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LIQUOR COMMISSION  
DEPARTMENT OF LIQUOR CONTROL  
COUNTY OF MAUI, STATE OF HAWAII

TRANSCRIPT OF PROCEEDINGS  
REGULAR MEETING

Held at the Department of Liquor Control Conference Room, David K. Trask, Jr. Office Building, 2145 Kaohu Street, Room 108, Wailuku, Maui, Hawaii, commencing at 8:59 a.m., on August 8th, 2018.

REPORTED BY: SANDRA J. GRAN, RPR/CSR #424

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APPEARANCES

COMMISSION MEMBERS PRESENT:

VICE-CHAIRPERSON:

NANE ALULI

COMMISSIONERS:

LEON BOLOSAN

JONATHAN TODD

ALBERTA DeJETLEY

LESLIE ANN YOKOUCHI

STAFF PRESENT:

DEPUTY CORPORATION COUNSEL:

GARY MURAI

DEPUTY DIRECTOR:

GEORGETTE TYAU

DIRECTOR:

GLENN MUKAI

LIQUOR CONTROL OFFICER III:

GENE SILVA

LIQUOR CONTROL OFFICER III:

LAYNE SILVA

LIQUOR CONTROL OFFICER III:

JARRETT KAHOOHANOHANO

LIQUOR CONTROL OFFICER IV:

KARI YOSHIZAWA

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(August 8th, 2018, 8:59 a.m.)

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ACTING CHAIR ALULI: (Gavel.) Okay. Let's call the August 8th, 2018 liquor commission meeting to order.

Kari, can I have the roll call, please.

MS. YOSHIZAWA: Kari Yoshizawa, liquor control.

COMMISSIONER TODD: Jonathan Todd.

COMMISSIONER BOLOSAN: Aloha. Leon Bolosan.

MR. MURAI: Deputy corporation counsel Gary Murai standing in for Ed Kushi today.

ACTING CHAIR ALULI: Aloha. Nane Aluli.

COMMISSIONER DeJETLEY: Aloha. Alberta DeJetley.

COMMISSIONER YOKOUCHI: Good morning. Leslie Yokouchi.

DIRECTOR MUKAI: Glenn Mukai, liquor control.

MS. TYAU: Georgette Tyau, liquor control.

MR. GENE SILVA: Gene Silva, liquor control.

MR. LAYNE SILVA: Layne Silva, liquor control.

ACTING CHAIR ALULI: Thank you. You have before you the agenda for August 8th, 2018. Can I get a motion for approval?

COMMISSIONER DeJETLEY: Mr. Chair, I move to approve.

MEMBER BOLOSAN: Second.

ACTING CHAIR ALULI: It's been moved and seconded,

1 all in favor say "aye."

2 (Response.)

3 ACTING CHAIR ALULI: Anybody opposed?

4 (No response.)

5 ACTING CHAIR ALULI: Motion carried.

6 You have before you the liquor commission minutes  
7 for July 11th, 2018. May I have a motion for approval?

8 COMMISSIONER YOKOUCHI: I so moved.

9 COMMISSIONER DeJETLEY: I second.

10 ACTING CHAIR ALULI: Motion has been moved and  
11 seconded, all in favor say "aye."

12 (Response.)

13 ACTING CHAIR ALULI: Any opposition?

14 (No response.)

15 ACTING CHAIR ALULI: Motion carried.

16 Kari, is there any public testimony at this time?

17 MS. YOSHIZAWA: No, no one signed up to testify.

18 ACTING CHAIR ALULI: Okay. Good. We'll go on to  
19 item IV -- item V, Public Licensing Matters. May I have a  
20 motion for confirmation of items -- oh, yes. Oh, correction.  
21 We have a slight correction for item No. F to change the --

22 MR. MURAI: No, it's E.

23 ACTING CHAIR ALULI: Is it E? Let me see. One  
24 minute, please.

25 MS. YOSHIZAWA: It's E.

1           ACTING CHAIR ALULI: It was item E from -- oh, yes,  
2 item E from "trade name" to "licensee." If there's no  
3 objection to that change, we'll make that. Is there any  
4 objection to that?

5           (No response.)

6           ACTING CHAIR ALULI: Okay. So we can make that  
7 change. Right?

8           MR. MURAI: Mr. Chair, so that was just a  
9 typographical error.

10          ACTING CHAIR ALULI: Just a typographical error.  
11 Okay. No objection. We'll do that.

12          Okay. So can I get a motion for approval for  
13 General Licensing Matters A to J?

14          COMMISSIONER DeJETLEY: Mr. Chair, I move to accept  
15 items A to J with a correction of the typo on item E.

16          COMMISSIONER YOKOUCHI: Second.

17          ACTING CHAIR ALULI: All in favor say "aye."

18          (Response.)

19          ACTING CHAIR ALULI: Any opposed?

20          (No response.)

21          ACTING CHAIR ALULI: Motion carries. Thank you.

22          Okay. We'll move on to item No. VI, Licensing  
23 matters. Okay. Can we have item No. A, Application No. 1.  
24 Layne.

25          Please state your name.

1 MS. MEHLING: Good morning. My name is Keri Mehling  
2 and I'm the attorney on behalf of the applicant. With me is  
3 Mr. Blake Moore, he is the vice president, secretary, and  
4 director.

5 ACTING CHAIR ALULI: Thank you.

6 Layne.

7 OFFICER LAYNE SILVA: Application 1, Tour or Cruise  
8 Vessel, Category B.

9 Applicant is Sea Sport Cruises, Inc. doing business  
10 as Ocean Odyssey applying for a Tour or Cruise Vessel License,  
11 Category B.

12 The officers, directors, and stockholder of the  
13 corporation; past history; vessel documentation; and lease  
14 agreement are all listed in the investigator's report.

15 The proposed premises is a 64.5 foot double deck,  
16 engine powered catamaran authorized to carry 131 passengers, 6  
17 other persons in crew, 1 masters, and 2 deckhands; total  
18 persons allowed is 140. The vessel will be moored within the  
19 Maalaea Small Boat Harbor, Mooring berth No. 44 (Temporary),  
20 Maalaea Harbor, Wailuku, Maui, Hawaii.

21 The men's and women's toilet facilities are located  
22 within the starboard hull section of the main deck.

23 Beverages will be dispensed from within the cabin  
24 area located on the main deck of the vessel.

25 There are 38 licenses of this class and kind

1 currently issued within Maui County.

2 Applicant initially plans to be open seven days a  
3 week from 8 a.m. to 2 a.m.

4 A site inspection was conducted of the proposed  
5 premises on July 5th, 2018.

6 In the opinion of this investigator, the applicant  
7 appears to be fit and proper and does not appear to be  
8 disqualified by any provision as stated within Section 281-56  
9 HRS from obtaining or exercising a license.

10 All documents necessary for the issuance of a liquor  
11 license have not been submitted. Those items are listed in  
12 the investigator's report.

13 ACTING CHAIR ALULI: Thank you, Layne.

14 Anything further?

15 MS. MEHLING: We have nothing. We'll answer  
16 questions.

17 ACTING CHAIR ALULI: Any of the commissioners have  
18 any questions for the applicant?

19 COMMISSIONER TODD: Still looking. I think we're  
20 okay with this. I'm okay with it.

21 ACTING CHAIR ALULI: No other questions?

22 (No response.)

23 ACTING CHAIR ALULI: Can I have a motion for  
24 approval?

25 COMMISSIONER TODD: I'll move to approve this

1 application.

2 ACTING CHAIR ALULI: Second.

3 COMMISSIONER YOKOUCHI: Second.

4 ACTING CHAIR ALULI: All in favor, say "aye."

5 (Response.)

6 ACTING CHAIR ALULI: Motion carries. Thank you very  
7 much.

8 COMMISSIONER TODD: Very good.

9 ACTING CHAIR ALULI: We can move on to application  
10 No. 2, item B. Seabird Charters, Inc. dba Ocean Quest  
11 Adventures.

12 MS. MEHLING: Keri Mehling on behalf of the  
13 applicant and with me is Mr. Blake Moore.

14 ACTING CHAIR ALULI: Thank you.  
15 Layne.

16 MR. LAYNE SILVA: Application No. 2, Tour or Cruise  
17 Vessel, Category B.

18 The applicant is Seabird Charters, Inc. doing  
19 business as Ocean Quest Adventures applying for a Tour Or  
20 Cruise License, Category B.

21 Officers, directors, and stockholder of the  
22 corporation; past history; vessel documentation; and lease  
23 agreement are all listed in the investigator's report.

24 The proposed premises is a 64.5 foot double deck,  
25 engine powered catamaran authorized to carry 149 passengers, 1

1 other person in crew, 1 masters, and 2 deckhands; total  
2 persons allowed is 153. The vessel will be moored within the  
3 Lahaina Small Boat Harbor, Mooring/berth No. 4, Lahaina, Maui,  
4 Hawaii.

5 The men's and women's toilet facilities are located  
6 within the starboard hull section of the main deck.

7 Beverages will be dispensed from within the cabin  
8 area located on the main deck of the vessel.

9 And there are 38 licenses of this class and kind  
10 currently issued within Maui County.

11 Applicant initially plans to be open seven days a  
12 week from 8 a.m. to 2 a.m.

13 A site inspection was conducted of the proposed  
14 premises on July 5th, 2018.

15 In the opinion of this investigator, the applicant  
16 appears to be fit and proper and does not appear to be  
17 disqualified by any provision as stated within Section 281-56  
18 HRS from obtaining and exercising a license.

19 All documents necessary for the issuance of a liquor  
20 license have not been submitted and those items are listed in  
21 the investigator's report.

22 ACTING CHAIR ALULI: Thank you, Layne.

23 Keri, anything further?

24 MS. MEHLING: We have nothing to add.

25 ACTING CHAIR ALULI: May I have a motion for

1 approval?

2 COMMISSIONER DeJETLEY: Mr. Chair.

3 ACTING CHAIR ALULI: I'm sorry. Any questions from  
4 any of the commissioners?

5 COMMISSIONER TODD: Alberta, go ahead.

6 COMMISSIONER DeJETLEY: After you.

7 COMMISSIONER TODD: After you. I insist.

8 COMMISSIONER DeJETLEY: Mr. Chair, I move to approve  
9 application 2 for Seabird Charters, Inc.

10 COMMISSIONER TODD: Oh, I don't insist. I had a  
11 question.

12 ACTING CHAIR ALULI: He has a question.

13 COMMISSIONER TODD: I just want to -- I found what I  
14 had marked on the second application. So you have, Kristi,  
15 you have a current affiliation with Pacific Whale and a number  
16 of other things; right?

17 MS. MEHLING: Kristi, the president, does, yes.

18 COMMISSIONER TODD: Or Kristi does.

19 MS. MEHLING: Yes.

20 COMMISSIONER TODD: Is there a relationship between  
21 these things and others or is this a separate entity?

22 MS. MEHLING: These are all separate entities.  
23 You're going to hear from us over the course of probably the  
24 next two to three months. Pacific Whale Foundation is a  
25 master sort of entity. In order to hold a harbor --

1 COMMISSIONER TODD: Right. I get it. You've got to  
2 be -- yeah.

3 MS. MEHLING: To hold a license, they all have to be  
4 separate, so they're all separate. So functionally, it's the  
5 same management team, but you're going to hear separate  
6 applications.

7 COMMISSIONER TODD: Right. That's what I'm trying  
8 to understand. Thank you very much.

9 ACTING CHAIR ALULI: Any other questions?

10 (No response.)

11 ACTING CHAIR ALULI: May I have a motion for  
12 approval then?

13 COMMISSIONER TODD: Ms. DeJetley.

14 COMMISSIONER DeJETLEY: Mr. Chair, I reinstate my  
15 motion to approve this application.

16 ACTING CHAIR ALULI: Is there a second?

17 COMMISSIONER TODD: Second.

18 ACTING CHAIR ALULI: All in favor.

19 (Response.)

20 ACTING CHAIR ALULI: Any opposition.

21 (No response.)

22 ACTING CHAIR ALULI: None opposed. Thank you very  
23 much. The motion carries.

24 MS. MEHLING: Thank you.

25 ACTING CHAIR ALULI: Move on to item C, application

1 No. 23, Tante's Maalaea, LLC dba Tante's Fish Market and  
2 Restaurant and Bar.

3 MS. MEHLING: Good morning. Keri Mehling on behalf  
4 of the applicant. With me is Mr. Kao (phonetic spelling).

5 ACTING CHAIR ALULI: Gene.

6 Oh, you're going to take it. Okay.

7 OFFICER LAYNE SILVA: Yep. Application No. 23. The  
8 applicant is Tante's Maalaea, LLC doing business as Tante's  
9 Fish Market, Restaurant and Bar. The proposed premises  
10 located at 300 Maalaea Road, No. 300 Parkway, Maalaea, Maui,  
11 Hawaii.

12 This is a public hearing for a new Dispenser General  
13 License, Category C(ii).

14 The documents necessary for completing the remaining  
15 application requirements for a liquor license are listed in  
16 the summary report.

17 Notice of public hearing was published in the Maui  
18 News on June 13th and 20th, 2018.

19 There are a total of 21 owners and licensees  
20 situated within 500 feet of the proposed premises.

21 The department did not receive any protests.

22 ACTING CHAIR ALULI: Thank you.

23 Or, sorry, Keri, anything further to add?

24 MS. MEHLING: The only thing that we have to add is  
25 that I know the waste water insurance may reflect as not

1 having been delivered yet, those were actually delivered  
2 August 7th, so they did come in. There's a few other items  
3 that remain that we owe.

4 ACTING CHAIR ALULI: Okay. Do the commissioners  
5 have any questions? Jonathan, do you have a question?

6 COMMISSIONER TODD: No. We're okay.

7 ACTING CHAIR ALULI: Any other of the other  
8 commissioners?

9 (No response.)

10 ACTING CHAIR ALULI: May I have a motion for  
11 approval then? Hello.

12 COMMISSIONER DeJETLEY: I'll move. I have one other  
13 questions. You said you have a lot of documents that have not  
14 come back in. Is there a time table on this, a time table?

15 MS. MEHLING: Yeah. The waste water insurance did  
16 get delivered. There's the CO, the miscellaneous, and fire  
17 that need to come in. The CO is in our possession, so that's  
18 going to be delivered shortly. And then miscellaneous and  
19 fire have to follow that, so those are I believe on schedule,  
20 that's -- actually, the gentleman -- Tante was supposed to be  
21 here today, he's doing an inspection this morning, so those  
22 should be coming in very shortly.

23 COMMISSIONER DeJETLEY: Mr. Chair, I'd like to  
24 approve this with the -- with the addition that all of the  
25 documents must be submitted for final approval.

1           ACTING CHAIR ALULI: Yes.

2           COMMISSIONER YOKOUCHI: Second.

3           ACTING CHAIR ALULI: All in favor.

4           (Response.)

5           ACTING CHAIR ALULI: Any opposed.

6           (No response.)

7           ACTING CHAIR ALULI: No opposition. Motion carries.

8           Thank you very much.

9           MS. MEHLING: Thank you.

10           ACTING CHAIR ALULI: Move on to item D, Application  
11           No. 24, Lineage Restaurant for a Dispenser General License.  
12           Or MNS, Limited.

13           Gene, are you going to take this one? Okay.

14           MR. NAKAMURA: Good morning, Mr. Chair. Craig  
15           Nakamura, attorney on behalf of the applicant. With me is  
16           Mr. Matt Godfrey, who is the general manager of the restaurant  
17           and Eric Nakamoto, who is the district manager for Maui.

18           ACTING CHAIR ALULI: Thank you.

19           OFFICER GENE SILVA: Application No. 24, the  
20           applicant is MNS, Ltd. doing business as Lineage Restaurant.  
21           The proposed premises is located at 3750 Wailea Alanui Drive,  
22           Wailea, Maui, Hawaii.

23           This is a public hearing for a new Dispenser General  
24           License, Category C(ii).

25           The documents necessary for completing the remaining

1 application requirements for a liquor license are listed in  
2 the summary report.

3 Notice of the public hearing was published in the  
4 Maui News on June 13th and 20th, 2018.

5 There are a total of 127 owners and licensees  
6 situated within 500 feet of the proposed premises.

7 The department did not receive any protests.

8 ACTING CHAIR ALULI: Thank you.

9 Craig, anything further?

10 MR. NAKAMURA: Just very briefly to refresh the  
11 memory of the board members -- or the commission members, this  
12 is the Lineage Restaurant, which is -- of course, MNS is the  
13 parent company for ABC Stores, the Lineage Restaurant is their  
14 venture into their second restaurant operation, I believe. It  
15 is going to be open next to their ABC Store in the Wailea  
16 Shops.

17 ACTING CHAIR ALULI: Okay. I've got a question.  
18 Are you planning to open more restaurants with some of the ABC  
19 Stores, is that kind of the direction that ABC is moving in?

20 MR. GODFREY: Yeah. I think this restaurant here  
21 will dictate whether that's going to move forward or not, but  
22 that's our goal.

23 ACTING CHAIR ALULI: Okay. Good.

24 Any questions by any of the other commissioners?

25 (No response.)

1           ACTING CHAIR ALULI:  If there are no questions, can  
2 I have a movement for approval?

3           COMMISSIONER TODD:  I move to approve.

4           MEMBER BOLOSAN:  Second.

5           ACTING CHAIR ALULI:  All in favor?

6           (Response.)

7           ACTING CHAIR ALULI:  Motion carries.  Thank you very  
8 much, Craig.

9           COMMISSIONER TODD:  Thank you very much guys.

10          MR. NAKAMURA:  Thank you.

11          ACTING CHAIR ALULI:  Move on to application -- or  
12 item E, application No. 29, Paradise Prosperities, LLC dba  
13 Sunsets Bar & Grill.

14          MR. HOROVITZ:  Good morning, Mr. Chair, members of  
15 the commission and staff.  My name is Peter Horovitz.  I'm the  
16 attorney for the applicant.  With me is Tim Schooler, he's the  
17 member and manager of the applicant.

18          ACTING CHAIR ALULI:  Thank you, Tim.  
19          Jarrett.

20          OFFICER KAHOOHANOHANO:  Application No. 29.  The  
21 applicant is Paradise Prosperities, LLC doing business as  
22 Sunsets Bar & Grill.  The proposed premises is located at 470  
23 Lipoa Parkway, Kihei, Maui, Hawaii.

24          This is a public hearing for a new Dispenser General  
25 License, Category C(ii).

1           The documents necessary for completing the remaining  
2 application requirements for a liquor license are listed in  
3 the summary report.

4           Notice of public hearing was published in the Maui  
5 News on June 13th and June 20th of 2018.

6           There are a total of 6 owners and lessees situated  
7 within 500 feet of the proposed premises.

8           The department did not receive any protests.

9           ACTING CHAIR ALULI: Thank you, Jarrett.

10          Any further questions or comments?

11          MR. HOROVITZ: A few. Thank you. First, there are  
12 additional paperwork that needs to be submitted. We're having  
13 some of the final inspections within the next few days, we  
14 hope. We did just obtain the certificate of liability  
15 insurance for liquor liability that's required. I just have a  
16 copy. I think a copy is being dropped off to the department  
17 this morning.

18          There was a letter that hopefully made its way into  
19 your packet of support for the applicant.

20          I also wanted to address, I understand that at the  
21 preliminary hearing there were some questions about my  
22 client's background. He had had some DUIs years ago in  
23 California. We disclosed three of them, there are two of them  
24 technically, don't even -- shouldn't even appear on his  
25 record, they were wiped clean after a period of time, as many

1 jurisdictions do, but we disclosed them out of an abundance of  
2 caution. We -- there's been no violations in over a decade,  
3 including all of the time that he's been living and working in  
4 Hawaii.

5 If you look at my client's, you know, history and  
6 work history, virtually his entire working life has been in  
7 the restaurant or beverage service industry, both on the  
8 distributor side and on the licensee side, including a time in  
9 California where he did hold a liquor license and that was  
10 actually during one of the times that one of the violations  
11 occurred.

12 We took the opportunity to look up the liquor laws  
13 in the jurisdiction where he held the license and they're very  
14 similar requirements to here that they, you know, require if  
15 someone is -- find someone not fit and proper, that they can't  
16 hold a license, so while I don't practice in California, but I  
17 can take it on faith that the licensing authorities there  
18 found that this was something that he would -- you know, did  
19 not disqualify him. I don't think it disqualifies him here,  
20 frankly, you know. I've been practicing liquor license laws  
21 or I've had a liquor license practice in this jurisdiction for  
22 oh, about, 15, 16 years now and I've seen all sorts of things  
23 and I don't think this is a disqualifying event, especially,  
24 you know, since -- given the passage of time.

25 There was also a question, well, you know, should he

1 be the only one involved in the license? Well, ownership is  
2 one thing, he is the owner of the -- of the entity, it's  
3 business. He's not the only person running it. He's got,  
4 obviously, about 20, 25 plus employees in the restaurant, he's  
5 couple of people who are also involved. Holly Hansen is his  
6 bar manager, Iulia Nandrea-Miller as his special events  
7 coordinator, both of those were long-time employees of the  
8 predecessor at the location and, you know, are experienced,  
9 you know.

10 So I don't see, again, that the events that occurred  
11 more than a decade ago are disqualifying. We wanted to try to  
12 take the opportunity to explain them fully and be happy to  
13 address any further questions the commission may have.

14 ACTING CHAIR ALULI: Okay. Great. Thanks, Pete.

15 Any questions from any of the commissioners?

16 Jonathan, do you have --

17 COMMISSIONER TODD: Yeah. So from prior history you  
18 guys know that I'm -- I've got a problem with this. Peter,  
19 how long known your client?

20 MR. HOROVITZ: He's been a client of our firm since  
21 the liquor license application began.

22 COMMISSIONER TODD: Do you -- do you --

23 MR. HOROVITZ: If you're asking me if I knew him in  
24 2007? No.

25 COMMISSIONER TODD: No, no, no. I'm asking you if

1 you know the character and the nature of this man, because I  
2 deeply trust you. I mean, you're an excellent attorney, you  
3 and I have gone back for years.

4 MR. HOROVITZ: Yes.

5 COMMISSIONER TODD: Okay? And if you tell -- this  
6 is about the safety of human beings and lives on this island.  
7 We all make mistakes, I've made mistakes, and the further in  
8 the past they are and the less you repeat them in the future,  
9 the better it is. So I'm asking you because I know you if  
10 you're advocating for a party or if you believe in this party?

11 MR. HOROVITZ: Absolutely. I mean, you know, our --  
12 you know, as a professional, we try not to take on clients  
13 who's position we disagree with.

14 COMMISSIONER TODD: I know this well.

15 MR. HOROVITZ: And obviously I'm here to advocate  
16 for him and for his business. I wouldn't be sitting here if I  
17 didn't think that this was a, you know, a good business, that  
18 this person deserves a shot to make it work. Frankly, I think  
19 we all know the economics of restaurants in this -- in this  
20 town. Without a liquor license --

21 COMMISSIONER TODD: He's not gonna make it without a  
22 liquor license.

23 MR. HOROVITZ: He's not gonna make it, you're gonna  
24 shut him down.

25 COMMISSIONER TODD: I get it. Peter, are you and

1 your client willing to entertain an immediate removal of  
2 liquor license if there's a violation of the owner in terms of  
3 drunk -- driving while intoxicated or -- I mean, are you  
4 willing to take a provision on this?

5 MR. HOROVITZ: I don't think that's a proper thing  
6 to put on to a license. I think there's a process. If the  
7 department or the commission finds there's a violation,  
8 there's a process to go forward and I don't think it's fair to  
9 ask someone to waive the process at this stage.

10 ACTING CHAIR ALULI: Can we refer to counsel on this  
11 item?

12 MR. MURAI: Actually, I was going to back up a  
13 little bit. Commissioner Todd, to the extent that  
14 Mr. Horovitz wants to answer your question about him  
15 personally vouching for his client, that's okay, but it's --  
16 you know, Mr. Horovitz as counsel may be precluded or, you  
17 know, or he may have some difficulty professionally from, you  
18 know, personally vouching for the applicant, you know, given  
19 his role as counsel.

20 COMMISSIONER TODD: But we've deduced that there is  
21 a history here now rather than this is a client only and there  
22 is some time that Peter has known this client, which matters  
23 to me.

24 MR. MURAI: To the extent that Mr. Horovitz is  
25 comfortable, but I just don't -- wouldn't want the commission

1 to hold it against Mr. Horovitz if he's unable to vouch for  
2 his client because he's not known him that long or it may  
3 place him in a difficult position.

4 COMMISSIONER TODD: How -- and the rest of the  
5 commissioners may disagree, I'm concerned about this one and  
6 I'm -- I want to know what our rights are to not have to go  
7 through a thousand dollar fine, suspended to a \$500 fine from  
8 another group of ours who is adjudication who doesn't know  
9 what we're doing here necessarily.

10 MR. MURAI: Well, fortunately, the license -- the  
11 applicant is represented by able counsel, but I'm somewhat  
12 concerned when the commission asks an applicant to waive any  
13 due process rights that they may have. You have to also --

14 COMMISSIONER TODD: What are the remedies available  
15 to us other than just standard procedure? There's no --  
16 there's nothing we can add to this that says, Look, we're  
17 granting this, but we need to watch it more carefully.

18 MR. MURAI: Well, you can -- you can do that, but  
19 not necessarily by, you know, limiting or abrogating any  
20 licensee's due process rights. So if an applicant -- if a  
21 licensee has a right to due process and an adjudication of a  
22 violation, that's the process.

23 COMMISSIONER TODD: Well, I mean, there are a number  
24 of things that I've seen in this council where if you do  
25 something again, blank is going to happen, but maybe that's

1 from only the adjudication board's standpoint. I mean, I  
2 don't -- do we need to go into executive session for five  
3 minutes and discuss what our options are here?

4 COMMISSIONER DeJETLEY: Before we go into executive  
5 session, Mr. Chair, with your permission I would like to put  
6 in my two cents.

7 When you came before us initially, we were both --  
8 both of us are concerned about your prior DUIs and we wanted  
9 to know what made a change where now you're saying that this  
10 isn't going to be a problem for you. And I think you will  
11 remember that I asked you how you felt if we put a condition  
12 on your license that if you had another DUI, your license  
13 would be revoked. And I don't know whether or not we can  
14 legally do that, but when we had --

15 COMMISSIONER TODD: That was brought up at that  
16 discussion.

17 COMMISSIONER DeJETLEY: Yes. So when we had the  
18 first meeting, two of us voted no on proceeding further, and  
19 then after talking to you, we -- I agreed that I would give  
20 you a yes vote so you could move forward to public hearing.

21 MR. HOROVITZ: If I might respond.

22 COMMISSIONER DeJETLEY: Yes.

23 MR. HOROVITZ: Thank you. You know, none of us have  
24 a crystal ball, you know. I've never had a DUI, I can't tell  
25 you that I never will, you know, mistakes happen. The

1 question is do you punish someone, you know, forever for a  
2 mistake? Now, he -- three and we disclosed them.

3 COMMISSIONER TODD: Three. Well, you have to  
4 disclose them.

5 MR. HOROVITZ: Well, I mean --

6 (Multiple speakers.)

7 MR. MURAI: Hold on.

8 ACTING CHAIR ALULI: Let's have some order.

9 (Gavel.)

10 MR. MURAI: One person at a time. The court  
11 reporter cannot record multiple conversations. What we want  
12 to make sure of is because this is a public hearing, we have a  
13 clean record. So, Commissioners, I ask you to obtain leave of  
14 the chair to pose your questions and only one person speak at  
15 a time.

16 ACTING CHAIR ALULI: Peter.

17 MR. HOROVITZ: Thank you, Chair. I can say in my 15  
18 or 16 years of practicing before this commission that I've  
19 seen worse from a -- from a history standpoint. The question,  
20 rightly so, is, you know, has there been a sufficient passage  
21 of time? Has someone changed? Well, I think what we can look  
22 at is the fact that in the last 11 years there have been no  
23 violations. Okay? Two of the three that we -- that were  
24 disclosed wouldn't appear, even appear on a record, you know,  
25 because the jurisdiction that, you know, lists them said,

1 Look, if nothing happens, this gets wiped off your record. We  
2 submit them because, hey, we're trying to be, you know, fully  
3 disclosing here.

4 So we've got 11 years of history including a number  
5 of years in this state, a number of years holding a license,  
6 holding a liquor license, a number of years working at various  
7 positions, you know, involved in liquor both in California and  
8 here. That's what we have, that's what we have to go on.

9 In terms of adding a condition of an immediate  
10 revocation, I don't believe that's allowed. I could be wrong,  
11 but I don't believe it is. I can say from experience that  
12 this liquor department is very zealous in their enforcement  
13 and if the commission, you know, says to the department, We  
14 would like you to keep an eye on this one, I have every faith  
15 that they will. And if there -- you know, it's every  
16 licensee's goal not to have any violations whatsoever, but if  
17 there are, you own up to them and you deal with them. If a  
18 disqualifying event occurs, you know, that he gets a felony  
19 conviction that means that he couldn't hold the liquor  
20 license, well, then we have to deal with that. Okay? But we  
21 deal with it at that time and there's a process to deal with  
22 it and I don't think it's -- you know, there -- and there's a  
23 process for a reason, so that, you know, we have rights, the  
24 community and the commission has rights. And just as we would  
25 not ask the commission to waive its process, I don't think

1 it's fair to ask us to waive ours.

2 COMMISSIONER DeJETLEY: Mr. Chair, may I --

3 ACTING CHAIR ALULI: Yes. Alberta has the floor.

4 COMMISSIONER DeJETLEY: It's not our intent to deny  
5 your client because when you were here, you were honest and up  
6 front and this is your livelihood. I totally respect that, I  
7 think the other commissioners totally respect that you need to  
8 have a liquor license to make your business a success, but we  
9 wanted to shift it to you to -- where you're going to be the  
10 person responsible if your license is revoked. And that's why  
11 I came up with that and asked would you be willing to do that  
12 and this is why your permit was able to move forward.

13 MR. HOROVITZ: And I appreciate that and I think at  
14 the end of the day if his license is revoked, he is the one  
15 responsible and he is going to take it on the chin financially  
16 and otherwise, so there is a strong incentive.

17 COMMISSIONER DeJETLEY: Yes, I --

18 MR. HOROVITZ: You know, and like I said, we have 11  
19 years of history here with no issues.

20 COMMISSIONER DeJETLEY: I think that the community  
21 as a whole is really upset over DUI --

22 MR. HOROVITZ: Absolutely.

23 COMMISSIONER DeJETLEY: -- so I really feel strongly  
24 that it's our responsibility to be diligent and see that the  
25 needs of the community are met over and above whatever

1 financial gains your client will have.

2 MR. HOROVITZ: Of course.

3 COMMISSIONER DeJETLEY: So with that said, I  
4 personally would do yes on this permit with reservations.

5 ACTING CHAIR ALULI: Jonathan.

6 COMMISSIONER TODD: Okay. And part of the problem  
7 with this process for me is that your client is represented by  
8 an incredibly able orator and advocate, maybe one of the best  
9 on the planet, and there's nobody that's trained at that level  
10 on this side of the fence except a guardian. "If there's a  
11 felony conviction, then we deal with it at that time," means  
12 to me that there's an accusation which has to be caught.  
13 Okay? People drink and drive all the time and don't get  
14 caught. People who have a propensity to drink and drive or  
15 have a history of that are, I believe, more likely to  
16 recidivate or repeat it. So now you have if you're caught, a  
17 felony, a felony conviction which would disqualify the license  
18 is two, three, four years down the road, meanwhile he's got a  
19 license. You don't get caught, convicted, felony; there's a  
20 period there that goes in.

21 I don't know what the protocol -- counsel is saying  
22 if we want to have LC do more enforcement or more vigilant  
23 enforcement in this area, I don't know if there's a protocol  
24 for that. Isn't that a denial of due process? Isn't that  
25 prejudicial? And I'm asking counsel, our counsel.

1 MR. MURAI: Well, you cannot in advance profile or  
2 target --

3 COMMISSIONER TODD: Okay. So we can't do that then.  
4 I suggest we go into executive session and have a conversation  
5 about that --

6 MR. MURAI: If you want to have --

7 COMMISSIONER TODD: I need to know the law. I don't  
8 want dead people.

9 ACTING CHAIR ALULI: I think we can all understand  
10 that, Jonathan.

11 MR. MURAI: If there's going to be -- there's a  
12 request for -- to go into executive, a motion, a second, and  
13 state the reason for going into executive session, whether  
14 it's to consult with the commission's counsel to discuss the  
15 commission's powers, duties, liabilities, that sort of thing.

16 ACTING CHAIR ALULI: Can I --

17 COMMISSIONER DeJETLEY: Mr. Chair, may I make a  
18 motion to go into executive counsel so that counsel, legal  
19 counsel can advise us of procedure.

20 COMMISSIONER TODD: Second.

21 ACTING CHAIR ALULI: It's moved and seconded.  
22 Counsel -- or commission will move into executive session.  
23 Can we please clear the room.

24 (Pause in Proceedings: 9:30 a.m.-9:39 a.m.)

25 ACTING CHAIR ALULI: Okay. We call regular session

1 back into order. Please continue. So can I have a motion for  
2 either approval or denial of this application?

3 COMMISSIONER YOKOUCHI: I have one more question,  
4 Nane.

5 ACTING CHAIR ALULI: Yes. Go ahead.

6 COMMISSIONER YOKOUCHI: Can you look me into the eye  
7 and say that you've never driven drunk after your three -- I  
8 mean, you know, I think Jonathan mentioned that a lot of  
9 people -- a lot of us do drink and drive and sometimes we are  
10 drunk, but we never get caught.

11 MR. HOROVITZ: I appreciate the question, but I'm  
12 going to have to object, you know.

13 ACTING CHAIR ALULI: One minute, please. Can we  
14 confer with counsel?

15 MR. MURAI: No, no, no. That's okay. I --

16 ACTING CHAIR ALULI: (Conferring with counsel.)

17 All right. Peter.

18 MR. MURAI: I'm sorry, Peter. I interrupted you.

19 MR. HOROVITZ: No, no problem. I appreciate it.  
20 I'm going to have to object to the question. I mean, we --  
21 there's a legal standard for drunk driving and we don't --  
22 none of drive around with a breathalyzer -- I -- it was my  
23 anniversary two nights ago and I had a nice glass of wine with  
24 my wife, I drove home after that, so I have driven after I've  
25 had a drink, so it's not --

1 COMMISSIONER YOKOUCHI: My question was impaired.

2 MR. HOROVITZ: But there's a legal standard there  
3 and none of us qualified to answer that.

4 MR. MURAI: And, Commissioners, I would caution the  
5 commission not to hold it against the applicant because his  
6 attorney has asserted -- has objected to the question or  
7 asserted rights that the applicant may have.

8 MR. SCHOOLER: I just want to assure you I'm not  
9 going to be a problem. I'm -- Shawn, can you stand up? I've  
10 been with her living together five years and just for the  
11 record, she is a pit bull about this whole conversation we're  
12 having. I'm probably already in trouble because we're having  
13 this conversation. She absolutely -- I will not have a place  
14 to live or a job if drinking and driving is any part of my  
15 future and I assure I'm not going to cause a problem.

16 COMMISSIONER YOKOUCHI: That's what we wanted to  
17 hear, something like that from you.

18 (Baby squealing.)

19 COMMISSIONER TODD: She has a very high voice.

20 ACTING CHAIR ALULI: Okay. So can we have a motion  
21 for either approval or denial or does -- are there further  
22 questions from any of the commissioners.

23 COMMISSIONER TODD: I have a statement to make  
24 before I make a motion. My statement is that the problem that  
25 some of my brothers and sister commissioners have here is that

1 you are by yourself on this application and there is that  
2 history. When we first came here, one of the thoughts was and  
3 my question was: Do you have anybody else on this that can  
4 hold this license? Because it's not our intent to not have  
5 you be a businessman and have your business. The issue is:  
6 Are you fit for owning this license by yourself according to  
7 the rules that as we understand them? And because there is no  
8 second party that can carry that, there -- Peter, there --  
9 there should -- in my personal opinion with that record, there  
10 should be a secondary party in his -- in his company that  
11 applies for the liquor license. There are certain people who  
12 don't apply and certain people who do apply; right? You know  
13 how to do that, you've done that many times, add a person to  
14 his world who can have that responsibility. But for me, I  
15 can't approve this and so I will make a motion to deny the  
16 applicant.

17 ACTING CHAIR ALULI: At this point we only have five  
18 commissioners present.

19 MR. MURAI: Ask for a second.

20 ACTING CHAIR ALULI: Yeah. Do I have a second for  
21 that?

22 MR. MURAI: Motion dies without a second.

23 ACTING CHAIR ALULI: Motion dies without a second.  
24 The license is denied.

25 MR. HOROVITZ: No, there was no second, so is there

1 someone who want to make a motion approve?

2 ACTING CHAIR ALULI: Oh, sorry.

3 MR. MURAI: So the motion to deny was made and it  
4 failed for lack of a second. Mr. Chair, you can ask if there  
5 are any other motions?

6 ACTING CHAIR ALULI: Any there any other motions  
7 from the commissioners?

8 COMMISSIONER YOKOUCHI: Can I ask one more question,  
9 Nane?

10 ACTING CHAIR ALULI: Yes.

11 COMMISSIONER YOKOUCHI: Can you explain the three  
12 DUIs that once occurred and how long ago and why was --

13 ACTING CHAIR ALULI: Peter already gave those.

14 COMMISSIONER YOKOUCHI: I may have missed that.

15 MR. HOROVITZ: They're in -- they're all in the  
16 report and we had disclosed them in a letter. One -- you  
17 know, my client is 48 now?

18 MR. SCHOOLER: Yeah.

19 MR. HOROVITZ: 48, my age. The first was in 1992,  
20 the second was in the year 2000, and then the third was in  
21 2007 all in the same general area in California where he was  
22 living at the time.

23 COMMISSIONER YOKOUCHI: In California.

24 MR. HOROVITZ: And the last one was a time when he  
25 held a liquor license in the jurisdiction. The jurisdiction

1 the rules we looked up indicate that they're very similar to  
2 here, so I'm presuming that the licensing authority there knew  
3 or were made aware of it and --

4 COMMISSIONER TODD: I don't think that's relevant.

5 ACTING CHAIR ALULI: One at a time, please.

6 Peter.

7 MR. HOROVITZ: I'm just trying to offer an  
8 explanation. So in any event --

9 MR. MURAI: He was asked a question, he's responding  
10 to the question.

11 COMMISSIONER TODD: Yeah.

12 MR. HOROVITZ: So we provided a full -- an  
13 explanation of each of them. And as I mentioned, on the  
14 criminal -- two of them, the two previous ones back when he  
15 was 22 and, you know, 28, I guess, you know, those two are  
16 wiped off their record. Our practice is we try to disclose  
17 things out of an abundance of caution whether it's going to be  
18 appear on the criminal background check you find or not, which  
19 is the right thing to do.

20 ACTING CHAIR ALULI: Okay. Any other questions?

21 (No response.)

22 MR. MURAI: You can ask if there is any other  
23 motion?

24 ACTING CHAIR ALULI: Is there any other motion?

25 COMMISSIONER YOKOUCHI: I move that we approved this

1 license.

2 ACTING CHAIR ALULI: We've only got five here,  
3 though, so can't get a --

4 COMMISSIONER TODD: Well, you do have enough to  
5 vote, you have a quorum.

6 ACTING CHAIR ALULI: Oh, yes, we did.

7 MR. MURAI: You need a second.

8 ACTING CHAIR ALULI: A second for?

9 MR. MURAI: For --

10 ACTING CHAIR ALULI: Can I have a second on Leslie's  
11 motion for approval?

12 (No response.)

13 MR. MURAI: If there's no second, then there's a  
14 motion -- motion fails.

15 ACTING CHAIR ALULI: Okay. If there's no second,  
16 then the --

17 COMMISSIONER DeJETLEY: Go ahead.

18 COMMISSIONER TODD: I'll second it.

19 ACTING CHAIR ALULI: You second the approval?

20 COMMISSIONER TODD: I'll now second the approval so  
21 we can take a vote.

22 ACTING CHAIR ALULI: Okay. So can we call for the  
23 vote.

24 MR. MURAI: Well, you may want to call for any  
25 further discussion.

1           ACTING CHAIR ALULI: Any further discussion?

2           COMMISSIONER DeJETLEY: Yes, Mr. Chair. May I have  
3 the floor.

4           ACTING CHAIR ALULI: Yes.

5           COMMISSIONER DeJETLEY: I will go back to asking you  
6 whether or not you will let us approve this with the condition  
7 that if you have another DUI in this jurisdiction that you  
8 will immediately have your permit revoked.

9           COMMISSIONER TODD: And counsel will tell you no,  
10 they won't do that, that's against due process. We've been  
11 there. Let's take the vote.

12           COMMISSIONER DeJETLEY: Okay. So I withdraw my  
13 comment.

14           COMMISSIONER TODD: Yeah. Asked and answered.

15           ACTING CHAIR ALULI: So do I have a motion for  
16 approval?

17           MR. MURAI: No. There's already a motion.

18           ACTING CHAIR ALULI: Sorry. Motion on the floor.

19           COMMISSIONER TODD: Motion and seconded.

20           ACTING CHAIR ALULI: All in favor?

21           (Response.)

22           ACTING CHAIR ALULI: Motion carries.

23           COMMISSIONER TODD: No. You have to ask for  
24 opposed.

25           MR. MURAI: You have to ask for opposing.

1           ACTING CHAIR ALULI: Oh, ask -- okay. So is there  
2 opposition to that?

3           COMMISSIONER TODD: All in favor, how many ayes?

4           ACTING CHAIR ALULI: All in favor, how many ayes?

5           (Response.)

6           COMMISSIONER TODD: Okay. Opposed.

7           ACTING CHAIR ALULI: Opposed?

8           (Response.)

9           COMMISSIONER TODD: Three-two, one carries a failure  
10 on this. It's denied.

11          COMMISSIONER DeJETLEY: You need a full quorum. We  
12 only have five people.

13          ACTING CHAIR ALULI: So it's approved. Three to  
14 two, it's approved.

15          MR. MURAI: No.

16          COMMISSIONER TODD: No, no, no.

17          COMMISSIONER DeJETLEY: No, it's not. Excuse me,  
18 but it's not. You need a full five votes because you only  
19 have --

20          COMMISSIONER TODD: You need five votes. Anything  
21 shy of five votes is -- so any one person, let alone two  
22 denies this, then it does not pass.

23          ACTING CHAIR ALULI: Yes, that's correct.

24          COMMISSIONER TODD: So it's been denied by the  
25 rules. I would say that we are totally in favor of this man

1 getting a license or operating his business, but not him  
2 having that license right now.

3 MR. HOROVITZ: Can we double-check the rules on  
4 that?

5 COMMISSIONER TODD: Sure.

6 MR. HOROVITZ: We have quorum and we have majority.

7 MR. MURAI: Okay. You know what, let me -- let me  
8 check our rules. Let's take a recess.

9 ACTING CHAIR ALULI: Okay. Call for a ten-minute  
10 recess.

11 (Pause in Proceedings: 9:48 a.m.-9:54 a.m.)

12 ACTING CHAIR ALULI: Okay. (Gavel.) Let's call the  
13 meeting back to order. The meeting for August 8th is now back  
14 in session. So what do we now, Counsel? What do we have --

15 MR. MURAI: Okay. Let's kind of recap where we are.

16 ACTING CHAIR ALULI: Yeah.

17 MR. MURAI: There has been a motion and a second to  
18 approve. We were -- there was a vote, the vote was three in  
19 favor of approving, two opposed. Under the -- what the  
20 board -- what the commission requires in order to meet is to  
21 have a majority of the members the board is entitled to, in  
22 other words, we must have five members present to have a  
23 meeting. The county charter also requires that all business  
24 that is approved, all actions of the commission must be  
25 approved by affirmative vote of a majority of the members the

1 commission is entitled to. Therefore, because this commission  
2 is entitled to nine members, any action taken by the  
3 commission must have a majority of five. Therefore, even if  
4 only one commissioner votes against a matter, even if it's for  
5 one, the motion fails because any action taken must have five  
6 votes.

7 COMMISSIONER TODD: Okay. Point of parliamentary  
8 order. The vote's been taken, the die has been cast, the  
9 rules are clear, this motion fails.

10 MR. MURAI: That's correct.

11 ACTING CHAIR ALULI: Right.

12 COMMISSIONER TODD: And the client can come back, in  
13 my opinion, with a secondary party, just like many, many  
14 companies do, who will hold the license which will allow your  
15 client to keep his profitability and restaurant, but not be  
16 the one responsible for that license.

17 MR. HOROVITZ: Well, I think --

18 COMMISSIONER YOKOUCHI: What's the difference,  
19 though?

20 ACTING CHAIR ALULI: Hold on.

21 COMMISSIONER TODD: It's a huge difference.

22 MR. HOROVITZ: Let me -- let me make a comment of  
23 what my client is willing to do. I think, you know, that  
24 the -- there's an obligation, you know, for the people who are  
25 responsible for the license to be on the license. I don't

1 think we should be dictating, you know, who owns the company.  
2 He's the owner of the company. He's willing to bring his  
3 girlfriend, long-time girlfriend Shawn in as co-owner,  
4 co-member, or co-manager of the company so that there are two  
5 people, but that's going to take a little bit of time. But  
6 he's willing to start that process immediately, assuming the  
7 license is granted. But the problem is if we wait, the  
8 restaurant's going to shut down between now and then, but  
9 we're willing to do that process immediately.

10 The other thing he's willing to do -- I'm not  
11 certain of the legality, but he's willing to do it. He's  
12 willing to stipulate that if he gets a DUI and he's the member  
13 manager of the licensee, that it could be an immediate  
14 revocation. He's willing to stipulate to that if that is what  
15 the commission -- that's, you know, this means a lot. Like I  
16 said, this is this person's livelihood, it will put him out of  
17 business, it will put his workers out of business -- or out of  
18 a job, I should say. I think we have to look at the totality  
19 of the circumstances here.

20 We all have dings in our past, we all have things  
21 that we wish didn't occur, we're not proud of, but we step up  
22 and we take responsibility for them, which he did. We look at  
23 the past history of 11 years of no issues. He explained why  
24 he doesn't drink and drive and there's repercussions beyond  
25 monetary if he does, and that I think should mean a lot and I

1 think he deserves a chance.

2 ACTING CHAIR ALULI: Anything further questions or  
3 comments from the commissioners? Jonathan, I see you --

4 COMMISSIONER TODD: I -- Peter is on spot on  
5 everything he's saying to support his client. My only concern  
6 is that I have to decide if a person before me is fit to own  
7 that license and execute it and I'm worried about this case.

8 MR. HOROVITZ: And we've put certain stipulations  
9 which will give the board, the commission, and the department  
10 the tools it needs to enforce to be sure we stay on track and  
11 that's all any licensee can say. We are willing to  
12 immediately start the process to bring his girlfriend in on it  
13 as another responsible person, to get her vetted, that would  
14 be subject to a future hearing because that takes time. And  
15 we're willing to impose the stipulation that the commissioner  
16 had suggested about revocation if while he is a member manager  
17 of the licensee he receives another DUI.

18 COMMISSIONER DeJETLEY: Mr. Chair, I'm ready to  
19 make --

20 ACTING CHAIR ALULI: Wait. Okay. So I recognize --  
21 go ahead, Alberta.

22 COMMISSIONER DeJETLEY: After you talk to counsel.

23 ACTING CHAIR ALULI: (Conferring with counsel.)

24 COMMISSIONER TODD: We can't have a stipulation  
25 that's not legal, it nullifies it. Then we add a stipulation,

1 it's not legal, counsel comes back and goes that isn't legal,  
2 remove it and then --

3 MR. HOROVITZ: I've been instructed not to fight  
4 that, I'm not going to fight it.

5 ACTING CHAIR ALULI: Okay. So -- I'm sorry.

6 MR. MURAI: Commissioners, what is -- what the  
7 status of this public hearing or this application is as we  
8 speak is that it has been denied because it failed to garner  
9 five votes. Now, it sounds to me as if the -- you know, the  
10 applicant is, you know, making some suggestions or expressing  
11 some willingness to -- for additional conditions. For the  
12 commissioners to consider his application further, I believe  
13 what you need to do is someone needs to make a motion to  
14 reconsider; in other words, reconsider the vote that was  
15 previously taken. That would require, again, a motion, a  
16 second, and because we have a bare quorum, it would require a  
17 unanimous vote for a reconsideration.

18 If, assuming the motion for reconsideration passes,  
19 then you may -- you may, I guess, hear additional, you know,  
20 concessions or positions of the applicant and --

21 COMMISSIONER TODD: We believe from --

22 ACTING CHAIR ALULI: I have to call for a motion.

23 COMMISSIONER TODD: Even before -- no, even before  
24 that we -- the issue is, is there a sunset law violation or is  
25 there any -- you know, we're considering new stuff now because

1 this is now --

2 COMMISSIONER DeJETLEY: No, we're not.

3 COMMISSIONER TODD: It's the same thing?

4 ACTING CHAIR ALULI: It's the same thing.

5 MR. MURAI: It's the same thing.

6 COMMISSIONER TODD: Okay. So we don't have any of  
7 those problems with the agenda problems. All right. Great.

8 COMMISSIONER DeJETLEY: Mr. Chair, I'm ready to make  
9 a motion.

10 COMMISSIONER TODD: I'll second it.

11 COMMISSIONER DeJETLEY: I haven't even made it yet.

12 ACTING CHAIR ALULI: Hold on.

13 COMMISSIONER TODD: Make it.

14 COMMISSIONER DeJETLEY: Okay. Mr. Chair, I move  
15 that we reconsider our decision on Paradise Prosperities, LLC.

16 ACTING CHAIR ALULI: Do I have a second?

17 COMMISSIONER TODD: Second.

18 ACTING CHAIR ALULI: So we'll call for the --

19 MR. MURAI: Wait. Call for the vote. Discussion  
20 and vote.

21 ACTING CHAIR ALULI: Sorry. So is there any further  
22 discussion from any commissioners?

23 Leslie.

24 COMMISSIONER YOKOUCHI: I would just like to add  
25 that sometimes when we are young, we make mistakes and

1 sometimes we learn from our mistakes and I think we need to  
2 give people the benefit of the doubt that they've learned and  
3 I think sometimes we have to grow through that. And I think  
4 this fellow has learned his mistakes, which, you know, they  
5 were really honest with us, which they didn't have to be, so I  
6 feel that this person has learned and I think he will be a  
7 better citizen and help the community and not drink and drive.

8 MR. HOROVITZ: I'll second that. No.

9 ACTING CHAIR ALULI: So I'll call for the motion.  
10 So all in favor of passing this application --

11 MR. MURAI: No, no, no.

12 COMMISSIONER TODD: No, no, no. We have to go into  
13 restrictions.

14 MR. MURAI: Vote for reconsideration.

15 COMMISSIONER TODD: Reconsideration.

16 ACTING CHAIR ALULI: Sorry. So do I have a motion  
17 for reconsideration?

18 MR. MURAI: No.

19 COMMISSIONER TODD: I move to reconsider.

20 MR. MURAI: Okay. Actually, it was made and  
21 seconded.

22 COMMISSIONER TODD: It was made and seconded. We're  
23 in discussion.

24 MR. MURAI: Hold on. I'm sorry, Folks, one person  
25 at a time.

1           We are voting now on the motion to reconsider the  
2           commission's prior vote, the prior denial.

3           COMMISSIONER TODD: And that will open it up to a  
4           discussion.

5           MR. MURAI: That's correct.

6           COMMISSIONER TODD: Correct. So we're just voting.

7           COMMISSIONER DeJETLEY: Now we're just voting.

8           ACTING CHAIR ALULI: So we're -- right now do I have  
9           a motion for --

10          COMMISSIONER TODD: It's already open. Just all in  
11          favor, yes.

12          ACTING CHAIR ALULI: All in favor.

13          (Response.)

14          COMMISSIONER TODD: All opposed.

15          ACTING CHAIR ALULI: All opposed.

16          (No response.)

17          ACTING CHAIR ALULI: Motion carries. Go ahead.

18          COMMISSIONER TODD: Great. We're open.

19          MR. MURAI: Open for discussion.

20          COMMISSIONER TODD: Okay. As long as Alberta's  
21          requirement is acceptable, which I believe has been on the  
22          table from the beginning, if there is an arrest, not a  
23          conviction, a pull over, an arrest, or a citation for a DUI  
24          for you while you carry this, you are no longer a license  
25          holder. Now, if you put another party on there and she is

1 approved in a little bit, even if that were to happen again to  
2 you, she would continue to hold the license.

3 MR. HOROVITZ: Well, the entity holds the license.

4 COMMISSIONER TODD: Well, right, but since there's  
5 not just one person here.

6 MR. HOROVITZ: So I'm confused. Does the  
7 restriction go away when the second person comes on? Is that  
8 the --

9 COMMISSIONER TODD: Yeah, that would be --

10 MR. HOROVITZ: That's what I heard.

11 COMMISSIONER TODD: That would be -- I mean, I don't  
12 want to go through is this right or not right or is it a  
13 doable restriction. I would like a second person on so  
14 there's somebody else on that license who is a secondary  
15 responsible party. We have to see the applicant and see the  
16 background check to see if that's true, but I'm taking the  
17 general theory that this is a stable individual with a fair  
18 past and unless they have -- for the record, I think it's like  
19 15 years of three of those violations.

20 COMMISSIONER YOKOUCHI: Well, he was 22 and 28.

21 COMMISSIONER TODD: Which then goes to 32 and 38 and  
22 whatever. But, I mean, this is what bothered me about this,  
23 is that -- the repeats over long periods of time.

24 MR. HOROVITZ: So I'm just trying to get a sense of  
25 what the restriction is. We --

1                   COMMISSIONER DeJETLEY: Mr. Chair, Mr. Chair, may I  
2 have the floor.

3                   COMMISSIONER TODD: Please. I yield.

4                   COMMISSIONER DeJETLEY: If he comes back -- he owns  
5 the business now, so it's LLC, if he is going to add partners  
6 to that LLC, that is his right and his business. We have no  
7 kuleana or say in that. So if he adds another partner later,  
8 he comes back and he goes through what we did on the first  
9 part of the meeting where we approved changes to the board or  
10 bylaws or whatever for that organization, so we don't even  
11 have to be going near that. We're going to be looking at  
12 approving his license for him today and what he does with his  
13 company is his business, it's not our business.

14                  COMMISSIONER TODD: That's fine as long as he does  
15 not have --

16                  COMMISSIONER DeJETLEY: No. We have no right to  
17 make conditions on him.

18                  COMMISSIONER TODD: Okay. Well, I think what we're  
19 looking at right now is the right to make conditions on him.

20                  MR. HOROVITZ: My suggestion to try and get what I  
21 think the sense is and what my client was willing to stipulate  
22 to is if he receives a DUI while he is the member manager of  
23 this -- of the licensee, that he would agree that his license  
24 be revoked. That I think is as simply as I can say it.

25                  MR. MURAI: Peter, perhaps we need to clarify.

1 Earlier -- when you say receives a DUI, does it mean  
2 conviction for a DUI?

3 MR. HOROVITZ: To me that's what it means, but I --

4 MR. MURAI: Because we should probably make that  
5 clear because Mr. -- Commissioner Todd had mentioned arrested.

6 MR. HOROVITZ: People get citations all the time  
7 that aren't followed -- that the department decides is not a  
8 violation and that's where I think we have a real sticky  
9 issue. But what we're saying is -- what we're trying to do --

10 COMMISSIONER TODD: Are you predicting, Counsel,  
11 that --

12 MR. MURAI: Hold on.

13 MR. HOROVITZ: Let me finish. I'm trying to  
14 circumvent -- I'm trying short circuit the process which I  
15 think is what the commission wants, because normally what  
16 would happen is if a licensee gets some criminal violation  
17 that disqualifies them from holding a license, after that  
18 occurs, the department then has to start its own process to  
19 revoke a license and there's a process for that. So what  
20 we're saying is we don't -- we're willing to forgo that second  
21 process, but there has to be a violation first. And I  
22 think --

23 COMMISSIONER TODD: A conviction is what you're  
24 saying?

25 MR. HOROVITZ: A conviction, which is -- could be a

1 stipulated one or -- I mean, because they don't take three or  
2 four years to do a DUI, you know, they really don't.

3 COMMISSIONER TODD: Okay. A conviction on it.

4 MR. HOROVITZ: There has to be something that we can  
5 point to and yes, there was or no, there was not and I think  
6 that's a pretty good concession. And as Commissioner Yokouchi  
7 said, you know, we've got to give people chances, you know,  
8 and, you know, he's working for his family, he's working for  
9 others, other families, you know --

10 COMMISSIONER TODD: I totally agree.

11 MR. HOROVITZ: And we all agree we don't want drunk  
12 drivers, we don't -- I mean, I've got two teenage daughters,  
13 one of whom got her license a year ago, I don't want her  
14 driving impaired at any point, I don't want any drunk  
15 driver -- I tell her, I don't care how a good driver you are,  
16 you have to worry about how good the other driver is and  
17 that's the way. So we're all on the exact same page on that.

18 COMMISSIONER TODD: Right.

19 MR. HOROVITZ: I don't think there's any debate on  
20 that. And we're willing to add the additional condition on --  
21 legal or not, it doesn't matter to me, it doesn't matter to my  
22 client, he's willing to do it. Just like we were willing to  
23 show the two violations that aren't going to appear in any  
24 criminal history background check 'cause they've been wiped  
25 off the books, we're willing to do -- go the extra mile on it.

1 He's asking for a chance.

2 MR. SCHOOLER: Mr. Todd, I just wanted to add, if  
3 there's -- if there's a conviction, I will pull the license  
4 off the wall and drive it down here and hand it to you myself.

5 COMMISSIONER TODD: Okay. I want you to have this  
6 thing, I want you to thrive, but we have to protect this  
7 community and there's some history.

8 MR. SCHOOLER: We're on the same team.

9 COMMISSIONER TODD: All right.

10 ACTING CHAIR ALULI: So we've extensive discussion  
11 on it, do I have a motion now on the floor for either approval  
12 or denial?

13 COMMISSIONER TODD: I will move to approved the  
14 stipulated license with the stipulation that if there is a  
15 conviction, there is a waiver of the due process and the  
16 conviction instantly removes the liquor license.

17 ACTING CHAIR ALULI: (Conferring with counsel.)

18 COMMISSIONER TODD: I don't know if we can waive due  
19 process in America. Apparently --

20 MR. MURAI: Maybe -- maybe we should ask the  
21 department, the motion on the floor is for instant removal of  
22 a license upon conviction for a DUI or an OUI or, you know,  
23 the driving while impaired, how -- can that work, you know,  
24 instantaneous revocation or is it more clear if the motion was  
25 for surrender or relinquishment of a license? Which is more,

1 you know, procedurally -- is there a difference?

2 DIRECTOR MUKAI: I believe that's up to corp counsel  
3 and the commission to decide.

4 MR. HOROVITZ: I'm comfortable with the motion.  
5 We've stipulated if there's a conviction, we'll immediately  
6 surrender our license.

7 MR. MURAI: Okay.

8 MR. HOROVITZ: Whether that's us coming in and  
9 giving it to Mr. Todd, Mr. Mukai, or the liquor department  
10 notifying us that our license is revoked, I think that's  
11 administerial and either way is fine. It's, you know, similar  
12 to another condition if you -- you know, you can only be open  
13 until 4 in the afternoon, you know, you're agreeing to it, so  
14 I'm comfortable with it.

15 MR. MURAI: Okay. Thanks, Peter, that clarifies it.

16 ACTING CHAIR ALULI: Okay. So all in favor of the  
17 motion?

18 MR. MURAI: You need a second and discussion.

19 ACTING CHAIR ALULI: Is there a second, sorry, is  
20 there a second on Jonathan's motion?

21 MR. MURAI: You need a second.

22 ACTING CHAIR ALULI: Is there a second on Jonathan's  
23 motion to approve it with the stipulations that he said?

24 COMMISSIONER DeJETLEY: I vote no.

25 COMMISSIONER YOKOUCHI: I don't like the

1 stipulation.

2 MR. MURAI: Okay. Motion -- for want of a second,  
3 the motion fails.

4 COMMISSIONER DeJETLEY: Mr. Chair, may I make  
5 motion, please.

6 ACTING CHAIR ALULI: Go ahead.

7 COMMISSIONER DeJETLEY: Jonathan, your motion was  
8 much too wordy.

9 I move that we vote for the approval of this license  
10 with the condition that if the applicant receives another  
11 convicted DUI, that his license will be revoked.

12 MR. HOROVITZ: That's fair.

13 COMMISSIONER TODD: Immediately.

14 COMMISSIONER DeJETLEY: Just revoked. All right?

15 ACTING CHAIR ALULI: Do I have a second on Alberta's  
16 motion?

17 COMMISSIONER YOKOUCHI: I'll second.

18 ACTING CHAIR ALULI: All in favor?

19 (Response.)

20 ACTING CHAIR ALULI: Motion carries. Thank you very  
21 much.

22 MR. HOROVITZ: Thank you.

23 COMMISSIONER TODD: Do you want a (inaudible) now?  
24 You have the (inaudible) in the world.

25 ACTING CHAIR ALULI: Let's move on to --

1 COMMISSIONER TODD: Get a drink and have somebody  
2 drive you home.

3 ACTING CHAIR ALULI: Item F, MBO Maui Operations,  
4 LLC dba Maui Brick Oven.

5 Applicant, please step forward. Applicant.

6 (Applicant comes forward with a baby.)

7 COMMISSIONER YOKOUCHI: Okay. We have to pass this  
8 one already.

9 COMMISSIONER TODD: Do you have a kitten as well?

10 MR. COVINGTON: My brother does, but not me.

11 ACTING CHAIR ALULI: Please state your name.

12 MR. COVINGTON: Chad Covington representing Maui  
13 Brick Oven.

14 ACTING CHAIR ALULI: Thanks very much.

15 Jarrett.

16 OFFICER KAHOOHANOHANO: MBO Maui Operations, LLC  
17 doing business as Maui Brick Oven requesting commission  
18 approval to change from a Dispenser Beer and Wine license,  
19 Category C(i) to a Restaurant Beer and Wine license, Category  
20 B(i), pursuant to Section 08-101-22(c)(6) of the Rules of the  
21 Liquor Commission, County of Maui.

22 ACTING CHAIR ALULI: Anything further to add to  
23 that?

24 MR. COVINGTON: No.

25 ACTING CHAIR ALULI: Okay. Any questions from any

1 of the commissioners?

2 Nothing from you, Jonathan?

3 COMMISSIONER TODD: I can't see anything wrong with  
4 it, sir.

5 ACTING CHAIR ALULI: Thank you very much.

6 COMMISSIONER TODD: He has baby and his brother has  
7 a kitten.

8 ACTING CHAIR ALULI: Can I have a motion?

9 COMMISSIONER TODD: I prove to approve.

10 COMMISSIONER YOKOUCHI: I second.

11 ACTING CHAIR ALULI: All in favor.

12 (Response.)

13 ACTING CHAIR ALULI: Motion carries. Thank you very  
14 much.

15 MR. COVINGTON: Thank you.

16 ACTING CHAIR ALULI: All right. Shall we take a  
17 five-minute break at least?

18 MR. MURAI: Sure.

19 ACTING CHAIR ALULI: Okay. Call for a five-minute  
20 break, please.

21 (Pause in Proceedings: 10:15 a.m.-10:20 a.m.)

22 ACTING CHAIR ALULI: Okay. (Gavel.) The commission  
23 meeting is called back to order. Let's move on to Other  
24 Licensing Matters. Oh, we didn't have everybody here. That  
25 was five minutes right?

1 MR. GENE SILVA: My bad.

2 ACTING CHAIR ALULI: Okay. Thank you. We'll move  
3 on to item No. VII, Other Licensing Matters. Let's see. What  
4 is it? The Department of Liquor Control is requesting  
5 clarification of the liquor commission's motion regarding the  
6 entertainment for Miko's Cuisine LLC.

7 Please state your -- here is Paul Horikawa.

8 MR. HORIKAWA: That's me. Good morning, Mr. Chair,  
9 members of the commissioner. My name is Paul Horikawa.  
10 Present also is Tabo King, he's the head chef for Miko's  
11 Cuisine.

12 ACTING CHAIR ALULI: Thank you.

13 All of you got information in your packets regarding  
14 this applicant's request for reinstating entertainment.  
15 That's what it's for; right?

16 MR. HORIKAWA: Well, we wanted to do was just  
17 looking at the minutes that were prepared in this case, it  
18 appears just from a review that the requirement not to have  
19 live entertainment was added as a condition when the  
20 commission approved the license on October 11th of last year.  
21 What we would like to do is have that particular condition  
22 removed. And there's a still process that has to be followed  
23 in order to provide live entertainment at the premises and  
24 that -- the next step, if they were to proceed on that, is to  
25 get the permit to allow live entertainment to be played. So

1 it's not as if this will automatically allow live  
2 entertainment to be done. There would be possible sanctions  
3 if they were to proceed without the permit being issued by the  
4 department.

5 ACTING CHAIR ALULI: Okay. Thank you.

6 Are there any questions from any of the  
7 commissioners? I think all of you got the information, the  
8 background information on this.

9 COMMISSIONER DeJETLEY: I didn't. I'm sorry,  
10 Mr. Chair, but I didn't. I -- where is the background  
11 information? Because I wrote here, Why was it denied?

12 ACTING CHAIR ALULI: The decision was made --

13 COMMISSIONER DeJETLEY: Oh, here on this. (Pause -  
14 referring.) Can they explain why it was denied?

15 ACTING CHAIR ALULI: Paul, go ahead. Give us  
16 further information for Commissioner DeJetley.

17 MR. HORIKAWA: Sure. I'm going to have speculate a  
18 little and the reason is because the record shows that I was  
19 not present at the meeting, but I did speak to various  
20 individuals about what happened on that particular day. My --  
21 from what I've learned, again, Miko Israel, who is Miko from  
22 Miko's Cuisine, she was present and Commissioner Umeno had  
23 asked her, What are your hours of live entertainment? And  
24 Ms. Israel did respond to Commissioner Umeno's inquiry. I  
25 don't think at that time that Ms. Israel had a complete

1 understanding of what was going on. Her English is limited at  
2 that time.

3 ACTING CHAIR ALULI: Right.

4 MR. HORIKAWA: I would note that I processed several  
5 of the requests for liquor licenses at the same establishment.  
6 The first was Sandy's Place in the -- I believe it was in the  
7 '90s and the restriction that we're asking to be removed today  
8 was not placed on the liquor license back in the '80s. When  
9 the liquor license was transferred to Asian Star, the previous  
10 owner, that particular condition was not attached to that  
11 liquor license. How this arose, I'm not really sure only  
12 because I wasn't present, but let me explain that I don't  
13 think they're necessarily go out and do live entertainment  
14 immediately, but what -- they may have some plans, but what we  
15 would like to do is just have it as an option if there -- you  
16 know, if there was a fund raiser there of some type and the  
17 entity that was putting on the fund raiser wanted to have live  
18 music, we wanted to have that option to come to the commission  
19 and ask for permission to have live entertainment. I mean,  
20 that's just an option that we wanted to have as we -- as they  
21 operate their business.

22 ACTING CHAIR ALULI: And let me just state that I  
23 was there for that meeting and I remember that the license  
24 that was being applied for did allow for the entertainment at  
25 the time, but the applicant said that there was -- she didn't

1 feel it was necessary because the people that came to the  
2 establishment used -- or ate a lot of food and so they,  
3 therefore, didn't need the entertainment, that would suffice,  
4 the food would.

5 But if I understand, and I'll ask the director this  
6 question, the license that they have does allow for the  
7 entertainment; right?

8 DIRECTOR MUKAI: Yes.

9 ACTING CHAIR ALULI: Okay. So my question is, then,  
10 we can approve because the deletion was given by a  
11 commissioner, the commission can approve to reinstate license  
12 to its full status which --

13 COMMISSIONER TODD: To remove the condition.

14 ACTING CHAIR ALULI: -- allows for the -- or remove  
15 the condition that allows for the entertainment; right?

16 DIRECTOR MUKAI: Yes.

17 ACTING CHAIR ALULI: We can do that without any  
18 re-application.

19 COMMISSIONER TODD: So I'm going to make a motion  
20 that we remove the condition to this license and allow it to  
21 be as is it was originally intended.

22 ACTING CHAIR ALULI: Do I have a second?

23 COMMISSIONER DeJETLEY: I second.

24 ACTING CHAIR ALULI: All in favor?

25 (Response.)

1           ACTING CHAIR ALULI: The motion carries.

2           Anything else?

3           The motion carries. Thank you very much.

4           COMMISSIONER TODD: Just make sure that you -- if  
5 you do it, you know how to do it. You know what I mean? If  
6 there's dancing, there's rules.

7           MR. KING: Yes, sir.

8           COMMISSIONER TODD: That's -- and talk to your  
9 attorney.

10          MR. KING: Thank you very much.

11          COMMISSIONER TODD: 'Cause when you don't do it a  
12 lot, that's when you get in trouble.

13          MR. KING: Yes. Thank you.

14          COMMISSIONER TODD: Thank you.

15          ACTING CHAIR ALULI: Let's move on to item No. VIII,  
16 Administrative Affairs. Glenn.

17          DIRECTOR MUKAI: Yes. The department was informed  
18 by Mike Molina, he's an assistant to the mayor, that Nicole  
19 DeRego resigned her position as a member of the liquor  
20 commission.

21                 And also I have a reminder the state conference will  
22 be held October 7th to the 10th at Koloa Landing, Poipu,  
23 Kauai. All members of the commission and board are invited to  
24 attend. Please inform Lianne by August 30th, end of this  
25 month, if you plan to attend so we can do the flights, airline

1 flights, because I believe there's only three flights in the  
2 morning and one of them you'll arrive too late for direct  
3 flight. So let us know if you plan to attend.

4 And on B, the liquor control adjudication board held  
5 its serving August 2nd and the summary of the board decisions  
6 has been provided to the members of the commission.

7 ACTING CHAIR ALULI: Okay. Any questions or  
8 comments or -- from the commissioners?

9 COMMISSIONER DeJETLEY: Yes, I have a question. So  
10 on October 7th, what is the agenda for that day?

11 DIRECTOR MUKAI: We didn't the agenda, but normally  
12 that's when you have --

13 COMMISSIONER DeJETLEY: Arrivals?

14 DIRECTOR MUKAI: Arrival and the reception.

15 COMMISSIONER TODD: Isn't there a website or  
16 something that outlines what goes on here?

17 DIRECTOR MUKAI: We're waiting for Kauai to send us  
18 the -- you know, they're still doing the agenda item. Once we  
19 get it, we'll forward it to all the --

20 COMMISSIONER TODD: Can you or Lianne just forward  
21 it to us by text or something?

22 DIRECTOR MUKAI: Yes.

23 COMMISSIONER TODD: 'Cause to make a decision you've  
24 got to know what the topics are for four days.

25 DIRECTOR MUKAI: Yes, we will.

1           ACTING CHAIR ALULI: We usually get those in  
2 advance, so, you know --

3           COMMISSIONER DeJETLEY: So, Mr. Chair, Director  
4 Glenn, the Big Island convention was very worthwhile. I  
5 really learned a lot from the convention itself, from all of  
6 the different workshops, so I would highly encourage other  
7 directories attend if they can.

8           But I myself personally will not be able to arrive  
9 until late that night, so I would not be able to take part in  
10 the discussions or panels on the 7th. If that would be  
11 acceptable for me to arrive late that night?

12          DIRECTOR MUKAI: Yes, it will.

13          COMMISSIONER DeJETLEY: I can be there in the  
14 morning.

15          ACTING CHAIR ALULI: Okay. Thank you, Alberta.  
16 Anything else from the commissioners?

17          No? Okay. Then I will call for adjournment.

18          COMMISSIONER DeJETLEY: Oh. Wait, wait, wait.

19          COMMISSIONER TODD: I'm excited about adjournment.

20          COMMISSIONER DeJETLEY: No. Wait, wait. Can we  
21 talk about -- okay. Well, do we -- we have to discuss the  
22 adding to the agenda for next time and that -- the process is  
23 that I have to put it in writing to Nane? To put it on the  
24 agenda.

25          ACTING CHAIR ALULI: To put it on agenda, I'm not

1 sure how that's done.

2 MR. MURAI: Okay. Any time -- well, when you're  
3 formulating the agenda -- generally speaking, the chair is the  
4 one who approves the agenda, but what the board's -- what the  
5 commission's procedure is is the staff, the department will  
6 prepare the agenda and then it's, you know, sent to the chair  
7 for approval. And of course since we -- you know, the chair  
8 knows in advance that you're -- he's anticipating a request,  
9 when the chair gets your request, Alberta, he'll probably let  
10 the department know, Please include this, if that's his wish.

11 COMMISSIONER DeJETLEY: Okay. Now, the other  
12 question I have for counsel is I just received correspondence  
13 addressed to me at this office. How do I get it over  
14 officially to Glenn to review?

15 MR. MURAI: Well, of course, if --

16 COMMISSIONER DeJETLEY: It's addressed to me as a  
17 commissioner and sent to this office.

18 MR. MURAI: Okay. Whatever it is, you can just give  
19 it to him.

20 COMMISSIONER DeJETLEY: I just wanted to follow  
21 protocol.

22 COMMISSIONER TODD: No. You have to mail it to  
23 Lianne.

24 ACTING CHAIR ALULI: Okay. So let's adjourn the  
25 meeting. I need a motion. Do I have a motion for

1 adjournment?

2 COMMISSIONER TODD: I move to adjourn this lovely  
3 meeting.

4 ACTING CHAIR ALULI: Second?

5 MEMBER BOLOSAN: Second.

6 ACTING CHAIR ALULI: Meeting adjourned. Thank you  
7 very much.

8 COMMISSIONER TODD: All in favor, aye.

9 ACTING CHAIR ALULI: All in favor, aye.

10 (Response.)

11 ACTING CHAIR ALULI: Of course, aye. (Gavel.)

12 (The proceedings were adjourned at 10:31 a.m.)

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