BEFORE THE

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE ACCUSATION AGAINST: Bear River Casino 11 Bear Paws Way Loleta, CA 95551-9684 ON-SALE GENERAL PUBLIC EATING PLACE LICENSE	FILE NO. 47-423392 REG. NO. 08070211 **APPELLANT/RESPONDENT BEAR RIVER CASINO'S REPLY BRIEF**

This appeal challenges the Department's adoption of the May 20, 2009 Proposed Decision of ALJ John W. Lewis sustaining Count 1 of the Accusation and ordering the revocation of Appellant Bear River Casino's ("Bear River") On-Sale General Public Eating-Place License.[1] The revocation shall take effect on June 15, 2011, unless Bear River comes into compliance with Condition #8 before then, in which case the revocation is permanently stayed. (*See* ALJ's Order ¶2.) Critical to the ALJ's proposed decision was his finding that Bear River "is not now, nor have they ever been, in compliance with Condition #8" of its License (which required Bear River to modify the entrance from Singley Road to Bear River Drive). (ALJ Factual Finding #12.) The ALJ further concluded that the Bureau of Indian Affairs had prohibited the necessary modification, thereby preventing Bear River's compliance. (ALJ Factual Findings #7-8; Penalty Consideration #5.)

In its opening brief on appeal, Bear River contended that, in fact, it has complied with Condition #8; that the ALJ's finding that compliance with Condition #8 was a legal impossibility

[1] For ease of reference, the Department's Certificate of Decision, including the ALJ's Proposed Decision containi his Factual Findings, Conclusions, Penalty Considerations, and Order, are attached hereto as Exhibit 1.

rendered the Decision to revoke the license an abuse of discretion; that the determination that the so-called "Singley Hill Homeowners Association" ("Association") ever had standing to pursue the accusation also was a clearly erroneous and prejudicial abuse of discretion, given that the non-attorney(s) purporting to represent the Association never demonstrated that the Association even exists, much less that the Association ever has authorized anyone to make or pursue the accusation in its name; and that Bear River was prejudiced by the undue latitude that the ALJ gave the Association's non-attorney, purported representative.

In defense of the Decision, the Association makes a threshold erroneous factual assertion: "It is undisputed that the Licensee failed to make the required modifications to the entrance to Singley Road since the license was issued." (Association's Opp. Brief, p. 2:1-2.) Based on this false premise, the Association proceeds to argue that: Bear River agreed, but refused to comply with Condition #8; the Decision is supported by law and reason; the Association has legal standing despite its apparent exclusion of Bear River and tribal members from Association membership and the absence of any admissible evidence that it exists or ever authorized the filing and prosecution of the accusation; and that Bear River was not prejudiced by the extremely broad latitude that the ALJ extended to the Association's purported representative.[2]

As explained below, the Department's decision should be reversed, because the ALJ's Proposed Decision is unsupported by reason, law, or evidence actually and properly made part of the hearing record, and resulted from prejudicial errors. In addition, revoking Bear River's license would not accomplish Condition #8's apparent objective of discouraging the use of the northern portion of Singley Road by persons bound to or from Bear River's Casino, and could even result in an increase in traffic on that road.[3]

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[2] The Department has not filed a brief, but has informed the Appeals Board that it finds that the ALJ's Proposed Decision's findings are supported by the evidence and the remedy within the sphere of reasonableness.

[3] Throughout these proceedings, it has been obvious that the protestants' real complaint has been – and remains - less about whether, and if so, under what conditions alcohol may be served at the Bear River Casino, but, rather, the very fact of the Casino's existence, because the original protestants voiced many of the same complaints even before the Casino started serving alcohol. It is the Casino, not the service of alcohol, that attracts traffic, and the record is notably devoid of any evidence that the service of alcohol at the Casino has caused either an increase in traffic on any portion of Singley Road, or that it has created any safety hazards.

ARGUMENT

I. THE EVIDENCE IN THE RECORD DOES NOT SUPPORT A FINDING THAT BEAR RIVER FAILED TO MAKE THE REQUIRED MODIFICATIONS TO THE ENTRANCE TO SINGLEY ROAD AFTER THE LICENSE WAS ISSUED.

It is undisputed that the Department's legal counsel John Pierce drafted Condition #8 to facilitate a settlement of the protests to the original license prior to commencement of the hearing[4] thereon. (RT 165:3-13.)[5] Condition #8 provides that,

> The licensee shall modify the entrance from Singley Road to Bear River Drive so that public vehicular ingress and egress is available only to and from the south on Singley Road. The modified entrance or a separate entrance shall provide access to the premises from the north on Singley Road for emergency vehicles only.

(*See* ALJ Factual Finding #5.) Condition #8 does not set a specific timetable or deadline by which Bear River was or is to have commenced or completed modification of the entrance from Singley Road to Bear River Drive. Nor does Condition #8 specify how Bear River was to accomplish restricting vehicular ingress and egress to and from the south on Singley Road.

Significantly, it is undisputed that Bear River did, in fact, make substantial and successful efforts to deter public ingress from and egress to north Singley Road by installing physical barriers at the corner of Singley Road and Bear River Drive, and posting signage prohibiting turns, thus substantially complying with vaguely-worded Condition #8. (RT 64-68; ALJ Factual Finding #7.) It is also undisputed that Bear River was forced by the U.S. Bureau of Indian Affairs to remove the barriers as unjustified by Humboldt County's traffic counts, and that the California Department of Forestry prevented further efforts to close Singley Road from the north. (ALJ Factual Finding #9.)

Since removing the barriers, Bear River has worked continuously and diligently with Humboldt County, CalTrans and other government agencies to take every measure within Bear River's control to discourage traffic on the northern portion of Singley Road, including: installing speed bumps on Singley Road (removed because Singley Road residents – presumably the

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[4] Actually, the second hearing on Bear River's application. The first, which consumed three days over a period of several months, was nullified when the presiding ALJ suddenly retired after the close of briefing but before issuing a proposed decision.

[5] The Transcript of the Hearing Before Hearing Officer John Lewis held on April 29, 2009 was attached at Exhib to the Association's Opp. Brief.

Association's members – did not support permanent installation); erecting signs at the Bear River Road/Singley Road intersection prohibiting northbound right turns by exiting vehicles and left turns by southbound entering vehicles (RT 76, 93); and erection of freeway signage directing traffic to southern portion of Singley Road. (RT 77-78).

Moreover, the record is devoid of any evidence that the measures that Bear River already has taken have not substantially accomplished Condition #8's apparent purpose – with or without the ongoing presence of physical barriers – of minimizing the *Casino*'s traffic impacts, which would exist with or without Bear River's Type 47 License, on neighboring residents. In addition, no evidence suggest that the public safety, welfare or morals has been compromised in any way by the measures that Bear River has taken to date, or that Bear River has not been and is not continuing to be diligent in seeking to make the measures already taken even more effective. (ALJ Factual Findings # 9, 11.) Likewise, no evidence in the record supports the ALJ's conclusion that continuance of the license without imposition of discipline would be contrary to public welfare and morals (ALJ Conclusion of Law #3), particularly in light of the undisputed fact that other units of government, including the Bureau of Indian Affairs, the California Department of Forestry and Fire Protection, and the California Highway Patrol actively have prevented Bear River from taking additional measures to reduce traffic on Singley Road north of Bear River Drive.[6] Also significant is the absence from the hearing record of any relevant or otherwise admissible evidence to show that the service of alcohol at the Casino has been or is a significant contributor to such traffic.

Finally, to the extent that discouraging Casino-related traffic on the northern portion of Singley Road enhances the public safety, welfare and/or morals, the undisputable fact is that revoking Bear River's License would remove its only legal incentive to continue efforts to discourage patrons from using the northern portion of Singley Road, in which event traffic on that portion of Singley Road actually might *increase*.

Thus, unless Condition #8 is interpreted as requiring that at the instant the License was issued, Bear River already was obligated to physically prevent all non-emergency vehicles from

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[6] Presumably, the California Department of Forestry and Fire Protection, the California Highway Patrol, CalTrai and the Bureau of Indian Affairs share the Department's interest in protecting the public safety and welfare.

accessing Bear River Drive from the north and forcing all vehicles to turn south from Bear River Drive[7] – whether or not the vehicles are operated by Casino patrons – Bear River actually complied with Condition #8 when it installed physical barriers, and has continued substantive compliance with Condition #8 even after the U.S. Bureau of Indian Affairs required Bear River to remove the barriers that Bear River had installed.[8]

The Association contends that "[f]or unknown reasons, Licensee failed to obtain the approval of the Bureau of Indian Affairs" for the barriers that Bear River installed to comply with Condition #8. (Association's Opp. Brief, p. 3:22-23.) This statement is demonstrably incorrect, because the undisputed evidence in the record shows that the BIA ordered removal of the barriers from the BIA's road based on its determination that a traffic study conducted by Humboldt County showed that there was no measurable increase in traffic on Singley Road beyond the Casino, and thus that installation of the barriers was unnecessary to maintain an acceptable level of service. (12/12/08 Letter from BIA to Rep. Mike Thompson, attached as Exhibit B to Bear River's Opening Brief.)

The Association also contends that the ALJ did not find that compliance with Condition #8 was impossible. This is flatly contradicted by the ALJ's Decision. (ALJ Factual Finding #8; Penalty Considerations #4, 5, 7.) The reality is that if Condition #8 required Bear River to have blocked traffic on Singley Hill Road *on the date the License was issued*, or to install facilities on a BIA road *that the BIA would not permit*, such requirements would be both physically and legally impossible for Bear River, a fact of which the Department, protestants and Bear River were unaware when Department counsel Pierce drafted Condition #8. Plainly, Bear River would not have agreed to a

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[7] Including tribal members living on the Reservation, who, along with Casino patrons and other persons with business on the Rancheria, would be the only people not free to travel northbound or southbound on the public Singley Road.

[8] Subsequent to the hearing and filing of Bear River's opening brief in this appeal, Bear River was able to transfer oversight of Bear River Road from the BIA to the Federal Highway Administration, and thus now will proceed to install obstructions of the sort that the BIA deemed objectionable. A true copy of the Indian Reservation Road Maintenance Agreement between Bear River and the Federal Highway Administration, which was executed in June, 2010 and thus did not yet exist at either the time of the hearing or the filing of Bear River's opening brief in this appeal, is attached hereto as Exhibit 2.

condition it had no prospect of satisfying.[9] As the ALJ correctly noted: "It does not seem fair to punish Respondent's License because of the inaction of the Bureau of Indian Affairs." (ALJ Penalty Consideration #7.)

The Association's citation of numerous federal cases for the proposition that the State of California has jurisdiction over the licensing of liquor sales in Indian country is completely inapposite. This dispute is not about whether or not Bear River must have and maintain a license from the State of California to serve alcoholic beverages at its Casino, but whether or not the Department, by including a condition in a license that is beyond Bear River's power to satisfy without the consent of the BIA regarding construction on the BIA's Bear River Road, without Humboldt County's consent regarding construction on the County's Singley Road, and without any showing that Bear River's efforts to date to reduce Casino-related traffic on the northern portion of Singley Road have not been effective, should be able to use Bear River's alleged failure to meet Condition #8's ill-defined criteria and timetable for compliance as the basis for ordering the revocation of Bear River's Type 47 License – particularly when revocation of the license might *increase* traffic on the portion of Singley Road that impacts protestants most heavily.[10] Bear River respectfully submits that revocation under these circumstances would be contrary to law, logic or the evidence in the hearing record.

II. CONSTRUCTION OF CONDITION #8 AS REQUIRING INSTANTANEOUS OBSTRUCTION OF NORTHBOUND EGRESS AND SOUTHBOUND INGRESS TO BEAR RIVER DRIVE WOULD BE UNREASONABLE, AND THUS CONTRARY TO BOTH THE LAW AND THE INTENT OF THE PARTIES.

Under California law, if an agreement for performance of an obligation does not state a time within which the obligation must be performed, a reasonable time for performance will be implied. *See Frankel v. Board of Dental Examiners*, (1996) 46 Cal.App.4th 534; *In re Marriage of Corona*, (2009) 172 Cal.App.4th 1205. Thus, although Condition #8 does not state a time for performance, a

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[9] Chairman Bowman testified that when Bear River agreed to Condition #8, it did so on the assumption that performance of that obligation would be possible from an engineering perspective; it would not have agreed to the condition, and there is no evidence that the condition would have been imposed, had it known or believed that compliance with the Condition would be legally impossible, and there is no reason to believe that Condition #8 would have been included in the License when it was the Casino, not the License, that is the attractant of traffic.

[10] A fact noted by the ALJ during the hearing. RT 182:13-17.

reasonable construction of the Condition is that Bear River was to have a reasonable time within which to fulfill the Condition.

Given that Condition #8 was drafted by the Department's legal counsel, that the parties clearly contemplated that Bear River would have a reasonable time in which to fulfill Condition #8 (just as the Association concedes that Bear River had a reasonable time in which to comply with Condition #7), and that neither the Department, the Association nor Bear River assumed or had any reason to assume that implementing the restrictions contemplated by Condition #8 as interpreted by the ALJ would be rendered impossible by the Bureau of Indian Affairs, the State Department of Forestry and Fire Protection, and the California Highway Patrol, Condition #8 must be construed as impliedly giving Bear River a reasonable time within which to comply with that Condition as well, and that the measures taken thus far, coupled with Bear River's ongoing efforts to improve the effectiveness of existing restrictions, constitute substantial compliance with a reasonable interpretation of Condition #8.

As the ALJ noted during the hearing, if Bear River's Type 47 License were to be revoked, nothing would require that Bear River discourage anyone from using Singley Road north of Bear River Road without any restrictions whatsoever, and neither CalTrans, Humboldt County or the Bear River Band of the Rohnerville Rancheria would have any power to stop such traffic. The same would be true if the Casino were to close altogether.

There also can be no question that Bear River has been persistent and diligent in its efforts to remain in compliance with Condition #8, only to be thwarted by changing and inconsistent requirements of external state and federal authorities with jurisdiction over Singley Road and Bear River Drive. Given that there is no evidence in the record that shows, or even suggests, that Bear River's substantial efforts to date have not adequately protected the public safety, welfare and/or morals, and that the evidence in the record shows without dispute that Bear River continues to be engaged in a diligent and good faith effort to improve the effectiveness of existing restrictions, the only reasonable conclusion that the Appeals Board can reach is that there has been no violation of Condition #8, and thus that no discipline is warranted.

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III. THE ALJ COMMITTED PREJUDICIAL ERROR IN REFUSING TO ALLOW BEAR RIVER TO CHALLENGE THE ASSOCIATION'S EXISTENCE AND THE AUTHORITY OF ITS PURPORTED REPRESENTATIVE.

At the outset of the hearing, Bear River questioned whether the Association actually exists, and if so, whether it actually had authorized the accusation and designated anyone to represent it in the proceedings. Without allowing any *voir dire* of the Association's representative, without requiring submission of any written documentation of the Association's organization or authorization, and without obtaining sworn testimony concerning any of these issues, the ALJ summarily overruled Bear River's objection to allowing the Association to proceed with the accusation. (RT 8:6-25, 11:1-2, 30:7-10.) Had Bear River been permitted to delve into these issues, Bear River believes that it would have been able to show that the Association has no legal existence, that it does not represent a majority of Singley Hill residents as implied in its name, that it did/does not allow tribal members to belong to the Association, that it never took action to authorize the filing of the accusation, that the Association's purported representative was not authorized to speak for the residents of Singley Hill, that the Association actually had thwarted efforts by Bear River to improve traffic safety on the northern portion of Singley Road and that the position advocated by that representative was not, in fact, accurately representative of the position of a majority of the persons who properly could be considered Singley Hill homeowners or other residents, and who would be inconvenienced by the sorts of obstructions that the Association's purported representative advocates.

Had Bear River been given the opportunity to make the showing described above, there never would have been an accusation, and the Department never would or could have made the Decision at issue in this appeal.

IV. BEAR RIVER WAS PREJUDICED BY THE UNDUE LATITUDE EXTENDED TO THE ASSOCIATION BY THE ALJ.

Because the purported Association's purported representative at the hearing was not an attorney, the ALJ allowed that representative to establish what the ALJ described as "jurisdictional" facts without requiring those facts to be established by sworn testimony or other admissible evidence, thus depriving Bear River of its right to cross-examine the proponent of such evidence. As noted in the preceding section of this brief, had the Association been held to the same rules of

evidence and procedure as applied to Bear River, the entire foundation of the accusation might have been fatally undermined, leaving nothing for the Appeals Board to consider.

CONCLUSION

For all of the reasons set forth above, the Department's decision should be reversed and Condition #8 should be stricken from Bear River's License.

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[SIGNATURE ON FOLLOWING PAGE]

Dated: August 5, 2010

Respectfully submitted,

By: _____

George Forman
FORMAN & ASSOCIATES
Attorneys for Bear River Casino

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

IN THE MATTER OF THE ACCUSATION AGAINST:

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

ON-SALE GENERAL PUBLIC EATING PLACE LICENSE

under the Alcoholic Beverage Control Act

File : 47 - 423392
Reg.: 08070211
AB- 9047

CERTIFICATION

State of California }
} §§
County of Sacramento }

I, Judy Carlton,, do hereby certify that I am an Senior Legal Typist, for the Department of Alcoholic Beverage Control of the State of California.

I do hereby further certify that annexed hereto is a true, correct and complete record (not including the Hearing Reporter's transcript) of the proceedings had under Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code concerning the revocation stayed with suspension of the license heretofore issued to the appellant(s) herein under the provisions of Division 9 of the Business and Professions Code.

IN WITNESS WHEREOF, I hereunto affix my signature on December 21, 2009 , at Sacramento, California.

Judy Carlton
Legal Unit

STATE OF CALIFORNIA

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

CERTIFICATE OF DECISION

FILE : 47 - 423392
REG. : 08070211

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

THIS DECISION SHALL BECOME OPERATIVE AUGUST 6, 2009.

Sacramento, California

Dated: June 15, 2009

Helen McConville
Supervisor, Hearing and Legal Unit

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

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

IN THE MATTER OF THE ACCUSATION AGAINST:

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

Respondent,

} FILE: 47-423392
}
} REG: 08 070 211
}
} LICENSE TYPE: 47
}
} PAGES: 180
}
} REPORTER: Katherine Wayne
} Atkinson-Baker Court Reporters
}
On-sale General Public Eating-place License. } **PROPOSED DECISION**

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

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

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

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

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

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

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

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

FINDINGS OF FACT

1. The Accusation was filed by Singley Hill Homeowners Association on December 24, 2008. (Exhibit 1).

2. Department issued a type 47 (On-sale General Public Eating-place) license to Respondent at the above-identified location [Licensed Premises] on July 26, 2006.

3. There is no record of prior Departmental discipline against Respondent's license.

4. When Respondent submitted the application for this license numerous protests were filed, primarily by members of the Singley Hill Homeowners Association. A hearing was scheduled at that time.

5. A settlement agreement was reached between the Protestants and Respondent prior to the record being opened. In exchange for Protestants withdrawing their protests, Respondent agreed to a set of conditions. The Department then issued the license in July, 2006, subject to those conditions. (Exhibit 2). Among those conditions are the following:

> "8. The licensee shall modify the entrance from Singley Road to Bear River Drive so that public vehicular ingress and egress is available only to and from the south on Singley Road. The modified entrance or a separate entrance shall provide access to the premises from the north on Singley Road for emergency vehicles only."
>
> 9. The licensee shall exercise no off-sale privileges pursuant to Business and Professions Code Section 23401."

6. Thomas Mattson is employed by the Humboldt County Department of Public Works. He is a civil engineer and has been involved with the issues involving the roads near Respondent's casino in some capacity since 2006. Singley Road is a county road and is the only road that leads to Respondent's casino. Humboldt County requires an encroachment permit before any work can be done to a county road. Shortly after this license issued Respondent obtained the appropriate permit and paid to have Singley Road widened as was required by Condition #7.

7. During this same time frame Respondent placed barriers and K-rails on reservation property at Singley Road to prohibit right turns onto Singley Road when exiting the

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

1. Article XX, Section 22 of the California Constitution and Section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.

2. Section 23804 provides that violation of a condition placed upon a license constitutes the exercise of a privilege for which a license is required without the authority therefor and is grounds for suspension or revocation of the license.

3. Cause for suspension or revocation of Respondent's license was established in accordance with the Constitutional and code sections cited above and Findings of Fact, paragraphs 4 through 12, for the violations alleged in Count 1 of the Accusation. Continuance of the license without imposition of discipline would be contrary to public welfare and morals.

4. Cause for suspension or revocation of Respondent's license was **not** established in accordance with the Constitutional and code sections cited above and Findings of Fact, paragraphs 13 and 14, for the violations alleged in Count 2 of the Accusation.

PENALTY CONSIDERATIONS

1. Complainant recommends that the Type 20 license held by Respondent be suspended indefinitely until such time as Respondent is in compliance with Condition #8. However, that is not possible since the Type 20 license is not the subject of this Accusation.

2. Respondent requests that a finding be made that it is legally impossible for Respondent to comply with Condition #8 and that it be removed from the Petition for Conditional License.

3. Condition violations are considered serious violations, since without the conditions, the license would in all likelihood not have issued. In 2006 when this matter was scheduled to be heard as a protest matter, numerous protestants appeared at the hearing. Lengthy negotiations resulted in a compromise and the matter was settled instead of conducting the hearing. The Petition For Conditional License (Exhibit 2) was the end result of the settlement. Respondent agreed to accept the conditions and the protestants agreed to withdraw their protests. The license issued subject to those conditions.

4. By all accounts, Respondent has done everything within its power to comply with Condition #8. No one has even suggested that Respondent was "dragging their feet" in any way.

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

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

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

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

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

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

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IN THE MATTER OF THE ACCUSATION AGAINST:

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

ON-SALE GENERAL PUBLIC EATING PLACE LICENSE

FILE : 47 - 423392
REG. : 08070211

DECLARATION OF SERVICE BY MAIL

under the Alcoholic Beverage Control Act.

The undersigned declares:

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

CERTIFICATE OF DECISION

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

Bear River Casino
32 Bear River Drive
Loleta, CA 95551

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

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

Noel Krahforst
525 Singley Hill Road
Loleta, CA 95551

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

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

Executed on June 15, 2009 at Sacramento, California.

Declarant

X Eureka District Office(interoffice mail)
___ Division Office(interoffice mail)

ABC-116 (9/04)

INDIAN RESERVATION ROADS PROGRAM AGREEMENT BETWEEN THE BEAR RIVER BAND of ROHNERVILLE RANCHERIA AND THE UNITED STATES DEPARTMENT OF TRANSPORTATION

ARTICLE I – AUTHORITY AND PURPOSE

Section 1. Authority. This Indian Reservation Roads Program Agreement (hereinafter "the Agreement") is entered into by the Administrator, Federal Highway Administration, (hereinafter "Administrator"), for and on behalf of the United States Department of Transportation (hereinafter "DOT") and by the Bear River Band of Rohnerville Rancheria (hereinafter "the Tribe") (collectively hereinafter the "Parties"), under the authority of the Constitution and By-Laws of the Tribe and by resolution of the Tribal Government, a copy of which is attached hereto, and under the authority granted by section 202(d)(5) of Chapter 2 of Title 23, United States Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005), and the Delegations of Authority set forth in 49 CFR § 1.48(b)(29). This agreement will be implemented in a manner consistent with Executive Order 13175 (Nov. 6, 2000, 65 Fed. Reg. 67249) (Consultation and Coordination with Indian Tribal Governments) and the DOT's Order regarding Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes (DOT 5301.1, November 16, 1999), as amended by SAFETEA-LU. This Agreement authorizes the Tribe to perform the planning, research, design, engineering, construction, and

maintenance of highway, road, bridge, parkway, or transit facility programs or projects that are located on or which provide access to the Bear River Band of Rohnerville Rancheria or a community of the Tribe and are eligible for funding pursuant to 25 CFR Part 170. This Agreement is made pursuant to 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFTEA-LU, the Indian Reservation Roads (IRR) Program regulations (25 CFR Part 170), and in accordance with the Indian Self-Determination and Education Assistance Act (hereinafter "the ISDEAA"), Pub. L. 93-638, as amended (25 U.S.C. § 450 et seq.).[1]

Section 2. **Purpose**. The purpose of this Agreement is as follows:

(1) to transfer to the Tribe all of the functions and duties that the Secretary of the Interior would have performed with respect to a program or project under Chapter 2 of Title 23, United States Code, other than those functions and duties that cannot be legally transferred under the ISDEAA, together with such additional activities as the Tribe may perform under SAFETEA-LU and the IRR Program regulations (25 CFR Part 170);

(2) to carry out the Federal Highway Administration's (FHWA) statutory requirements pursuant to section 1119 of SAFETEA-LU and to maintain and improve its unique and continuing government-to-government relationship with and responsibility to the Tribe;

(3) to provide the Tribe or its designee, under the attached Referenced Funding Agreement (RFA), its formula share of IRR Program funds pursuant to 25 CFR Part 170, and those additional amounts as the Administrator determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of

[1] The Tribe and FHWA have recognized that each Party has a different understanding as to the application of the ISDEAA (Act) and its implementing regulations (25 CFR Parts 900 and 1000) to this Agreement. It is expressly understood that through the execution of this Agreement, neither party waives any rights regarding the application of the aforementioned Act and its regulations to this Agreement and no precedent is established for future agreements with this Tribe or any other Indian Tribe. The parties agree to work in good faith to resolve this issue in future agreements.

the program or project, together with such additional Federal Lands Highways funds as the Tribe may receive or otherwise be entitled to through a formula or competitive grant, award, earmark or other appropriation to the Department of Transportation (DOT). The Pacific Region Bureau of Indian Affairs (BIA) Regional Office shall continue to receive the funds identified in 23 U.S.C. § 202(d)(2)(F)(i) for certain program management and oversight (PM&O) activities and project-related administrative expenses as further identified in Article II, Section 2 and the attached RFA (Attachment A).

ARTICLE II – TERMS, PROVISIONS, and CONDITIONS

Section 1. Effective Date and Term: This agreement shall become effective upon the date of its approval and execution by authorized representatives of the Tribe and the Administrator and shall extend for the maximum period authorized by any statutory extensions to SAFETEA-LU. In the event SAFETEA-LU is reauthorized in whole or in part, this agreement shall continue to the extent authorized by law until a successive agreement is negotiated by the parties.

Section 2. Funding.

A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202(d)(5)(E), as amended by section 1119(g)(4) of Pub. L. 109-59, the Administrator shall provide to the Tribe or its designee, through an electronic transfer, a single annual lump sum funding amount equal to the amount that the Tribe would otherwise receive for the IRR program in accordance with the funding formula applicable to the IRR Program (25 CFR Part 170, Subpart C), and such additional amount, as determined by the Administrator that would have been withheld by the BIA for the administration of the Tribe's IRR Program or projects. The Parties agree to annually provide the Tribe the amounts that would have been withheld for the costs of the BIA for administration of the Tribe's program or projects as provided in 23 U.S.C.§ 202(d)(5)(E) and further identified in Attachment A to this Agreement.

B. Upon the execution of this Agreement and the RFA by both Parties, and subject to the availability of funds and the determination of the Tribe's annual Relative Need Distribution Factor (RNDF) percentage, the Administrator shall notify the Tribe or its designee, in accordance with Article IV, section 5, that the funds identified in the RFA are available. The Tribe shall submit electronic banking information under an ACH Vendor/Miscellaneous Payment Enrollment Form (see Attachment B) to the Administrator and the Administrator shall provide to the Tribe a single advance payment in the amount identified in the attached RFA within thirty (30) calendar days of his receipt of the Payment Enrollment Form. The Parties agree that the RFA will be renegotiated annually on a fiscal year basis.

C. Pursuant to section 1119(g)(5)(B) of SAFETEA-LU (23 U.S.C. § 202(d)(5), all funds shall be paid to the Tribe without regard to the organizational level at which the Department of the Interior or the DOT has previously carried out under the Federal Lands Highways Program, the programs, functions, services, or activities (PFSAs) involved.

D. Pursuant to 25 CFR §§ 170.607 – 170.608, Contract Support Costs are an eligible cost and the Tribe may use their IRR Program allocation to pay such costs. The Tribe shall include a line item for Contract Support Costs in the Tribe's project construction budgets. The Tribe may also include, as eligible Contract Support Costs, one-time start-up costs and preaward costs incurred by the Tribe in the initial year of this Agreement in accordance with 25 U.S.C. §§ 450j-1(a)(5) and (6). The Parties acknowledge that no additional IRR Program funds are available for Contract Support Costs.

E. Funds advanced to the Tribe under this Agreement shall be used by the Tribe as permitted under 23 U.S.C. § 202(d) and 25 CFR Part 170, as amended by SAFETEA-LU, other applicable laws, and as authorized under this Agreement. The Tribe reserves the right to reallocate funds among the eligible projects identified on an FHWA-approved IRR Transportation Improvement Program (IRRTIP), so long as such funds are used in accordance with Federal appropriations law. Funds advanced to the Tribe pending disbursement for a purpose authorized under the Agreement shall be placed in appropriate savings, checking or

investment accounts. For purposes of this Agreement, such funds when invested or deposited by the Tribe shall be subject to the following:

(i) Advanced funds not immediately spent for program activities may be invested only in obligations of the United States, in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed by the United States;

(ii) If not invested, advanced funds must be deposited into accounts that are insured by an agency or instrumentality of the United States or must be fully collateralized to ensure protection of the funds, even in the event of a bank failure;

(iii) Interest and investment income that accrue on any funds provided for by agreement become the property of the Tribe in accordance with the provisions of 25 U.S.C. § 450j(b) and may be used on projects identified on an FHWA approved IRRTIP (section 1119(c) of SAFETEA-LU).

(iv) Upon the receipt of funds under this Agreement, the Tribe shall expend the funds for the purposes set forth in this Agreement and as authorized by law; provided however that the Tribe may accumulate multiple annual allocations of IRR Program funds when necessary to fund an eligible project which requires more than one fiscal year of funding and is identified on a tribal TIP or a tribal priority list (25 CFR Part 170).

F. The Tribe may use funds provided under this agreement for flexible financing as provided in 23 U.S.C. § 122, 25 CFR §§ 170.300 – 303, and other applicable laws.

G. 1. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. §122 with the expectation of payment of IRR Program funds to satisfy the instruments, including, but not limited to, the repayment of loan principal and interest on such debt instruments. When the Tribe elects to use flexible financing to advance construct an eligible project or projects under this Agreement, the Administrator agrees (i) to maintain the project(s) on the FHWA-approved TIP until all debt instruments, including interest thereon, are repaid in full by the Tribe, and (ii) at the option and direction of the Tribe (after receipt of electronic banking information on the Payment Enrollment Form by the Administrator), to provide all or a portion of the funds the Tribe is eligible to receive under this Agreement directly to a trustee or other depository so designated by the Tribe pursuant to the provisions of any RFA received by the Administrator thereunder.

2. The designation of an eligible debt financing instrument for reimbursement with funds awarded under this Agreement shall not –

a) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principle or interest on the eligible debt financing instrument entered into by the Tribe; or

b) create any right of a third party against the United States for payment under the eligible debt financing instrument.

H. As authorized by 25 CFR § 170.301, the Tribe may use IRR Program funds to:

(i) leverage other funds; and

(ii) pay back loans or other finance instruments for a project that:

(a) the Tribe paid for in advance of the current year using non-IRR Program funds, including Tribal funds; and

(b) was included in an FHWA-approved IRRTIP.

I. The Tribe may use IRR Program funds awarded under this Agreement to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

J. The Parties agree that this Agreement is entered into, and that funds are made available to the Tribe, in accordance with the ISDEAA pursuant to 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFETEA-LU. Payments made by the Administrator under this Agreement shall be made in accordance with Article II, Section 2.B. herein. In the event funds due the Tribe under this Agreement are not paid to the Tribe in accordance with the requirements of Article II, Section 2.B., the Parties shall rely upon the dispute resolution provisions set forth in Article II, Section 4 of this Agreement.[2]

Section 3. Powers. The Tribe shall have all powers that the Secretary of the Interior would have exercised in administering the funds provided to the Tribe for such program under 23 U.S.C. § 202(d), except to the extent that such powers are powers that inherently cannot be legally transferred under the ISDEAA. Such powers shall include, but are not limited to the Secretary of the Interior's powers under 25 CFR Part 170, together with such duties and responsibilities as may be performed by an Indian tribe under the 25 CFR Part 170 regulations or as are otherwise permitted by law.

Section 4. Dispute Resolution. In the event of a dispute arising under this Agreement, the Tribe and the Administrator agree to use mediation, conciliation, arbitration, and other dispute resolution procedures authorized under 25 CFR § 170.934. The goal of these dispute resolution procedures is to provide an inexpensive and expeditious forum to resolve disputes. The Administrator agrees to resolve disputes at the lowest possible staff level and by consent whenever possible.

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[2] The language of footnote 1 is incorporated by reference herein.

Section 5. Construction of this Agreement. This Agreement shall be construed in a manner to facilitate and enable the transfer of programs authorized by 23 U.S.C. § 202, as amended by SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005).

Section 6. Activities to be Performed. The activities covered by this Agreement are:

- Transportation Planning;
- Construction Management;
- Program Administration;
- Design;
- Construction;
- Road Maintenance as authorized under SAFETEA-LU section 1119(i) (not more than 25% of the funds allocated to a tribe may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation);
- Development and negotiation of Tribal-State road maintenance agreements authorized under section 1119(k) of SAFETEA-LU; and
- Other IRR Program-eligible activities authorized under Chapter 2 of Title 23 or 25 CFR Part 170, as each may be amended by SAFETEA-LU, or other applicable law.

Section 7. Limitation of Costs. The Tribe shall not be obligated to continue performance under this Agreement that requires an expenditure of funds in excess of the amount of funds awarded under this Agreement or the RFA. If, at any time, the Tribe has reason to believe that the total amount required for performance of this Agreement, or a specific activity conducted under this Agreement or the RFA would be greater than the amount of funds provided under this Agreement or the RFA, the Tribe shall provide reasonable notice to the Administrator. If the Administrator does not increase the amount of funds allocated under this Agreement or the RFA, the Tribe may suspend performance of the Agreement until such time as additional funds are made available.

Section 8. Carryover. Any funds provided to the Tribe under this Agreement or the RFA which have not been expended at the conclusion of the fiscal year in which such funds were

allocated shall remain in the custody of the Tribe and be used for the purposes authorized under this Agreement. Determination of the priority and amount of funds to be used for each program, function, service or activity shall be the responsibility of the Tribe, except as limited by law or otherwise proscribed by this Agreement.

Section 9. Applicable Regulations. 25 CFR Part 170, and any amendments thereto apply to this Agreement.[3] The Tribe may seek a waiver of these regulations to the extent permitted by law and as set out in 25 CFR §§ 170.625 and 170.626.

Section 10. Use of Tribal Facilities and Equipment. The Parties agree that the Tribe shall be permitted to utilize IRR Program and other Federal Lands Highway funds awarded under this Agreement to pay such lease/rental rates, as well as to maintain such facilities and equipment when performing PFSAs under this Agreement. For purposes of this Agreement, in those cases where the Tribe reasonably determines, and provides written notice and analysis documentation to the Administrator that the purchase of equipment is more cost effective than the leasing of equipment, the Parties agree that the purchase of construction equipment shall be an allowable cost to the Tribe, as permitted under 25 CFR Part 170, Appendix A to Subpart G, so long as not more than 25% of the Tribe's IRR Program funds are used for this purpose.

ARTICLE III – RESPONSIBILITIES OF THE TRIBE

Section 1. A. Health and Safety. In exercising responsibility for carrying out the eligible programs and projects under this Agreement, the Tribe assures the Administrator that within available funding, they will meet all applicable health, safety, and labor standards related to the administration, planning, engineering and construction activities performed. To this end, and within available funding, the Tribe agrees to obtain or provide qualified personnel, equipment, materials, and services necessary to administer the transportation programs, including opportunities that provide for Indian preference in employment and sub-contracting as mandated by 25 U.S.C. § 450e(b).

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[3] The language of footnote 1 is incorporated by reference herein.

B. Program Standards and Regulations. The Tribe agrees to initiate and perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170, as amended by SAFETEA-LU. Additionally, the Tribe may, at its sole option, adopt applicable FHWA or BIA policies, procedures, program guidelines and memoranda, or develop tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation or administration of any aspect of the programs assumed by or delegated to the Tribe under this Agreement.

C. Plans, Specifications and Estimate (PS&E) Approval Authority.

(1) Tribal and BIA-owned facilities. The Tribe is authorized to review and approve plans, specifications and estimates ("PS&E") project packages in accordance with the requirements of 25 CFR §§ 170.460 through 170.463, as amended by section 1119(e) of SAFETEA-LU (amending § 202(d)(2) of Chapter 2 of Title 23, United States Code), and provide a copy of said PS&E approval to the facility owner. The Tribe hereby:

a) provides assurances under this Agreement that the construction will meet or exceed applicable health and safety standards; b) agrees to obtain the advance review of the PS&E from a State-licensed civil engineer who has certified that the PS&E meet or exceed the applicable health and safety standards; and c) will provide a copy of the State-licensed civil engineer's certification to the Deputy Assistant Secretary for Tribal Government Affairs, with a copy to the Federal Lands Highways Associate Administrator and BIA.

(2) Facilities owned or maintained by a public authority other than the Tribe or the BIA. In the interest of building stronger government-to-government relations in transportation planning and coordination, the Tribe voluntarily agrees to perform its PS&E review and approval function as to facilities owned or maintained by a public authority, as that term is defined in 23 U.S.C. § 101(a)(23), as follows. For a facility

owned or maintained by a public authority other than the BIA or the Tribe, in addition to satisfying the requirements of paragraph (C)(1) herein, the Tribe further agrees to:

(a) provide the public authority an opportunity to review and comment on the Tribe's PS&E package when it is between 75 and 95 percent complete, unless an agreement between the Tribe and the public authority states otherwise;

(b) allow the public authority at least 30 days for review and comment on the PS&E package, unless the Tribe and the public authority agree upon a longer period of time;

(c) before soliciting bids for the project(s), certify in writing to the Administrator that it afforded the public authority an opportunity to review and comment on the PS&E package and received no written comments from the public authority that prevent the Tribe from proceeding with the project.[4]

D. Transportation Planning and Inventory. Within available funding, the Tribe further agrees to carry out a transportation planning process and provide this information to the BIA, with courtesy copies to FHWA, as may be reasonably necessary for the BIA to maintain an updated inventory of roads and bridges and to develop the annual IRR Transportation Improvement Program (IRRTIP).

E. Easements, Maintenance and Utility Agreements, Environmental Assessments. In coordination with local jurisdictions and to the extent required by Federal law and 25 CFR Part 170, the Tribe agrees to develop appropriate construction easements, maintenance and utility agreements needed for the construction of IRR facilities carried out under this Agreement. The Tribe agrees to perform all environmental and archeological review functions under this Agreement

[4] The Parties agree that these procedures establish no precedent for future agreements with this Tribe or any other Indian tribe, nor waives any rights of the Parties.

in accordance with 25 CFR Part 170, Section 6002 of SAFETEA-LU, codified at 23 U.S.C. § 139, and other applicable laws.

F. Construction.

1) In accordance with the FHWA-approved IRR-TIP, the Tribe agrees to initiate and complete IRR construction projects in accordance with the approved PS&E and any Tribally-approved change orders and shall periodically ensure that construction engineering is performed according to applicable FHWA, BIA or Tribal standards which meet or exceed federal standards.

2) The Tribe agrees to expend IRR Program funds on:

(a) program and administrative expenses authorized under:

(i) this Agreement;

(ii) 25 CFR Part 170, as amended by SAFETEA-LU;

(iii) OMB Circular A-87; or

(iv) other applicable law; and

(b) construction activities on projects that are listed on an FHWA-approved IRRTIP.

3) Once an IRR construction project is completed, the Tribe will prepare for the Administrator a final construction report and as-built plans for final inspection in accordance with 25 CFR Part 170.

4) The Tribe agrees to allow FHWA Officials or by mutual agreement, a delegated representative of FHWA, the opportunity to visit project sites on a monthly basis or at critical project milestones, provided that FHWA gives the Tribe reasonable advance written notice. These visits are intended to allow FHWA to carry out its oversight and stewardship responsibilities for the IRR Program or project(s) assumed by the Tribe under this Agreement.

FHWA will not provide direction or instruction to the Tribe's contractor or any subcontractor at any time.

G. **Reporting Requirements.** The Tribe shall provide the Administrator a courtesy copy of its annual single agency audit report; semi-annual progress reports which contain a narrative of the work accomplished; and semi-annual financial status reports using an SF269A - Financial Status Report (Short Form) or such similar form as is used by the DOT. The Tribe shall provide the Administrator the semi-annual reports within ninety (90) days following the conclusion of the reporting period, which shall run from October 1 to March 31 and from April 1 to September 30.

ARTICLE IV – RESPONSIBILITIES OF THE ADMINISTRATOR

Section 1. Provision of Funds. The Administrator shall provide funds pursuant to the RFA to the Tribe to carry out this Agreement in accordance with Article II, Section 2 of this Agreement.

Section 2. Authorize Project Work. The Administrator authorizes the Tribe to carry out preliminary engineering, construction engineering, development of management systems, construction, and maintenance of the programs and projects carried out by the Tribe under this Agreement for PFSAs and projects/facilities included on an FHWA-approved IRRTIP in accordance with the approved PS&E packages, this Agreement, and applicable laws and regulations.

Section 3. Coordination with BIA.

A. The Administrator shall coordinate with the Bureau of Indian Affairs (BIA) concerning transportation functions and activities delegated by law to that agency to aide the Tribe in the proper and efficient administration of the PFSAs performed by the Tribe under this Agreement.

B. The Administrator will encourage a representative of the BIA, with knowledge of the IRR Program, to meet at least annually with a designee of the Tribe and the Administrator to review their respective duties and obligations under SAFETEA-LU, the IRR Program, applicable regulations, and this Agreement with the goal of identifying actions which the Tribe, the Administrator and the BIA can take to ensure the Tribe's successful administration of the transportation PFSAs carried out under this Agreement.

Section 4. Coordination with Public Authorities. The Administrator, or his authorized FHWA representative, upon the Tribe's request, shall coordinate with representatives of a public authority to assist the Tribe during the public authority's review of a PS&E package or final inspection of a completed project to ensure that the public authority's input during the review and comment period, or during the final inspection does not interfere with the Tribe's efficient administration of projects performed under this Agreement.

Section 5. Designated Officials. All notices, proposed amendments, and other written correspondence between the Parties shall be submitted to the following officials:

To the Tribe:	To the FHWA:
Chairman Bear River Band of Rohnerville Rancheria 27 Bear River Drive Loleta, CA. 95551	Associate Administrator Federal Lands Highways (HFL-1) U.S. Department of Transportation 1200 New Jersey Ave, SE, Room E61-316 Washington, D.C. 20590
With a copy to:	With a copy to:
Tribal Transportation Director Bear River Band of Rohnerville Rancheria 27 Bear River Drive Loleta, CA. 95551	Indian Reservation Roads Program Manager (HFPD-1) Federal Highway Administration U.S. Department of Transportation 1200 New Jersey Ave, SE, Room E61-311 Washington, D.C. 20590

Section 6. Federal Construction Standards. The Administrator may provide information about Federal construction standards as early as possible in the construction process. If Tribal construction standards are consistent with or exceed applicable federal standards, the Tribe's

proposed standards will be accepted. The Administrator may also accept commonly used industry construction standards, including design and construction standards adopted by the State of California.

Section 7. Joint Inspection. The Administrator shall conduct the final project inspection jointly with the Tribe and facility owner and shall concur in the BIA's acceptance of the construction project or activity for the purpose of including the completed project in the BIA's IRR Program Inventory.

Section 8. Technical Assistance. Upon the request of the Tribe and subject to the availability of funds, the Administrator shall provide or make available technical assistance to the Tribe to aide the Tribe in carrying out its responsibilities under this Agreement.

Section 9. Reporting. The Administrator shall provide the Tribe with semi-annual reports on program matters of common concern to the parties. The times for these reports are identical to those set out in Article III, Section 1(G).

Section 10. Notice of Additional Funds. If the Administrator receives notice of the availability of additional funding for any purpose authorized under this Agreement, including the availability of unspent IRR Program funds, the Administrator shall promptly notify the Tribe regarding such funding so that the Tribe may apply for any funds they may be eligible to receive on the same basis as any other Indian tribe.

ARTICLE V – OTHER PROVISIONS

Section 1. Eligibility for Additional Funding and Services. The Tribe shall be eligible, under this Agreement, to receive additional IRR Program funds on the same basis as other Indian tribes according to the Tribal Transportation Allocation Methodology (TTAM) set forth in 25 CFR Part 170, as well as other funds of the DOT, not included in this Agreement, which are available to Tribe on a competitive, formula, or other basis, including non-recurring funding such as High Priority Project funding, and Congressional earmarks such as Public Lands Highways

Discretionary grants. Whenever there are errors in calculations or other mistakes regarding estimates of available funding which may need to be renegotiated, both Parties agree to take action as necessary to correct such errors.

Section 2. Access to Data Available to the Administrator to Administer the Program. The Tribe is administering a federal program under the authority of SAFETEA-LU, in accordance with the ISDEAA, and by resolution of the Tribal government. In order for the Tribe to carry out this program effectively and without diminishment of federal services to program beneficiaries, and consistent with this Agreement, the Administrator shall provide the Tribe with all releasable data and information necessary to carry out the PFSAs assumed by the Tribe under this Agreement.

Section 3. Sovereign Immunity. Nothing in this Agreement shall be construed as–

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

Section 4. Trust Responsibility. Nothing in this Agreement shall absolve the United States from any responsibility to individual Indians and the Tribe, including responsibilities derived from the trust relationship and any treaty, executive order, or agreement between the United States and the Tribe.

Section 5. Federal Tort Claims Act/Insurance. In accordance with the provisions of Pub.L. 101-512, Title III, § 314, 104 Stat. 1959, as amended Pub.L. 103-138, Title III, § 308, 107 Stat. 1416 (25 U.S.C. § 450f, note), for purposes of Federal Tort Claims Act coverage under this Agreement, the Tribe and its employees are deemed to be employees of the Federal government while performing work under this Agreement. This status is not changed by the source of the funds used by the Tribe to pay the employee's salary and benefits unless the

employee receives additional compensation for performing covered services from anyone other than the Tribe. The Tribe is also authorized to use the funds provided under this Agreement to purchase such insurance coverage as may be necessary and prudent, in the determination of the Tribe. In full recognition of and without undermining the federal tort claims protection provided in this section, the Parties understand and agree that prudent project management requires that Tribal contractors purchase adequate workers compensation, auto and general liability insurance when completing construction projects funded under this Agreement. Accordingly, the Tribe shall include in any construction contracts entered into with funds provided under this Agreement a requirement that Tribal contractors maintain workers compensation, auto and general liability insurance coverage consistent with statutory minimums and local construction industry standards. The Parties understand and agree that this insurance requirement does not apply to the Tribe itself.

Section 6. Indian and Tribal Preference.

A. Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the IRR Program. Under 25 U.S.C. § 450e(b) and 23 U.S.C. § 204(e), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the IRR Program.

B. The Tribe's employment rights and contracting preference laws, including tribal preference laws, apply to this Agreement.

Section 7. Severability. Should any portion or provision of this Agreement be held invalid, it is the intent of the Parties that the remaining portions or provisions thereof continue in full force and effect.

Section 8. Termination of the Agreement. On the date of the termination of the Agreement by the Tribe as authorized under 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFETEA-LU, or if the Administrator makes a specific written finding and provides notice to the Tribe in accordance with this Agreement that the Tribe is no longer eligible to receive funding

under this section as authorized under section 1119(g)(4) of SAFETEA-LU, the Administrator shall allocate the funds that would have been provided to the Tribe under the Agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law; provided however, that if the Tribe disputes the Administrator's eligibility determination, the Parties may utilize the dispute remedies available under Article II, Section 4 herein, and the Administrator shall suspend any decision to transfer funds to the Secretary of the Interior pending the outcome of the dispute. At the Tribe's election, the Tribe may perform such functions, services and activities as it chooses to include in an ISDEAA contract or agreement to be entered into with the Secretary of the Interior upon the termination of this Agreement.

Section 9. Amendments. Any modification of this Agreement shall be in the form of a written amendment and shall require the signed agreement of a duly authorized representative of the Tribe and the Administrator. The Parties agree to work together in good faith, following the implementation of this Agreement, to identify additional issues or matters that should be addressed in this Agreement subject to the Parties' mutual written consent.

Section 10. Good Faith. The Parties agree to exercise the utmost good faith in the implementation and interpretation of this Agreement and agree to consider and negotiate such additional provisions as may be required to improve the delivery and cost-effectiveness of transportation services.

Section 11. Successor Agreements.

A. Indian Reservation Roads Program Agreement. No later than six months prior to the expiration of this Agreement, the Parties shall commence negotiation of a successor Indian Reservation Roads Program Agreement. It is the intent of the Parties to have a successor Agreement in place to run concurrent with the highway reauthorization legislation which succeeds SAFETEA-LU.

B. Referenced Funding Agreement. Ninety (90) days before the expiration of each year's RFA, the Parties shall commence negotiation of the subsequent year's RFA.

Bear River Band of Rohnerville Rancheria

By Leonard Bowman
Leonard Bowman
Chairman

6-22-10
Date

U.S. Department of Transportation
Federal Highway Administration

By for
John R. Baxter, P.E., Associate Administrator
Office of Federal Lands Highway

6/23/10
Date

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

IN THE MATTER OF THE ACCUSATION OF:

Singley Hills Homeowners Association
P.O. Box 755
Loleta, CA 95551

AGAINST THE ON-SALE GENERAL PUBLIC EATING PLACE LICENSE OF:

Bear River Casino
11 Bear Paws Way
Loleta, CA 95551

FILE: 47-423392
REG.: 08070211

DECLARATION OF SERVICE BY MAIL

under the Alcoholic Beverage Control Act

The undersigned declares:

I am over eighteen years of age, and not a party to the within cause; my business address is 4340 Redwood Highway, Suite E352, San Rafael, California 94903. I served by **REGULAR** mail a copy of the following document:

APPELLANT/RESPONDENT BEAR RIVER CASINO'S REPLY BRIEF

on the following, by placing same in an envelope addressed as follows:

Dean Lueders
Department of Alcoholic Beverage Control - Legal Unit
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Jim McVicker
Singley Hill Homeowners Association
P. O. Box 755
Loleta, CA 95551

Said envelope was then, on August 5, 2010, sealed and deposited in the United States Mail at San Rafael, Marin County, California, the county in which I am employed, with the postage thereon fully prepaid.

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

Executed on August 5, 2010 at San Rafael, California.

Rebecca Schmadeke, Declarant