LEWIS: Now, we're going to
12 get you a copy of this, Mr. Krahforst. But this is
13 from the base file that's kept regarding this
14 particular license.

15 What you see in this particular diagram is
16 where alcoholic beverages may be sold, served or
17 consumed. There and there only regarding this type 47
18 license.

19 MR. KRAHFORST: Which is -- is the original
20 one, the one on the --

21 HEARING OFFICER LEWIS: That's the original
22 one that you have.

23 MR. KRAHFORST: When you say license, that's
24 the one with the condition --

25 HEARING OFFICER LEWIS: Type 47.

1 MR. KRAHFORST: That's the one with the
2 conditions on it?

3 HEARING OFFICER LEWIS: That's what we're
4 here -- the type 47, yes.

5 MR. KRAHFORST: Okay.

6 HEARING OFFICER LEWIS: Now, what I'm going to
7 ask, Mr. Farrar, the type 20 license regarding this
8 minimart, that was issued sometime after the type 47?

9 THE WITNESS: Correct.

10 HEARING OFFICER LEWIS: And the type 20
11 license, was that protested?

12 THE WITNESS: No.

13 HEARING OFFICER LEWIS: Can I have that back,
14 sir? I don't want to lose it.

15 This, sir, is the minimart where the off-sale
16 privileges occur. That is a completely separate
17 license for that location, and a type 20 license, by
18 law, permits them to sell beer and wine for consumption
19 off of the premises. Okay?

20 MR. KRAHFORST: I'll be able to have copies of
21 this I can take with me?

22 HEARING OFFICER LEWIS: Oh, yes. We're going
23 to get you copies.

24 I'll put these in your hot little hands, sir,
25 so you can get us copies when the questioning is done

1 and you can return them back to the base file. Okay?

2 MR. KRAHFORST: I've seen --

3 HEARING OFFICER LEWIS: Once -- once I get
4 them back, we'll mark them up and we'll include them as
5 part of the record.

6 MR. KRAHFORST: I've just looked at them all?

7 HEARING OFFICER LEWIS: Yes.

8 MR. KRAHFORST: Okay.

9 Q. Mr. Farrar, the -- the way I see those
10 diagrams, they're building diagrams. They're not
11 premises -- full premises, including parking lot and --
12 and entranceway.

13 They're -- they're floor diagrams. Is that
14 correct?

15 A. No. Did you show --

16 HEARING OFFICER LEWIS: I don't know. Did I
17 show you this one?

18 MR. KRAHFORST: No, I didn't see this.

19 Q. Could -- could you -- if I come around, could
20 you show me where the premises -- the premises lines
21 are?

22 A. Sure.

23 HEARING OFFICER LEWIS: We're still talking
24 about the type 47, as far as the documents are
25 concerned. Go ahead.

1 THE WITNESS: This is called the supplemental
2 diagram. What we ask for is an area view of where the
3 premises is.

4 Right in the middle, where it says "Casino,"
5 that is the premises that is licensed with the type
6 41 -- I'm sorry, with type 47.

7 We also then asked for more detail,
8 specifically of the premises. So one is an overview
9 and one is very specific of what is licensed.

10 BY MR. KRAHFORST:

11 Q. One is kind of a zoom of this. Right?

12 A. Correct.

13 Q. Okay. So if I'm understanding, if it's under
14 the roof of that facility as diagramed, the building,
15 under this condition -- under this 47 type, there can
16 be no off-sale. Is that --

17 A. That's correct.

18 Q. Okay. If -- if I as a customer go out the
19 door of that building and there's a -- a counter with
20 alcohol to go, I can buy a six-pack of beer and -- and
21 take off, because I'm outside the premises? If it's
22 licensed. If that counter is licensed.

23 A. You lost me on part of that.

24 Q. If I -- a type 20 off-sale, as long as it's
25 outside the perimeter of that building, is -- is --

1 there's no conflict with the type 47. Is that correct?

2 A. Correct. Type 20 allows the off-sale of beer
3 and wine.

4 Q. So even --

5 HEARING OFFICER LEWIS: It has to be a
6 separate license, sir.

7 MR. KRAHFORST: Of course.

8 Q. But even if it's only 20 feet away from the
9 entrance or the exit to the building, it's -- it's out
10 of the --

11 A. If it's a separate license, separate building,
12 they're completely separate from each other.

13 Q. Even if it's 10 or 20 feet?

14 A. They could be right next -- have the same
15 wall.

16 Q. Do you know what the purpose of the insertion
17 of condition No. 9 was at the time it was inserted?

18 A. No.

19 Q. Not knowing that, can you still determine that
20 there's no conflict?

21 A. I don't see a conflict.

22 Q. Do both these, the minimart and the casino,
23 service the same customers?

24 A. I don't know.

25 MR. ACOSTA: Objection. Relevance, Your

1 Honor.

2 HEARING OFFICER LEWIS: Overruled. It's been
3 asked and answered.

4 BY MR. KRAHFORST:

5 Q. Do -- do the customers wanting to go to the
6 casino or -- or the gas station or the minimart use the
7 same common entrance?

8 A. Yes. There's one street that they can both --
9 people can drive on.

10 HEARING OFFICER LEWIS: Yeah. That's part of
11 the condition 8, I guess.

12 BY MR. KRAHFORST:

13 Q. So referring to diagram 6-A or photograph 6-A,
14 then a customer would come onto Bear River Drive, have
15 the choice of turning right into the minimart or left
16 to the casino?

17 A. Correct.

18 Q. Or if he were exiting the casino, he would
19 have the choice of -- of picking up alcohol to go?

20 A. That's correct.

21 Q. Okay. In this case, it's separated from Bear
22 Paws Way, which is part of the premises. Not per your
23 diagram, but per the casino site.

24 What would you say that roadway separating the
25 minimart lot there and -- and -- and the Bear Paws Way

1 is, approximately?

2 A. I have no idea. I -- I've driven it. I've
3 walked around. I don't know --

4 Q. A roadway width is what it looks like.

5 HEARING OFFICER LEWIS: Oh, I'll go for 20 to
6 30 feet. How's that?

7 MR. KRAHFORST: Okay, good.

8 Q. Would you --

9 A. Sure.

10 Q. Okay. Maybe since we're not allowed to talk
11 road safety, we can take 6-B and set that aside. Yeah.

12 A. Set it aside?

13 Q. Yes, as -- as far as this line of
14 questioning. And 6-C too.

15 So if we look at maybe 6-E next, and you were
16 at the site at this stage of construction, of the -- of
17 this type 20 facility?

18 A. During the construction?

19 Q. Well, as it appears in the photograph. Was
20 the marquee even unlit, or was it even existing when
21 you visited it?

22 A. Yes.

23 Q. Okay. Is that the casino in the background?

24 A. Yes.

25 Q. So the common road we were talking about

1 separates this marquee from -- from the -- the big
2 casino building?

3 A. Correct.

4 Q. Okay. So that, in addition to the 20 to 30
5 feet separation, is -- is -- is illustrated here.

6 Is this -- this minimart marquee inviting
7 customers to gamble here?

8 A. Yes.

9 Q. Okay. And here again, 6-D, it's doing the
10 same thing?

11 A. Correct.

12 Q. So would you say that the -- the minimart and
13 its marquee are -- are meant to attract the same
14 customer?

15 MR. ACOSTA: Objection. Relevance, Your
16 Honor. I'm still not -- advertising is advertising.

17 HEARING OFFICER LEWIS: Your opinion, sir.

18 THE WITNESS: My opinion? Yes.

19 MR. KRAHFORST: Okay.

20 Q. But you don't know the reason for the
21 insertion of -- of condition No. 9 in the -- in the
22 conditional license, 47?

23 A. No. I wasn't at that hearing.

24 MR. KRAHFORST: Okay. And there was a reason,
25 which I can't elicit from Mr. Farrar, on --

1 HEARING OFFICER LEWIS: Well, I -- I'm sure
2 there was, sir. I'm sure all of the -- all of the
3 conditions that are on there had reasons -- have reason
4 for being there.

5 MR. KRAHFORST: Okay. So --

6 Q. But if, as you just testified, the minimart
7 and the casino are serving the same customer, which you
8 testified to, then a casino customer can buy off-sale,
9 not under the -- a visitor to the casino proper can buy
10 off-sale by just going across the street and getting it
11 under a different license?

12 MR. ACOSTA: Objection, relevance. It's not
13 regulated by patron. It's regulated by premises.

14 HEARING OFFICER LEWIS: You know --
15 Mr. Krahforst, you know, I'm sure if I drove up and
16 down Highway 101 here in Eureka, I could find several
17 different examples, but let me give you some examples
18 from elsewhere in the -- in the state of California,
19 because the law governs the entire state.

20 If you were to go to State Street in Santa
21 Barbara, if you were to go to Mission Beach in San
22 Diego, if you were to go to the Gaslamp District in San
23 Diego, anywhere near the -- the Staples Center in Los
24 Angeles, you will find restaurants with type 47
25 licenses that have a condition saying they can't have

1 any off-sale privileges, and next door or two doors
2 down, you'll find liquor stores with type 20 or 21
3 licenses that have all kinds of off-sale privileges.

4 MR. KRAHFORST: Is the next door outlet under
5 the same ownership?

6 HEARING OFFICER LEWIS: It doesn't matter,
7 sir, and oftentimes it is, yes. And it really doesn't
8 matter. It doesn't matter who owns it.

9 MR. KRAHFORST: Oh. I have nothing more to
10 say. I'll -- on count No. 9 to you, sir, or to you,
11 sir, or to you, sir, or to you, sir.

12 I think the point has been made, I believe,
13 and you've ruled and you're --

14 HEARING OFFICER LEWIS: Mr. Krahforst --
15 Mr. Krahforst, look. I have not prevented you from
16 putting your case on. I am trying to explain to you
17 what some of the problems are with this case.

18 I'm sure if you discussed this with some of
19 the other people, they probably would have told you
20 that you're going to have some difficulty with your
21 case because of the way the -- the state of the law and
22 what it is.

23 The license was issued. If you didn't want
24 the type 20 license for the minimart, I just asked and
25 was told that it was not protested. It had to be

1 posted. It had to be -- the application had to have
2 been posted.

3 You had an opportunity to protest it at that
4 point in time if you didn't wish for it to be there.

5 Mr. Acosta, do you have any questions of the
6 witness?

7 MR. ACOSTA: Just a few, Your Honor.

8

9 CROSS-EXAMINATION

10 BY MR. ACOSTA:

11 Q. Mr. Farrar, you're not aware that the casino
12 has ever sold beer, wine or liquor off-sale. Correct?

13 A. Correct.

14 Q. They've never been cited for that?

15 A. No, they have not.

16 Q. You don't have any record of this matter at
17 the ABC?

18 A. Correct.

19 Q. And the -- are you familiar specifically with
20 Business & Professions Code Section 23804 as it relates
21 to type 47?

22 A. For conditions? Yes.

23 Q. And that particular B&P code is specifically
24 relevant only to type 47s?

25 A. No.

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Q. Oh, it's not?

A. For any type license.

Q. Oh, okay. So that allows off-sale privileges?

A. No, that allows for putting conditions on a license.

Q. Oh, I see. I'm sorry, I've got the wrong section. 23401 of the B&P code specifically refers to type 47 off-sale privileges?

A. Yes.

Q. It makes no reference to type 20 privileges?

A. I'd need to look at the section again to doublecheck it.

Q. Okay.

MR. ACOSTA: That's all I have, Your Honor.

HEARING OFFICER LEWIS: Okay. Mr. Krahforst, do you have any other questions of this witness?

MR. KRAHFORST: No.

HEARING OFFICER LEWIS: Let me ask you, Mr. Farrar. Have -- I know you said there's been no discipline. I take it that's regarding either license?

THE WITNESS: Correct.

HEARING OFFICER LEWIS: And what about the complaints? I know the department gets complaints.

Have there been any complaints regarding the ABC license at either the casino or the minimart?

1 THE WITNESS: Yes.

2 HEARING OFFICER LEWIS: Okay. When and what
3 was it?

4 THE WITNESS: I'm not -- part of it, I can't
5 answer.

6 HEARING OFFICER LEWIS: Okay. Tell me why.

7 THE WITNESS: I -- well, I'd have to -- the
8 only way would be is if the room was emptied. So there
9 has been -- there have been complaints and they've been
10 unfounded --

11 HEARING OFFICER LEWIS: Okay.

12 THE WITNESS: -- at this time.

13 HEARING OFFICER LEWIS: Recent complaints?

14 THE WITNESS: Yes.

15 HEARING OFFICER LEWIS: Okay. There have been
16 complaints, they have been investigated, and they've
17 been determined to be unfounded?

18 THE WITNESS: Correct.

19 HEARING OFFICER LEWIS: That's all I need to
20 know.

21 Okay. Would you kindly -- you are excused,
22 except I'm going to ask you to kindly make copies for
23 all of us, please.

24 THE WITNESS: Okay.

25 HEARING OFFICER LEWIS: All right,

1 Mr. Krahforst. Any more witnesses?

2 MR. KRAHFORST: No.

3 HEARING OFFICER LEWIS: Do you have any more
4 evidence you wish to present?

5 MR. KRAHFORST: No.

6 HEARING OFFICER LEWIS: Okay. Mr. Acosta?

7 Well, let me go back to you. That means you
8 rest, sir. Is that correct?

9 MR. KRAHFORST: I can make a statement.

10 HEARING OFFICER LEWIS: Well, you get --
11 everyone gets to make a closing argument.

12 MR. KRAHFORST: Okay. We're not at that
13 point?

14 HEARING OFFICER LEWIS: No, we're not at that
15 point. No, this -- if you don't have any more evidence
16 to present, then you say, "Okay, we rest."

17 MR. KRAHFORST: We rest.

18 HEARING OFFICER LEWIS: Now, Mr. Acosta.

19 MR. ACOSTA: Your Honor, we were going to call
20 our -- our latest engineer, John Bergenske of LACO, our
21 new engineering firm. Although I think the evidence
22 will be probably cumulative, so I'll just rest.

23 HEARING OFFICER LEWIS: Okay. Fair enough,
24 then.

25 You know what, before I -- before I take both

1 of you at your word, I'm going to give you an
2 opportunity -- we'll take a five-minute recess, after
3 the diagrams come back.

4 I'm going to give you both an opportunity to
5 look at them, just in case there's any questions that
6 you want raised based upon those, because I know you
7 haven't had an opportunity to really look at them.
8 Okay?

9 So we'll take 10 minutes, and hopefully you'll
10 get the copies within five and we'll come back. If
11 there's no additional questions, we'll do closing
12 arguments.

13 Mr. Krahforst, you get to go first.
14 Mr. Acosta, you'll go second, and of course you can --
15 you do have the final word, Mr. Krahforst, as far as
16 the argument is concerned.

17 We're going to take 10 minutes, look at the
18 diagrams when they come back, and see if those raise
19 any additional questions for you.

20 Off the record.

21 (Discussion was held off the record.)

22 HEARING OFFICER LEWIS: Back on the record. I
23 have marked as Exhibit No. 7 the copy of the ABC 257
24 for the type 47 license. It's three pages long.

25 And Exhibit 8 is the 257 for the type 20 and

1 it is three pages. The parties have been given copies
2 of Exhibits 7 and 8.

3 (Complainant's Exhibits 7 and 8 were marked.)

4 HEARING OFFICER LEWIS: Mr. Krahforst, do you
5 have any additional questions based upon your review of
6 7 and 8?

7 MR. KRAHFORST: That's 7 there?

8 HEARING OFFICER LEWIS: This one -- this one
9 is 8.

10 MR. KRAHFORST: Okay. No.

11 HEARING OFFICER LEWIS: The type 20 is 8.
12 Mr. Acosta?

13 MR. ACOSTA: No, Your Honor.

14 HEARING OFFICER LEWIS: Okay. One thing we
15 didn't deal with, gentlemen, is the exhibits and
16 whether or not I should receive them as evidence. So
17 why don't we start.

18 Let's see. 2 through -- well, 2 through 8,
19 Mr. Acosta, do you have any objection to my receiving
20 any of them?

21 MR. ACOSTA: Just a minute, Your Honor.

22 HEARING OFFICER LEWIS: 2 is the petition for
23 conditional license, 3 is the letter from the
24 Department of Public Works, 4 is the letter from --
25 from you, which included the memorandum of agreement,

1 unsigned, and the diagram.

2 5 was the letter from the congressman, 6 was
3 the photos, "A" through "E", and 7 and 8 are the
4 diagrams on the ABC 257s.

5 MR. ACOSTA: So I would only object to Exhibit
6 3, because I think through testimony, we established
7 that there was no foundation, personal knowledge, to
8 lay a foundation for a letter that was two years before
9 Tom Mattson's time.

10 And Exhibits 6-A through E, I would object
11 that they contain -- they are hearsay and contain
12 additional hearsay that was drawn not off Google, but
13 was modified from their format on Google.

14 HEARING OFFICER LEWIS: I understand that they
15 are not timely, but they sure do give me an idea of
16 what's there, what was there.

17 So I'm going to overrule your objection
18 regarding the photos because they are helpful to me in
19 trying to render a decision, and I understand that
20 these -- these things you get from the Google map are
21 not up to the date, you know.

22 I understand that, but besides that,
23 Mr. Farrar gave me a -- a good understanding and he was
24 personally there and authenticated some of that stuff
25 too.

1 MR. ACOSTA: Okay.

2 HEARING OFFICER LEWIS: All right. Now, we
3 also have Exhibits A and B, which were in fact offered
4 by you, Mr. Acosta. There we go. Okay.

5 Mr. Krahforst, do you have any objection to my
6 receiving Exhibit A that was offered by Mr. Acosta?

7 MR. KRAHFORST: I haven't had a chance to look
8 at it, because I never got a copy of it.

9 MR. ACOSTA: I can make a copy.

10 HEARING OFFICER LEWIS: Well, I've got to make
11 a decision now, so why don't you take the time to look
12 at it now and tell me if you have an objection to me
13 receiving that as evidence.

14 He'll give you a copy after --

15 MR. KRAHFORST: Sure.

16 HEARING OFFICER LEWIS: But mainly, it's --
17 it's the -- the testimony we received was regarding the
18 -- the third page there, I believe.

19 MR. KRAHFORST: I don't have any objection to
20 page 3, but I have -- the contents of the first two
21 pages I would object to, because I don't even know what
22 there is without some study of it.

23 HEARING OFFICER LEWIS: Let's see.

24 MR. KRAHFORST: Because they're technical
25 engineering...

1 MR. ACOSTA: I didn't hear a basis for an
2 objection, Your Honor.

3 MR. KRAHFORST: And what was talked about here
4 was that page 3. That's what I looked at.

5 HEARING OFFICER LEWIS: Okay. Well, I'm going
6 to overrule your objection. I'm going to -- I'm going
7 to admit Exhibit A, but I want you both to know it's
8 primarily for the diagram that's on page 3 of Exhibit
9 A.

10 That's what the testimony came in about and
11 that's what's helpful to me as far as determining this
12 Singley Road and the intersection at Bear River Road.
13 It's the one good diagram that I do have of that
14 particular vicinity.

15 MR. ACOSTA: Your Honor, just to comment,
16 there was a lot of testimony that supports the other
17 diagrams in there too concerning the --

18 HEARING OFFICER LEWIS: No, I -- I
19 understand. I understand.

20 MR. ACOSTA: Okay.

21 HEARING OFFICER LEWIS: And lastly,
22 Mr. Krahforst, do you have any objection to my
23 receiving Exhibit B?

24 MR. KRAHFORST: No, I don't believe I've got a
25 copy of that either.

1 HEARING OFFICER LEWIS: Pardon?

2 MR. KRAHFORST: I don't believe I have a copy
3 of that either.

4 HEARING OFFICER LEWIS: He'll get you copies
5 of these things. My question is, do you have an
6 objection?

7 MR. KRAHFORST: No.

8 HEARING OFFICER LEWIS: There's no objection.
9 I'll receive Exhibit B also, and I believe that takes
10 care of everything. Am I right? All right.

11 (Complainant's Exhibits 2 through 8 and
12 Respondent's Exhibits A and B were admitted into
13 evidence.)

14 HEARING OFFICER LEWIS: With that, we have
15 nothing left except closing arguments. Mr. Krahforst,
16 you get to go first.

17 MR. KRAHFORST: This is different from closing
18 statement?

19 HEARING OFFICER LEWIS: Same thing.

20 MR. KRAHFORST: Same thing.

21 HEARING OFFICER LEWIS: Tomato, tomato. It
22 starts with "closing," so it's closing statement,
23 closing argument.

24 But understand, sir, I'm -- I'm not limiting
25 you as to what you can say by any means. I want you to

1 remember, this is what I'm here to decide, and that's
2 count 1 and count 2 on this accusation, okay? Go
3 ahead.

4 MR. KRAHFORST: Yeah. I don't -- for the
5 record, I don't believe we got a fair hearing today.

6 HEARING OFFICER LEWIS: And why is that, sir?

7 MR. KRAHFORST: I -- I heard comments from
8 yourself, Your Honor, that -- at one point that you've
9 heard enough, that with regard to the specifics of this
10 accusation, perhaps my testimony and documentation or
11 elicited testimony was -- maybe didn't have any
12 grounds.

13 ABC was eliminated right from the get-go from
14 any testimony, except voluntarily from Mr. Farrar.

15 HEARING OFFICER LEWIS: What do you mean? I
16 don't understand what you're saying, sir.

17 MR. KRAHFORST: With regard to what?

18 HEARING OFFICER LEWIS: What do you mean, ABC
19 was eliminated? I don't understand. Tell -- tell me
20 what you think is unfair. Please.

21 MR. KRAHFORST: I'm about to tell you that. I
22 wanted Mr. Farrar, Mr. Pierce and Karen Locken -- who
23 participated in all of the events and ABC decisions up
24 to this point, approval of licenses and attended the
25 hearings before -- to testify, and they sent a letter

1 that they wouldn't unless their fees were paid, and
2 Karen Locken stated she wouldn't attend anyway.

3 HEARING OFFICER LEWIS: Did you pay the fees,
4 sir?

5 MR. KRAHFORST: Even if I paid the fees.

6 HEARING OFFICER LEWIS: Did you pay the fees,
7 though?

8 MR. KRAHFORST: I didn't pay the fees because
9 the letter said -- Mr. Leuders worded the letter. He
10 said in essence, "There's no need to pay her fees
11 because she won't be attending. She has prior
12 commitments."

13 HEARING OFFICER LEWIS: Okay.

14 MR. KRAHFORST: And -- and so, with that -- we
15 believe their testimony was critical to this and so --

16 HEARING OFFICER LEWIS: Okay.

17 MR. KRAHFORST: -- when I asked Mr. -- I'm
18 making my statement, Your Honor.

19 HEARING OFFICER LEWIS: Well, I -- I -- I want
20 to clear some air here, sir.

21 MR. KRAHFORST: Okay.

22 HEARING OFFICER LEWIS: What did you do when
23 you were told that? Did you ask --

24 MR. KRAHFORST: Told what?

25 HEARING OFFICER LEWIS: Well, wait a minute.

1 MR. KRAHFORST: Told --

2 HEARING OFFICER LEWIS: When you were told
3 that -- you believed that one witness was essential.
4 What steps did you take to ensure that she would be
5 here?

6 And I'm talking about arranging for a
7 conference call with me as the judge who was about to
8 hear the matter --

9 MR. KRAHFORST: I had no idea who -- who the
10 judge was, Your Honor. What I did do --

11 HEARING OFFICER LEWIS: No. Well, we have an
12 office. I didn't expect you to know me by name, but
13 you knew a judge was going to hear the matter, whether
14 it be me or someone else.

15 MR. KRAHFORST: What I -- I didn't know that
16 it was a recourse. What I did was wrote a letter to
17 Andrea Hock, Governor Schwarzenegger's legal secretary,
18 asking for a waiver of the fees and asking that those
19 three subpoenaed ABC officials do attend, because their
20 testimony was critical.

21 And apparently Mr. Farrar did voluntarily
22 attend, but when I referred -- when I asked him what
23 the -- if he knew what the reasoning for the insertion
24 of condition No. 9 was, he said, no, he didn't know.
25 But he's carrying --

1 HEARING OFFICER LEWIS: Well, he told you he
2 wasn't part of it then, sir.

3 MR. KRAHFORST: I'm making my statement, Your
4 Honor. I --

5 HEARING OFFICER LEWIS: No, I -- I understand
6 that, and you can go ahead and make your statement.

7 But see, I'm kind of -- I -- I think I go out
8 of my way to try to be fair to everyone. I think I
9 went out of my way to try to help you with asking
10 questions -- questions of the witnesses today, rather
11 than just cut you off and say -- and sustain the
12 objection.

13 Let me -- let me finish now, okay?

14 I go out of my way to try to be fair to
15 everyone, believe me, and I think I did that today.

16 Now, you're telling me after all the evidence
17 is in, everything is closed, that you were denied an
18 opportunity to present essential witnesses here today.

19 MR. KRAHFORST: I never said that, Your Honor.

20 HEARING OFFICER LEWIS: Well, that's what
21 you're telling me now. You said --

22 MR. KRAHFORST: No, I -- those are not my
23 words.

24 HEARING OFFICER LEWIS: You said you
25 subpoenaed them and they did not show up. Okay? And

1 you're -- you're talking about Pierce and someone else.

2 MR. KRAHFORST: Karen Locken.

3 HEARING OFFICER LEWIS: And -- and you didn't
4 pay the fees. You wrote the governor's office. I was
5 never contacted. My office was never contacted.

6 I'm assuming the governor's office didn't help
7 you out.

8 MR. KRAHFORST: I think it was a matter of --
9 of lack of time to respond.

10 HEARING OFFICER LEWIS: Okay. Well, you know,
11 the law specifically requires that the fees be paid in
12 situations like that of public employees.

13 MR. KRAHFORST: I never argued the legal --

14 HEARING OFFICER LEWIS: Okay. Well, I'm just
15 letting you know, because you make it sound like it was
16 a witch hunt by ABC because they didn't produce a
17 witness.

18 MR. KRAHFORST: I don't know if "witch hunt"
19 is -- would be the correct characterization, but I
20 would say that they isolated themselves in -- they
21 protected themselves certainly from -- from involvement
22 in this, and -- but they -- they've made decisions
23 regarding the type 20, type 47, the two different
24 licenses that we discussed today.

25 HEARING OFFICER LEWIS: Well, I know

1 Mr. Pierce, sir, and I -- I don't think he's involved
2 in those types of decisions.

3 MR. KRAHFORST: No, he was -- he worded the --
4 the wording of the conditions himself. We were there.
5 We were in this -- in this room, I believe, and he --
6 he came before us, before Mr. Acosta, and -- and said,
7 "How about the wording in condition No. 7?"

8 He -- he wrote condition No. 7 and he wrote it
9 for 8 and for 9, and we agreed to it.

10 HEARING OFFICER LEWIS: Okay.

11 MR. KRAHFORST: And that was his involvement
12 in there. Also, he refused to put a timeline on
13 enforcement of condition 8 and 9, and we -- we said,
14 "Well, how are we going to see that they're enforced?"

15 He said, "Your only recourse" -- I wasn't even
16 clear on what the reason he -- he wouldn't put a
17 timeline on enforcement, something Mr. Acosta brought
18 to our attention. Something to do with he wouldn't put
19 the ABC in that position.

20 I said, "So what can we do if they don't
21 comply?" He says, "Your recourse is to have another
22 hearing," like we had that day, and that's what brought
23 us here today.

24 And so -- and that's all documented in a
25 letter to Mr. Farrar, a letter to Stephen Hardy, and

1 Andrea Hock, that that was the situation.

2 That's why we're here, and that was their
3 involvement, and that's why I subpoenaed them.

4 HEARING OFFICER LEWIS: Okay. Well, I want
5 you to understand something, sir. I'm hearing it for
6 the first time. It's not part of this record.

7 None of those letters, none of those
8 conversations, none of all that stuff is part of this
9 record.

10 MR. KRAHFORST: I -- I can only say to that
11 that I was so often told, "These are the issues.
12 That -- you know, anything else is -- is peripheral to
13 that and -- and not important."

14 So at one point, I said, "Well, I guess I
15 don't have any more witnesses and I guess I don't have
16 any more documentation." But those documentation --
17 documents I brought with me, but I got the opinion that
18 it was hurting our case if I submitted anything,
19 that -- that -- anything more than I already had.

20 So I thought, "Well, I won't." And that's why
21 we moved on quickly enough to -- to count 2.

22 It -- so in -- in -- in general, we had public
23 safety issues when we came in here that have been
24 around for years. They're for real, they're valid,
25 they're confirmed, and we believe that ABC was --

1 entered this thing as interference, for whatever
2 reason, and that's why we're at where we're at today.

3 That the end result of this whole hearing was
4 Mr. Acosta: "Hey, what can we do?" Mr. Bowman: "Hey,
5 what can we do?" The BIA. Yourself: "Hey, only Obama
6 can change this."

7 So the BIA won, and that's not -- and the BIA
8 was not here, and -- and -- as a witness or to testify
9 or be cross-examined.

10 So all our efforts to -- to present this, we
11 didn't get a fair hearing for whatever reason, and I'm
12 not questioning your -- your statement that you're fair
13 to everybody or, you know, that you didn't, to some
14 extent, allow me some leeway as a nonlawyer.

15 But we had every reason to assert those
16 conditions and every reason to believe that they would
17 be enforced, and the ABC -- the tribe has showed no
18 motivation, citing the reason of ABC to enforce them,
19 and ABC -- to comply, and ABC -- the two conditions,
20 and ABC has shown no motivation to enforce them.

21 And that's how it ended up, and I'm not sure
22 where it goes from here.

23 HEARING OFFICER LEWIS: Okay. Let me ask you
24 something, Mr. Krahforst, because as the person who is
25 prosecuting the case and presenting the evidence --

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MR. KRAHFORST: That would be me?

HEARING OFFICER LEWIS: That would be you.
That person normally would make a recommendation to the
judge as to what should be done with this case.

Now, I'm going to ask you: What do you
recommend that I do with this case, based upon the
evidence that's been presented here?

MR. KRAHFORST: I would recommend that -- that
the off-sale license for the minimart be suspended --
that was count 2 -- until count 1 is complied with, a
modified Bear River entrance or something that -- that
works for the people that want it to work, which my
understanding is Mr. Bowman, Mr. Acosta, myself, the
county supervisors, public works.

That -- and that we as a group, and with your
input, pressure the BIA to -- to back off until that
can get resolved, and then we get our -- we get the
traffic out of our neighborhood and they can have their
off-sale, because the traffic will be diverted.

That's -- we're not -- there's no monetary
gain here or no vengeance gain here. We have a casino
in our neighborhood. It's there to stay. We want the
public safety issue to be addressed, not by
discouragement, but by a physical engineered entrance.

HEARING OFFICER LEWIS: In light of the

1 testimony, sir, that you heard from the people that you
2 brought here, Mr. Mattson in particular and the county
3 supervisor, in light of their testimony where, you
4 know, they said that the tribe has in fact been active
5 in trying to get this thing resolved and trying to get
6 the condition complied with and everyone seems to be
7 having a problem with the Bureau of Indian Affairs,
8 over which none of them have any control, how -- how in
9 the world is this supposed to be done?

10 MR. KRAHFORST: I --

11 HEARING OFFICER LEWIS: I -- I'm open to
12 suggestions. See, I could write a decision that says
13 just about anything.

14 MR. KRAHFORST: Sure. I believe that if the
15 BIA were here to defend itself, and we could ask
16 questions like, "Why are you running interference for
17 this project?" And "Is your motivation public safety
18 or community cooperation with the tribe and the
19 community and the local government?"

20 "What's your motivation? Is it economic
21 development plans that the tribe has for across the
22 street? Is -- is that why the configurations we have
23 don't work, if they interfere with future economic
24 development?" Which I believe is -- is the reason.

25 This is something Mr. Acosta brought up at a

1 meeting with public works.

2 MR. ACOSTA: I'm going to object to this as
3 closing argument. It's throwing --

4 HEARING OFFICER LEWIS: It's -- it's not
5 evidence, Mr. Acosta. It's not evidence. It's
6 argument.

7 MR. KRAHFORST: Mr. Acosta said at that point,
8 "It's imperative that we do not impede cross traffic to
9 the Fearrien property," which is basically going
10 straight across Singley Road to developments over
11 there.

12 And it was that reason that we couldn't get
13 him to -- to accept a -- that additional diagram of
14 modified entrance and he said, "Well, why don't we
15 close off the road?"

16 We said, "We've tried that," and he goes,
17 "Well, maybe we can, as a -- as a Native American
18 tribe, push that through."

19 That delayed any resolution, as you heard, for
20 over a year or more, and then the next thing on the
21 table was a round-about, and we never revisited that.

22 Next -- next, it was road closure two-way,
23 road closure one-way, round-about. BIA jumped in
24 and -- and so one can believe that the tribe did due
25 diligence and we can believe that they delayed any

1 action and continue to delay any action that interferes
2 with their future economic development.

3 And BIA will back them, because that's part of
4 their mission, is to promote economic development of
5 tribes.

6 And can I ask my neighbors if they have any
7 other comments? Or -- I'm not asking to step out of
8 line here, but that's the way I see it.

9 HEARING OFFICER LEWIS: Okay. Let me do
10 this. First of all, as far as a resolution of this
11 matter, you're asking me to suspend the type 20 license
12 at the minimart until such time as condition No. 8 has
13 been complied with.

14 MR. KRAHFORST: I'll --

15 HEARING OFFICER LEWIS: Is that what you're
16 asking me?

17 MR. KRAHFORST: I'll -- I'll qualify that.
18 If -- if you can put a timeline on the completion of --
19 of -- require the licensee to complete condition No. 8
20 per the condition, egress/ingress, they can continue to
21 operate their off-sale in -- in the interim if we have
22 the -- have the feeling that that -- that it really
23 will get completed. Because if they don't, then that
24 off-sale or perhaps their -- their general license
25 could be in jeopardy.

1 That -- that -- that would be a solution, and
2 they'd be under pressure to do it. Everyone would have
3 to sit down and get this thing cranked out and -- and
4 additional pressure on the BIA from all the people that
5 have been involved, who all -- as you said, we all want
6 the same thing except the BIA, and the -- a solution.

7 HEARING OFFICER LEWIS: Okay. Now, is there
8 anything else, sir?

9 MR. KRAHFORST: I don't think so. Can I
10 ask --

11 HEARING OFFICER LEWIS: I'm not -- I'm not --
12 no, wait a minute.

13 MR. KRAHFORST: Okay.

14 HEARING OFFICER LEWIS: Here's what I'm going
15 to do. I'm going to give Mr. Acosta an opportunity to
16 give a closing.

17 MR. KRAHFORST: Sure, sure.

18 HEARING OFFICER LEWIS: You, as the person
19 with the burden of proof, will get, you know, the final
20 word here today. I get the final word, period.

21 But you can ask for input from any of these
22 people as to have them write a note to you or
23 whatever. When Mr. Acosta is done, you have an
24 opportunity to bring it up at that time. Okay?

25 MR. KRAHFORST: It works.

1 HEARING OFFICER LEWIS: Okay. Mr. Acosta.

2 MR. ACOSTA: Yes, Your Honor, thank you. I
3 think that was quite a lot to respond to. I think
4 there was a suggestion of improper influence by the
5 tribe, by the BIA.

6 There was a suggestion of the improper motives
7 by the ABC in its own actions, and what we heard was
8 very clear from neutral witnesses -- the top engineer
9 of the County -- that condition No. 8 is legally or
10 legally and engineering -- legally impossible to
11 achieve without these government agencies concurring.

12 And Exhibit B that we presented very clearly
13 demonstrates that the BIA will not perform the
14 condition or modifi -- any modification of that
15 intersection unless the traffic counts justify that.
16 And testimony indicated that the traffic counts
17 classified that intersection level surface as "B" and
18 that no further mod -- no further modifications be
19 necessary from an engineering perspective.

20 We have attempted to deal with the BIA. We
21 brought the BIA and the County together at the tribal
22 building. You heard testimony from Jimmy Smith that he
23 came down to the tribal building.

24 We hosted and got those two parties together
25 and they were at an impasse, and it was an ugly

1 impasse, and what resulted was Exhibit B, which was an
2 attempt to go above the BIA's head to the congressman,
3 United States congressman, to resolve this for us.

4 As Your Honor mentioned, there's only two
5 levels actually above that. They're a senator and a --
6 and a president. We --

7 HEARING OFFICER LEWIS: I don't think the
8 senator has much pull.

9 MR. ACOSTA: So if the Congressman for this
10 district couldn't resolve this and to use his influence
11 over the BIA to resolve this, I don't have much hope.

12 And the ironic thing is at ten o'clock today,
13 when I offered Mr -- Mr. Krahforst 30 minutes to try to
14 resolve count 1, at least, based on a timeline for
15 implementation, that was before I knew that Tom Mattson
16 would testify that the one remaining hope we had, which
17 was a one-way closure, would not comply with County
18 regulations, because it required a round-about or a
19 cul-de-sac. A cul-de-sac, turn-about.

20 So at that point, hearing that testimony, it
21 was very clear that this is a legally impossible
22 condition.

23 So the tribe would ask that condition 8 be
24 declared legally impossible, finding of legal
25 impossibility, and be res judicata for the remainder

1 of -- if the tribe holding the type 47 license.

2 With respect to count 2, you know, this --
3 this was -- I was going to ask for summary judgment on
4 this anyway.

5 Business & Professions Code section 23401 --
6 which I'm sure I looked up, so I hope I'm right --
7 states very clearly that it's only applicable to type
8 47. This is "A holder of a type 47 license may also
9 exercise off-sale privileges." It has no application
10 to a type 20 license.

11 So on its face, on the summary judgment
12 basis --

13 HEARING OFFICER LEWIS: No. Under -- under
14 the circumstances, Mr. Acosta, this accusation is being
15 brought against the type 47 license, not the 20.

16 MR. ACOSTA: Right.

17 HEARING OFFICER LEWIS: Okay.

18 MR. ACOSTA: I'm sorry, I misspoke. That that
19 section only applies to type -- it says that a holder
20 of a type 47 may exercise off-sale.

21 Now, the tribe volunteered to not sell
22 off-sale ever and we never have. We don't even let
23 glasses of water out the door because of the perception
24 it may be alcohol. We're the only casino in the area
25 to do that, I believe.

1 But the type 20 license was applied for in
2 good faith. The posting was made, the investigation
3 was done. The ABC local office confirmed our public
4 posting as being compliant with their regulations and
5 no protest was -- was submitted within 30 days.

6 This appears to me to be a collateral attack
7 in lieu of a basic protest of the type 20 license, and
8 I don't think that's appropriate. I think that's
9 frivolous and an abuse of process.

10 So we ask that count 2 be completely denied
11 and that count 1, condition 8, be found to be legally
12 impossible. Absent -- maybe the one glimmer of light
13 would be absent the BIA's direction on what to do to
14 mitigate traffic at that intersection.

15 But since we've been trying for three years,
16 and you can see the -- the history of attempts from all
17 the agencies -- I wouldn't at this point impose a
18 condition on it.

19 In terms of other development, I think it's --
20 notice that this condition No. 8 doesn't say anything
21 about east to westbound traffic, and my comments about
22 a lot of east to westbound traffic is because the west
23 side of that road is going to be tribal housing, and
24 specifically condition 8 was only intended to apply to
25 commercial traffic. Not residential traffic.

1 The tribal residents are -- are residents of
2 the Singley Hill Assoc -- Singley Hills area, too, and
3 there was never an agreement in condition 8 to restrict
4 the tribal residents from using that County public
5 road, and I -- I have to emphasize that it is a public
6 road. It is not a private road. No one is entitled to
7 have a private road in this county.

8 But the concern with the language of condition
9 8, the reason it says commercial traffic only, was
10 specifically so that tribal residents could participate
11 in life on Singley Hills like the rest of the residents
12 and use that road.

13 So I think we've acted in good faith. We
14 entered this agreement when we thought -- when our
15 engineers told us from an engineering standpoint we can
16 design something.

17 We didn't have all the jurisdictions in the
18 room when we made that agreement. We didn't have CDF,
19 CHP, BIA in the room. We had County, we had ABC, and
20 we had the private parties. And Sonny Lowe
21 specifically said at one point that he wouldn't require
22 anything of us that was beyond our control.

23 That was in reference to the Cal -- residents
24 asking us to change Caltrans' mind at the bottom of the
25 hill.

1 So here we are where we -- we can't change the
2 BIA's mind. So we would ask for a finding of legal
3 impossibility on No. 8.

4 Thank you, Your Honor.

5 HEARING OFFICER LEWIS: Okay. Mr. Krahforst?

6 MR. KRAHFORST: I -- I'd like to -- just to
7 make a few comments. Thank you. A few comments in
8 reference to Mr. Acosta's.

9 Traffic counts which have been referred to in
10 the -- by the BIA as a basis for -- for any
11 modification that they didn't agree with is not the
12 only basis for -- for traffic diversion and road
13 modifications.

14 There are other issues. One is this agreement
15 right here, and second, there are public safety issues
16 that -- and a history of -- of that being an issue
17 before the alcohol license even came into play.

18 The casino traffic on its own, and by adding
19 alcohol mixed to the -- to the deal, complicates it.

20 And restriction of east-west traffic was never
21 part of -- of condition No. 8. As long as it doesn't
22 restrict east-west traffic, and without being an
23 engineer, there are a million ways to -- to not
24 restrict the tribe from using the property across the
25 street, so they have access like any other residents.

1 I would also like to say that I didn't
2 introduce this as evidence, and I know it can't be
3 introduced now, but that property across the street was
4 indeed for commercial development, and an entire
5 environmental evaluation was done to -- to create an RV
6 park for 25 RVs and a gas station, minimart, and a --
7 and a community center, I guess for the RV park.

8 It was a later idea to move the minimart and
9 gas station across the street.

10 So indeed, they have commercial plans for that
11 which will impact us even further up the road, which
12 maybe we can't do anything under this alcohol license
13 condition, but -- but that is -- is indeed the case.

14 And -- and also the fact that we always hear
15 growing up, "Well, ignorance of the law is no excuse."
16 Well, here's a tribal attorney and a tribal
17 chairperson. If anyone should know who has authority,
18 BIA or the tribe, it would be a tribal lawyer or the
19 tribal chairperson.

20 But we're hearing in testimony that, "Heck, we
21 didn't know. We made that in good faith." We
22 certainly didn't know and shouldn't be expected to, and
23 ABC allowed that, even composed the wording. So they
24 didn't know.

25 So there are people a lot more legally

1 knowledgeable than us that allowed that in there and
2 we're hearing as a defense that "We didn't know at the
3 time we signed that."

4 So the points I'd like to make were traffic
5 counts alone are -- are not a criteria, even though BIA
6 would like to think so, and east-west traffic is not an
7 issue that can't be engineered to allow residents --
8 because there's going to be residen -- Indian housing
9 besides commercial development over there.

10 And -- and ignorance of the law doesn't -- I'd
11 just like a minute to -- to read these, you know, and
12 add.

13 I -- we entered an -- I think the point of
14 this first note is we entered an agreement and that's
15 why we're here. We were led to believe, and we dropped
16 our protest, is -- is basically I think what that said.

17 We asked that -- okay. Well, here, I think I
18 made this point. This person has noted the second
19 request -- "I second the request that a timeline be
20 implemented on coming up with an entrance road
21 modification satisfactory to all parties," a timeline
22 that didn't exist -- exist when Mr. Pierce wrote up the
23 -- the condition.

24 "The casino is in a neighborhood. Alcohol
25 license be denied, in total agreement that can be

1 accomplished -- is accomplished."

2 Well, the -- this is adding that they deny
3 it. I made a comment that they initially deny it or
4 even allow it until a solution has come up.

5 "There's only two ways for residents to access
6 the road. We are -- we want one neighborhood." They
7 want one approach to the neighborhood to be safe.

8 Is kind -- we're on a loop road. Casino is at
9 one end, the neighbors are at the other end. They can
10 keep that casino traffic at that one end and let us
11 come and go from the other end without having to deal
12 with any alcohol-related or additional traffic.

13 Is -- more or less -- okay. And without
14 thinking any further, I believe that's my rebuttal or
15 whatever.

16 HEARING OFFICER LEWIS: Okay. I -- I want you
17 to all understand something. You know, I -- I've
18 been -- I've done enough of these involving tribes up
19 and down the state to know that people who live in the
20 vicinity of the Indian casinos are not happy with the
21 presence of the Indian casinos.

22 You -- you're concerned about the safety going
23 up and down this road and you want the -- the condition
24 on the license to be enforced, although they're having
25 troubles getting approval to do it, because they can't

1 do it on their own.

2 And the only method for you to do any of these
3 things is through ABC, and quite frankly, folks, I
4 think that's a shame. All of these things should have
5 been dealt with long before ABC had to become involved
6 in it.

7 And they're thrown in there because they're
8 the only avenue left for citizens to take up protests
9 and try to continue with the fight that they have. The
10 issues regarding safety in the neighborhood should have
11 been addressed long before there was any even
12 application for an ABC license.

13 If there were no ABC license regarding this
14 particular location, then people would be going up and
15 down that Singley Road any way they wanted to, and you
16 and the other neighbors who live in the area couldn't
17 do anything about it.

18 AUDIENCE MEMBER: That would be fine.

19 HEARING OFFICER LEWIS: That would -- your
20 only recourse would be to deal with it through the
21 County. So it makes it much more difficult to throw
22 ABC in the middle of all this and say, "Okay, you come
23 up with a solution for all of this." And that's what's
24 being done. Not just here. It's being done up and
25 down the state. I see it all the time.

1 It's -- it's not a pleasant position to put
2 the department in. You know, we've got to play, you
3 know, Solomon and try to -- "Give me a big sword and
4 I'll cut the baby in half here and see what I can do."

5 There are concerns about public safety from
6 all involved and there are -- well, you've heard the
7 evidence regarding what has been done in this
8 particular case.

9 I can't -- I didn't create this condition.
10 It's there. I'm just trying to deal with it. It's not
11 an easy position to be put in. I am going to give
12 you -- well, actually, I'm going to give the
13 director -- because my decision goes directly to him.
14 You both will be given copies of it once I do it. And
15 it will up to the director ultimately, because he does
16 have the final say.

17 MR. KRAHFORST: Is that Steve -- Steve Hardy?

18 HEARING OFFICER LEWIS: Yes. He does have the
19 final say as to whether to adopt what I tell him should
20 be done or to change it if he so chooses. He's the
21 director. He's the boss. He gets to do that.

22 But I give him -- based on what I heard here
23 today and what's been presented to me, I get to give
24 him what I think should be done here.

25 And I'm going to do that, and I don't take

1 that job lightly. I want you to know that. I don't
2 cut people off. I try to give them an opportunity to
3 be heard, and I think I've done that.

4 You may not like the fact that you have to
5 comply with the law and do things certain ways, but
6 quite frankly, folks, I can only bend the rules so far
7 and, you know, I tried to give you every opportunity to
8 be heard.

9 I'll do what I can do to try to resolve this
10 manner -- matter in a manner that is good for
11 everyone. Does that mean everyone is going to like
12 it? No, it sure doesn't. But I'm going to do what
13 I've got to do.

14 With that, this matter will stand submitted.
15 I will issue my proposed decision within 30 days.

16 Thank you all very much. Off the record.

17 THE WITNESS: So am I --

18 HEARING OFFICER LEWIS: Oh, I'm sorry. Back
19 on the record. Mr. Farrar, we didn't excuse you,
20 apparently.

21 THE WITNESS: True.

22 HEARING OFFICER LEWIS: You were out making
23 copies. You're officially excused.

24 THE WITNESS: Thank you.

25 HEARING OFFICER LEWIS: Now we'll go off the

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record. Thank you.

(The hearing was adjourned at 3:04 p.m.)

* * * * *

1 CERTIFICATE OF REPORTER

2
3 I, KATHERINE J. WAYNE, a Certified Shorthand
4 Reporter, hereby certify that the proceedings herein
5 were taken in shorthand by me, a disinterested person,
6 at the time and place therein stated, and that the said
7 proceedings were thereafter reduced to typewriting, by
8 computer, under my direction and supervision;

9 I further certify that I am not of counsel or
10 attorney for either or any of the parties to said
11 proceedings, nor in any way interested in the event of
12 this cause, and that I am not related to any of the
13 parties thereto.

14 In witness whereof, I have hereunto set my
15 hand this day: November 15, 2009.



Katherine J. Wayne

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KATHERINE J. WAYNE, CSR 2854

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