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2005

5 Attorneys for Bear River Casino Corporation
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8

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

10 IN THE MATTER OF THE PROTEST OF:

11 Antoinette Ballister, et al
12 P.O. Box 591
Loleta, CA 95551-0591

13 AGAINST THE PERSON TO PERSON AND PREMISES TO
14 PREMISES TRANSFER OF AN ON-SALE GENERAL
PUBLIC EATING PLACE LICENSE TO:

15 Bear River Casino Corporation
16 11 Bear Paws Way
Loleta, CA 95551

FILE: 47-423392
REG.: 05060025

**RESPONDENT'S
POST-HEARING
BRIEF**

17 Respondent(s)/Licensee(s)
18 under the Alcoholic Beverage Control Act
19

20 INTRODUCTION

21 On February 25, 2005, Respondent/Licensee, the Bear River Casino Corporation, applied for a
22 person to person and premises to premises transfer of an on-sale general public eating place license
23 (Type 47) formerly held by Larry McCoy. Nearly 220 persons submitted protests to the Department. Of
24 those, 41 timely submitted requests for a hearing on the application. RT 6:9.

25 At the commencement of the first day of hearings, Applicant submitted motions *in limine* to bar
26 the introduction of evidence that would not be relevant to or probative of any of the issues to be
27 determined during the hearing, and to strike the protest of the Singley Hill Homeowners' Association on
28 the grounds that there was no evidence that such an Association actually exists or that the filing of its

1 protest had been duly authorized by that body, if in fact the Association exists. The motions were denied
2 without prejudice as premature. RT 8:7-10. Applicant also moved to preclude Protestants from
3 introducing evidence that was not provided in response to requests for discovery; a ruling on that motion
4 was deferred. RT 9:1-3.

5 The first day of hearings on the application occurred on October 19, 2005. At that hearing, the
6 protests of Antoinette Ballister, Louis Ballister, Kenneth Cunningham, Cary Nash, Kim Nash, Gordon
7 Stevens, Christopher Jones, Morrison James, Christie Wolstrom, Cynthia Moore, Arlene Rose, Charles
8 Pero, David Blackley, James Reeves, Virginia Reeves, Mark Miller, Gena Miller, Tim Daly, Meghan
9 McGee, Steve Gildesgard, Marie Allinger, and Donald Gigland were deemed abandoned due to the
10 named protestants' failure to appear at the hearing.

11 The second day of hearings on the application occurred on March 8, 2006. At that hearing, the
12 protests of Abigail Hudson-Crim, Brodie DeLaney, Renee DeLaney, James DeLaney, and Betty May
13 Nichols were deemed abandoned due to the named protestants' failure to appear at the hearing.

14 The third day of hearings on the application occurred on March 21, 2006. At that hearing, the
15 protests of Kenneth Cunningham, Brodie DeLaney, James DeLaney, Renee DeLaney, Abigail Hudson-
16 Crim, Cary Brian Nash, and Kim Nash were deemed abandoned due to the named protestants' failure to
17 appear at the hearing. On April 26, 2006, protestant Noel Krahforst withdrew his protest. Thus, a total
18 of 13 protests remain to be determined. Set forth below are the reasons why the Department's
19 recommendation to approve the application to transfer the license at issue should be affirmed.

20 THE PARTIES

21 Applicant is the Bear River Casino Corporation, a corporation organized under the laws of the
22 Bear River Band of Rohnerville Rancheria, a federally-recognized Indian tribe that is the beneficial owner
23 of the federal trust lands on which the proposed licensed premises are located. Applicant seeks the
24 transfer of a Type 47 General Eating Establishment on-sale license from Larry McCoy for premises
25 located within the Bear River Casino on the federal trust lands of the Bear River Band of Rohnerville
26 Rancheria.

27 The Department of Alcoholic Beverage Control has recommended the issuance of the license,
28 subject to certain conditions that Applicant has agreed to accept. Originally, 220 individuals objected to

1 approval of the transfer of the license. Of those, a relatively small number actually reside in the general
2 vicinity of the proposed licensed premises, either on Singley Road or on various streets that intersect with
3 Singley Road. None of the protestants lives within 120 feet of the premises proposed to be licensed, and
4 most of the protestants reside elsewhere in Humboldt County, miles away from the proposed licensed
5 premises. Exhibit 1.

6 Of the original 220 protestants, only 41 timely registered their protests for the purpose of
7 participating in the hearing on the protests. Of those, 19 appeared at the October 19, 2005 hearing. The
8 individual protestants who participated in the hearing designated protestant Suzie Fregeau to act as their
9 spokesperson for the purposes of presenting evidence and examining witnesses. RT 6:18.

10 For lack of appearance, 22 of the protests, Antoinette Ballister, Louis Ballister, Kenneth
11 Cunningham, Carrie Nash, Kim Nash, Gordon Stevens, Christopher Jones, Morrison James, Christie
12 Wolstrom, Cynthia Moore, Arlene Rose, Charles Pero, David Blackley, James Reeves, Virginia Reeves,
13 Mark Miller, Gena Miller, Tim Daly, Megan McGee, Steve Gildesgard, Marie Allinger, and Donald
14 Gigland were deemed abandoned and thus dismissed. RT 24:22-23.

15 At the March 8, 2006 hearing, protestants Abigail Hudson-Crim, Brodie DeLaney, Renee
16 DeLaney, James DeLaney, and Betty May Nichols failed to appear, and their protests were deemed
17 abandoned and dismissed. RT 200:4-25, 201:1-25; 202:1-25; 203; 1-25. At the March 21, 2006 hearing,
18 Antoinette Ballister and Louis Ballister, whose protests had been dismissed appeared, but no order ever
19 was entered reinstating their abandoned/dismissed protests. 200:4-25, 201:1-25; 202:1-25; 203; 1-25.

20 Protestant Noel Krahforst, the nearest resident to the proposed licensed premises, has withdrawn
21 his protest, based upon the Bear River Band's completion of acceptable measures to mitigate the impacts
22 of Casino operations on his home. The original of his letter of withdrawal has been submitted to the
23 Department, and a true copy is submitted herewith.

24 One protestant is identified as the "Singley Hill Homeowners' Association" ("SHHA"), an
25 unincorporated association.¹ Applicant moved to strike the purported SHHA protest and exclude any
26

27 ¹ There are 35 residences on or served by Singley Road. RT:525:5-11. In addition, there are 15 residences on the
28 Bear River Band's tribal trust lands. RT 524:23-25. There is no evidence that the fifteen households on the tribal lands are
considered eligible to belong to the SHHA, or that their Indian residents were consulted by the SHHA in connection with this

1 evidence proffered by the SHHA. The motion was based on several grounds: 1) it was signed under
2 penalty of perjury only by Suzi Fregeau, and not by any other member of the purported Association; 2)
3 it was unaccompanied by any certification or other admissible evidence that the Association actually
4 exists; and 3) the protest was unaccompanied by any certification or other admissible evidence that Suzi
5 Fregeau had any authority to execute and file the protest on behalf of the Association, assuming that
6 Association actually exists. RT 7:9-25, 8:1-10. The Administrative Law Judge declined to rule on that
7 motion. RT 7:16-25, 8:10. No evidence ever was offered to meet Applicant's objection or otherwise to
8 substantiate either the existence or composition of the SHHA, that the purported SHHA ever authorized
9 Suzie Fregeau to act on the SHHA's behalf in connection with this matter, or that the protest was made
10 on the personal knowledge and oath of any members of the SHHA other than Suzie Fregeau, assuming
11 that she is in fact a member of the SHHA. Accordingly, because the existence of the SHHA never was
12 established, because its unsworn "protest" is defective *per se* as the unsworn statements of persons who
13 apparently have no personal knowledge of the statements in the protest, and because no evidence was
14 submitted to substantiate that the SHHA ever authorized anyone to act on its behalf, Applicant hereby
15 renews its motion to strike the protest of the SHHA and exclude all evidence offered by it.

16 THE ISSUES

17 At the commencement of the October 19, 2005 hearing, the ALJ identified the following issues
18 as the subject of the proceeding:

- 19 1. There will be a disturbance of quiet enjoyment by the increase in noise emanating from
20 the premises or their patrons;
- 21 2. There is improper zoning for the casino;
- 22 3. There is an unsafe road or roads serving the casino;
- 23 4. The quality of life presently enjoyed by the protestants will be impaired;
- 24 5. There may be destruction of property, namely cattle;
- 25 6. It is a high-crime area and children will be endangered;
- 26 7. Water quality will be diminished;

27
28 matter.

1 8. There is an undue concentration of liquor licenses in the area.

2 RT 17:6-25.

3 SUMMARY OF THE EVIDENCE

4 A. The Department's Evidence.

5 1. Department Investigator Karen Locken.

6 The Department's evidence was presented during the October 19, 2005 hearing (day one), in the
7 form of the oral testimony of Department Investigator II Karen Locken and documentary evidence about
8 which she testified. Exhibit 1 (and its sub-exhibits) was a compendium of the protest letters the
9 Department had received in connection with the proposed license transfer.² Of the protests set forth in
10 Exhibit 1, the protests of Antoinette Ballister, Louis Ballister, Kenneth Cunningham, Carrie Nash, Kim
11 Nash, Gordon Stevens, Christopher Jones, Morrison James, Christie Wolstrom, Cynthia Moore, Arlene
12 Rose, Charles Pero, David Blackley, James Reeves, Virginia Reeves, Mark Miller, Gena Miller, Tim
13 Daly, Meghan McGee, Steve Gildesgard, Marie Allinger, Donald Gigland, Abigail Hudson-Crim, Brodie
14 DeLaney, Renee DeLaney, James DeLaney, and Betty May Nichols have been deemed abandoned and
15 were dismissed. Protestant Noel Krahforst has withdrawn his protest, which also was contained in
16 Exhibit 1.³

17 Applicant objected, based upon hearsay, lack of foundation and relevance, to the receipt into
18 evidence of the various letters comprising Exhibit 1 except for proof that they were submitted, and not
19 for the truth of their contents. The objections were noted but overruled. RT 89:2-21.

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21 ² 1-A: protest of County Supervisor Jimmy Smith (in his individual capacity only -- RT 27:11-13); 1-B: protest of
22 Louis Costa; 1-C: protest of Antoinette Ballister; 1-D: protest of Louis Ballister; 1-E: protest of Steven and Maretta Calkins;
23 1-F: protest of Theodora Costa; 1-G: protest of Singley Hill Homeowners' Association; 1-H: protest of Mike Holmes; 1-I:
24 protest of Valerie Holmes; 1-J: protest of Noel Krahforst; 1-K: protest of Theresa and Jim McVicker; 1-L: protest of Carrie
25 Nash; 1-M: protest of Kim Nash. The protests of Antoinette and Louis Ballister, Cary Nash, Kim Nash, Kenneth
26 Cunningham, Gordon Stevens, Christopher Jones, Morrison James, Christi Walstrom, Cynthia Moore, Arlene Rose, Charles
27 Peneau, David Blackly, James Reeves, Virginia Reeves, Mark Miller, Gina Miller, Tim Daley, Meghan McGee, Merle
28 Aldinger, Steve Giltsguard, Donald Gigland and Pamela Marie Aldinger were deemed abandoned by reason of non-
appearance at the first two hearings, and on that ground were dismissed. *See, e.g.*, RT 18:5-7, 24:1-4, 201:24-25, 203:1).

26 ³ The Department subsequently supplemented its Exhibit 1 with a document received by the Department from
27 someone claiming to be Cheryl Schmidt/Stand Up for California. Applicant objected to any consideration of the contents
28 of that document as not having been timely submitted as a protest, not being sworn, and constituting hearsay. No testimony
was offered about the document, and the ALJ agreed that the truth of the matter set forth in the document is not to be
considered. RT 211-212.

1 Ms. Locken sponsored her Investigative Report (Form ABC 220) (Exhibit 2), Supplemental
2 Diagram and Premises Diagram (Form ABC 253) (Exhibit 3) and the Petition for Conditions (Exhibit 4).
3 Those exhibits were admitted without objection.

4 Ms. Locken testified that Applicant is seeking an On-Sale General Eating Place License for
5 premises within Applicant's tribal gaming casino, a newly-constructed single-story free-standing building
6 measuring approximately 145 feet by 216 feet and located on Indian trust lands. The Casino is located
7 just off a rural, two-lane Humboldt County Road. RT 52-53. This testimony was not contradicted.

8 According to Ms. Locken's testimony, the interior of the Casino building includes a gaming floor,
9 office area/cashier's cage, card room, dining room and lounge. The rated occupancy is 700 persons, and
10 there is sufficient off-street parking. The originally-proposed operating hours were to have been from
11 noon to midnight, seven days per week.⁴ The proposed premises have not previously been licensed. *Id.*
12 This testimony was not contradicted by any other witness or documentary evidence.

13 Ms. Locken testified that she had determined that because the premises are located on Indian trust
14 land, the Tribe is the only governmental entity with authority to zone the land.⁵ Ms. Locken also testified
15 that she had determined that there are no "consideration points" such as a church, school or hospital
16 located within 600 feet of the proposed premises, and that the proposed premises does not fall within an
17 area of either an undue concentration of licenses of high crime. RT 54:5-25. This testimony was not
18 contradicted by any other testimony or documentary evidence.

19 Ms. Locken confirmed that she had discussed the proposed premises with Lt. Mike Downey, the
20 Humboldt County Sheriff's Department Operations Lieutenant responsible for Southern Humboldt
21 County, and that Lt. Downey, "advised that his agency has no objection to license issuance." RT 55:1-17.
22 No other government or law enforcement agency submitted an objection to the transfer of the license.

23 Ms. Locken testified that she had determined that there are no non-tribal residences within 100
24

25 ⁴ The actual operating hours of the Casino are from 9:00 a.m. to 5:00 a.m. Alcoholic beverages are served from
26 10:00 a.m. until 2:00 a.m.

27 ⁵ Ms. Locken's conclusion as to the tribal government's exclusive jurisdiction over land use is correct. *See, e.g.,*
28 *Santa Rosa Band of Indians v. Kings County* (9th Cir. 1975) 532 F.2d 655; *California v. Cabazon Band of Mission Indians*
(1987) 480 U.S. 202. Moreover, the Bear River Band has determined that a casino in which alcoholic beverages would be
served is a permissible use of Rancheria lands. RT 383:14-25, 384:1-11.

1 feet of the proposed licensed premises. RT 55:18-23. There are houses on the Rancheria, but nobody
2 from the Rancheria filed a protest. RT 56:1-25, 56:1-8. This testimony was not contradicted.

3 Ms. Locken testified that in the course of her investigation, she separated the issues raised by
4 protestants into what she called "nonapplicable issues" and "applicable issues." The former included
5 overconcentration of licenses (based upon her knowledge of the concentration of licenses within the
6 census tract), zoning/land use (based on the status of the Rancheria as tribal trust land) and the absence
7 of "consideration points" such as schools, churches, playgrounds, etc. RT 58:11-25, 59:1-25, 60:1. No
8 evidence was offered to contradict Ms. Locken's conclusions regarding these issues.

9 According to Ms. Locken, the "applicable issues" were traffic safety concerns due to an increase
10 in vehicular traffic on Singley Road. RT 60:4-5. Based upon Ms. Locken's investigation, she concluded
11 that the Casino would cause an increase in traffic on Singley Road, but she had no factual basis upon
12 which to conclude that issuing the applied-for liquor license would result in additional traffic. RT 60-9-
13 14.⁶

14 Based upon her observations and investigation, Ms. Locken testified that because the distance
15 between the Casino entrance and the intersection between Highway 101 and the southern end of Singley
16 Road (exit 692) is only three-tenths of a mile, and because that section of Singley Road has only "slight
17 curves," she assumed that most traffic bound for the Casino would use exit 692 and travel only three-
18 tenths of a mile to the Casino, rather than taking exit 694 at the north end of Singley Road and traveling
19 nearly two miles on a curvy, hilly road. RT 60:19-22, 61:22-25, 62:1-12. Traffic heading to the Casino
20 from exit 692 would affect only three residences. Of those three, two are located right next to Highway
21 101, and the owner of the third residence -- which would be most directly affected by Casino traffic --
22 did not file a protest. RT 65:4-17, 67:15-19.

23 Ms. Locken determined that any estimate that approving the transfer of the license would increase
24 the potential for drunk driving on Singley Road would be speculative, particularly given the Applicant's
25

26 ⁶ Applicant's witness John McGinnis, the current Casino general manager who has worked at the Casino since before
27 it opened, later testified -- without contradiction -- that, based on his experience working at the Casino since before it opened
28 that the absence of alcoholic beverage service would reduce the number of patrons by perhaps one percent, although the
decrease in revenues might be greater. RT 530:3-25, 531:1-21.

1 plans to provide alternate transportation to people who may have consumed too much alcohol. RT 68:3-
2 15. As to the condition of the road as a hazard associated with the approval of the license transfer, Ms.
3 Locken testified that, "... there's really no way to determine whether or not more folks are going to be
4 impacted by the bad roadway." RT 69:1-3. While Ms. Locken characterized the condition of the road
5 (particularly the portion north of the Casino) as "bad," she specifically rejected the characterization of
6 Singley road as "unsafe:" "No, it's just your typical county road that's in disrepair. I mean I don't think
7 I could categorize it as being unsafe." RT 72:8-10.

8 Ms. Locken testified that the operation of the Casino, not the service of alcoholic beverages, was
9 responsible for the increase in traffic on Singley Road. RT 67:20-25, 68:1-2. Ms. Locken's testimony
10 on these matters was not contradicted, although various of the protestants expressed their lay opinions
11 that the road is not safe.

12 Based upon her investigation, Ms. Locken recommended that the application should be
13 conditionally issued. RT 69:11-14. Exhibit 4 contains the conditions to which the license would be
14 subject; the Interim Permit under which the Casino has been serving alcoholic beverages since it opened
15 on August 10, 2005 incorporates those conditions.⁷

16 B. Applicant's Witnesses and Documentary Evidence.

17 Because of the number of protestants and the time needed to receive their testimony and evidence,
18 Applicant was unable to present any testimony until the third day of hearings, March 21, 2006.⁸

19

20

21 ⁷ The conditions are summarized as follows: 1) No persons under the age of 21 shall be allowed in any Class III
22 gaming areas where consumption of alcoholic beverages is permitted, except that employees not engaged in the sale or service
23 of alcoholic beverages shall be permitted to be in such areas in the performance of their duties as employees, but minors may
24 be permitted in Class III gaming areas where consumption of alcoholic beverages is allowed while en route to other areas
25 in the licensed premises; 2) Applicant must report in writing any changes in members of the elected tribal board of directors
26 within 30 days of such change; 3) There shall be no exterior advertising or sign of any kind or type, including interior signs
27 visible from without, promoting or indicating the availability of alcoholic beverages; 4) Entertainment shall not be audible
28 beyond licensee's control, including the parking lot, unless an Event Permit Authorization for entertainment is authorized;
5) Alcohol sales, service and consumption shall be permitted only between 10:00 a.m. and 2:00 a.m. daily; and 6) while
alcoholic beverages are being sold, served or consumed, two uniformed security guards must be available to maintain order
and respond to any disturbance inside or outside the premise or the parking lot, and the parking lot shall be patrolled at least
hourly.

27 ⁸ The Applicant submitted one exhibit during the October 19, 2005 hearing: Exhibit A, a rough map showing the
28 general relationship between the site of the Casino, Singley Road and the two exits (692 on the south and 694 on the north)
from Highway 101 by which Singley Road can be accessed.

1 At the March 21 hearing, Applicant presented testimony and exhibits in support of its contention
2 that approval of the transfer of the license would not be contrary to public morals and welfare.
3 Specifically, Applicant offered evidence to show that: 1) the Bear River Band is in the process of
4 finalizing an agreement with Humboldt County to address and mitigate protestants' concerns about the
5 alleged unsafe condition of Singley Road by paying more than \$1 million to widen the southern three-
6 tenths of a mile of Singley Road between the Casino and the Highway 101 interchange⁹ to Humboldt
7 County standards; 2) the Bear River Band has entered into an agreement with Humboldt County to
8 contribute \$66,000 per year for additional law enforcement services in the vicinity of the Casino, and that
9 neither the operation of the Casino nor the service of alcoholic beverages therein since August, 2005 has
10 created any significant law enforcement or other public health and/or safety problems (other than a traffic
11 jam on opening night, a situation that has not recurred); 3) the Bear River Tribal Gaming Agency has an
12 active policy to warn employees against over-serving alcoholic beverages to patrons, and to severely
13 punish any violations of that policy; 4) the entire interior and exterior Casino premises, including the
14 parking lot and the bar area, are under constant and close video surveillance by the Tribal Gaming
15 Agency, using a system of 137 cameras that are monitored at all times by a staff that is on duty twenty-
16 four hours per day, seven days per week (including while the Casino is closed) and is in immediate radio
17 contact with a large force of security officers and watches for signs of over-service or intoxication; 5) the
18 Casino's security force is on duty twenty-four hours per day, seven days per week, and patrols all areas
19 of the Casino (including parking areas), coordinates with the Tribal Gaming Agency's Surveillance
20 Department concerning all incidents (including patrons observed to be purchasing or consuming an
21 excessive number of alcoholic drinks or showing signs of intoxication), checks the identification of
22 persons entering the Casino and arranges for free alternative transportation for patrons whose ability to
23 drive seems impaired; 6) the Casino's food and beverage staff has received and continues to receive
24 appropriate training in the service of alcoholic beverages in accordance with ABC policies and
25 requirements, the Casino maintains and adheres to policies and procedures designed to prevent over-
26 service of alcoholic beverages and the taking of alcoholic beverages or containers outside the Casino; 7)

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28

⁹ The portion of Singley Road used by the overwhelming majority of Casino customers.

1 Applicant takes effective, affirmative measures to minimize the number of vehicles using the northern
2 portion of Singley Road to access or exit from the Casino, and the actual number of vehicles that use the
3 northern portion of Singley Road to access or depart the Casino is extremely small; 8) the amount of litter
4 along Singley Road has decreased since the Casino opened in August, 2005; 9) substantially all of the
5 increase in traffic on Singley Road of which protestants complain is due to the operation of the Bear River
6 Casino, and not to the licensing of the premises for the sale, service and consumption of alcoholic
7 beverages; 10) licensing of the premises at the Bear River Casino for the sale, service and consumption
8 of alcoholic beverages would not significantly disturb the quiet enjoyment of area residents by reason of
9 noise emanating from the Casino or its patrons; 11) that the operation of the Casino and service of
10 alcoholic beverages therein on the trust lands of the Bear River Band has been duly authorized by the
11 government with jurisdiction over the land on which the premises are located; 12) that the licensing of
12 the premises will not degrade the quality of life of area residents; 13) that licensing of the premises has
13 not and will not create law enforcement problems; 14) that licensing of the premises will not impair the
14 environment or the quality of life of residents of the Singley Hill area; 15) licensing of the premises at
15 the Bear River Casino will not create significant risks to children picked up or dropped off by school
16 buses; and 16) Applicant has complied with all of the conditions set forth in its Interim Permit. In short,
17 Applicant's evidence established without substantial contradiction that the sale, service and consumption
18 of alcoholic beverages that occurs at the Bear River Casino has been and will continue to be closely
19 monitored, supervised and controlled, such that the public interest would not be impaired by affirming
20 the Department's recommendation that the applied-for license be approved subject to the conditions under
21 which the premises now are operating.

22 Applicant presented this evidence through the testimony of witnesses and introduction of
23 documentary evidence. Applicant's witnesses were Leonard Bowman, the Chairperson of the Bear River
24 Band and Chairperson of Applicant's Board of Directors; Odell Shelton, Chairperson of the Bear River
25 Tribal Gaming Commission ; Ernie Tompkins, Director of Surveillance for the Bear River Tribal Gaming
26 Commission; Robert Jimenez, Casino Security Director; Philip Burns, Casino Food and Beverage
27 Director; John McGinnis, Casino General Manager; and Erik Smith, a Surveillance Department
28 technician responsible for operation and maintenance of the Casino's video surveillance system, and who

1 personally conducted a count of vehicles entering and leaving the Casino parking lot at peak times over
2 a period of several months. Summaries of the testimony of Applicant's witnesses and the exhibits
3 introduced through them are set forth below.

4 1. Leonard Bowman

5 Mr. Bowman is the elected Chairperson of the Bear River Tribal Council (the governing body of
6 the Bear River Band of Rohnerville Rancheria). RT 382:24. Mr. Bowman also is the Chairperson of the
7 Board of Directors of the Bear River Casino Corporation (Applicant). RT 383:3-7.

8 The Bear River Band has exclusive jurisdiction to regulate land use on the Band's trust lands
9 (which include the site of the Bear River Casino and the proposed licensed premises), as well as to
10 determine whether gaming may be conducted on its lands. Santa Rosa Band of Indians v. Kings County
11 (9th Cir. 1975) 532 F.2d 655; California v. Cabazon (1987) 480 U.S. 202; 25 U.S.C. §2710(d). The Band
12 also has jurisdiction to determine whether to allow the introduction of spiritous liquors onto its lands,
13 subject to applicable State laws. Rice v. Rehner (1983) 463 U.S. 713.

14 The Bear River Band has determined both that operating a casino is an appropriate use of its tribal
15 trust lands, and that the service of alcoholic beverages is permissible and compatible with the other uses
16 of the Band's trust lands. RT 383:14-25, 384:1-11.

17 Mr. Bowman authenticated Applicant's Exhibit B, the Bear River Band's resolution approving a
18 law enforcement services agreement between the Band and Humboldt County Sheriff's Department
19 (approved by the Board of Supervisors) under which the Band is to pay the County \$66,000 per year to
20 supplement law enforcement services that the County Sheriff's Department already is obligated to furnish
21 under 18 U.S.C. §1162, and to offset any increase in law enforcement services resulting from the
22 operation of the Casino on the Band's trust lands.¹⁰ RT 385:5-19. Mr. Bowman also authenticated
23 Applicant's Exhibit C, correspondence between the Sheriff and the Humboldt County Board of
24 Supervisors approving the law enforcement services agreement with the Band. RT 386:4-14.

25 Mr. Bowman also testified that the Band actively is in discussions with Humboldt County about
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27 ¹⁰ As later confirmed by Applicant's witness Robert Jimenez, the Casino has required very little in the way of
28 services from the Sheriff's Department in seven months of operation. RT 457:7-15, 459:1-6.

1 widening and otherwise improving the southern three-tenths of a mile of Singley Road between the
2 Casino entrance and the intersection with Highway 101, and that an agreement in principle has been
3 reached to improve that portion of Singley Road by widening both traffic lanes to eleven feet each, with
4 a five-foot paved shoulder on each side of the road (the County previously had requested four-foot wide
5 shoulders). RT 386:15-25, 390:2-22, 403:12-25, 404:1-2. Some confusion in Mr. Bowman's testimony
6 about the status of the agreement with Humboldt County was clarified by a later witness, John McGinnis.
7 RT 547:1-8. Mr. Bowman also described the Applicant's efforts to discourage patrons from using the
8 section of Singley Road north of the Casino as including placing a left-turn-only sign at the exit from the
9 Reservation. RT 395:3-6.

10 Mr. Bowman described the Bear River Band's efforts to resolve complaints made by neighboring
11 landowners about impacts from the Casino. According to Mr. Bowman, the Bear River Band did
12 everything that it promised to do to mitigate those impacts, including modifying the Casino's plans and
13 designs. RT 396:6-17, 398:1-25.¹¹ With the exception of Mr. Bowman's testimony about the existence
14 and content of a purported agreement between the Bear River Band and former protestant Noel Krahforst
15 concerning measures to mitigate the Casino's impact on the latter's residence, Mr. Bowman's testimony
16 stands undisputed and unrebutted by competent testimony and/or admissible evidence.¹²

17 2. Odell Shelton

18 Applicant next presented the testimony of Odell Shelton, who is the Chairman of the Bear River
19 Tribal Gaming Commission (Mr. Shelton also is the elected mayor of the nearby City of Fortuna,
20 California). RT 417:16-20, 418:14-24. Mr. Shelton described the Tribal Gaming Commission's role in
21 overseeing the service of alcoholic beverages in the Casino as, "To make sure that the rules and
22

23
24 ¹¹ Since the March 21, 2006 hearing, the concerns of the property owner whose home is closest to the Casino, Noel
25 Krahforst, have been resolved to his satisfaction, and he has withdrawn his protest. A copy of that withdrawal is submitted
26 herewith.

27 ¹² Although hearsay may be admissible in this proceeding to supplement or explain other evidence, hearsay alone
28 is not sufficient to support a finding unless the evidence would be admissible over objection in a civil action. Gov't. Code
§11513(d); Komizu v. Gourley (2002) 103 CA4th 1001. As further discussed in the following section of this brief, Applicant
repeatedly objected to much of protestants' testimony and proffered documentary evidence on various grounds, including
relevance and hearsay. Although those objections almost uniformly were overruled, protestants offered no non-objectionable
evidence to support their personal speculations about the likely effects of issuing the applied-for license.

1 regulations are followed." RT 419:3-7. Mr. Shelton authenticated Applicant's Exhibit D, a notice from
2 the Tribal Gaming Commission to Casino employees regarding financial penalties and possible gaming
3 license revocation that the Tribal Gaming Commission would impose on Casino employees who over-
4 served alcoholic beverages to Casino patrons.¹³ RT 419:18-25, 420:1-24. A copy of that policy is given
5 to all Casino employees. RT 426:12-16.

6 Mr. Shelton also described how the service of alcohol is monitored by the Tribal Gaming
7 Agency's extensive system of surveillance cameras. RT 424:25. Mr. Shelton's testimony stands
8 undisputed and un rebutted by competent testimony and/or admissible evidence.

9 3. Ernie Tompkins

10 Applicant next presented the testimony of Tribal Gaming Agency Surveillance Director Ernie
11 Tompkins. Mr. Tompkins is employed by the Bear River Band, not the Casino. RT 429:9-22. His unit
12 of the Tribal Gaming Agency controls 137 high-resolution cameras (most of which are "point, target/tilt
13 and 23-power zoom), and at least two or three members of his twelve-person staff are on duty monitoring
14 those cameras 24 hours per day, seven days a week, even when the Casino is not open for business.¹⁴ RT
15 429:23-25, 430:1-5, 13-25, 431:1-25 432:1-25, 433:1-22. The entire bar area is constantly under
16 surveillance by five cameras, with the images from the cameras being transmitted to video recording
17 equipment and retained for fourteen days. RT:432:14-25, 433:1-9, 435:8-11. In addition, the surveillance
18 operators are trained to train cameras on patrons carrying multiple drinks to determine whether who is
19 consuming the drinks; persons observed consuming more than two drinks are reported to Casino Security
20 via radio for further observation and any action that might be appropriate. RT 433:14-22, 439:4-13. The
21 Surveillance unit of the Tribal Gaming Agency also monitors persons entering the Casino, and advises
22 Security if any persons entering the Casino appear to be intoxicated or otherwise impaired; such persons
23 are not admitted into the Casino. RT 442:1-13.

24 Mr. Tompkins testified that Casino Security officers check the identification of persons entering
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26 ¹³ All Casino employees must be licensed by the Tribal Gaming Commission. RT 425:1-10. If an employee's license
27 is revoked, the employee must be discharged. RT 421:2-7.

28 ¹⁴ Because of overlapping shifts, four surveillance officers are on duty between the hours of 9:00 or 10:00 p.m. and
3:00 a.m. RT 437:10-12.

1 the Casino to determine whether such persons are over 21 years of age, and that if his staff or Security
2 observes someone suspected of being intoxicated, that person is offered transportation home. RT 443:3-
3 14.

4 4. Robert Jimenez

5 Applicant next presented the testimony of Robert Jimenez, the Security Manager for the Casino.
6 Before becoming Security Manager at the Casino, Mr. Jimenez worked for the Bear River Band's Tribal
7 Gaming Agency as a background investigator starting in February, 2005; before that, he was employed
8 in the Security Department at the Blue Lake Casino (RT 483:1), and before that was employed as a traffic
9 officer for the California Highway Patrol between 1979 and 1981, serving in Humboldt County for the
10 last five years of his service with the CHP. RT 448:6-25.

11 Mr. Jimenez authenticated Applicant's Exhibits E-1 (the Casino Security Department's policy for
12 excluding persons from the Casino), E-2 (the Casino Security Department's procedures for checking
13 patron identification at the front door); and E-3 (the Security Department's procedures for policing the
14 gaming floor, including watching for intoxicated guests and, if necessary, cutting off alcohol service to
15 such persons and facilitating sobering up prior to leaving the Casino).

16 Mr. Jimenez testified that the Casino security staff under his supervision consists of 22 officers
17 and four parking valets, who supplement security officers. The security officers are deployed in three
18 shifts over the course of each day, and at least some officers are on the premises at all times, even when
19 the Casino is not open for business. During peak hours, the Casino security staff has at least seven
20 security officers on the premises; those officers that do not have CPR training are receiving it, and
21 officers also have received or will be receiving ABC-approved training specifically concerning the
22 service, sale and consumption of alcoholic beverages. RT 451:1-25, 452:1-8.

23 Casino security officers are posted at the Casino doors, where they check the identification of any
24 person appearing to be under 30 years of age. RT 452:16-22. Persons without appropriate identification
25 are refused admittance to the Casino, except that minors are permitted to enter with an accompanying
26 adult if the destination within the Casino is the food-service area; in such cases, a security officer will
27 escort the minor(s) to the restaurant, the minor's hand will be stamped and the movement of the minor(s)
28 will be monitored by the Surveillance and Security staffs, and further escort would be provided -- even

1 if large numbers of minors are on the premises. RT 469:17-25, 470:1-10, 503:4-16, 504:3-13.

2 The uniformed security staff patrols the entire Casino premises, including the parking areas, and
3 controls vehicular movement on the premises. The parking areas are patrolled at least hourly, and the
4 parking areas are under constant video surveillance. Moreover, information about circumstances in the
5 parking areas is relayed to security staff by parking valets and the parking lot shuttle drivers. Between
6 midnight and 2:00 a.m. on Friday and Saturday nights (the Casino's peak business hours), a security
7 officer is posted at the intersection of Singley Road and the Casino exit road to direct drivers to obey the
8 "Left Turn Only" sign directing drivers to turn left when they exit the Casino property. RT 453:6-22,
9 461:13-25, 487:14-24, 488:1-17. To further discourage patrons from heading north on Singley Road after
10 exiting the Casino parking lot, hourly announcements are made throughout the Casino reminding people
11 to turn left, rather than right, when leaving the Casino. RT 460:7-25.¹⁵

12 The Security Department's officers are instructed to look for intoxicated guests; if one is observed,
13 the officers are to cut off his/her drinking by notifying service personnel. RT 468:14-22. Indicia for
14 intoxication include abnormal actions, imbalance, slurred speech, spilling of drinks, etc. RT 469:1-4.
15 Security Department officers absolutely prohibit patrons from taking beverage containers out of the
16 Casino. RT 469:5-7.

17 Mr. Jimenez also described the Casino Security Department's policy and practice regarding the
18 permanent documentation of unusual incidents occurring at the Casino, a requirement of the Bear River
19 Band's Class III gaming compact with the State of California. An "incident" would include summoning
20 outside law enforcement, fire or ambulance assistance, injuries to persons, or traffic collisions on the
21 property. Mr. Jimenez is personally familiar with the incident reports generated during his tenure at the
22 Casino (which predated the Casino's opening), and testified without contradiction that since the Casino
23 opened, there have been only a couple of occasions on which outside law enforcement assistance was
24 needed; none of those incidents involved the consumption of alcoholic beverages at the Casino, the
25 Security Department has not had to summon the assistance of a fire department or ambulance in

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¹⁵ Because Singley Road is a County road, neither Applicant nor the Bear River Band has the legal ability to block its use north of the Casino, whether by residents or Casino patrons. RT 481:1-14.

1 connection with an alcohol-related incident, and the Casino has not received any complaints from the
2 Sheriff's Department about law enforcement problems at the Casino that may be attributable to the sale
3 or consumption of alcoholic beverages. RT 456:1-25, 457:1-15, 458:7-11, 459:1-6. Were such assistance
4 required, it would be readily available from any or all of several law enforcement agencies, including the
5 CHP, the Humboldt County Sheriff's Department and/or the City of Fortuna Police Department. RT
6 490:9-17, 493:1-23.

7 Mr. Jimenez described the Casino's program for providing transportation to Casino customers
8 whose driving ability has been impaired (using the .08 blood alcohol standard). That program consists
9 primarily of a shuttle service that the Security Department makes available to customers at no cost. RT
10 458:12-24, 475:6-9. That service has transported customers to Eureka and beyond, at no charge to
11 customers. RT 477:11-18,¹⁶ and is extended even to persons who arrive at the Casino in an intoxicated
12 condition (such persons are not admitted, and outside law enforcement agencies are notified if such
13 persons decline alternative transportation, assuming that identifying information can be ascertained). RT
14 498:5-25.

15 Mr. Jimenez gave a definitive description of the Casino's policy for preventing over-service of
16 alcoholic beverages to individual customers. In addition to observing customer behavior for signs of
17 intoxication, Casino staff are instructed not to permit a customer to simultaneously purchase more than
18 one drink unless each drink is destined for a different person, and a patron must wait at least ten minutes
19 before ordering another drink for him/herself.

20 Mr. Jimenez also provided estimates, based upon his experience as a Highway Patrolman
21 investigating traffic accidents and other law-enforcement matters, about the distances between the Casino
22 premises and nearby residences and the relative safety of Singley Road. He estimated that the distance
23 between the edge of the Casino parking lot to the nearest non-tribal residence on the north side of the
24 Casino is approximately 150 feet,¹⁷ and the distance between the southern edge of the Casino parking lot

26 ¹⁶ In response to questions from the ALJ as to whether Applicant or the Bear River Band could establish a remote
27 parking lot that would eliminate the need for patrons or employees to use Singley Road, Mr. Jimenez explained that no such
land currently is available. RT 475:16-25; 476:1-25

28 ¹⁷ The dwelling of Noel Krahforst, whose protest since has been withdrawn.

1 and the nearest non-tribal residence to the south is approximately 450 feet, with approximately 900 feet
2 separating the southern edge of the Casino building and the nearest non-tribal residence.¹⁸ Mr. Jimenez's
3 testimony was not disputed or controverted, except that various protestants offered their lay opinions
4 regarding the safety of Singley Road.

5 6. Philip Burns

6 Mr. Burns is the Casino's Food and Beverage Manager. Mr. Burns described the ABC-approved
7 training on avoiding over-service of alcoholic beverages that Food and Beverage Department have
8 received and are receiving on an ongoing basis, as well as the Casino's own policies on that subject. Mr.
9 Burns authenticated Applicant's Exhibits F (a certificate of training of responsible beverage certification)
10 and G (a "Notice to Food and Beverage Staff" that he authored regarding avoiding over-service of
11 alcoholic beverages to patrons). RT 505:13-24, 506:1-24, 507:11-25.

12 Mr. Burns described other measures that the Casino takes to avoid over-serving alcoholic
13 beverages, including the use of devices to limit the amount of liquor served in one pour, absence of free
14 drinks, lack of happy hours, lack of exterior signage, procedures to be followed on service and
15 consumption of drinks at and after the last call at 1:30 a.m., a 16-ounce limit on beer size, lack of double
16 shots of liquor, limits on the number of alcoholic drinks that a patron may order at one time,¹⁹
17 discontinuation of sales of beer by the pitcher, the time that must elapse between drink purchases (at least
18 ten minutes), and procedures to be followed when a patron orders drinks too frequently or is to be cut off
19 due to apparent intoxication.²⁰ RT:508:5-25, 509:1-25, 510:1-25, 511:1. Mr. Burns also testified that
20 the Casino does not serve food or beverages in containers bearing the logo of either McDonald's or Burger
21 King. RT 508:22-24. Mr. Burns' testimony stands unrebutted or disputed.

22 7. John McGinnis

23 Mr. McGinnis is the General Manager of the Bear River Casino, and was involved in the Casino's
24

25 ¹⁸ The owner of that residence did not file a protest.

26 ¹⁹ A patron may order two drinks, but one of the drinks must be for another patron.

27 ²⁰ "They are to remove any alcoholic beverages from the person's possession, alert the other staff members they
28 are working with, the other bartenders, the other cocktailers and then call security. And security and surveillance both
monitor the person from that point forward." RT 510:18-25, 511:1.

1 development, planning and construction. He is a member of the Bear River Band, and his duties include
2 oversight of every Casino department to ensure that every department is in compliance with all legal
3 requirements and that every manager is doing his/her job. RT. 518:9-25.

4 Mr. McGinnis participated in meetings with former protestant Noel Krahforst to discuss measures
5 to mitigate the Casino's impacts upon his residence, and Mr. McGinnis described the measures taken and
6 expenses incurred by the Applicant to address Mr. Krahforst's concerns. RT 519:1-25, 520:1-25, 521:1-
7 23, 522:1-25, 523:1-4. The hearing record contains conflicting evidence about what the Bear River Band
8 actually had agreed to do for Mr. Krahforst and the adequacy of the measures that were taken to mitigate
9 the Casino's impacts; however, since the hearing, Mr. Krahforst has reached an agreement with the Bear
10 River Band concerning mitigation measures, and on that basis has withdrawn his protest. See April 26,
11 2006 letter from Noel Krahforst to Judge Greenberg withdrawing his protest and objections from
12 consideration, the original of which is attached hereto and offered as Applicant's Exhibit I.

13 Mr. McGinnis testified that the Casino's peak days and hours of operation begin on Fridays at
14 about 5:30 p.m. until Sundays at 2:00 a.m., and that so few patrons are in the Casino the rest of the week
15 (particularly Sundays after 2:00 a.m. through Thursdays) that the Casino operates a "skeleton crew" of
16 one hostess and two servers in the restaurant, and one bartender and one drink server for the rest of the
17 Casino during those times. RT 523:9-25, 524:1-15. According to Mr. McGinnis, the Casino does only
18 about 15% of its business between the hours of 9:00 a.m. and 3:00 p.m.; during those hours, most of the
19 patrons are "elderly" -- or at least older than Mr. McGinnis. RT 536:20-21, 537:2-8.

20 Mr. McGinnis testified that there is no school bus traffic on Singley Road on either Saturdays or
21 Sundays, and that on Monday through Friday during the school year, the school bus comes to the
22 Reservation (and presumably elsewhere on Singley Road at about 8:00 a.m. (while the Casino is closed),
23 and delivers children back to the Reservation (and presumably elsewhere on Singley Road) between 2:30
24 and 2:45 p.m., during the Casino's least busy hours. The bus makes no stops on Singley Road south of
25 the Reservation, although it picks up and drops off children on Singley Road north of the Reservation,
26 and on Eel River Road after it leaves Singley Road south of the Reservation. RT 533:2-20, 534:2-7,1
27 535:1-25, 536:1-8.

28 Consistent with Ms. Locken's undisputed and unrebutted testimony, Mr. McGinnis testified that

1 the sale of alcoholic beverages has a negligible impact on the amount of patronage (and hence traffic)
2 generated by the Casino's operation. Specifically, he testified that if the Casino were to cease serving
3 alcoholic beverages, total patronage would decline by perhaps one percent, although there would likely
4 be a greater reduction in the dollar volume of business. RT 530:6-25, 531:1-21, 532:1-7.

5 Mr. McGinnis described the efforts that the Bear River Band has made to reach agreements with
6 Humboldt County and Cal-Trans to improve the flow of traffic on Singley Road and at the southern
7 intersection of Singley Road and Highway 101. According to Mr. McGinnis, the Bear River Band is
8 committed to widening the southern three-tenths of a mile of Singley Road to eleven-foot traffic lanes
9 and five-foot wide paved shoulders, and is working with County Supervisor Smith to improve signage
10 that would discourage drivers from using the northern portion of Singley Road to travel to or from the
11 Casino. Mr. McGinnis testified that the plans for the project are being finalized by traffic engineers
12 Winzler & Kelly, and that, subject to County approval, the work should be completed by September 30,
13 2006; Mr. McGinnis also expressed the intention that the project would be completed by August 31,
14 2006. RT 539:16-24, 540:1-24, 541:1-18, 542:2-20, 543:1-25, 544:1-25, 545:1-18; Exhibits H-1-3. The
15 Tribe's ability to commence construction, and thus to meet that target date will, of course, depend upon
16 the County's timely approval of the plans that have been submitted. A copy of the Bear River Band's
17 application to Humboldt County for the necessary encroachment permit is submitted herewith as Exhibit
18 "I," of which official notice is requested.

19 Mr. McGinnis testified that Applicant is making a concerted effort to reduce the amount of litter
20 present along Singley Road, even though virtually none of the litter along the road can be attributed to
21 the Casino.²¹ Specifically, Applicant has created a litter crew that walks the entire length of Singley Road
22 on Sundays to pick up litter. RT 529:3-19. Indeed, protestants concede that the amount of litter along
23 Singley Road has declined since the Casino opened. RT 140:10-17. Mr. McGinnis' testimony stands
24 undisputed and unrebutted by competent testimony and/or admissible evidence.

25 8. Erik Smith

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28 ²¹ As discussed in the following section of this brief, much of protestants' "evidence" about litter along the road was collected long before the Casino opened for business on August 10, 2006, and consists of items that are not sold at the Casino.

1 Mr. Smith is employed by the Bear River Tribal Gaming Agency as the surveillance technician
2 responsible for maintaining the surveillance system's video cameras and recording devices. RT 551:3-13.
3 He described the resolving power of the cameras as capable of reading what is printed on the shirts worn
4 by Casino security officers: "Customer Service" and "Security." RT 551:23-25, 552: 1-11.

5 Mr. Smith described the efforts that Applicant has made to monitor and document the movement
6 of vehicular traffic at the intersection of Bear River Drive and Singley Road. Specifically, Mr. Smith
7 testified that Applicant has conducted traffic monitoring on Thursday, Friday and Saturday nights
8 between the hours of 6:00 p.m. and 2:00 a.m., beginning in mid-December, 2005 and continuing through
9 mid-March, 2006, by directing a dedicated video camera (connected to a recording device) toward that
10 intersection, thus making a record of the actual traffic to/from that intersection north and south on Singley
11 Road (the actual Casino entrance is on Bear Paws Way, which is reached by turning onto Bear River
12 Drive from Singley Road; Applicant's Exhibit A; RT 553:1-25, 554:1-25). Mr. Smith positioned the
13 camera, reviewed the actual recordings to produce vehicle counts and made complete notes of his
14 observations. At the ALJ's suggestion, Mr. Smith presented a summary of his observations, rather than
15 introducing the DVDs on which the actual traffic movements were recorded, and which Mr. Smith
16 reviewed. RT 555:1-25.

17 According to Mr. Smith's uncontradicted and unrebutted testimony, no more than six percent of
18 the vehicles leaving the Casino turned north (right) onto Singley Road, and the greatest number of cars
19 turning right onto Singley Road from the Casino between 6:00 p.m. and 2:00 a.m. was 32 on March 10,
20 2006 -- an average of four cars per hour -- out of a total of 604 vehicles (Mr. Smith's count excluded
21 vehicles coming from elsewhere on the Reservation).²² RT 556:16-25, 557:1-14. Two of those vehicles
22 turned to the south after their drivers conversed with the traffic control security officer on duty at the time.
23 RT 561:1-9.

24 In summary, the evidence offered by the Department and Applicant affirmatively has established
25 that: 1) the quiet enjoyment of nearby residents will not be disturbed by noise emanating from the
26 premises or Casino patrons due to the surveillance and security measures that Applicant is obligated to
27

28 ²² There are 15 residences on the Reservation, and 12 operable cars. RT 558:13-19.

1 take under its Gaming Compact and that Applicant has taken and will continue to take, and by the
2 conditions that the Department has proposed; 2) Humboldt County lacks jurisdiction to zone the tribal
3 trust land on which the Casino is located, and the Bear River Band has authorized both the use of its land
4 for the Casino and, through the enactment of a tribal liquor ordinance that has been approved by the
5 Secretary of the Interior, the sale, service and consumption of alcoholic beverages; 3) even in its current
6 condition, Singley Road, while currently not well-maintained, is not particularly unsafe (especially the
7 southern three-tenths of a mile of Singley Road that is used by more than 90% of Casino-related traffic),
8 but that nonetheless the Bear River Band has committed to improving the southern three-tenths of a mile
9 of Singley Road to County standards, with eleven-foot traffic lanes and five-foot paved shoulders; 4) the
10 sale, service and consumption of alcoholic beverages at the Casino will not adversely impact the quality
11 of life of protestants, because the Casino does not contribute to litter along Singley Road and the
12 overwhelming majority of Casino-related traffic uses the southern three-tenths of a mile of Singley Road,
13 rather than the northern portion of Singley Road; 5) granting the applied-for license will not cause an
14 increase in crime, and the Casino is not located in a high-crime area; 6) approving the applied-for license
15 will not endanger schoolchildren, because the Casino is closed during the morning hours when
16 schoolchildren are picked up by the school bus, and very few patrons are present in the afternoon when
17 the school bus delivers children to stops on Singley Road; 7) absolutely no evidence was introduced to
18 show that approving the applied-for license would have any impact on area water supplies; 8) there is not
19 an overconcentration of licenses in the area; and 9) the concerns of the nearest resident to the Casino have
20 been mitigated to his satisfaction, and he has withdrawn his protest.

21 C. Protestants' Evidence

22 Protestants' evidence consisted of the testimony of Jimmy Smith, Susan Fregeau, Theresa
23 McVicker, Maretta Calkins, Mike Holmes, Louis Costa, James McVicker and Noel Krahforst (who since
24 has withdrawn his protest). Protestants submitted numerous exhibits, primarily consisting of photographs
25 of Singley Road, accident scenes and reports, old and recent correspondence from Humboldt County
26 employees and others concerning the Bear River Band's development of its Casino and improvement of
27 Singley Road. Applicant objected to the receipt into evidence of each of the items of correspondence and
28 many of the photographs on a variety of grounds, including relevance, lack of foundation and hearsay.

1 Those objections routinely were overruled, and the materials were admitted.

2 Although these hearsay documents and other evidence may be admissible to supplement or
3 explain other evidence, protestants still had the burden of identifying the admissible evidence that the
4 hearsay evidence supplements or explains. Komizu v. Gourley, supra. Other than to lay the foundation
5 for many of the photographs, protestants failed to produce any such evidence during the three days of
6 hearings. Specifically, protestants failed to present testimony from the authors of these documents --
7 particularly those pertaining to Singley Road -- so that Applicant could subject the opinions and purported
8 facts contained in the documents to cross-examination. Therefore, the numerous documents offered by
9 protestants cannot serve as the basis for any of the factual findings that protestants may seek.

10 1. Jimmy Smith

11 Mr. Smith is the local elected Supervisor, but Humboldt County has not protested the application.
12 Mr. Smith acknowledged that Humboldt County has no jurisdiction to zone the land on which the Casino
13 is located (RT 39:19-23); his testimony concentrated on what he believes to be the substandard condition
14 of Singley Road. Mr. Smith presented Exhibit I, a document that had not previously been provided in
15 discovery, to which Applicant objected on grounds of lack of authentication, multiple levels of hearsay
16 and lack of relevance, given that the document pertained to an old project, not Applicant's current facility.
17 Mr. Smith agreed that southern Singley Road between Highway 101 and about 1/4 mile north of the
18 Casino entrance is narrow, but "not real curvy." RT 41:4-6. Mr. Smith had no personal knowledge of
19 the current width of Singley Road. RT 41:18-24. Mr. Smith had no evidence that serving alcohol at the
20 Casino would increase the number of vehicles going to the Casino. RT 43:18-21.

21 2. Susan (Suzie) Fregeau

22 Ms. Fregeau testified about her belief that Singley Road is unsafe. Ms. Fregeau did not establish
23 her qualifications as an expert on road or traffic safety. Ms. Fregeau presented various photographs
24 depicting cars parked on Singley Road, vehicles on Singley Road and the surface of Singley Road
25 (Protestants' Group Exhibit IVA-D). Much of the documentary evidence offered by Ms. Fregeau dated
26 from 1997. Ms. Fregeau confirmed that the school bus picks children up at about 8:00 a.m. (when the
27 Casino is closed) and drops children off between 3:30 and 4:00 p.m., ninth months out of the year. Ms.
28 Fregeau agreed that the service of alcohol at the Casino likely would not result in a significant increase

1 in traffic on Singley Road. RT 113:13-16. Ms. Fregeau testified that she observed 25 cars passing her
2 house in a three-hour period on a Saturday; she was unable to say whether the cars were bound to or from
3 the Casino. RT 115-6-15. Although Ms. Fregeau testified at considerable length and offered numerous
4 exhibits, she did not offer any evidence, other than her personal opinions and speculations, on any of the
5 issues identified by the ALJ as material to the proceeding.

6 Despite Applicant's motion at the outset of the first hearing to strike the protest of the Singley Hill
7 Homeowners' Association, Ms. Fregeau also failed at any point during the three days of hearings to
8 present any evidence concerning the existence of the Singley Hill Homeowners' Association, its
9 authorization of the filing of a protest in its name or the Association's personal knowledge of the contents
10 of its purported protest, which was not sworn to by anyone other than Ms. Fregeau.

11 2. Theresa McVicker

12 Ms. McVicker testified about seeing ten vehicles turn north out of the Casino parking lot in two
13 months' time, about an incident that occurred on a foggy night several years before the Casino opened,
14 and about seeing cars moving at what she regarded as unsafe speeds. She expressed concern for the safety
15 of wild animals and livestock, as well as children in the road. Ms. McVicker testified about the
16 occurrence of three traffic accidents between 1999 and 2003 that she did not personally observe, long
17 before the Casino opened. RT 117:23-25, 118:1-17, 119:3-25, 120:1-25, 132:4-8. Ms. McVicker offered
18 no testimony upon which a denial of the applied-for license could be based.

19 4. Maretta Calkins

20 Ms. Calkins testified that one of the accidents to which Ms. McVicker referred occurred in
21 December, 2000, and that another occurred after that when the driver apparently fell asleep at the wheel.
22 RT 134. Ms. Calkins testified that tribal members turn right out of the Rancheria entrance. Ms.
23 McVicker testified that she collects litter along Singley Road, including McDonald's wrappers, and that
24 the litter problem actually has decreased since the Casino opened. RT140. Ms. Calkins presented no
25 evidence that would justify denial of the applied-for license.

26 5. Mike Holmes

27 Mr. Holmes testified that he leaves home between 3:30 and 5:00 a.m., that on a number of
28 occasions he observed a large truck parked on Singley Road near the Casino, and that on one dark

1 morning, several hours after the Casino ceased serving alcohol, he observed what he believed to be a
2 Casino employee assisting an individual whom Mr. Holmes believed to be the intoxicated driver of the
3 truck as the driver attempted to get into the truck. RT 143-146. Mr. Holmes did not speak with any of
4 the participants in this incident, and had no actual knowledge whether the alleged truck driver was in fact
5 intoxicated, or that the person assisting the driver in fact was associated with the Casino in any way. RT
6 176-178.

7 Mr. Holmes testified that traffic volume on Singley Road has increased since the Casino opened
8 in August, 2005, but that he does not regularly use a flagger when exiting his driveway with a large stock
9 trailer, which he sometimes has difficulty keeping on his side of the road. RT 177-179. Mr. Holmes
10 offered several photographs of his vehicle and his dwelling, and offered his speculation about the impact
11 that intoxicated drivers would have on livestock fences and ranchers' liability for loose cattle. RT 150-
12 154. Mr. Holmes also testified that he believed that a tribal member was intoxicated when the member
13 drove through a fence, wrecked his car and trespassed across Mr. Holmes' land on the way back to the
14 Rancheria. RT 167. Mr. Holmes described an incident in which he was passed on the right by a driver
15 whom Mr. Holmes believed to be intoxicated and coming from the Casino (but whom Mr. Holmes did
16 not see leave the Casino), and who then sideswiped a parked vehicle on Singley Road. RT 215. Mr.
17 Holmes attempted to offer into evidence some police reports regarding traffic accidents, but they properly
18 were rejected upon objection. RT 221:15-25, 226:22-24. Mr. Holmes complained of a general increase
19 in people using Singley Road, including walkers and bicyclists -- none of which had anything to do with
20 the service of alcohol at the Casino. RT 170.

21 6. Louis Costa

22 Mr. Costa lives to the north of the Casino on Singley Road. Mr. Costa testified about cars that
23 he has observed parked on the side of Singley Road after what appeared to him to have been accidents.
24 He introduced some photographs of the vehicles. He did not witness any of the accidents or have
25 personal knowledge as to their causation. Applicant objected to the police reports that he offered on the
26 basis of hearsay; the objection was overruled. RT 247. Mr. Costa testified that he has seen evidence of
27 about ten accidents in twenty-one years. RT 251. Mr. Costa provided no evidence that would support
28 the denial of the applied-for license.

1 7. James McVicker

2 Mr. McVicker testified and offered photographs about what he believed to be indications of
3 reckless driving on Singley Road. He did not link that evidence to the Casino or the service of alcohol
4 at the Casino, and provided no probative evidence to support a denial of the applied-for license.

5 8. Theresa McVicker

6 Ms. McVicker testified again to attempt to offer a diagram purporting to show that a vehicle
7 towing a trailer may cross the center line of a road. The diagram was not received in evidence. Ms.
8 McVicker offered no further evidence to support a denial of the applied-for license.

9 9. Noel Krahforst

10 Mr. Krahforst is the nearest non-tribal resident to the north of the Casino. Most of Mr. Krahforst's
11 testimony pertained to his individual complaints about the impacts of the Casino on him. Mr. Krahforst
12 has reached an agreement with the Bear River Band regarding the mitigation of his complaints, and has
13 requested that his protest be withdrawn.

14 In summary, protestants failed to offer evidence to sustain their complaints that their quiet
15 enjoyment and quality of life would be adversely affected by the issuance of the applied-for license, or
16 that the issuance of the license would cause problems for law enforcement, endanger children, property
17 and animals, or any of the other grounds for protest asserted by them. Rather, the evidence shows that
18 protestants' real complaint is that the Casino exists at all, not that alcoholic beverages are to be served on
19 the premises. Indeed, to the extent that persons patronizing the Casino may be consuming alcohol off the
20 premises, the evidence would support a finding that approving the applied-for license actually would
21 enhance the public welfare and morals by bringing the consumption of alcohol by Casino patrons under
22 much stricter control, and making the Casino's resources available to persons who might become
23 intoxicated.

24 The law requires that a decision by the Department to do anything other than approve the applied-
25 for license must be based upon facts -- not merely protestants' fears and speculation -- that would
26 establish a demonstrable relationship between the grounds asserted by protestants and the service of

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1 alcoholic beverages at the Casino.²³ No such showing has been or can be made in this case, Applicant
2 having affirmatively rebutted protestants' allegations.

3 CONCLUSION

4 For all of the reasons set forth above, the applied-for license should be approved.

5
6 Dated: June 1, 2006

Respectfully submitted,

7
8 By: 

9 George Forman
10 FORMAN & ASSOCIATES
11 Attorneys for Applicant/Respondent
12 Bear River Casino Corporation
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28 ²³ See Win River Mini Mart Corp. v. McGowan, ABC Appeals Board Case No. AB-7628.

April 26, 2006

Re: Bear River Casino: FILE 47-423392 REG. 05060025

Dear Judge Greenberg:

In response to your instructions that the Applicant (Bear River Casino) and I reach an agreement regarding privacy issues impacting my residence (essentially casino parking lot and road activity), and as a result of the Applicant's completed mitigation efforts to restore my privacy and compensate me for the cost of sound deadening windows, I wish to withdrawal my letter of protest and the objections contained therein from consideration in your decision regarding this alcohol license.



Noel Krahforst
Protestant
525 Singley Rd.
Loleta, CA 95551

