

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 9:00 a.m., on Wednesday, February 8, 2017.

Reported by: Tonya McDade, CSR, RPR, CRC
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APPEARANCES

- Robert Tanaka, Chairperson
- Nane Aluli, Commissioner
- William Kennison, Commissioner
- Dana Souza, Commissioner
- Roy Umeno, Commissioner
- Stephen West, Commissioner
- STAFF PRESENT:
- Edward Kushi, Jr., First Deputy Corporation Counsel
- Glenn Mukai, Director
- Mark Honda, Deputy Director
- Karilee Yoshizawa, Supervising Investigator
- Layne Silva, Senior Investigator
- Sarah Cordeiro, Secretary to Boards/Commissions II

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(Wednesday, February 8, 2017, 9:00 a.m.)

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CHAIR TANAKA: (Gavel.) Okay. Liquor
Commission meeting called to order. Sarah, roll call.

MS. CORDEIRO: Sarah Cordeiro, Liquor Control.

COMMISSIONER KENNISON: Willy Kennison.

COMMISSIONER WEST: Good morning. Stephen West.

COMMISSIONER ALULI: Aloha. Nane Aluli.

MR. KUSHI: Ed Kushi, County of Maui.

CHAIR TANAKA: Good morning. Bob Tanaka.

COMMISSIONER SOUZA: Dana Souza.

COMMISSIONER UMENO: Good morning. Roy Umeno.

DIRECTOR MUKAI: Glenn Mukai, Liquor Control.

DEPUTY DIRECTOR HONDA: Mark Honda, Liquor
Control.

MS. YOSHIZAWA: Kari Yoshizawa, Liquor Control.

CHAIR TANAKA: Thank you. Okay. You have your
agenda for February 8, 2017. Okay. Before I call for
approval, I'm gonna stop the meeting at 10:00 a.m. to take
public hearing from the public on our rule change. Got it
posted at 10:00 a.m., so I'm gonna stop the meeting at
that time and then continue afterwards. Okay. If there's
no comments or questions on the agenda, may I have a
motion for approval?

COMMISSIONER SOUZA: So moved.

1 COMMISSIONER UMENO: Second.

2 CHAIR TANAKA: Moved and seconded. All in
3 favor, say "aye."

4 (Response.)

5 CHAIR TANAKA: Okay. You have your Commission
6 minutes of January 11th, 2017 and January 20 of 2017. If
7 there's no comments or questions, may I have a motion for
8 approval?

9 COMMISSIONER SOUZA: So moved.

10 COMMISSIONER UMENO: Second.

11 CHAIR TANAKA: Moved and seconded. All in
12 favor, say "aye."

13 (Response.)

14 CHAIR TANAKA: Motion carried. Let's go on to
15 General Licensing Matters, Item A through M, if there's
16 any questions or comments. If not, may I have a motion
17 for confirmation?

18 COMMISSIONER SOUZA: So move.

19 COMMISSIONER UMENO: Second.

20 CHAIR TANAKA: Moved and seconded. All in
21 favor, say "aye."

22 (Response.)

23 CHAIR TANAKA: Okay. Let's go on to Licensing
24 Matters, Public Hearing. Application Number 08, S&A
25 Hospitality.

1 MR. KAWAGISHI: Chairman Tanaka and Members of
2 the Liquor Commission, Michael Kawagishi on behalf of S&A
3 Hospitality, LLC. And with me today is Bryce Sorenson who
4 is a member of the LLC.

5 CHAIR TANAKA: Thank you. Kari.

6 MS. YOSHIZAWA: Application Number 08, the
7 applicant is S&A Hospitality, LLC doing business as Koa's
8 Seaside Grill. The proposed premises is located at 839
9 Front Street, Unit 5, Lahaina, Maui, Hawaii. This is a
10 public hearing for a new Dispenser General License,
11 Category C(ii).

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

15 Notice of public hearing was published in "The
16 Maui News" on December 21st and 28th, 2016. There are a
17 total of 78 owners and lessees situated within 500 feet of
18 the proposed premises. The Department did not receive any
19 protests.

20 CHAIR TANAKA: Thank you. Anything else to add,
21 Michael?

22 MR. KAWAGISHI: Nothing to add at this time.

23 CHAIR TANAKA: Okay. Since this is a public
24 hearing, I'm gonna open it to the public. Anybody for or
25 against this application? Okay. Seeing none, any

1 questions by the Commissioners? Okay. If there's no
2 questions, may I have a motion?

3 COMMISSIONER SOUZA: I move to approve
4 Application Number 08 conditioned upon the applicant
5 completing the remaining application requirements to the
6 satisfaction of the Department of Liquor Control.

7 COMMISSIONER UMENO: Second.

8 CHAIR TANAKA: Moved and seconded. All in
9 favor, say "aye."

10 (Response.)

11 CHAIR TANAKA: Opposed, "no."

12 (No response.)

13 CHAIR TANAKA: Motion carried. Thank you.

14 MR. KAWAGISHI: Thank you.

15 CHAIR TANAKA: Application Number 12, Everyday
16 Restaurant Group.

17 MR. MANCINI: Good morning. My name's Paul
18 Mancini, I'm representing the applicant Everyday
19 Restaurant Group LLC. Adam Fuderer, the manager member is
20 with us today. And Alison Isabelle is in the audience,
21 she's also a member manager of the LLC.

22 CHAIR TANAKA: Thank you. Kari.

23 MS. YOSHIZAWA: Application Number 12, the
24 applicant is Everyday Restaurant Group LLC doing business
25 as Kolea Kitchen. The proposed premises is located at

1 4405 Honoapiilani Highway, Suite Number 301, Lahaina,
2 Maui, Hawaii. This is a public hearing for a new
3 Dispenser General License, Category C(ii).

4 The documents necessary for completing the
5 remaining application requirements for a liquor license
6 are listed in the summary report.

7 Notice of public hearing was published in "The
8 Maui News" on December 21st and 28, 2016. There are a
9 total of 2,284 owners and lessees situated within 500 feet
10 of the proposed premises. The Department did not receive
11 any protests.

12 CHAIR TANAKA: Anything else to add, Paul?

13 MR. MANCINI: No, we have nothing to add.

14 CHAIR TANAKA: Okay. I'm gonna open it to the
15 public since this is a public hearing. Anybody for or
16 against this application? Okay. Seeing none, public
17 hearing closed for this item. Any questions by the
18 Commissioners? Okay. If there's no questions, may I have
19 a motion?

20 COMMISSIONER KENNISON: I move to approve
21 Application Number 12 upon the applicant completing the
22 remaining application requirements to the satisfaction of
23 Department of Liquor Control.

24 COMMISSIONER WEST: Second.

25 CHAIR TANAKA: Moved and seconded. All in

1 favor, say "aye."

2 (Response.)

3 CHAIR TANAKA: Opposed, "no."

4 (No response.)

5 CHAIR TANAKA: Motion carried.

6 MR. MANCINI: Thank you for your time.

7 MR. FUDERER: Thank you.

8 CHAIR TANAKA: Application Number 13.

9 MR. NAKAMURA: Good morning, Mr. Chair, Members
10 of the Commission. Craig Nakamura, attorney on behalf of
11 the applicant. This is Mr. Dennis Pruessler --
12 P-R-U-E-S-S-L-E-R -- who is the general manager of the
13 theatre.

14 CHAIR TANAKA: Okay. Kari.

15 MS. YOSHIZAWA: Application Number 13, the
16 applicant is Kattwood, LLC doing business as Maui Theatre.
17 The proposed premises is located at 878 Front Street,
18 Building B, Unit Number 4, Lahaina, Maui, Hawaii. This is
19 a public hearing for a new Dispenser General License,
20 Category C(ii).

21 The documents necessary for completing the
22 remaining application requirements for a liquor license
23 are listed in the summary report.

24 Notice of public hearing was published in "The
25 Maui News" on December 21st and 28, 2016. There are a

1 total of 111 owners and lessees situated within 500 feet
2 of the proposed premises. The Department did not receive
3 any protests.

4 CHAIR TANAKA: Thank you. Anything else to add,
5 Craig?

6 MR. NAKAMURA: Mr. Chair, as discussed at the
7 preliminary hearing on this matter, we would ask that the
8 same conditions be applied to this license as on the prior
9 license as indicated in the investigative report. That's,
10 A, exception to Section 08-101-61(f)(2) regarding minors;
11 and, B, exception to 08-101-92 regarding lighting; C,
12 licensee will appear before the Liquor Commission if/when
13 concerns by the Liquor Department are brought forth; and,
14 D, there shall be two employees approved by the Director
15 at all times observing the gallery from the catwalk.

16 CHAIR TANAKA: Okay. Is that correct, Kari?

17 MS. YOSHIZAWA: I would need to verify with the
18 application on file.

19 MR. NAKAMURA: I was reading that from the
20 investigative report.

21 CHAIR TANAKA: Those were the conditions,
22 original conditions?

23 MR. NAKAMURA: That's correct.

24 MS. YOSHIZAWA: Yes. The applicant did request,
25 as noted in the investigator's report, that they're asking

1 for an exception to 08-101-61(f)(2), Rules of the Liquor
2 Commission, as well as an exception to Section 08-101-92,
3 Rules of the Liquor Commission, and that refers to
4 lighting. Two other conditions was, C, licensee will
5 appear before the Liquor Commission if and when concerns
6 by the Liquor Department are brought forth and, D, there
7 shall be two employees approved by the Director at all
8 times observing the gallery from the catwalk.

9 CHAIR TANAKA: Okay. So that's the same
10 conditions, then?

11 MS. YOSHIZAWA: As the previous licensee, yes.

12 CHAIR TANAKA: Okay. I'm gonna open it to the
13 public. Anybody for or against this application? Okay.
14 Seeing none, any questions by the Commissioners? If
15 there's no questions, may I have a motion?

16 COMMISSIONER KENNISON: I move to approve
17 Application Number 13 upon the applicant completing the
18 remaining application requirements to the satisfaction of
19 the Department of Liquor Control and to note the
20 additional conditions that was noted, requested.

21 COMMISSIONER WEST: Second.

22 CHAIR TANAKA: Okay, moved and seconded. All in
23 favor, say "aye."

24 (Response.)

25 CHAIR TANAKA: Opposed, "no."

1 (No response.)

2 CHAIR TANAKA: Motion carried.

3 MR. NAKAMURA: Thank you very much. And,
4 Commissioner West, good to see you back.

5 COMMISSIONER WEST: Good to be back. Thank you.

6 CHAIR TANAKA: Application Number 14.

7 MR. KAWAGISHI: Chairman Tanaka and Members of
8 the Liquor Commission, Michael Kawagishi on behalf of
9 Coconut's Fish Cafe LLC. And with me today is Michael
10 Phillips who is a member of the LLC.

11 CHAIR TANAKA: Thank you. Kari.

12 MS. YOSHIKAWA: Application Number 14, applicant
13 is Coconut's Fish Cafe LLC doing business as Coconut's
14 Fish Cafe. The proposed premises is located at 2463 South
15 Kihei Road, Space A-21 Kihei, Maui, Hawaii. This is a
16 public hearing for a new Dispenser Beer and Wine license,
17 Category C(ii).

18 Documents necessary for completing the remaining
19 application requirements for a liquor license are listed
20 in the summary report.

21 Notice of public hearing was published in "The
22 Maui News" on December 21st and 28, 2016. There are a
23 total of 1,080 owners and lessees situated within 500 feet
24 of the proposed premises. The Department did not receive
25 any protests.

1 CHAIR TANAKA: Thank you. Anything else to add,
2 Mike?

3 MR. KAWAGISHI: Nothing at this time.

4 CHAIR TANAKA: Okay. I'm gonna open it to the
5 public since this is a public hearing item. Anybody for
6 or against this application? Okay. Seeing none, public
7 hearing closed for this item. Any questions by the
8 Commissioners? Okay. If there's no questions, may I have
9 a motion?

10 COMMISSIONER SOUZA: I move to approve
11 Application 14 conditioned upon the applicant completing
12 the remaining application requirements to the satisfaction
13 of the Department of Liquor Control.

14 COMMISSIONER WEST: Second.

15 CHAIR TANAKA: Moved and seconded. All in
16 favor, say "aye."

17 (Response.)

18 CHAIR TANAKA: Opposed, "no."

19 (No response.)

20 CHAIR TANAKA: Motion carried.

21 MR. KAWAGISHI: Thank you.

22 MR. PHILLIPS: Aloha.

23 CHAIR TANAKA: Application Number 16, Kaanapali
24 Queen.

25 MR. RANDOLPH COON: Good morning. Sorry.

1 Randolph Coon, and I'm president of Kaanapali Queen, Inc.
2 And our general counsel, Denver Saxton Coon.

3 CHAIR TANAKA: Kari.

4 MS. YOSHIZAWA: So, Members, this is an
5 application for Tour or Cruise Vessel License. So they do
6 not have a preliminary hearing, they go straight to public
7 hearing. So I'll be reading the report.

8 Application Number 16, applicant is Kaanapali
9 Queen, Inc., a registered Hawaii corporation, doing
10 business as Trilogy III applying for a Tour or Cruise
11 Vessel License, Category 2. The officers, directors and
12 stockholder of the corporation is listed in the
13 investigator's report.

14 Applicant has submitted a U.S. Coast Guard
15 Certificate of Documentation dated September 23rd, 2016.

16 Applicant has submitted a copy of a Certificate
17 of Ownership from Gold Coast Yachts, Inc. and Kaanapali
18 Queen, Inc., dated November 7, 2016.

19 The proposed premises is a 65-foot
20 auxiliary-powered sailing catamaran, authorized to carry
21 49 passengers, one masters, two deckhands, and six persons
22 in addition to the crew, total persons allowed is 59. The
23 vessel will be moored offshore, Mooring Area A-05, Lahaina
24 Harbor, Lahaina, Maui, Hawaii.

25 The men's toilet facilities are located within

1 the port hull, and the women's toilet facilities are
2 located within the starboard hull sections of the bottom
3 level of the vessel.

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

6 There are 34 licenses of this class and kind
7 currently issued within Maui County.

8 Applicant initially plans to be open seven days
9 a week from 5:30 a.m. to 12:00 midnight. Applicant is
10 aware of the hours during which a tour or cruise vessel
11 may be open for the sale of liquor. Applicant is aware
12 that if they wish to open at 5:30 a.m., that they would
13 need to submit a permit application to request an
14 extension of hours.

15 A site inspection was conducted of the proposed
16 premises on January 26, 2017, at 2:00 p.m.

17 As of the date of this report, the current
18 officers and directors of the following licenses are as
19 follows: Randolph Saxton Coon, President/Assistant
20 Secretary/Assistant Treasurer/Director; James Eldon Coon,
21 Vice President/Secretary/Treasurer/Director; Ginger Lee
22 Lucy, Assistant Vice President/Assistant Secretary; LiAnne
23 Summer Driessen, Assistant Vice President/Assistant
24 Treasurer; Riley Eldon Coon, Assistant Vice President;
25 Gabriel William Lucy, Assistant Vice President; Denver

1 Saxton Coon, Assistant Vice President.

2 Kaanapali Queen, Inc. doing business as Trilogy

3 IV, Number 335, Tour or Cruise Vessel, Category 2,

4 original license issued on September 1st, 2009, with no

5 violations; Trilogy Corporation doing business as Trilogy,

6 Number 128, Tour or Cruise Vessel, Category 2, original

7 license issued on October 1st, 2009, with no violations;

8 Trilogy Corporation doing business as Trilogy VI, Tour or

9 Cruise Vessel, Category 2, original license issued on

10 October 1st, 2009, with no violations; Trilogy Corporation

11 doing business as Manele General Store, Number 108, Retail

12 Beer and Wine, original license issued on October 3rd,

13 2016, with no violations; Maui Navigation Company, Ltd.

14 doing business as Trilogy Elua, Number 149, Tour or Cruise

15 Vessel, Category 2, original license issued on September

16 15, 2011, with no violations; Maka Kai Charters, Inc.

17 doing business as Trilogy II, Number 034, Tour or Cruise

18 Vessel, category 2, original license issued on September

19 15, 2011, with no violations; Maka Kai Charters, Inc.

20 doing business as Trilogy V, Number 115, Tour or Cruise

21 Vessel, Category 2, original license issued on September

22 15, 2011, with no violations; Lanai City Service, Inc.

23 doing business as Lanai Plantation Store, Retail General,

24 original license issued on May 4, 1999, Lanai City

25 Service, Inc. doing business as Lanai Plantation Store

1 did, through its employees, sell or furnish liquor to a
2 minor as defined in Section 281-1 HRS, contrary to Section
3 281-78(b)(1)(A) and Section 08-101-60(b)(1)(A), Rules of
4 the Liquor Commission. Conviction dates, January 4, 2001,
5 \$1,000 fine; July 5th, 2012, \$2,000 fine with \$1,000
6 suspended one year provided no same violation; August 1st,
7 2013, \$2,000 fine.

8 Lanai City Service, Inc. doing business as Lanai
9 Plantation Store did, through its employee, fail to check
10 or properly check the identification of a minor as defined
11 in Section 281-1 HRS, who was in possession of or seeking
12 to purchase liquor at its premises where liquor is sold
13 for consumption off the premises, contrary to Section
14 08-101-61(b), Rules of the Liquor Commission. Conviction
15 date, January 4, 2001, \$1,000 fine with \$500 suspended one
16 year provided no same violation.

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

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

25 CHAIR TANAKA: Thank you. Anything else to add,

1 Mr. Coon?

2 MR. RANDOLPH COON: This -- this particular
3 permit is a new license, but it is replacing the -- I
4 think maybe it was alluded to, replacing the license of
5 Trilogy IV which this vessel replaces. So continuing
6 that -- you know, that existing long-standing business.

7 CHAIR TANAKA: Thank you. Okay. Since this is
8 a public hearing item, I'm gonna open it to the public.
9 Anybody for or against this application? Okay. Seeing
10 none, public hearing closed for this item. Any questions
11 by the Commissioners?

12 COMMISSIONER WEST: What -- what steps have you
13 taken to prevent serving alcohol to minors?

14 MR. RANDOLPH COON: With respect to this
15 particular application or are you referring to the Lanai
16 City Service Plantation Store?

17 COMMISSIONER WEST: No. For, you know,
18 basically, all of your operation, you know. Pretty much,
19 I wanna find out what -- what steps are you taking to
20 make -- make sure you guys don't provide alcohol to
21 minors?

22 MR. RANDOLPH COON: Yeah. I think one of the
23 reasons why there have been no violations, particularly in
24 the boating side, is that all the crew are trained and
25 licensed. And they -- they do a, you know, very

1 conscientious check on everybody's -- you know, their --
2 their identification. So we just -- have just never had a
3 problem because we follow that protocol very religiously.

4 CHAIR TANAKA: Okay. Any other questions? If
5 there's no other questions, may I have a motion?

6 COMMISSIONER KENNISON: I move to approve
7 Application Number 16 conditioned upon the applicant
8 completing the remaining application requirements to the
9 satisfaction of Department of Liquor Control.

10 COMMISSIONER WEST: Second.

11 CHAIR TANAKA: Moved and seconded. All in
12 favor, say "aye."

13 (Response.)

14 CHAIR TANAKA: Opposed, "no."

15 (No response.)

16 CHAIR TANAKA: Motion carried. Thank you.

17 MR. DENVER COON: Thank you.

18 MR. RANDOLPH COON: Thank you.

19 CHAIR TANAKA: Okay. Let's go on to Preliminary
20 Hearings. Application Number 15, Maui Wine.

21 MS. HEGELE: Good morning Commission. I'm Paula
22 Hegele, President of Maui Wine, formerly Tedeschi
23 Vineyards.

24 CHAIR TANAKA: Thank you. Kari.

25 MS. YOSHIZAWA: Application Number 15, the

1 applicant is Maui Wine, Ltd., a Hawaii corporation, doing
2 business as "To Be Named" applying for a Small Craft
3 Producer Pub License.

4 The officers, directors and stockholders of the
5 corporation is listed in the investigator's report.

6 Applicant has submitted an affidavit from
7 Ulupalakua Ranch acknowledging Maui Wine, Ltd., formerly
8 known as Tedeschi Vineyards, Ltd., as the current
9 leaseholder and licensee to the use and exclusive control
10 of the property for the consumption of liquor in
11 accordance with State of Hawaii Liquor Control laws, dated
12 August 16, 2016.

13 The proposed premises consists of a wine
14 manufacturing facility and tasting rooms that are situated
15 on approximately 1.238 acres and a vineyard consisting of
16 59.1 acres, located at 14815 Piilani Highway, Kula, Maui,
17 Hawaii.

18 There are no schools, churches or licensees of
19 the same class and kind located within a radius of 500
20 feet.

21 There are no licenses of this class and kind
22 currently issued within Maui County.

23 Calvin Pardee Erdman, Jr., Paula Jean Hegele,
24 Nicholas Matichyn, Gerald McKie Clair, Emilio David
25 Tedeschi and Mario Luke Tedeschi currently hold positions

1 as officers or directors within Maui Wine, Ltd. doing
2 business as MauiWine, Manufacturer wine (from fruits grown
3 in the state), Liquor License Number 093.

4 There are no reports of liquor law violations at
5 this location.

6 Applicant initially plans to be open seven days
7 a week from 8:00 a.m. to 9:00 p.m.

8 A site inspection was conducted of the proposed
9 premises on December 20th, 2016 at 10:00 a.m.

10 Information contained within the DLC-006 and
11 DLC-008 Forms submitted by Gerald McKie Clair and Mario
12 Luke Tedeschi indicated that they had not been convicted
13 for a violation of law other than a minor traffic
14 violation. Information received from criminal background
15 checks revealed that Gerald McKie Clair and Mario Luke
16 Tedeschi had been convicted for violations of law other
17 than minor traffic violations. Gerald McKie Clair and
18 Mario Luke Tedeschi have both submitted letters of
19 explanation.

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

23 CHAIR TANAKA: Thank you. Do you have anything
24 else to add?

25 MS. HEGELE: No. Thank you.

1 CHAIR TANAKA: Okay. I'm gonna open it to the
2 public for any public testimony. Seeing none, any
3 questions by the Commissioners? If there's no questions,
4 may I have a motion?

5 COMMISSIONER KENNISON: I move to approve
6 Application Number 15 for public hearing and to process
7 the application for publication.

8 COMMISSIONER WEST: Second.

9 CHAIR TANAKA: Okay, moved and seconded. All in
10 favor, say "aye."

11 (Response.)

12 CHAIR TANAKA: Opposed, "no."

13 (No response.)

14 CHAIR TANAKA: Motion carried. Thank you.

15 MS. HEGELE: Thank you.

16 CHAIR TANAKA: Okay. Let's go on.

17 Application -- I'm gonna take Application Number 20 and 21
18 together since it's a similar location, FOH Hospitality.

19 MR. HOROVITZ: Good morning, Mr. Chair, Members
20 of the Commission and staff. My name is Peter Horovitz,
21 I'm the attorney for the applicant. With me is Chris
22 Rabang, who is the General Manager of the hotel and retail
23 operations. Also in the room is Brandon Maeda, who is the
24 Food and Beverage Operations Manager.

25 CHAIR TANAKA: Thank you. Kari.

1 MS. YOSHIKAWA: Application Number 20, the
2 applicant is FOH Hospitality, LLC, a registered Delaware
3 limited liability company, doing business as Kauhale
4 Market applying for a Retail General License.

5 The manager and member of the manager-managed
6 LLC is listed in the investigator's report.

7 Applicant has submitted a copy of a Resort
8 Hospitality Management Agreement by and among Vistana
9 Hawaii Management, Inc., a Hawaii corporation, Vistana
10 Management, VSE Pacific, Inc., a Florida corporation,
11 developer, and FOH Hospitality, LLC, a Delaware limited
12 liability company, FOH, dated November 1st, 2016.

13 The term of the lease -- or the Management
14 Agreement is, Except as may be earlier terminated pursuant
15 to Sections 3.2 and 3.3 hereof, the term of this agreement
16 will commence on the date hereof and will end on the date
17 of the termination of the Management Agreement.

18 The proposed premises is a single-story
19 structure consisting of approximately 1,500 square feet,
20 is located within Westin Nanea Ocean Villas Hotel located
21 at 45 Kai Malina Parkway, Suite Number 1, Lahaina, Maui,
22 Hawaii.

23 There are no schools or churches located within
24 a radius of 500 feet.

25 Aina Gourmet is a license of the same class and

1 kind located within a radius of 500 feet. There is one
2 Hotel license located within a radius of 500 feet. There
3 are 142 licenses of this class and kind currently issued
4 within Maui County.

5 Applicant plans to be open seven days a week
6 from 6:00 a.m. to 12:00 p.m.

7 A site inspection was attempted of the proposed
8 premises on January 6, 2017. The premises cannot be
9 inspected at this time as it is still under construction.

10 As of the date of this report, Angela Kathryn
11 Halladay is currently an officer of the following
12 licenses: FOH Hospitality, LLC doing business as Kai Ala
13 Market, Number 419, Retail General, original license
14 issued on April 18, 2008, with no violation; FOH
15 Hospitality, LLC doing business as Westin Ka'anapali Ocean
16 Resort Villas, Number 222, Hotel, original license issued
17 on November 9th of -- October 9, 2003, with no violations;
18 Western Host, Inc. doing business as The Westin Maui
19 Resort & Spa, Number 236, Hotel, original license issued
20 on November 6, 1998, with no violations.

21 In the opinion of the investigator, the
22 applicant appears to be fit and proper, and does not
23 appear to be disqualified by any provision as stated
24 within Section 281-56 HRS from obtaining or exercising a
25 license.

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

4 Application Number 21, the applicant is FOH
5 Hospitality, LLC, a registered Delaware limited liability
6 company, doing business as The Westin Nanea Ocean Villas
7 applying for a Hotel license.

8 The manager and member of the manager-managed
9 LLC is listed in the investigator's report.

10 Applicant has submitted a copy of a Resort
11 Hospitality Management Agreement by and among Vistana
12 Hawaii Management, Inc., a Hawaii corporation, Vistana
13 Management, VSE Pacific, Inc., a Florida corporation,
14 developer, and FOH Hospitality, LLC, a Delaware limited
15 liability company, FOH, dated November 1st, 2016.

16 The term of the Management Agreement is
17 indicated as "Except as may be earlier terminated pursuant
18 to Sections 3.2 and 3.3 hereof, the term of this agreement
19 will commence on the date hereof and will end on the date
20 of termination of the Management Agreement.

21 The proposed premises, which is situated on
22 approximately 16 acres, consists of eight buildings, two
23 parking garages and 390 guest rooms, located at 45 Kai
24 Malina Parkway, Lahaina, Maui, Hawaii.

25 There are no schools or churches located within

1 a radius of 500 feet.

2 Duke's Beach House is a license of the same
3 class and kind located within a radius of 500 feet.
4 There's one Retail General license located within a radius
5 of 500 feet. There are 29 licenses of this class and kind
6 currently issued within Maui County.

7 Applicant plans to be open seven days a week, 24
8 hours a day. The applicant is aware of the hours during
9 which a hotel licensed premises may be open for the sale
10 of liquor. Applicant is aware that if they wish to open
11 outside of the hours allowed for a Hotel licensed premises
12 that they would need to submit a permit application to
13 request an extension of hours.

14 Site inspection was attempted on the proposed
15 premises on January 6, 2017. The premises cannot be
16 inspected at this time as it is still under construction.

17 As of the date of this report, Angela Kathryn
18 Halladay is currently an officer of the following
19 licenses: FOH Hospitality, LLC doing business as Kai Ala
20 Market, Number 419, Retail General, original license
21 issued on April 18, 2008, with no violations; FOH
22 Hospitality, LLC doing business as Westin Ka'anapali Ocean
23 Resort Villas, Number 222, Hotel, original license issued
24 on October 9, 2003, with no violations; Western Host, Inc.
25 doing business as the Westin Maui Resort & Spa, Number

1 236, Hotel, original license issued on November 6, 1998,
2 with no violations.

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

8 All documents necessary for the issuance of a
9 liquor license have not been submitted, those items are
10 listed in the investigator's report.

11 CHAIR TANAKA: Thank you. Peter, you get
12 anything else to add?

13 MR. HOROVITZ: I'd just like to thank the staff
14 and the Commission for getting the applications before you
15 today. It was a lot of work. And everyone understands
16 that.

17 As Kari mentioned, the premises are under
18 construction, we are anticipating that they're going to be
19 done by beginning of April. And I think they currently
20 tentatively scheduled opening April 15th. So we're
21 looking forward to completing that and opening up for
22 business.

23 And we'll happily answer any questions that the
24 Commission may have.

25 CHAIR TANAKA: Thank you. Before I ask for any

1 questions, I'm gonna open it to the public. Any public
2 testimony on this item? Okay. If not, any questions by
3 the Commissioners? You're sure you're gonna be open by
4 April 15th?

5 MR. RABANG: They -- we've been assured that
6 they're working towards that.

7 CHAIR TANAKA: Guaranteed, yeah, you guaranteed.

8 MR. RABANG: Like every other construction
9 project.

10 CHAIR TANAKA: You guys was pretty sure at one
11 time. Okay.

12 MR. RABANG: A little nervous.

13 MR. HOROVITZ: That's our story and we're
14 sticking to it.

15 CHAIR TANAKA: I gonna make sure now.

16 MR. HOROVITZ: I'm gonna be there. How about
17 you?

18 MR. RABANG: I'll be there, too.

19 CHAIR TANAKA: Any other questions by the
20 Commissioners? If not, may I have a motion?

21 COMMISSIONER WEST: I move to approve
22 Application Number 20 and 21 for public hearing and
23 process the application for publication.

24 COMMISSIONER KENNISON: Second.

25 CHAIR TANAKA: Okay, moved and seconded. All in

1 favor, say "aye."

2 (Response.)

3 CHAIR TANAKA: Opposed, "no."

4 (No response.)

5 CHAIR TANAKA: Motion carried.

6 MR. RABANG: Thank you.

7 CHAIR TANAKA: Peter, at the public hearing, I'm
8 gonna take this item one at a time since it's two
9 different classifications.

10 MR. HOROVITZ: That's fine. Thank you.

11 MR. RABANG: Thank you.

12 CHAIR TANAKA: Okay, let's go on to Other
13 Licensing Matters. HKB Beverage, L.L.C.

14 MR. NAKAMURA: Good morning, Mr. Chair, Members
15 of the Commission. Craig Nakamura, attorney on behalf of
16 the applicant.

17 CHAIR TANAKA: Okay. Kari.

18 MS. YOSHIKAWA: HKB Beverage L.L.C. doing
19 business as Hyatt Ka'anapali Beach, a Hyatt Residence Club
20 Resort, Number 183, and Lahaina Provision Company, Number
21 200, notifying the Commission of a change of members and
22 officers and requesting Commission approval for a change
23 of stockholder within the member of the limited liability
24 company.

25 HTS-Maui, L.L.C. was admitted as a member of the

1 limited liability company.

2 S.O.I. Acquisition Corp. was admitted as a
3 member of the member of the limited liability company.

4 Jeanette Elaine Marbart, William Loucks Harvey, John
5 Anthony Galea and Victoria Jean Kincke were admitted as
6 officers of S.O.I. Acquisition Corp.

7 IIC Holdings, Incorporated owns 100 percent of
8 the outstanding corporate stock of S.O.I. Acquisition
9 Corp.

10 Members, officers and stockholder of the
11 member-managed LLC is listed in the investigator's report.

12 Applicant has submitted a copy of a
13 certification of HKB Beverage, L.L.C. dated September 27,
14 2016.

15 Information contained within the DLC-006 and
16 DLC-008 Forms submitted by Victoria Jean Kincke indicated
17 that she had been convicted for violation of law other
18 than a minor traffic violation. Victoria Jean Kincke has
19 submitted a letter of explanation.

20 Information received from the Hawaii Criminal
21 Justice Data Center revealed that Victoria Jean Kincke had
22 not been convicted for violation of law other than minor
23 traffic violation.

24 CHAIR TANAKA: Thank you. Anything else to add?

25 MR. NAKAMURA: Just very briefly. This is,

1 actually, not really a change, but we've been asked to
2 submit additional information regarding the application.
3 Originally, when it was submitted in 2014, we submitted
4 HKB Beverages as licensee, we submitted the member and
5 officers which were acceptable at that time. And now
6 we're being requiring to submit additional information
7 regarding members of members and officers of the members
8 of members and so on and so forth. So that's the reason
9 for this application. I'll be happy to answer any
10 questions.

11 CHAIR TANAKA: Okay. Thank you. I'm gonna open
12 it to any public testimony. Okay. Seeing none, any
13 questions by the Commissioners? Okay. If there's no
14 questions, may I have a motion?

15 COMMISSIONER KENNISON: I move to approve
16 application, under Other Licensing Matters, A.

17 COMMISSIONER WEST: Second.

18 CHAIR TANAKA: Moved and seconded. All in
19 favor, say "aye."

20 (Response.)

21 CHAIR TANAKA: Opposed, "no."

22 (No response.)

23 CHAIR TANAKA: Motion carried.

24 MR. NAKAMURA: Thank you.

25 CHAIR TANAKA: Okay. Let's go on to Food

1 Pantry, Ltd.

2 MR. UEOKA: Good morning, Mr. Chair, Members of
3 the Commission, Mr. Mukai. Robert Ueoka on behalf of the
4 Food Pantry, Ltd. To my right, Mr. Boyd Moffett, District
5 Manager. First name is spelled B-O-Y-D, last name
6 M-O-F-F-E-T-T.

7 CHAIR TANAKA: Thank you. Kari.

8 MS. YOSHIZAWA: Food Pantry, Ltd. doing business
9 as Whaler's General Store, Retail General license, at 130
10 Kai Malina Parkway, Konea Tower, Kaanapali, Maui, Hawaii,
11 requesting an extension to exercise the liquor license
12 pursuant to Section 08-101-34(c) of the Rules of the
13 Liquor Commission, County of Maui. License granted by the
14 Commission on August 10, 2016, expired on February 6,
15 2017.

16 CHAIR TANAKA: That's it?

17 MS. YOSHIZAWA: Yes.

18 CHAIR TANAKA: Thank you. Robby, anything else
19 to add?

20 MR. UEOKA: Just a request for additional time.
21 We have one outstanding item with the electrical inspector
22 which is needed for a certificate of occupancy. We do
23 have a certificate of occupancy for the entire hotel, but
24 we are trying to get a certificate of occupancy just for
25 this -- this store. Request -- we requested for six

1 months and appreciate if the Commission would grant our
2 request.

3 CHAIR TANAKA: Okay. Six months will be enough?

4 MR. UEOKA: We think so, but if the Commission
5 is able to grant a year, we would take it.

6 CHAIR TANAKA: You're not gonna procrastinate
7 now, are you?

8 MR. UEOKA: No. No.

9 MR. MOFFETT: We're not.

10 MR. UEOKA: We're moving forward diligently.
11 It's just this one item.

12 CHAIR TANAKA: Okay. So I'm gonna open it to
13 the public for any public testimony on this item. Okay.
14 Seeing none, any questions by the Commissioners? Okay.
15 If there's no questions, may I have a motion?

16 COMMISSIONER KENNISON: I move to --

17 COMMISSIONER WEST: I move to approve the
18 extension of one year for application.

19 COMMISSIONER KENNISON: Other Licensing Matters
20 B.

21 COMMISSIONER WEST: Yeah.

22 CHAIR TANAKA: Okay. Any second?

23 COMMISSIONER KENNISON: Second.

24 CHAIR TANAKA: Moved and seconded. All in
25 favor, say aye.

1 (Response.)

2 CHAIR TANAKA: Opposed, "no."

3 (No response.)

4 CHAIR TANAKA: Motion carried.

5 MR. UEOKA: Thank you very much. We'll proceed
6 as soon as possible. Thank you.

7 CHAIR TANAKA: Okay. Let's go on to
8 Communication Item, letter from Craig Nakamura.

9 MR. NAKAMURA: Good morning, Mr. Chair. Excuse
10 me. Craig Nakamura, attorney on behalf of the applicant.
11 And with me is Greg Peros, who is the General Manager of
12 the Maui Beach Hotel, and Kyoko Kimura, also representing
13 the hotel.

14 CHAIR TANAKA: Thank you. Let me get all my
15 information ready. I get a lot of information to attack,
16 you know. I guess everybody got a letter written from
17 Craig to the Director. Maybe, Craig, I let you get
18 started and --

19 MR. NAKAMURA: Sure. Thank you.

20 CHAIR TANAKA: -- explain your position.

21 MR. NAKAMURA: Thank you, Mr. Chair. Just very
22 briefly, and I'd be happy to answer any questions anybody
23 has later.

24 We're kind of surprised that we're here today.
25 And we really didn't want to be here today. I think if

1 you look at the minutes of the -- of the last meeting, in
2 December, it's pretty clear, at least was clear to me,
3 what the Commission allowed us to do.

4 The December 14th meeting, the main issue was
5 the Management Agreement, whether or not the temporary
6 license was going to be extended because the Management
7 Agreement had not been -- well, it was provided, but we
8 didn't have all of the information with respect to the
9 officers and directors and shareholders and all that types
10 of clearances for the manager. So what the Commission
11 said at that time -- and I have the minutes of the meeting
12 attached. I think you all have that, right? You have
13 the --

14 COMMISSIONER KENNISON: Yeah, we do.

15 MR. NAKAMURA: The letter and the minutes of the
16 meeting. And I think it was pretty clear that the
17 Commission said that they could waive any requirements and
18 that they would waive the requirement regarding providing
19 any information regarding the Management Agreement. In
20 other words, all we had to do was provide the Management
21 Agreement, and we didn't have to provide all the detailed
22 information for that manager.

23 We did that, that day, we provided that
24 information. There was some information that went stale
25 because the application had been returned. The Commission

1 said we would provide that as soon as possible. And we
2 did. On December 27th, we provided that additional
3 information.

4 And so since that time the application has been
5 pending, we haven't had a preliminary hearing on it, so we
6 asked -- on January 19th, we asked about the status of it.
7 And we were then told that the application wouldn't be
8 processed until all of those Management Agreement
9 materials were provided. In other words, we had to
10 provide the Personal History Statements and all of the
11 things that the Commission said we didn't have to provide.

12 So on that basis, I sent an email to Glenn,
13 asking him to reconsider that, providing him -- to look at
14 a copy of the transcript. And -- and I didn't hear
15 anything, so I filed this appeal.

16 So, basically, that's the issue that's before us
17 today.

18 I think, again, reviewing the minutes, I think
19 it's pretty clear that the Commission waived any
20 requirement that we had to provide all this information
21 for the Management Agreement, but, for some reason, we're
22 being asked to do that again.

23 So, in the meantime, the application still
24 remains pending, hasn't been processed. We haven't had a
25 preliminary hearing. The timing on our temporary license

1 is running.

2 And I also wanted to point out that we have
3 had -- we have had a permit request. One of the
4 requirements of the Commission is you have dance floor,
5 you have entertainment areas, you have to file a permit
6 for that, a request for a permit. And we had that permit
7 application filed, I think it was back in October, and we
8 still haven't had that granted.

9 I know it's being processed. There was a
10 inspection this week. But I just want to point out that,
11 for three, four months, we haven't had an entertainment
12 permit. And so, for example, you know, I think many of
13 you are familiar with the Eighties Night that they used to
14 have at the Maui Beach Hotel on Friday or Saturday night.
15 That was a very popular local event. And that's been
16 canceled, it's been moved to another facility. So, you
17 know, you can imagine the type of financial loss that's
18 being suffered because that permit has not been granted
19 for that period of time.

20 But, today, the issue is processing the
21 application without the Management Agreement requirements.

22 I would be happy to answer any questions.

23 CHAIR TANAKA: Okay. Before -- before I open it
24 up to questions, let me explain our position or the
25 Commission's position. We did not waive any requirements

1 on the application. Let me make that clear. That was not
2 the intent. What we did was in order for you to get a
3 temporary license. The rule says you have to submit an
4 application, a complete application. Okay. The
5 Management Agreement was not complete because the person
6 was not vetted. Okay. So the Commission accepted the
7 Management Agreement as is. I don't know what you saying
8 about the minutes, but, if you read the minutes -- I
9 reading the minutes here. Let me -- let me restate that.
10 It says here: "Let me reiterate this. Submit an
11 application for the Hotel license. We will accept the
12 Management Agreement as is without the Department needing
13 to do certain criminal background or personal background.
14 Your application -- we will give you a temporary license
15 once you submit that application. But you -- you have to
16 eventually, within that temporary license period, bring
17 the application up to date." That means the application
18 gotta be completed. And in order for the application to
19 be completed, you have to vet that guy. We're not gonna
20 accept carte blanche whatever you have there. The
21 Department would have to be satisfied. You understand
22 what I'm saying?

23 MR. NAKAMURA: Well, I understand that, but that
24 was not my understanding at the time of the hearing,
25 Mr. Chair. I think if you look --

1 CHAIR TANAKA: We -- we allowed you to submit
2 the application incomplete so that you -- so that Maui
3 Beach could get a temporary license to operate. You had
4 120 days to bring the applications complete up to date.
5 And that -- that was based on what the Commission felt was
6 time necessary for you to complete an application.

7 Commissioners who was here at that time, if I am
8 wrong, you can speak up.

9 But that's what -- that's what our understanding
10 was. We did not waive any requirements for the
11 application.

12 COMMISSIONER KENNISON: So you're saying, Craig,
13 that the application would work under the Management
14 Agreement, right?

15 MR. NAKAMURA: That's correct.

16 COMMISSIONER KENNISON: That's what you're
17 saying?

18 MR. NAKAMURA: So the whole -- the entire
19 discussion was based on the fact that, if you recall, the
20 Commission rule -- had a rule, Rule 42, which said that --
21 which provided -- required that all of this information
22 for management agreements be provided. That rule was
23 suspended or canceled by the Commission several years ago
24 and -- because the policy of the -- of the Department at
25 that time was that Management Agreement information was

1 not required. Basically, the Department didn't care about
2 management agreements and they --

3 CHAIR TANAKA: Let me correct you there. Let me
4 correct you there. I was the Chair at that time. The
5 Management Agreement, under the rule, was supposed to be
6 submitted to the Commission for approval. But because, at
7 that time, we had so much Management Agreement coming and
8 going, and we wanted to help the people -- because,
9 otherwise, if you had to send it to the Commission, you
10 had to wait a minimum of 30 days after submittal, because
11 we were meeting only once a month. So the Commission
12 allowed the acceptance of the Management Agreement
13 administratively. So it was not waived or it was not --

14 MR. NAKAMURA: Well, then why --

15 CHAIR TANAKA: -- removed.

16 MR. NAKAMURA: I don't understand why the rule
17 was rejected, then, or suspended at that time. And I
18 asked -- I can provide you with information that I asked
19 the -- I did a written request to the Commission, to the
20 Department for all information pertaining to that rule and
21 when it was changed. And I was not provided with any kind
22 of documents or transcripts from which the rule change was
23 discussed. Only the fact that that rule was --

24 CHAIR TANAKA: This was -- this was -- this
25 was -- the Commission gave that administration authority

1 to do it administratively, so it did not have to come to
2 the Commission for approval. So that's where the
3 administration did what they thought it was right.

4 MR. NAKAMURA: Well, I didn't see that in any
5 transcript. So I'm just wondering where that -- you know,
6 that direction came. Because I asked for information
7 specifically on that subject and I received nothing.

8 CHAIR TANAKA: Well, that, I cannot answer.

9 COMMISSIONER KENNISON: This happens to a lot of
10 properties, especially in the hotel industry, where you
11 have one entity that works under the Management Agreement.

12 MR. NAKAMURA: That's correct. So my
13 understanding -- I mean, because of that, the entire
14 rationale, going back to the hearing, was the fact that --

15 CHAIR TANAKA: But -- but we getting off the
16 case here, Craig. This does not affect what the
17 Commission allowed you to do. We allowed -- we allowed
18 you to submit the Management Agreement incomplete with the
19 application so that you could get the temporary license
20 immediately.

21 MR. NAKAMURA: No. I --

22 CHAIR TANAKA: You were supposed to bring
23 everything up to date. You read -- you read that? I -- I
24 specifically stated that.

25 MR. NAKAMURA: Well, I think it's subject to

1 interpretation.

2 CHAIR TANAKA: You have to, eventually, within
3 the temporary license period, bring your application up to
4 date.

5 MR. NAKAMURA: Right.

6 CHAIR TANAKA: And bringing application up to
7 date is you gotta vet that guy, or whoever that Management
8 Agreement --

9 MR. NAKAMURA: I think that's subject to some
10 interpretation because the --

11 CHAIR TANAKA: Well, that's our intent and --
12 that's the Commission intent.

13 MR. NAKAMURA: Because I -- I would like to
14 point out that --

15 COMMISSIONER KENNISON: Not -- not all the
16 Commission.

17 CHAIR TANAKA: Oh, you didn't agree with that?

18 COMMISSIONER KENNISON: Yeah. I mean, I'm
19 listening. I don't agree with that. later on, I wanna go
20 into Executive Session, but I let the discussion take
21 place, I wanna ask --

22 CHAIR TANAKA: This is what I'm reading.

23 COMMISSIONER KENNISON: I want to ask our Corp
24 Counsel --

25 CHAIR TANAKA: Yeah. This is what I'm reading

1 from the minutes.

2 MR. NAKAMURA: Well, I can -- I can point to
3 maybe what Commissioner Kennison is saying. On Page 812,
4 he says, Commissioner Kennison, "And we exempt them from
5 the -- Bobby, Bobby -- and we exempt from the criminal --
6 criminal history." And you -- you say, "Yeah, we're gonna
7 accept the --" Commissioner Kennison, "As is." And Chair
8 Tanaka says, "-- management agreement as is. As is."
9 Chair Tanaka, "Without -- I'm sorry, that's the way the
10 transcript reads. Commissioner Kennison, "Without a
11 criminal history check."

12 COMMISSIONER WEST: What page is that on?

13 MR. NAKAMURA: Page --

14 MR. KUSHI: 812.

15 MR. NAKAMURA: 812. So the entire discussion at
16 that -- on that day was the fact that the Management
17 Agreement rule had already been suspended or rejected, so
18 we didn't feel that providing that information for the
19 officers and directors of the manager was required. And
20 that's my understanding of what the Commission approved
21 that day.

22 CHAIR TANAKA: Well, the staff required the
23 vetting of the manage -- Management Agreement.

24 MR. NAKAMURA: Right.

25 CHAIR TANAKA: Correct?

1 MR. NAKAMURA: That's why we -- that's why we
2 were there that day.

3 CHAIR TANAKA: Yeah. So the Commission -- the
4 Commission accepted the Management Agreement as is, with
5 your application, so that you could get a temporary
6 license. Under the rules, in order for you to get a
7 temporary license, you had to submit an application. An
8 application was never submitted. The Management Agreement
9 was not acceptable by the staff. So what the Commission
10 did was we accepted the Management Agreement as is, the
11 way you had it, with your application, so that you could
12 get a temporary license. Otherwise, the temporary license
13 could not be issued.

14 MR. NAKAMURA: Well, the issue there was the
15 fact that we -- at the prior hearing, there was some
16 discussion about the applicability of the Management
17 Agreement. So what we decided to do -- and we advised the
18 Department that we would be filing, instead of a Hotel
19 license, a Dispenser license. And so we didn't have to
20 deal with the Management Agreement issue. But because the
21 Department would not issue our -- or renew our temporary
22 license, we came back on the last hearing and said, okay,
23 we would file a Hotel license, but we didn't think that
24 filing the requirements for the manager under the
25 Management Agreement were required because of the fact

1 that that rule had already been suspended. And I think
2 the discussion was that, you know, the rule which required
3 all of that, which was Rule 42, had been -- had been --
4 had previously been withdrawn, but there were some
5 remnants of references of the rule -- of the word
6 Management Agreement in other sections of the rule. So
7 that's what the Department was relying on in requesting
8 that we provide that information.

9 So one of the things that we were gonna do today
10 was to request that that rule pertaining to -- all the
11 remnants and other references to Management Agreements in
12 other sections of the rule be -- be -- also be deleted. I
13 mean, it just doesn't make sense. Why would you delete
14 the rule if you're going to go ahead with those
15 requirements?

16 CHAIR TANAKA: Well, you gotta get to the
17 legislature. They're the -- they're the ones who screwed
18 up. But the staff is just following the -- whatever the
19 rule says.

20 MR. NAKAMURA: No. The staff -- the Commission,
21 actually, had a rule, specific rule, on that issue. And
22 the Commission moved to withdraw it.

23 CHAIR TANAKA: Glenn.

24 DIRECTOR MUKAI: Yes.

25 CHAIR TANAKA: That rule is still in -- I mean,

1 that Management Agreement rule is still in the rules?

2 DIRECTOR MUKAI: The requirements are still in
3 the rule.

4 CHAIR TANAKA: Still in the rule.

5 DIRECTOR MUKAI: The Management Agreement, like
6 the Commission Chair said, in researching and talking to
7 former Director Silva and some of the staff and what
8 remnants of the Commissioners, apparently, the rule was
9 withdrawn -- I mean deleted because what would happen on
10 that old rule, it requires Commission approval. So when
11 an applicant submit an application with a Management
12 Agreement, the Department could not process it because the
13 Management Agreement had to come before the Commission
14 before we can process the application because we needed
15 approval of the Commission. At that time the Commission
16 was getting a lot of Management Agreement to approve and
17 these licensees, all application was on hold. And, you
18 know, the Commission, it meets only once a month. So it
19 delays the license application process by a month or two,
20 depends on when they submit it. So they deleted the rule
21 where it required Commission approval. And have
22 administration, Department just process the Management
23 Agreement, and, at the same time, bring it before the
24 Commission when we process the entire license instead of
25 come before the Commission for the Management Agreement,

1 come back, reprocess it a month or two later, come in
2 front of the Commission for their license application.

3 MR. NAKAMURA: Mr. Chair, in fact, the policy of
4 the Department, prior to -- after this rule was rejected,
5 is that they didn't even care about management agreements.
6 We didn't provide -- we have not provided management
7 agreements since that time until we were directed to do so
8 on this particular application.

9 COMMISSIONER KENNISON: That's right.

10 MR. NAKAMURA: We have numerous management
11 agreements. And -- and, basically, the Department's
12 position was they didn't care about them.

13 MR. KUSHI: Well, there's a new sheriff in town.

14 MR. NAKAMURA: I understand, but then that's a
15 different (inaudible). And I understand that. And there
16 is a change in --

17 MR. KUSHI: And -- and --

18 MR. NAKAMURA: -- policy and procedure.

19 MR. KUSHI: And the rules are coming up for
20 discussion right after this.

21 MR. NAKAMURA: I understand.

22 MR. KUSHI: I think you're pretty much attacking
23 what's going to happen.

24 MR. NAKAMURA: Well, I understand, but we're
25 talking about -- also talking about a change in policy

1 that --

2 MR. KUSHI: Correct.

3 MR. NAKAMURA: The new Department is, is --

4 MR. KUSHI: So, Glenn --

5 MR. NAKAMURA: -- requiring --

6 MR. KUSHI: -- let me ask you this. Once the
7 Commission -- and I remember, I was there when they
8 deleted that Rule 45. So the intent was to have -- to
9 have it reviewed administratively, not by the Commission?

10 DIRECTOR MUKAI: Yes.

11 MR. KUSHI: Management agreements?

12 DIRECTOR MUKAI: By Department is my
13 understanding.

14 MR. KUSHI: And -- and meaning the rule -- I
15 mean review is to review the management -- management
16 agreement person as if he was a new licensee?

17 DIRECTOR MUKAI: Yeah. Because it's similar
18 to -- like I checked with Big Island and City and County
19 of Honolulu, they all have these management
20 agreement/operating agreement rule, also. In fact, Hawaii
21 don't have it, but, in checking with the director there,
22 they are putting in the management agreement/operating
23 agreement in the new rules so that they will be going
24 through the rule process on it.

25 MR. KUSHI: Well, I mean, it's up for discussion

1 at 10:00.

2 COMMISSIONER KENNISON: Yeah.

3 MR. KUSHI: But, Mr. Chair, for the record --
4 for the record, you cited the minutes, on Page 813, from
5 Line 18, and it goes on to Page 814, Line 2.

6 Although I wasn't there, Mr. Chair, I was
7 speaking to my Deputy, my understanding was the whole
8 purpose of that meeting was not so much to argue about the
9 Management Agreement review, it was to consider granting a
10 temporary --

11 CHAIR TANAKA: Temporary license.

12 MR. KUSHI: -- license. That's what happened.
13 Now, again, the minutes are exhaustive. I wasn't there,
14 so I can't comment any further.

15 CHAIR TANAKA: Okay.

16 COMMISSIONER KENNISON: And my understanding was
17 they was gonna operate under the Management Agreement.

18 MR. KUSHI: No.

19 COMMISSIONER KENNISON: That's my understanding.

20 COMMISSIONER WEST: So on the temporary license,
21 how much more time do you have?

22 MR. NAKAMURA: It was just recently extended,
23 so, that was, what, two months ago, 30, 60 -- probably 60
24 -- 60 days, but the Commission did say -- Chair did
25 consider the fact that, you know, the timing is running

1 and said that the Commission would consider an extension
2 at that time.

3 COMMISSIONER WEST: So where -- where exactly
4 are you at? How much time --

5 COMMISSIONER KENNISON: How much time?

6 MR. NAKAMURA: I believe 60 days have run. So
7 probably sometime in April it's gonna --

8 COMMISSIONER KENNISON: Of the 180 days?

9 COMMISSIONER WEST: 120.

10 COMMISSIONER KENNISON: 120.

11 CHAIR TANAKA: So don't you have all your
12 information in line already?

13 MR. NAKAMURA: No.

14 MR. KUSHI: Will you? I mean, are you guys --
15 what are you planning to do? Submit a hotel and operators
16 or --

17 MR. NAKAMURA: Well -- okay. On that day, on
18 the day of that hearing in December, the Commission did
19 say that we could submit our application -- if we could
20 submit our application that day, we should get it in, and
21 then the temp -- at that point, the temporary license had
22 been -- was expired. So the hotel was dry. For the
23 second time, it was dry. And so the Commission did say we
24 could submit our application that day and that the temp --
25 the temporary license would be issued, okay, which it was

1 a couple days later. But that we had to come -- you know,
2 we had to update our -- we -- my understanding was we had
3 to update the stale information. In other words, you
4 know, some of the documents were -- because the
5 application had been filed back in July, you know, some of
6 the documents were considered stale by the Department. So
7 we had to re-submit them, we had to update them, have them
8 re-signed, which we did.

9 COMMISSIONER KENNISON: But not the criminal
10 background checks.

11 MR. NAKAMURA: We didn't do -- we didn't --
12 other than submitting the Management Agreement, we didn't
13 provide all of the information that would be required from
14 the manager, which, you know, includes, for example, like
15 the personal history statements, the fingerprinting,
16 identifications, criminal history background clearances, a
17 guaranty. You know, we didn't provide the information on
18 the -- on the manager entity, articles of incorporation, a
19 certificate of good standing, a secretary certification.
20 I mean, all of those requirements would be required for
21 the manager.

22 CHAIR TANAKA: Isn't that --

23 MR. NAKAMURA: So --

24 CHAIR TANAKA: Isn't that under the rules?

25 MR. NAKAMURA: We do not believe so. We believe

1 that information was --

2 COMMISSIONER KENNISON: Falls under --

3 MR. NAKAMURA: -- required under Rule 42, which
4 was -- which had previously been suspended, and that any
5 remnants or references to management agreements are just a
6 result of an oversight.

7 And I just wanted to point out, too, one other
8 thing. Yes, I know, for sure, Honolulu does have rules
9 pertaining to management agreements, but I was at a
10 commission hearing in Honolulu where they're actually
11 making those rules liberal, more liberal. And I believe I
12 have a copy of it here somewhere, but they're just
13 requiring reporting of the -- of the manager, not all of
14 the detailed background information and criminal history
15 checks on the manager. So, I mean, that's -- that's the
16 trend.

17 CHAIR TANAKA: Our -- Glenn, our rules require
18 them to vet all the people under the Management Agreement,
19 right?

20 DIRECTOR MUKAI: Yes.

21 CHAIR TANAKA: So that's a requirement. You're
22 saying that there's no requirement for that?

23 MR. NAKAMURA: No. I'm saying that -- well, I
24 think it depends on exactly how you interpret the rules,
25 but I -- I can circulate what I was going to submit as the

1 revisions to the management agreement rules which has
2 references to management agreements in the various
3 different parts of the rules that we're asking be amended.

4 CHAIR TANAKA: Okay. You going to testify to
5 this, eh?

6 MR. NAKAMURA: Yes. But, I mean, you know -- I
7 mean, we're -- we're -- of course, we're willing to go --

8 CHAIR TANAKA: Can't you -- can't you get all
9 that information?

10 MR. NAKAMURA: We can, but, you know, there are
11 difficulties. Okay. So, for example, what I had
12 mentioned at the time, the food and beverage operator at
13 the hotel is this company called DH Investment. The
14 principal officer and shareholder of DH Investment was
15 David Huang, H-U-A-N-G. One of the specific requirements
16 of the Department is that the identifications have to
17 match up. So, basically, they have to use the same name,
18 initials, exactly the same. And as you can imagine, or
19 you may know, Mr. Huang is a -- is an alien, a resident
20 alien, he came over from China. So upon coming to the
21 United States, he -- he took the name David, okay, but
22 that's not his -- that's not his, I guess, name that's on
23 some of his identification. So we have to match those up.
24 So, basically, he has to go in, back to the department --
25 I can't remember the exact details now, it's been months,

1 but -- and I didn't think we would have to do this, but we
2 have to go back to either the Social Security office or
3 the driver's license or whatever and request a new ID to
4 match up to, you know, what the other documents say. So
5 that was -- that was a hurdle for that -- that entity.
6 And we stopped because we didn't think that that was going
7 to be required. But, yeah, it can be, but, again, I
8 pointed out, you know, the various different things that
9 -- that have to be done. And it's not so easy. If the
10 Commission decides we need to do it, you know, we'll do
11 it, but I'm just saying I don't think that's what the --
12 that's what the intent was when that rule was suspended.

13 COMMISSIONER KENNISON: How long you think would
14 take?

15 MR. NAKAMURA: I can't say. I mean, you know,
16 we have two -- we have two -- there's two managers at the
17 hotel. As you heard Mr. Savio testify, there's a food and
18 beverage operator and there's a hotel operator.

19 CHAIR TANAKA: Why don't -- why don't he take
20 the whole operation under his thing and --

21 MR. NAKAMURA: Because he --

22 CHAIR TANAKA: -- identify them as an employee
23 or manager or whatever?

24 MR. NAKAMURA: As he --

25 CHAIR TANAKA: That solves all the problems.

1 MR. NAKAMURA: As he identified -- when he -- as
2 he mentioned at the time that he was here, you know, he's
3 not a hotel operator. I mean, he's a -- he's a developer,
4 he's an investor, he's -- you know, he's an owner of the
5 hotel, but he doesn't -- he wasn't familiar with the
6 operations of the -- like a food and beverage operation.

7 CHAIR TANAKA: Then if that's the case, then
8 you're going to have to go through all these rigmarole.

9 MR. NAKAMURA: I understand.

10 CHAIR TANAKA: Okay. Anyway, it's 10:00, let me
11 recess this and let's suspend it for now, and go into our
12 public hearing.

13 COMMISSIONER KENNISON: And then when we come --
14 after the public hearing, I like to go into Executive
15 Session.

16 CHAIR TANAKA: Well you can. Yeah, at that time
17 you make a motion. Okay. Let's go --

18 MR. NAKAMURA: Thank you.

19 CHAIR TANAKA: Yeah. Let's recess for couple
20 minutes and go into our public hearing item.

21 (Recess, 10:00 a.m. to 10:12 a.m.)

22 CHAIR TANAKA: Okay. Liquor Commission meeting
23 called back to order. Okay, let's go on, Public Hearing
24 on our proposed amendments to the Rules of the Liquor
25 Commission. I'm gonna start taking public testimony. And

1 will you please state what chapter you are testifying on
2 so that the Commission can follow along with you. And you
3 have three minutes. If you need more time at the end of
4 the public hearing, we'll give you more time. Please
5 state your name, if you represent any organization. Okay.
6 Kari, first testifier.

7 MS. YOSHIZAWA: First testifier, Peter Horovitz.

8 MR. HOROVITZ: Thank you, Commissioners. Peter
9 Horovitz. I'm just here -- I'm an attorney, as you know.
10 I'm going to offer testimony on two items, one which was
11 in a letter I submitted, which is Section 08-101-30, and
12 then another, more of a comment, I don't think there are
13 any proposed changes, but something for the Commission to
14 consider, in 08-101-22 about classes of licenses.

15 The first, on 08-101-30, was the proposal that
16 would allow the Director to revoke any action taken after
17 discovering that any information contained within the
18 application, any document submitted or affidavit is false.

19 MR. KUSHI: Excuse me. What page are you
20 referencing?

21 MR. HOROVITZ: I'm sorry. I don't have that in
22 front of me. It's Item Number 12. 24. 24, thank you.
23 Thank you, Craig.

24 You know, the applicants have no issues with --
25 you know, have no desire to put any false statements in,

1 but errors do occur. The application is fairly lengthy
2 and asks for long-ago information and very detailed
3 information. And mistakes are made once in a while.

4 And so our only comment there, as I mentioned in
5 my letter, is to perhaps have -- state that a revocation
6 can only occur or should only occur after there's an
7 opportunity to either correct an application or, as
8 applicable here. And you might have a situation where an
9 applicant is at the point in the process where they have
10 some vested rights. You might have granted an application
11 or you might have granted some permission, I don't know.
12 But I just think it would be behoove everyone to avoid
13 those types of confrontations.

14 If it's a simple thing to correct, great. There
15 are, obviously, things that are much more serious. If an
16 applicant lies about a felony conviction, there
17 shouldn't -- you know, should probably be given no
18 quarter. But if we simply made a mistake as to where I
19 was living when I was 19 years old and what month, well,
20 come on, that's -- that's gonna happen.

21 So that was my only comment. And my comments in
22 that are in -- are more detailed in the letter that I
23 submitted.

24 The second comment that I would have -- and,
25 again, there's no proposed rule change on this, but it is

1 in -- it has to do with transferring of a restaurant
2 license. I think this is more of a matter of -- of
3 interpretation.

4 Currently, the practice, if you have a
5 Restaurant license and you wanna transfer it, the
6 Department requires that you downgrade the license to a
7 Dispenser General License and then transfer the Dispenser
8 General License. And the rationale there is that the
9 requirement of Restaurant licenses is that you have, you
10 know, 30 percent of your sales from food and you show that
11 for a year.

12 And, you know, a new applicant, obviously, can't
13 meet that because they don't have any history. However,
14 the rules themselves and -- you know, don't limit -- don't
15 limit the -- is my time up or do I have a -- sorry. I'll
16 conclude very quickly. The rules themselves state that a
17 Restaurant license can be issued so long as the -- to a
18 place which regularly is used and kept open for service of
19 meals and the premises must have continually be operated
20 for a year. Where this impacts is, you know, if you've --
21 if you have created a business, Makawao Steak House or
22 Koho's or something like that, and the owners wish to
23 retire, you know, you're gonna have to downgrade from a
24 Restaurant to a Dispenser and then transfer. That's
25 pretty significant.

1 One of the major differences is the Dispenser
2 General, kids can't go in there -- or minors can't go in
3 there on their own. So can you imagine someplace like
4 Koho's, in a mall, where kids can't go in and grab -- you
5 know, grab their food.

6 I -- I -- I think the solution and the -- I
7 mean, one -- I think the rules, actually -- you know, they
8 don't require that the applicant themselves show that they
9 personally have a year's worth of receipts. It's simply
10 the premises. So if you're taking over a going concern,
11 you show that. And the Department, on renewal times, can,
12 obviously, require, you know, that you show that, in the
13 past year, that you have continued to do -- to sell food.
14 I think that would be appropriate.

15 I think that's really more a matter of a
16 clarification. I think the rules allow for it already. I
17 know the interpretation is different, but it's something
18 that the Commission might -- might take a look at
19 sometime.

20 I'm happy to answer any questions. I don't want
21 to -- I know there's a lot of other people who wish to
22 testify as well.

23 CHAIR TANAKA: I have one question.

24 MR. HOROVITZ: Yes.

25 CHAIR TANAKA: You know, I guess you and the

1 other testifiers might -- might be in the same position,
2 requesting different changes in different sections of the
3 rules. And you have some kind of written testimony to
4 submit to the Commission so we could take a look at it?

5 MR. HOROVITZ: I did. I sent a letter in on
6 January 13th, 2017. And that was specifically with regard
7 to Section 08-101-30.

8 CHAIR TANAKA: Yeah. Well, this is specifically
9 related to what's -- what's on the public hearing right
10 now, but what I'm saying is --

11 MR. HOROVITZ: Correct.

12 CHAIR TANAKA: -- what you suggested on the
13 second item --

14 MR. HOROVITZ: I will -- I will happily do that.
15 And I can go back and do that. It was --

16 CHAIR TANAKA: We would appreciate -- we would
17 appreciate something like that.

18 MR. HOROVITZ: Absolutely. Absolutely.

19 CHAIR TANAKA: Okay. Any -- any questions by
20 the Commissioners? Glenn, you get any questions? No?
21 Okay.

22 MR. KUSHI: Mr. Chair? Peter, on your Section
23 101-30(e) about the false applications, can you submit
24 some specific language?

25 MR. HOROVITZ: Absolutely.

1 MR. KUSHI: I -- I tend to agree with you.

2 MR. HOROVITZ: Yeah.

3 MR. KUSHI: Make an opportunity to correct it
4 before --

5 MR. HOROVITZ: I can get both of those in
6 tomorrow.

7 MR. KUSHI: And what section was the other one
8 about the restaurant?

9 MR. HOROVITZ: Well, the -- the section, it's
10 actually 08-101-22(c) which defines what a restaurant is.

11 COMMISSIONER KENNISON: What page?

12 MR. HOROVITZ: That's 101-28 in your rules. And
13 then -- and I'm kind of going off of the definitions as
14 well. So the definition of a restaurant is on 101-14.
15 And both of those, in my -- you know, reference that
16 the -- you know, the place or the premises has been used
17 to serve food, not -- not the applicant has been serving
18 food. So --

19 MR. KUSHI: Yeah. As I understand it, right
20 now, in the Koho's example --

21 MR. HOROVITZ: Right.

22 MR. KUSHI: -- somebody would come over, want to
23 take over the exact -- exact operation, they would have to
24 downgrade --

25 MR. HOROVITZ: Yes.

1 MR. KUSHI: -- and then upgrade later?

2 MR. HOROVITZ: Yes. They would have to wait a
3 year. And that -- that has significant impacts, you know,
4 on a business operation, significant impacts on the value
5 and what -- and what they can do. Again, it's not trying
6 to avoid a requirement, that, you know, if -- if a
7 restaurant, you know, stops serving food and switches
8 straight to a bar, well, yeah, there should -- their
9 license should change. And -- and, you know -- but if
10 you're -- if you're taking over a restaurant or, you know,
11 something that is a restaurant and you're -- you're going
12 to be running it in the same manner, there shouldn't -- I
13 don't see any reason why -- and I don't think the rules
14 would necessarily require that -- that a license be
15 downgraded.

16 Again, I know other counties allow it, every
17 county is different, but my interpretation of the rules
18 are -- are that it should be allowed. But I think it's an
19 area that -- that can be clarified.

20 MR. KUSHI: So in that instance, if a new
21 licensee comes in for a new premises for a restaurant,
22 they would have to start off with a Dispenser General
23 first?

24 MR. HOROVITZ: Currently, if you -- well,
25 currently, in this county, if I came in and rented a space

1 that hasn't been licensed before and I wanted to run a
2 restaurant, I would have to go to a Dispenser first, wait
3 a year, and -- and then -- and then upgrade. Other
4 counties do allow you to go straight to a Restaurant
5 license based on your business plan. So if you can show
6 you have a kitchen and this is what you're doing, here's
7 your menu, they'll allow you to go straight to a
8 Restaurant. I love that. I don't know whether the -- you
9 know, the Commission wishes to go that far. My main
10 concern, though, is existing license -- you know, existing
11 licensees. I have clients who -- you know, who are -- you
12 know, do wish to retire, do wish to pass on what they've
13 built. And this significantly impacts their ability to do
14 that.

15 MR. KUSHI: So an existing Dispenser General, if
16 they want to upgrade to a Restaurant --

17 MR. HOROVITZ: Right.

18 MR. KUSHI: -- they would have to -- they just
19 come in for an upgrade, but they would show records --

20 MR. HOROVITZ: They would show records --

21 MR. KUSHI: -- how long --

22 MR. HOROVITZ: -- for the year. So for a year
23 that they have, you know, the -- the requisite portion of
24 their sales have been from food. And then -- and then
25 they can qualify to upgrade their license to a Restaurant

1 General license.

2 MR. KUSHI: Okay.

3 CHAIR TANAKA: Okay. Any other questions? Any
4 comments?

5 DIRECTOR MUKAI: On that issue, the Department's
6 Small Business Committee, which consists of licensees, are
7 looking into that at this time.

8 CHAIR TANAKA: Okay.

9 DIRECTOR MUKAI: And, also, the definition of 30
10 percent, what it covers.

11 CHAIR TANAKA: Okay, Peter, so can you give us a
12 written --

13 MR. HOROVITZ: Absolutely. Absolutely. I'll
14 have that in by tomorrow.

15 CHAIR TANAKA: Okay. Next testifier.

16 MR. HOROVITZ: Thank you.

17 MS. YOSHIZAWA: Next testifier is Dave
18 Jorgensen.

19 MR. JORGENSEN: Good morning, Chairman Tanaka,
20 Members of the Commission and staff. My name's Dave
21 Jorgensen. I'm a private attorney practicing with liquor
22 licensees. I'm not here representing any particular
23 licensee. I generally talk fast when I get going. I'm
24 gonna talk any even faster because I have a lot, but, if I
25 run out of time, I'll wait 'til the end.

1 The first thing I wanted to talk about was the
2 whole issue of the management agreements. And just a
3 couple things I wanted to point out.

4 Number one, as was said earlier, and I
5 understand there's a new sheriff in town, but there's no
6 request to -- for review of any management agreement since
7 2012, since that rule was removed, until Mr. Nakamura's
8 client. I was around a lot back in 2012. I did talk to
9 the prior director back then, I talked to the prior deputy
10 director and the prior supervising investigator since
11 then. And, very clearly, it was my understanding that
12 requirement was being removed because the Department did
13 not want to deal with 'em anymore, did not feel the need
14 to review management agreements, didn't see the need to.
15 I'm sure there was also a component of they didn't want to
16 waste the Commission's time with them, but the fact is
17 they have not been reviewed or asked for since 2012.

18 I would also point out that the language that
19 does remain in the various sections -- and I could -- I
20 can give you the page numbers, but the -- and I have a --

21 COMMISSIONER KENNISON: What page?

22 MR. JORGENSEN: One is on 101-8, is in the
23 definition of applicant. One is on 101-64, in the -- in a
24 run-on list of applications. One is on 101-67, contained
25 within Section 10 -- 08-101-30(f). And then there's

1 one -- actually, (f) goes on for a couple of pages. And
2 then there's one in Section (i).

3 The one on Page 101-67, I think, is the one I
4 want to focus your attention on. This whole Section (f)
5 that contains six references to management agreement is
6 talking about Commission approval. "Licensee shall apply
7 for and secure the Commission's approval." Then it goes
8 down and says, "If the Commission finds that any partner,"
9 blah, blah, blah, "or management agreement is unfit and
10 improper so the rules." So the rules -- the references to
11 management agreement that remain in the rules are still
12 talking about Commission approval, presenting to the
13 Commission.

14 And so I echo Mr. Nakamura's comments that when
15 Section 42 was deleted, it was deleted because management
16 agreement approval was no longer required by the
17 Department or the Commission.

18 I think that means I have 30 seconds, so I'm
19 going to -- unless there's questions on that specific
20 point, I'm going to blaze ahead to a couple other things.
21 Some are less important and I'll come back to those later.

22 One of the things that special licenses can be
23 issued, and the rules contemplate increasing that to add a
24 couple other subsections of 501, to add 501(c)(4),
25 501(c)(10) or 501(c)(19) organizations. There are

1 potentially other nonprofits that have IRS letters that
2 maybe should also be included in that list, but I don't
3 know if there was a reason why it was only limited to
4 those.

5 Another issue that's come up, and we're working
6 on this at the State Legislature, too, but when you get a
7 federal or state tax clearance, there's a couple different
8 options of why you might not get one; one is because you
9 have a payment plan, and one is because you've legally and
10 properly appealed your tax assessment. But if you have
11 appealed your tax assessment or your tax bill, you can't
12 get a tax clearance. And currently, the Department will
13 not recognize that that's okay, you know, somebody has a
14 legitimate reason why they don't have a tax clearance, but
15 it's not one of those two.

16 And I'm looking at Page 101-23 from the proposed
17 amendments that state and federal tax clearances -- you
18 have to provide state and federal tax clearances or that
19 the applicant has entered into and is complying with an
20 installment plan agreement with the Department of Taxation
21 for the payment of delinquent taxes. But it doesn't also
22 contemplate the fact that there might be an appeal going
23 on, which is -- will hold up somebody getting a tax
24 clearance and potentially hold up a renewal. So --

25 MR. KUSHI: Well, if our President can't get a

1 tax clearance, I guess applicants don't, either.

2 MR. JORGENSEN: That's right.

3 CHAIR TANAKA: (inaudible). Dave --

4 MR. JORGENSEN: Yes, sir.

5 CHAIR TANAKA: -- like we requested from Peter,
6 can you also put your verbiages and whatever?

7 MR. JORGENSEN: Well, on -- yes, I can do that.
8 On the management agreement, I did submit a letter,
9 January 27th --

10 CHAIR TANAKA: Yeah, we got that.

11 MR. JORGENSEN: -- 2017. And I know
12 Mr. Nakamura just passed around the specific places -- the
13 specific provisions. And I'll have other things to talk
14 about, so I can -- when I come back. After that, I will
15 submit in writing.

16 CHAIR TANAKA: Okay.

17 MR. JORGENSEN: Thank you.

18 CHAIR TANAKA: Next speaker.

19 MS. YOSHIZAWA: Next speaker is Craig Nakamura.

20 MR. NAKAMURA: Thank you, Mr. Chair, Members of
21 the Commission. Craig Nakamura, attorney.

22 I just passed around the revisions regarding the
23 Management Agreement that we've been talking about. I
24 thought maybe I would also circulate the request that I
25 did for any information pertaining to the change in Rule

1 42. And I think what Mr. Jorgensen is referring to is
2 that the current rules relate to when an application for a
3 management agreement is filed, and that's what's being
4 picked up, but there is no application pending. And
5 there's no requirement that an application be filed.

6 The rule that required an application be filed
7 was Rule 42 which says licensees shall apply for and
8 secure the approval for any management agreement from the
9 Commission. So, basically, what's happening is, again,
10 we're reiterating that we think that rule requiring
11 approval of management agreements was -- was rescinded.
12 And I'll be circulating this as well.

13 And I did want to, also, reiterate the fact
14 that, yes, I do work at other -- other counties as well.
15 And in Honolulu, they don't require -- they do allow you
16 to process a Restaurant license immediately without
17 waiting the one year, which is very helpful.

18 I would be happy to answer any questions.

19 CHAIR TANAKA: Any questions?

20 COMMISSIONER WEST: I have a question. So
21 regarding Rule 42, do you believe that this Commission,
22 the County is -- has put itself in a position of liability
23 by this -- you know, this rule being reinstated by the
24 Director?

25 MR. NAKAMURA: I don't know about liability.

1 Maybe with respect to the amount of work that the -- that
2 the Commission is going to have to undergo. Because if
3 you're asking for -- I mean, definitely, there's been a
4 change in policy. Okay. I mean, previously, as
5 Mr. Jorgensen said, the Director said that, basically,
6 they didn't care about management agreements. He told me
7 that himself directly. And so they felt -- the Director
8 felt that the licensee was going to be responsible for all
9 the operations. So if anything happened, you know, in
10 that premises, even if there was a manager, it was still
11 the licensee that was gonna be held responsible. So
12 that -- as a result of that, and I think, also, because of
13 the number of management agreements that are in town, that
14 are in effect in town, they just didn't want to deal with
15 them. So this rule -- we believe that's why this rule was
16 repealed.

17 And I'll circulate this information so you can
18 actually see. It's a little difficult to read because
19 it's in red, but it did have that requirement for
20 management agreements before.

21 So if the -- if the Department is now going to
22 require that all of the management agreements be provided
23 as well as, as you saw on the HKB situation earlier today,
24 that all of the entities behind the licensee LLC be
25 reported. I mean, we're going down every level. It's

1 gonna have major implications, you know, throughout the
2 County. There's a lot of management agreements. There's
3 a lot of entities like that with -- with reporting.

4 CHAIR TANAKA: Okay. Any other questions?
5 Okay. Next testifier.

6 MS. YOSHIZAWA: Next testifier is Richard Moss.

7 MR. MOSS: Good morning, Commissioners. My name
8 is Richard Moss. I'm the Quartermaster for Veterans of
9 Foreign Wars, Post 3850 here on Maui.

10 And I'm, also, joined by three others from our
11 post, Danny Kanahale, who is our post commander, and
12 Israel Montalvo is a member of our post, and Bo Mahoe is,
13 also, a member of our post. They will not all speak. I'm
14 the chosen spokesperson for the VFW.

15 We're here to speak to your amendments to Title
16 8, Chapter 101 on Page 11, Paragraph 2, where it's my
17 understanding, in the past, your rule has been, for
18 nonprofit organizations, they needed to be -- have the IRS
19 designation of 501(c)(3) in order to qualify to apply for
20 a liquor license. And veterans organizations are
21 typically classified as 501(c)(19)s by the IRS. And,
22 obviously, VFW Post 3850 is a 501(c)(19).

23 So my understanding is that you're considering a
24 rule change to allow 501(c)(19) organizations to apply for
25 liquor licenses along with some other classifications of

1 nonprofit organizations. So we're here -- simply here to
2 say we fully support that rule change and we would love to
3 see you adopt that change.

4 We -- we apply -- we have three events that we
5 sponsor each year where we serve alcohol, two luaus and a
6 Steak fry. They're fundraisers for the post. And we do
7 serve alcohol at those events. And it would be very
8 helpful for us to be able to get a -- be legal and get a
9 liquor license to be able to do that.

10 CHAIR TANAKA: Thank you. Any questions --

11 MR. MOSS: Thank you very much.

12 CHAIR TANAKA: -- by the Commissioners?

13 MR. KUSHI: Mr. Chair, since he brought it up,
14 not so much a question to the testifier, but to staff, is
15 this the only category that authorizes special licenses?

16 DIRECTOR MUKAI: When we looked at it for
17 charitable or education, we found that these people and
18 those that previous that tried to apply, like Maui Roping
19 Club, VFW, some fraternal, was not included. So we did
20 research on which category they fall in.

21 There's certain things by IRS (inaudible)
22 charitable or educational. And, you know, it's
23 (inaudible). So when we get to the rule, we'll discuss it
24 further.

25 MR. KUSHI: Yeah. I'm looking at because it

1 only applies to charitable, educational nonprofits,
2 political parties, other organizations where nobody takes
3 a cut for these special IRS entities. What about private
4 entities? Like some Lahaina -- some hotel in Lahaina that
5 they can't get their liquor license and they want to open
6 for like three days?

7 DIRECTOR MUKAI: Well, the hotels allowed to
8 have a catering -- they go and --

9 MR. KUSHI: No. A new hotel or a new
10 restaurant.

11 DIRECTOR MUKAI: I believe the State law -- I
12 have to review the State law -- it kind of restricts on
13 who can get it.

14 MR. KUSHI: Special license?

15 DIRECTOR MUKAI: State law.

16 CHAIR TANAKA: So this opens the door for people
17 like them?

18 DIRECTOR MUKAI: Yes.

19 COMMISSIONER KENNISON: Yeah.

20 CHAIR TANAKA: Otherwise, they couldn't get it,
21 huh?

22 DIRECTOR MUKAI: Yes.

23 CHAIR TANAKA: Okay. Any other questions?

24 Thank you very much.

25 MR. MOSS: Thank you.

1 CHAIR TANAKA: Okay. Next testifier.

2 MS. YOSHIZAWA: Next testifier is Bo Mahoe.

3 MR. MAHOE: I, actually, I'm part of the VFW
4 Post. Thank you.

5 MS. YOSHIZAWA: Danny Kanahale.

6 MR. KANAHELE: Same thing. We always bring up
7 the same subject and the same question. And we would
8 appreciate if you do help us get through this. Thank you.

9 MS. YOSHIZAWA: Israel Montalvo.

10 MS. CORDEIRO: Mr. Chair, could we have a
11 five-minute recess? Our machine just blipped.

12 CHAIR TANAKA: Let's have a five-minute recess
13 to fix that machine?

14 MS. CORDEIRO: Thank you.

15 (Recess, 10:36 a.m. to 10:40 a.m.)

16 CHAIR TANAKA: Liquor Commission called back to
17 order. Our machine is fixed, so, okay, next testifier.

18 MS. YOSHIZAWA: Last person signed up to testify
19 is Lisa Paulson.

20 MS. PAULSON: Good morning. My name is Lisa
21 Paulson. I'm the Executive Director for the Maui Hotel
22 and Lodging Association. And we are the legislative arm
23 of the visitor industry. We represent over 175 properties
24 and allied businesses, all of which have an interest in
25 the visitor industry. I'm here today because I've been an

1 active member of the Liquor Commission Small Business
2 Review and Advisory Committee and I have had the privilege
3 of reviewing and being able to have some input in some of
4 the amendments that are being proposed in Chapter 101.
5 And I am in support of those.

6 I do want to just stress as well that I do
7 welcome the opportunity to be a member of that small
8 visitor -- Small Business Advisory Committee, to give my
9 industry a voice. And as I'm hearing in some of the
10 discussions today, we still have a long way to go in
11 making some further amendments to making our ability to
12 conduct business with you a little bit more at -- easily.

13 So that's -- thank you for my -- the opportunity
14 to testify. And I'm willing to take questions.

15 CHAIR TANAKA: Any questions? No questions.
16 Thank you very much.

17 MS. PAULSON: Thank you.

18 CHAIR TANAKA: Okay. Next testifier.

19 MS. YOSHIZAWA: No one else has signed up to
20 testify.

21 CHAIR TANAKA: Okay. Anybody else in the
22 audience want to testify?

23 MR. COVICH: Yes, I would. My name's Michael
24 Covich, C-O-V-I-C-H. I am President of Concerned American
25 Veterans, I'm Past President of the Vietnam Veterans of

1 Maui County. And I'm here to speak -- excuse me. I have
2 to put my glasses on. This is too small. Title 9,
3 Chapter 101-11, Chapter 2, 501(c)(19).

4 I've only been on Maui for 30 years. A lot of
5 places in the country veterans halls and 501(c)(19)s
6 already have this privilege. I would ask that, after all
7 this time they've been operating, and getting allowed to
8 do this. So I'm recommending and I'm asking humbly that
9 the Commission grant permission for the VFW to operate
10 under a 501(c)(19) and get their liquor license. In
11 essence, I believe that veterans have a vested
12 entitlement. And this is an area where this vested
13 entitlement should be exercised.

14 So I humbly ask you for approval of this
15 measure. Thank you.

16 CHAIR TANAKA: Thank you.

17 MR. COVICH: Any questions?

18 CHAIR TANAKA: Any questions? Anybody else?

19 Okay. Anybody else who testified, went over their limit,
20 wanna come back and testify again? Not too long, Dave.

21 MR. JORGENSEN: Not too long at all. Just real
22 brief. Real briefly, Dave Jorgensen. Again, the --
23 couple -- just a couple things to -- couple questions I
24 had. On Page 101-3 -- excuse me -- this is Section
25 08-101-10(a)(5). I guess maybe it's stated somewhere

1 else, but I'm wondering why it says a Commission
2 employee -- why it restricts Commission employees'
3 activity and not Department employees. I suggest it
4 should say Department employees, that Department employees
5 may not support, advocate or aid in election or defeat of
6 any candidate. And then, down below, no Department
7 employee, this is in Subsection (b), no Department
8 employee shall solicit or receive contributions.

9 Unless I'm missing something, are all employees
10 employees of the Commission or the Department? That's one
11 question to be considered.

12 And something I was mentioning during the break,
13 on the comment I made on Page 101-11, about what these
14 fine veterans have testified to. A suggestion, because
15 there are other 501(c) designations out there that may
16 or -- you know, various numbers -- obviously, the VFW
17 comes under 19, so there's several -- just to delete from
18 section -- and I can submit this in writing, if you
19 want -- delete from the word "section" down to the number
20 19 and just say attached are U.S. Internal Revenue's
21 exemption letter, and political candidate shall be
22 required, blah, blah, blah. And to take out any
23 limitation on what designations are available. And if
24 they have an IRS exemption letter, that's fine.

25 I understand there may be other reasons why

1 maybe some categories would not be appropriate, but it
2 would seem to me that it should be more inclusive.

3 I mentioned about the tax clearances. And
4 Mr. Horovitz had previously talked about the section on
5 Page 101-24, 08-101-30, about before the Director may take
6 the proposed actions (inaudible) to revoke any action that
7 it -- number one, I don't think the Director, with all due
8 respect, should be able to revoke an action of the
9 Commission. I mean, only the Commission should be able to
10 revoke that. But other actions, there should at least be
11 the opportunity for due process before that takes effect.

12 Just on the state and federal tax clearances,
13 this is on Page 101-27, I know because I'm doing a license
14 on the Big Island, they -- their state and federal tax
15 clearances, they accept those for six months because
16 that's what the State of Hawaii -- they're good for six
17 months. So I would suggest that would solve a lot of
18 problems and stress for licensees, and probably a lot of
19 heartache for the Department who has to make those
20 unpleasant calls about somebody's tax clearance not being
21 still current, that it should be six months instead of 60
22 days on Section 08-101-33(a).

23 And I think that's it. Thank you very much.

24 CHAIR TANAKA: Okay. Any questions?

25 MR. KUSHI: Question. You know when the

1 licensee renews its license every year --

2 MR. JORGENSEN: Yes.

3 MR. KUSHI: -- they submit tax clearances --

4 MR. JORGENSEN: Yes.

5 MR. KUSHI: -- every year?

6 MR. JORGENSEN: Yes, but if they get them in
7 February, February 15th, and submit them after April 15th,
8 then they have to get another one.

9 MR. KUSHI: Okay. Not only for new ones, with
10 existing ones?

11 MR. JORGENSEN: For -- for renewals as well new
12 ones. And for some other things as well, but definitely
13 for new licenses and for renewals.

14 CHAIR TANAKA: What's the status on Maui now
15 with the IRS?

16 MR. JORGENSEN: We were told they weren't -- I
17 mean, I -- I'm the one who was telling a lot of people
18 that they weren't going to be open at all, but they are
19 open on Wednesdays again. At least we were able to get an
20 appointment on Wednesday, but --

21 CHAIR TANAKA: So they coming from Honolulu?

22 MR. JORGENSEN: They're open and then they're
23 not. And then they're open once a week and then they're
24 not. So it's unclear. I don't think they permanently
25 staffed the position here. They still have the space up

1 on Main Plaza, but there's, a lot of times, nobody there.
2 Most of the week, most of the time, nobody's there. But
3 we were able to get an appointment on a Wednesday.

4 CHAIR TANAKA: They coming from Honolulu?

5 MR. JORGENSEN: Yes.

6 CHAIR TANAKA: So you gotta make appointment in
7 Honolulu to meet here?

8 MR. JORGENSEN: Mr. Labeled is his name. You have
9 to make an appointment. Any -- any appointment with the
10 IRS, whether we're gonna fly to Honolulu, to Hilo, to come
11 to Maui, you have to call a nationwide number and talk
12 to -- they pick it up in all different cities on the
13 mainland, and make an appointment. So you cannot just go
14 up there and you cannot call them and make an appointment.
15 You have to call a national number and then they schedule
16 you an appointment. But we were able to get one on Maui
17 on a Wednesday. But as it gets closer to -- well, as you
18 go over the next couple months, everybody's -- you know,
19 people are going to have to go to Honolulu to get those,
20 unless -- and our office is still working through the
21 Hawaii Compliance Express program, which, if we can figure
22 it out, it's gonna be a great thing to be able to,
23 hopefully, do it more streamlined. And the Department has
24 been very helpful in trying to help facilitate that.

25 CHAIR TANAKA: So everybody gonna start getting

1 problems pretty soon.

2 MR. JORGENSEN: Yeah. Yeah. And so, again, as
3 you've always stressed and the Department's always
4 stressed, don't wait 'til the last minute.

5 CHAIR TANAKA: Yeah. Okay. Any other
6 questions?

7 MR. KUSHI: Mr. Chair, if I may. This is for
8 the Commission's consideration. I ask you, Mr. Jorgensen,
9 and not Mr. Nakamura, because he's dealing with this.
10 What is your position about the review of management
11 agreements? I mean, the Department and the Commission is
12 faced with the first rule, the licensee shall have total
13 control and ownership and possession of the licensed
14 premises at all times. If they sub it out to a different
15 operator. And let's say the operator himself came into
16 the Commission for a license and was turned down as an
17 unfit applicant. Now, if they don't review that
18 applicant, who is gonna manage -- who is in charge of the
19 management agreement, where does it leave the Commission?

20 MR. JORGENSEN: I believe, if the -- if the
21 policy remained as it has been for the last five years,
22 the licensee is the responsible party. The people who
23 have been vetted that are, actually, part of the licensee
24 have been cleared, have signed personal guaranties or a
25 bond, are responsible for what goes on, and the license is

1 at risk.

2 I think the other -- the other side of the
3 question that has to be asked is if I run Dave's
4 Restaurant in Wailea, and I hire Junior Kushi to be my
5 nighttime manager, and I turn over everything, nighttime
6 manager, to him, does he have to be vetted? I mean, we
7 got to keep in mind, it's not just -- the rule is not just
8 a company. If you have an agreement with somebody to
9 manage your business, that's a management agreement.
10 There's no limitations or -- or distinctions in the rule.

11 MR. KUSHI: In your example, with reference to
12 my name, I would be your employee, but if I'm not your
13 employee, I'm an independent contractor.

14 MR. JORGENSEN: Well, you might be an
15 independent contractor. I can hire you as an independent
16 contractor. There's lots of -- I have lots of clients
17 where there's -- the person running the day-to-day -- the
18 business, the day-to-day business is an independent
19 contractor for various tax reasons, liability reasons and
20 other reasons.

21 MR. KUSHI: What --

22 MR. JORGENSEN: I did more management
23 agreements -- submitted more management agreements to the
24 Department prior to 2012, during that stretch, because
25 Larry did 'em before that, but it was mostly hostess bars.

1 That's the only ones that I ever recall having to submit.
2 All the other ones, whether it was operating agreements,
3 management agreements, independent contractor agreements,
4 they were never -- they -- they never had to come in.

5 MR. KUSHI: Would the independent contractor
6 agreement under that scenario be able to order liquor and
7 pay a distributor and pay on a different account?

8 MR. JORGENSEN: On behalf of the licensee.

9 MR. KUSHI: On behalf of the licensee?

10 MR. JORGENSEN: Yeah.

11 MR. NAKAMURA: I just wanted to add, since the
12 Commission -- I'm -- I'm sorry.

13 CHAIR TANAKA: The attorney say you're not
14 supposed to speak.

15 MR. KUSHI: No, no.

16 MR. NAKAMURA: Well, he asked me the question.

17 MR. KUSHI: The reason why I'm not asking
18 Nakamura is because he's involved in that situation. I
19 want to ask an independent testifier on the rules.

20 MR. NAKAMURA: Can I just point out one
21 situation?

22 MR. KUSHI: You -- you can testify after,
23 after --

24 MR. NAKAMURA: Okay.

25 MR. KUSHI: -- Dave testifies.

1 CHAIR TANAKA: Anything else?

2 MR. JORGENSEN: No. But I understand there's
3 a -- it's a slippery slope, but where do you draw the line
4 in who would have to come in. And the implication is that
5 if -- if this interpretation of the rule is upheld, then
6 anybody that has a management agreement, whatever that
7 means, may have to be -- may be summoned back in. As one
8 of the cases earlier today, they already got their
9 license, after the fact, they said, oh, you got to come in
10 and clarify who this chain of command is. So my clients
11 may start getting letters saying, oh, you know, you have
12 to come in and get approval of your management, there's --
13 I -- I would bet -- I can't even think how many clients
14 potentially have that situation.

15 The licensee is still responsible. The license
16 is still at risk. The people who were approved and who
17 signed the documents are all personally responsible.
18 That's -- that's the -- that's the game. That's the
19 system. That's the program.

20 MR. KUSHI: Mr. Chair, in your estimation, out
21 of all the licensees that you know of on Maui, what
22 percent would have management agreements, in your
23 estimation?

24 MR. JORGENSEN: What is your definition of
25 management agreement?

1 MR. KUSHI: Operator's agreement.

2 MR. JORGENSEN: You mean officially a document
3 that says operator's agreement or management agreement?

4 MR. KUSHI: Right.

5 MR. JORGENSEN: If you're talking about the
6 hotels, I would say probably 75, 80 percent of them --
7 probably 100 percent, almost 100 percent, probably. As
8 far as restaurants, particularly chain restaurants,
9 probably all of them. I mean, that's an overstatement,
10 but a lot of them because that's -- that's the way the
11 business works. You got the person who is responsible,
12 but you got somebody that's on the ground running the
13 business. So it's one of those things where sometimes you
14 got to be careful what you ask for because you might get
15 it.

16 And the Department is working real hard, but
17 they're understaffed and overworked. And that this is --
18 this is an avalanche waiting to happen.

19 And on the other hand, I believe it's -- it's
20 unfair to the licensees. They go through the process and
21 get approved, as the head of the beast gets approved, and
22 they're responsible for whatever happens on their premises
23 and under their license.

24 CHAIR TANAKA: Question, Dave. You said, in
25 2012, you did most of the management agreements, hostess

1 bars I'm looking at?

2 MR. JORGENSEN: There wasn't that many.
3 Probably five. I mean, five different premises.

4 CHAIR TANAKA: Yeah. Let me ask you this
5 question. Do you have any problems vetting them?

6 MR. JORGENSEN: Vetting the --

7 CHAIR TANAKA: Managers.

8 MR. JORGENSEN: Yes.

9 CHAIR TANAKA: I would think so because most of
10 those hostess bars were all green card holders or --

11 MR. JORGENSEN: Yeah. We had some issues --

12 CHAIR TANAKA: -- tourist visas.

13 MR. JORGENSEN: But -- no. But, honestly, I
14 don't -- we didn't have to -- the managers didn't have to
15 get fingerprints, they didn't have to go through all that.
16 The management agreement itself had to be reviewed, even
17 before 2012, but that was to make sure -- basically to
18 make sure it says that the licensee was still responsible.

19 CHAIR TANAKA: But you're saying that they
20 didn't have to be vetted?

21 MR. JORGENSEN: I don't think they had to be
22 fingerprinted, even, before then. He's nodding his head
23 up and down and side to side. So I don't know what that
24 means. I don't recall having to get a background check
25 done for those management agreements, but the management

1 agreement itself, the document, had to be reviewed.
2 That's for sure. But on the background check, I don't
3 believe they have to get their fingerprints. I'm trying
4 to think of a couple in particular. But for a few of
5 them, they -- it was -- it was an adventure, I'll say
6 that. I mean, I'm glad we don't have to do that. I'm
7 glad when we didn't have to do that anymore. But the
8 restaurants and hotels and other licensees are more --
9 more of an issue.

10 CHAIR TANAKA: Okay. Any other questions to
11 Dave? Thank you.

12 COMMISSIONER WEST: I have a question.

13 CHAIR TANAKA: Oh.

14 COMMISSIONER WEST: So I think last year we had
15 a number of -- I think it was hotel restaurants and
16 restaurants that, basically, their license -- well, they
17 were shut down for a period of time. Do you remember
18 that?

19 MR. JORGENSEN: Yes.

20 COMMISSIONER WEST: Is there any language that
21 you could come up with, that you could submit to the
22 Commission, to prevent that from happening again?

23 MR. JORGENSEN: Well, there was a few different
24 reasons why that happened. I mean, it wasn't just one
25 category. One of the reasons, as I said earlier, as the

1 Commission and Department have been saying, you know,
2 people got to start earlier.

3 COMMISSIONER WEST: Right.

4 MR. JORGENSEN: The one big category that I
5 talked about before was that -- that two-week gap period,
6 you know, what is that for, where you have the deadline
7 of -- the license is expired June 30th, the deadline is
8 June 15th. And so, you know, making it clearer that --
9 or -- or deciding, determining, dictating that the
10 two-week period -- things have to be in by the 15th.
11 Something has to be in by the 15th. They have to give it
12 the old college try to get it in by the 15th. But if
13 something is not technically correct, they still have 'til
14 the expiration date to get it corrected. That would be
15 very helpful to have in the rules very clear. Or the
16 opposite, if that's the decision, the pleasure of the
17 Commission, have the opposite stated very clearly, so
18 people know. I mean, people, right now, assume that's not
19 the case, but, one way or the other, that would be helpful
20 to clear it up.

21 But a lot of it -- I mean, our office has
22 started already telling people, you know, are you paying
23 your taxes, you gonna be able to get your tax clearance.
24 We have that 60-day problem where they can't go get it too
25 soon, but that we're telling them, you know, we're going

1 to start -- as soon as we get within that window, we
2 telling our clients we gotta start doing it, for
3 self-preservation as much as anything else, because
4 we're -- you know, we're bouncing off the walls that last
5 week or so trying to help people get within -- on time.

6 COMMISSIONER WEST: You can correct me if I'm
7 wrong, Corp Counsel. I believe the date fell on a
8 weekend, right?

9 MR. JORGENSEN: I forget what the June --

10 DIRECTOR MUKAI: I believe you're referring to
11 the gross sales --

12 MR. JORGENSEN: June 15th.

13 COMMISSIONER WEST: Yeah.

14 DIRECTOR MUKAI: Gross sales. And to correct --
15 we have a rule amendment to correct that.

16 COMMISSIONER WEST: Okay. So that's been --

17 DIRECTOR MUKAI: That's part of this rule
18 amendment.

19 COMMISSIONER WEST: Very good.

20 MR. JORGENSEN: That's two different things.
21 Gross sales reports are due every year.

22 COMMISSIONER WEST: Right.

23 MR. JORGENSEN: But -- and you have to renew,
24 but that's done a month after the renewal. The renewal
25 application has to be in by the middle of June, before the

1 license expires June 30th. And then, after that, you have
2 to do the gross sales. But the deadline falling on a
3 weekend is certainly something that -- you know, in court,
4 it's usually the following Monday is the deadline. If the
5 deadline is on a Saturday or Sunday, the following Monday
6 is the deadline.

7 COMMISSIONER WEST: Right. Okay. Thank you.

8 MR. JORGENSEN: Thank you.

9 CHAIR TANAKA: Next.

10 COMMISSIONER KENNISON: Craig.

11 CHAIR TANAKA: Craig, you gonna --

12 MR. NAKAMURA: Oh, I'm sorry. I thought someone
13 else was coming up.

14 COMMISSIONER KENNISON: No. They leaving.

15 MR. NAKAMURA: Real quickly. Craig Nakamura,
16 again. First thing is, I think, a large part depends on
17 the discretion of the Director, as was mentioned in the
18 previous matter. You know, there's a new sheriff in town,
19 okay, but, in the old administration, they had the
20 discretion to do certain things, to give -- give some
21 flexibility as to when things would occur. Now, I think
22 we -- you know, so we got extremes. You know, you got
23 follow the letter of the law as you interpret it versus
24 have discretion to -- to allow other things to occur.

25 I wanted to point out in that hearing that, in

1 Honolulu, I was at when they were considering the revision
2 of the management agreement rule, on the agenda -- excuse
3 me -- on the agenda were items to allow licenses to
4 continue and to be extended even though tax clearances
5 hadn't been filed for months after the end of the fiscal
6 year. Okay. That -- I mean, tax clearance, I think
7 everyone would say is maybe a critical part, even though
8 it doesn't really have anything to do with the service of
9 liquor. However, it's a critical requirement of getting
10 your license renewed. In Honolulu, they allowed the
11 license to be extended for months after the June 30
12 deadline.

13 The second thing I wanted to just, basically,
14 say is that it's just a question of, again, extremes. If
15 you follow the exact letter of the law as you interpret it
16 versus not. Being a little more liberal, a little more
17 flexible to help the licensees.

18 This HKB matter that I was at -- I -- I -- I
19 spoke to earlier today is clear example. That license was
20 submitted in 2014. It's a LLC, it has officers -- a
21 little unusual for Hawaii, it has officers, and it has a
22 member. At that time counsel agreed that that was all we
23 needed to submit. Okay. New sheriff in town, now we need
24 to submit all the way down the chain. Okay. This is a
25 national entity. So as you saw in the application, we had

1 to go the member of the member, the member of the member,
2 member, member. We had to go down four different levels
3 and then provide all of the officers or all of the members
4 of that entity.

5 Now, you go down that far, what do these people
6 actually have to do with the operation of the business?
7 You're talking about you want to have, you know, the
8 people vetted who are -- actually have the operation of
9 the business in mind, not people who are owners four --
10 four -- four entities down the line. But that's going --
11 that's the requirement now. And that, again, in addition
12 to management agreements, is going to be a big change as
13 far as how things are -- how things are reported.

14 Thank you.

15 CHAIR TANAKA: Any questions?

16 COMMISSIONER WEST: So, in Honolulu, is it to
17 the discretion of the commission or the -- the director
18 that lets them, you know, go 30, 60, 90 days?

19 MR. NAKAMURA: Well, those -- those extensions
20 on the submitting the tax clearance, those were on the
21 agenda for Commission approval, but, you know, I mean, we
22 don't even get that far. I mean, we won't even be allowed
23 to bring it to the Commission. It will automatically be
24 rejected. If you remember the Maui beach situation, they
25 weren't allowed to renew just because they didn't have the

1 original signature on the renewal application on June
2 15th.

3 COMMISSIONER WEST: Now, regarding Maui Beach,
4 were they told when they submitted the application that
5 was going to be rejected or did it come weeks after that
6 it was rejected?

7 MR. NAKAMURA: Okay. I wasn't representing the
8 hotel at the time. Kyoko is here and -- and she can talk
9 about what happened. My understanding was she tried to
10 submit it on the 15th. Of course, yes, she shouldn't have
11 waited that long, but it was tried to be submitted on the
12 15th. And they didn't have Mr. Savio's original signature
13 because, of course, he's in Honolulu. I think he might
14 have, also, been out of town. And she was told the next
15 day, on the 16th, that the license wouldn't be renewed.

16 COMMISSIONER WEST: Okay.

17 MR. NAKAMURA: Even though our understanding
18 from the Chair is that that two-week period, from the 15th
19 to the 30th, was supposed to be the time period to allow
20 you to make corrections. So that's why we're in the Maui
21 Beach situation today.

22 DIRECTOR MUKAI: Oh, the Maui Beach situation,
23 they submitted the application before the 15th. It was
24 rejected for various reason, including that there were no
25 official signature. The Department contacted them to tell

1 them the deficiency. They came up, picked up the
2 application, and didn't re-submit it for a while. And we
3 contact the attorney of record for Maui Beach, he re --
4 said he has nothing to do with it, he will not sign the
5 application. So it was, at that point, expired.

6 COMMISSIONER WEST: What -- oh, by the 30th?

7 DIRECTOR MUKAI: On the 15th.

8 COMMISSIONER WEST: On the 15th.

9 DIRECTOR MUKAI: So the lag between the 15th and
10 30th, why the Commission passed that rule was because when
11 it was -- the deadline was the 30th, they, all of a
12 sudden, being told, you know, you're dead already. So the
13 attorneys that represent licensees, at that time,
14 (inaudible) of the Hotel Association met with the
15 Department and kind of agreed that the deadline should be
16 on the 15th. So at that point, on the 15th, if they know
17 they can't go forward, their attorneys or the applicant
18 can submit another application from -- maybe do another
19 entity or something so they can complete it before the
20 30th to transfer the license and operate under -- under
21 the transfer.

22 MR. NAKAMURA: Well, we can go back and look at
23 the transcript, but I'm sure I heard the Chair say that
24 the reason for that two-week period was to allow
25 corrections to the application if they weren't done, which

1 is only reasonable. I mean, not reject an application
2 because you don't have a signature. I mean, we're talking
3 about the electronic age. I mean, everybody accepts PDF
4 signatures. We even have real estate documents signed
5 without even a signature on it, just a -- a facsimile of a
6 signature.

7 CHAIR TANAKA: Tell that to the County Public
8 Works. They won't except my signature unless it's on the
9 plans. Change that. Because every plans has to be an
10 original signature now. They won't accept a print now.
11 So what you're saying is not true.

12 MR. KUSHI: Question, Craig. All right. You
13 referenced something that happened earlier this morning.
14 Is that the SNA?

15 MR. NAKAMURA: No. HKB. It was application for
16 change of officers, Item --

17 MR. KUSHI: Other Licensing Matters?

18 MR. NAKAMURA: Yes.

19 MR. KUSHI: Change in stockholders?

20 MR. NAKAMURA: Yes. Item A, HKB Beverage, LLC.

21 MR. KUSHI: Is the parent company a
22 publicly-traded corporation?

23 MR. NAKAMURA: No.

24 MR. KUSHI: No?

25 MR. NAKAMURA: I don't believe so.

1 MR. KUSHI: So they don't fall under the state
2 exemption?

3 MR. NAKAMURA: Right.

4 CHAIR TANAKA: Okay. Any other questions?
5 Thank you.

6 MR. NAKAMURA: Thank you.

7 CHAIR TANAKA: Anybody else testifying? Okay.
8 If not, public hearing is closed. Let's have a
9 five-minute recess before we go into discussions.

10 (Recess, 11:08 a.m. to 11:17 a.m.)

11 CHAIR TANAKA: Liquor Commission meeting back to
12 order. Okay. When we stopped for the public hearing, we
13 were in a Communication Item. Craig, you get anything
14 else to add before I'm gonna have the Commission go into
15 Executive Session to discuss some legalities?

16 MR. NAKAMURA: Yeah, just very quickly,
17 Mr. Chair.

18 The first thing is I did pass around, during the
19 testimony on the rule change -- the first page is notice
20 to requestor, but this is just the -- the request I made
21 with respect to the change in the deletion of Rule 42 and
22 notices the Department's response. But the significant
23 part is -- is at the end. It says rule amendment
24 proposals. And then the rule that the Department changed
25 is Rule 42. It's attached. It's very difficult to read,

1 I apologize, it's in red, but the bracketed portion with
2 respect to management agreement is the part that's
3 deleted. And it says, "Licensee shall apply for and
4 secure the approval for any management agreement." So
5 that.

6 The second thing was I want -- I quick -- took a
7 quick look again at the minutes of the last meeting. And
8 I just wanted to reiterate, on Page 818 and 819, with
9 respect to the actual motion, it says -- Chair Tanaka, "We
10 accept --" "And we accept the management agreement as is,"
11 from Commissioner Souza. And Commissioner Bicoy says,
12 "And we'll overrule the background criminal, personal."
13 And that's the motion. And that's the motion that was
14 adopted. So that's what led me to believe that we didn't
15 have to provide that information because the motion as
16 stated in the transcript says that.

17 And nothing further. I'd be happy to answer
18 questions.

19 MR. KUSHI: What page was that, again?

20 MR. NAKAMURA: I'm sorry. It's page -- it's
21 when the motion was heard, Page 812 and 813, the motion
22 and the granting of the motion. And, again, you know -- I
23 mean, maybe, again, it's a question of interpretation and
24 extremes. So on one extreme, we have you gotta report
25 everybody. On the other extreme, we have you just provide

1 the management agreement or you don't have to provide
2 anything if there's a management agreement.

3 I understand that, you know, there's probably
4 some middle ground. I would suggest the middle ground
5 might be as we did, we just provide the Management
6 Agreement so that the Department is aware of the fact that
7 there is one and who the manager is, but we not be
8 required to provide anything else. At least, at that
9 point in time, that they're aware of the operator -- of
10 the operator without all of the details because, again,
11 the licensee is still responsible for the operation of
12 the -- the business.

13 Thank you.

14 CHAIR TANAKA: Before you go, I get one
15 question.

16 MR. NAKAMURA: Sure.

17 CHAIR TANAKA: If the Commission decide not to
18 go and waive all the requirement, how long would it take
19 you to get all that information?

20 MR. NAKAMURA: At this point, I don't even know.
21 I mean, I have --

22 MR. KUSHI: Take a guess.

23 CHAIR TANAKA: Take a guess. Because you can --
24 the Commission can extend the temporary license.

25 MR. NAKAMURA: Yes. I understand. I -- it's --

1 I really can't make -- even make a guess just because I
2 don't know the -- one of the entities, as you -- as you
3 might remember, that operates the hotel is actually an
4 Aston entity. So I -- I don't know what the chain of
5 command is, so to speak. I don't know what the ownership
6 is like, you know. So if I'm going to be required to go
7 all the way down the chain of command, I don't know what
8 that's going to be involved. I don't know if we're going
9 to get to a national company. I don't -- I have no
10 knowledge about that at this point in time. So it would
11 be difficult to say. I would imagine it's probably going
12 to take at least --

13 CHAIR TANAKA: Well --

14 COMMISSIONER KENNISON: Wait.

15 CHAIR TANAKA: Kyoko -- Kyoko can answer that
16 question?

17 MS. KYOKO: If we are required to submit only
18 the local entity, the Aqua Aston's entities, officers,
19 directors, probably three to four months, but if we're
20 required to submit the chain of command like which is
21 owned by a publicly-traded national company, or
22 international company, then I would say six to eight
23 month.

24 CHAIR TANAKA: Okay. That gives us an idea.

25 MR. KUSHI: Wait. Wait. Wait. Mr. Chairman,

1 I'm getting confused. Craig, currently, what applications
2 do you have pending with the Department?

3 MR. NAKAMURA: We have an application for a
4 Hotel license on behalf of MBH -- MBH.

5 MR. KUSHI: Who --

6 MR. NAKAMURA: I think it's called.

7 MR. KUSHI: Is that Savio or --

8 MR. NAKAMURA: That's the Savio entity.

9 MR. KUSHI: Savio transferred from Maui -- from
10 the old --

11 MR. NAKAMURA: Yes.

12 COMMISSIONER KENNISON: Old Maui Beach.

13 MR. KUSHI: So Hotel --

14 MR. NAKAMURA: Yes.

15 MR. KUSHI: Transfer of Hotel license?

16 MR. NAKAMURA: Yes.

17 MR. KUSHI: Then you have --

18 MR. NAKAMURA: There's two management agreements
19 under that. One is with D&H Investment, which is the food
20 and beverage operator.

21 MR. KUSHI: Okay.

22 MR. NAKAMURA: And the second is -- I'm not sure
23 of the exact name, but it's an Aston entity for the hotel.

24 MR. KUSHI: Well, why are you required to submit
25 the hotel application -- I mean the hotel operator

1 agreement?

2 MR. NAKAMURA: Why am I being required?

3 MR. KUSHI: Yes. Is the Department requiring
4 you --

5 MR. NAKAMURA: Yes. Yes, they are. That's
6 the --

7 MR. KUSHI: Why?

8 MR. NAKAMURA: That's the whole issue.

9 CHAIR TANAKA: Because the hotel has a lot more
10 flexibility.

11 MR. KUSHI: They have nothing to do with liquor.

12 MR. NAKAMURA: Well, the food and beverage
13 operation does. There's a -- there's two -- there's two
14 Management Agreements.

15 MR. KUSHI: Right.

16 MR. NAKAMURA: Okay. So the food and beverage
17 is one, the hotel operation is the other.

18 MR. KUSHI: The hotel operation is like taking
19 reservations, et cetera?

20 MR. NAKAMURA: Yes. Yes.

21 MR. KUSHI: Nothing to do with licensed
22 premises, right?

23 MR. NAKAMURA: Well --

24 CHAIR TANAKA: No. It is the licensed premises.

25 MR. NAKAMURA: Well, the license in that -- in

1 that -- okay. As a part of the licensed premises, for
2 example, you have like a --

3 CHAIR TANAKA: The whole area.

4 MR. NAKAMURA: -- you have like a grounds where
5 they do, you know, weddings and that kind of thing.

6 CHAIR TANAKA: Yeah.

7 MR. NAKAMURA: Okay. I don't think there's any
8 room service. I don't think there's any minibars in the
9 hotel rooms. But to that -- to the extent that it covers
10 the grounds, you know, they would have some control.

11 COMMISSIONER KENNISON: But --

12 MR. KUSHI: But then the grounds and serving of
13 liquor is under DH.

14 MR. NAKAMURA: No. No. The grounds -- well, it
15 would be under DH. I mean, who's -- who's actually going
16 to be serving the liquor?

17 MR. KUSHI: It's DH, not the -- not Aston.

18 MR. NAKAMURA: That's true, but it's not --
19 okay. So I guess -- I mean, I would have to look at the
20 details, but, you know, I guess it's not currently a part
21 of what we considered to be their licensed premises -- I
22 mean -- or the -- you know, under the -- the area that's
23 under the operating agreement. Right? That's typically
24 only the kitchen and the banquet rooms and the bar, you
25 know, if there's a separate bar, but not the -- so that's

1 why we have Hotel license because it covers the entire
2 grounds. So that -- this is what happened before, Junior,
3 at the last -- or I don't remember what hearing it was.

4 MR. KUSHI: Aston wasn't mentioned. Aston was
5 not mentioned.

6 MR. NAKAMURA: Well, but they knew about Aston.
7 I mean, the Commission knew about Aston because we
8 submitted that as well. Okay. But this is where we were
9 before. What we had thought -- there was an issue about
10 are we gonna require these things for management
11 agreements. Right? So what I volunteered to do was I
12 said, well, forget the Hotel license, then, because then
13 we gotta provide the management agreement, we'll apply for
14 a Dispenser license for D&H, then they can just have the
15 food and beverage and the liquor on one side, and they
16 don't need a hotel, then we don't have to worry about the
17 management agreement and reporting that guy. Okay. Then
18 the problem was we couldn't get the temporary, you know,
19 because now it's a different entity. You gotta be same
20 class and kind to get a temporary license. And it's a
21 different entity, different license. So then we -- you
22 know, they weren't going to give us the temporary. So
23 then we went back, okay, we'll do the Hotel, but don't
24 provide us with -- we don't have to do the Management
25 Agreement.

1 MR. KUSHI: Okay. Okay. Okay. You answered my
2 question. Mr. Chair, I think it's -- you should hear from
3 the Department, why are they requesting the Aston
4 Management Agreement.

5 DIRECTOR MUKAI: Because the hotel, under a
6 Hotel license, they have to show they have control of 40
7 rooms.

8 MR. KUSHI: But then it's not licensed premises,
9 though.

10 DIRECTOR MUKAI: It is a licensed premises.

11 CHAIR TANAKA: The whole -- whole grounds are
12 licensed premises.

13 MR. KUSHI: The rooms?

14 DIRECTOR MUKAI: Yes. To -- to be able to
15 obtain a Hotel license, you must show that you have 40
16 rooms under your control.

17 MR. KUSHI: But Aston is not serving liquor.

18 CHAIR TANAKA: Why don't you cancel the
19 Management Agreement with the hotel?

20 MR. NAKAMURA: Cancel?

21 CHAIR TANAKA: Yeah.

22 MR. NAKAMURA: I'm sorry?

23 CHAIR TANAKA: Yeah.

24 MR. NAKAMURA: Well, they have to have some kind
25 of operator for the hotel. And it's not Mr. Savio or

1 Savio's company.

2 CHAIR TANAKA: Yeah, Savio -- Savio is --

3 COMMISSIONER ALULI: That's the ownership
4 entity.

5 CHAIR TANAKA: -- is the owner, right?

6 MR. NAKAMURA: That's right. That's right.

7 MR. KUSHI: So cancel the Management Agreement
8 with the Aqua Enterprises.

9 MR. NAKAMURA: Who is going to operate the
10 hotel?

11 CHAIR TANAKA: Savio.

12 MR. NAKAMURA: He says --

13 CHAIR TANAKA: Who the hell knows if Savio
14 running the thing or not.

15 MR. NAKAMURA: Well, that's -- that's why --
16 that's the very reason why the position of the Department
17 before was we don't care about management agreements.

18 CHAIR TANAKA: But it's there, so that's the
19 problem.

20 COMMISSIONER KENNISON: Bumbye Kyoko be out of
21 one job, 'eh, Kyoko? Maybe Kyoko will explain.

22 CHAIR TANAKA: No, not -- not really. She can
23 be the manager or the -- the employee of Savio as the
24 manager of the hotel. That will --

25 MS. KYOKO: We -- Aqua Aston Hospitality manages

1 50 hotels within the state. We don't own any of the
2 hotel. None of the ownership, for tax reasons, liability
3 reasons, they don't want to employ any -- any of the
4 employees who is working as a hotel operation. That's why
5 we come in as a hotel operation company. None of the
6 owners will -- Nane would understand.

7 COMMISSIONER ALULI: Yeah. And most -- in most
8 hotels throughout the state, there are management
9 companies and not owners that are operating the -- that's
10 not what they're there for. They're mainly investors in
11 the real estate piece of it. And they hire Hilton, Aqua,
12 you know, all the different management entities. And I
13 don't think you'll find a hotel, that I know of, in Hawaii
14 that doesn't have a separate management company that
15 actually manages the asset, the hard asset, you know.

16 MS. KYOKO: I don't want to jeopardize anybody
17 else's license, but -- so you're gonna require the
18 Marriott to submit every directors of the Marriott
19 companies fingerprints?

20 CHAIR TANAKA: I think they have. All the --
21 all of these hotels have submitted all those things.

22 MR. NAKAMURA: Well, I think because --

23 MS. KYOKO: I don't think Four Seasons did.

24 MR. NAKAMURA: The difference that we have here
25 is that in this -- in most situations, the hotel operator

1 owns the license.

2 COMMISSIONER ALULI: Yes.

3 MR. NAKAMURA: Okay. In this situation, the
4 owner, the Maui Beach Hotel, owner held the license. And
5 that's -- and we're trying to transfer that license. Or
6 even if we were to file -- you know, the whole issue, I
7 think, comes down to the -- the temporary license, right,
8 because we couldn't -- if we could get a temporary license
9 and file an application for D&H or an application for
10 Aston, but preserve the temporary license, that wouldn't
11 be a problem, but that's why we were here the last time,
12 because they wouldn't allow us to get the -- extend the
13 temporary license. So we would have a gap.

14 CHAIR TANAKA: You could not get a temporary
15 license without filing an application for the Hotel
16 license.

17 MR. NAKAMURA: Right.

18 CHAIR TANAKA: And part of the Hotel license,
19 you guys had a Management Agreement.

20 MR. NAKAMURA: Right.

21 CHAIR TANAKA: If there was no management
22 agreement involved was no problem.

23 MR. NAKAMURA: I understand, but there is one so
24 we can't just say there is none.

25 CHAIR TANAKA: So -- so you had to submit the

1 Management Agreement with the application.

2 MR. NAKAMURA: Which we did.

3 CHAIR TANAKA: Okay. And that's the only way
4 you're gonna get the temporary license.

5 MR. NAKAMURA: Correct.

6 CHAIR TANAKA: Okay. But Department says, in
7 the Management Agreement, you had to vet the guy.

8 MR. NAKAMURA: Correct.

9 CHAIR TANAKA: Okay. And that's what the
10 Commission waived at that time, that you don't have to --
11 if we require you to vet the guy, you could not get a
12 temporary license.

13 MR. NAKAMURA: I understand.

14 CHAIR TANAKA: How long would it take to vet the
15 guy?

16 MR. NAKAMURA: Right. I understand.

17 CHAIR TANAKA: Yeah. So that's what we did,
18 we -- we waived that requirement so they could get you
19 temporary license that day. You wanted it that day, you
20 know.

21 MR. NAKAMURA: Yeah. But that wasn't my
22 understanding. My understanding was --

23 CHAIR TANAKA: The intent was not to -- not to
24 eliminate all the requirements.

25 MR. NAKAMURA: Well, I guess that's what you

1 need to discuss with the Commission.

2 CHAIR TANAKA: Yeah, yeah, yeah. You know
3 what --

4 MR. KUSHI: One more question, Mr. Chair.
5 Craig, hearing that, I'm trying to get to the forest and
6 eliminate --

7 MR. NAKAMURA: Yeah.

8 MR. KUSHI: -- the trees.

9 MR. NAKAMURA: Yeah.

10 MR. KUSHI: The hotel, Savio has nothing do with
11 operations, he's the owner of the land?

12 MR. NAKAMURA: Correct.

13 MR. KUSHI: Aston has nothing to do with the
14 liquor operations, they -- they book the rooms, they --
15 you know, they staff the rooms, et cetera.

16 MR. NAKAMURA: Correct.

17 MR. KUSHI: So in this case, DH Investments,
18 wouldn't it be easier to just get a General Dispenser
19 license?

20 MR. NAKAMURA: Correct.

21 MR. KUSHI: You know --

22 MR. NAKAMURA: Which is --

23 MR. KUSHI: -- although it's in a hotel.

24 MR. NAKAMURA: Which is what we were suggesting,
25 but we could not get the temporary license if we did that,

1 because, in order to get a temp, you have to have the same
2 class and kind.

3 MR. KUSHI: Okay. Looking at the end result,
4 the big picture. If DH comes in and applies for a General
5 Dispenser license, although it's in the hotel, and
6 designate the licensed premises, then it's okay, right?
7 Wouldn't that be okay?

8 MR. NAKAMURA: Except we cannot get the temp.
9 That's what we -- that's what we offered to do. We
10 offered to file a Dispenser license to avoid the
11 Management Agreement issue.

12 MR. KUSHI: Well, think beyond that, you have a
13 temporary license --

14 MR. NAKAMURA: For the hotel.

15 MR. KUSHI: -- no matter what you say. I'm
16 looking at what -- what's the next steps.

17 MR. NAKAMURA: If we can get the temporary
18 license -- if we can get the temporary license to
19 continue, even though we file the Dispenser license, we
20 would be -- we could do that. But that's the whole issue.

21 MR. KUSHI: 'Cause Savio and Aston will not be
22 involved.

23 MR. NAKAMURA: Right. No. That's -- that's the
24 whole issue. That's why we were here the last time,
25 because we couldn't get the temp. That's why we said,

1 okay, we gotta to go back and file the Hotel license.

2 COMMISSIONER KENNISON: Before we go into
3 Executive Session, what's the Director's position at?

4 DIRECTOR MUKAI: Well, the Director position is
5 we worked with the Hotel Association on trying to resolve,
6 (inaudible). So on the rule change, there will be, maybe,
7 an out for Mr. Nakamura, if he looks at it.

8 COMMISSIONER KENNISON: What is that?

9 DIRECTOR MUKAI: When we go through the rule,
10 when we explain, we go through the rule, then, instead of
11 discussing it now and again at the rule, it's better we do
12 it with the rule amendments.

13 COMMISSIONER KENNISON: Okay.

14 CHAIR TANAKA: Glenn.

15 COMMISSIONER WEST: Let me ask a question.

16 If -- if -- and I guess this is for Kushi. If the
17 Commission came up with some avenue to go back and
18 retroactively look at what happened and come up with some
19 language, like -- because the issue that caused all this
20 problems was that there was no signature, right? Is
21 that -- is that possible that we could come up with some
22 language that -- you know, say, if there is an error in
23 the signature --

24 COMMISSIONER KENNISON: I think what Director is
25 saying is maybe we can handle it in the rule amendments.

1 COMMISSIONER WEST: Okay.

2 CHAIR TANAKA: Glenn, before -- before I call
3 for motion for Executive Session, I get a question. Can
4 the Commission -- or maybe we should discuss it in
5 Executive Session, it's a legal question. Okay. Can I
6 have a motion to go into Executive Session?

7 COMMISSIONER SOUZA: So moved.

8 COMMISSIONER KENNISON: Second.

9 CHAIR TANAKA: Okay. All in favor, say "aye."
10 (Response.)

11 CHAIR TANAKA: Let's go into Executive Session.

12 (Executive Session, 11:32 a.m. to 11:56 a.m.)

13 (Recess, 11:56 a.m. to 11:58 a.m.)

14 CHAIR TANAKA: Okay. Craig?

15 MR. NAKAMURA: Yes.

16 CHAIR TANAKA: This is what the Commission has
17 discussed. Is that operator gonna come in for a Dispenser
18 General?

19 MR. NAKAMURA: Well, I'd have to talk to him
20 about it, but I -- I think he can.

21 MR. KUSHI: He can or can't?

22 CHAIR TANAKA: He can or --

23 MR. NAKAMURA: Can.

24 CHAIR TANAKA: He can or will -- he will not?

25 MR. NAKAMURA: I would need to confirm with him

1 because I -- I haven't specifically, you know, talked to
2 him about this again. But we did talk about it at one
3 time and, at that point, he said he could. That's why I
4 found out about the ID. Remember I was talking about his
5 ID? So I think that -- because, earlier, that was the
6 intent, to change and file a Dispenser license.

7 CHAIR TANAKA: Yeah. Okay. So that's his -- in
8 essence, that's his ultimate goal, though?

9 MR. NAKAMURA: Sure, I would think so.

10 CHAIR TANAKA: Okay. This is what the
11 Commission was thinking of doing. Let him file for a
12 Dispenser General.

13 COMMISSIONER SOUZA: And we're speaking of D&H?

14 CHAIR TANAKA: Yeah.

15 MR. NAKAMURA: Yeah.

16 CHAIR TANAKA: And the temporary license would
17 still be active. Okay? Then -- then he can file for --
18 normally, it would take minimum of 90 days. Right?

19 MR. NAKAMURA: To -- to file the application?

20 CHAIR TANAKA: To file the application.

21 MR. NAKAMURA: I would think so.

22 CHAIR TANAKA: You guys can vet him, though, eh?

23 MR. NAKAMURA: Yes.

24 CHAIR TANAKA: Okay. So you guys no get problem
25 with vetting him?

1 MR. NAKAMURA: I have no idea at this point. I
2 mean, we -- we're gonna have to try. We haven't submitted
3 anything for him.

4 CHAIR TANAKA: So if -- if -- if you run into
5 problems vetting him, you're gonna have to come back to
6 the Commission to extend the temporary. Savio's temporary
7 now. He gonna be operating under until such time that he
8 get his application and everything in.

9 MR. NAKAMURA: Right. So if we have problems,
10 for whatever reason, we can come in for an extension?

11 COMMISSIONER KENNISON: Yes.

12 CHAIR TANAKA: Yeah, come in for an extension.

13 MR. NAKAMURA: Okay.

14 CHAIR TANAKA: Because we wanna know why or what
15 the reason --

16 MR. NAKAMURA: Yes.

17 CHAIR TANAKA: -- you cannot vet him. Or maybe
18 he can't even get a license.

19 MR. NAKAMURA: Right. Well, there might be --
20 you know, I don't know what all the issues may be. I
21 mean, for example, one of the things an applicant has to
22 provide is a tax clearance. You know, that means, of
23 course, all the state and federal taxes have to be paid to
24 date. So I don't know what his financial situation is,
25 you know. We -- we -- we haven't found out. We haven't

1 checked on that.

2 CHAIR TANAKA: Yeah, because if -- if that's the
3 situation, and if he cannot get the license, either he
4 gotta change operator or he gotta find somebody to take
5 his place or, in essence, Savio gotta run the restaurant.

6 MR. NAKAMURA: Okay. And, again, the --

7 CHAIR TANAKA: So the Commission wanna go with
8 that.

9 MR. NAKAMURA: Understand.

10 CHAIR TANAKA: Before we'll do any extension of
11 temporary. Otherwise, the license going cease and desist.

12 MR. NAKAMURA: So the temporary would continue,
13 basically, I know we have to come in for an extension, but
14 it will continue until a new license is issued to D&H, a
15 Dispenser license, right?

16 CHAIR TANAKA: Well, not until the -- until
17 the -- his license is issued. You're gonna have to come
18 in.

19 MR. NAKAMURA: Right, for an extension.

20 COMMISSIONER WEST: For an extension.

21 COMMISSIONER KENNISON: No. Yeah. But once he
22 gets the extension, yeah.

23 MR. NAKAMURA: Assuming -- assuming like -- from
24 what I understand, I believe the temporary is good for
25 approximately another 60 days, through, I think, April or

1 so.

2 CHAIR TANAKA: Right. Okay. So --

3 MR. NAKAMURA: I don't think --

4 CHAIR TANAKA: -- before then, you gotta come
5 in for an extension.

6 MR. NAKAMURA: Right. I don't think we're gonna
7 be able to have a new license.

8 CHAIR TANAKA: Yes.

9 MR. NAKAMURA: Right, within that period. So we
10 will have to come in, but there's a possibility that the
11 Hotel temp -- license -- the temporary license can be
12 extended under the Hotel license.

13 CHAIR TANAKA: Right.

14 COMMISSIONER KENNISON: That's correct.

15 CHAIR TANAKA: They gonna be operating under
16 that until his license --

17 MR. NAKAMURA: Is issued.

18 CHAIR TANAKA: -- is issued.

19 MR. NAKAMURA: Okay. You just wanna know why
20 it's taking so long.

21 COMMISSIONER KENNISON: Repeat again, yeah. So
22 until his license is issued.

23 MR. NAKAMURA: Right.

24 CHAIR TANAKA: Yeah. And then you have to come
25 in for an extension.

1 MR. NAKAMURA: Right.

2 CHAIR TANAKA: Yeah. So don't misinterpret
3 that. He has the license --

4 MR. NAKAMURA: I understand. No. We -- we will
5 definitely do that.

6 COMMISSIONER SOUZA: So just one thing for the
7 administration. We -- we are on his first extension.
8 He's normally allowed two 120-day extensions.

9 DIRECTOR MUKAI: He's on his second extension.

10 COMMISSIONER SOUZA: Oh, he's second. So now we
11 gonna have to break the rule and go to his third, but the
12 Commission can do that?

13 DIRECTOR MUKAI: At that point, the Corp Counsel
14 has to give a ruling, which is state law.

15 MR. KUSHI: I'll rule -- I'll rule at that time.

16 COMMISSIONER SOUZA: Because we're only on 60.
17 So for -- to give them the third, I remember some hearings
18 ago that they can get two temporary extensions. Now we
19 going on his third.

20 MR. KUSHI: Possibly.

21 COMMISSIONER ALULI: Possibly.

22 MR. KUSHI: Probably.

23 COMMISSIONER SOUZA: I'm pretty sure, 'cause 60
24 days. He's --

25 COMMISSIONER ALULI: Right. It's not gonna do

1 it. No.

2 COMMISSIONER KENNISON: No, not gonna do it.

3 You know --

4 COMMISSIONER SOUZA: It takes 90 days minimum.

5 MR. NAKAMURA: Yeah, it takes 90 days because we
6 have to have the preliminary, then there's a 45-day notice
7 period. So we miss the next month and it'll be the third
8 month. So that's a minimum of 90 days.

9 COMMISSIONER KENNISON: I got a question because
10 you said the Corp Counsel gotta rule. What if the Corp
11 Counsel sees a problem?

12 MR. KUSHI: Well, in my mind, this Commission
13 has vast and broad authority.

14 COMMISSIONER KENNISON: Okay. That's what I
15 wanna --

16 CHAIR TANAKA: I -- I feel the same way.

17 COMMISSIONER SOUZA: I just had to bring it up.

18 COMMISSIONER KENNISON: No, no. That's
19 important.

20 MR. NAKAMURA: Thank you.

21 COMMISSIONER KENNISON: No, I agree with you.
22 And I wanted to clarify.

23 COMMISSIONER WEST: Need to make sure it's
24 clear.

25 COMMISSIONER KENNISON: Yeah, wanna make sure

1 it's clear.

2 CHAIR TANAKA: I feel the same way. I get one
3 question, though, Glenn. Why can't he come in for a
4 Restaurant license?

5 DIRECTOR MUKAI: You cannot go from a Hotel to a
6 Restaurant, it doesn't allow it, state law. So I believe
7 maybe some of the rule changes today --

8 CHAIR TANAKA: The rule change gonna make that
9 change. And what happens -- let's say if the Commission
10 pass this rule amendments now, yeah, because that's part
11 of the rule change. And he's in the process of going
12 through a Dispenser General. Now the rule changed so he
13 can go -- going behoove him to get a Restaurant license,
14 right?

15 MR. NAKAMURA: Definitely. I --

16 CHAIR TANAKA: So --

17 DIRECTOR MUKAI: Basically, the rule change says
18 that a Hotel licensee meet all requirements can downgrade
19 to a --

20 CHAIR TANAKA: Restaurant.

21 DIRECTOR MUKAI: -- restaurant license. So at
22 that point, they can get a Restaurant license. So it
23 eliminates the rooms and everything else. But, also,
24 there's another state law and -- and, I believe, rule,
25 that says -- has to do with mergers and everything else on

1 how they do it. I can quote the section for Mr. --

2 CHAIR TANAKA: Well, that's up to Craig.

3 DIRECTOR MUKAI: Craig --

4 CHAIR TANAKA: He getting paid for that.

5 DIRECTOR MUKAI: Yeah.

6 MR. NAKAMURA: But in -- again, in -- in
7 Honolulu, okay -- so the -- the problem here is that we
8 cannot apply for a Restaurant license directly, okay,
9 because, as interpreted, the Restaurant license -- the
10 restaurant -- or the business has to be in operation for
11 one year, showing sales of 30 percent or more of food.
12 Okay. So, of course, you can't do that unless you've been
13 running for a year. So that's why we're not allowed to
14 initially apply for a Restaurant license; we gotta apply
15 for a Dispenser and then transfer to a Restaurant license.
16 Okay.

17 So, two things. In Honolulu, they allow you to
18 immediately apply for a Restaurant license. And what you
19 have to do, as mentioned, is you have to provide a
20 business plan to show that you -- how you intend to comply
21 with that 30 percent requirement, which makes it a whole
22 lot easier.

23 CHAIR TANAKA: Well --

24 MR. NAKAMURA: The other --

25 CHAIR TANAKA: But our rule change -- yeah, once

1 our rule change goes through, then, that should eliminate
2 that process.

3 MR. NAKAMURA: I -- I haven't seen the rule
4 specifically, so I can't say. But -- but the other
5 changes.

6 CHAIR TANAKA: If that's the case, what I'm
7 saying is, you -- you gonna be going through the process
8 of a Dispenser General license. Now -- and if the rule --
9 gonna take your 90 days minimum, maybe more than that.
10 If -- if the Commission approves this rule, the rule --
11 minimum can be approved in 30 days. You gonna be going
12 through that process now. Glenn, can he switch around in
13 mid (inaudible) or he gotta start all over again?

14 DIRECTOR MUKAI: No. Basically, what he can do,
15 once the rule is enacted, he can come before the
16 Commission and ask to switch to a Restaurant.

17 CHAIR TANAKA: Okay. So then that may make it
18 easier for them.

19 MR. NAKAMURA: From a -- from a Dispenser
20 license to a Restaurant license?

21 DIRECTOR MUKAI: No.

22 CHAIR TANAKA: No. Hotel license to --

23 MR. NAKAMURA: Right. But we're not applying
24 for a Hotel license. We're gonna apply for a Dispenser
25 license.

1 DIRECTOR MUKAI: But you have a Hotel license
2 now.

3 COMMISSIONER KENNISON: But you have Hotel --

4 MR. NAKAMURA: We don't have a Hotel license.

5 COMMISSIONER KENNISON: Temporary?

6 MR. NAKAMURA: Oh, the temporary, but that's not
7 the license.

8 DIRECTOR MUKAI: Yeah, but you have a Hotel
9 license now, so --

10 MR. NAKAMURA: No, we don't.

11 DIRECTOR MUKAI: It's a temporary Hotel license.

12 MR. NAKAMURA: It's a temporary license, but
13 there's no Hotel license. We don't have a Hotel license.

14 DIRECTOR MUKAI: But what is it issued under?
15 Is it issued under a Hotel license?

16 MR. NAKAMURA: Under the application for the
17 Hotel license.

18 MR. KUSHI: Right.

19 MR. NAKAMURA: There's no Hotel license.

20 DIRECTOR MUKAI: Well, in essence, you are
21 operating a Hotel license.

22 MR. NAKAMURA: If you construe it that way, I'd
23 be happy do it, but that's not what -- that's not the way
24 it's been interpreted.

25 CHAIR TANAKA: No. My question was, can they --

1 can they switch from a Dispenser General application to a
2 Restaurant application under the rule?

3 DIRECTOR MUKAI: Under the rules, you have one
4 year of 30 percent.

5 CHAIR TANAKA: No. But with the rule change
6 now?

7 DIRECTOR MUKAI: Well, rule change -- they have
8 a Hotel license, that's what they issued under the
9 temporary.

10 MR. NAKAMURA: No. We're gonna be applying --
11 as we discussed, we're gonna be applying for a Dispenser
12 license. So the question is, can we change that Dispenser
13 license to a Restaurant license. That's not what the rule
14 says. The rule talks about changing from a Hotel license
15 to a Restaurant license.

16 COMMISSIONER WEST: Okay.

17 MR. NAKAMURA: A downgrade.

18 COMMISSIONER WEST: So if the Commission changes
19 the rule to accommodate, will they have to wait or no?

20 DIRECTOR MUKAI: As far as the Department's
21 concerned, they're operating on a temporary Hotel license.

22 COMMISSIONER WEST: Okay. So --

23 CHAIR TANAKA: But we're not -- we're not -- as
24 soon as the Dis -- let's say DK, or whatever that -- they
25 -- they get the Dispenser General license, automatically

1 that Hotel license ceases.

2 MR. KUSHI: There's no Hotel license.

3 COMMISSIONER KENNISON: But he's saying -- but
4 he's saying -- but he's saying -- but he's saying they not
5 under the Hotel license, so what --

6 CHAIR TANAKA: There's no Hotel license.

7 MR. NAKAMURA: So what -- what --

8 CHAIR TANAKA: Only a temporary license.

9 MR. NAKAMURA: No. Yeah. It's a -- it's a
10 temporary Hotel license. So what -- I mean, if I
11 understand what the Director is saying --

12 COMMISSIONER KENNISON: No, but the -- I
13 think -- I think what he's saying, even on the temporary
14 Hotel license, it is a Hotel license. Is that what you're
15 saying?

16 DIRECTOR MUKAI: Yes.

17 MR. NAKAMURA: But we're not gonna be applying
18 for a Hotel license. We're not be applying for a
19 Dispenser license.

20 COMMISSIONER KENNISON: No. But --

21 MR. NAKAMURA: The rule doesn't allow you to
22 change to a Restaurant license.

23 COMMISSIONER KENNISON: But what he's saying,
24 right now, under the temporary Hotel license, he
25 considering it a Hotel license.

1 MR. NAKAMURA: Right. So we could change --
2 theoretically, we could change the temporary license from
3 a Hotel license to a temporary Restaurant license, but
4 that doesn't really do us any good because the application
5 is still for a Dispenser license. So we got a temporary
6 Hotel -- Restaurant license, but once we -- once we apply
7 for the new Dispenser license, that thing is gone. Or
8 get -- get the new --

9 COMMISSIONER KENNISON: Glenn? I like hear
10 Glenn's interpretation.

11 MR. NAKAMURA: -- dispenser license.

12 DIRECTOR MUKAI: No. At that point, when we go
13 through the rules, you'll see that there's -- I believe
14 you're familiar with the merger, (inaudible) where you
15 don't need to have -- so if you have a different entity,
16 like D&H, that you declared, right, you merge with this
17 Savio, which will hold the Hotel license, it's not
18 considered a transfer or anything else. Operate --

19 MR. NAKAMURA: That's -- that's completely
20 different, though. I mean, I'm not familiar with the
21 rule, but like a merger is -- is --

22 COMMISSIONER ALULI: It's a different situation.

23 MR. NAKAMURA: Yeah, that's a completely
24 different situation. You're talking about some -- one
25 entity buying out another entity. That's not what's

1 happening here.

2 CHAIR TANAKA: So the -- so the -- actually, our
3 change in rules amendment here does not give them the
4 right to change license, then?

5 DIRECTOR MUKAI: It will change to a Restaurant
6 license. And if they wanna do the merger or -- that's
7 allowed by law and everything else, they can do that if
8 they --

9 CHAIR TANAKA: Without -- without -- without the
10 merger. What I was thinking is that -- I thought that the
11 rule change was that an applicant can come in for a
12 Dispenser General license and, in mid-term, he say, oh,
13 now I want the Restaurant license.

14 COMMISSIONER KENNISON: Yeah, it doesn't --

15 DIRECTOR MUKAI: No. We have to change the rule
16 on the Restaurant license.

17 CHAIR TANAKA: Gotta change the rule on the
18 Restaurant license.

19 DIRECTOR MUKAI: To allow that.

20 CHAIR TANAKA: Okay. So -- but still yet, that
21 will solve your problem.

22 MR. NAKAMURA: What would -- what would also
23 solve the problem is if --

24 CHAIR TANAKA: The Dispenser General.

25 MR. NAKAMURA: Is if you allow us to immediately

1 apply for a Restaurant license without having to wait one
2 year, like Honolulu does.

3 CHAIR TANAKA: But that's not in our rules.

4 MR. KUSHI: Yeah.

5 CHAIR TANAKA: What -- what we're trying to do
6 now is apply for a Dispenser General, okay, and then use
7 the Hotel temporary license to operate. Then one year
8 from now, he can go to a --

9 MR. NAKAMURA: Yeah.

10 CHAIR TANAKA: -- Restaurant license.

11 MR. NAKAMURA: Well, that's the current rule.
12 That's the current rule.

13 CHAIR TANAKA: Yeah. So that will resolve the
14 problem. And let him come in for -- and then that -- that
15 pushes Aqua Enterprises on the side.

16 MR. NAKAMURA: Right. Exactly.

17 CHAIR TANAKA: Right.

18 COMMISSIONER KENNISON: Yeah.

19 MR. NAKAMURA: As long as we can get that
20 temporary license extended, and we can apply for a
21 Dispenser license.

22 COMMISSIONER KENNISON: That's -- and that's
23 what we looking at.

24 MR. NAKAMURA: Right.

25 CHAIR TANAKA: That's all -- that's all we

1 proposing.

2 MR. NAKAMURA: Right. And this is what I
3 volunteered to do three months ago.

4 CHAIR TANAKA: Okay. So then tell the guy apply
5 for his Dispenser General right away.

6 COMMISSIONER KENNISON: Yeah. Yeah.

7 MR. NAKAMURA: Okay.

8 MR. KUSHI: It's -- it's in -- the application
9 is in, right?

10 MR. NAKAMURA: No. The Hotel license
11 application is in. Savio's license is in.

12 COMMISSIONER KENNISON: But it will be in like
13 yesterday, yeah?

14 MR. NAKAMURA: I gotta get that guy cleared
15 and -- and I know we got that -- the issue about his ID.

16 MR. KUSHI: Okay. Mr. Chair, also, I think you
17 should address this in Craig's letter, request by the
18 Department to vet and to look at Hotel Management Services
19 LLC. Which is Aqua?

20 MR. NAKAMURA: Yes. I think what the Chair is
21 saying is that's irrelevant at that point because they're
22 not gonna be serving liquor.

23 MR. KUSHI: Right.

24 MR. NAKAMURA: They're not gonna have any
25 control over the licensed premises at all.

1 MR. KUSHI: Is that your understanding,
2 Mr. Director?

3 DIRECTOR MUKAI: If they apply for a Dispenser
4 license, the rooms would -- would not come into play.
5 Only a Hotel license where they're required to have 40
6 rooms.

7 MR. KUSHI: Okay.

8 CHAIR TANAKA: Dispenser General. Dispenser
9 General --

10 COMMISSIONER KENNISON: Dispenser license.

11 CHAIR TANAKA: -- cuts everything else.

12 COMMISSIONER KENNISON: Yeah.

13 CHAIR TANAKA: So -- okay. You understand what
14 we trying to do this time?

15 MR. NAKAMURA: Yes.

16 CHAIR TANAKA: So submit the --

17 COMMISSIONER KENNISON: Wait. Question.
18 Question.

19 MS. KIMURA: What happens to our entertainment
20 permit?

21 MR. NAKAMURA: So that's a -- that's a
22 completely different issue. We have -- in order to do
23 entertainment, for example, dance floors or a stage for a
24 band, we're required to submit a permit application. And
25 we did that in October, I think October 22nd or something,

1 several months ago. And it hasn't been approved yet. So
2 this -- this week, actually, one of the staff members
3 called and they went and did a floor -- a site inspection
4 again. And I think there's gonna be some revisions to the
5 application. But it's been four months. And during that
6 time, with no dance floor, with no stage, we -- you know,
7 they can't have any of the typical events. That's why we
8 were saying like that Eighties -- you know, that Eighties
9 event is now -- they lost that business, they're up at
10 King Kamehameha, you know, weddings, that kind of thing,
11 all those things are off because they -- you know, who
12 wants to have a wedding when you can't dance, I mean --
13 you know, so we're asking that that -- at least that be
14 expedited.

15 CHAIR TANAKA: Under the Hotel temporary
16 license, they can do that, eh?

17 DIRECTOR MUKAI: Yeah, they applying for a
18 permit. Although they -- remember, in October, when they
19 applied, we was processing and the question about that,
20 you know, we had to return the application and everything
21 else. So we can't process anything without application.

22 CHAIR TANAKA: But right now -- right now, they
23 can under the --

24 DIRECTOR MUKAI: That's why they said they --

25 CHAIR TANAKA: (Inaudible).

1 MR. NAKAMURA: No. Under the -- under the
2 temporary license, you can serve alcohol. You need a
3 permit in order to have a dance floor and stages.

4 COMMISSIONER KENNISON: Dance floor.

5 CHAIR TANAKA: That's the special permit.

6 COMMISSIONER WEST: What -- what is the status
7 of the --

8 MR. NAKAMURA: Permit.

9 COMMISSIONER WEST: -- request of the permit?

10 MR. NAKAMURA: Right. So that --

11 COMMISSIONER WEST: Where is it at?

12 DIRECTOR MUKAI: I believe Craig said they had
13 to do some revisions. So once -- if the revision is in,
14 then they'll process it.

15 COMMISSIONER WEST: Was the revision submitted
16 to the Department?

17 MR. NAKAMURA: I think it's gonna be done today.
18 They just did the floor inspection, the site inspection
19 the other day.

20 MR. KUSHI: Mr. Chair, it's not the -- it's on
21 the agenda. It was brought up today. It's -- I think
22 it's totally irrelevant for the Commission to even hear
23 this.

24 COMMISSIONER WEST: Yeah, you're right.

25 CHAIR TANAKA: Well, that's the Department's

1 kuleana; not the Commissions kuleana. Okay. So can I
2 have a motion what we discussed? Shall I reiterate?

3 COMMISSIONER WEST: I think you need to
4 reiterate, please.

5 CHAIR TANAKA: That -- see, I even forget the
6 name already.

7 MR. NAKAMURA: DH -- DH Investment.

8 CHAIR TANAKA: DH Investment to submit an
9 application for a General Dispenser -- I mean --

10 MR. NAKAMURA: Dispenser.

11 CHAIR TANAKA: Dispenser General license. In
12 the meantime, the Hotel temporary license will suffice,
13 and the applicant must come back to the Commission for any
14 extension for the temporary license.

15 COMMISSIONER WEST: So moved.

16 COMMISSIONER ALULI: Second.

17 CHAIR TANAKA: Okay. Do you understand
18 specifically now?

19 MR. NAKAMURA: Yes.

20 CHAIR TANAKA: Okay. Make sure you get the guy
21 vetted.

22 COMMISSIONER SOUZA: So, Craig, we'll see you in
23 60 days, because that's when it's gonna expire.

24 MR. NAKAMURA: Yeah.

25 COMMISSIONER SOUZA: You're gonna have to ask

1 for a new one.

2 MR. NAKAMURA: Less than -- less than 60 days.
3 We'll have to be here next March, probably.

4 CHAIR TANAKA: Okay. Give us a report on how
5 they --

6 MR. NAKAMURA: I will.

7 CHAIR TANAKA: On vetting the guy --

8 MR. NAKAMURA: Thank you.

9 CHAIR TANAKA: Other than that, there shouldn't
10 be any problem.

11 COMMISSIONER WEST: You're gonna have to get the
12 paperwork in to come back to us for an extension. And,
13 Glenn, if you get that today, will that be a problem
14 putting him on the agenda for next month?

15 DIRECTOR MUKAI: No problem. That's --

16 COMMISSIONER WEST: Okay.

17 DIRECTOR MUKAI: As long as he put down his
18 request.

19 COMMISSIONER WEST: Okay. So, please get
20 that --

21 MR. NAKAMURA: Yeah. It probably won't get it
22 in today, but we -- they -- they have -- there's been no
23 issue getting things like --

24 COMMISSIONER WEST: Okay.

25 MR. NAKAMURA: He was nice enough to get this

1 matter on the agenda with very short notice. So --

2 CHAIR TANAKA: Okay. There's a motion on the
3 floor, second. All in favor, say "aye."

4 (Response.)

5 CHAIR TANAKA: Opposed, "no."

6 (No response.)

7 CHAIR TANAKA: Motion carried.

8 MR. NAKAMURA: Thank you very much for --

9 CHAIR TANAKA: We no like --

10 MR. NAKAMURA: Sorry for your waste of time.

11 CHAIR TANAKA: -- see you again.

12 MR. NAKAMURA: I know. I know. I don't want to
13 come --

14 CHAIR TANAKA: Okay. Let's go into
15 Administrative Affairs, discuss the rule amendment. There
16 have been some issues from the public about adding
17 additional requirements. According to the Director, the
18 minimum time will take 30 days if we approve the
19 amendments in total here. Now, if there is any changes to
20 be done, then it has to go back through the process again.
21 And I would -- I would suggest that -- if there's no major
22 comments, that we approve the amendments as it is now.
23 And if there is any other rule changes to be done, we can
24 take it up at a further date.

25 And one of the reasons is that we would like to

1 get that VFW and that nonprofit guys opportunity to get a
2 permit to operate. Now, if we change this thing, I don't
3 know how long it going take.

4 COMMISSIONER WEST: Yeah. I -- I would like to
5 see the change on Number 2 for special licenses for
6 charitable, educational, 501(c) -- 501(c)(19). That the
7 only concern I have -- and I guess it would be a question
8 for Corp Counsel -- is on 808-101-19 [sic] on political
9 activities of the Commission employees -- I don't know.
10 I -- is that -- is that something that's -- that's legal,
11 I mean -- I mean, as far as if I wanna support a
12 candidate?

13 MR. KUSHI: It's -- the testimony was brought up
14 was the Commission or Department employees. I need to
15 check, but the intent and the language is taken
16 strictly --

17 DIRECTOR MUKAI: Straight from the state law.

18 MR. KUSHI: -- from the state law.

19 COMMISSIONER WEST: State law.

20 CHAIR TANAKA: I think -- I think the -- they
21 get the word Commission inside there because, if you look
22 at the table of contents, the Commission is on the top,
23 then it comes down, Director, and then all the employees
24 down. So maybe they took it that way.

25 MR. KUSHI: Let me -- let me check on that.

1 CHAIR TANAKA: Yeah.

2 COMMISSIONER WEST: That's -- that's the only
3 concern I have.

4 COMMISSIONER KENNISON: The other one was Page
5 101-24, the one to revoke action taken after discovering
6 that any information contained within the application, any
7 document submitted, the affidavit is false. I think he
8 had some legitimate concerns, as our Corp Counsel alluded
9 to.

10 MR. KUSHI: Yeah. He was supposed to -- he said
11 he's gonna submit some proposed language.

12 COMMISSIONER KENNISON: And that can be added to
13 it, yeah, amended?

14 DIRECTOR MUKAI: We have to go through the rule
15 amendment again and publish and everything else. But to
16 clarify, this is only what the Director approves, like the
17 gross sales, special license, permits. With the licenses
18 itself, that gets approved by the Commission. If you look
19 on -- ah, it's not here. Ah, D -- if you look at the
20 Section 08-101-30(d) in your rule book, the Commission
21 have the authority. The Director cannot overrule or deny
22 anything, or revoke anything that the Commission approved.
23 This is only what the Director approves.

24 COMMISSIONER WEST: So if they were to
25 incorrectly state something in testimony to the

1 Commission, the Director would not revoke?

2 DIRECTOR MUKAI: No. That's under the
3 Commission, under 08-101-30(d).

4 COMMISSIONER WEST: So --

5 DIRECTOR MUKAI: Provide false -- the
6 Commission -- I mean, the Director cannot overrule the
7 Commission. Whatever you do is your call in revoking.

8 COMMISSIONER WEST: So just to be clear, again,
9 if an incorrect statement or representation in writing
10 were to be made to the Commission, and it's found out
11 later, a hearing will be prompted for the Commission to
12 take action against the applicant?

13 DIRECTOR MUKAI: Yes.

14 CHAIR TANAKA: Yeah. Steve, let me inform you.
15 under the HRS, prior, if any -- any time you falsified
16 applicant, whatever it is, the Commission shall reject,
17 you know, any -- or criminal activity or whatever. And
18 then they changed the rule and said the Commission may
19 change this word from shall to may, but it still has to
20 come to the Commission. And the Director don't have --

21 COMMISSIONER WEST: That's why we had that
22 meeting regarding some of the stuff that was
23 represented --

24 CHAIR TANAKA: Yeah. Yeah.

25 COMMISSIONER WEST: -- on Lanai.

1 CHAIR TANAKA: Yeah.

2 COMMISSIONER WEST: Okay. Thank you.

3 CHAIR TANAKA: Okay. Any other questions?

4 MR. KUSHI: Question on that nonprofit thing.

5 The VFW guys, anything pending that needs to be advised

6 now or --

7 DIRECTOR MUKAI: I believe they have an event in
8 March and another date. The March, I believe, they might
9 bring in a politician to apply for that portion in case
10 they can't get it under their own. But the danger of all
11 that is when a politician or another nonprofit goes into
12 them, then they assume all liabilities.

13 COMMISSIONER WEST: All liability, right.

14 DIRECTOR MUKAI: So I guess VFW have the
15 insurance and they can be covered and everything else.

16 CHAIR TANAKA: Okay. Any other questions by the
17 Commissioners? What is the intent? Get anything
18 outstanding that the Commission should know in this rule
19 amendments?

20 DIRECTOR MUKAI: I believe the Commission
21 reviewed most of the rule amendments.

22 CHAIR TANAKA: Yeah. And most -- mostly, it's
23 housekeeping. Yeah.

24 DIRECTOR MUKAI: Yeah, mostly housekeeping.

25 And, also, majority of this stuff is all by the licensee.

1 Because the committee is made up of all licensee from
2 different class. Like we have Lisa Paulson from Hotel
3 Association, Greg Cabanting from Anheuser-Busch, Diane
4 Orite from Tiffany's, James Coon, he represent the
5 vessels, the Trilogy and, also, the -- he has a small
6 retail store in -- in --

7 COMMISSIONER KENNISON: Lanai.

8 DIRECTOR MUKAI: -- Lanai, and Paula Hegele, the
9 manufacturers, she do all the things. So, basically, they
10 come together and they are the ones bring up what the
11 concern is and how to update the rules to make it more
12 business friendly.

13 And one of the rules that -- major rule, I
14 think, that they proposed was the hours of operation.
15 Because they felt, under the rule, that the Hotel license,
16 because they are a 24-hour business and they have guests
17 and functions all over the place, you know, major -- some
18 of the guests come in at 3:00 in the morning, so they want
19 the ability to serve. So the rule is that now, proposed
20 rule, is 24 hours they can operate. And, also, the
21 wholesalers, they were restricted to 9:00, but if they get
22 called, a hotel or someone else, they running out stuff
23 and they need something after 9:00, they can't go and
24 respond. So now they want 24 hours. So the proposed rule
25 is to operate 24 hours.

1 And the other one that's gonna operate under 24
2 hours would be the retail stores, like the Safeway,
3 Foodlands and everything else. They're open 24 hours,
4 but, come 11:00, they have to shut down. And so they're
5 requesting the retailers to operate 24 hours. So we put
6 it in the proposed rules.

7 COMMISSIONER WEST: Glenn, I'm sorry, I haven't
8 had a chance to review all this because I've been out, but
9 is -- is there any changes to a manager, you know, being
10 present on a license, you know, because, you know, some of
11 the, you know, issues that -- you know, one that I feel
12 very strongly is that we have a manager there, then of
13 course the employees. Has that been taken out?

14 DIRECTOR MUKAI: No.

15 COMMISSIONER WEST: Okay. Thank you.

16 CHAIR TANAKA: Before -- before -- I get one
17 question, Glenn. Management agreement, seems like they
18 giving us all kind of problem. What the position of the
19 Department?

20 DIRECTOR MUKAI: At this point --

21 CHAIR TANAKA: On eliminating it?

22 DIRECTOR MUKAI: We are -- we forwarded to the
23 committee.

24 COMMISSIONER KENNISON: Yeah.

25 DIRECTOR MUKAI: The committee will review it

1 on -- I guess, next Monday, and they'll vet it and see
2 what they can come up with. But like I said, you
3 know, other -- other -- other jurisdiction have management
4 agreement, if they want -- and the thing of it that we
5 gotta be careful is lot of these management agreement that
6 coming in is -- also, under management agreement, they are
7 the licensee. It's not where the licensee with a
8 management agreement. If you remove everything, so, in
9 essence, is the Commission saying, if they apply on a
10 management agreement, we don't have to vet anybody?

11 CHAIR TANAKA: Yeah. Okay. What -- I guess
12 what Glenn is talking about is -- well, Nane should know.

13 COMMISSIONER ALULI: Oh. Right.

14 CHAIR TANAKA: Because all the -- all the
15 dispensers have their own license and they have a separate
16 management agreement. The -- this situation is a little
17 different. The owner -- or the hotel owns 'em and they
18 giving 'em out to somebody to run the facility. And
19 that -- that used to happen with all the small bars, yeah.
20 Has it -- has it been giving you guys problems besides
21 that?

22 DIRECTOR MUKAI: No.

23 COMMISSIONER ALULI: Because in the Marriott
24 situation, Marriott is the one that applied, is the
25 licensee, right?

1 DIRECTOR MUKAI: Yeah, but I gotta --

2 COMMISSIONER ALULI: They're not the owner.

3 DIRECTOR MUKAI: Yeah. Usually, they have a
4 management agreement and they apply on a management
5 agreement. So they get vetted.

6 COMMISSIONER ALULI: Right, they get vetted.

7 CHAIR TANAKA: Well, same like the Hyatt.

8 COMMISSIONER ALULI: Yeah, same thing.

9 CHAIR TANAKA: The Hyatt where Son'z and da
10 kine. And Roy's, too, has a management agreement, but he
11 came in for the license.

12 DIRECTOR MUKAI: Well, he applied for it by
13 himself, Roy's.

14 CHAIR TANAKA: Yeah. He had a license.

15 COMMISSIONER WEST: Yeah, I think that they
16 should come in front.

17 CHAIR TANAKA: Yeah. Well, so -- yeah.
18 Shall -- shall -- shall we just table all these
19 recommendations until the Director can pass it through the
20 committee and then come back with recommendation?

21 DIRECTOR MUKAI: Well, it will take some time
22 because they have a lot of rule amendments they have on
23 the table already they reviewing. And they don't want to
24 do another rule amendment before the Commission until --
25 because there's lot of -- like the tax clearance that they

1 brought up, it's state law, we cannot change that. And
2 they're always saying that we should change the state --
3 that's what we said, Hotel Association agreed to be the
4 lead. And I think they met with Senator Agaran. So he
5 introduced the bill to change what they feel about state
6 clearances and federal clearances.

7 And officers and directors that they mentioned,
8 state law. So the attorneys get it, too, and Mr. Chu,
9 attorney, are going to the legislature to change the state
10 law to make who specifically need to be vetted.

11 MR. KUSHI: They're gonna try again?

12 DIRECTOR MUKAI: Yes, they are. They have two
13 bills.

14 CHAIR TANAKA: Okay. So, Glenn, these
15 amendments here today facing us was -- went through the
16 committee?

17 DIRECTOR MUKAI: Yes.

18 CHAIR TANAKA: Yeah.

19 DIRECTOR MUKAI: This is -- was approved by the
20 committee.

21 CHAIR TANAKA: Okay. So the Commission have any
22 other questions? Then I would suggest that we approve
23 these amendments. And the other -- the other one that
24 came to us through the public hearing and whatever request
25 from outside source be submitted to the committee and come

1 back to us for another rule amendment, if we have to.

2 DIRECTOR MUKAI: We have to.

3 SPEAKER: Yeah.

4 COMMISSIONER WEST: So moved.

5 COMMISSIONER ALULI: Second.

6 CHAIR TANAKA: Okay, moved and seconded. All in
7 favor, say "aye."

8 (Response.)

9 CHAIR TANAKA: Opposed, "no."

10 (No response.)

11 CHAIR TANAKA: Motion carried. Okay. Let's go
12 on to Director -- salary increase for Director, Deputy
13 Director.

14 DIRECTOR MUKAI: That's a letter that the Mayor
15 sent out to the Commission. It's part of the
16 communication.

17 And on D, Financial Disclosure Form, I believe
18 all of you have the financial disclosure form. For those
19 that will be remaining on the Board, it is required to
20 file it. So please fill it out and submit it to Sarah.
21 She will forward it to the proper agency.

22 And Director's Monthly Report. The Department
23 conducted a minor decoy operation on December 16th and
24 January 15th, 2017 with enforcement staff, Maui Police
25 Department and the minor decoy. Employee of one premises

1 checked the minor identification and sold liquor to the
2 minor. Employee of another premises did not request to
3 see the minor decoy identification, no ask the minor decoy
4 age, and still served the minor liquor.

5 COMMISSIONER WEST: What -- what was business
6 was that?

7 DIRECTOR MUKAI: Oh, this is Director's Report.

8 COMMISSIONER WEST: Oh, okay.

9 DIRECTOR MUKAI: And the police officer issue a
10 citation to employees who sold liquor to the minor for
11 appearance at the District Court.

12 The minor decoy operation conducted end of
13 January 2017 was a success in our terms because every
14 licensed premises checked did not sell liquor to any of
15 our decoys.

16 On State Legislature, the Department is directly
17 working with liquor administrators tracking, introducing
18 testimony for several liquor-related bills. Two bills was
19 included in your packet.

20 But there are several bills that may be
21 detrimental to liquor industry. Of those bills, we did
22 inform the Hotel Association, so their lobby is tracking
23 it.

24 And one of the bills is noise. Although it says
25 for those with -- below 500 -- I mean, above 500,000

1 population, but, if they change that, it's very
2 strictly -- very strict because it raises the limit for
3 fines to \$4,000. And, also, after so much conviction,
4 they revoke the license. So, actually, it's -- it's more
5 severe than selling to the minor or over-serving.

6 And another bill is that the Department must
7 post its minutes on a website within 30 days of the
8 meeting. If the Department does not, then the Board or
9 Commission cannot meet until it's done. So, you know,
10 that would push back any public hearing and everything
11 else, you know, notification two, three months. So hotel
12 industry is aware of it, and they tracking it.

13 The State Small Business Regulatory Board
14 reviewed our proposed amendment. And we have the --
15 because of the law requirement, we had to send our
16 proposed amendment to the State Board. They reviewed it,
17 they had an agenda, you have the agenda, they met on it,
18 they discuss it, they called me for clarification. And
19 they sent a letter, it's in your agenda -- in your packet,
20 saying, you know, to move forward with it.

21 And new hires. Sandra Kobayashi, our Liquor
22 Control Auditor II was selected for the new LCO III
23 position in Licensing Section effective February 1st.
24 Andrew Carbonel and Eric Jeter was selected and started
25 employment as Liquor Control Trainees on February 1st,

1 2017. The third applicant was selected and was to start
2 on February 1st, but called in sick the first day, and,
3 the second day, she notified the Department she's
4 declining the position.

5 Department's Small Business Review and Advisory
6 Committee met on January 23rd. And the Committee is in
7 the process of working several amendments to Rules of
8 Liquor Commission, this is third round, implementing and
9 incorporating any proposed state legislative bills that
10 may be adopted during this legislative session that may
11 impact the current Rules of the Liquor Commission.

12 On the electronic fingerprint scanner, you have
13 an update in your packet. Basically, Kari Yoshizawa, LCO
14 IV, is working, coordinating all that with the Hawaii
15 Criminal Justice Data Center, our ITS, and the vendor for
16 necessary clearances and installation of the equipment.

17 On the Education Board, Education Board hearing
18 was held on February 2nd, 2017, and the result is within
19 the Commission packet.

20 That's all the Department has.

21 CHAIR TANAKA: You guys receive that equipment
22 for the fingerprints?

23 DIRECTOR MUKAI: We're in the process. Because
24 PO somehow got hanged up in Finance.

25 CHAIR TANAKA: Oh, so you guys don't have it

1 yet?

2 DIRECTOR MUKAI: No. We finally got the PO
3 back. I mean, we had to call and --

4 CHAIR TANAKA: Okay. Any questions by the
5 Commissioners? If not, may I have a motion for
6 adjournment?

7 COMMISSIONER WEST: So moved.

8 COMMISSIONER KENNISON: So moved.

9 COMMISSIONER SOUZA: Second.

10 COMMISSIONER KENNISON: Second.

11 CHAIR TANAKA: Meeting adjourned. (Gavel.)

12 (Meeting adjourned, 12:38 p.m.)

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CERTIFICATE

I, TONYA MCDADE, Certified Court Reporter of the State of Hawaii, do hereby certify that the proceedings contained herein were taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; and that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney nor an employee of any of the parties hereto, nor in any way concerned with the cause.

DATED this 24th day of February, 2017.

/s/ Tonya McDade

Tonya McDade
Certified Shorthand Reporter #447
Registered Professional Reporter
Certified Realtime Captioner