

STATE OF HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawai'i 96819

June 8, 2018

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

**SUBJECT: DENIAL OF REQUEST FOR CONTESTED CASE HEARING BY  
CHARLES CARROLL REGARDING APRIL 13, 2018 DECISION TO  
ISSUE A REQUEST FOR PROPOSALS FOR DEVELOPMENT OF  
PUBLIC LANDS AT THE ALA WAI SMALL BOAT HARBOR  
REGARDING TAX MAP KEY NOS.: (1) 2-3-037 AND (1) 2-6-010.**

**SUMMARY:**

Mr. Charles Carroll requests a contested case hearing concerning the April 13, 2018 Board of Land and Natural Resources (Board) decision to authorize the Division of Boating and Ocean Recreation (DOBOR) to issue a request for proposals (RFP) for development of public lands at the Ala Wai small boat harbor regarding tax map key numbers: (1) 2-3-037 and (1) 2-6-010. DOBOR recommends that the Board deny the contested case hearing request on the basis that Mr. Carroll is not entitled to a contested case because he did not comply with the deadline requirements of Hawai'i Administrative Rule (HAR) § 13-1-29.

**BACKGROUND:**

At the Board's regularly scheduled April 13, 2018 meeting, as Agenda Item J-4, DOBOR requested approval from the Board to move forward with issuance of an RFP for redevelopment of public lands at the Ala Wai small boat harbor (AWSBH). DOBOR's RFP process will begin with an invitation to submit proposals for redevelopment of AWSBH. The Chairperson will form a selection committee to recommend an eligible applicant to the Board, and the Board will decide on approval or rejection of the applicant. If the Board approves the applicant, DOBOR will conduct negotiations for a development agreement and proposed lease.

The Board voted at the April 13, 2018 meeting to approve Item J-4 as submitted, which contained the following: (1) a finding that disposing of a lease for AWSBH through negotiation is in the public interest; (2) authorizing DOBOR to issue an RFP for redevelopment of public lands at AWSBH regarding tax map key numbers: (1) 2-3-037 and (1) 2-6-010; and (3) authorizing cancellation of revocable permits for AWSBH and delegating authority to the Chairperson to determine when those cancellations will take effect. No individuals at the April

13, 2018 meeting requested a contested case on Item J-4. Mr. Carroll filed a petition for contested case hearing on Item J-4, which the Board received on April 27, 2018 (*see Exhibit 1*).

DISCUSSION:

HAR § 13-1-29(a) provides in part:

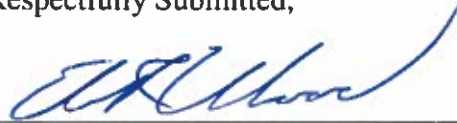
"[Persons other than the Board] must both request a contested case and petition the board to hold a contested case hearing. An oral or written request for a contested case hearing must be made to the board no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition. An agency or person so requesting a contested case must also file (or mail a postmarked) written petition with the board for a contested case no later than ten calendar days after the close of the board meeting at which the matter was scheduled for disposition. For good cause, the time for making the oral or written request or submitting a written petition or both may be waived."

Mr. Carroll did not meet the deadline requirements under HAR § 13-1-29(a). He did not request a contested case hearing orally or in writing before the conclusion of the April 13, 2018 meeting. Even if Mr. Carroll made a request for contested case at the April 13, 2018 meeting, the Board received his written request on April 27, 2018, which is four days late. Mr. Carroll provided no explanation for failing to meet the deadline requirements in HAR § 13-1-29(a). DOBOR staff therefore does not recommend waiver of the deadline requirements.

RECOMMENDATION:

DOBOR recommends that the Board deny Mr. Charles Carroll's petition for contested case hearing, pursuant to HAR § 13-1-29.1, on the basis that he is not entitled to a contested case hearing because he did not meet the submission deadline requirements under HAR § 13-1-29(a).

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources



STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:  
Department of Land and Natural Resources  
Administrative Proceedings Office  
1151 Punchbowl Street, Room 130  
Honolulu, Hawaii 96813  
Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
- All materials, including this form, shall be submitted in three (3) photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Charles Carroll	2. Contact Person Charles Carroll	
3. Address [REDACTED]	4. City Honolulu	5. State and ZIP HI 96815
6. Email [REDACTED]	7. Phone [REDACTED]	8. Fax [REDACTED]

B. ATTORNEY (if represented)		
9. Attorney Name Linda Paul	10. Firm Name	
11. Address [REDACTED]	12. City Honolulu	13. State and ZIP HI 96815
14. Email [REDACTED]	15. Phone	16. Fax

<b>C. SUBJECT MATTER</b>	
<b>17. Board Action Being Contested</b> Approving DOBAR to release RFP's to develop the Ala Wai Small Boat Harbor	
<b>18. Board Action Date</b> 4/13/2018	<b>19. Item No.</b> J4
<b>20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action</b> 171-11 states uses shall be consistent for the purpose the land was set aside. Non maritime development will cause extreme financial loss to property value. The subject redevelopment with extensive fast land uses in Act 197 of 2011 contradicts Ilikai agreement with State of Hawaii in Indentured Deed #196552 attached to titles. The lack of public input on the so called "Public Meetings" and closing down meetings without public input is a violation of due process.	
<b>21. Any Disagreement Petitioner May Have with an Application before the Board</b>	
<b>22. Any Relief Petitioner Seeks or Deems Itself Entitled to</b> Attorneys fee's and compensation of loss	
<b>23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest</b> Non maritime permitted uses by the Act 197 sessions law Hawaii 2011 violates the Public Trust Doctrine and deprives the public of harbor use. Special legislation targets the Ala Wai Small Boat Harbor and is unconstitutional per Hawaii law.	
<b>24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR</b> Attorney General testimony on HB 1988 H.D.1 relating to small boat harbors states the law must apply uniformly siting Sierra Club v. Dep't of Transp. 120 Hawaii 181, 214, 202 P.3d 1226, 1259 (2009)	

☒ Check this box if Petitioner is submitting supporting documents with this form.

☐ Check this box if Petitioner will submit additional supporting documents after filing this form.

Charles Carroll

Petitioner or Representative (Print Name)

  
Signature

4/25/2018

Date





**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1988, H.D. 1, RELATING TO SMALL BOAT HARBORS.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, February 28, 2018 **TIME:** 12:00 p.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Colin J. Lau, Deputy Attorney General

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Chair Luke and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill while noting the following legal concerns. Specifically, this bill may be subject to challenge as a special law concerning lands owned or under the control of the State and its political subdivisions in violation of article XI, section 5, of the Hawai'i Constitution.

This bill directs the Department of Land and Natural Resources (DLNR) to lease fast lands and submerged lands at the Ala Wai boat harbor using a request for proposals process for public-private development, management, and operation, pursuant to section 200-2.5, Hawaii Revised Statutes. The bill further directs that such leases have only certain enumerated permissible uses with structures that have a height limitation of fifteen feet or forty-five feet.

There is a potential that the bill could be subject to challenge as an exercise of legislative power over government lands by special law because it designates a specific, identifiable property to be disposed of by lease to a private entity other than a political subdivision of the State. Article XI, section 5, of the Hawai'i Constitution provides: "The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof." A general law must apply uniformly. *Sierra Club v. Dep't of Transp.*, 120 Hawai'i 181, 214, 202 P.3d 1226, 1259 (2009). We recommend

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Twenty-Ninth Legislature, 2018  
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that subsection (a), found on page 1, line 3 to line 5, be amended to provide for disposition by lease for all state small boat harbors, or such other general criteria that do not identify a named small boat harbor property (e.g., all small boat harbors located on the south shore of a given island).

We also make the following comment that the bill should reference subsection (c) contained in section 8 of Act 197, Session Laws of Hawaii 2011, such that the bill proposes to amend the permissible uses indicated in that provision.

We respectfully ask the Committee to revise this bill accordingly.

Thank you for the opportunity to testify.