

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for a	)	
Dispenser Class A (DA)	)	
License by:	)	AMENDED
	)	FINAL
Moki, Inc.	)	FINDINGS OF FACT,
LAKE OF THE WOODS RESORT	)	CONCLUSIONS OF LAW,
Box 950, Harriman Route	)	AND ORDER
Klamath Falls, Oregon 97601	)	
-----	)	
Klamath County	)	

A hearing in the above matter was held on the 23rd day of February, 1983 and the 7th day of April, 1983, in Klamath Falls, Oregon, before Hearings Examiner Douglas Crumme'. The record of the hearing was held open through April 17, 1983 for the receipt of additional documentary evidence from the Applicant. The Applicant appeared in person and was represented by Bradford J. Aspell, Attorney at Law. The Commission was not represented by legal counsel.

The Commission issued a Final Order in this matter on June 20, 1983. The Applicant appealed to the Oregon Court of Appeals. The Court reversed and remanded the Commission's Order. Moki, Inc. v. Oregon Liquor Control Commission, 68 Or App 800, 683 P2d 159 (1984). The Commission, having reconsidered the record of the hearing, the Proposed Order of the Hearings Examiner, the entirety of the Criteria for the Issuance and Maintenance of Licenses, applicable statutes and regulations, and the decision of the Court of Appeals in Moki, supra, enters the following:

## FINDINGS OF FACT

1. Moki, Inc. has applied for a Dispenser Class A (DA) license at the LAKE OF THE WOODS RESORT, P.O. Box 950, Harriman Route, Klamath Falls, Oregon. The Applicant was first licensed by the Commission at the Lake of the Woods Resort on June 15, 1982 with Restaurant, Package Store and Seasonal Dispenser licenses.

2. The Commission's Regulatory Staff Committee has recommended that the Applicant's application be refused, citing the following:

- a. ORS 472.160(1) (not demanded by public interest or convenience).
- b. OAR 845-05-040(3)(f), OAR 845-05-040(1), and OAR 845-05-040(2)(a) (whether applicant's premises will provide greater 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).
- c. OAR 845-05-040(2)(c) and OAR 845-05-030(1) (public adequately served by existing dispenser outlets in the applicant's community).
- d. OAR 845-05-040(3)(b) (applicant will provide primarily fast foods, short order foods, such as hamburgers, sandwiches, pancakes, eggs, and pizza or other foods with which distilled liquor drinks are not normally ordered).
- e. ORS 472.110(4) (quota).
- f. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 534 P2d 204 (1975).

- g. ORS 472.114 (preference for licensure indicated where applicant's premises are located in a rural unincorporated area and where an applicant is located in a rural unincorporated area has seating for less than 100 persons).

(Commission's Exhibit D.)

3. The Lake of the Woods Resort is located at Lake of the Woods, approximately 1.5 miles off of Highway 140, in the mountains halfway between Klamath Falls and Medford.

4. The Lake of the Woods Resort includes a lodge with a dining room and game room, a marina, a small grocery store, and five cabins. In addition, the Applicant is presently remodeling the upstairs of the lodge to provide seven sleeping rooms for overnight guests.

5. The Applicant's 1983 Seasonal Dispenser's license has been granted for the period from May 15 through December 15, 1983.

6. The lodge's game room is separated by walls and doors from the dining room. The game room contains one pool table, two video games, two pinball machines and a jukebox.

7. The Lake of the Woods' dining room has seating for 64 persons. There is seating for 28 persons in the game room.

8. The Lake of the Woods does not have a bar.

9. The Applicant serves the full menu in the game room.

10. The Applicant serves banquets and groups in its game room and in its dining room. Approximately 15 to 20 banquets

have been held at the premises since the Applicant opened on June 15, 1982.

11. The Applicant's dining room has large picture windows with a scenic view of the Lake of the Woods.

12. The decor of the Applicant's dining room features finished log walls, wood paneling, wood beams and finished wood tables and chairs. There is a large fireplace in one corner of the dining room.

13. During the winter, the Lake of the Woods Resort dining room is open from 9:00 a.m. until 6:00 p.m. on Wednesday, Thursday, Friday and Sunday, and from 9:00 a.m. until 8:00 p.m. on Saturday. During the winter the premises is closed on Monday and Tuesday. During the summer the dining room hours are from 7:00 a.m. to 9:00 p.m., seven days a week.

14. The Lake of the Woods Resort has separate winter and summer menus.

15. The single-page winter menu includes breakfast items, hamburgers, sandwiches, side orders, full meals and beverages. The non-breakfast items on the winter menu include the following: hamburger (\$2.25), cheeseburger (\$2.50), hot dog (\$1.25), deluxe cheeseburger with fries (\$3.25), deluxe hamburger with fries (\$3.00), chiliburger (\$3.90), grilled ham and cheese sandwich (\$3.00), Reuben sandwich (\$3.85), soup (\$1.00 and \$1.75), small salad (\$1.25), chili (\$1.25 and \$2.25), top sirloin steak (\$8.50), steak sandwich (\$5.50), and bowl of beef

stew and bread (\$3.75). In addition to the above, the Applicant prepares two dinner specials each day. The specials have included spaghetti, corned beef and cabbage, turkey dinner, chicken, and roast beef.

16. The Applicant's summer menu includes breakfast items, hamburgers, sandwiches, side orders and dinners. Dinners on the Applicant's planned 1983 summer menu include the following: top sirloin steak (\$8.50), steak sandwich (\$5.50), stuffed shrimp and filet of sole (\$7.95), low-cal plate (\$3.50), fried chicken (\$5.25), and chicken fried steak (\$6.25). In addition to the above, the Applicant also offers two dinner specials each day during the summer.

17. During both the summer and winter the Applicant features a prime rib special on Saturday evenings. The prime rib special costs \$7.95. The Applicant serves as many as 80 portions of their prime rib special on a busy summer Saturday.

18. The Applicant's sales since opening at the Lake of the Woods Resort in 1982 have been as follows:

	<u>ACTUAL SALES</u>	
<u>MONTH</u>	<u>FOOD SALES</u>	<u>TOTAL SALES</u>
<u>1982</u>		
June	\$ 5,740.41	\$ 6,182.98
July	11,556.34	12,884.30
August	11,162.32	12,700.10
September	5,249.98	6,537.50
October	2,331.50	3,120.23
November	1,968.86	2,900.70
December	2,116.36	2,649.51

<u>1983</u>		
January	3,487.05	4,600.41
February	3,329.00	4,035.40
<u>March</u>	<u>2,161.16</u>	<u>2,441.35</u>
Average	\$ 4,910.30	\$ 5,805.25

19. The Applicant has received numerous requests from its patrons for cocktails rather than beer and wine. Requests for cocktails have in particular come from dinner guests.

20. During a recent one-year period, DA outlets in Klamath County averaged \$19,113 per month in food sales and \$28,688 per month in total food and alcoholic beverage sales.

21. Klamath County has a population of 59,200. Klamath County contains 28 DA outlets, six Dispenser Class B (DB) outlets and two Dispenser Class C (DC) outlets.

22. The nearest DA, DB and DC outlets to the Lake of the Woods Resort are either approximately 40 miles east in Klamath Falls or 40 miles west in Medford.

23. The nearest Seasonal Dispenser outlet to the Lake of the Woods is the Rocky Point Resort, located 13.3 miles east in the Rocky Point area on Klamath Lake. The dates of Rocky Point Resort's Seasonal Dispenser license in 1983 will be from April 15 through September 15. Rocky Point Resort is not open during the winter.

24. An application is pending before the Commission for a Seasonal Dispenser's license at the Harriman Springs Resort located approximately 12 miles east of Lake of the Woods Resort in the Rocky Point area. The Harriman Springs Resort offers a

menu of steaks and chicken during its summer operations. The premises operates on a very limited basis or is closed during the winter, however.

25. Other than the Seasonal Dispenser's license at Rocky Point Resort, there are no dispenser outlets within 20 miles of the Lake of the Woods Resort.

26. A full-year DA license was issued by the Commission at the Lake of the Woods Resort from 1977 through 1980. However, the licensee during that period closed the premises for three months each winter.

A Seasonal Dispenser's license was issued to Haggei, Inc., at The Lake of the Woods Resort between June 1, 1981 and December 31, 1981. This licensee went out of business in December, 1981. The present Applicant then is the first Licensee in approximately the last six years to operate the Lake of the Woods Resort through the winter. The Applicant intends to continue operating the Lake of the Woods Resort through the winter.

27. The Lake of the Woods Resort is located at a relatively high elevation in the Cascade Mountains. The Resort consequently receives a considerable amount of snow and the Lake freezes over during the winter.

28. The Lake of the Woods Resort's patrons include persons who travel to the area for winter and summer recreational purposes as well as many of the local residents living in the Rocky Point area 12 miles east. Rocky Point has a permanent

population of about 150 persons. The population of the Rocky Point area approximately triples during the summer months.

29. Recreational activities at Lake of the Woods include fishing and boating during the ice-free months, hunting in the fall, and Nordic skiing, snowmobiling, ice skating and ice fishing in the winter.

30. The Lake of the Woods area and adjacent areas in the Southern Oregon Cascades have many miles of groomed or designated Nordic ski trails and snowmobile trails. A large number of persons visit the area for Nordic skiing and snowmobiling during the winter.

31. During the winter of 1982, the Applicant rented its marina building to two persons who operated a Nordic skiing shop. The ski shop offered rentals and ski lessons. The ski shop drew a large number of Nordic skiers to the Lake of the Woods Resort.

32. Pelican Butte is approximately 15 miles east of the Lake of the Woods Resort. A snowcat service tows downhill skiers to the top of Pelican Butte. Construction of permanent ski lift facilities on Pelican Butte has been discussed.

33. Patrons are seated at the Lake of the Woods Resort by a host or hostess. Food orders are served by a waiter or waitress. The Lake of the Woods dining room does not have an eating counter. Many of the dining room patrons linger at the premises for as long as an hour eating their food, enjoying the view, and perhaps having drinks before and after dinner.

34. The Applicant operates the Lake of the Woods Resort under a lease from the Winema National Forest. Fred Weaver, District Ranger of the Winema National Forest, anticipates future growth in winter recreational use of the area. (Applicant's Exhibit No. 8.) Mr. Weaver has written the Commission a letter indicating that a year-long liquor license at the Lake of the Woods Resort would better serve the public during the winter season. Mr. Weaver indicates that the present Applicant, Moki, Inc., has provided excellent public service at the Lake of the Woods Resort. (Applicant's Exhibit No. 9.)

35. The Commission has received letters in support of the issuance of a DA license to Moki, Inc. at the Lake of the Woods Resort from the following:

Tom and Beth Stout, Owners/Operators of Odessa Mercantile, Rocky Point

Robert and Katherine Sloane, Owners, Harriman Springs Resort, Rocky Point

Tim and Chris Courson, Part Owners, Fish Lake Resort

Matt and Glo Mansfield, Part Owners, Fish Lake Resort

Arthur Eggleston

Elaine Mikkelsen

Mrs. Raymond L. Bowman

Myrna C. Newcomb

Pamela Copelen and two other signers

Laurette Jirikovich and Tracy Reynolds, Operators,  
Lake of the Woods Nordic Skiing Center

36. The following individuals testified at the Applicant's hearing in support of license issuance:

Robert Sloan III, Owner, Harriman Springs Resort,  
Rocky Point

Billy Drumm, Rocky Point

Eugene Moneymaker, Rocky Point

Pamela Copelen, Rocky Point

Bill Cadman, Owner, White Pelican Resort, Rocky Point

John Symoniak, Rocky Point

Grace Easley, Rocky Point

Lowell Jaynes, Rocky Point

Francis Jirsa, Rocky Point

37. Approximately 750 persons have signed a petition in support of the issuance of a DA license to the Applicant at the Lake of the Woods Resort. Petition signers include many persons from throughout Southern Oregon, including residents of Klamath Falls, Ashland, Medford and Grants Pass. The petition was collected at the Lake of the Woods Resort. (Applicant's Exhibit No. 14.)

38. Lake of the Woods is about two-and-one-half miles long and one mile wide. There are 214 homes located along the Lake. In addition to the homes, there are about seven campgrounds at the Lake run by private organizations or by the Federal Government. The Federal Government operates two parks along the Lake with overnight camping facilities and an additional park for day use only.

39. The Lake of the Woods Resort is located in a rural unincorporated area.

40. Highway 140 leading to Lake of the Woods from Klamath Falls and Medford is kept open by road crews on a 24-hour basis. The road has never been closed due to weather conditions.

41. As of April 28, 1983, the Commission had 64 DA and DB licenses available for issuance. On this same date there were 25 DA and four DB license applications pending before the Commission.

42. The Commission takes official notice that on February 28, 1983, the Commission issued a DA license to the Seasonal Dispenser's licensee at the Lemolo Lake Resort. The Lemolo Lake Resort is similar to the Lake of the Woods resort in that it is a lakeside resort at a remote location in the Cascades. The Lemolo Lake Resort has a more extensive dinner menu than the Lake of the Woods. But Lemolo Lake Resort's recent average monthly total sales (\$2,904) are much lower than the Lake of the Woods (\$5,805.25). In the Commission's Final Order in the Lemolo Lake Resort matter, the Commission concluded a DA license should be granted because:

"Applicant's premises is isolated, because Applicant's two distinct seasons cannot be accommodated by a Seasonal Dispenser's license, and because Applicant's premises meets the qualifications for community size and seating capacity set out in ORS 472.114 as a basis for preference . . . ."

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).

There are insufficient dispenser outlets in the locality of the Lake of the Woods Resort. There are no dispenser outlets within 10 miles of the premises. The nearest dispenser outlet is the Rocky Point Resort, a Seasonal Dispenser outlet located 13.3 miles to the east. The Rocky Point Resort is closed during the winter months. Beyond the Rocky Point Resort, the nearest dispenser outlets to the Lake of the Woods Resort are located approximately 40 miles distant either in Klamath Falls or in Medford. Many of the persons that patronize the Lake of the Woods Resort visit the area for specific recreational purposes such as fishing, boating, hunting, skiing and snowmobiling. As such, the dispenser outlets in Klamath Falls and Medford are not sufficient for persons visiting the Lake of the Woods area.

The present lack of a dispenser outlet within 40 miles of the Lake of the Woods that is open during the winter overcomes the presumption against license issuance stated under OAR 845-05-040(2)(c) due to the fact that there is more than one dispenser outlet per 2,000 people in Klamath County.

The lack of sufficient outlets in the Applicant's community under OAR 845-05-030(1) weighs in favor of license issuance.

2. An application for a DA license may be granted or denied on the basis of a comparison with existing DA licenses in the same city or county or a comparison with other pending dispenser's applications. OAR 845-05-040(1). Preference in licensing may be given to applicants providing greater economic benefit to the area or 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, entertainment or such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(2)(a).

The Applicant's average sales since going into business on June 15, 1982 have been well below the recent average sales of DA outlets located in Klamath County. There is a reasonable likelihood that the issuance of a full-year DA license at the Lake of the Woods Resort would result in some increase in sales at the premises. However, the Applicant's small menu would probably serve to limit any increase in gross sales. The Applicant's comparatively low sales indicate a significant lack of preference for license issuance under OAR 845-05-040(2)(a).

3. Unfavorable consideration may be given to an applicant if the applicant will provide primarily fast foods, short order foods, such as hamburgers, sandwiches, pancakes, eggs, and pizza, or other foods with which distilled liquor drinks are not normally ordered. OAR 845-05-040(3)(b).

The Applicant does not emphasize fast foods so much as the Applicant simply has a small menu. There are some full meals

and a small number of additional items including hamburgers, sandwiches and side orders. The small menu seems to have more to do with the limited patronage at the premises than an attempt by the Applicant to push fast foods. Items on the Applicant's winter menu that are not fast foods include top sirloin steak (\$8.50), steak sandwich (\$5.50), bowl of beef stew and bread (\$3.75), the Applicant's two daily dinner specials and the Saturday evening prime rib special. There are several additional dinners offered in the summer. Patrons are seated at the premises by a host or hostess. Food orders are served by waiter or waitress. The Commission concludes that the premises does not emphasize fast foods and that disfavor is not shown under OAR 845-05-040(3)(b).

4. 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).

The Lake of the Woods Resort has been shown to offer a different dining atmosphere in comparison to existing dispenser outlets within 20 miles to the extent that the Lake of the Woods Resort would be the only dispenser outlet in this area that is located in the snow country to serve winter skiers, snowmobilers, and other visitors. Preference for license issuance is therefore indicated under OAR 845-05-040(2)(b).

5. Preference in licensing may be given to applicants where applicant's premises are located in a rural unincorporated area or in an incorporated area with a population of less than 25,000 or where applicant's premises are located in such an area and have a seating capacity for 100 or fewer patrons. OAR 845-05-040(2)(d) and (e).

Applicant has seating for fewer than 100 persons. Applicant is located in a rural unincorporated area. Preference for licensure is therefore indicated under OAR 845-05-040(2)(d) and (e).

#### ULTIMATE CONCLUSIONS OF LAW

The Commission's licensing criteria are in some conflict with respect to this application. The Applicant's low sales and limited menu indicate disfavor for license issuance. On the other hand, the absence of another dispenser outlet during the winter within 40 miles of this winter recreation area shows cause for license issuance. The Applicant intends to operate Lake of the Woods Resort on a year-around basis and provide the only food and distilled spirits services available in the winter to persons visiting the Lake of the Woods area for skiing, snowmobiling, ice skating and ice fishing. Preference is also shown under OAR 845-05-040(2)(d) and (e) and under OAR 845-05-040(2)(b) because this premises would necessarily be unique.

The question ultimately becomes whether there is sufficient demand during the months not covered by the existing Seasonal license to justify issuance of one of the limited number of full-year DA licenses. The Commission concludes that

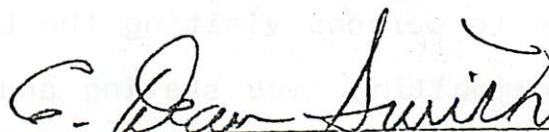
license issuance is indicated by the present record, especially in view of the procedural history in this case. The Commission, however, gives notice that this analysis may not be followed in the future. In future cases, even where two seasons cannot be accommodated by a Seasonal Dispenser license, we may, nevertheless, deny a DA license if the applicant will provide substantially lesser services than city and county averages as indicated by gross sales, such as in the Lemolo Lake Resort case (see Finding of Fact No. 42), and in the present case.

FINAL ORDER

It is hereby ordered that the application by Moki, Inc. for a Dispenser Class A (DA) license at Lake of the Woods Resort, P.O. Box 950, Harriman Route, Klamath Falls, Oregon, be GRANTED.

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

Dated this 6th day of December, 1984.



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.