

* Kyoko to arrive @ 12:30 AM *

July 20, 2016 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA	Oahu	Parking Pass	Yes
Barbara Bennett, 2nd Vice Chair	HA	Mauai	Parking Pass	Yes
Kyoko Kimura	HA	Mauai	Parking Pass	Yes
Harris Nakamoto, Vice Chair	NA	Oahu	NA	Yes
Director's ex officio - Mark Richey	NA	Oahu	NA	Yes
Robert Cundiff	NA	Oahu	Parking Pass	Yes
Nancy Atmospera-Walch	NA	Oahu	NA	No
Garth Yamanaka	HA	B.I.	Parking Pass	Yes

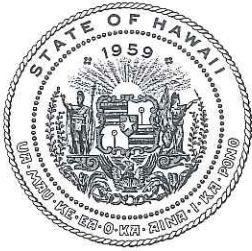
Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 12 - 15 copies of rule packages for board packets	12
Poll Board Attendance - Working on	✓
Prepare TAF's for Director's approval - ASAP (Linda) - Group TAF = Incorrect	Yes
Airline booking ASAP - Linda + Car Barbara / Kyoko / Jimmie?	✓✓
Draft Agenda to Chair for approval	7-12-16 approved ✓
Post approved agenda on 1) SBRRB website, 2) State Calendar, 3) Lte. Governor's Office	✓✓✓
Send Agendas to those people who requested it - IMPORTANT	Done
Mail Board Packets to Board members, Deputy AG	✓ Thurs / Fri ✓
Include "discussion leader" names on the agendas to Board members only.	✓
Include parking permits in Board members' agenda packets.	✓

STAFF				
Dawn Apuna				Yes
Dori Palcovich				Yes

Post Meeting Checklist	

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - July 20, 2016

	Name	Title	Organization	Email	Phone
1	Alton M. Yasaka		DNIR/DAR	alton.k.miyasaka@hawaii.gov	587-0092
2	Kevin Minami	(Minami?)	HOHA PAB	kevin@k.m.minami.gov	832-0566
3	Lance Sakano		HOHA PAB	hdca.paspe@hawaii.gov	8320566
4	Christopher Kishimoto		HOHA PAB	christopher.m.kishimoto@hawaii.gov	832-0566
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SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594

AGENDA

Wednesday, July 20, 2016 ★ 1:00 p.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436

David Y. Ige
Governor

Luis P. Salaveria
DBEDT Director

Members

Anthony Borge
Chairperson
Oahu

Harris Nakamoto
Vice Chairperson
Oahu

Barbara Bennett
2nd Vice Chairperson
Kauai

Kyoko Y. Kimura
Maui

Robert Cundiff
Oahu

Nancy Atmospera-Walch
Oahu

Garth Yamanaka
Hawaii

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of May 18, 2016 Meeting Minutes

III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to **Governing of Commercial Surfing and Stand-up Paddle Instruction, Part V, Section 40, Time of Use (a), (b), Section 43(f), and Sections 43(u) and (v)**, promulgated by Department of Parks and Recreation, County of Kauai – *attached and incorporated as Exhibit 1*
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to the Rules of Practice and Procedure of the County of Kauai Public Access, Open Space, and Natural Resources Preservation Fund Commission, by Adding New Chapter V. **Report Process, Relating to the Process of Receiving Proposals, and Analyzing and Recommending Land or Property Entitlements for County Council Approval**, promulgated by the County of Kauai Public Access, Open Space and Natural Preservation Fund Commission – *attached and incorporated as Exhibit 2*
- C. Discussion and Action on the Small Business Statement After Public Hearing to and Proposed Amendments to the **Rules & Regulations of the Liquor Control Commission of the County of Kauai**, promulgated by Department of Liquor Control, County of Kauai – *attached and incorporated as Exhibit 3*

IV. New Business

- A. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13, Chapter 74, **License and Permit Provisions and Fees Fishing, Fish, and Fish Products**, promulgated by Department of Land and Natural Resources – *attached and incorporated as Exhibit 4*
- B. Discussion and Action on Proposed Amendments to HAR Title 4, Chapter 72, **Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules, Section 12, Quarantine Restrictions on Ohia and Soil from Rapid Ohia Death Infested Areas**, promulgated by Department of Agriculture – *attached and incorporated as Exhibit 5*

V. Administrative Matters

- A. Update on this Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers, under Section 201M-5, Hawaii Revised Statutes (HRS)

- VI. Next Meeting:** Scheduled for Wednesday, August 17, 2016, at 1:00 p.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

VII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

Exhibit 1

Recommended Park's Rules Amendments

Pursuant to the authority granted to the Director of Parks and Recreation under Kaua'i County Code section 19-1.18, section 23-3.3, section 23-3.5, and section 23-3.6, the Director proposes to amend the Department of Parks Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough. Proposed additions to existing Rules and Regulations are underlined.

Rules and Regulations Governing Commercial Surfing and Stand-up Paddle Instruction

Part V, Section 40, of the Department of Parks and Recreation Rules and Regulations Governing Commercial Surfing and Stand-Up Paddle Instructions At County Beach Parks is amended to read as follows:

"Section 40. Time of Use.

(a) No commercial surfing and/or stand-up paddling instruction activity shall occur within the County parks on Sundays, or on holidays designated in Special Management Area Minor Permit SMA(M)-2013-23.

(b) Permittees shall limit their commercial surfing and/or stand-up paddling instruction activity within the County parks ~~{between the hours of 7:00 a.m. and 7:00 p.m.}~~ to the hours specified in Special Management Area Minor Permit SMA(M)-2013-23.

(c) Special events authorized by permit shall take precedence over commercial surfing and/or stand-up paddling instruction activity allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.

(d) At the Director's discretion, no commercial surfing and/or stand-up paddling instruction activity shall occur within the County parks during periods of maintenance or repair of County beach park property or equipment or when park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.

Part V, Section 43(f), of the Department of Parks and Recreation Rules and Regulations Governing Commercial Surfing and Stand-Up Paddle Instructions At County Beach Parks is amended to read as follows:

"(f) Vehicles used for commercial surfing and/or stand-up paddling instruction activities shall not be driven onto or parked in any County beach area. All customers and/or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and or instructors shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for period not exceeding thirty minutes. All vehicles used for shuttling instructors and/or customers shall clearly indicate that they are owned and operated in behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place. The following areas are designated by the Department as loading and unloading areas:

- 1) Hanalei Pier Right of Way Access (State of Hawai'i) TMK 4-5-001:008
- 2) Hanalei Pavilion TMK 4-5-5-002:019
- 3) Waioli Beach Park/He'e Road Parking Lot TMK 4-5-5-003:21 & 4-5-5-004:002
- 4) Waioli Beach Park/Anae Road Parking Lot TMK 4-5-5-005:020
- 5) Weke Road Boat Ramp (SUP Only) TMK 4-5-5-001:999"

Part V, Sections 43(u) and (v), of the Department of Parks and Recreation Rules and Regulations Governing Commercial Surfing and Stand-Up Paddle Instructions At County Beach Parks is amended to read as follows:

~~" [(u) Permittee failing to perform in accordance with the conditions of these rules and regulations shall forfeit any further use of an existing permit and will not be allowed to apply in person, member of a firm, corporation, or entity for a period of two-years from the date of failure to perform.]~~

~~[(v)]~~ (u) Non-compliance with any and all terms and conditions of this agreement shall subject the permit holder to civil fines of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00) for each offense. Repeated non-compliance shall ~~[automatically]~~ render this agreement null and void, and the permittee shall be required to cease and desist all commercial operation immediately upon notification by the Department."

(v) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation."

COUNTY OF KAUAI DEPARTMENT OF PARKS AND RECREATION

Pursuant to the authority granted to the Director of Parks and Recreation under Kaua'i County Code section 19-1.18, section 23-3.3, section 23-3.5, and section 23-3.6, the Director proposes to amend the Department of Parks Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough and will appear in red. Proposed additions to existing Rules and Regulations are underlined. A public hearing on proposed amendments will be held on Tuesday, December 1, 2015 at the Moikeha Building Meeting Room A/B, 4444 Rice Street, Lihue, Kauai starting at 9:00am, or soon thereafter.

COUNTY OF KAUAI DEPARTMENT OF PARKS AND RECREATION

Under and by virtue of the authority conferred upon him by Chapter 91, Hawaii Revised Statutes (HRS), Chapter 23, Article 3, Kauai County Code 1987 (KCC) as amended, and every other enabling power, the Director of Parks and Recreation of the County of Kaua'i does hereby prescribe the following:

RULES AND REGULATIONS GOVERNING COMMERCIAL SURFING AND STAND-UP PADDLE INSTRUCTIONS AT COUNTY BEACH PARKS

PART V

Section 37. Findings and Purpose. Pursuant to section 23-3.3 of the KCC and Section 8 of these rules and regulations, a public hearing was conducted to determine the propriety of the proposed use of facilitating commercial surfing and stand-up paddle instruction activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR) Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard at those County beach parks and beach right-of-ways listed in the attachment.

The Department duly received applications from various individuals and organizations to conduct these activities, pursuant to Section 7 of these regulations.

As a result of the public hearing, the Department finds that the proposed use of the County beach parks identified herein facilitates commercial activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR) Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard. The Department further finds the proposed use to be essentially recreational in nature, complementary to the facilities of the parks and consistent with established park use.

These activities are hereby designated authorized activities in accordance with the definition provided in these rules, subject to the limitations and conditions hereinafter described.

Section 38. State Permit.

In order to operate a commercial surfing and/or stand-up paddling class operators must have in their possession a current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, Department of Land and Natural Resources (DLNR), Division of

Boating and Ocean Recreation (DOBOR). If a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended, said permittee's County permit will automatically expire.

Section 39. Number of Persons.

(a) The maximum number of students permitted in a commercial surfing and/or stand-up paddling instruction activity authorized by these rules within the County park shall be limited to that number allowed in the operator's current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR) and any and all permits issued to the County, including but not limited to sma, zoning and/or land use permits.

Section 40. Time of Use.

(a) No commercial surfing and/or stand-up paddling instruction activity shall occur within the County parks on Sundays, or on holidays designated in Special Management Area Minor Permit SMA (M)-2013-23.

(b) Permittees shall limit their commercial surfing and/or stand-up paddling instruction activity within the County parks to the hours specified in Special Management Area Minor Permit SMA (M)-2013-23.

(c) Special events authorized by permit shall take precedence over commercial surfing and/or stand-up paddling instruction activity allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.

(d) At the Director's discretion, no commercial surfing and/or stand-up paddling instruction activity shall occur within the County parks during periods of maintenance or repair of County beach park property or equipment or when park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.

Section 41. Fees.

The fees for conducting commercial surfing and/or stand-up paddling instructions shall be as stated in section 23-3.4 of the KCC.

Section 42. Permits.

(a) Permits to conduct commercial surfing and/or stand-up paddling instructions shall be issued only for those County beach parks and beach right-of-ways listed in the attachment.

(b) Permits for operation of commercial surfing and/or stand-up paddling instructions shall have duration of up to one year and shall expire automatically, without notice to the permit holder, on the date specified on the permit and or if a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended.

(c) The director, or his authorized representative, may renew a permit for additional periods of up to one year provided the permittee is in compliance with all applicable rules. Permit renewal shall also be contingent upon the permittee renewing or attaining any necessary state and federal permits. A renewed permit shall be subject to the terms and conditions of these rules and any subsequent amendments.

(d) The Permittee shall notify the director within five (5) business days of any changes regarding the information provided in the permit application.

Section 43. General Conditions.

(a) Permittees must possess any and all license(s) required to conduct business in the State of Hawaii. Copies of all license(s) shall be provided to the Parks Permit Section of the Department prior to any permit being issued.

(b) Permittees must have in current force and effect an insurance policy, in which the combined limit of liability for bodily injury and property damage is \$1 million per occurrence and \$2 million in the aggregate. The insurance certificate shall name the County of Kauai as additional insured. A copy of the certificate shall be provided to the Parks Permit Section of the Department prior to any permit being issued. Permittee shall be responsible for providing the Department with an updated copy of the certificate of insurance if such certificate expires during the term of the permit.

(c) Permittees shall use inclement weather as criteria to cease operations (i.e. continuous rain, flash flood warning, strong currents, heavy debris and high winds, or any other weather or water conditions that may cause a hazard).

(d) Picnic tables and benches and other facilities owned by the County shall not be used by permittees for commercial purposes, nor shall they be used for storage or as a staging area for commercial surfing and/or stand-up paddling activities, equipment and/or supplies. Loading or unloading of equipment at County beach parks shall be restricted to areas designated by the Department. All equipment not being utilized shall be stored at the operator's place of business. Equipment shall not, under any circumstances, be dragged across grassy recreational surfaces and slopes within County parks. County showers and hose bibs shall not be utilized by the permittee for cleaning of equipment.

(e) Permittees shall not be allowed to store, display, show case their business in any County beach park or parking lot.

f) Vehicles used for commercial surfing and/or stand-up paddling instruction activities shall not be driven onto or parked in any County beach area. All customers and/or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and or employees shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for period not exceeding thirty minutes. All vehicles used for shuttling employees and/or customers shall clearly indicate that they are owned and operated in behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place. The following areas are designated by the Department as loading and unloading areas:

- 1) Hanalei Pier Right of Way Access (State of Hawai'i) TMK 4-5-001:008
- 2) Hanalei Pavilion TMK 4-5-5-002:019
- 3) Waioli Beach Park/He'e Road Parking Lot TMK 4-5-5-003:21 & 4-5-5-004:002
- 4) Waioli Beach Park/Anae Road Parking Lot TMK 4-5-5-005:020
- 5) Weke Road Boat Ramp (SUP Only) TMK 4-5-5-001:999"

(g) Trash generated by commercial operations shall be disposed of properly.

(h) Permittees shall at all times use due care for their clientele and other users and defend, hold harmless, and indemnify the County, its officers, agents, and employees from and against all claims or demands for damages, including claims for property damage, personal injury, or death arising out of or incident to the operations permitted under any permits.

(i) Soliciting and or conducting business is prohibited within any or the beach parks or parking lot.

(j) Commercial notices or advertisements for commercial surfing and/or stand-up paddling instruction activities shall not be displayed, posted or distributed within any of the beach parks or parking lot.

(k) Permittees and any employees operating under their permit shall be required to present their permit, when requested, to any authorized representative of the Department, any police officer and or any individual acting under the authority of any County, State of Federal governmental agency.

(l) Permittees shall be responsible for the safety of persons under their charge and for determining that their physical capability and experience are adequate to safely participate under the existing sea and surf conditions.

(m) Should it be adjudged that harm or death has resulted from the permittee's negligence or use of faulty equipment, the permit issued to the permittee shall be immediately revoked upon notice, review and consideration by the Department of Parks and Recreation without the possibility of future permits.

(n) All permittees must possess off site, permitted commercial staging areas and shuttle their customers to and from any County Beach Parks. Solicitation of moneys and or exchanging of moneys are prohibited within the County parks.

(o) Permittees shall comply with all Federal, State and County laws and ordinances and the rules of the Department.

(p) Permittees shall demonstrate to the Director's satisfaction their experience and familiarity with seasonal and high surf conditions typical of the location requested.

(q) Permittees shall complete a course provided by the Department regarding the customary and historical place names (reef, channels, rivers, landmarks, etc.) typical of the location and surrounding areas being requested.

(r) Permittees shall demonstrate to the director's satisfaction their personal years of experience, knowledge, and history of performing the requested activity for the specific location requested.

(s) Permittees and their patrons shall use designated pathways to gain access to the beach areas through park property.

(t) Permittees shall conduct operations so as to impose no more than minimal impact upon public facilities and the physical features of the County parks. No, washing or storage repair and or other maintenance of surfing and/or stand-up paddling instruction equipment and/or supplies are permitted in the County parks identified herein County parking lots or in road rights of way.

(u) Non-compliance with any and all terms and conditions of this agreement shall subject the permit holder to civil fines of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00) for each offense. Repeated non-compliance shall render this

agreement null and void, and the permittee shall be required to cease and desist all commercial operation immediately upon notification by the Department.”

(v) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation.”

ADOPTED this ___ day of _____ 2016, by the Director of Parks and Recreation, County of Kauai, State of Hawaii.

/s/ Leonard A. Rapozo LEONARD A. RAPOZO, JR., Director Department of Parks and Recreation County of Kaua‘i

APPROVED AS TO FORM:

/s/ Mauna Kea Trask County Attorney

APPROVED this ___ day of _____, 2016.

/s/ Bernard P. Carvalho, Jr.

BERNARD P. CARVALHO, JR, Mayor County of Kaua‘i

CERTIFICATION

I, LEONARD A. RAPOZO, JR., in my capacity as Director of Parks and Recreation, County of Kaua‘i, do hereby certify that the foregoing is a full, true and correct copy of the rules and regulations governing commercial swimming and surfing instructions in City beach parks, which were adopted on _____, following a public hearing held on _____, after public notice was given on _____ in the Garden Island Newspaper.

/s/ Leonard A. Rapozo, Jr. LEONARD A. RAPOZO, JR., Director Department of Parks and Recreation County of Kaua‘i

Received this ___ day of _____, 2016.

/s/ Jade Tanigawa, JADE TANIGAWA County Clerk

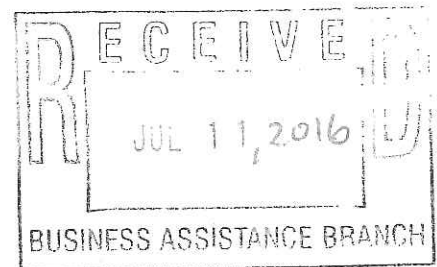


Exhibit 2

Chapter V. Report Process

1-5-1 Authority. This rule governs the procedures of the Public Access, Open Space and Natural Resources Preservation Fund Commission pursuant to the authority conferred under Chapter 6, Article 14, Kauai County Code 1987 as amended (KCC).

1-5-2 Public Input

- (a) The Commission shall solicit public input for proposals to be considered for funding. Strategies to solicit public input shall include but not be limited to discussion during Commission meetings, community outreach to various groups, and participation in community events.
- (b) The Department shall solicit public input for proposals to be considered for funding. Strategies to solicit public input shall include but not be limited to community outreach to various groups and participation in community events.
- (c) The Department shall maintain a website to inform the public of the Commission's purposes and provide a mechanism for the public to provide input on proposals.

1-5-3 Department Review and Recommendation

- (a) Within 45 days of receiving a proposal(s), the Department shall transmit a preliminary report on the public proposal(s) to the Commission. In the report, the Department shall provide a preliminary evaluation and recommendation based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.
- (b) At least 90 days prior to the first Commission meeting in January of odd calendar years, the Department shall provide a final evaluation and recommendation for the proposal(s) received subsequent to the adoption of the last preceding biennial report. The recommendation shall be based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.
- (c) After further research, should the Department determine that a preliminarily approved recommendation for acquisition does not meet the criteria of Section 1-5-4 or has a prohibitive factor, the Department shall transmit an additional report to the Commission providing an amended evaluation and recommendation.

1-5-4 Criteria for Acquisition. In the event that a proposal does not meet one or more of the following criteria, the proposed acquisition shall not be recommended. The Department shall submit a recommendation for acquisition only if all criteria established in subsections (a) through (d) of this section are met:

- (a) The proposal fulfills at least one of the Commission's purposes to provide:

- (1) Public outdoor recreation and education, including access to beaches and mountains;
 - (2) Preservation of historic or culturally important land areas and sites;
 - (3) Protection of significant habitats or ecosystems, including buffer zones;
 - (4) Preserving forests, beaches, coastal areas and agricultural lands;
 - (5) Protecting watershed lands to preserve water quality and water supply;
 - (6) Conserving land in order to reduce erosion, floods, landslides, and runoff;
 - (7) Improving disabled and public access to, and enjoyment of, public land and open space;
 - (8) Acquiring disabled and public access to public land, and open space;
 - (9) Conserving land open space and scenic values.
- (b) The cost for the acquisition is commensurate to the public interest served. The cost may be shared by other parties.
- (c) The process for the acquisition is commensurate to the public interest served. Factors may include, but are not limited to:
- (1) The type of property interest that is proposed for acquisition (for example, an easement versus fee simple ownership);
 - (2) Whether or not the acquisition will be an adversarial process.
- (d) The lack of any maintenance requirements; or in the event there are maintenance requirements, the maintenance requirements have cost implications that are commensurate to the public interest served.

Prohibitive Factor. Any proposed acquisition that contains extremely dangerous attributes in the land or that poses a risk of serious injury or death shall not be recommended.

1-5-6 Biennial Report

- (a) The Commission shall adopt a biennial report that:
- (1) Reports the balance and reviews the sufficiency of the fund;

- (2) Prioritizes land or property entitlements or proposals that were recommended for acquisition and are directly related to the purpose of Chapter 6 Article 14 of the KCC;
 - (3) Provides an acquisition plan for each proposal that is recommended for acquisition.
- (b) The biennial report shall be adopted by a majority vote of the Commission on the first meeting held in January of odd calendar years. In the event that no action is taken (for example, due to a lack of a majority vote), review and action on the biennial report shall be scheduled at each subsequent Commission meeting until action is taken.
 - (c) The Commission shall attempt to prioritize the recommended projects, and the biennial report shall reflect the adopted prioritization of projects. In the event that no consensus is achieved on the prioritization of projects, the report shall reflect as such.
 - (d) The biennial report shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.
 - (e) The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of the biennial report. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.

1-5-7 Dossier Recommendation Process

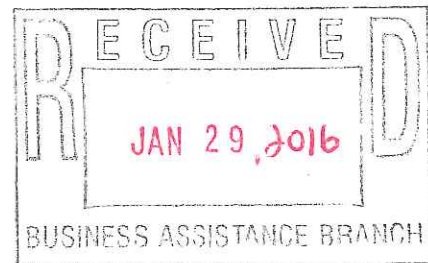
- (a) A Commission recommendation for acquisition outside of the biennial report (“dossier recommendation”) may be adopted and transmitted to Council and Mayor only when the Commission determines all of the following:
 - (1) The proposal meets the criteria for acquisition established under Section 1-5-4 of these rules;
 - (2) The proposal does not have a prohibitive factor under Section 1-5-5 of these rules;
 - (3) There is a demonstrable urgency concerning the timing of acquisition where delaying action to the upcoming biennial report will result in significantly more expense, an adversarial acquisition process, or both.
- (b) The dossier recommendation shall provide an acquisition plan for the proposal.
- (c) Prior to the Commission taking action on a dossier recommendation, the Department shall provide the Commission with an evaluation and recommendation based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.

- (d) The dossier recommendation shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.

- (e) The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of a dossier recommendation. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.

Exhibit 3

**RULES & REGULATIONS
OF THE
LIQUOR CONTROL COMMISSION
OF THE
COUNTY OF KAUAI**



EFFECTIVE:

RULES & REGULATIONS
KAUAI LIQUOR CONTROL COMMISSION

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RULES AND REGULATIONS OF THE LIQUOR CONTROL COMMISSION
COUNTY OF KAUAI

RULE 1
DEFINITIONS

Rule 1.1. Definitions. Words used in these rules and regulations in the singular include the plural, and vice versa; words of any gender include any other gender. Words defined in Section 281-1, Hawaii Revised Statutes, as amended, shall have the same meaning wherever used herein.

"Application" means the application or the required forms used in making the request and any information contained therein for liquor license; renewal, or transfer thereof, a permit or the amendment of restrictions or conditions placed on a license or for any other request or petition and shall include and not be limited to any affidavit or document filed by the applicant in connection with such application, oral statement to the commission, the required necessary documentation, and any other forms or documents which may be prescribed from time to time by the commission.

"Applicant" means a person who has filed any application for a permit, management agreement, liquor license, or its like, for consideration by the Department or Commission.

"Blue card" means a card issued by the department to a person 21 years of age or older who has scored at least 85% on a written exam administered by the department for an on-premises establishment.

"Catering" means a privilege extended to a restaurant (class 2), hotel (class 12), caterer (class 13), brewpub (class 14), or condominium hotel (class 15) licensee to provide liquor service off of its license premises in conjunction with its food service.

"Complimentary drink(s)" means individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill, which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Complimentary liquor" means packaged or individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Condominium Hotel Guest Room" means (1) a condominium hotel guest room that is a unit, as defined in Section 514B-3, HRS, which is used to provide transient lodging for periods less than thirty days under a written contract with the owner of a unit in a condominium hotel operation; or (b) a guest room that is a unit, owned or managed by the condominium hotel operator, providing transient lodging for period less than 30 days, which is offered for adequate pay to transient guests.

"Customer" means any person other than an on-duty employee of that licensee.

"dBA" means a unit for measuring sound level of all noises as measured with a sound level meter using the "A" weighting network.

"Dancing" means "to move your body in a way that goes with the rhythm and style of music that is being played."

"Department" means the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Decibels" means the unit for measuring the volume of sound equal to 20 times the logarithm to the base 10 of the ratio of the pressure to the sound measured to the reference pressure, which is 20 micropascals (0.0002 dynes per square centimeter).

"Director" means the director of the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Employee" shall include the licensee and all other persons who perform any type of activity, whether compensated or not, in conjunction with the operation, maintenance, or management of the licensed premises, including but not limited to the dispensing, serving, or selling of liquor, directly or indirectly, or who shall assist in the dispensing, serving, or selling of liquor, or who shall manage or supervise, directly or indirectly, any person who shall dispense, serve, or sell liquor. Any person who performs, whether compensated or not, any act or function as defined above, shall be considered "on duty".

"Entertainer" means any person who performs a service usually or normally done, on or within licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated.

"Guest Room" means a room for the lodging of transient guests which is offered for adequate pay for period less than 30 days.

"Lap dancing" means any form of physical contact where a person's torso makes contact or is rubbed against another simulating sexual contact.

"Manager" means any person who has a valid blue or red card and who is registered as a manager or assistant manager by the licensee.

"Non-standard bar" means an on premise license that is authorized to have live entertainment with or without dancing by patrons.

"Off premises license, licensee, or establishment" means a retail dealer, license, licensee, or business.

"On premises license, licensee, or establishment" means any license, licensee, or business authorized to sell liquor for consumption on the premises.

"Private party" means a gathering of persons for a special occasion; such as a wedding, an anniversary, a luau, etc., where food and drinks are served.

"Red Card" means a card issued by the department to a person 21 years of age or older who has scored at least 85% on a written exam administered by the department for an off-premises establishment.

"Showroom Facility" is defined as a location having a staged performance with seated guests.

"Strip show," means a burlesque act in which a performer removes his or her clothing piece by piece.

"Unreasonable noise" means noise emanating from liquor-licensed premises that exceed the maximum allowable decibel level as prescribed in rule 7.4(b).

RULE 2 **RULES OF PRACTICE AND PROCEDURE**

Rule 2.1. Methods whereby public may obtain information. The public may obtain information as to matters within the jurisdiction of the commission by inquiring at the office of the County Clerk of the County of Kauai, State of Hawaii, where there are on file all rules of the commission; or at the department. All rules, orders, or opinions of the commission are on file and available for public inspection at said office, copies of compilations of rules and supplements thereto are available to the public at a price to be fixed by the County Council to cover mailing and publication costs.

Such inquiry may be made in person at said office during business hours, or by submitting a request for information in writing to the department.

Rule 2.2. Petition for adoption, amendment, or repeal of rules. (a) Any interested persons may petition the commission requesting the adoption, amendment, or repeal of any rule of the commission.

(b) The petition shall be typewritten and shall include:

- (1) A statement of the nature of the petitioner's interest;
- (2) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed; and
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) The commission shall within thirty days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with the Hawaii Administrative Procedure Act for the adoption, amendment, or repeal of the rule, as the case may be.

Rule 2.3. Declaratory ruling by the commission. (a) Any interested person may petition the commission for a declaratory order as to the applicability of any statute, ordinance, or of any rule or order of the commission.

(b) The petition shall be typewritten and shall contain:

- (1) The name, address, and telephone number of the petitioner;

- (2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
 - (3) A designation of the specific provision, rule, or order in question;
 - (4) A complete statement of facts;
 - (5) A statement of the position or contention of the petitioner; and
 - (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.
- (c) Any petition which does not conform to the foregoing requirements may be rejected.
- (d) The commission may for good cause refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the commission may so refuse where:
- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future; or
 - (2) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief; or
 - (3) The issuance of the declaratory ruling may adversely affect the interests of the County of Kauai or any of its officers or employees in any litigation which is pending or may reasonably be expected to arise; or
 - (4) The matter is not within the jurisdiction of the commission.
- (e) Where any question of law is involved, the commission may refer the matter to the county attorney. The commission may also obtain the assistance of other agencies, where necessary or desirable.
- (f) Upon the disposition of his petition, the petitioner shall be informed in writing thereof by the commission.
- (g) Orders disposing of petitions shall have the same status as other commission orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to a different fact situation or where additional facts not considered in the order exist.

Rule 2.4. Rules of practice. (a) Except as otherwise provided by law, in any proceeding involving an application for the issuance or transfer of a license, or the revocation or suspension of a license, or other disciplinary action by the commission, which by law is required to be determined after an opportunity for a hearing, the following shall apply:

- (1) The applicant or licensee shall be notified in writing of the hearing and of his opportunity to be heard. Such notice shall conform to the requirements of the Hawaii Administrative Procedure

Act, and shall be sent not less than two calendar days before the date of the hearing in the case of license applications and not less than five calendar days before the date of the hearing in the case of disciplinary actions. Such notice shall be in addition to any notice required by law to be published in a newspaper.

- (2) The hearing shall be conducted in conformity with the applicable provisions of the Hawaii Administrative Procedure Act.
- (3) The determination shall be subject to such limitations or standards as may be prescribed by law.
- (4) If the commission decides in favor of the applicant or licensee, the commission shall promptly notify the applicant or licensee.
- (5) If the commission decides against the applicant or licensee, it shall issue an appropriate decision and order. Such decision and order shall be accompanied by separate findings of fact and conclusions of law. The commission shall within a reasonable time send a certified copy of the findings of fact, conclusions of law, decision and order to the applicant or licensee.

(b) Any of the foregoing procedures may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(c) The department shall adopt rules by which contested case hearings will be conducted. Parties to a contested case hearing shall be provided with such rules ten (10) days prior to the date of the contested case hearing.

(d) Judicial review shall be as provided by law.

Rule 2.5. License application; notice of hearing; affidavits. (a) All applications for new licenses and all notices of public hearing sent and affidavits filed by applicants in connection with such applications, shall be in respective forms prescribed therefore from time to time by the department.

(b) An applicant for a new license or a transfer of license other than a special or temporary license shall file as part of its application:

- ~~(1) A statement of its financial condition dated within the last twelve months which shall be verified by oath of the applicant as being full, true, and correct, or an audited report of its financial condition which was prepared by a certified public accountant;~~
- (1) ~~(2)~~ Tax clearance from the state department of taxation and the federal internal revenue service;
- (2) ~~(3)~~ Personal history of all persons named in the application in the form prescribed by the department;

- (3) (4) If the applicant is a partnership, a partnership agreement;
- (5) If the applicant is a corporation, the articles of incorporation which has been filed and accepted by the state department of commerce and consumer affairs; and
- (6) If the applicant is a limited liability company, its articles of organization which has been filed and accepted by the state department of commerce and consumer affairs;
- (7) A floor plan which shall be drawn to scale and showing the detailed description of the proposed premises; and
- (8) Lease or rental agreement, if applicable.

(c) An applicant for a new license other than a ~~[vessel,]~~ transient vessel, tour or cruise vessel, or special license shall also file as part of its application:

- (1) A map drawn to scale showing all properties within five hundred (500) feet of the proposed premises; which shall also designate all properties within one hundred (100) feet of the proposed premises; and
- (2) A list of names and mailing addresses of property owners and lessees of record of the properties within five hundred (500) feet of the proposed premises; which list shall also designate all property owners and lessees of record within one hundred (100) feet of the proposed premises.

(3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 as prescribed for by HRS Section 281-31 (r) except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses prior to the issuance of a new license.

(d) An application for transfer of license shall also file as part of its application:

- (1) A statement of the price to be paid for the purchase of the licensed business; and
- (2) Tax clearances for the transferor from the state department of taxation and the federal internal revenue service.

(3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 for both the transferor and transferee as prescribed for by HRS Section 281-31 (r) except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses.

(e) An applicant for a transfer of a class 5 and class 11 licenses shall also comply with requirements of Section 281-57 of the Hawaii Revised Statutes.

(f) A temporary license of any class and kind may be granted under the following conditions:

- (1) The premises shall have been operated under a license of the same class, kind and category issued by the commission at least one year immediately prior to the date of filing of the application for a temporary license; the application must be filed within 90 days of the surrender of the previous license or the closing of business.
 - (2) The applicant for temporary license shall have filed with the commission an application for a license of the same class and kind then in effect for the premises.
 - (3) If the issuance of a temporary license is based upon a transfer or new license application, the temporary license shall terminate upon the issuance or denial of the transfer or new license application.
 - (4) Where a temporary license is issued and the application for an original license is denied or withdrawn, or the temporary license is canceled, the temporary licensee shall be responsible for filing a gross sales report together with percentage fee due for the duration that the temporary license was in effect.
- (g) Applicant for a special license shall file as part of its application:
- (1) A floor plan which shall be drawn with measurements and showing the detailed description of the proposed premises;
 - ~~(2) Tax clearances from the state department of taxation and the federal internal revenue service;~~
 - (2) ~~(3)~~ A roster of all persons selling liquor, including their ages, and the name and age of the person in charge of those selling liquor;
 - (3) ~~(4)~~ The name ~~[and age]~~ of the person in charge of security ~~[and names of those providing security]~~;
 - (4) ~~(5)~~ The property owner's permission to sell ~~[dispense]~~ liquor for consumption on its property.
 - (5) ~~(6)~~ Method of disposal for the remaining liquor inventory.
- (h) An applicant for a ~~[vessel or]~~ transient vessel license shall file as part of its application:
- (1) A list of dates, ports of call, times of arrival and departure.
- (i) An applicant for a transient vessel, per day, license shall file:
- (1) One application for each vessel, and the application may be filed annually;
 - (2) Tax clearances shall be applicable to all applications for the Transient Vessel licenses that are filed by the agent or owner during that fiscal year; and.

- (3) The application shall include a list of dates, ports of call, times of arrival and departure and payment of fee per port of call.

When inclement weather forces a vessel to shift its port of call to the island of Kauai, and the vessel has a valid transient vessel license issued by another jurisdiction within the State of Hawaii, said license shall be valid in the County of Kauai, provided that notification of such change of port is sent to the Department prior to arrival.

- (j) An applicant for a tour or cruise vessel license shall file as part of its application:
 - (1) Commercial permit;
 - (2) Mooring permit; and
 - (3) Coast Guard certification.

Tour or cruise vessel license, exception. A tour or cruise vessel licensee may, with the approval of the commission, sell and serve liquor to ticketed passengers while on board the vessel during the loading of passengers for a period of time as determined by the commission.

(k) All applicants shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time.

Rule 2.6. Renewal of license. Applications for renewal of licenses, except temporary licenses, shall be submitted no earlier than June 1 and no later than June 30 of each year. Current tax clearances from the state department of taxation and the federal internal revenue service, ~~and~~ a deposit to cover the basic fee as prescribed by Rule 4.1 and proof of liquor liability insurance coverage in the amount of \$1,000,000 except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses as prescribed for by HRS, Section 281-31 (r) shall be submitted as part of the application.

An application for renewal of a temporary license shall be submitted prior to the expiration date of the license. A deposit to cover the temporary license fee as prescribed by Rule 4.1 shall be deposited as part of the application.

Rule 2.7. Deposit with application. A deposit to cover the cost of publishing the notice of public hearing must accompany all applications for a license.

Rule 2.8. Filing fee with application~~[-]~~, exception. A filing fee in the sum of one hundred dollars (\$100.00) shall be paid with any application for an initial issuance of a license or for a transfer of a license, except for Transient Vessel, per day and Special license applications the filing fee shall be the cost of the basic license fee as prescribed for in rule 4.1.

The filing fee shall become a realization of the county where the application is denied or withdrawn.

Rule 2.9. Knowledge of liquor laws, rules and regulations. (a) No license shall be issued or

renewed until the commission is satisfied that the applicant is familiar with the liquor laws of Hawaii and with the rules and regulations of the commission.

(b) Every licensee shall ensure that its employees involved with the sale of liquor are familiar with the rules of the commission and liquor laws of Hawaii.

Rule 2.10. Rehearing on application. An applicant desiring a rehearing after his application has been refused must file a petition with the commission within fifteen days from the date of such refusal.

Rule 2.11. Application for individual permits to receive shipments of liquor. (a) Any unlicensed person who is of legal age to purchase liquor may apply at the department on the form prescribed by the department and with the payment of a permit fee of ten dollars (\$10.00) or as required by Section 281-33.1(d) of the Hawaii Revised Statutes, whichever is greater, for a permit to receive a shipment of liquor from outside the state, within the limits allowed by Chapter 281, Hawaii Revised Statutes.

(b) The application form shall include the following information:

- (1) A description of the liquor as to type, brand or trade name, domestic or imported, and quantity; and
- (2) Whether the liquor is an unsolicited gift, unavailable in the state, or part of the applicant's household goods.

Rule 2.12. Direct Shipment of Wine by Wineries. (a) Any manufacturer of wine who desires to ship wines to residents of the County of Kauai shall obtain a Direct Wine Shipper Permit from the Department of Liquor Control, County of Kauai. The permit may be granted by the Director to any person holding:

1. A general excise tax license from the State of Hawaii department of taxation; and
2. Either:
 - A. A class 1 license to manufacture wine under section 281-31; or
 - B. A license to manufacture wine issued by another state.

(b) The term of the permit shall be for one calendar year. The applicant for a permit shall submit:

1. An application form;
2. Copy of the State of Hawaii Department of Taxation general excise tax license;
3. Copy of the class 1 license to manufacture wine under section 281-31 or the license to manufacture wine issued by another state; and
4. [Payment of an annual] [p]Permit fee of \$48.00. [~~For purposes of this rule, permit fees shall be prorated.~~]

No permit shall be issued unless the applicant has met the foregoing requirements.

(c) The holder of a direct wine shipper permit may sell and annually ship to any person twenty-one years of age or older in this county no more than six nine-liter cases of wine per household for personal use only and not for resale and shall:

1. Ship wine directly to the person only in containers that are conspicuously labeled with the words containing or similar to: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY".
2. Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment.
3. Report no later than January 31 of each year to the Department the total amount of wine shipped to persons in this county during the preceding calendar year;
4. Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a direct wine shipper permit shall be deemed to be wine sold in the state; and,
5. Be subject to audit by the liquor commission.

(d) The holder of a license to manufacture wine issued by another state shall annually renew a direct wine shipper permit by providing the liquor commission with a renewal application, a copy of the current license to manufacture wine and payment of the annual fee.

(e) The sale and shipment of wine directly to a person in this state by a person that does not possess a valid direct wine shipper permit is prohibited. Knowingly violating this law is a misdemeanor.

Rule 2.13. Application for a permit for trade shows, tasting event or other exhibitions. (a) Any trade exhibitor or trade organization, may apply for a permit to have liquor for display and sampling on a not-for-sale basis at trade exhibitions. The director may permit the exhibitor or organization to receive liquor that is not available in the state from outside the state.

(b) The application for the permit shall include the following information:

- (1) The name and address of the applicant;
- (2) The location of the trade show;
- (3) The dates and hours of the trade show;
- (4) An inventory list of the liquors to be displayed and sampled, its value and the procedure to be used to dispose of any liquor remaining at the end of the function; and
- (5) Property owner's permission and floor plan detailing where the trade show, tasting event or exhibition will be taking place.

(c) The dispensing of liquors for consumption is permitted between the hours of 8:00 a.m. to 11:00 p.m. on any day of the week.

(d) Liquor shall be consumed within the approved area that the holder of the permit has

exclusive control and clear view of, and any liquor being consumed shall not be removed from the area.

(e) Guidelines for sample servings are four ounces of beer per customer, two ounces of wine per customer, and one-half ounce of distilled spirit per customer, except as otherwise approved by the director.

(f) Samples shall be served in its original form.

(g) An industry member may assist a [retail] licensee who conducts a product tasting event provided that in no case shall the industry member assume duties normally conducted by an employee of the [retail] licensee.

Rule 2.14. Applications for warehousing liquor off the licensed premises. Liquor may be warehoused off the licensed premises within an appropriately zoned area in the county with the written approval of the commission. An application for warehousing off the licensed premises shall include as part of the application:

- (1) Floor plan drawn to scale;
- (2) Lease agreement, if applicable;
- (3) List of all licensed premises which will be using the warehouse, if the applicant holds more than one liquor license; and
- (4) Street address and tax map key of warehouse location.

Rule 2.15. Application and cost for a duplicate license. (a) A license that has been lost, destroyed, or mutilated will be replaced upon application from the licensee. A licensee shall submit an affidavit stating the cause of the loss, destruction, or mutilation of the license when applying for a duplicate license.

(b) A duplicate license shall be issued at no cost to the licensee if the director is satisfied that the license was lost, destroyed, or mutilated by circumstances beyond the control of the licensee.

(c) A fee of twenty-five dollars (\$25.00) will be charged for a duplicate license to replace a license that was lost, destroyed, or mutilated because of negligence on the part of the licensee.

Rule 2.16. Authority vested to the director. (a) In the event that any licensee or any person submits a written application for a permit or renewal of an existing license or permit and the application cannot be brought before the commission at a regular meeting prior to the date of the event or function, the director may approve the application provided that all other applicable requirements of the liquor laws and the commission's rules and regulations have been met.

(b) The director may issue a notice of violation hearing to any licensee for any violation of the commission's rules and regulations or the liquor laws.

(c) When all applicable requirements of the liquor laws and the commission's rules and regulations have been met, the director shall have the authority to issue, suspend or revoke the following

permits and issue the following licenses:

Permits for: All games, game machines; karaoke machines; temporary increase or decrease of premises; alteration of premises. Karaoke permit shall be limited to licensees whose category of license provides for live entertainment with applicable conditions, as it may exist.

Licenses: Special license, Transient Vessel, per day[,] license[s].

Rule 2.17. Emergency rules and regulations. In the event of a national, statewide, or local emergency, the commission may adopt emergency rules and regulations, with the approval of the Mayor, for the protection of life and/or property. All emergency rules and regulations shall be scheduled for public hearing at the earliest possible date.

If the commission is unable to hold a meeting to meet the emergency, the Mayor may authorize the director to act for the commission.

Rule 2.18. Free one-day special license. (a) Notwithstanding any other rule to the contrary, the director may issue a free one-day special license of any class and kind at no cost to any nonprofit organization for a fundraising event from which no member is entitled to or takes, directly or indirectly, any share of the profits there from. Issuance of such license shall not exempt the licensee from any other provision of the liquor laws.

(b) An applicant for this free one-day special license shall file an application on the form prescribed by the department.

(c) The applicant shall obtain the property owner's permission to dispense and/or retail liquor on its property.

(d) The director may issue a free one-day special license to any applicant if the event for the license is to occur prior to a commission meeting.

RULE 3 **RULES OF GENERAL APPLICATIONS**

Rule 3.1. Posting of license and availability of rules and regulations and Liquor Laws of the State of Hawaii. (a) The original liquor license shall be conspicuously posted on the licensed premises.

(b) Every licensee shall have a current copy of the rules and regulations of the commission and a copy of the liquor laws of the State of Hawaii available at all times on the licensed premises for examination by employees and customers. A copy viewed on a computer is not acceptable unless the computer is located in a general sales area accessible to all employees and customers.

(c) Licensees and employees shall familiarize themselves with said rules and laws.

Rule 3.2. Alteration of premises. A licensee shall obtain approval from the commission prior to making any substantial physical alteration, such as adding or removing walls, changes in entrances and/or

exits, relocating wet bars, changing floor levels, etc., to its licensed premises.

Rule 3.3. Unauthorized liquor. The possession of any liquor by a licensee on any licensed premises, other than that authorized by the license, is prohibited. The finding of such unauthorized liquor on the licensed premises will be considered prima facie evidence of illegal possession thereof by the licensee.

Rule 3.4. Surrender of license. The holder of any license must immediately surrender its license to the commission upon suspension or revocation thereof, or within five days after closing his business if it be otherwise discontinued.

Rule 3.5. Free goods prohibited, exception. No licensee shall directly or indirectly offer, furnish, deliver, or give away any free goods, gratuities, gifts, prizes, coupons, premiums, or other article or thing of value to a consumer which is tied in to the sale of liquor, except "pupus" (appetizers) offered in on premises establishments and advertising specialties which are available to all consumers are exempt from this provision.

Rule 3.6. Advertisements, posters, and signs. (a) No licensee shall, directly or indirectly, cause obscene, lewd, or immoral matter to be shown, displayed or distributed either on or from the premises.

(b) Any exterior poster or sign advertising liquor by brand name either in whole or part and maintained on the exterior of a licensed premises shall conform to the sign ordinances of the County government.

Rule 3.7. Attire and conduct of persons within a licensed premises, exception. No licensee shall at any time:

- (1) Employ or use any person or permit any person to remain in or upon the licensed premises while such person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areole or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals, except as provided by Rule 8.5;
- (2) Permit any person to perform or simulate sexual acts in its licensed premises.
- (3) Permit the showing of film, still pictures, or electronic reproductions depicting:
 - (a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
 - (b) Nudity or scenes wherein a person displays the anus, genitalia or female breast below the top of the areole;
 - (c) Any person being touched, caressed or fondled on the anus or genitalia; and
 - (d) Scenes wherein artificial devices or inanimate objects are employed to depict, or

drawing are employed to portray, any of the prohibited activities described above.

Rule 3.8. Sales to persons below the legal age to purchase liquor prohibited. No licensee shall sell or furnish any liquor to any person who is below the legal age to neither purchase liquor nor accept any payment, including the signing of any charge slip, from any person who is below the legal age to purchase liquor for any liquor sold.

Rule 3.9. Warehousing of liquor off the licensed premises. (a) Any licensee with warehousing off his licensed premises shall keep within the warehouse invoices for all liquor received at the warehouse, and a record of all liquor distributed from the warehouse. All records shall be kept for no less than three years.

(b) Any liquor distributed from the warehouse must be delivered directly to the licensed premises of the licensee.

(c) If a warehouse building is used by more than one licensee, each licensee's space shall be separated with permanent partitions.

Rule 3.10. Pool buying. The agent of a pool buying agreement shall file a copy of the agreement with the department and receive its approval prior to exercising the agreement. The agreement shall name the licensee who is to be the agent, the address of the delivery location, and a list of participants, their license number and street addresses.

A pool buying agreement shall expire on June 30 of each year or upon the addition of a new party to the agreement, whichever occurs first.

The agent shall inform the department of the date of transaction made under the pool buying agreement prior to the transaction date. Each pool buying transaction shall be completed on the day transacted which means that all members of the pool must take possession and pay for their merchandise on the day that the agent receives the liquor at his premises.

Where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensee.

The agent shall provide a list to the wholesaler and/or manufacturer of all members of the pool buying agreement and a list of purchases to be made by each member.

The wholesaler and/or manufacturer shall prepare separate invoices for each member of the pool buying agreement.

Participants of the pool buying agreement shall maintain records of its liquor purchases pursuant to the pool buying agreement within the licensed premises for a period of three years and the records shall be made available forthwith for inspection by the department or its authorized personnel.

Nothing in this section shall be deemed to exempt any licensee entering into any pool buying

agreement from any antitrust laws, liquor laws, or rules of the commission.

Rule 3.11. Waiving of rights to a violation hearing. A licensee who is cited by the commission as having violated any one of the following rules:

- (1) Rule 3.1. Posting of license and availability of rules and regulations;
- (2) Rule 3.2. Alteration of premises;
- (3) Rule 3.6. Advertisements, posters, and signs;
- (4) Rule 7.9 Manager registration;
- (5) Rule 7.11. Bar employee records;
- (6) Rule 7.13. Fight and disturbance reports;
- (7) Rule 8.4. Minimum requirements of a hotel condominium licensee
- (7)(8) Rule 9.1. Membership list of club; and
- (8)(9) Rule 10.3. Manager registration.

may waive its right to a hearing and admit to the charge prior to the hearing without appearing before the commission.

For the first violation of any one of the above-mentioned rules, the licensee shall pay a penalty of ~~fifty~~ **one hundred fifty** dollars ~~[(50.00)]~~ **(\$150.00)** to the department at the time that the licensee admits to the charge.

For the second violation within a twelve-month period, whether the violation is of the same rule or any other rule mentioned above, the licensee shall pay a penalty of ~~[one hundred dollars]~~ **three hundred dollars** ~~[(100.00)]~~ **(\$300.00)** to the department at the time that the licensee admits to the charge.

The licensee may not waive its right to a hearing pursuant to this rule and shall be required to appear before the commission where the licensee has committed more than two rule violations of the commission's rules within the previous twelve-month period.

Rule 3.12. Commission orders. All licensees shall comply with all lawful orders of the commission.

Rule 3.13. Contests and prizes, prohibitions. (a) No licensee shall promote or permit any contests which involve the consumption of liquor.

(b) No licensee shall at any time give any liquor as a prize for any contest.

Rule 3.14. Suspension or revocation of blue card or red card. The Commission may at any time for good cause suspend or revoke a blue card or red card.

Rule 3.15. A person below the age of eighteen years working or entertaining in licensed premises. The licensee shall comply with all of the requirements of the Child Labor Laws of the State of Hawaii.

Rule 3.16. Legal age to sell liquor. The legal age for an employee to begin selling liquor is 18 years old.

Rule 3.17 Licensees shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time.

RULE 4
LICENSE FEES, GROSS SALES REPORTS

Rule 4.1. License fees. The fees for licenses of the several classes and kinds as described in Section 281-31, Hawaii Revised Statutes, as amended, shall be as follows, the same being per annum except where otherwise specified:

<u>Class</u>	<u>Kind</u>	<u>Basic Fees</u>	
1. Manufacturers (including rectifiers)	(a) Beer	\$ 408	
	(b) Wine	\$ 408	
	<u>Wine manufactured from agricultural products grown in the State</u>		<u>\$ 120</u>
	(c) Alcohol	\$ 204	
	(d) Other Liquors	\$ 648	
<u>Distilled spirits manufactured from agricultural products grown in the State</u>		<u>\$ 180</u>	
2. Restaurant	(a) General	\$ 480	
	(b) Beer & Wine	\$ 180	
	(c) Beer	\$ 120	
3. Wholesale dealer	(a) General	\$1,200	
	(b) Beer & Wine	\$ 324	
	(c) Alcohol	\$ 18	
4. Retail dealer	(a) General	\$ 480	
	(b) Beer & Wine	\$ 180	

	(c) Alcohol	\$ 18
5. Dispenser	(a) General	\$ 480
	(b) Beer & Wine	\$ 180
	(c) Beer	\$ 120
6. Club		\$ 240
7. Vessel <u>repealed</u>		\$ 240
8. Transient Vessel, per day		\$ 33
Transient Vessel, per year		\$ 900
9. Tour or Cruise Vessel		\$ 240
10. Special, per day	(a) General	\$ 33
	(b) Beer & Wine	\$ 24
	(c) Beer	\$ 16
11. Cabaret		\$ 600
12. Hotel		\$ 900
13. Caterer		\$ 120
14. Brewpub		\$ 900
<u>15. Condominium Hotel</u>		<u>\$ 900</u>
<u>16. Winery</u>		<u>\$ 900</u>
<u>18. Small craft producer pub</u>		<u>\$ 900</u>

The fee for a temporary license of any class and kind shall be sixty dollars (\$60.00) for an initial period of one hundred twenty days or any fraction thereof, and an additional sixty dollars (\$60.00) for a renewal of not more than sixty days of the license.

Rule 4.2. Fees for solicitors' and representatives' permits. The fees for solicitors' and representatives' permits shall be for twelve calendar months, including the month the permits are issued, and shall be in the following amounts: General-\$180.00; Beer & Wine-\$90.00; and Alcohol-\$5.00.

Rule 4.3. Special license sales report. Persons issued special licenses shall report their gross sales and any other information required by the commission within three days after the expiration of the license.

Rule 4.4. Percentage Fee. Licensees in Classes 2, 4, 5, 6, 9, 11, 12, and 13, and 14, and 15

and 18, and classes 1, [and] 3 and 16 for retail liquor sales to any person for private use and consumption, shall be subject to the basic fee plus a percentage fee. Licensees shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report. The Final Gross Liquor Sales of each licensee multiplied by the percentage shall constitute the percentage fee. The percentage to be applied to the Final Gross Liquor Sales of each licensee for each current fiscal year shall be based upon the following formula:

$$\frac{EE - (BF + C)}{TFGS} = \text{Percentage Fee}$$

EE = Estimated Expenditures (current fiscal year)
 BF = Basic Fees (current fiscal year)
 C = Carryover (excess fees from prior fiscal year)
 TFGS = Total Final Gross Sales (prior license year)

(a) Licensees in the above-mentioned classes shall file with the Director, on a form prescribed by the Commission, a report showing gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the Director and shall be completed and filed no later than July 31 after the date of expiration of such licenses, and at such other times or intervals as the Director may require. After a tally of the total gross sales of all licensees, the percentage fee due and payable shall be assessed each licensee. Notice of Percentage Fee Due shall be mailed to each licensee and shall be paid within 30 days from the date of such notice or as otherwise provided by the Director.

Rule 4.5. License Fees; When Due; How Received. (a) Fees Due, When. The basic fee as prescribed by Rule 4.1 for any license or permit issued hereunder shall be due and payable in advance of or on June 30 of each year. The fee for a license or permit issued July 1 shall be for a full year.

Full payment of a prorated license fee is due and payable at the time the license is issued and the fee paid shall be reckoned proportionally from the first day of the month on which the license or permit is issued to the expiration date.

Transient vessel, per day, special and temporary license fees shall be paid in full at the time of filing the application.

(b) Change to higher kind or different class. A holder of a license who applies for a higher kind of license within the class of the existing liquor license or a higher class of license on the same premises shall be credited with the unused portion of the current basic license fee in computing the fee for the new license.

(c) Change to lower class or kind. A licensee who desires to lower the class or kind of license, pursuant to Section 281-31 and 281-52 of the Hawaii Revised Statutes, as amended, or terminate a category of license shall file written notice to the Commission for its approval and state the effective date of the change.

(d) Forfeiture of fees; when. Upon termination of business by a licensee and upon revocation, cancellation, or change to lower class or kind of license, all fees paid for the remaining unexpired term

shall be forfeited.

Rule 4.6. Payment of fees upon transfer of license. (a) Final report and percentage fee by transferor. Prior to the transfer of a license, the transferor shall file a final report of its gross liquor sales ~~[together with]~~ and payment of its percentage fees due. The past fiscal year's percentage figure shall be used to calculate the percentage fee owed by the transferor. The transferor shall be notified of the percentage fee due and the transfer shall not be completed until the percentage fee is paid.

(b) Final report and percentage by transferee; when. If the transferor fails to submit a final report of gross liquor sales and/or fails to pay the percentage fees upon transfer of such a license, the transferee shall be responsible for any percentage fee based on the total gross liquor sales for the entire term for which the license was exercised by the transferor.

~~[Gross sales of liquor under a temporary license shall be included as part of the sale of the transferee.]~~

Rule 4.7. Gross liquor sales report, percentage fee, and records. (a) Filing. Licensees holding Classes 2, 4, 5, 6, 9, 11, 12, 13, ~~[and]~~ 14, 15, 16 and 18 and Classes 1, ~~[and]~~ 3 for retail liquor sales to any person for private use and consumption, shall file, on a form provided by the Department, a report showing the true and accurate gross sales of liquor including complimentary liquor as defined in Rule 1 for the license year.

Gross sales of liquor under a temporary license shall be included as part of the transferee's or new licensee's gross sales report for the fiscal year.

Reports shall be completed and filed with the department as follows:

- (1) On or before July 31, a final gross sales report for that license year.
- (2) Within 30 days of the closing of business or cancellation or revocation of the license, a final gross sales report.
- (3) At such other time as the Commission or Director may direct.

For purposes of this rule, reports postmarked on the due date shall be acceptable. Where the due date falls on a holiday or weekend, the report shall be delivered to the office of the Department on the first working day thereafter.

(b) Percentage fee due; when. The percentage fee based on gross sales of liquor shall be due and payable in full on September 30.

In case of revocation or cancellation of such license, the percentage fee chargeable against such license shall be the past fiscal year's percentage figure and the percentage fee due shall become due and payable within 30 days from the date of the Notice of Percentage Fee Due.

Any licensee who fails to pay its percentage fee on the due date ~~[shall]~~ may be issued a notice of

violation for every day payment has not been made and be subject to penalties as stated in Section 281-91, Hawaii Revised Statutes.

(c) Percentage fee amount due; when. All licensees required to pay an annual percentage fee as prescribed in rule 4.4 shall be mailed a Notice of Percentage Fee Due stating the amount due to the department by the due date.

~~[For fiscal year ending June 30, 2005, the percentage fee for classes 2 and 4 licenses shall not exceed \$10,000. This maximum percentage fee will only be applicable for fiscal year ending June 30, 2005.]~~

~~[For fiscal year ending June 30, 2005, the percentage fee for a class 12 license shall not exceed \$30,000. This maximum percentage fee will only be applicable for fiscal year ending June 30, 2005.]~~

~~[Beginning July 1, 2005,]~~ Any [any] licensee whose annual percentage fee exceeds ~~[\$12,000]~~ \$5,000 may [shall] pay to the department either in full or in two equal payments with the first payment being due no later than September 30 and the final payment being due no later than January 31 of the same fiscal year.

(d) Records and accounts. All licensees shall keep, within the State of Hawaii, a set of books or records, which show all income, purchases and expenses of the liquor licensed business for a period of three years. These books and records, including but not limited to daily sales records, employee time sheets, and invoices, shall be made available for inspection and/or auditing by the department within forty-eight (48) hours from the time the licensee is notified by the department.

RULE 5 **TERM OF LICENSE AND PERMIT**

Rule 5.1. Terms of licenses and permits. (a) Every license issued, except classes 8 and 10 and temporary licenses, shall expire at 12:00 midnight on June 30 next succeeding its issue.

(b) Transient vessel, special, temporary licenses, and solicitors' and representatives' permits shall expire at 12:00 midnight on the expiration day of the licenses.

(c) All liquor licenses not exercised within one hundred eighty (180) days of approval by the commission shall, except for good cause, become void.

(d) A licensee who applies for a license to change its class or category of license shall exercise the new license within seven (7) days of approval by the commission or it will become void.

RULE 6 **HOURS OF BUSINESS**

Rule 6.1. Hours during which licensed premises may be open for transaction of business are as follows:

- (a) Dispenser, restaurant, [brewpub], club, tour or cruise vessel[, and vessel]: Every day from 6:00 a.m. to 2:00 a.m. the following day. For Restaurant class from 6:00 a.m. to 11:00 p.m. for retailing of "growlers".
- (b) Cabaret, hotel, [and] transient vessel and condominium hotel: Every day from 6:00 a.m. to 4:00 a.m. the following day. Exception: Cabaret in a location zoned other than resort shall be from 6:00 a.m. to 2:00 a.m. the following day.
- (c) Retail dealers: Every day from 6:00 a.m. to 11:00 p.m.
- (d) Wholesale dealers and manufacturers: Every day from 6:00 a.m. to 11:00 p.m.
- (e) Caterer: Every day from 6:00 a.m. to 12:00 midnight.
- (f) Special Dispenser: From 6:00 a.m. to 12:00 midnight.
- (g) Free One-Day Special Retail Dealer: From 6:00 a.m. to 11:00 p.m.
- (h) Free One-Day Special Dispenser: From 6:00 a.m. to 12:00 midnight.
- (i) Brewpub: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.
- (j) Winery: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.
- (k) Small Craft: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.

Rule 6.2. Sales, service, or consumption before or after hours of business , exception.

There shall be no sale, service, or consumption of liquor on or within any licensed premises before or after hours established by the commission, except that employees who were on duty at the legal closing time in on premises establishments may consume liquor immediately after closing with the permission of the licensee, and at no cost, if no other person is in the liquor service area of the premises.

RULE 7
RELATING TO ON PREMISES ESTABLISHMENTS

Rule 7.1. Number of drinks per person and liquor content of drinks, exception. (a) The stacking of liquor for consumption by patrons is prohibited. For the purpose of this rule, ~~[a beer served with a straight or unmixed drink shall be considered to be one drink. Also, for the purpose of this rule,]~~ the word "stacking" is defined as more than two standard servings to a customer at one time. This rule shall not apply to authorize showroom facilities as defined in rule 1, which may serve the minimum drinks at the same time to lessen disturbance to the show.

A standard serving shall be a drink containing distilled spirits ~~[[in a container]]~~ and mixes not to exceed 10 ounces, five ounces of wine or twelve ounces of beer. A drink in excess of a standard serving shall be limited to one drink per person at one time.

Distilled spirits containing no mixes shall be limited to not more than two ounces per person at one time.

A pitcher of beer or mixed drink containing distilled spirit, not to exceed 48 ounces, may be served to no less than two or more persons when seated together.

Distilled spirits may be served from its original package of up to 1 liter in capacity for any special occasion upon obtaining a permit from the director.

A bottle of wine, not to exceed 750 milliliters, may be served to one person at one time with a meal as it applies to a hotel, ~~or~~ restaurant, club, cabaret, condominium hotel, brewpub class licensee engaged in meal service as provided for in section 281-31 ~~[(q)]~~ (r) of the Hawaii Revised Statutes. The law allows for a patron to remove from the licensed premises any portion of wine that was purchased for consumption with a meal; provided that it is recorked or resealed in its original container. A ~~[hotel or restaurant class]~~ licensee wishing to exercise ~~[exerciseing]~~ this privilege shall inform the customer of the State of Hawaii "open container" law as stated in sections 291-3.1, ~~[and]~~ 291-3.2, 291-3.3 and 291-3.4 of the Hawaii Revised Statutes.

(b) A drink consisting of one or more kinds of liquor and water or any other mix which is served, sold, or offered for sale by any on premises licensee, or prepared for such purpose, shall contain not less than one fluid ounce of liquor; except when selling a specialty drink which requires less than one ounce of liquor; in which case the licensee shall present to the patron a recipe or have in plain view of the patron ordering the drink a menu which specifies the amount of liquor in the drink.

When liquor is poured into a service glass by the licensee or an employee, the drink shall be presumed to have been prepared for service or sale, notwithstanding the fact that the mix or water has not been added.

(c) A straight drink shall have not less than one fluid ounce of liquor.

Rule 7.2. Sanitary conditions. (a) All licensed premises, including all furnishings, equipment, and paraphernalia within the premises, shall be kept in a strictly clean and sanitary condition, and all drinking glasses must be uncracked and effectively sterilized.

(b) All on premises establishments shall have access to adequate toilet facilities, which have been approved by the State Department of Health. Special license establishments shall have toilet facilities as may be required by the commission.

Rule 7.3. Draught beer. Draught beer sold or served shall be freshly drawn. The selling and serving of stale or slop beer is prohibited.

Rule 7.4. Condition of premises. (a) The main entrance of an on premises establishment must be kept unlocked whenever there is any non-employee or any employee who was not on duty at the closing time in the premises.

(b) Entrance to booths must be open and unobstructed.

(c) Lighting in all parts of the licensed premises shall be sufficient to make easily discernible the appearance and conduct of all persons in the premises and the main entrance of licensed premises shall be well and properly lighted.

(d) All interior rooms or enclosed areas in a Restaurant, Dispenser, Brewpub, or Cabaret licensed premises where liquor is sold, served, or consumed shall be constructed in such a manner as to permit a full view of the interior of the room through a transparent window on the entry door or on the wall. Tinted windows are prohibited.

(e) No licensee that is authorized for on-premise consumption shall have an opening, transparent window or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining or enclosed unlicensed structure.

(f) Paragraph (d and e) above to the contrary notwithstanding, the commission may waive this requirement for good cause. A request for a waiver shall be in writing and specifically state why an exception to this rule is justified.

(g) An on premises establishment shall be constructed in such a way that the sound from the licensed premises shall not disturb the nearby residents with unreasonable noise in excess of the following noise levels in decibels (dBA) for more than ten percent of the time within any 20-minute period at the boundary line of the complainant's property which is closest to the licensed premises. For this purpose, any sound having duration of less than one second shall be deemed to last one second.

<u>Zoning Districts</u>	<u>7 a.m. to 10 p.m.</u>	<u>10 p.m. to 7 a.m. the following day</u>
Residential (R-1 to R-6)	55 dBA	45 dBA
Open (O)	55 dBA	45 dBA
Residential (R10 & R20)	60 dBA	50 dBA
Resort (RR10 & RR20)	60 dBA	50 dBA
Commercial (Neighborhood and General)	60 dBA	50 dBA
Agricultural	70 dBA	70 dBA
Industrial (Limited and General)	70 dBA	70 dBA

Where the allowable noise level between two adjacent zoning districts differ, the lower allowable noise level shall be used. This rule shall be enforced if a complaint of noise from the premises is received by the department from any resident or property owner with rental units within the area.

Rule 7.5. Music, dancing, and entertainment , exception. (a) In any on premises

establishment, radios, television sets, jukeboxes, and any other system of providing recorded background music in the premises may be installed and operated without commission approval, provided that the sound does not disturb the neighborhood. Programs that are not offensive to common propriety and programs that are rated G or PG may be shown within the premises.

(b) Impromptu entertainment which is unpaid and unscheduled entertainment by a person who is not less than eighteen years of age is permitted without commission approval if said entertainment is not offensive to common propriety and the sound does not disturb the neighborhood.

(c) Any and all games and other forms of entertainment provided by management, such as music, shows, and game machines are prohibited except where and when specifically permitted by the commission in writing.

(d) A standard bar or a dispenser, category (C) or a restaurant, category (2) without dancing premises that wishes to have dancing in its premises as part of its normal operations shall be subject to Section 281-51 to 281-60 of the Hawaii Revised Statutes.

(e) In premises where dancing by customers is permitted, the licensee shall provide a clearly designated dance floor of not less than one hundred fifty (150) square feet suitable for ballroom dancing. The designated area may be utilized for other purposes when not used for dancing. However, when used for dancing, the designated area must be totally cleared of all obstructions and utilized only for dancing.

(f) Dancing by customers is permitted only on a designated dance floor approved by the Commission. Licensees shall not allow any form of lap dancing by customers or its employees.

(g) Paragraph (c) above to the contrary notwithstanding, no permit shall be required by a hotel or condominium hotel licensee for live entertainment, games, movies, etc., if the entertainment, games, movies, etc., are not offensive to common propriety.

Rule 7.6. Repealed.

Rule 7.7. Clearing of tables at closing time. Any and all vessels containing liquor shall be removed from all areas of the licensed premises which is open to the public no later than the legal closing time for liquor sales, except as permitted by Rule 6.2.

Rule 7.8. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age and who is duly registered by the licensee as a manager and approved by the commission must be in active charge of any on premises establishment at all times when there is anyone who is not an employee in the premises.

(b) To become eligible for approval as a manager, the applicant shall take a written or oral test in the English language covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of eighty-five percent (85%) or more correct. Upon successful completion of the test; presentation of proper identification showing the applicant's date of birth; and commission review of eligibility and approval; the applicant shall be issued a blue card. Any blue card issued on or after April 15, 1983 shall be valid for a period of five years from the date of issuance. Any blue card issued

prior to April 15, 1983 shall remain valid until the holder, on or after April 15, 1983, changes his place of employment and is registered as a manager by the licensee of his new place of employment. The commission may require the applicant to appear before the commission for a personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

Rule 7.9. Manager registration. (a) The manager on duty is strictly accountable for the conduct of all employees, including other management personnel, and for the sales of liquor in the licensed premises.

(b) An on premises licensee shall notify the commission of the employment of a manager prior to his employment by submitting a notice of employment of such person to the department. A manager must have a valid blue card prior to his employment as manager. A person does not qualify as a manager unless he is registered as a manager by the licensee.

(c) The commission may require the licensee to suspend or terminate the employment of any employee for good and sufficient reason. Good and sufficient reason shall include but not be limited to conviction for an offense against the public health and morals as set out in the Hawaii Penal Code.

(d) Every on premises licensee shall submit a typewritten list of all its management personnel to the department no later than July 31 of each year on the forms provided by the department.

Rule 7.10. Bar employee records. An on premises licensee shall have available at all times in the licensed premises a current record showing all bar employees, including management personnel, who are on duty.

Rule 7.11. Employees drinking on duty and entertaining patrons prohibited. In an on premises establishment, no employee, while on duty and within the premises, shall consume liquor or sit or dance with or play games with patrons. This restriction shall not apply to the overall manager who is in active charge of the premises if he does not work at selling or serving liquor.

For the purpose of this rule, "while on duty" shall mean from the time an employee starts work on any day until the employee is through for that day. It shall include any time during a split shift, a meal break and a rest break.

Rule 7.12. A person below the age of eighteen years in an on premises establishment prohibited, exceptions. (a) A person below the age of eighteen years is not permitted in an on premises establishment where liquor sales account for seventy-five percent (75%) or more of the total revenues of the establishment, excluding revenues from coin operated machines and logo items or when there is a show or televised program that exposes to view the female breast below the top of the areole, or a strip tease show, or a show that is offensive to common propriety.

The revenue figures for the immediate past calendar month shall be used to determine if a licensed premises is qualified to have persons below the age of eighteen years in its premises. A new licensee or a licensee who changes its operation to include sales of other merchandise shall be automatically qualified to permit persons below the age of eighteen years in its premises during its first month of operation.

(b) A minor below the age of 18 years shall not be permitted in any area of any licensed premises where liquor is served after 12 o'clock midnight. This paragraph shall not apply to such minor who is attending a private party with a parent or a guardian.

(c) The commission may exempt any licensee from this rule upon application and review of a proposed special event.

Rule 7.13. Fight and disturbance reports. An on premises licensee shall report all fights and disturbances, on the form provided or approved by the department that occurs in his licensed premises. The report shall be typewritten and submitted to the department within seven days from the time of the incident. Hand written reports will not be accepted.

The report shall include the name of the licensee and business, the date and time of the incident, the location of the incident, the name(s) of person(s) involved, the condition of those involved, the details of the incident and action taken by the licensee to prevent or suppress the occurrence. The report shall be signed by the licensee or its authorized agent.

For the purpose of this rule, the word "disturbance" shall mean any incident of quarrelsome behavior that causes the licensee, his employees, or police officers to evict a person from the premises or to request a person to leave the premises. Also for the purpose of this rule, the word "fight" shall mean a physical confrontation.

Rule 7.14. Review by patron of charge slip for liquor purchased. Any on premises licensee who does not collect payment for each drink as it is served shall upon request, inform the patron the amount owing each time liquor is served.

Rule 7.15. Practices that promote excessive consumption of liquor prohibited. (a) Licensees shall use good judgment in serving liquor to patrons to prevent excessive consumption of liquor by patrons.

(b) No alcoholic beverage shall be sold unless the consuming patron consents to accept said beverage prior to service.

(c) No licensee shall sell to any person an unlimited quantity of liquor during any set period of time for a fixed price. This paragraph shall not apply to private functions for which a hosted bar is utilized such as a wedding receptions, or public functions such as luaus and brunches where liquor is inclusive, or other similar events where liquor service is incidental to food service.

(d) Before serving liquor in an on-premises establishment the licensee shall have received a bona fide and specific order before preparing and serving the order from its service bar.

RULE 8 **RELATING TO CABARET, [AND] HOTEL [LICENSES] AND CONDOMINIUM HOTEL LICENSEES**

Rule 8.1. Minimum requirements of cabaret license. (a) A cabaret license shall be general

only (but excluding alcohol) and shall authorize the sale of liquors for consumption on the premises. A cabaret establishment shall have an adequate kitchen facility where hot meals are prepared and available to patrons from the time the premises is open for business to midnight unless the premises closes before midnight. A dance floor of not less than one hundred fifty (150) square feet suitable for dancing and clearly designated for such purpose or professional entertainment shall be provided for the benefit of the patrons.

(b) No cabaret licensed premises shall remain open after 2:00 a.m. without dancing or professional entertainment being provided. ~~Neither a paid person who operates a system of recorded music nor a paid person who serves as a master of ceremonies shall be considered a professional entertainer.~~ The commission reserves the right to regulate and control professional entertainment in cabarets. The licensee will be strictly accountable for the conduct of all entertainers in the licensed premises.

Rule 8.2. Cabaret license not issued, when. No application for a new cabaret license which is to be located in an area which is not a resort zoned area shall be approved if there is any residential property located within 500 feet of the proposed premises.

Rule 8.3. Minimum requirements of hotel license. (a) Minimum requirements for hotel license shall be an establishment consisting of one or more buildings which contain (1) at least forty rooms in which sleeping accommodations are provided and offered for adequate pay to transients[;] or timeshare ownerships. [; or permanent guests;] [and (2) a suitable and adequate kitchen and dining room where at least one meal is prepared and served daily to hotel guests and other customers. For the purpose of this rule, anything that can be eaten quickly and without formality to appease the appetite shall not constitute a meal. The commission reserves the right to define a meal.]

~~[Rule 8.4. Catering privilege.]~~ (b) A hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.4. Minimum requirements of condominium hotel license. (a) Minimum requirements for a condominium hotel license shall be a condominium hotel, as defined in HRS Sec. 281-1, containing: at least forty condominium hotel guest rooms. Room service, self-service, and service at private parties within the condominium hotel premises are permitted.

(b) As part of its initial application, (1) a condominium hotel license applicant shall submit a list of the initial condominium hotel guest rooms that are part of the proposed licensed premises and (2) the number of condominium hotel guest rooms that are part of the proposed licensed premises must equal at least fifty percent (50%) of the total number of rooms in the condominium hotel. If the condominium hotel is a phased project (meaning built and/or administered in separate phases), for purposes of determining the total number of condominium hotel guest rooms in the condominium hotel, each phase shall be treated as a separate condominium hotel. After said application is approved by the Commission, the condominium hotel licensee shall update the list of condominium hotel guest rooms on a quarterly basis.

(c) In addition to the quarterly update obligation in subparagraph (b), the condominium hotel licensee shall maintain for inspection at the premises by any authorized employee of the Commission a current list of the condominium hotel guest rooms.

(d) Upon the opening or closing of any section within the condominium hotel premises which serves alcoholic beverages, the licensee shall notify the Liquor Commission with details and floor plan changes (which may be shown using relevant portions of the condominium map) in writing not less than thirty (30) days prior to the commencement of such event.

(e) A condominium hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.5. Strip shows, exotic dancers. Rule 3.7 to the contrary notwithstanding, cabaret and hotel licensed premises may allow scheduled entertainers whose breasts and/or buttocks are exposed to view to perform, if they perform on a stage that is not less than twelve inches above the immediate floor level and not less than six feet from the nearest patron, but at no time under any circumstances shall an entertainer expose his or her genitals, pubic hair, or anus, or perform or simulate sexual acts in the licensed premises. A tip of money or other gifts on the performer's person during the performance while in such attire that exposes to view the female breast below the top of the areole and/or performer's buttocks is prohibited. The licensee shall submit the names of all entertainers who are to perform to the department not less than twenty-four hours prior to their performance and the performers shall be 18 years of age or older. The licensee shall not permit any nude impromptu entertainment under this rule.

Rule 8.6. Mini bars in guest rooms and room service. A hotel or a condominium hotel licensed premises shall be restricted from selling liquor in its original package except via mini bars installed in ~~[hotel]~~ guest rooms and room service. Said service shall be initiated at the request of an occupant twenty-one years of age or older. ~~[and consumption shall be restricted to the hotel guest room.]~~

Rule 8.7. Recognizable security person. (a) Every cabaret and hotel licensee shall have recognizable security personnel within the premises to prevent anyone from selling, distributing, or using illegal drugs within the premises where liquor is being sold during the time the premises is open for business after 2:00 a.m.

(b) The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises by any person is prohibited.

(c) No licensee shall promote, encourage or permit any person on the licensed premises to possess, distribute or use illicit or illegal drugs.

Rule 8.8. Change of Hotel or Cabaret license. Any hotel class or cabaret class license failing to meet the minimum requirements of a hotel class or cabaret class license, respectively, may be reclassified by the commission to a dispenser or restaurant class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 9 **RELATING TO THE CLUB LICENSE**

Rule 9.1. Membership list of club. Each licensed club shall keep a complete list of its members,

which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises.

Rule 9.2. Guest-card privileges of club. Any individual enjoying guest-card privileges of a club and to whom liquors may be sold must be a bona fide guest of the club. ~~It is provided, however, that no person who is a legal resident of the county of Kauai shall be deemed to be a guest enjoying the privileges of the membership of a club.~~ Each club shall keep records as to registration of all such bona fide guests, which records shall be produced whenever required by the commission, or by any member thereof, or by any investigator. Guest-card privileges extended to such guest shall be limited, in each case, to not more than four weeks within any twelve consecutive months.

RULE 10 **RELATING TO MANUFACTURERS, WHOLESALERS, AND RETAILERS**

Rule 10.1. Retail dealer licensed premises. (a) If the retail dealer licensed premises remains open to the public during the hours when the sale of liquor is prohibited, the licensee shall post conspicuous signs about all areas displaying liquor giving notice that the sale of liquor is prohibited.

(b) An off premises licensee shall have available at all times in the licensed premises a current record showing all employees, including management personnel, who are on duty.

(c) Drive-in retail sale is prohibited. Customers making a purchase at a retail dealer's premises must enter the licensed premises to purchase liquor. The drive-in method whereby the customer orders from a motor vehicle and the licensee delivers liquor to the vehicle is prohibited. Nothing in this rule shall be construed to prohibit assistance to any person who is physically unable to walk, lift or carry purchases of liquor because of a disability.

(d) A Retail Dealer licensee may make deliveries of liquor to private residences or businesses with a bona fide order from the purchaser provided the licensee produces a receipt of delivery signed by a person verified to be of legal age at the delivery point.

Rule 10.2. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age and who is duly registered by the licensee as a manager and approved by the commission must be in active charge of any off premise establishment at all times that liquor can be legally sold.

(b) To become eligible for approval as a manager, the applicant shall take a written or oral test in the English language covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of eighty-five percent (85%) or more correct. Upon successful completion of the test; presentation of proper identification showing the applicant's date of birth; and commission review of eligibility and approval; the applicant shall be issued a red card. Any red card issued shall be valid for a period of five years from the date of issuance. The commission may require the applicant to appear before the commission for a personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

Rule 10.3. Manager registration. (a) An off premises licensee shall notify the commission of the employment of a manager prior to employing the individual by submitting a notice of employment of such

person to the department. A manager must have a valid red card prior to employment as a manager. A person does not qualify as a manager unless the licensee registers the individual as a manager.

(b) Every off premises licensee shall submit a typewritten list of all its managers to the department no later than July 31 of each year on the forms provided by the department.

Rule 10.4. Prohibition against peddling, exception. Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing liquor from licensed premises for delivery to a customer under a manufacturer's or wholesale or retail dealer's license, the licensee must have received a bona fide and specific order therefore. Provided, however, duly licensed wholesale dealers may, without a bona fide and specific order therefore, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquor at retail in their original package or dispense liquor for consumption on the premises.

Rule 10.5. Record keeping by wholesalers. All wholesale dealers shall keep a separate and distinct book account, wherein shall be entered the name of the licensee, license number, place of business, the day, month, and year in which the sale was made and the quantity of liquor sold to each licensee, and shall, upon the specific request therefore, submit to the commission a list of such sales data as may be required from time to time.

Rule 10.6 Manufacture, Wholesale or Retail Dealer licensee; Free One-Day Special license, exception. (a) The rules of the commission do not prohibit a manufacturer, wholesaler or retail dealer licensee from giving financial or other forms of event sponsorship assistance to any bona fide nonprofit organization owning and exercising a Free One-Day Special license issued by this department for purposes of charitable fundraising.

(b) An industry member or its employee may deliver the draft keg dispensing van, draft keg dispensing trailer, or draft keg dispensing wagon to the site of the special licensed premises, and may assist in the connection and maintenance of the draft kegs and its tapping accessories, but may not assist the licensee in the selling, serving, or furnishing of liquor to patrons.

RULE 11 **RELATING TO RESTAURANT LICENSE**

Rule 11.1 Minimum requirements for a restaurant license. A restaurant license may be issued to an establishment which is regularly used and kept open for the serving of meals to patrons for compensation and which has suitable kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least thirty per cent of the establishment's gross revenues must derive from the sale of foods.

Rule 11.2. Catering privilege. A restaurant licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor authorized by its license while performing food catering functions, subject to Rules 12.2. to 12.4.

Rule 11.3. Categories of license. A restaurant license shall be either category [1] **A** or category [2] **B**, a premises in which live entertainment or recorded music is provided. A category [2] **B** premises shall be further described as a premises with dancing or a premises without dancing. A licensee who wishes to change from one category to a different category will be required to apply for a new license.

Rule 11.4. Change to a restaurant license. (a) A license of a different class, which qualifies for a restaurant class license, may be issued a restaurant, category [1] **A** or [2] **B** license by the commission. The category assigned will be according to the permitted activities of the license to be changed.

(b) Any restaurant class license failing to meet the minimum requirements of a restaurant class license may be reclassified by the commission to a dispenser class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 12 **RELATING TO CATERER LICENSE**

Rule 12.1. Minimum requirements for a caterer license. A [caterer] **general** license may be issued to any **applicant operating a kitchen facility where food is prepared for the sale of liquor while performing food catering functions off of the licensed premises subject to rule 12.2 to 12.4.** [~~cabaret, brewpub or dispenser general licensee who serves food as part of its operation and generates at least 30% of its gross revenue from the sale of foods for the sale of liquor while performing food catering function~~].

Rule 12.2. Notification of catering function. The licensee shall notify the department of all catering functions that will be held away from the licensee's premises at least five days prior to the function on the form provided by the department. The notification shall include a written statement from the owner or representative of the property **giving the applicant permission to sell liquor for consumption on its property** [~~that such function will be subject to the liquor laws and the inspection by investigators~~].

Rule 12.3. Location of catering function, restrictions. (a) The commission may deny the use of any specific location for catering functions for good cause as stated in paragraph (c) below.

(b) The licensee may provide catering service to any location if the property owner is not compensated for the use of the property and there is no charge to anyone to attend the function.

(c) If the property owner of the location for the catering event is compensated for the use of the property or if the caterer is the property owner, [~~or if there is a charge for anyone to attend the function~~] the property **owner shall acknowledge that the property is properly** [~~must be~~] zoned [~~resort or commercial~~] or be a government facility where liquor may be sold. The property may be used for catering functions **provided** [~~as long as~~] the department does not receive any complaints, such as noise, dust, traffic, **parking,** etc., [~~about the~~] **as the result of the catered**[~~ing~~] function[~~s~~].

Rule 12.4. No host bar prohibited. The caterer shall not at any catered function which is held away from its licensed premises open or operate a no host bar. A no host bar means a bar where each person who orders a drink is charged for the drink.

RULE 13
SEVERABILITY

Rule 13.1. Severability. If any provision of these rules and regulations or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules and regulations are declared to be severable.

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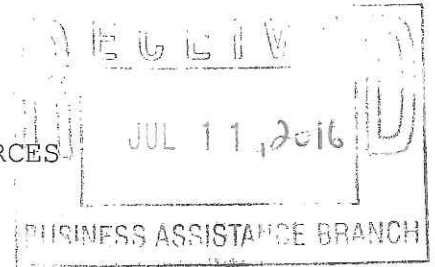
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Exhibit 4

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-74
Hawaii Administrative Rules

(date of adoption)



1. Section 13-74-1, Hawaii Administrative Rules, is amended by amending the definition of "commercial marine dealer" to read:

"Commercial marine dealer" means any:

(a) Person who sells or exchanges, or who is an agent in the transfer of, marine life obtained:

- 1) Directly from a commercial marine licensee who took the marine life;
- 2) From another dealer;
- 3) From a licensed aquaculture facility; or
- 4) From an importer whose marine life is regulated under state law, or

(b) Person who exports marine life taken within the jurisdiction of the State for commercial purpose;
or

(c) Commercial marine licensee who sells or exchanges locally caught marine life they took themselves at retail." [Eff 8/12/93; am 10/18/10; am] (Auth: HRS §§187A-5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6, 189-10)

2. Section 13-74-20, Hawaii Administrative Rules, is amended to read as follows:

"§13-74-20 Commercial marine license. (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license. Additionally, any person providing vessel charter services in the State for the

taking of marine life in or outside of the State shall obtain a commercial marine license.

(b) Licenses to persons with proof of identity to engage in the activities described in subsection (a) shall require the person's name, address, age, place of birth, length of residence in the State, height, weight, color of hair and eyes, citizenship, and such other information as the department may require.

(c) The fee for the commercial marine license shall be[:

(1) Residents, \$50;

(2) All other persons, \$200;

(3) Duplicate license, \$10.] \$100. The fee for a duplicate license shall be \$10.

(d) Beginning January 1, 2018, the fee for the commercial marine license shall be \$150. The fee for a duplicate license shall be \$10.

(e) No person may:

(1) Renew a commercial marine license more than two months prior to its expiration date; or

(2) Be issued more than one commercial marine license at any one time.

[(d)] (f) The department may require persons issued the commercial marine license to submit reports of their fishing activity. Such reports shall be submitted to the department monthly; provided that persons taking bottomfish as defined in chapter 13-94, in the main Hawaiian islands, shall, in addition to their monthly report for species other than bottomfish, submit trip reports of their bottomfish fishing activity if requested. The monthly and trip reports shall be subject to section 13-74-2, sections 189-3 and 189-3.5, HRS, and as may be otherwise provided by law." [Eff 8/12/93; am 1/15/99; am 10/18/10; am] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

3. Chapter 13-74, Hawaii Administrative Rules, is amended by adding a new section 13-74-45 to read as follows:

§13-74-45 Commercial marine dealers. (a) The department may issue a commercial marine dealer license to any person to sell or exchange, or act as an agent in the transfer of, marine life obtained directly from a commercial marine licensee, or to any commercial marine licensee to export marine life taken within the jurisdiction of the State for commercial purpose or to sell or exchange marine life at retail.

(b) No person shall sell or exchange, or act as an agent in the transfer of, marine life obtained directly from a commercial marine licensee without possessing a valid commercial marine dealer license.

(c) No commercial marine licensee shall export any marine life taken within the jurisdiction of the State for commercial purpose without possessing a valid commercial marine dealer license.

(d) No commercial marine licensee shall sell or exchange marine life at retail without possessing a valid commercial marine dealer license.

(e) A person applying for the commercial marine dealer license shall provide to the department the name and physical location of the place of business.

(f) A separate commercial marine dealer license shall be required for each place of business, even if one person owns or operates several places of business, provided that a person who owns or operates a business consisting of only mobile places of business may be issued one marine dealer license per vehicle.

(g) It is unlawful for any commercial marine dealer to sell or offer for sale, to purchase or attempt to purchase, to exchange, or to act as an agent in the transfer of, any marine life taken within the jurisdiction of the State for commercial purpose, that is obtained from any person whom the department has required to have, but does not have, a valid commercial marine license, commercial marine dealer license, or other license or permit authorizing such sale, purchase, exchange, or transfer for commercial purpose.

(h) Every commercial marine dealer shall issue receipts to the person from whom marine life is obtained and shall provide the following information on the receipt:

- (1) The date of the issuance;
- (2) The name and commercial marine license number of the person to whom the receipt is issued;
- (3) The species, numbers, weights, and values of each of the varieties of marine life obtained; and
- (4) The signature of the commercial marine dealer who issued the receipt.

Any commercial marine dealer who takes the dealer's own marine life shall issue a sales receipt with the same information.

(i) The commercial marine dealer shall keep all receipts on file and be able to present such receipts for inspection upon demand of any officer authorized to enforce the laws of the State. The receipts shall be kept for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The department may approve the use of documents other than the receipts as written records of the transaction." [Eff _____] (Auth: HRS §189-10) (Imp: HRS §§189-10, 189-11)

4. Chapter 13-74, Hawaii Administrative Rules, is amended by adding a new section 13-74-46 to read as follows:

"§13-74-46 Commercial marine dealer report. (a) Every commercial marine dealer shall submit to the department a report of all marine life obtained, purchased, transferred, exchanged, or sold during the report period. Reports shall contain the following information:

- (1) The name, address, and telephone number of the commercial marine dealer;
- (2) The time period for which the report is being submitted;

- (3) The species, numbers, weights, and values of each of the varieties of marine life landed in the State that the dealer obtained, purchased, transferred, exchanged, or sold during the reporting period;
 - (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
 - (5) Other information as required on forms provided by, or as directed in writing by, the department.
- (b) Reports shall be submitted to the department monthly or weekly as provided in writing by the department." [Eff _____] (Auth: HRS §189-10) (Imp: HRS §189-10)

5. Material, except source notes, to be repealed is bracketed. New material is underscored.

6. Additions to update source notes to reflect these amendments are not underscored.

7. These amendments to chapter 13-74, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural
Resources

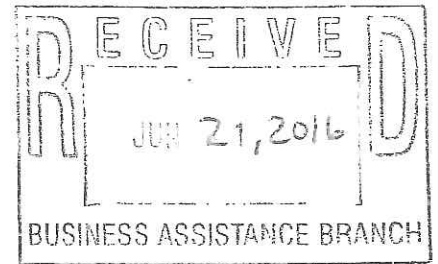
Ramseyer Format (4/22/16)

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

Exhibit 5

Amendments to Chapter 4-72
Hawaii Administrative Rules



1. Chapter 4-72, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

§4-72-13 Quarantine restrictions on ohia and soil from rapid ohia death infested areas. (a) The board has determined that the disease called ohia wilt (also known as rapid ohia death) presents a serious danger to ohia (*Metrosideros*), the ohia forests of Hawaii, and horticultural and agricultural industries.

(b) Transportation of soil and ohia (*Metrosideros*, all species in genus) plants, plant parts, including flowers, leaves, seeds, stems, twigs, cuttings, mulch, greenwaste, frass, wood, logs, and posts is prohibited from a rapid ohia death infested area to a rapid ohia death restricted area except as allowed by permit pursuant to subsection (c), or as otherwise provided herein.

(c) A permit may be issued by the chief for the transportation of a material or commodity listed in subsection (b), subject to laboratory analysis or other science-based method approved by the chief, as appropriate, to determine whether the material or commodity is free of the fungus, *Ceratocystis fimbriata*, the causal agent of ohia wilt disease, and subject to appropriate conditions established by the chief.

(d) Material or a commodity listed in subsection (b) that tests positive for *Ceratocystis fimbriata*, other than material or a commodity for research or diagnostic purposes, shall not be shipped from a rapid ohia death infested area to a rapid ohia death restricted area, nor shall any material or commodity in the same lot for shipment be shipped, unless an effective treatment to destroy *Ceratocystis fimbriata* is available, is approved by the chief, and the shipment has been subjected to the approved treatment.

(e) Transportation of a material or commodity listed in subsection (b) for research or diagnostic purposes moving from a rapid ohia death infested area to a rapid ohia death restricted area of the State, shall be under permit, using safeguards approved by the chief, to an approved facility.

(f) Soil, including soil as a planting medium, may be shipped from a rapid ohia death infested area to a rapid ohia death restricted area of the State subject to pre-shipment

testing as provided in subsection (c) and, if applicable, subject to treatment as provided in subsection (d). A shipper of soil that is an active participant in the department's intrastate compliance agreement program in which the shipper is required to maintain *Ceratocystis fimbriata*-free status as a condition for soil movement from an infested area is subject to testing as required by the compliance agreement and permit.

(g) Finished ohia wood products, such as wood flooring, furniture, bowls, picture frames, carvings, and jewelry that have been subjected to a treatment approved by the chief do not require a permit for intrastate transportation.

(h) The chief is authorized to approve treatments and mitigative measures as they are scientifically validated and may revise permit conditions accordingly, as necessary to prevent movement of ohia wilt disease from the infested area and to preserve the quarantine.

(i) The island of Hawaii is designated as a rapid ohia death infested area, notwithstanding any ongoing control projects on the island, and other islands in the State are designated as rapid ohia death restricted areas. The designated rapid ohia death infested area may be expanded by board action as provided in §4-72-4.5.

(j) The shipper is responsible for all costs, charges, or expenses incident to the inspection or treatment of the soil and ohia material or commodity listed in subsection (b), including charges for overtime wages, fixed charges for personnel services, and meals. [Eff and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §141-2, 150A-8)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to chapter 4-72, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on August __, 2016 and filed with the Office of the Lieutenant Governor.

SCOTT E. ENRIGHT
Chairperson, Board of
Agriculture

APPROVED AS TO FORM:

Deputy Attorney General