

8-76

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class A (DA))	
License by:)	
)	FINAL
Pacific Coast Restaurant)	FINDINGS OF FACT,
Merchants, Ltd.)	CONCLUSIONS OF LAW,
NEWPORT BAY RESTAURANT)	AND ORDER
11950 N. Center)	
Portland, OR 97217)	
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 1st day of June, 1983, in Portland, Oregon, before Hearings Examiner Jill Thompson. The Applicant appeared in person and was represented by Samuel Anderson, Attorney at Law, Portland, Oregon. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Pacific Coast Restaurant Merchants have applied for a Dispenser Class A (DA) license at NEWPORT BAY RESTAURANT, 11950 N. Center, Portland, Oregon. Applicant currently holds a Restaurant (R) license at this location; it was granted December 15, 1982.

2. License Division and the Regulatory Staff recommended to the Commission at its January, 1983 meeting that the license be granted. The Commission directed that a hearing be conducted to consider the following issues:

- A. Whether the public demand or interest is currently being met by existing dispenser outlets.
- B. The basis and methodology used to obtain Applicant's projected gross sales figures.
- C. Whether Applicant's service or atmosphere would be such as to justify a preference for licensing based on unique or substantially different characteristics compared with other dispenser licensees in a 20-mile radius.

3. The Newport Bay is located 100 feet from the Columbia River in the Jantzen Beach Shopping Center on Hayden Island, in a free-standing building. It currently seats 163. The Applicant also owns the Newport Bay Restaurant in Washington Square, which is DA-licensed. The Hayden Island restaurant is in unincorporated Multnomah County.

4. The premises is open from 7:00 a.m. until 10:00 p.m., seven days a week. Applicant serves breakfast, lunch and dinner. The breakfast menu offers five egg dishes as well as six kinds of omelette, and four pancake/waffle-type dishes. It also contains juices and pastries. The lunch menu lists 14 sandwiches (hot and cold meats, seafood, chicken and vegetarian), six kinds of hamburgers, nine salads, a seafood quiche and seafood omelette, and a daily special. The dinner menu contains nine full meal entrees, of which five are seafood dishes. It also offers a chowder and cheese combination and a daily catch special. Also available are fish and chips, fried prawns, a combination platter, deep-fried fish sandwich, steamer clams and clam chowder. Applicant also offers a variety of hot appetizers with an emphasis on seafood.

5. Breakfast entree prices range from \$1.75 to \$4.75; sandwiches and hamburgers are from \$3.50 to \$5.25; and dinner entrees are from \$7.95 to \$9.95.

6. Applicant plans to expand its lunch and dinner menus. The existing lunch selections will be retained; three sandwiches; two fettuccine specials and three salads will be added. The dinner menu will offer the following full meal entrees:

Halibut with dill sauce	\$ 9.95
Shrimp and scallop fettuccine	9.95
Red snapper Florentine	8.95
Sauteed prawns	10.95
Dungeness chicken	9.95
Scallop and shrimp combination	11.95
Steak and prawns	11.95
Fried chicken	9.95
Teriyaki chicken	8.95
Chicken fettuccine	8.95
Top sirloin	9.95
Combination platter	9.95
Grilled halibut	8.95
Deep-fried halibut	8.95
Broiled salmon	9.95
Poached salmon	10.95
Batter-fried prawns	9.95
Fried oysters	8.95

The following light meals will also be available: fish and chips, seafood quiche, seafood crepes, steamed clams, seafood omelette, and shrimp fettuccine. Prices range from \$3.95 to \$6.95.

7. Applicant is installing a mesquite wood cooker in the premises. Mesquite grilling imparts a distinctive flavor to meat and seafood not available from other cooking materials. Applicant also is installing an oyster and seafood selection and display bar.

8. If a DA license is granted, Applicant intends to add two lounge areas to the premises. One seating 22 will be inside the restaurant, and another seating 28 will be in an outside open deck added on to the existing structure. These additions will increase the premises' seating capacity to 213.

9. The restaurant's decor features a nautical theme established by a number of large color photos of the Oregon coast, by wallpaper designs, and by etchings of a sailing vessel on glass doors and panels.

10. The atmosphere and price structure of Newport Bay are calculated to attract family and business-oriented patrons, which will also appeal to mall shoppers by its emphasis on food rather than liquor. No entertainment is offered or planned.

11. Newport Bay's patrons are drawn from mall business-people, Oregon and Washington shoppers, Hayden Island residents, and travelers staying at the Red Lion and Thunderbird motels located on the Island. Its location in the Jantzen Beach Center provides it with a natural market area not definable by a fixed-mile radius.

12. Hayden Island has about 1,000 full-year residents; mall businesses employ about 1,400 people; the Red Lion and Thunderbird have a total of 352 rooms, accommodating an average of 600 people per day. The motels' guests on the average eat only one meal a day at motel dining facilities.

13. There are four existing DA outlets on Hayden Island: Mr. C's Hippopotamus, Waddle's Drive-In, Red Lion Motor Inn, and Thunderbird Motor Inn. There is one Dispenser Class B (DB)

license (Hayden Island Yacht Club) and one Seasonal D license (M/V Great River Explorer) effective May-October. None of the DA licensees are similar to the Newport Bay in price, atmosphere or food service.

14. Off the Island, but within three miles from Applicant, are 11 DA outlets. These include concession services at Portland Meadows and the Expo Center, Winner's Circle, Red Steer Cafe, Jubitz Truck Stop, Elmer's Pancake House, Kenton Club, Tiny's Cafe, The Stone Pony, Mel Osbeck's Restaurant, and Lung Fung Restaurant. Of these, only Elmer's Pancake House and Lung Fung cater to family-oriented diners. The majority of the other premises feature live and or loud entertainment, and appeal to a discrete clientele.

15. Distribution of comparative sales figures are as follows:

	<u>AVERAGE GROSS SALES</u>	<u>AVERAGE FOOD SALES</u>	<u>FOOD RATIO</u>
Multnomah County dispenser licensees	\$56,401	\$36,806	65%
Newport Bay actual 11/82 - 5/83	43,423	41,664	96%
Newport Bay projected	77,458	60,667	78%

Newport Bay's existing food sales average is 13 percent higher than the county average for outlets already dispenser-licensed.

16. Applicant based its projected sales on the figures from its Washington Square Newport Bay Restaurant, which has an identical menu and atmosphere. The Washington Square outlet seats 179, according to License Division figures. Applicant's

projected sales averages are quite close to actual sales average for April, 1982 through March, 1983 in Washington Square. The projection is slightly higher to account for differences between the two locations which are likely to attract more patrons to Hayden Island due to its proximity to the river and the fact that the Hayden Island restaurant is free-standing and separated from the enclosed shopping mall by 100 yards.

17. The only other dispenser licensees offering an open oyster/seafood bar are located between 12 and 25 miles from Applicant; they do not offer mesquite grills. Two dispenser outlets in the metro area offering mesquite grilling are 12 and 20 miles from Applicant. One of these is Father's in downtown Portland, which has a higher price range than Applicant, and also features live entertainment and caters to a singles clientele. The other is Brannigan's in Beaverton Town Square, which does not emphasize any particular kind of food.

18. Applicant has submitted letters in support of its application from Washington Square mall management, and Hayden Island developers and businesses. Because of its menu and atmosphere, Newport Bay is uniquely attractive on the Island to businesspeople located there.

19. As of June 22, 1983 the Commission had 55 DA and DB licenses available for issuance.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The existence of sufficient licensed premises in the locality set out in an application shall weigh against granting the application. For purposes of this section, the applicant's community will be a 10-mile radius for dispenser licenses and a two-mile

radius for other licenses, unless the applicant establishes that a substantial portion of the patronage of the premises is or would be from a larger or smaller area. OAR 845-05-030(1).

Applicant's average food sales without a dispenser license exceed those of Multnomah County dispenser outlets by 13 percent. Because of Applicant's unusual location its market community cannot be determined by usual methods. Applicant's patrons include Washington shoppers and Island motel guests as well as Portland-area residents. Its food sales volume indicates that the four existing DA outlets in the area are insufficient to meet public demand. The Commission concludes that this criterion does not weigh against granting the application.

2. Unfavorable consideration may be given to an applicant if the applicant's premises will provide lesser services, facilities and economic benefit to the area or to the general public, as indicated by actual or reasonably projected number of patrons served, seating capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities, or other such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(3)(f).

Applicant's existing average food sales already exceed those of the county as a whole. Although its projected sales figures are ambitious, they are not unreasonable. Their basis is the sales experience of a nearly identical outlet elsewhere in the Portland area. The salient differences between the two tend to enhance the potential of the Hayden Island location over that of the Washington Square site. The Hayden Island restaurant has greater seating facilities, a substantial number

of motel guests within walking distance, and draws people having water-or river-related sports interests. Applicant offers three full meals daily and is open from 7:00 a.m. to 10:00 p.m., seven days a week. The Commission concludes that this criterion does not provide a basis for unfavorable consideration.

3. Preference for issuance of a dispenser license will be given to applicants who provide dining service or atmosphere which is unique or substantially different in quality, quantity or type from that offered by other licensees within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other characteristics. OAR 845-05-040(2)(b).

Applicant's combination of services and amenities is unique in a 20-mile radius. It offers a wide variety of seafood, mesquite cookery, outdoor seating and an atmosphere conducive to family and business gatherings at moderate prices. It has provided a place on the Island for business lunches that did not previously exist. The Commission concludes that this criterion provides a preference for licensing.

ULTIMATE CONCLUSIONS OF LAW

A DA license should be granted because there is no basis for unfavorable consideration, and a preference for licensing has been established under OAR 845-05-040(2)(b) (unique or substantially different service and atmosphere).

FINAL ORDER

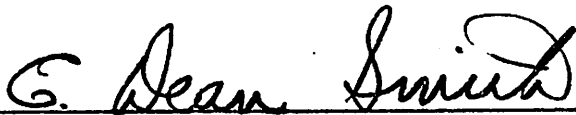
It is hereby ordered that the application for a Dispenser Class A (DA) license by Pacific Coast Restaurant Merchants,

Ltd., at Newport Bay Restaurant, 11950 N. Channel, Portland, Oregon be GRANTED with the following conditions:

1. License shall not be effective until construction of both lounge areas is complete.
2. Construction of lounge areas shall be complete within 180 days following grant of the license.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 18th day of July, 1983.



C. Dean Smith
C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.