BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA

AB-8336
File: 47-392950 Reg: 04056912

COUNTY OF SAN DIEGO, et al.,
Appellants/Protestants

v.

BARONA TRIBAL GAMING AUTHORITY
dba Barona Valley Ranch Casino and Resort
1932 Wildcat Canyon Road, Lakeside, CA 92040,
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: June 2, 2005
Los Angeles, CA

ISSUED AUGUST 29, 2005

County of San Diego, et al. (appellants/protestants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which granted the application of Barona Tribal Gaming Authority, doing business as Barona Valley Ranch Casino and Resort (respondent/applicant), for an on-sale general license.

Appearances on appeal include appellant/protestant County of San Diego ("the County"), appearing through its counsel, John J. Sansone, and appellants/protestants C. Ingrid Coffin and Robert B. Coffin, appearing through their counsel, Robert B.

[1]The decision of the Department, dated August 26, 2004, is set forth in the appendix.

Coffin;[2] respondent/applicant Barona Tribal Gaming Authority ("Barona"), appearing through its counsel, William R. Winship, Jr.; and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

On or about September 18, 2002, Barona petitioned for issuance of an on-sale general license. Tannie Kelpin, a Department licensing representative, recommended that the license be issued. Protests were filed by the County and 75 individual protestants. An administrative hearing was held on the protests on June 15 and 16, 2004, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which overruled appellants' protests, dismissed the protests of those protestants who did not appear, and allowed the license

[2] The notice of appeal filed by Robert B. Coffin was silent as to the parties on whose behalf the appeal was filed. Coffin represented himself and his wife at the administrative hearing, was designated "lead protestant" by the administrative law judge (ALJ), and conducted the direct examination of those individual protestants who testified. A supplemental notice of appeal filed by Coffin incorporated by reference the contents of the notice of appeal filed by the County, and recited that it was filed on behalf of "protestants and appellants."

Thereafter, on March 10, 2005, Coffin filed a document entitled "Appellants' Opening Brief on Appeal, which recited that it "is being filed on behalf of everyone who filed a protest of the license application." No issue is raised in that brief with respect to the protestants who were dismissed for failure to appear at the hearing. Although Coffin did not formally represent the individual protestants at the administrative hearing, he was their spokesperson, in effect acting as their counsel. Consequently, we have elected to treat the following protestants as additional parties to this appeal, since they appeared at the hearing and the issues they raised in their letters of protest were essentially the same as those raised by the Coffins and the County: George English, Judy Fritz, Randolph Fritz, Sue Fritz, Mary Ann Holloway, David G. Landry, Geraldine M. Larson, Sheila A. Leaming, Mark Meador, Joan Embrey Pillsbury, W. Duane Pillsbury, Connie Poland, Paula Wansley, and Ronald Webb. Robert Coffin, Ingrid Coffin, and the protestants listed in this paragraph, shall be referred to as "the Coffin protestants."

to issue.[3] Protestants have filed timely notices of appeal.

The County raises three broad issues, contending: (1) that findings of fact contained in the Department decision regarding road conditions are no longer accurate; (2) that the County was not provided a full and fair hearing in violation of its due process rights; and (3) that the Department's findings and decision are not supported by substantial evidence in light of the whole record. In addition, the County has moved to augment the record on appeal to include any "Report on Hearing" which may have been provided to the administrative law judge before he prepared his proposed decision in this matter.

The Coffin protestants raise additional contentions: (1) the administrative law judge (ALJ) and the Department did not proceed according to law in that the ALJ improperly shifted the burden of proof from the applicant to the protestants; (2) the Department failed to make a thorough investigation to determine whether the applicant and the premises qualify for a license, and failed to investigate all matters thereafter which may affect the public welfare and morals;[4] (3) the decision is not supported by

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[3] Approximately three months prior to the administrative hearing, the Department granted Barona an interim operating permit, pursuant to Business and Professions Code section 24044.5. That code section authorizes the Department to grant such a permit when a protest has been filed against the application and the Department has, based upon its investigation, made a determination that a license should be issued.

[4] Business and Professions Code section 23958 provides:

> "Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a license or for a transfer of a license if either the applicant or the premises for which a

(continued...)

the findings; and (4) the finding that issuance of the license would not create a law enforcement problem in the area surrounding the complex is not supported by substantial evidence in light of the record viewed as a whole.

To some extent, the issues raised by the County and the Coffin protestants overlap, and, when it appears that they do, they will be discussed together.

DISCUSSION

I

The overriding objections by protestants to the issuance of the license in question were grounded on fears that difficult driving conditions on Wildcat Canyon Road would be exacerbated by the addition of intoxicated drivers. The only access to the premises is over Wildcat Canyon Road.

The licensed premises includes a 397-room hotel, a championship golf course, an events center, a fine dining area, and a high-stakes gaming area. The license does not extend to the gaming casino operated by Barona, nor to a convenience store operated by the tribe. The license, as issued, contains 17 conditions, 13 of which were proposed by Barona in its petition for conditional license, and four conditions which were agreed to by Barona as a condition of issuance of the license. The conditions are set forth in an addendum to this decision.

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[4](...continued)

license is applied do not qualify for a license under this division.

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4."

Wildcat Canyon Road extends 12 miles from the unincorporated community of Lakeside to the south to Ramona to the north. The licensed premises is located approximately halfway between Lakeside and Ramona. The road is described by the County as narrow, with little or no shoulders, one lane in each direction, curvilinear for most of its length, with steep grades. According to the County, traffic on the road has increased to 16,000 vehicles daily, largely as a result of the growth of Barona's gaming operations. Barona concedes (Barona Br., page 14) that "the road has been a concern long before the premises were even conceived, and is in need of improvements for which County funding remains limited," but contends that issuance of the license could not be shown to have any appreciable effect on the traffic problems. The Department notes that "evidence did establish that the road is congested and in some areas difficult to navigate," but insists that evidence did not establish that issuance of the license would create a traffic problem. (Dept. Br., page 3.)

The County requests the Board to remand the matter to the Department on the ground that there is relevant evidence that could not have been produced at the hearing that demonstrates that various findings regarding the condition of the road were dependent upon circumstances which have proved ephemeral, and are no longer accurate. The County's request is supported by the declaration of Thomas L. Bosworth, its attorney.

Bosworth's declaration singles out excerpts of four findings that he contends are no longer accurate as a result of events contemplated by the findings but which did not come to pass:

(a) **Finding IV.C**: "Applicant is not required to build any fences [to keep cattle off the road], ... the premises were left with only one cow after last year's Cedar fire and

there are no plans to replace the heard [sic]."

Bosworth's declaration states that, subsequent to the decision, the County repealed certain sections of the San Diego County Code to remove open range designations so that Barona would be required by state law to keep cattle off the road. Since it had been represented at the hearing that Barona had no plans to rebuild its cattle herd, Bosworth stated, the County anticipated no opposition from Barona to the change. According to Bosworth's declaration, a representative of Barona advised the Board of Supervisors that Barona's "cattlemen and cattlewomen still have contemplations of bringing our herd back to the reservation," another asked that the repeal be delayed as it could adversely impact continued grazing on the Barona reservation, and a third asserted that the repeal would not prohibit Barona from continuing to allow cattle to roam freely across the road.

Bosworth asserts that, at the hearing, the ALJ sustained objections to the County's line of questioning of its traffic expert regarding the risk of collisions between vehicles and cattle ("cattle strikes") on the ground such testimony would be too speculative "at this point in time [since] the only testimony we have is that there's only one cow remaining and no other information." Bosworth contends that Barona's assertion of the right to rebuild its cattle herd and its disclaimer of any obligation to keep its cattle off the road contradicts the Department's findings and warrants a remand so the County can present evidence regarding the risk of cattle strikes by alcohol-impaired drivers.

Barona opposes a remand on this issue, contending that the County never presented any evidence of cattle strikes except for reference to an unimpaired driver who sued the County. The County disputes this, Bosworth's declaration citing Exhibit 5

to the declaration of Henry O. Morris, its traffic engineer, which details 84 separate cattle strike accidents over the preceding 10 years.

Although the events the County relies upon as the reasons for a remand to permit the taking of additional evidence on the hazards posed by the risks of cow strikes did not arise until after the Department's decision, they suggest that the finding by the ALJ regarding the unlikely risk of cow strike accidents rests on frail underpinnings. By itself, this issue could be considered within the Department's discretionary authority to assess the risks posed to the public welfare and morals.

(b) Finding IV.C and IV.D: "... [T]he fact that drivers will have knowledge that a passing lane is coming up will contribute to the overall safety of the road."

Prospective in nature at the time of the administrative hearing, the plan called for a one-mile passing lane project, the estimated cost of which had risen to $5 million at the time of the administrative hearing. The purpose of the project, according to the County's traffic engineer, is so that drivers can pass safely without crossing double yellow lines and also not have to travel the length of the road behind slow traffic. The ALJ found that the project would address the current limited visibility on the road, would provide for current County standards, add better visibility by cutting side embankments, add right and left turn lanes, and remove equestrian uses to a separate path. The County expected to complete necessary land acquisition by December 2004 or January 2005, or March or April 2005 if it became necessary for the County to use eminent domain. If the County has its share of funding available, the project would then be put out for bid, with construction estimated to be completed in 16 months, with the work performed in stages to avoid road closure during the construction.

Bosworth asserts that, following the administrative hearing, the County initiated

negotiations with Barona to obtain the funds necessary to complete the passing lane project, asking it to contribute an additional $1.7 million for the project. Barona has not agreed to do so, and, Bosworth states, the Bureau of Indian Affairs has threatened to withdraw its over $3 million funding commitment if the project is not promptly completed. Exhibit D, entitled "Cooperative Agreement Between the County of San Diego and the Barona Band of Mission Indians For Wildcat Canyon Road Passing Lane Project, addresses the respective contributions to be made for the project by the County and Barona. The document reveals that the passing lane project has been under consideration at least since 1999.

Barona blames the County for the failure of the project to be funded, and argues that a broader agreement has been tendered to the County calling for an additional $8.4 million contribution by Barona, but the proposal remains unsigned by the County. The County, in turn, argues that it was not liable for any shortfall in funding, and that it was recognized at the time the project was contemplated that the County had no other existing program or means by which to obtain full funding.

There was a considerable amount of attention devoted to the need for and anticipated benefits of the passing lane project, reflecting the recognition of all concerned that the ability of the road to deal with traffic without it was impaired.

The Board may question the extent to which the ALJ and the Department relied on a project the completion of which is expected at some unknown date in the future, especially in light of other findings in the Department's decision. Determination of Issues III.A of the decision found that the road :

> is a "narrow road that contains sharp curves and steep grades and that it can be hazardous if drivers do not obey the posted speed limits and the rules of the road. Because accidents on this Road have been a common occurrence in past

> years, it is understandable that the Protestants would be concerned about a possible increase in the number of accidents on Wildcat Canyon Road if the Applicant is allowed to sell alcoholic beverages at its resort.

As noted above, the County has estimated that completion of the project will take 16 months. It is not clear whether any work has begun. The arguments presented by the County suggest that it has not.

(c) Finding V.C:

> An agreement has been made with San Diego Gas and Electric for the installation of 47 street lights up and down Wildcat Canyon Road from Willow Road to the Applicant[']s resort and the Applicant will pay the monthly electric bill for these street lights.

The County contends that it had no knowledge of this agreement until it was presented on the second day of the hearing, and the document was not included in Barona's exhibit list supplied to the County. Bosworth's declaration asserts that the County met with Barona to express its concerns that the installation of the lights in the manner contemplated would result in disconnected light sheds[5] and additional obstructions to the road's shoulders, as well as Barona's failure to contact the County about its undertaking to install facilities on a County right-of-way. Bosworth further states in his declaration that the County has been informed that the lighting project has been abandoned.

Barona suggests that the County "stalled" the street lighting project by expressing concerns with the proposal, and contends the lighting proposal confirms its "avowed and continuing, albeit frustrating attempts ... to take every available step to mitigate the effects of its resort project." (Barona Br., page 8.)

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[5] The County explains in its brief that the disconnected light sheds would have put motorists in "the precarious position" of having to navigate the road while their eyes repeatedly adjusted to changing light conditions.

Whether or not it is fair to say that the County "stalled" the lighting project, the reality appears to be that any mitigating effects from the apparently abandoned lighting proposal have vanished. The ALJ's finding, then, has little significance.

(d) Finding V.A (CHP contract)

Bosworth states in his declaration that the record is void of any evidence to show that Barona has entered into the agreements with the California Highway Patrol to control the traffic at the intersection of Wildcat Canyon Road and Willow Road, an intersection some protestants claimed was the site of numerous traffic accidents and traffic congestion.

Bosworth is correct when he states that the agreement was in draft form at the hearing. However, Karol Schoene, General Manager of the Barona resort, testified that the CHP had already executed the agreement, and Barona expected to execute the agreement that day or the next.

Again, it is difficult to determine how much weight the ALJ placed on the supposed existence of the agreement, but the evidence does indicate effort by Barona to mitigate the traffic problems associated with the operation of its resort and the heavy volume of traffic it attracts.

It appears to this Board that the only item in the Bosworth declaration that might warrant any reconsideration of the findings is that involving the apparently abandoned lighting project. Since that finding has little overall significance to the Department's decision, we see no need for a remand to consider Bosworth's contentions.

II

The County has raised two due process claims. In its brief, it argues that evidence that Department counsel told protestant Joan Embrey Pillsbury on the day

before the hearing that "it was a done deal, it was an uphill battle, and that [her] coming had minimal impact," demonstrated that the Department had prejudged the matter, and that such comments raised questions about the circumstances surrounding the decisions of over 50 other protestants not to attend the hearing.

The County has also moved to augment the record to include any Report of Hearing that may have been provided to the ALJ on an ex parte basis, citing *Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd* (2005) 127 Cal.App.4th 615 [25 Cal.Rptr.3d 821], opinion modified and rehearing denied (127 Cal.App.4th 615 [__ Cal.Rptr.3d __].[6] That case involved three consolidated appeals in which the Board had held that the Department had violated due process by failing to separate and screen the prosecuting attorneys from the Department decision maker. In each of the three cases, the ALJ had submitted a proposed decision that dismissed the accusation. In each case, the Department rejected the ALJ's proposed decision and issued its own decision with new findings and determinations, and imposing suspensions in all three cases. In this case, however, the Department adopted the decision of the ALJ in its entirety, without additions or changes. Moreover, there is nothing in the *Quintanar* cases to suggest that a Report of Hearing went to the ALJ, nor is there any suggestion that one did in this case.

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[6] For ease of reference these are referred to as the *Quintanar* cases, Quintanar being one of the licensees involved in the appeals. The Department filed petitions for review with the Second District Court of Appeal in each of these cases. The cases were consolidated and the court affirmed the Board's decisions. In response to the Department's petition for rehearing, the court modified its opinion and denied rehearing. The cases are now pending in the California Supreme Court and, pursuant to Rule of Court 976, are not citable. *(Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2005) 127 Cal.App.4th 615, review granted July 13, 2005, S133331.)

There is nothing in the record to suggest that remarks claimed to have been made by Department counsel discouraged any protestant from attending the hearing. Indeed, the person to whom the remarks were made acknowledged that the Department attorney agreed to accommodate her difficulty in arriving at the hearing in a timely fashion, by agreeing to hold the hearing open until she arrived. She did appear at the hearing, and testified at length in support of the protestants' position.

The claim by the County that a Report of Hearing was provided to the ALJ reflects a misreading of the *Quintanar* decision. No claim was made in those cases that such a report was provided to the ALJ, and based upon the representations to the Board by Department counsel in those cases, it was not the practice to furnish such reports to the ALJ, and none were.

We are of the view that there is no merit to the due process claims.

III

Both the County and the Coffin protestants contend that the decision and findings are not supported by substantial evidence. The County casts its argument on the premise that evidence contained in affidavits of Captain Glenn D. Revell of the County Sheriff's Department and Lieutenant Tim Lepper of the California Highway Patrol, neither of which are referred to in the decision, along with the affidavit and testimony of Henry O. Morris, the County Traffic Engineer, stands unrefuted, and establishes the existence of a law enforcement problem flowing from the combination of alcohol, heavy traffic, and a dangerous road. The County cites Captain Revell's statement that "without additional road improvements, the sale of liquor at the Barona Resort could well increase the number of accidents on Wildcat Canyon Road," and the statement of Lt. Lepper that, "[b]ased on the curvilinear nature of Wildcat Canyon Road,

the existence of downhills and the presence of free range cattle, it is my professional opinion an increase in the number of impaired drivers on Wildcat Canyon Road will result in a corresponding increase in accidents ... [which in turn] will have an adverse effect on traffic safety, will result in the diversion of CHP services ... [and would] tend to create a law enforcement problem. The County argues that no evidence was offered by Barona or the Department to counter these expert opinions, and argue they are supported by the testimony of traffic engineer Morris that an accident rate higher than on similar roads throughout the state is evidence of the challenge the road will pose to an impaired driver, that serving liquor at the Resort will create a problem for the County's Department of Public Works by diverting resources, and, in Morris's opinion, create a law enforcement problem.

Barona contends that when it appeared that Revell and Lepper would be unavailable for cross-examination, the affidavits, which had been timely served pursuant to Government Code section 11514, were offered "for hearsay purposes only." It argues that, because the County did not present any qualified witness testimony or opinion evidence of the existence of a law enforcement problem at the hearing, there is nothing for the hearsay evidence to supplement or explain. Barona also points to the ALJ's extensive consideration of the testimony of traffic engineer Morris, as well as the withdrawal, over Captain Revell's signature, of the San Diego County Sheriff's protest. In Revell's letter (Exhibit E), he said he had repeatedly consulted with the CHP regarding the license application since it was primarily responsible for traffic management in that area. Stating Revell's and CHP Captain Hagler's opinion that the restrictive license conditions struck a reasonable balance of traffic efficiency and safety, the letter concluded with a disclaimer that "We do not endorse or oppose the issuing of

a restricted license as long as the agreed upon restrictions are included in the license."

The County, in turn, argues that the anecdotal evidence of the protestant witnesses who live near or commute on Wildcat Canyon Road concerning the accidents they have witnessed, been involved in, or been subjected to extensive delays by, establishes the existence of a law enforcement problem. Thus, argues the County, the opinions of Revell and Lepper must be accorded weight as supplemental and explanatory to such evidence, even though initially offered only as hearsay.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (*Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].) Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (*Brookhouser v. State of California* (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

There is an inescapable degree of speculation in the evidence offered by protestants to the effect that the issuance of the proposed license will lead to an increase in accidents on Wildcat Canyon Road.

Similarly, there is an equally inescapable degree of speculation in how much the

license conditions will minimize the risk that impaired drivers will be unable to navigate Wildcat Canyon Road safely. The Department and the applicant have placed great weight on those conditions, primarily those which reflect the limitations on where, when, and how much alcohol may be served to visitors to the Barona facility. Add to this the decision by the County Sheriff to withdraw its protest, based on the belief that the license conditions eliminated his concerns about the proposed license.

It is undeniable that drivers who have consumed alcohol pose a risk to themselves and to the general public. The State of California acknowledges that risk, and at the same time permits drivers who have consumed alcohol to drive lawfully. In this case, the question is whether the condition of the road on which those drivers and the general public will travel is such that *any* risk is unacceptable. The Department has said, by granting the license, that while it recognizes there is some risk, steps have been or will be taken to alleviate that risk, and that risk is not of sufficient magnitude to warrant the denial of the license to a well-qualified applicant.

The opinion of the Sheriff of San Diego County that the restrictive license conditions "struck a reasonable balance of traffic efficiency and safety" must also be given some weight in this analysis.

This seems to be the kind of case the court in *Kirby v. Alcoholic Bev. Control Appeals Bd.* (1972) 7 Cal.3d 433, 436 [102 Cal.Rptr. 857] had in mind, when, quoting from another *Martin case (Martin v. Alcoholic Bev. Control Appeals Bd.* (1961) 55 Cal.2d 867, 876 [13 Cal.Rptr. 513], it said: "[If] it be conceded that reasonable minds might differ as to whether granting [a license] would or would not be contrary to public welfare, such concession merely shows that the determination of the question falls

within the broad area of discretion which the Department was empowered to exercise.'"

While the Appeals Board may have reached a different result on the evidence, we are not in a position to say that the Department abused its discretion when it granted the license in question.

IV

The Coffin protestants contend that the Department erred in imposing on them the burden of proof to show that the license should not be granted. They argue that the decision in *Martin v. Alcoholic Bev. Control Appeals Bd.* (1959) 52 Cal.2d 259 [341 P.2d 291] and an opinion of the Attorney General (Op. Atty. General 53-41) both say that the burden remains on the applicant even in a protest hearing.

Both the *Martin* case and the Attorney General's opinion deal with cases where the Department had initially denied license applications. In this case, contrariwise, the Department had concluded that a license should be granted. The purpose of a protest hearing is to give a protestant an opportunity to overturn that decision.

Had the protestants appeared at the hearing but presented no evidence whatsoever, the ALJ would have had no alternative but to recommend to the Department that the license issue. It was not incumbent on the applicant to persuade the Department to adhere to its original decision. It seems to us that it makes much more sense for the burden to be on the protestant to prove the essential elements of his or her claim.

If protestants were correct in their contention, it would mean that every decision by the Department to grant a license would have to be reaffirmed in a formal hearing where a protestant could merely object to its issuance and, solely on the basis of an unsupported objection, put the Department and the applicant to the task of justifying a

decision the Department properly made in the exercise of its administrative discretion. In other words, the Department would be required to prove it did not abuse its discretion simply because a protestant, without any evidentiary basis, claimed it had.

The Department has traditionally placed on the protestant the burden of overturning a Department decision to grant a license, and we have been cited no case where this has been held to be improper. We are not inclined to be the first to do so.

We have considered the remaining arguments raised by protestants and find them unpersuasive.

ORDER

The decision of the Department is affirmed.[7]

SOPHIE C. WONG, MEMBER
FRED ARMENDARIZ, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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[7] This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.

ADDENDUM TO BOARD DECISION

The petition for conditional license recites that the petitioner

"wishes to permit consumption of alcoholic beverages in the gaming facility where Class III Gaming Activities will be conducted; and

> "persons under 21 years of age cannot be present in any area in which Class III Gaming and the consumption of alcoholic beverages occur"

The petition sets forth thirteen proposed conditions:

1. The sales, service and consumption of alcoholic beverages shall be limited to the fine dining restaurant, golf course, private gaming area, event center and room service to the hotel, as depicted on the ABC-257 dated 11-14-03.

2. The sales, service and consumption of alcoholic beverages in the casino is prohibited, with the exception of the private gaming area as depicted on the ABC-257 dated 11-14-03.

3. The sales and service of alcoholic beverages on the golf course shall be by cart service only and shall only be allowed through the 9th hole.

4. The sales service and consumption of alcoholic beverages in the event center as depicted on the ABC-257 dated 11-14-03 shall cease one hour prior to the pre-scheduled ending time of an event up to four hours and 90 minutes for pre-scheduled events over four hours.

5. There shall be no bar or lounge area upon the licensed premises maintained for the purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption, with the exception of the event center as depicted on the ABC-257 dated 11-14-03, during pre-scheduled events.

6. Live entertainment on any portion of the licensed premises is prohibited except in the event center during pre-scheduled events and an unamplified solo pianist in the dining area as depicted on the ABC-257 dated 11-14-03

7. Patron dancing on any portion of the licensed premises id prohibited except in the event center, as depicted on the ABC-257 dated 11-14-03, during prescheduled events.

8. A list, including the dates and times of all pre-scheduled events at the event center shall be maintained by the licensee at all times and made available to the Department upon request.

9. The sale of alcoholic beverages for consumption off the premises is strictly prohibited.

10. The licensee shall maintain a full-time security staff which, at a minimum, shall be assigned and posted at the ingress and egress to any portion of the licensed premises serving alcoholic beverages.

11. No person under the age of 21 shall be permitted to remain in any Class III gaming areas, except that employees not engaged in the sales or service of alcoholic beverages shall be permitted to be in such areas in the performance of their duties.

12. Persons under the age of 18 years old shall not be permitted to remain in any room in which Class III gaming activities are being conducted unless the person is en-route to a non-gaming area of the Gaming Facility.

13. The applicant shall report to the Department in writing any change in members of the elected tribal council. This report shall be made within 30 days of said changes.

The decision of the Department adds four additional conditions:

1. The sale, service and consumption of alcoholic beverages in the fine dining restaurant as depicted in the ABC-257 shall be allowed only from 5:00 p.m. until 10:00 p.m. on Sunday through Thursday and from 5:00 p.m. until 12 midnight on Friday and Saturday.

2. The sale of alcoholic beverages in the hotel through room service shall be allowed only between the hours of 9:00 a.m. until 1:00 a.m.

3. Alcoholic beverages at the service cart at the golf course shall be limited to two drinks per person per visit.

4. The sale and service of alcoholic beverages at the special event center shall be allowed only from 9:00 a.m. until midnight on Sunday through Thursday and from 9:00 a.m. until 1:00 a.m. 0n Friday and Saturday.