

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

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

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

Respondent/Licensee

On-Sale General Bona Fide Eating Place License
under the Alcoholic Beverage Control Act.

FILE: 47-423392

REG: 08070211

ORDER

On Wednesday February 23, 2011, at approximately 4:54 p.m., the Director of the Department of Alcoholic Beverage Control received a Motion/Petition for Reconsideration via e-mail from counsel for the Respondent/Licensee. On February 24, 2011, the Department issued an Order extending the time within which to consider the Motion/Petition by 10 days to Monday March 7, 2011.

In its Motion/Petition for Reconsideration, Respondent/Licensee argues that the Director should accept the additional evidence submitted by way of declarations and exhibits and find that Respondent/Licensee has substantially complied with, or upon implementation of the plan it has proposed would adequately comply with, Condition 8 on its license, without further proceedings. This proceeding is a disciplinary action brought, not by the Department, but by a third party pursuant to Business and Professions Code section 24201, one of the original protestants who objected to issuance of the license in the first instance. Should the Department do as Respondent/Licensee requests, the real party in interest accuser here, the Singley Hills Homeowners Association, would be deprived of the opportunity to inquire as to the facts presented, examine the declarants/witnesses, and to present any contrary evidence. Such matters are most appropriately handled by an Administrative Law Judge in a hearing where all parties may have the opportunity to fully address and respond to all issues.


Moreover, Respondent/Licensee's Motion/Petition is essentially requesting that the Department modify or remove the subject condition (Condition 8) on the license. When a licensee makes such a request, the Department undertakes an investigation to determine whether the request should be approved or denied. Although a great deal of information has been developed in the course of the present action, the Department has not considered it in the context of modifying or removing the condition and has thus not conducted its customary investigation. In addition, Business and Professions Code section 23803

governs such matters and imposes certain procedural requirements on the Department, as well as requiring the petitioner to pay a fee of \$100.

Based upon a review of the Motion/Petition for Reconsideration, the record on file in this matter, the totality of circumstances, and the statutory requirements, the Department hereby denies the Motion/Petition for Reconsideration.

Normally the Department would not consider and rule on a petition to modify or remove conditions while a disciplinary action involving the condition(s) that is/are the subject of the request to remove or modify is pending. However, this case is unique in both the circumstances in which the disciplinary action arose and its procedural history. For those reasons, Respondent/Licensee's Motion/Petition for Reconsideration shall be treated as a petition to modify or remove Condition 8 on the license and is hereby referred to the Department's Santa Rosa district office for consideration as such—subject to prompt payment by Respondent/Licensee of the statutory fee of \$100.

Dated: March 4, 2011



Matthew D. Botting
General Counsel

For: Jacob Appelsmith
Director

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

IN THE MATTER OF THE ACCUSATION AGAINST:

BEAR RIVER CASINO
BEAR RIVER CASINO
11 BEAR PAWS WAY
LOLETA, CA 95551-9684

FILE : 47-423392
REG. : 08070211

**DECLARATION OF
SERVICE BY MAIL**

ON-SALE GENERAL EATING PLACE LICENSE

under the Alcoholic Beverage Control Act.

The undersigned declares:

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

ORDER

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

**BEAR RIVER CASINO
BEAR RIVER CASINO
11 BEAR PAWS WAY
LOLETA, CA 95551-9684**

**SINGLEY HILL HOMEOWNERS ASSC.
ATTN: NOAH KRAHFORSST & JIM
MCVICKER
PO BOX 755
LOLETA, CA 95551**

**GEORGE FORMAN
ATTORNEY AT LAW
4340 REDWOOD HIGHWAY STE F228
SAN RAFAEL, CA 94903**

**CHERYL SCHMITT
STAND UP FOR CALIFORNIA
PO BOX 355
PENRYN, CA 95663**

**SCHARFF, BRADY & VINDING
ATTN: MICHAEL VINDING
WELLS FARGO BUILDING
400 CAPITOL MALL, SUITE 2640
SACRAMENTO, CA 95814**

Each said envelope was then, on March 4, 2011 sealed and deposited in the United States Mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

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

Executed on March 4, 2011 at Sacramento, California.



Declarant

Eureka District Office(interoffice mail)

Division Office(interoffice mail)