

**From:** [Karen R Boyer](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Please accept this testimony and copy of contested case hearing from Karen Boyer, community member  
**Date:** Monday, December 4, 2023 3:27:51 PM  
**Attachments:** [J-7 deny direct issuance; Contested Case Hearing submitted to DLNR 8-21-23.pdf](#)

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Dear esteemed BLNR Board Members:

Please note my strong opposition to item J-7 to renew the Secure Parking contract for the Ala Wai Small Boat Harbor area.

**Parking Access and Signage:**

There are several important issues at hand and include further research into DOBOR and the unfulfilled [2008 negotiated Ala Wai Small Boat Harbor](#) recreational access agreement to keep parking accessible for the public for open ocean access

Between 2007 and 2008, during a state-funded mediation process, hundreds of citizens gave their testimony. The Board of Land and Natural Resources member fully addressed this matter in 2008 and all parties agreed to the maintenance (saving) of the 300 free parking stalls in this well documented and established agreement. DOBOR immediately took ‘possession’ of the 249 parking stalls, yet they never delivered on their side of the negotiated agreement! DOBOR in the formal agreement in 2008 (15 years ago) including to:

1. Provide standard parking management. DOBOR agreed to monitor the 6-hour recreational time limit by providing parking attendants who issue citations, parking signage on poles, and ground striping. Provide clear signage and informational actions to prevent workers parking the 300 recreational stalls.
2. Provide an ad hoc committee (Community and DOBOR Staff) to continue to refine parking signage and implement policies to improve and protect this beach access for the public.

**Corrupt Practices in towing:**

Another significant concern includes the Instant Towing policies of DOBOR/DLNR/BLNR as they are a corrupt process wherein only cash is allowed as payment and no records are available. Predatory towing practices are illegal and DLNR allows it to happen on a daily basis at the Ala Wai Small Boat Harbor.

We remain vigilant in requesting DOBOR to fulfill their promises from 2008.

I have also attached a copy of my contested case hearing for the same issue.

Thank you Board Members for the opportunity to submit testimony on these issues.

Karen R. Boyer, community member

Karen R. Boyer, RN, MN, FNP  
Kapi'olani Community College  
Professor of Nursing/Interim Dean of Health Academic Programs  
Ilima 206  
808.734.9569 (o)

**From:** [Jill Chapman](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Item J-7: Strong Opposition to Secure Parking LLC Contract Exceeding 6 Months  
**Date:** Monday, December 4, 2023 6:51:10 PM

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Aloha Board Members,

**The community needs 6 months to further research DOBOR and the unfulfilled 2008 negotiated Ala Wai Small Boat Harbor recreational access agreement.**

**We must END the Instant Towing policies of DOBOR/DLNR/BLNR. Predatory towing practices are illegal, and DLNR allows it to happen on a daily basis at the Ala Wai Small Boat Harbor.**

I am writing to share my experience regarding the towing incidents that occurred at the AWSBH with both myself and ohana. This experience has not only been stressful but has also raised concerns about the practices of the towing service, specifically Mr. Tow.

Ohana Experience: My friend and many others have had their cars towed from the AWSBH parking area. Under the impression that their parking was valid and was surprised to find their car towed. The stress of unexpectedly losing access to personal vehicles and personal items and the scramble to arrange alternative transportation was significant. Car was towed despite beliefs that they were parked legally as signage was illegible. Additionally being in the car at the time the tow truck was in the midst of hooking up the car and refusing to release my vehicle. The anxiety and inconvenience caused by these incidents were considerable. This is a predator practice, having tow trucks waiting on standby to the exact second.

Issues with Retrieving the Vehicle and Payment: In many cases, when we approached Mr. Tow's office to retrieve our vehicles, we were informed that the payment had to be made in cash. This requirement was particularly troubling given that, as per the law established in 2020, credit card payments should be accepted. The atm machine in the office only allows minimal cash amounts with a \$20.00 fee each time, making a person have to do multiple transactions. This not only added to the inconvenience but also raised questions about the adherence of Mr. Tow to legal standards.

The combination of unexpected towing, the insistence on cash payments, and the inability to challenge the tow has created a distressing situation for both me and my community. It has not only caused financial strain but also significant emotional stress, disrupting our daily lives and schedules.

**Between 2007 and 2008, during a state funded mediation process, hundreds of citizens gave their testimony. The Board of Land and Natural Resources member fully addressed this matter in 2008 and all parties agreed to the maintenance (saving) of the 300 free parking stalls in this well documented and established agreement. DOBOR immediately took 'possession' of the 249 parking stalls, yet they never delivered on their side of the negotiated agreement! DOBOR in the formal agreement in 2008 (15 years ago) were to:**

**1. Provide standard parking management. DOBOR agreed to monitor the 6-hour recreational time limit by providing parking attendants who issue citations, parking signage on poles, and ground striping. Provide clear signage and informational actions to**

**prevent workers parking the 300 recreational stalls.**

**2. Provide an ad hoc committee (Community and DOBOR Staff) to continue to refine parking signage and implement policies to improve and protect this beach access for the public.**

Our community has been standing by requesting DOBOR's to fulfill its promises in 2008. It's 2023, how long shall we wait?

Mahalo Board Members for the opportunity to submit testimony on these issues.

Jill Chapman



**From:** [Marija Colic](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Item J-7: Strong Opposition to Secure Parking LLC Contract Exceeding 6 Months  
**Date:** Monday, December 4, 2023 2:29:11 PM

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Dear board members,

I am writing to express my concerns regarding the DOBOR actions.

The community needs 6 months to further research DOBOR and the unfulfilled 2008 negotiated Ala Wai Small Boat Harbor recreational access agreement.

We must END the Instant Towing policies of DOBOR/DLNR/BLNR. Predatory towing practices are illegal, and DLNR allows it to happen on a daily basis at the Ala Wai Small Boat Harbor.

Between 2007 and 2008, during a state funded mediation process, hundreds of citizens gave their testimony. The Board of Land and Natural Resources member fully addressed this matter in 2008 and all parties agreed to the maintenance (saving) of the 300 free parking stalls in this well documented and established agreement. DOBOR immediately took 'possession' of the 249 parking stalls, yet they never delivered on their side of the negotiated agreement! DOBOR in the formal agreement in 2008 (15 years ago) were to:

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2. Provide an ad hoc committee (Community and DOBOR Staff) to continue to refine parking signage and implement policies to improve and protect this beach access for the public.

Our community has been standing by requesting DOBOR's to fulfill its promises in 2008. It's 2023, how long shall we wait?

Mahalo Board Members for the opportunity to submit testimony on these issues.

--



Marija Čolić, PhD, BCBA, LBA  
Assistant Professor  
Department of Special Education  
University of Hawai'i at Mānoa  
Email: [colic@hawaii.edu](mailto:colic@hawaii.edu)  
Office: UA 4, RM 7  
Virtual office: [Čolić's V-office](#)

Respecting the 'āina (land) we gather upon, I acknowledge the 'āina (land) of West Hall in Pa'ākea, in the ahupua'a of Mānoa. This territory is revered by Native Hawaiian/kanaka maoli/kanaka as Papahānaumoku, their ancestral grandmother. I recognize Queen Lili'uokalani's sacrifice, yielding Hawaiian lands under duress and having Hawai'i as an illegally occupied state of America.

I recognize my kuleana – both my responsibilities as well as my dear privileges – to care for this 'āina for the many generations yet to come. I also recognize my kuleana to invite each of you to help me in this most important endeavor and I do so at this time.

**From:** [Arlen Flanagan](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Item J-7: Strong Opposition to Secure Parking LLC Contract Exceeding 6 Months  
**Date:** Monday, December 4, 2023 10:20:02 PM

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**Dear Board Members,**

**We must END the Instant Towing policies of DOBOR/DLNR/BLNR. Predatory towing practices are illegal, and DLNR allows it to happen on a daily basis at the Ala Wai Small Boat Harbor.**

**Between 2007 and 2008, during a state funded mediation process, hundreds of citizens gave their testimony. The Board of Land and Natural Resources member fully addressed this matter in 2008 and all parties agreed to the maintenance (saving) of the 300 free parking stalls in this well documented and established agreement. DOBOR immediately took 'possession' of the 249 parking stalls, yet they never delivered on their side of the negotiated agreement! DOBOR in the formal agreement in 2008 (15 years ago) were to:**

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- 2. Provide an ad hoc committee (Community and DOBOR Staff) to continue to refine parking signage and implement policies to improve and protect this beach access for the public.**

**Our community has been standing by requesting DOBOR's to fulfill its promises in 2008. It's 2023, how long shall we wait?**

**Mahalo Board Members for the opportunity to submit testimony on these issues.**

--

Arlen Flanagan  
Cell/WhatsApp: 916 300-2992  
[ArlenFlanagan@gmail.com](mailto:ArlenFlanagan@gmail.com)

**From:** [Kari Goodbar](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Item J-7: Strong Opposition to Secure Parking LLC Contract Exceeding 6 Months  
**Date:** Monday, December 4, 2023 4:58:52 PM

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December 5<sup>th</sup>, 2023 request for Zoom attendance for the J-7 meeting December 7<sup>th</sup>.

To Chair Dawn Chang, and to the Board of Land and Natural Resources.

**Item J-7: I am in Strong Opposition to Secure Parking LLC receiving a contract. If they must have a contract that it not exceed June 30, 2023.**

Thank you for your time at this meeting to review the history of the Ala Wai. We must look back to at least to the early 1900's when the Ala Wai was dredged to understand why it is so important for recreational use only.

My request for a contested case hearing was on 8-21-2023 and has not been heard. I do not believe it is correct to have a vote on J-7 till this is settled.

The AWSBH parking and recreational use only is a settled matter. I am asking the BLNR to have DOBOR uphold the agreement BLNR created in 2008.

1957 Please see the records of the territorial Governor creating the Ala Wai Area for recreational use only. Aerial photo and recent aerial photo showing with land erosion.

2008 Please see the J-1 1-25-2008 BLNR meeting J-1 5-23-2008 BLNR meeting. New Parking Plan agreement Plan A was adapted as was the agreement that 249 parking meters would create \$800,000 a year and these funds would be used in free recreational parking upkeep and monitoring. State paid mediation service to create this recommendation to the BLNR Board 5-22-2008 and they ordered DOBOR to agree to several important action items. BLNR ordered that the community surrender 249 free parking stalls to generate money for overall upkeep of AWSBH and to create an ad-hoc community group and this support has not been created, or delivered to the people who use the area.

2020 - Please see the Contract with Mr. Tow showing they did not have to have a bond and no requirement to report back to the state how many daily tows they are doing at the AWSBH.

2020 - Please see the State contract with Diamond Parking that the Board approved saying that would be a flat income not to exceed \$10,000. a month (or \$120,000. a year).

2022-2023 -Please see sample of Secure Parking financial monthly report to DOBOR.

2022 Please see emergency (covid 19) contract with Secure Parking that does not uphold the BLNR required direction of a flat fee of \$10,000. a month of vendor profit. Also, Secure Parking LLC did not have the minimum 5 years of experience at the time the contract was awarded. Currently Secure Parking is responsible for monitoring the recreational parking, yet there is no evidence that Secure Parking monitors the recreational area at all.

2022 and 2023 Please see Secure Parking contract stating 20 percent of gross receipts nothing about allowed adjusted gross receipts. The Monthly Statements trend shows a possible refund to the State.

2023, Please see Senate Bill 1034, Introducer(s) INOUYE, CHANG, LEE, MCKELVEY, SHIMABUKURO, San Buenaventura, Wakai. Report title Ala Wai Boat Harbor; Public Parking; Free Stalls. Requires the maintenance of at least three hundred parking stalls at Ala Wai Boat Harbor at no cost for recreational ocean access and for the practice of traditional and customary Native Hawaiian rights. Bill 1034 passed in a joint committee hearing of Water and Land and Committee on Hawaii Affairs. The measure would permanently make at least 300 parking stalls in and around the harbor free for people who want to access the ocean or perform Native Hawaiian cultural practices. 2/17/2023 report adopted; Passed Second Reading, as amended (SD 1) and referred to WAM. The bill was never scheduled for a hearing in the Senate Ways and Means Committee by the March 2, 2023 deadline.

8-11-2023 Please see the transcript from the BLNR video meeting from J-1

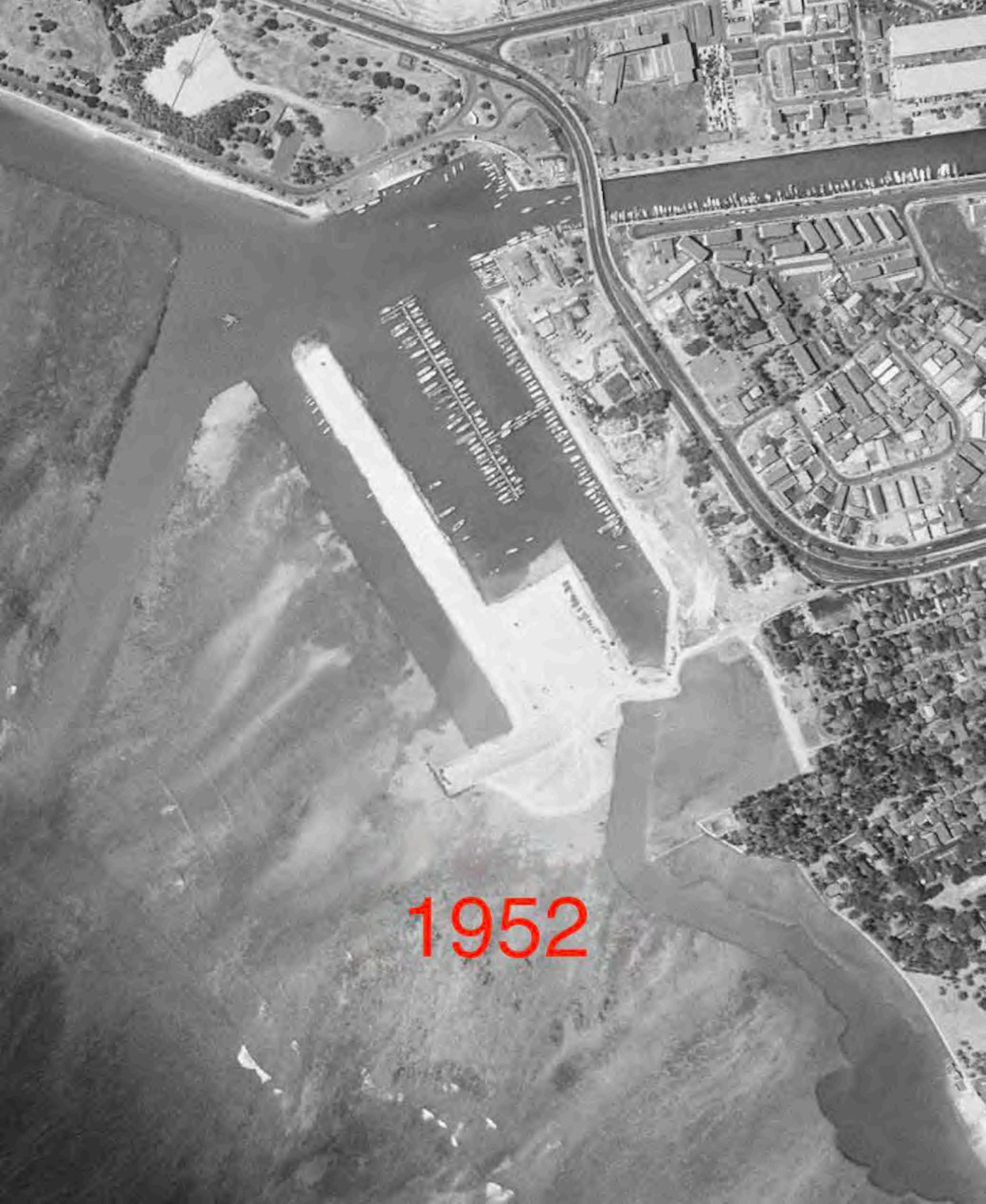
8-21-2023 Please see my request for a contested case hearing.

11-14-2023 Please see Waterway Coast Guard email from research

11-20-2023 Please see SENATOR LORRAINE R. INOUYE (D) research

11-21-2023 Please see Jason Redulla DOCARE research

12-5-2023 Written testimony by Maggie Hallahan to the board on J-7



1952







# Waikīkī Beach Sectors



WBSIDA  
Waikīkī Beach  
SPECIAL IMPROVEMENT  
DISTRICT ASSOCIATION

## WAIKĪKĪ BEACH SECTORS

Waikīkī Beach Improvement and Maintenance Program  
Environmental Impact Statement Preparation Notice (EISP)  
Honolulu, O'ahu, Hawai'i





THE TERRITORY OF HAWAII  
EXECUTIVE CHAMBERS  
IOLANI PALACE  
HONOLULU

July 8, 1957

FISCAL 1957

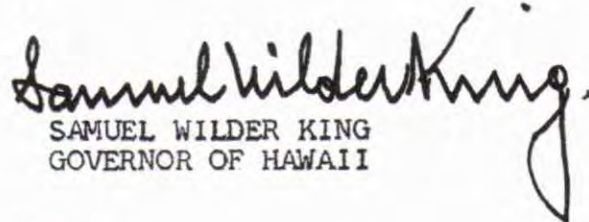
MEMORANDUM NO. 122

TO: Commissioner of Public Lands  
FROM: Governor of Hawaii  
SUBJECT: Transfer of land area at the boat harbor to  
the Board of Harbor Commissioners.

The question of transferring the land area at the boat harbor being created off the Ala Wai entrance to the Board of Harbor Commissioners has been pending for some time.

I have finally decided to transfer this land to the Board of Harbor Commissioners for use as a boat harbor with the understanding that no commercial leases or other extraneous activities will be authorized by the Board, with the exception, however, of granting a lease of a limited area of land to the Hawaii Yacht Club for the construction and operation of a club house.

Will you get together with the Chairman of the Board of Harbor Commissioners to delineate the area to be transferred and draft an executive order for that purpose.

  
SAMUEL WILDER KING  
GOVERNOR OF HAWAII

cc: Attorney General  
Board of Harbor Commissioners



# Setting Aside Land for Public Purposes

By this Executive Order, I, the undersigned, <sup>let</sup> Governor of the Territory of Hawaii, by virtue of the authority in me vested by paragraph q of Section 73 of the Hawaiian Organic Act, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes:

**FOR ALA WAI BOAT HARBOR, to be under the control and management of the Board of Harbor Commissioners.**

### ALA WAI BOAT HARBOR

Kalia, Waikiki, Honolulu, Oahu, T. H.

#### COMPRISED THE FOLLOWING:

1. Portion of the area transferred to the Territory of Hawaii by Presidential Proclamation 1936 dated October 27, 1936.
2. Portion of the unincorporated and filled area of Kalia Fishery not covered by any Presidential Executive Order.
3. Lots 23 and 24 as shown on Map 4 of Land Survey Consolidation 22, covered by Survey's Certificate of Title 66816, issued to the Secretary of Hawaii.

Beginning at the north corner of this parcel of land, the west corner of Parcel 2 of Governor's Executive Order 1930, and on the west side of Ala Moana, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNAHONA" being 8722.74 feet South and 2936.16 feet East, as shown on Government Survey Registered Map 1936, thence running by azimuths measured clockwise from True South-

1. 367° 59' 152.15 feet along the west side of Ala Moana

## EXHIBIT "E"



2-2-A  
1-2-1  
OF  
T I  
1092



41. 131° 00' 1884.43 feet along the line of breakers as described in Presidential Proclamation 1856 dated October 27, 1928;
42. 200° 11' 50" 1528.28 feet;
43. 197° 29' 806.20 feet;
44. 285° 05' 416.13 feet along Ala Moana Park and along Parcel 2 of Governor's Executive Order 1330;
45. 250° 10' 165.86 feet along Parcel 2 of Governor's Executive Order 1330;
46. 242° 54' 376.00 feet along Parcel 2 of Governor's Executive Order 1330;
47. Thence along Parcel 2 of Governor's Executive Order 1330 on a curve to the right having a radius of 30.00 feet, the chord azimuth and distance being: 284° 24' 39.76 feet;
48. 325° 54' 117.31 feet along Parcel 2 of Governor's Executive Order 1330;
49. Thence along Parcel 2 of Governor's Executive Order 1330 on a curve to the left having a radius of 65.00 feet, the chord azimuth and distance being: 291° 38' 30" 72.62 feet;
50. 257° 59' 126.84 feet along Parcel 2 of Governor's Executive Order 1330 to the point of beginning and containing an AREA OF 153.518 ACRES.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the Territory of Hawaii to be affixed. Done at the Capitol at Honolulu this 13th day of August, Nineteen Hundred and 57.

Approved as to form:

Herbert G. C. Day  
 DEPUTY ATTORNEY GENERAL

ETC:mas  
 Checked by: md

Harold R. J. Jones  
 ACTING Governor of the Territory of Hawaii



CONFIDENTIAL WORK PRODUCT  
 JANELLE CLARK, CEDS  
 janelle@ceds.net  
 Ala Wai Land Info.

## Transfer Certificate of Title

No. 42,731

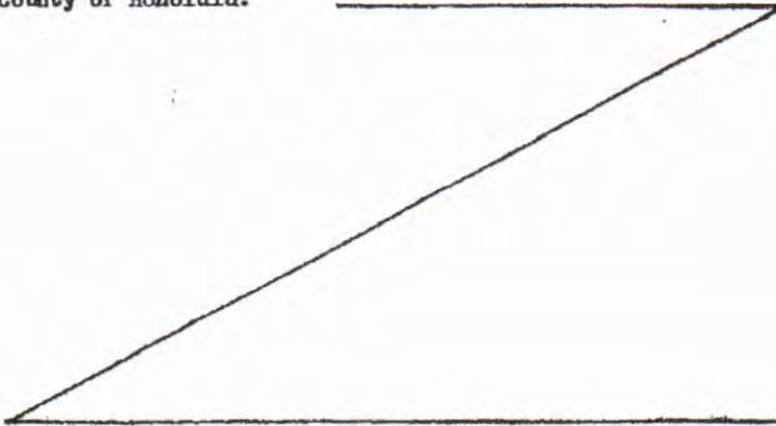
From Transfer Certificate No. <sup>16,754</sup>~~16,755~~, Originally Registered May 8, 1937  
in Registration Book 168 Pages <sup>213</sup>~~217~~ for the Registry District of the Territory of Hawaii.

*This is to Certify* that the -TERRITORY OF HAWAII-, is the owner in fee simple of those certain parcels of land (for public purposes) situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, Territory of Hawaii, described as follows:

FIRST: LOTS: 5-A-2-A, area 2,000.0 square feet, as shown on Map 5, and  
5-A-2-B-1, area 18,390.0 square feet, as shown on Map 6;

the maps above referred to by numbers are on file in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 852 of Bishop Trust Company, Limited, Trustee, and being all of the land described in Transfer Certificate of Title No. 16,754 issued to The City and County of Honolulu;

SECOND: Lot 1, area 21,212.0 square feet, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 1098 of Bishop Trust Company, Limited, Trustee of Hobron Land Trust, and being all of the land described in Transfer Certificate of Title No. 16,755 issued to The City and County of Honolulu.

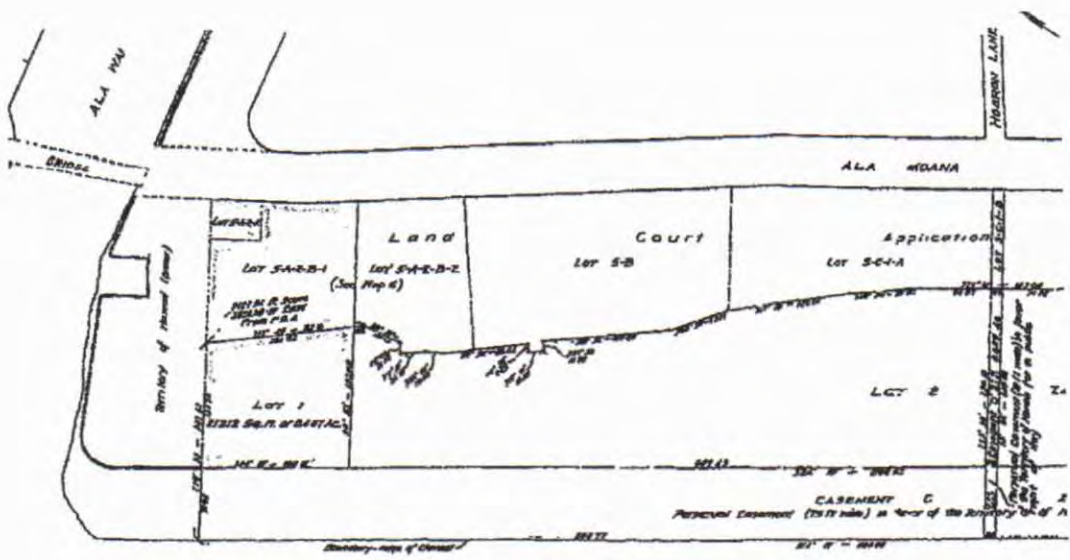


**EXHIBIT "F"**



**CONFIDENTIAL WORK PRODUCT**  
JANILEY U. ARK, CEDS  
janile@ceds.net  
Ala Wai Land Info.





DEEP WATER CHANNEL

LAND COURT  
 TERRITORY OF HAWAII  
 SUBDIVISION OF LAND COURT APPLICATION 1092  
 AS SHOWN ON MAP 1 FILED WITH THE  
 ASSISTANT REGISTRAR OF THE LAND COURT  
 INTO LOT 1 AND LOT 2  
 SITUATE AT KALIA, MAUI, HAWAII, DANIEL K.  
 SCALE - 1 INCH = 30 FEET

DEPARTMENT OF PUBLIC WORKS -  
 CITY AND COUNTY OF HONOLULU  
 BUREAU OF PUBLIC WORKS  
 BY: *J. H. Anderson*  
 Assistant Registrar of Public Works  
 APPROVED: *J. H. Anderson*  
 Director

HONOLULU, HI  
 AUGUST 28, 1978

OFFICER - *Robert R. ...*  
 BY: *J. H. Anderson*  
 CHIEF'S CERTIFICATE OF TITLE NO. 1178.



I hereby certify that the map herein being a  
 subdivision of Land Court Application 1092, as herein  
 entitled, has been examined and checked up to form  
 and mathematical correctness and that it has been  
 approved by Order of the Judge of the Land Court  
 dated March 22, 1977.  
 Honolulu, T.H.  
 March 22, 1978.  
*J. H. Anderson*  
 Surveyor Territory of Hawaii

of 5A-B-1 of Land Court Application 1092, as amended,  
 and of 5A-B-2 of Land Court Application 1092,  
 as amended (to be known as 5A-B-1) and portion of Land  
 Court Application 1092 (to be known as Lot 1) were  
 acquired by the City and County of Honolulu for park  
 and playground purposes from Bishop Trust Co., Ltd.,  
 trustees for the Bishop Land Trust and Oahu Railway  
 and Land Co., Ltd., by Final Order of Commissioner  
 Noel Holmoe, 12/20/52, then giving Lot 1 of the sub-  
 division of Land Court Application 1092 access to the  
 canal over Lots 5A-B-1 and 5A-B-2 of Land  
 Court Application 1092, as amended.

TRANSFER CERTIFICATE OF TITLE

No. 114,029  
 March 1, 1934  
 From Transfer Certificates No. 12,829, Originally Registered January 14, 1949  
 129 131  
 in Registration Books 428 Page 121 for the Registry District of the State of Hawaii.

*This is to Certify that* -STATE OF HAWAII-, is the owner in fee simple of those certain parcels of land (for public purposes) situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS: 119, area 18,743.0 square feet, and  
 120, area 6,137.0 square feet, as shown on Map 50, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 852 of Bishop Trust Company, Limited, Trustee, and being portions of the land described in Transfer Certificates of Title Nos. 12,829 and 42,731 issued to the Territory of Hawaii.

EXHIBIT "G"



CONFIDENTIAL WORK PRODUCT  
 JANELLE C. CLARK, CEDS  
 janelle@pcalle.net  
 Ala Wai Land Info.

And it is further certified that said land is under the operation and provisions of Chapter 342 of the Revised Laws of Hawaii, 1955, and that the title of said

-STATE OF HAWAII-

to said land is registered under said Chapter subject, however, to any of the encumbrances mentioned in Section 342-42 of said Revised Laws of Hawaii which may be subsisting, and subject also to:

Witness, the Honorable Samuel P. King, Judge of the Land Court  
at Honolulu, in the City and County of Honolulu, State of Hawaii, the 15th day of  
March in the year nineteen hundred and sixty-seven  
at 11 o'clock and 30 minutes in the forenoon  
Attest, with the Seal of Said Court,

Charles F. Neumann III  
Assistant Registrar.

MEMO: This Transfer Certificate of Title is issued by Land Court Order No. 26866, filed March 15, 1967 at 11:30 o'clock A.M.

Attest:

Charles F. Neumann III  
Assistant Registrar.



**CONFIDENTIAL WORK PRODUCT**

JANELLE C. CLARK, CFDS

janelle@pcalc.org

Ala Wai Land Info.

MEMORANDA OF ENCUMBRANCES, ETC., ON THE LAND DESCRIBED IN THIS CERTIFICATE

DOCUMENT NUMBER	KIND	RUNNING IN FAVOR OF	TERMS	DATE OF INSTRUMENT	DATE OF REGISTRATION	SIGNATURE OF ASSISTANT REGISTRAR	DISCHARGE												
90123 <i>and Court Order</i>					<table border="1"> <tr> <td>YEAR &amp; MONTH</td> <td>D.</td> <td>H.</td> <td>M.</td> <td>A.M.</td> <td>P.M.</td> </tr> <tr> <td>1988</td> <td>13</td> <td>8</td> <td>01</td> <td>AM</td> <td></td> </tr> </table>	YEAR & MONTH	D.	H.	M.	A.M.	P.M.	1988	13	8	01	AM		<i>Debra S. ...</i>	
YEAR & MONTH	D.	H.	M.	A.M.	P.M.														
1988	13	8	01	AM															

[See over]





# Transfer Certificate of Title

No. 42,731

From Transfer Certificates Nos. <sup>{16,754}</sup>16,755, Originally Registered May 8, 1937  
in Registration Book 168 Pages <sup>{213}</sup>217 for the Registry District of the Territory of Hawaii.

*This is to Certify* that the -TERRITORY OF HAWAII-, is the owner in fee simple of those certain parcels of land (for public purposes) situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, Territory of Hawaii, described as follows:

FIRST: LOTS: 5-A-2-A, area 2,000.0 square feet, as shown on Map 5, and  
5-A-2-B-1, area 18,390.0 square feet, as shown on Map 6;

the maps above referred to by numbers are on file in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 852 of Bishop Trust Company, Limited, Trustee, and being all of the land described in Transfer Certificate of Title No. 16,754 issued to The City and County of Honolulu;

SECOND: Lot 1, area 21,212.0 square feet, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 1092 of Bishop Trust Company, Limited, Trustee of Hobron Land Trust, and being all of the land described in Transfer Certificate of Title No. 16,755 issued to The City and County of Honolulu.

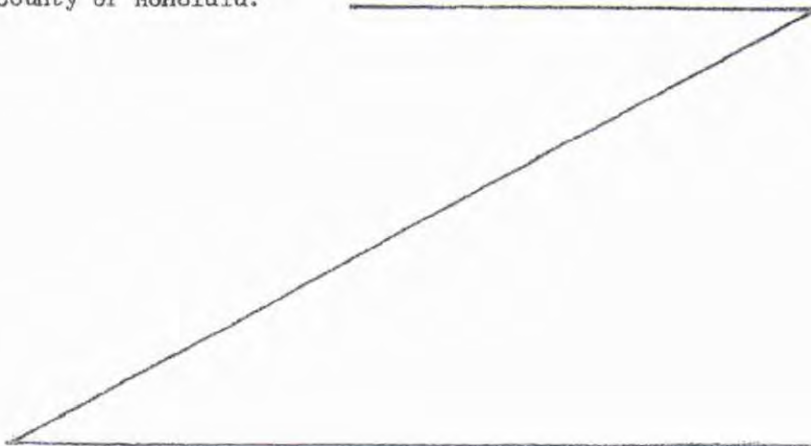


EXHIBIT "F"

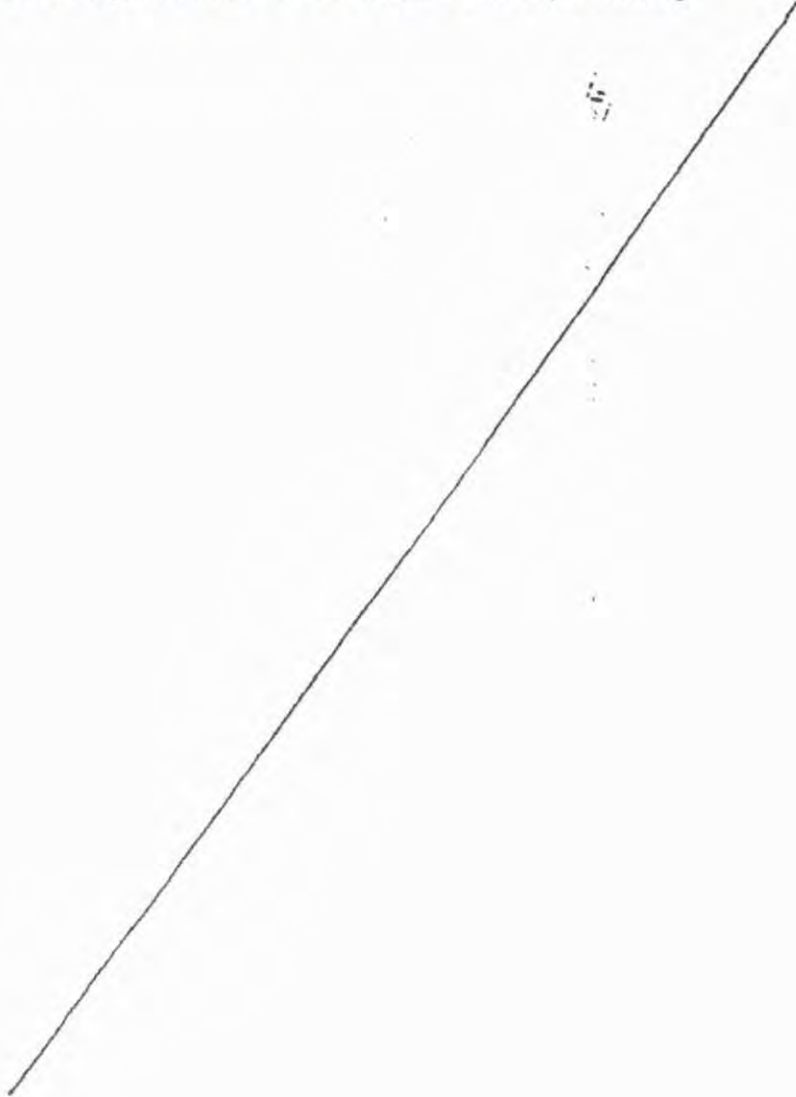


CONFIDENTIAL WORK PRODUCT  
JANELL C. CLARK, CEDS  
jcc@pentic.net  
Ala Wai Land Info.

And it is further certified that said land is under the operation and provisions of Chapter 307 of the Revised Laws of Hawaii, 1945, and that the title of said

-TERRITORY OF HAWAII-

to said land is registered under said Chapter subject, however, to any of the encumbrances mentioned in Section 12641 of said Revised Laws of Hawaii which may be subsisting.



Witness, the Honorable A. M. Cristy, Judge of the Land Court at Honolulu, in the City and County of Honolulu, Territory of Hawaii, the 14th day of January in the year nineteen hundred and forty-nine at 2 o'clock and 00 minutes in the afternoon.

Attest, with the Seal of Said Court,

*Oliver R. Aiu*

Assistant Registrar.



CONFIDENTIAL WORK PRODUCT

JANELLE C. CLARK, CEDS

janelle@psdlc.net

Ala Wai Land Info.

LANDA OF ENCUMBRANCES ON THE LAND DESCRIBED IN THIS CERTIFICATE

BENEFIT FAVOR OF	TERMS	DATE OF INSTRUMENT	DATE OF REGISTRATION	SIGNATURE OF ASSISTANT REGISTRAR	DISCHARGE
			YEAR & MONTH D. H. M. A.M. P.M.		
A-2-B-1 have been withdrawn from consolidated with lot 5-A-1 of as original to 114059)	}	Mar 10, 1967	Mar 15 11 30 A.M. 1967	R. M. Chambers III	
two lots 1-A and 1-B, Map 4		Jun 2, 1988	Jun 13 8 01 Am 1988	C. L. Baker	

(See over)

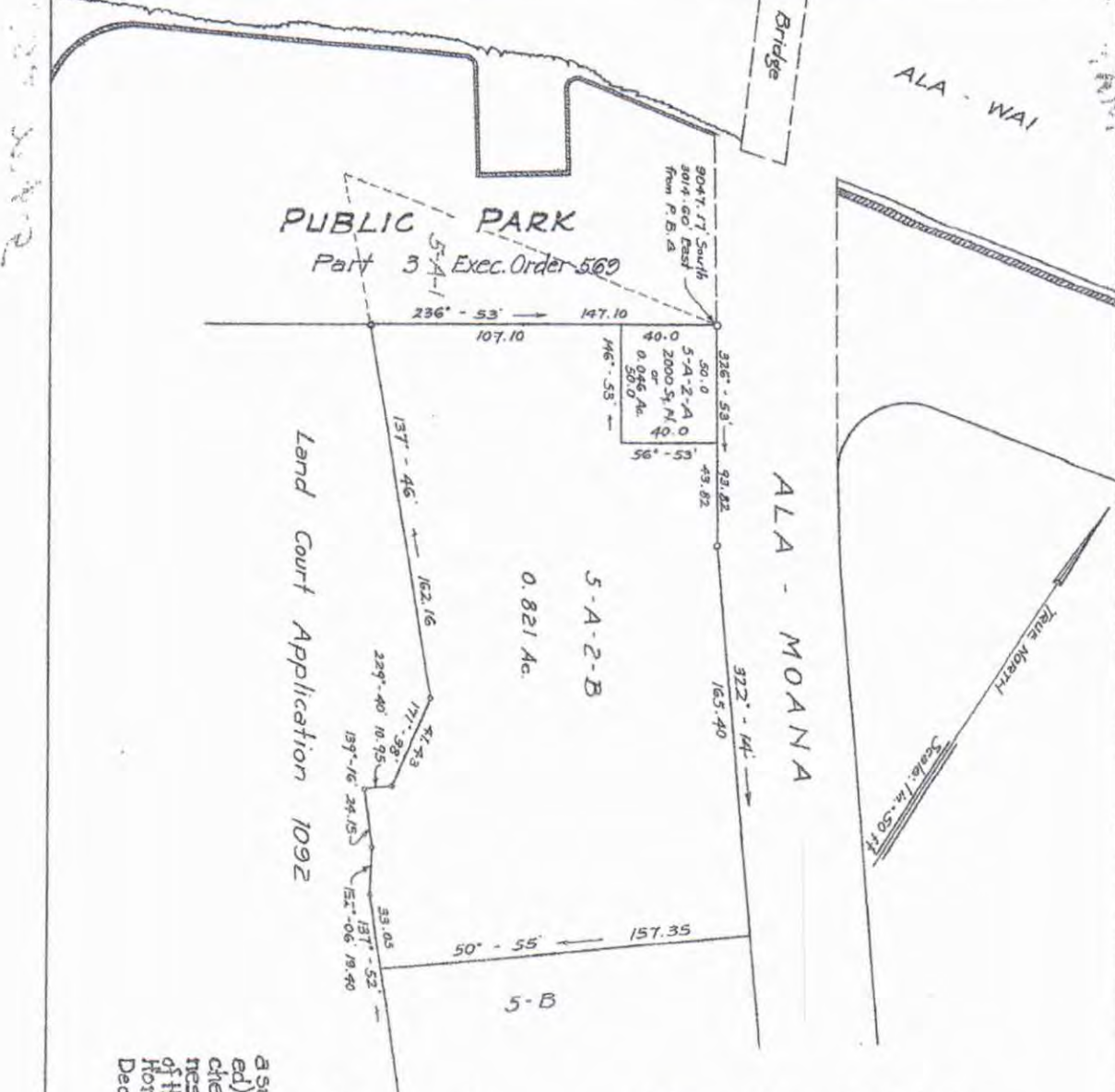






24-11-528

MAP 5 24-11-528



# LAND COURT

## TERRITORY OF HAWAII

Subdivision of Lot 5-A-2 of Land Court Application 852 (Amended) as shown on Map 4, filed in the Office of the Assistant Registrar of the Land Court into Lots 5-A-2-A and 5-A-2-B.

AT KALIA, MAIKIKI, HONOLULU, T.H.

Scale: 1 in. = 50 ft.



Honolulu, T.H.  
Oct. 8, 1934  
WRIGHT, HARVEY E. WRIGHT  
Surveyor & Factor of Plats  
419 S. M. Damon Bldg.

OWNER: Banking Fund 628  
Trustee for Hudson Trust Fund

by W. B. Howard  
Attorney-in-Fact

OWNER'S CERTIFICATE OF TITLE 12828

I hereby certify that the map hereon being a subdivision of Land Court Application 852 (Amended) as herein entitled, has been examined and checked as to form and mathematical correctness, and that it has been approved by Order of the Judge of the Land Court dated Dec. 20, 1934.

W. B. Howard  
Surveyor General of Hawaii  
Dec. 20, 1934.

EXHIBIT



CONFIDENTIAL WORK PRODUCT  
JANELLE CLARK, CEM  
janelle@ceds.net  
Ala Wai Land Info.









Tax Map Key: 2-6-10



42,731 352,825  
 114029  
 CDW 119 + 120

**LAND COURT**  
 STATE OF HAWAII  
**LAND COURT APPLICATION 852 (Amended)**

CONSOLIDATION OF LOT 5-A-1 AS SHOWN ON MAP 4,  
 LOT 5-A-2-A AS SHOWN ON MAP 5 AND  
 LOT 5-A-2-B-1 AS SHOWN ON MAP 6  
 AND SUBDIVISION OF SAID CONSOLIDATION  
 INTO LOTS 119 AND 120  
 AT KALIA, WAIKIKI, HONOLULU, OAHU, HAWAII



BY: *James F. Foster*  
 Registered Professional Surveyor 625  
 Land Court Surveyor 23

APPROVED BY: *[Signature]*  
 for Chief Engineer

Owner: State of Hawaii  
 Owner's Certificate of Title: 12, 629 and 66, 731

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
 OF THE LAND COURT DATED MARCH 10, 1987  
 BY ORDER OF THE COURT.

*James A. Smith*  
 Acting REGISTRAR OF THE LAND COURT

Filed March 7, 1987 Paul Gifford

MAP 50  
 852 (Amended)

EXHIBIT 11



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Abb 10653 Wbb 4

1092

MAP 4

# LAND COURT STATE OF HAWAII LAND COURT APPLICATION 1092

SUBDIVISION OF LOT 1  
AS SHOWN ON MAP 2  
INTO LOTS 1-A AND 1-B

KALIA, WAIKIKI, HONOLULU, OAHU, HAWAII



SAM O. HIROTA, INC.

BY: Richard K. Kawasaka  
Registered Professional Surveyor 3844  
Land Court Surveyor 201

864 S. Beretania St.  
Honolulu, Hawaii  
May 2, 1988

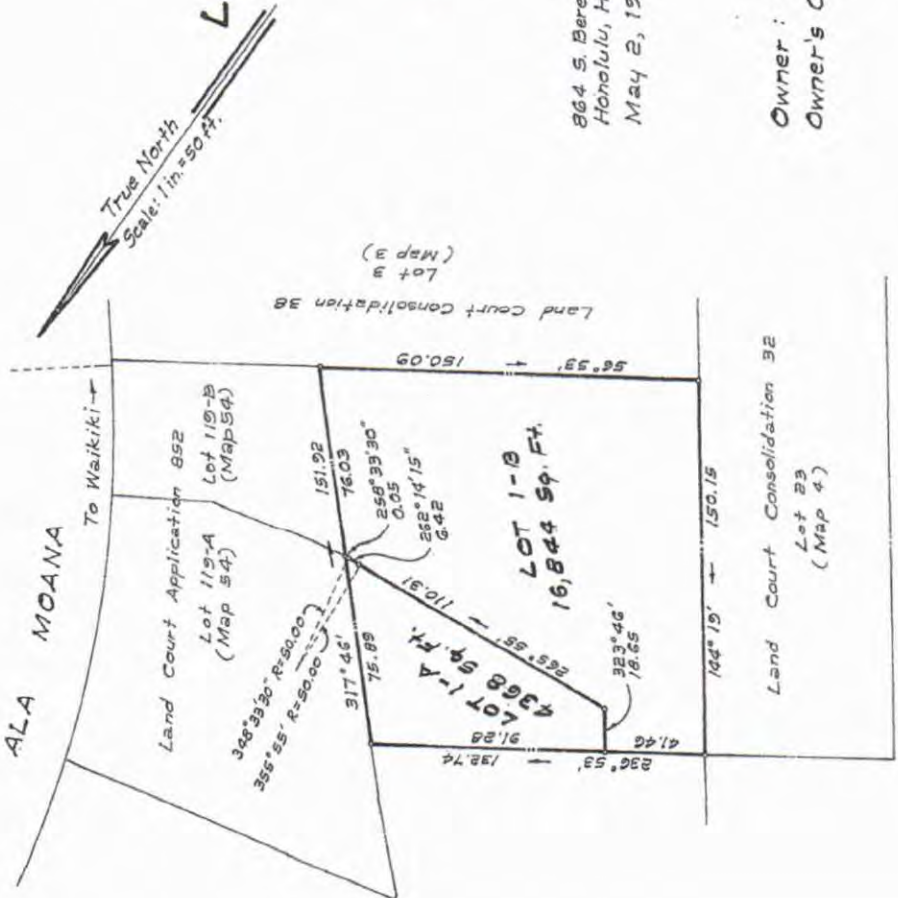
Owner: State of Hawaii  
Owner's Certificate of Title: 42,731

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
OF THE LAND COURT DATED JUNE 2, 1988  
BY ORDER OF THE COURT.

Barbara E. Waight, Deputy  
REGISTRAR OF THE LAND COURT

filed May 18, 1988 Barbara E. Waight, Deputy Registrar

10' x 15" = 1.0 Sq. Ft.



Tax Map Key: 2-6-10: Por. 3



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Ala Wai Land Info.



Public Law 199 - 84th Congress  
Chapter 441 - 1st Session  
H. R. 6331

AN ACT

All 69 Stat. 428.

Authorizing the Territory of Hawaii, through its duly designated officers and boards, to negotiate a compromise agreement, exchange with, sell or lease to the owners of certain shorelands, certain tidelands, both in the Territory of Hawaii, and to make covenants with such owners, in settlement of certain damage claims and for a conveyance of littoral rights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Public Lands of the Territory of Hawaii, with the concurrence of the Board of Harbor Commissioners and the approval of two-thirds of the Board of Public Lands and of the Governor of the Territory of Hawaii, is hereby authorized and empowered, any provision of the Hawaiian Organic Act or any other law to the contrary notwithstanding, to enter into a compromise agreement with the owners of certain shorelands in the Territory of Hawaii covered by land court applications numbered 314, 1549, 1653, and 852 and 1092 (land court consolidation 32), and with any other owner or owners of lands abutting any part of the tidelands described in section 2 hereof, involving the conveyance by the Territory to said owners, or some of them, of all or any part of the tidelands described in section 2 of this Act, or to make a sale of all or any part of said lands described in section 2, to said owners, or some of them, or to exchange all or a part of said lands described in section 2, with said owners, or some of them, provided that said owners, who may have littoral rights appurtenant to said shorelands, affecting the tidelands described in section 2, convey to the Territory such littoral rights, agree to the construction of a public beach and groin along the seaward side of the lands described in section 2 of this Act, and release all claims for compensation, damages or otherwise which they have or might have against the Territory of Hawaii by reason of acts or omissions of the Territory, or for which the Territory is claimed to be responsible, done or omitted in connection with the development of the shoreline, yacht harbor and beaches in and adjoining said area. The Commissioner of Public Lands, with the concurrence of the Board of Harbor Commissioners, is hereby authorized and empowered, any provision of the Hawaiian Organic Act or any other law to the contrary notwithstanding, to lease for a period of fifty-five years all or any part of said lands described in section 2, to said owners, or some of them.

Hawaiian tide-lands.  
Sale or exchange, etc., agreement.

31 Stat. 141.  
48 USC 491.

← MARSHES CAN CONSTRUCT BEACHES IN SECTION 2

Sec. 2. The tidelands authorized to be conveyed or leased by the Commissioner of Public Lands by this Act are described as follows: Land at Waikiki, Honolulu, Oahu, Territory of Hawaii: Being a portion of area transferred to the Territory of Hawaii by Presidential Proclamation Numbered 1856, dated October 27, 1928. Situated off Kalia, Waikiki, Honolulu, Oahu, Territory of Hawaii.

Beginning at an  $\nearrow$  cut in face of seawall on the easterly boundary of this parcel of land, being also the west corner of land court application 1653, the coordinates of said point of beginning referred to Government survey triangulation station "PUNCHBOWL" being 10,981.46 feet south and 3,555.61 feet east and running by azimuths measured clockwise from true south:

Along face of seawall, along highwater mark of land court application 1653 for the next three courses, the direct azimuths and distances between points along said face of seawall being:

1. 310 degrees, 12 minutes, 46.20 feet to an  $\nearrow$  cut in face of seawall;
2. 297 degrees, 18 minutes, 23.9 ft to seawall cut
3. 296 degrees, 24.62' to a cut in seawall

(cut off)



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Alo Wai Land Info.



Thence along face of seawall along high-water mark of land court applications 624 and 264 for the next eleven courses, the direct azimuths and distances between points along said face of seawall being—

4. 296 degrees, 06 minutes, 27.85 feet to an ↗ cut in face of seawall;
5. 293 degrees, 08 minutes, 22.85 feet to a + cut in face of seawall;
6. 298 degrees, 14 minutes, 44.75 feet to a spike in face of seawall;
7. 248 degrees, 12 minutes, 0.97 foot to an ↗ cut in top edge of seawall;
8. 269 degrees, 48 minutes, 55.85 feet to an ↗ cut in top edge of seawall;
9. 270 degrees, 42 minutes, 37.45 feet to an ↗ cut in top edge of seawall;
10. 274 degrees, 46 minutes, 16.35 feet to an ↗ cut in top edge of seawall;
11. 277 degrees, 33 minutes, 16.65 feet to an ↗ cut in top edge of seawall;
12. 281 degrees, 22 minutes, 32.66 feet to an ↗ cut in top edge of seawall;
13. 282 degrees, 58 minutes, 32 feet to a pipe;
14. 234 degrees, 59 minutes, 0.27 foot; thence
15. 319 degrees, 19 minutes, 154.69 feet to a † cut in concrete tile walk;
16. 239 degrees, 30 minutes, 36.95 feet;
17. 329 degrees, 30 minutes, 34.37 feet along end of Dewey Way, the true azimuth and distance from U. S. M. R. Monument 32 being: 58 degrees, 03 minutes, 82.92 feet;
18. 58 degrees, 03 minutes, 90.96 feet along United States Military Reservation (Fort DeRussy) and passing over U. S. M. R. Monument 31 at 30.93 feet;
19. 139 degrees, 19 minutes, 157.27 feet;
20. 96 degrees, 18 minutes, 45 seconds, 190.64 feet;
21. 120 degrees, 05 minutes, 25 seconds, 208.60 feet;
22. 149 degrees, 25 minutes, 115 feet;
23. 157 degrees, 41 minutes, 29 seconds, 427.19 feet;
24. 239 degrees, 58 minutes, 406 feet to the west corner of land court application 1549;

Thence along highwater mark of land court application 1549 for the next five courses, the direct azimuths and distances between points along said highwater mark being—

25. 320 degrees, 22 minutes, 18.48 feet;
26. 291 degrees, 45 minutes, 15.75 feet;
27. 297 degrees, 01 minute, 22.75 feet;
28. 318 degrees, 42 minutes, 32.70 feet;
29. 326 degrees, 46 minutes, 15.03 feet;

Thence along highwater mark of land court application 314 for the next four courses, the direct azimuths and distances between points along said highwater mark being:

30. 325 degrees, 00 minutes, 35 feet;
31. 334 degrees, 10 minutes, 125 feet;
32. 336 degrees, 15 minutes, 189 feet;
33. 334 degrees, 00 minutes, 93.42 feet to a † cut in top of stonewall;
34. 61 degrees, 39 minutes, 60 feet along land court application 1653 to a 2½-inch pipe in concrete;
35. 61 degrees, 46 minutes, 67.74 feet along land court application 1653 to a spike in face of seawall;
36. 61 degrees, 56 minutes, 273.88 feet along face of seawall along highwater mark of land court application 1653 to the point of beginning and containing an area of 6.39 acres.



7/10/55

SEC. 3. The Commissioner of Public Lands, with the concurrence of the Board of Harbor Commissioners and the approval of two-thirds of the Board of Public Lands and of the Governor is also authorized and empowered in the making of any such compromise agreement, exchange, sale or lease to covenant with such owners to create and maintain a public beach and groin on the seaward side of the lands described in section 2 of this Act, so long as and to the extent that appropriations are and may from time to time be available therefor, and to permit access to and from said beach across courses nineteen to twenty-three inclusive of the land described in section 2 of this Act. Public beach and groin.

SEC. 4. This Act shall take effect upon its approval.

Effective date.

Approved August 1, 1955.



CONFIDENTIAL WORK PRODUCT

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Ala Wai Land Info.



By the President of the United States of America

## A Proclamation

WHEREAS section 91 of the act of Congress approved April 30, 1900, entitled "An act to provide a government for the Territory of Hawaii" (31 Stat. 141-159), as amended by section 7 of the act approved May 27, 1910 (36 Stat. 443-447), authorizes the transfer to the Territory of Hawaii by direction of the President of the United States of the title to such public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), and in the possession and use of said Territory for public purposes or required for any such purposes; and

WHEREAS certain lands of the United States within the area hereinafter described are required for certain public purposes;

Now, THEREFORE, I, CALVIN COOLIDGE, President of the United States of America, by virtue of the power vested in me by section 7 of the act of Congress, approved May 27, 1910 (36 Stat. 443, 447), do hereby transfer to the Territory of Hawaii the title to all lands owned by the United States in the Territory of Hawaii lying within the area described as follows:

That certain area of land situate in Waikiki, District of Honolulu, Island of Oahu, Territory of Hawaii:

Beginning at a stake on the South side of Boulevard (which Boulevard is South of Ala Wai), on the high water mark, the coordinates of said point of beginning referred to Government Survey Trig. Station "Punchbowl" being 9083.7 feet South and 2848.9 feet East, as shown on Government Survey Registered Map No. 2799 (Sheets, 1, 2 and 3), and running along high water mark by true azimuths and distances as follows:

1. 315° 01' 39.75 feet to a stake;
2. 317° 46' 183.98 feet to a stake;
3. 351° 38' 41.43 feet to a stake;
4. 49° 40' 10.95 feet to a stake;
5. 319° 16' 24.15 feet along seawall to a stake;
6. 332° 06' 19.40 feet to a stake;
7. 317° 52' 88.44 feet to a stake;
8. 45° 56' 9.05 feet along seawall to a stake;
9. 318° 01' 15.65 feet along same to a stake;
10. 227° 35' 10.98 feet along same to a stake;
11. 319° 38' 130.85 feet along same to a stake;
12. 305° 57' 63.57 feet to a stake;
13. 317° 19' 128.05 feet to a stake;
14. 320° 56' 75.60 feet to a stake;
15. 325° 11' 153.05 feet to a stake;
16. 327° 55' 321.65 feet to a stake;
17. 321° 35' 67.35 feet to a stake;
18. 312° 39' 27.23 feet to a stake;
19. 294° 47' 22.20 feet to a stake;
20. 316° 40' 9.25 feet along seawall to a stake;
21. 325° 35' 13.45 feet across stream to a stake;
22. 60° 04' 46.12 feet along seawall to a stake;
23. 333° 27' 78.15 feet to a + on concrete;
24. 330° 44' 101.40 feet to a stake;
25. 340° 15' 208.40 feet to a stake;
26. 347° 28' 191.90 feet to a stake;
27. 0° 04' 41.75 feet to a stake;
28. 52° 21' 38.80 feet along seawall to a stake;



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Ala Wai Land Info.



30. 59° 31' 4" set along same to a spike in face of seawall;
31. 61° 52' 277.20 feet along same to a spike in face of seawall;
32. 313° 56' 78.20 feet to a stake;
33. 261° 39' 24.90 feet along seawall to a stake;
34. 294° 32' 95.82 feet along seawall to a stake;
35. 29° 45' 1.29 feet along seawall to an iron pin;
36. 270° 29' 91.62 feet along seawall to a + on concrete;
37. 275° 34' 34.85 feet along seawall to a + on concrete;
38. 281° 44' 65.75 feet along seawall to a stake;
39. 234° 44' 35.95 feet along seawall to a stake;
40. 304° 10' 66.95 feet to a stake;
41. 282° 40' 26.20 feet to a stake;
42. 229° 42' 5.50 feet to a stake;
43. 308° 49' 84.35 feet to a stake;
44. 312° 17' 32.10 feet to a stake;
45. 57° 58' 95.55 feet along seawall to U. S. Military Reservation Monument No. 31;
46. 301° 17' 30'' 58.34 feet along same to U. S. Military Reservation Monument No. 30;
47. 305° 47' 30'' 100.03 feet along same to U. S. Military Reservation Monument No. 29;
48. 310° 50' 30'' 99.97 feet along same to U. S. Military Reservation Monument No. 28;
49. 315° 57' 30'' 99.99 feet along same to U. S. Military Reservation Monument No. 27;
50. 321° 02' 30'' 100.03 feet along same to U. S. Military Reservation Monument No. 26;
51. 325° 45' 30'' 505.55 feet along same to U. S. Military Reservation Monument No. 25;
52. 323° 48' 30'' 100.00 feet along same to U. S. Military Reservation Monument No. 24;
53. 316° 46' 100.00 feet along same to U. S. Military Reservation Monument No. 23;
54. 309° 46' 63.54 feet along same;
55. 9° 37' 40.20 feet to a stake;
56. 308° 04' 63.65 feet to a stake;
57. 290° 25' 111.33 feet to a stake;
58. 299° 26' 251.40 feet to a stake;
59. 306° 19' 100.80 feet to a stake;
60. 303° 00' 149.35 feet to a stake;
61. 293° 12' 47.85 feet to a stake;
62. 284° 09' 89.75 feet to a stake;
63. 307° 41' 4.05 feet along seawall to a stake;
64. 36° 16' 8.15 feet along same to a stake;
65. 287° 29' 383.90 feet along same to a + on concrete;
66. 245° 48' 11.15 feet along same to a + on concrete;
67. 211° 06' 34.00 feet along same to a stake;
68. 301° 33' 4.10 feet along fence to a stake;
69. 298° 07' 28.35 feet to a stake;
70. 297° 26' 38.00 feet to a stake;
71. 289° 00' 87.70 feet to a stake;
72. 20° 40' 7.70 feet to a stake;
73. 294° 14' 70.75 feet along wood wall to a + on concrete;
74. 34° 40' 8.95 feet along seawall to a + on concrete;
75. 289° 14' 129.55 feet along same to a + on concrete;
76. 288° 46' 95.25 feet along same to a + on concrete;
77. 261° 55' 3.60 feet along same to a + on concrete;
78. 289° 34' 107.80 feet along same to a + on concrete;
79. 327° 54' 2.07 feet along same to a + on concrete;
80. 289° 17' 63.05 feet along same to a + on concrete;
81. 295° 54' 30.20 feet along same to a + on concrete;
82. 287° 43' 78.85 feet along same to a stake;
83. 334° 36' 42.83 feet along wood wall to a stake;





85. 260° 54' 11 feet along seawall to a stake;  
 86. 271° 16' 178.95 feet to a stake;  
 87. 275° 25' 152.50 feet to a stake;  
 88. 287° 47' 131.90 feet to a stake;  
 89. 297° 32' 141.50 feet to a + on concrete;  
 90. 310° 17' 61.80 feet to a stake;  
 91. 291° 29' 88.92 feet along seawall to a + on concrete;  
 92. 293° 38' 66.50 feet along same to a + on concrete;  
 93. 301° 38' 234.35 feet along same to a + on concrete;  
 94. 312° 50' 61.20 feet along same to a + on concrete;  
 95. 317° 23' 78.95 feet along same to a + on concrete;  
 96. 283° 11' 21.20 feet to a stake;  
 97. 316° 43' 125.20 feet to a stake;  
 98. 318° 42' 118.60 feet to a stake;  
 99. 317° 19' 73.65 feet to a stake;  
 100. 357° 31' 27.85 feet to a + on stone;  
 101. 311° 32' 88.20 feet along seawall to a + on stone;  
 102. 225° 19' 35.45 feet along same to a stake;  
 103. 308° 38' 88.00 feet to a spike in face of seawall;  
 104. 44° 28' 30.70 feet along seawall to a + on concrete;  
 105. 314° 22' 127.60 feet along same to a + on concrete;  
 106. 324° 35' 65.05 feet along same to a stake;  
 107. 239° 30' 9.00 feet along same to a stake;  
 108. 333° 49' 145.80 feet to a stake;  
 109. 343° 03' 163.40 feet to a stake;  
 110. 56° 00' 7.20 feet along seawall to a + on face of seawall;  
 111. 316° 50' 110.10 feet along same to a + on face of seawall;  
 112. 240° 36' 9.90 feet along same to a stake;  
 113. 313° 00' 47.05 feet to a + on seawall;  
 114. 330° 33' 36.95 feet along seawall to a + on seawall;  
 115. 333° 41' 433.4 feet along seawall;  
 116. 336° 31' 433.9 feet along same;  
 117. 77° 42' 8.7 feet along same;  
 118. 5° 11' 73.8 feet along same;  
 119. 11° 29' 21.0 feet along same;  
 120. 17° 25' 44.4 feet along same;  
 121. 33° 42' 50.2 feet along same;  
 122. 57° 34' 40.2 feet along same;  
 123. 358° 55' 161.9 feet along same to an → on seawall;  
 124. 359° 15' 100.6 feet along same;  
 125. 263° 35' 5.4 feet along same;  
 126. 358° 14' 98.2 feet along same;  
 127. 80° 11' 11.1 feet along seawall;  
 128. 1° 28' 100.8 feet along same to a spike in face of seawall;  
 129. 356° 34' 52.1 feet along same;  
 130. 70° 59' 10.2 feet along same;  
 131. 352° 51' 205.1 feet along same;  
 132. 60° 36' 9.5 feet along same;  
 133. 350° 52' 95.0 feet along same;  
 134. 76° 00' 10.3 feet along same;  
 135. 347° 02' 97.2 feet along same;  
 136. 347° 12' 153.0 feet along same;  
 137. 77° 32' 27.6 feet along same;  
 138. 346° 41' 97.1 feet along same to a + on seawall;  
 139. 257° 30' 6.0 feet along same;  
 140. 340° 56' 32.8 feet;  
 141. 78° 34' 7.7 feet along cement walk;  
 142. 343° 28' 8.5 feet along same;  
 143. 260° 43' 4.6 feet along same;  
 144. 346° 33' 7.3 feet along seawall;  
 145. 261° 07' 4.0 feet along same;  
 146. 345° 04' 55.9 feet along same;  
 147. 345° 25' 246.7 feet along same;



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Ala Wai Land Info.

149. 000 00 0 1000 along same;  
 150. 337° 35' 100.7 feet along same;  
 151. 346° 42' 36.0 feet along same;  
 152. 76° 29' 245.6 feet along same;  
 153. 31° 42' 21.6 feet along same;  
 154. 347° 02' 352.3 feet along same;  
 155. 302° 47' 21.6 feet along same;  
 156. 257° 28' 252.1 feet along same;  
 157. 341° 30' 112.0 feet along same;  
 158. 344° 00' 150.7 feet along same;  
 159. 351° 31' 21.1 feet along same;  
 160. 350° 10' 79.2 feet along same;  
 161. 251° 40' 5.0 feet along same;  
 162. 353° 09' 27.8 feet along same;  
 163. 74° 46' 12.5 feet along same;  
 164. 7° 09' 40.3 feet along same;  
 165. 17° 25' 78.4 feet along same;  
 166. 351° 00' 208.5 feet along same;  
 167. 71° 40' 32.3 feet along same;  
 168. 354° 52' 197.9 feet along same;  
 169. 345° 50' 26.5 feet along same;  
 170. 337° 15' 87.2 feet along same;  
 171. 327° 10' 20.0 feet along same;  
 172. 322° 35' 16.4 feet along same;  
 173. 318° 05' 13.7 feet along same;  
 174. 312° 50' 14.4 feet along same;  
 175. 279° 25' 4.0 feet along same;  
 176. 311° 40' 14.6 feet along same;  
 177. 306° 15' 9.4 feet along same to an iron pin;  
 178. 70° 40' 1420.0 feet more or less to the line of breakers;  
 179. 174° 50' 3650.0 feet more or less along the line of breakers;  
 180. 131° 20' 1150.0 feet more or less along same;  
 181. 96° 00' 2450.0 feet more or less along same;  
 182. 131° 00' 4965.0 feet more or less along same;  
 183. 225° 00' 2900.0 feet more or less to the point of beginning.

2 1/4<sup>0</sup> magnetic AREA 406 ACRES, MORE OR LESS.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 27th day of October in the year of our Lord one thousand nine hundred and twenty-eight and of the Independence of the United States of America the one hundred and fifty-third.

CALVIN COOLIDGE

By the President:

FRANK B. KELLOGG

Secretary of State.

[No. 1856]







See pg. 5  
for marine  
restriction

DOC # 196552

INDENTURE AND DEED

*aka 'ne restriction*

- THIS INDENTURE AND DEED made, executed and delivered  
this 20<sup>th</sup> day of December, 1956, by and between  
the TERRITORY OF HAWAII, whose place of business and post  
office address is Iolani Palace, Honolulu, City and County  
of Honolulu, Territory of Hawaii, hereinafter called "Territory",  
and ALA MOANA PROPERTIES, LIMITED, a Hawaii corporation, whose  
principal place of business is 1350 Ala Moana, said Honolulu,  
and whose post office address is Post Office Box 3468, said  
Honolulu, hereinafter called "Ala Moana",

W I T N E S S E T H:

WHEREAS, the parties hereto did enter into an  
"Agreement" dated April 30, 1956, whereby the parties hereto,  
under the provisions of Section 4535, Revised Laws of Hawaii,  
1945, and other pertinent provisions of law thereunto enabling,  
did agree to an exchange of land, extinguishment of certain  
easements, establishment of new easements, and restriction  
of use of lands and yacht harbor; and

WHEREAS, the Board of Harbor Commissioners, at a  
meeting held April 26, 1956, has concurred in, and the  
Commissioner of Public Lands of the Territory of Hawaii,  
and the Attorney General of the Territory of Hawaii, and  
the Governor of the Territory of Hawaii, have approved the  
above-mentioned Agreement;

NOW, THEREFORE, for and in consideration of the  
covenants of Territory contained in said Agreement, and for





and in consideration of the conveyance of certain lands by Territory and the granting and extinguishment of certain easements by Territory, as hereinafter set forth, Ala Moana:

1. Does hereby give, grant, bargain, sell and convey unto the said Territory, its successors and assigns, that certain parcel of land situate on the Southwest side of Ala Moana, at Kalia, Waikiki, said Honolulu, generally known as Lot 23, area 40,944 square feet, as shown on Map No. 4 on file in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Consolidation No. 32 of Bishop Trust Company, Limited, Trustee for the Hobron Land Trust, said lot being a portion of the land described in Land Court Transfer Certificate of Title No. 66815 issued to Ala Moana.

Ala Moana Dec 12  
convey Lot 23  
to Territory

Consolidation 32

TO HAVE AND TO HOLD the same, with the improvements thereon, and all rights, easements, privileges and appurtenances thereunto belonging or appertaining unto the said Territory, its successors and assigns, in fee simple forever.

2. Does hereby give, grant, bargain, sell and convey unto the Territory, its successors and assigns, that certain parcel of land situate on the Southwest side of Ala Moana, at Kalia, Waikiki, said Honolulu, generally known as Lot 25, area 30,109 square feet, as shown on Map No. 4 on file in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Consolidation No. 32 of Bishop Trust Company, Limited, Trustee for the Hobron Land Trust, said lot being a

inconsistent with  
to Territory





portion of the land described in Land Court Transfer Certificate of Title No. 6413 issued to Ala Moana.

TO HAVE AND TO HOLD the same, with the improvements thereon, and all rights, easements, privileges and appurtenances thereunto belonging or appertaining unto the said Territory, its successors and assigns, in fee, so long as said area be used for the purposes of public recreation and/or a roadway.

EXCEPTING and RESERVING, HOWEVER, to Ala Moana a non-exclusive easement of access into, out of, and along said lots.

AND, the Territory covenants that no buildings or structures (other than necessary and incidental to the construction and maintenance of a roadway thereon) shall be constructed or erected nor permitted to be constructed or erected on said Lot 25; and further, that if a roadway be constructed and maintained by the Territory on said Lot 25, that a mauka sidewalk area (not to exceed three and one-half feet in width including curbing) be provided, and that parking on said lot be limited to loading and unloading only; and that these covenants shall run with the land.

3. Does hereby remise, release and forever discharge the Territory, its successors and assigns, of and from any and all manner of action or actions, cause and causes of action, suits, controversies and trespasses, damages, claims and demands of whatsoever kind or nature, on account of any failure by the Territory to maintain a public beach on Lots 23, 24, 25, and 26, as shown on Map No. 4 on file in

*Lot 25  
APR 23  
1964*

PARKING



*loading + unloading  
Max. 3 1/2  
sidewalk  
Max. to be provided  
mauka. all  
run w land*

*release  
all claims  
for failure to  
provide beach.*

*release of beach*





the Office of the Assistant Registrar of the Land Court with Land Court Consolidation No. 32 of Bishop Trust Company, Limited, Trustee for the Hobron Land Trust.

*ocean views from lot 25*  
*no view from lots 23, 24, 25, 26*  
*through lots have building restrictions*

4. Does hereby remise, release and forever discharge the Territory, its successors and assigns, of and from any and all manner of action or actions, cause and causes of action, suits, controversies and trespasses, damages, claims and demands of whatsoever kind or nature, in connection with any failure by the Territory to maintain a clear view of the ocean makai from the lots referred in the preceding paragraph and makai from Lots 4, 14, 15, and 19, as shown on Map 1 of said Land Court Consolidation No. 32, from Lots 2-A and 6-A as shown on Map No. 2 of said Land Court Consolidation No. 32, and from Lot No. 22 as shown on Map No. 3 of said Land Court Consolidation No. 32.

*ocean view from lot 29*

5. Does hereby remise, release and forever discharge the Territory, its successors and assigns, from any obligation to maintain in the future a clear view of the ocean makai from the lands described in the preceding paragraph; PROVIDED, HOWEVER, that the Territory shall use the 8-foot strip of land and retaining wall makai of Lots 23 and 25 referred to herein only for sea wall and sidewalk purposes, existing transformers, electric light standards, drainage outlets, and gear lockers, any such structures except electric light standards not to exceed four (4) feet in height above existing sidewalk, and said gear lockers not to occupy more than thirteen (13) lateral feet of each forty (40) lateral feet of the sea wall;

*8' strip of land makai lots 23 & 25*  
*gear lockers*  
*sea wall sidewalks only*





the Office of the Assistant Registrar of the Land Court with Land Court Consolidation No. 32 of Bishop Trust Company, Limited, Trustee for the Hobron Land Trust.

OCEAN VIEWS FROM LOT 25  
Makai  
14' sidewalk  
& 8' from  
road  
through  
lot  
24, 25, 26  
have building  
restrictions

4. Does hereby remise, release and forever discharge the Territory, its successors and assigns, of and from any and all manner of action or actions, cause and causes of action, suits, controversies and trespasses, damages, claims and demands of whatsoever kind or nature, in connection with any failure by the Territory to maintain a clear view of the ocean makai from the lots referred in the preceding paragraph and makai from Lots 4, 14, 15, and 19, as shown on Map 1 of said Land Court Consolidation No. 32, from Lots 2-A and 6-A as shown on Map No. 2 of said Land Court Consolidation No. 32, and from Lot No. 22 as shown on Map No. 3 of said Land Court Consolidation No. 32.

OCEAN VIEW FROM LOT 29

8' strip of land  
makai  
lots 23 &  
5' sidewalk  
gear lockers  
sea wall  
sidewalks  
only

5. Does hereby remise, release and forever discharge the Territory, its successors and assigns, from any obligation to maintain in the future a clear view of the ocean makai from the lands described in the preceding paragraph; PROVIDED, HOWEVER, that the Territory shall use the 8-foot strip of land and retaining wall makai of Lots 23 and 25 referred to herein only for sea wall and sidewalk purposes, existing transformers, electric light standards, drainage outlets, and gear lockers, any such structures except electric light standards not to exceed four (4) feet in height above existing sidewalk, and said gear lockers not to occupy more than thirteen (13) lateral feet of each forty (40) lateral feet of the sea wall;





AND PROVIDED FURTHER, HOWEVER, that the Territory shall restrict its use of the marine area immediately makai of the said described 8-foot strip and in front of or makai of the property of Ala Moana to non-commercial seaworthy marine vessels in first-class condition, shall prohibit the persons on such craft from setting up residences or effectuating major repairs on vessels while in said area, and shall refrain from building, causing to be built, or permitting to be built, any structures within said marine area above the level of the existing sidewalk on the 8-foot strip described herein, except for catwalks and bitts, cleats, or other mooring devices thereon.

Non commercial  
vessels in  
first class  
condition no  
resident  
dwelling use

Territory  
will restrict  
strip of land  
makai of  
Ala Moana  
open to  
non commercial  
vessels

release  
littoral rights  
to Lot 4  
& 19

6. Does hereby surrender, grant, convey, relinquish, release and quitclaim to Territory, its successors and assigns, any and all littoral rights appurtenant to Lots 24 and 26, as shown on Map No. 4 of said Land Court Consolidation No. 32, and Lot No. 19 as shown on Map No. 1 of said Land Court Consolidation No. 32.

TO HAVE AND TO HOLD the same, together with all rights and privileges belonging or appertaining thereto, unto the said Territory, its successors and assigns, forever.

7. Does hereby remise, release and forever discharge the Territory, its successors and assigns, of and from any and all manner of action or actions, cause and causes of action, suits, controversies and trespasses, damages, claims and demands of whatsoever kind or nature, and from any and all provisions and obligations of that certain Agreement known as the Waikiki Agreement entered into on October 19, 1928,

5.





between the Territory and various property owners, including Ala Moana's predecessors in title and interest, said Agreement being recorded in the Bureau of Conveyances of the Territory of Hawaii in Book 1047, Pages 176-202. *waikiki agreement*

8. Does hereby give, grant, bargain, sell, convey, release, relinquish and quitclaim unto the Territory, its successors and assigns, any and all reversionary or other interest it has or might claim, as successors to the title and interest of the Hobron Land Trust, in that certain parcel of land known and denoted as Lot No. 2, Area 11,041 square feet, as shown on Map No. 1 on file in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 852, said lot being a portion of the land described in Land Court Transfer Certificate of Title No. 12,829 issued to the Territory.

*on other side of Ala Moana at pump station in Ala Moana Bot Park*

TO HAVE AND TO HOLD the same unto the said Territory, its successors and assigns, forever.

AND, for and in consideration of the covenants of Ala Moana contained in said Agreement, and for and in consideration of the conveyance of certain lands by Ala Moana, as hereinbefore set forth, and the release of littoral rights and other claims by Ala Moana, as hereinbefore set forth, Territory:

(a) Does hereby give, grant, bargain, sell and convey unto the said Ala Moana, its successors and assigns, all of the following described property:

That certain parcel of land situate on the Southwest side of Ala Moana, at Kalia, Waikiki, said

*LITTORAL S. side*





Honolulu, known as Lct No. 5-C-1-B-1, area 72<sup>1</sup>/<sub>4</sub> square feet, as shown on Map No. 45 on file in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 852 of Bishop Trust Company, Limited, Trustee for the Hobron Land Trust, and being a portion of the land described in Land Court Transfer Certificate of Title No. 12829 issued to Territory.

EXCEPTING and RESERVING, HOWEVER, unto the Territory all littoral rights of whatever nature or kind which are or may be thereunto appertaining.

TO HAVE AND TO HOLD the same, with the improvements thereon, and all rights, easements, privileges and appurtenances thereunto belonging or appertaining unto the said Ala Moana, its successors and assigns, in fee simple forever.

(b) Does hereby surrender, release, cancel, extinguish, quitclaim, sell and convey unto the said Ala Moana, its successors and assigns, all of the following described property:

That certain perpetual easement in favor of the Territory for a public right of way over Lot No. 4, area 1,840 square feet, as shown on Map No. 1 on file in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Consolidation No. 32 of the Bishop Trust Company, Limited, Trustee for the Hobron Land Trust, and noted on Transfer Certificate of Title No. 63399.

*Lot 4  
Hobron public  
perpetual  
easement - given  
to state.*





TO HAVE AND TO HOLD the same unto the said Ala Moana, its successors and assigns, forever.

(c) Does hereby grant and convey unto the said Ala Moana, its successors and assigns, a perpetual easement for the construction, use and maintenance for storm drain purposes only, over, across or under Lot 25, said lot being all of the land conveyed to the Territory pursuant to Paragraph (2) of this Indenture and Deed, and noted on Land Court Transfer Certificate of Title No. 66816 issued to the said Territory.

ASEMENT  
OR STORM DRAIN  
ALLOWED UNDER  
LOT 25

TO HAVE AND TO HOLD the same unto the said Ala Moana, its successors and assigns, forever.

(d) Does hereby grant and convey unto the said Ala Moana, its successors and assigns, a perpetual non-exclusive easement for pedestrian and vehicular traffic over and across Lot 23, said lot being all of the land conveyed to the Territory pursuant to Paragraph (1) of this Indenture and Deed, and noted on Land Court Transfer Certificate of Title No. 66816 issued to the said Territory.

Ala Moana  
wishes granted  
over the lot  
bank of  
the

TO HAVE AND TO HOLD the same unto the said Ala Moana, its successors and assigns, so long as the said Ala Moana has no other reasonable alternative access to said Lot 25; PROVIDED, HOWEVER, that in the event and when such alternative access to the above-mentioned Lot 25 be available, this easement shall be terminated and extinguished, except that if and so long as any licensees of the Territory are afforded access over and across said Lot 23, similar access shall likewise be afforded Ala Moana.

Ala Moana, to  
have non-exclusive  
access to Lot 25.  
The easement  
shall be  
terminated and  
extinguished  
if and so long as  
any licensees of the  
Territory are  
afforded access  
over and across  
said Lot 23.



IN WITNESS WHEREOF, the TERRITORY OF HAWAII has caused these presents to be duly executed by those Territorial officials in whom the authority so to do is in them vested by law, and ALA MOANA PROPERTIES, LIMITED has caused these presents to be executed and its corporate seal to be hereunto affixed by its proper officers in that behalf duly authorized, on the day and year first above written.

TERRITORY OF HAWAII

By Samuel Hilder King  
Governor, Territory of Hawaii

ALA MOANA PROPERTIES, LIMITED

By [Signature]  
ITS VICE-PRES.

By [Signature] C. W. HUMME  
ITS VICE-PRES. and SECRETARY

COUNTERSIGNED:

[Signature]  
Commissioner of Public Lands

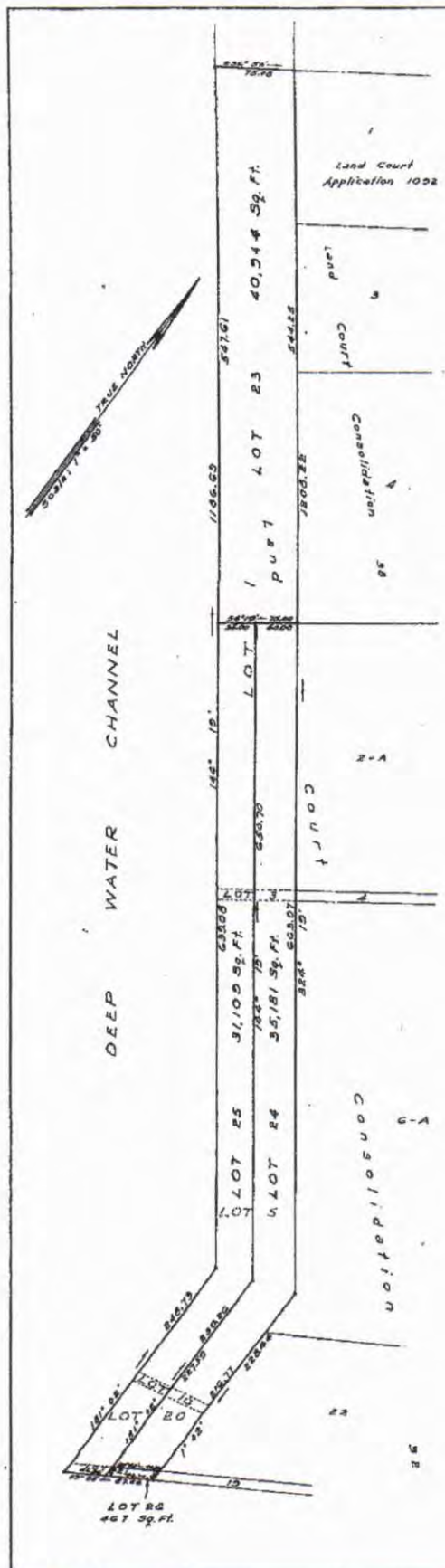
[Signature]  
Chairman, Board of Harbor Commissioners

APPROVED AS TO FORM:

Richard K. Sharpless  
Attorney General, Territory of Hawaii







### LAND COURT TERRITORY OF HAWAII

#### LAND COURT CONSOLIDATION 32

CONSOLIDATION OF LOTS 1, 3, 5, 10, 20, AND 21  
AS SHOWN ON MAP 1  
AND RESUBDIVISION OF SAID CONSOLIDATION  
INTO LOTS 23, 24, 25, AND 26

AT KALIA, WAIKIKI, HONOLULU, OAHU, T.H.

December 14, 1956  
338 Dillingham Building  
Honolulu, T.H.



*John Clive Meany*  
Registered Professional Surveyor  
Certificate Number 375  
Land Court Surveyor  
Certificate Number 82

OWNER: ALA MOANA PROPERTIES, LIMITED  
OWNER'S CERTIFICATE OF TITLE: 66815

AUTHORIZED AND APPROVED BY ORDER OF THE  
JUDGE OF THE LAND COURT DATED: DECEMBER 20, 1956  
BY ORDER OF THE COURT  
*[Signature]*  
REGISTRAR OF THE LAND COURT

*[Signature]*  
December 20, 1956  
Registrar of the Land Court

200-222-10-4  
C.S. 124-77

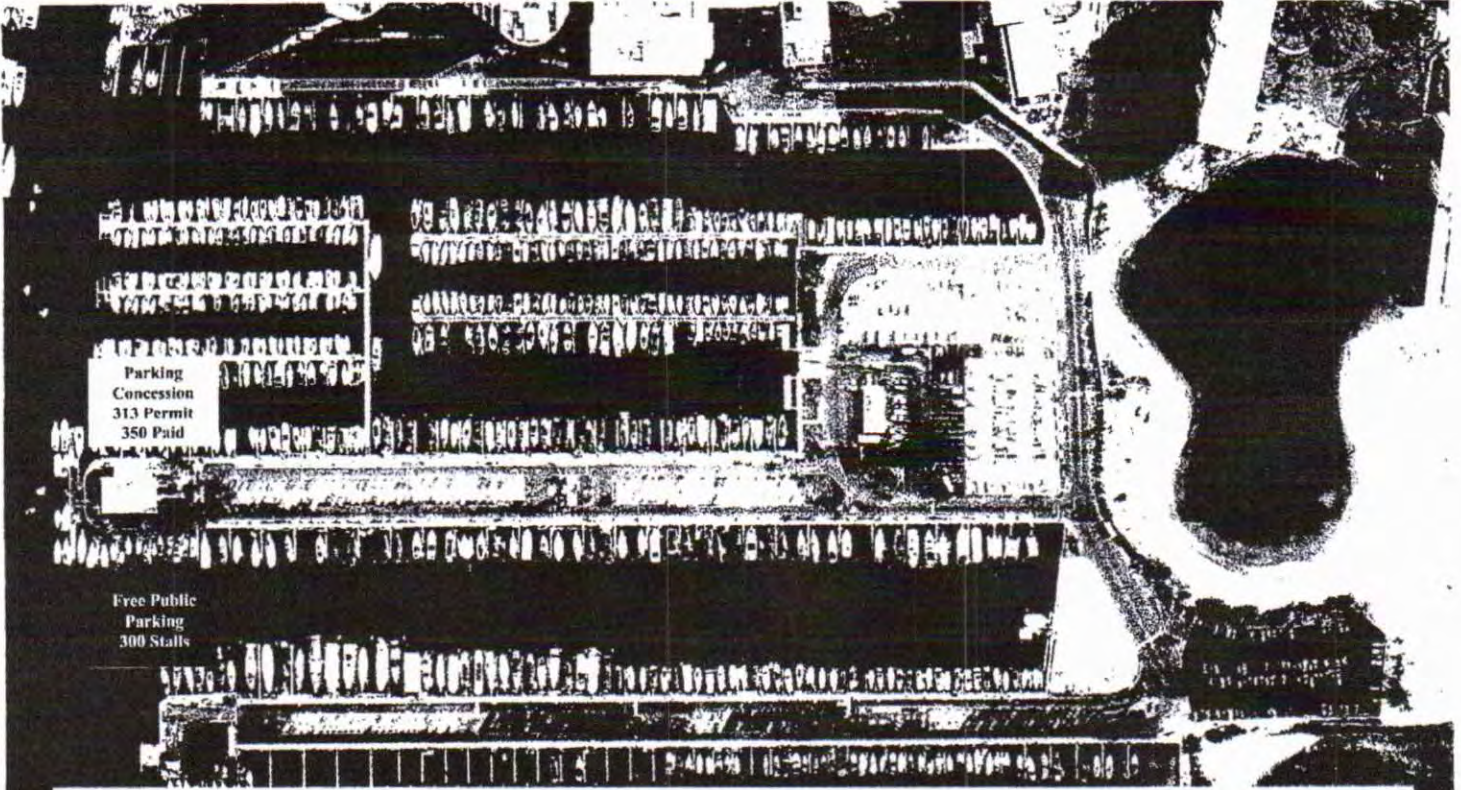
21" x 32" - 4474



CONFIDENTIAL WORK PRODUCT  
JANELI C. CLARK, CEDS  
janeli@perille.net  
Ala Wai Land Info.







Parking  
Concession  
313 Permit  
350 Paid

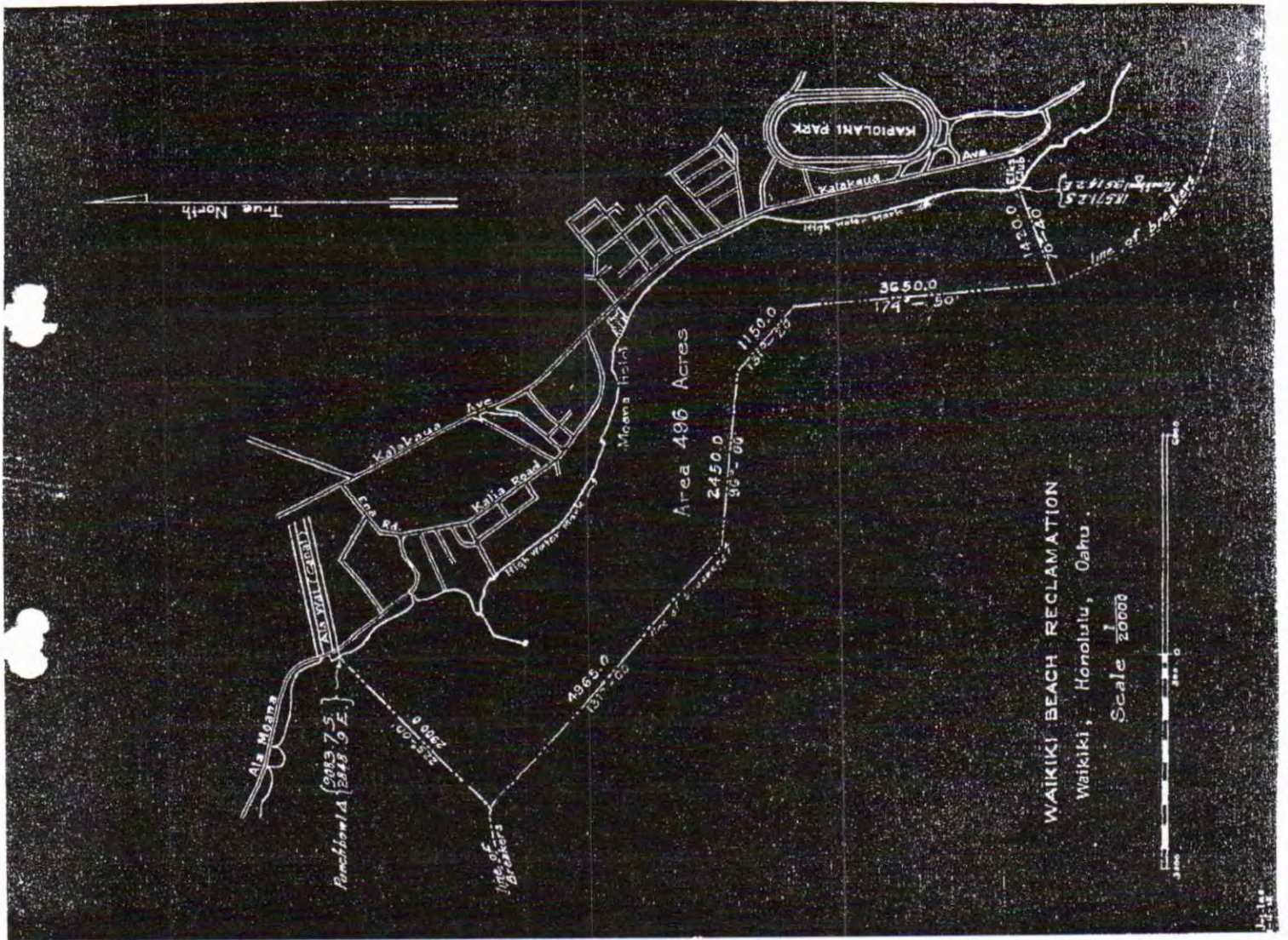
Free Public  
Parking  
300 Stalls

**Diamond Parking is Lessee of all the parking at the Ala Wai Boat Harbor (Both Free Parking and Parking Concession).  
They maintain the parking lots and take care of all towing and parking problems.  
Parking Complaints (Diamond Parking – 592-7275) \* General Complaints (Ala Wai Harbor Master – 973-9727) \* Criminal Problems (HPD – 911)**



**CONFIDENTIAL WORK PRODUCT**  
JANELLE C. CLARK, CEDS  
janelle@cedc.net  
**Ala Wai Land Info.**





**WAIKIKI BEACH RECLAMATION**  
 Waikiki, Honolulu, Oahu  
 Scale 1:20000

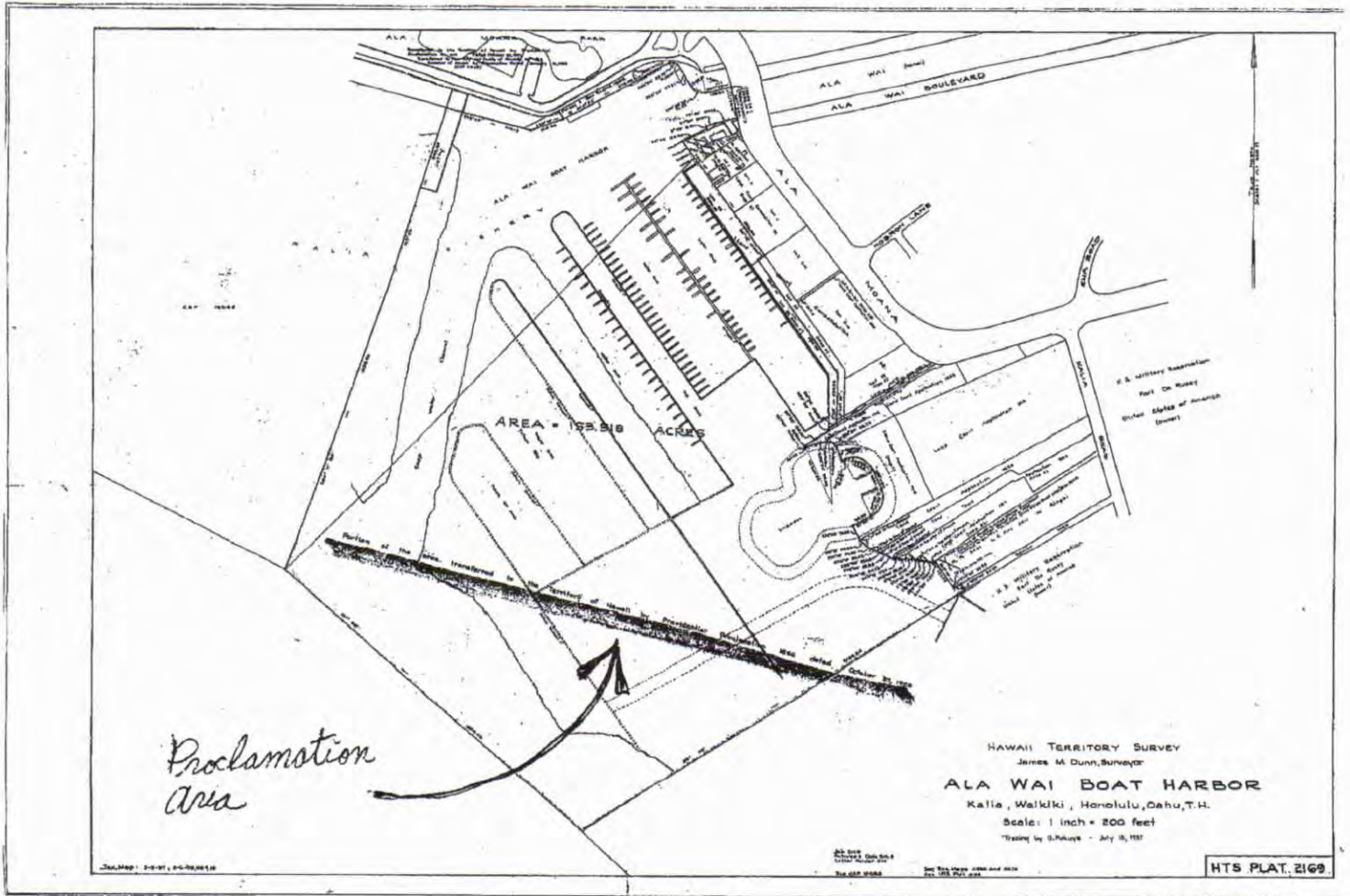


**CONFIDENTIAL WORK PRODUCT**  
 JANELLE C. CLARK, CEDS  
 janelle@pcnlc.net  
 Ala Wai Land Info.



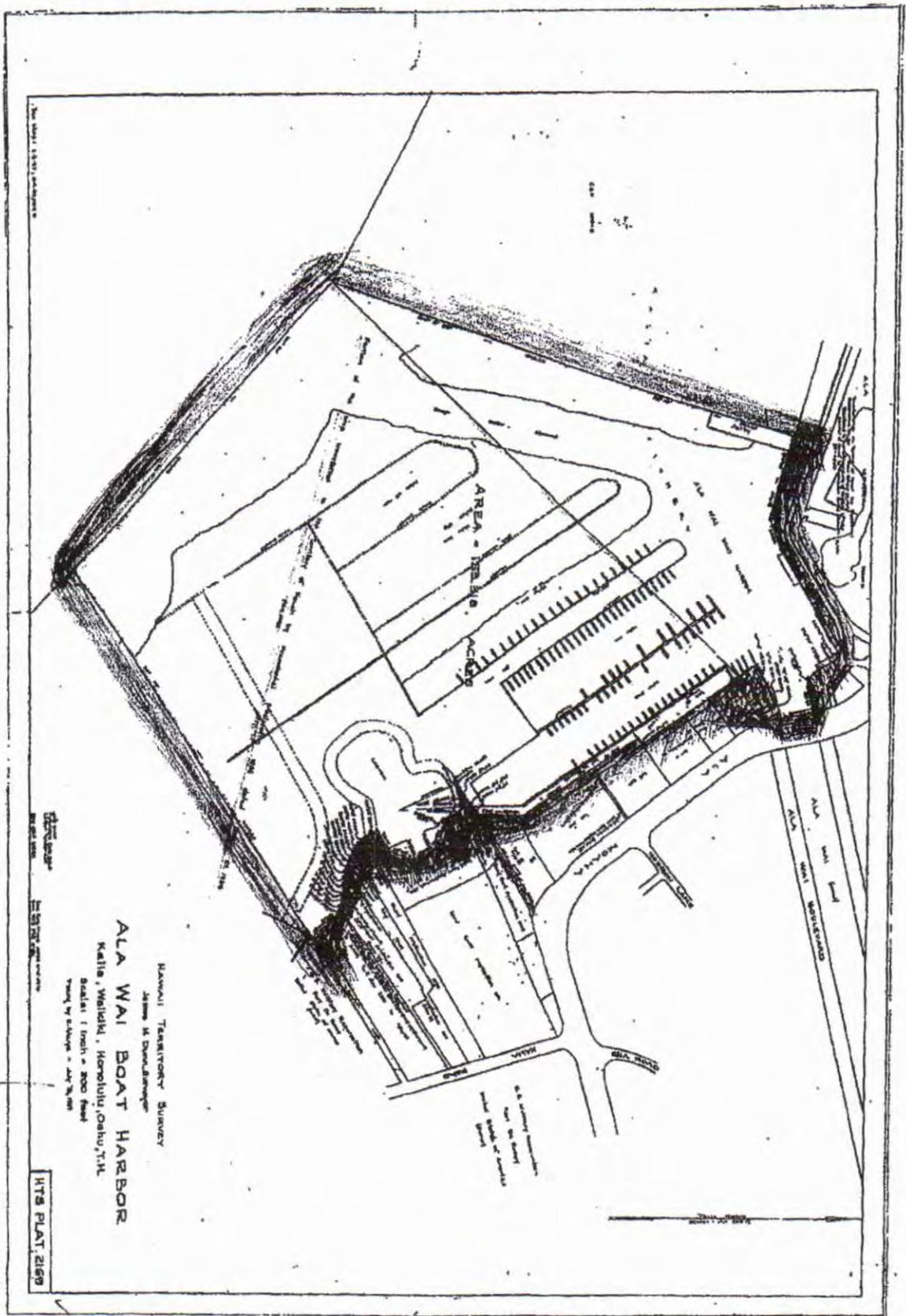






**CONFIDENTIAL WORK PRODUCT**  
JANELLE C. CLARK, CEDS  
jclark@prolicast.com  
**Ala Wai Land Info.**





JULY 13 1957

2109

HTS PLAT 2109

HAWAII TERRITORY SURVEY  
 James M. Clark  
**ALA WAI BOAT HARBOR**  
 Kalia, Waikiki, Honolulu, Oahu, T.H.  
 Scale: 1 inch = 200 feet  
 Survey by Clark - July 13, 1957



**CONFIDENTIAL WORK PRODUCT**  
 JAMES M. CLARK, CEDS  
 james@ceds.net  
 Ala Wai Land Info.







**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, JANUARY 25, 2008  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:04 a.m. The following were in attendance:

**MEMBERS**

Ms. Laura Thielen  
Mr. Tim Johns  
Mr. Jerry Edlao  
Mr. Rob Pacheco

Mr. Ron Agor  
Ms. Taryn Schuman  
Dr. Sam Gon, III

**STAFF**

Mr. Morris Atta, LD  
Mr. Sam Lemmo, OCCL  
Mr. Dan Polhemus, DAR  
Mr. Ed Underwood, DOBOR

Mr. Dan Quinn, SP  
Mr. Eric Hirano, ENG  
Mr. Dave Gulko, DAR

**OTHERS**

Mr. Colin Lau, Office of the AG  
Ms. Pam Matsukawa, Office of the AG  
Mr. James McCarty, K-1  
Mr. Matthew Pyun, E-2  
Ms. Lynn Brown, E-3  
Mr. Douglas Blake, E-3  
Mr. Clemeth Keali'ipoimokukanuha, Jr., E-3  
Mr. Jim Coon, D-4, F-5  
Mr. Rick Lesser, F-5  
Mr. Ed Robinson, F-5  
Mr. Phillip Kasper, F-5  
Mr. Jeff Strum, F-5  
Mr. Garry Kaaihue, J-2

Mr. Bill Wynhoff, Office of the AG  
Ms. Denis Toombs, K-2  
Ms. Victoria McCarty, K-1  
Mr. Jon Moon, E-3  
Ms. Cindy Sheehan, E-3  
Mr. China Uemura, E-3  
Mr. Brian Blundell, D-4  
Mr. Russell Sparks, F-5  
Mr. Greg Howeth, F-5  
Mr. Steven Morris, F-5  
Mr. Grant Arnold, F-5  
Ms. Melissa Ling-Ing, J-2  
Mr. Kurtis Ro, J-2

Mr. Joseph Napoleon, J-2  
Ms. Janet Mandrell, J-2  
Mr. Jimmy Anderson, J-2  
Ms. Catherina Pudwill, J-2  
Mr. Ron Iwami, J-2  
Ms. Liz Enoka, J-2  
Mr. Noa Napoleon, J-2  
Mr. Michael Kraft, J-2  
Mr. Bruce Middleton, J-2  
Mr. Richard Ing, J-2  
Mr. Chris Roridge, J-2  
Mr. Greg VanderLaan, J-1  
Dr. Charles Littnan, F-4

Mr. Fred Madlener, J-2  
Mr. Les Parsons, J-2  
Ms. Lavonne West, J-2  
Mr. Tony Agad, J-2  
Mr. George Downing, J-2  
Ms. Susan Kim, J-2  
Ms. Zelei Abordo, J-2  
Mr. Frank Lange, J-2  
Mr. Mark Cunningham, J-2  
Mr. Reggie White, J-2  
Mr. Peter Drews, J-2  
Ms. Marti Townsend, F1-F4

{Note: language for deletion is [bracketed], new/added is underlined}

**Item A-1      Minutes of November 16, 2007.**

Member Schuman recused.

**Unanimously approved as submitted. (Agor, Gon)**

**Item A-2      Minutes of December 14, 2007.**

**Deferred. (Johns, Agor)** Not ready for this meeting.

**Item A-3      Minutes of January 11, 2008.**

Member Pacheco recused.

**Deferred. (Johns, Agor)** Not ready for this meeting.

**Item K-2      Conservation District Use Application (CDUA) OA-3435 for an  
Australia-Hawaii Fiber Optic Cable System Located at and Offshore  
of Keawaula, Waianae, Island of Oahu - portion of parcel TMK: (1)  
8-1-001:007 & 008**

Sam Lemmo, Administrator for Office of Conservation and Coastal Lands (OCCL), briefed the Board on the background. He recommends approval of project subject to conditions. The project will take 7 days.

Denise Toombs for Telstra was here to answer questions.

**Unanimously approved as submitted. (Schuman, Gon)**



**Item K-1 Third Time Extension Request for Conservation District Use Application (CDUA) MA-3035B for James R. McCarty and Victoria L. McCarty - Single Family Residence (SFR), Honokohau, Island of Maui - Parcel TMK: (2) 4-1-002:008.**

Sam Lemmo representing OCCL corrected landowner section to read McCarty's are the sole owners. He reported on the situation the McCarty's are experiencing and staff recommends approval.

James McCarty introduced himself and his wife Vicky. He informed the Board of the problems in acquiring Maui permits and hoped to obtain an extension. He cited permits on neighboring properties. Mr. McCarty distributed a handout to the Board.

Vicky McCarty clarified that the bankruptcy court has been cleared and asked to consider staff's recommendation. She noted that the property is not for sale and they intend to build on it.

**Approved as submitted. (Edlao, Agor) All approved, but Member Johns opposed.**

**Item E-2 Request for Approval of the Placement of Hazard Signs on Improved Public lands Along the Kauai Bicycle and Pedestrian Pathway for Lihi Park to Kealia Beach, County of Kauai Pursuant to Act 82, Session Laws of Hawaii, 2003**

Dan Quinn, Administrator for State Parks, informed the Board on submittal background.

Matthew Pyun, Attorney for Kauai County, asked for approval.

Member Agor remarked he visited the site and finds the location of signs appropriate

**Unanimously approved as submitted. (Agor, Gon)**

**Item E-3 Request from Hulakai to Use a Portion of the Kekaha Kai State Park - Kaulana-Mahai'ula Section to Hold the Third Annual Hulakai Longboard Surf Classic**

Dan Quinn representing State Parks reported background. He described alleged violations and who benefits at Make-A-Wish Foundation.

Discussion of problems with surfers keeping general public out of parking lot, alcohol use, drugs, camping overnight, and jet skis.

Mr. Quinn explained there are few beach parks on the island that can hold such an event. Staff is balancing the benefits to a worthy cause versus the impacts to the public. It is represented as a fundraiser.

The Board had concerns with the use of a state park for a commercial venture.

Jon Moon of Hulakai explained products are given away to the children. Nothing is sold at the event. If any money is made it all goes to Make-A-Wish Foundation. He disputed the allegations and noted a DOCARE officer was there. It was Hulakai's first event which had problems, but they corrected them. Mr. Moon requested for more enforcement officers. Regarding advertisement, brochures were handed out. All the money made stays on the Big Island.

Lynn Brown, Executive Director of Make-A-Wish Foundation, introduced Cindy Sheehan, Development Director. Ms. Brown described their organization's reliance on volunteers and fundraisers. Make-A-Wish brochures are handed out and banners are displayed.

Douglas Blake expressed he has nothing against Make-A-Wish, but none of their children was there last year. Hulakai had their chance then and he doesn't understand why staff is allowing it. He described the allegations. There were no Make-A-Wish banners displayed, only Hulakai banners were up. It was held at Kawaihae the first year. He had no photos. Mr. Blake doesn't recommend giving Hulakai a permit because this is a non-commercial wilderness park.

Mr. Quinn reassured that staff will work with the Attorney General's (AG) office.

Discussion on penalties of violated conditions.

Member Pacheco concerned with any commercial activity and its impacts. He remarked that because of the expensive equipment left overnight Hulakai would need security.

Clemeth Keali'ipoimokukanuha, Jr. supports Hulakai, Make-A-Wish Foundation and traditional surfing. He noted on a daily basis 60-70 people use this park and with his own resources he volunteers to clean it.

Discussion on enforcement.

Mr. Moon mentioned the t-shirts are free, the food is free and described who the volunteers are.

Mr. Quinn explained the definition in Hawaii Administrative Rules states commercial activity is anything involving exchange of money on the site. He related there was pressure to start a commercial kayak operation and staff put a stop to that.

Discussion on number of contestants and people attending. 50-60 contestants, but unsure of the number of public attending.



China Uemura described the need for sponsors and banners. He observed tourists drinking in the park.

Member Edlao made a motion to approve submittal. Member Agor second.

The Board discussed the importance of this wilderness area and whether to post banners.

Chair Thielen queried the Board on whether to consider an amendment that this be the last approval of this Land Board for a surf meet held in Kekaha Kai State Park that additional conditions be imposed which require all banners and signage to primarily support Make-A-Wish Foundation and to delegate the Chair of this Department with the authority to impose fines upon the applicant if the conditions are not met.

Mr. Quinn replied staff will work with the AG's office.

Member Edlao moved to include amendment. Member Agor second.

Ayes: Jerry Edlao, Ron Agor, Laura Thielen

Nays: Rob Pacheco, Taryn Schuman, Sam Gon, Tim Johns

**Motion as amended did not pass. Not Approved.**

**Item D-4 Authorize a One-Year Holdover for Grant of Easement No. S-5182, Lahaina Yacht Club and Grant of Term, Non-Exclusive Easement to Lahaina Yacht Club for Maintenance and Repair of Existing Concrete Pillars and Improvement Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-1: seaward of 5.**

Morris Atta, Acting Land Division Administrator, conveyed background. Staff requested a 1 year holdover and issuance of a long term lease if all proper approvals are met.

Brian Blundell, Chairman of the Board of Trustees for Lahaina Yacht Club, asked for the Board's approval. He described background of Lahaina Yacht Club and the groups they support. He has been apprised of staff's recommendations.

Jim Coon member of Lahaina Yacht Club supports their application.

**Unanimously approved as submitted. (Johns, Edlao)**

**Item L-1 Request for Authorization for the Department and its Agents, Employees, and Consultants, to Enter Upon Various Private properties and Easements / Right-of-Ways, for the Purpose of Conducting Investigations and Inspections of the Kaloko Dam, as Directed by Act 118, Session Laws of Hawaii 2006, Relating to Emergency Relief for Natural Disasters, and Pursuant to Hawaii Revised Statutes Chapter 179D.**

Member Taryn Schuman recused herself.

Eric Hirano, Chief Engineer of Engineering Division, added to staff's submittal regarding Phase 2 dam safety inspection. Staff will gather topographic information which will assist staff to evaluate the stability of the dam, holding capacity and storage volume of the reservoir. This will help form additional dam break scenarios and evaluate potential impacts downstream of the reservoir. Ground evaluations would be provided to help better determine trigger points or alert warning levels to rising water which is attached to a water monitoring gauge. The study will look at the hydrology. A diversion from Moloa'a Stream feeds the reservoirs but was never registered with the water commission. This investigation will provide important information to staff and the owners or operators of the dam. He recommended approving staff's recommendations in the submittal.

Member Pacheco inquired who is responsible for registering the diversion.

Mr. Hirano replied it's the owners, operators or users.

Member Johns queried whether the land board has to make a decision to empower DLNR staff to utilize HRS §179D-6 to move onto the property to do the inspection that is being paid for pursuant to Act 118 (Section 24, 25 - Session Laws of Hawaii 2006).

Deputy AG Bill Wynhoff responded in the affirmative. Staff did ask the landowners for permission and they were cooperative with respect to Phase I. Because of the massive litigation it shouldn't be held against the landowners if they didn't feel able to accede to the Phase II. Staff believed it best to get Land Board's permission to conduct Phase II.

Member Johns asked if the HRS §179D provision is not related to the litigation.

Mr. Wynhoff replied it is not.

Member Johns inquired if HRS §179D doesn't have any provisions in it with regard to confidentiality for protection of the Land Board.

Mr. Wynhoff answered no; he believes staff took this position with respect to the Phase I. Once it was done and became public record he believes it will be the same case with Phase II when it is completed.

Chair Thielen queried Mr. Wynhoff if the intent behind that section of the statute is to allow the State to meet its obligations for dam safety inspection in the event the landowner does not give the State right-of-entry.

Mr. Wynhoff agreed. HRS §179D-22 was added last year in response to the Kaloko tragedy for the reasons the Chair mentioned.



Member Johns inquired if the AG's office reviewed the statute and found in the situation with litigation it is not asking the landowner to abridge the right against self incrimination or otherwise.

Mr. Wynhoff replied in the affirmative.

Member Pacheco asked if this was done with other dams.

Mr. Wynhoff explained this was done with this dam shortly after the tragedy and staff may have done it with other dams during the push to examine all the dams. The Board did take this specific action under the pre-existing statute at the time.

Member Johns asked if the public safety issue was done what is staff doing now. Over reaching for litigation advantage?

Mr. Wynhoff reported staff has not solved the problem. Staff went in concerned with the dam collapsing again and with the landowner's cooperation did a Phase I. The Phase I team did not think the dam looked like it will collapse, but they could not make no definitive conclusion without doing a Phase II.

Mr. Hirano remarked in answer to the Board's question, staff did come before the Board when the Corp. of Engineers and consultants were hired to cover the statewide inspections.

Chair Thielen inquired what the distinction is between Phase I and Phase II is.

Mr. Hirano replied Phase I is based on visual inspection. Phase II requires actual topographic surveys to calculate the slopes of the embankment, taking borings for soil samples and doing hydrology analysis. It is more costly than a Phase I.

Member Pacheco queried whether this authority to enter private property precludes any information coming from this investigation to be used in any litigation.

Mr. Wynhoff asserted it doesn't speak to that issue. The owners will have to work it out themselves in the litigation.

Mr. Hirano added it will become a public document once finalized.

Mr. Wynhoff stated the fact that there is on-going litigation doesn't legally override statutory authority and obligation.

Member Agor inquired how long this will take.

Mr. Hirano replied various consultants need to meet before setting a schedule.

**Unanimously approved as submitted. (Agor, Gon)**

**Item F-5      Resubmittal – Enforcement Action against Maui Snorkel Charters, Inc. for Damaging Coral within the Molokini Shoal Marine Life Conservation District**

Written testimony was received from Richard Lesser, attorney for Maui Snorkel Charters.

Dan Polhemus, administrator for Division of Aquatic Resources (DAR), reminded the Board that this submittal came before them in December. He gave a brief recap on the background. The Board pursuant to law has available to it two primary options for sanctioning Maui Snorkel Charters. First, revoke their commercial use permit for Molokini. Or second, impose an administrative fine and assess fees and costs of up to \$672,618. At the time of the original submittal, DAR recommended revoking the permit for Maui Snorkel Charters for 1 year because it's a significant penalty that both reflects the seriousness of the offense, the damage and the circumstances surrounding the incident. The Board has the additional option of imposing fines and assessing fees. At the discretion of the Board it may impose a fine in addition to the permit revocation or the imposition of a substantial fine in lieu of the revocation. DAR considers this proposal reasonable and feels it should be considered because it provides direct benefit to the management of the resource. The State Office of the Attorney General is aware of this proposal.

Discussion and background on methodology.

Bill Wynhoff, deputy attorney general, explained that Hawaii Revised Statutes 187-12.5 talks about per specimen. The issue is not to measure the coral cover area or to put a market value on the damage. That point of view is how many specimens were damaged, destroyed or killed.

Member Johns asked why the difference between the two methodologies.

Mr. Wynhoff explained there are a welter of overlapping statutes related to fines. He referred to Pilaa and declared it's better or at least easier to go with a per specimen method.

Member Johns rephrased his question to Dan. Is staff confident on the number of specimens impacted in the area? He wondered if staff was trying to be conservative.

Mr. Polhemus replied in the affirmative and that David Gulko, a staff biologist, is available if the Board wants more detail. Staff produced a very conservative estimate.

Member Johns queried if this particular action is subject to a contested case hearing.

Mr. Wynhoff replied in the affirmative. But Maui Snorkel has not made a request.



Russell Sparks of Aquatic Resources on Maui reported that staff has gone back to the site since the accident, numerous times, to do annual coral monitoring assessments.

Dave Gulko, staff biologist with DAR, explained the regeneration issue. Eighty years is a conservative estimate of the slowest growing coral. He cited the example of a styrofoam cup comparing it to loss ecological services. It takes time to recover based on the type of coral and the environmental conditions.

Rick Lesser representing Maui Snorkel Charters thanked the Board for deferring this matter from December. He mentioned the distributed binder and who was here to testify. Mr. Lesser presented his testimony and photographs. He noted a permanent revocation would be fatal to Maui Snorkel Charter's operation. A high fine could be fatal, too. He recommended providing on-going income to the Department for the preservation, restoration and education of Molokini Crater. The company is willing to retain its permit by obtaining a surcharge in its operation to be directly donated to DAR in a total sum of \$500,000 over the next 10 years guaranteeing a minimum of \$50,000 a year to provide additional services that the DAR believes are required at Molokini. Mr. Lesser discussed the poaching problem, the use of enforcement and education.

Mr. Polhemus stated DAR has a commercial fisheries special fund available for this use. Staff consulted with the Office of Attorney General (AG) and they felt it is a possible option. He doesn't feel the Board should assess a fine so large it cannot be collected. DAR would like the resource to gain some benefit from any settlement and this proposal gives a tangible benefit to the management of the resource. Mr. Polhemus explained Maui Snorkel's situation where they had ample time to tow.

Discussion on how to prevent it from happening in the future.

Chair Thielen expressed she was offended by Mr. Lesser's presentation insinuating that the Board is looking for a piece of paper up on the wall that they have a win. She explained the Board takes their responsibility to natural resources seriously. Chair Thielen finds Mr. Lesser's offer interesting where DAR's use of the fund would be overseen by the commercial operators. Because Maui Snorkel made a series of decisions over a period of time which exhibited very poor judgment and impacted the reef for decades. It's interesting that Mr. Lesser should even bring that forward.

Member Edlao stated he likes the idea of a fund, but felt uncomfortable of having Maui Snorkel's passengers pay for Maui Snorkel's mistake. He clarified he is not against the company, but noted the severity of the situation. He asked is the \$50,000 a year guaranteed.

Mr. Lesser replied it was discussed with the AG to obtain a real number that was collectable. He apologized to the Board that there was no offense meant by his comment. He reported in recent meetings, a multitude of options were discussed. The AG noted in past incidences where a fine was levied, but years later nothing had been collected. That is not what Maui Snorkel wants. They want to make sure there is something that will

work into the future for the reef. The reef is how the company makes its living and it is not trying to get out of this situation. Maui Snorkel wants to provide real funds to DAR to protect the reef they use, to help the moorings, to prevent the poaching and to educate the people to why it's so valuable. For those reasons, Maui Snorkel suggested a viable and realistic income stream that would last over the years. Mr. Lesser discounted the report on the growth rate and economic damage. He mentioned support for the reef and that Maui Snorkel are not the bad guys. He reiterated the situation.

Mr. Lesser mentioned that no petroleum or diesel leaked. He gave the analogy of cutting down an 80 year old tree and planting 25 little ones is not the same compared to the foam cup. No old coral was found in the impacted area. He added Maui Snorkel has no problem paying the fine. A six figure fine is not a viable option for this business which is the reality of it. Mr. Lesser reiterated the suggestion of reef preservation. It goes to the passengers, but so does everything else.

Discussion on why the captain didn't tow. Maui Snorkel understands they are responsible.

Chair Thielen suggested the coral regeneration time period is not necessarily an issue with the Board's ability to enforce the fines.

Mr. Polhemus encouraged the Board to levy an appropriate fine, but of sufficient magnitude that it recognizes the severity of the damage. While at the same time a fine that is collectable and utilized in the rehabilitation of the resource that was damaged.

Mr. Lesser suggested assuming the AG feels the period of reef conservation contribution, donation or fine is a viable option that the Board take certain parameters to revisit this in 12 months to see whether the money was collected, whether DAR was happy with what had been done and whether or not DAR felt it is a viable program. He suggested making an ultimate decision in 12 months rather than today.

Jim Coon, president of Ocean Tourism Coalition which represents 300 statewide ocean businesses. His organization is concerned with the situation and is shocked with the fine amount because no small business could pay a fine like that. Mr. Coon approved of the compromise and noted that Maui Snorkel is a long time supporter of local conservation. As an industry, his organization is committed to establishing some operating protocols because they don't want this to happen again. He acknowledged how important this resource is.

Member Johns queried whether it would be better for the resource to have these operating protocols. Or, are there too many tours going out there now, and if there are, why not start whittling it down with somebody who has done something as bad as this and eliminating them from the coalition.

Mr. Coon replied the reef is a limited resource and it's limited by weather. Molokini only has a window of 4 hours per day that allows the tours. The 42 operators share 24



moorings. One disadvantage of putting an operator out of business is losing a responsible operator. He explained as an industry these operators call each other to help in any accident and are willing to preserve the resource. Mr. Coon feels putting Maui Snorkel out of business will not enhance the resource. The industry wants to support that resource which should be encouraged. The weather may not allow any tours for days and the resource has lots of rest periods. The resource will benefit because of the responsible shared use and stewardship.

Member Edlao clarified after a year Maui Snorkel can reapply. Staff is not putting them out of business.

Discussion on whether they allowed a new captain to operate after 3 days based on his credentials. Reiteration of situation and mistakes made.

Mr. Coon explained if the weather is bad his staff will re-schedule or go somewhere else. If his clients are not satisfied they will get their money back. His operation will notify those clients in advance if the tour won't happen.

Chair Thielen was concerned why there aren't any internal protocols within the businesses currently. Here a captain said he knows he needs a tow, but a mechanic on shore said no you don't. Perhaps the businesses aren't taking as much responsibility or kuleana for the resource as they should. Mr. Coon mentioned protocols, but the Chair said she hasn't heard any time frames, any guarantees or anything delivered by the industry. She referred to the compliance of pumping toilets as an example. Chair Thielen asked Mr. Coon if he was confident that the industry will provide protocols for operating to avoid a situation like this from happening in the future some time in the next 6 months.

Mr. Coon agreed with the Chair in regards to the compliance of pumping toilets. He stated in regards to the protocols, the industry needs to get together. This situation has never happened before and now that it has the industry will put something in place to help the captains. The different operators will informally discuss on developing these protocols afterward. Mr. Coon has met with Mr. Polhemus on this.

Greg Howeth representing Lahaina Divers, Inc. testified he is a competitor of Maui Snorkel and has worked with them on a number of reef conservation projects. He explained that everyone in the industry is concerned because Maui Snorkel is a long time business who is able to give back to the resource. A start-up business would not be able to. The 1 year revocation would put Maui Snorkel out of business. Molokini is a significant part of its business. Mr. Howeth was concerned with the magnitude of the fine and what will be done with it. He supports a structured ongoing payment that will go back to Molokini.

Mr. Polhemus mentioned the Board could assess up to \$672,618 based on the amount of coral damage. Staff did not endorse any amount. They are giving a range between zero and the amount stated. He noted that a fund going to the resource is palatable. But as an

operator any increases could price them out of the market. They are not governed by the PUC but the free market.

Discussion on who makes the call on the ship and reiteration of the situation decisions.

Ed Robinson has had a Maui dive business since 1971 and is concerned with the fine levied against Maui Snorkel. He felt the situation wasn't negligence, carelessness or irresponsibility, but stupidity. He is surprised there are no mitigating things to lessen the impact or some objective way to look at it. It isn't something that can be stopped.

Member Gon disagreed. It's an MLCD and all commercial use can be stopped at Molokini. It is the Board's discretion as to the amount.

Mr. Robinson replied he understands and was hoping for other considerations. He described the Maui Reef Fund and how it is used to protect the reefs. Donations are given to support it. He explained the commitment toward protecting the reef.

Steven Morris, secretary of the Hawaiian Islands Recreational Scuba Association Board and owner of Hawaiian Rafting Adventures Dive Maui, informed the Board that he has worked at Molokini. He is a volunteer with Malama Kai and the Maui Reef Fund. Mr. Morris acknowledged that Maui Snorkel is a responsible company, is a good example for other boat companies and they employ a lot of people. He described being a captain himself and that there is no one on the island to tow commercially. The other boat companies look out for each other.

Phillip Kasper, owner of Frogman Charters, addressed the Board that the operators install their own moorings on their own time and expense. He supports Maui Snorkel Charter's solution to the situation. Mr. Kasper reiterated Mr. Morris's sentiments. He added the engines are not perfect and problems will arise. It's difficult for anyone to memorize any one protocol when a couple situations happen at the same time. He compared this with car insurance that everyone makes mistakes. Mr. Kasper believes this won't happen again and requested the Board to consider all testimony.

Grant Arnold representing the Office of Hawaiian Affairs (OHA) explained that OHA was surprised by the series of decisions that were made in this situation, the amount of damage done and the amount of heavy commercial use in this marine preserve. OHA urged the Board to levy a punishment commensurate with the damage caused and to better manage this area.

Jeff Strum, general manager of Maui Snorkel Charters, apologized to the Board, the marine community and the citizens of Hawaii for the damage that was caused. He acknowledged that the captain and mechanic are employees of Maui Snorkel Charters and that they take full responsibility. Mr. Strum believes that the proposal made is fair. It benefits DAR, it benefits the marine industry, it gets the message out and the resource will benefit. His company is offering a vehicle to collect money to make things right. He



thinks Maui Snorkel can do it and the industry, the tourists and community will approve it. Maui Snorkel Charters strongly urged the Board to consider their proposal.

Member Edlao expressed that the wording in the written testimony makes it sound like the Board is condoning this.

Mr. Strum apologized for that. It wasn't the intent of his staff. He described the industry's need to be proactive and to meet with the State to protect the resource.

Mr. Wynhoff explained that revenues generally go to the State General Fund which is dispursed by the Legislature. The Legislature has set-up a few special funds, including this one which might be a vehicle so it won't necessarily go through the appropriation process. There is a special fund set-up by the Legislature that has primers on what can go in it and what goes out it. It can be determined by the Board.

Chair Thielen added that the Legislature has the authority to take funds and put them to alternate purposes.

Mr. Strum stated Maui Snorkel is willing to guarantee raising \$50,000 a year and tie it to the renewal of the permit. He is not opposed to putting up a bond.

**12:09 pm      Adjourned for Executive Session pursuant to HRS §92-5(a)(4) to discuss its legal rights, duties, privileges, and obligations relating to this matter with the deputy attorney. (Gon, Edlao)**

**12:49 pm      Reconvened**

**The Board:**

**Amendment to staff's recommendation:**

**Member Johns made a motion to amend staff's recommendation to instruct the Department through its Chairperson to negotiate a settlement with Maui Snorkel Charters and the parameters of that settlement shall include a commercial use permit suspension of an undetermined time and will also include a payment plan of not less then \$550,000 and for the Chair to report back to the Board with the outcome of those settlement negotiations within 1 month. Also, \$10,000 for administrative costs on top of the payment and included in the settlement negotiations. Member Gon second.**

Chair Thielen summarized that the Chair has the authority to negotiate a settlement subject to the terms set by the Board and will be working with staff who will report back to the Board.

**Unanimously approved as amended. (Johns, Gon)**

**Item J-2 Recommendation for final approval for adoption of rule amendments to Chapter 13-233, Hawaii Administrative Rules, as relating to small boat harbors motor vehicle and parking rules; denial of requests for contested case hearings by Arnold L. Lum, Garry Kaaihue, and Melissa Malulani Ling-Ing.**

Numerous written testimonies were received via mail, e-mail and fax. Portions were inaudible.

Ed Underwood, Administrator for Division of Boating and Ocean Recreation (DOBOR), briefed the Board on submittal background. There are issues with enforcing a 72 hour (3-day) time maximum because of the need to wait the 3 days before taking action on any vehicle. As written, the rules currently allow, DOBOR to meter the entire harbor (parking area) as well as the helicopter pad area. Originally staff looked at metering, but it was too costly and was never pursued. The parking area behind the harbor master's building was leased to Tahitian Lanai, but when the restaurant ended so did the lease. The Board did authorize DOBOR in 2000 to lease those lots to a public parking vendor but it was never pursued. Staff decided to look at the whole harbor instead of piecemeal. DOBOR held 3 public informational meetings to address concerns at the harbor. Staff sent out 560 survey letters to boaters. About 154 letters returned which is a 20% return rate. Of that 20%, 60% were in favor of a parking management plan. At the final public informational meeting, staff stated they will reserve the Ala Wai helipad area for recreational use parking. Reduce the parking time from 72 hours to 24 hours unless designated for longer periods. Staff would like to hire a parking vendor to run a parking management plan. Boaters will still receive parking, but at an increased rate from \$25/year to \$25/month. Staff requested approval of amendments to the rules.

Discussion regarding concerns with fishermen, launch ramp and enforcing the change in hours.

Melissa Ling-Ing representing Common Ground Hawaii requested for a contested case hearing, but was denied because of lack of standing and referred to HAR § 13-1-31 which says "...or who otherwise can demonstrate that they will so be directly and immediately affected by the proposed change..." She believes she will be affected and this supports her stand.

Chair Thielen pointed out that the Office of Attorney General says she does not have standing. Ms. Ling-Ing was recommended to see the Chair to see what recourse she had.

Ms. Ling-Ing noted all her comments are directed to the Ala Wai Boat Harbor. This harbor should be recreational, but has turned commercial. She can't see justifying fishermen and surfers paying for the boating fund when the public uses 10% of the parking. She is concerned that people are not able to pay the rates and might park at Magic Island instead. The rules are too vague. The 130 parking stalls are unclear and there is nothing specific in the rules. There's some city and county rates, but is it charged a portion of the hour or a minimum of an hour? The public has a right to know this.



This causes people to park somewhere else. It allows hotel and construction workers a cheap place to park. Staff is penalizing the public to park and from accessing the ocean for free. There will be accidents because people will park at Magic Island and swim across the channel to reach the surf spot off of Ala Wai. Ms. Ling-Ing asked not to approve amending the rules, to re-write them and that the 130 parking spaces should be written into the rules. There was 100% opposition at the last public meetings.

Chair Thielen explained what an administrative rule will do which is to give authority to the Land Board to make decisions within certain boundaries. After the rule is passed the Land Board has the authority to establish parking rates. DOBOR has come forward before the Board with a proposal to accept the public parking rates for that area. In that proposal 130 stalls will remain open and free for public parking. Under the existing administrative rules, the Land Board does not have the authority to do that and that is what DOBOR is asking to change. Under this draft the only change included in this proposed rule is for the slip holders, the permit that they have for parking will go from \$20/year to \$25/month. Any other change for parking fees will have to come back to this Board to set an administrative rules change. That is why it is not shown in this application. Chair Thielen understands there is confusion on this and that is why she is explaining it. She cannot foresee where circumstances would go on the record if this issue should come back to the Board in the future. That is why it is not shown specifically in this submittal.

Ms. Ling-Ing asked if these newly adopted rules are completed will the free 130 stalls of public parking at the heliport area be guaranteed.

Chair Thielen replied if this rule passes the only parking fee that will change under this administrative rule is the annual parking permit for slip holders that the rule gives the Board the authority to establish public parking fees and to assign for parking in State boat harbors. Any additional parking fees under this rule would have to come back to the Land Board for decision making.

Ms. Ling-Ing said it does not guarantee 130 stalls in the helipad area free of charge.

Chair Thielen responded that this does not change the parking stalls that are currently free at the Ala Wai. If this rule was to pass DOBOR intends to bring it back to the Board, a recommendation for a parking plan for the Ala Wai Harbor and in that recommendation DOBOR has committed to put in writing 130 stalls at the Ala Wai Harbor helipad will remain free and open to the public.

Ms. Ling-Ing queried could it be placed in writing right now.

Chair Thielen replied it's in writing now, but it's not in the rule. It's in the Land Board submittal.

Ms. Ling-Ing stated the submittal is saying for future changes which is leaving it open.

Chair Thielen reassured that staff is not leaving it open because DOBOR submitted a written recommendation to this Land Board, which is a matter of public record and a record for this Land Board, which extends to future Ala Wai plans that the 130 stalls are free and open to the public, if it passes. It is on record that staff will not change that helipad area. It will remain free.

Ms. Ling-Ing said she further recommends that any major changes to this parking arrangement in this area be approved by the Chairperson.

Chair Thielen added it would include keeping the 130 stalls.

Ms. Ling-Ing added and for all future changes. She thinks the Board should consider the future because these rules are good for 10 years.

Chair Thielen reiterated under the rules the only change that has to be adopted by this Land Board is in a public meeting that was noticed. DOBOR is on the record of saying that they are committed to keeping those 130 stalls at the helipad open and free for public parking.

Ms. Ling-Ing asked if it will not be put down in the administrative rules.

Member Pacheco clarified the 130 stalls will not be written in the administrative rules. The administrative rules give the Board the authority to go back and make decisions on how they want to manage the harbor parking throughout the State. The Board is getting the authority to do this only now. The parking will come back to the Board and that is when Ms. Ling-Ing can come back to make sure the 130 stalls are there.

Ms. Ling-Ing asked otherwise what does the public have right now to protect themselves? What do they have in writing that says they have free parking to the beach? We the people want something that protects their beach access.

Member Johns inquired as it stands right now there is nothing in the rules that protects the Department.

Mr. Underwood acknowledged the rule right now says it should be metered parking.

Member Johns pointed out that right now the rule and law says today it should not be free, it should be metered. This amendment creates an ability for the public to come back at a later meeting and ask for the 130 stalls. If the public says to stop this amendment now, the Department has the authority to go and put in the meters right now. He asked does Ms. Ling-Ing understand that.

Ms. Ling-Ing replied that she wants the public to do other things, too.

Member Pacheco recommended she go to the public trust office because it's mandated to provide public access.

Ms. Ling-Ing reiterated the above discussions and suggested the Board place this in writing to make people comfortable.

Member Pacheco asked Mr. Underwood if he would have a problem adding under recommendation #2 a memo to include 130 free parking at the heliport.

Mr. Underwood replied he had no problem with that.

Garry Kaaihue of Common Ground Hawaii reiterated Ms. Ling-Ing's testimony. He read and distributed his written testimony and he is against approving this.

Kurtis Ro of Common Ground reiterated previous testimonies and remarked this is the last free parking on this end of Waikiki.

Joseph Napoleon of Anuenue Canoe Club informed the Board of the history. His club uses the heliport parking and requested to keep it recreational.

Fred Madlener, boat owner and board member of Hawaii's Thousand Friends, proposed the community of boaters and recreation users be included in the rulemaking process. He reiterated the parking problem and that the boaters and recreational users want to work with DOBOR to simplify the plan.

Mr. Underwood suggested to provide free parking at the Ala Wai, businesses could pay a fee and concession the rest.

Janet Mandrell, boat permittee and a member of the Makai Society, told the Board that at the public meetings they were told this is the plan staff will be moving on and that Ala Wai Harbor is the first. The boaters thought they would have to go because the rule package shows, referring to Exhibit A map, where the zones are contrary to the existing statute. The map is confusing because Lot A is vehicle parking and Lot E is cargo parking reserved for boaters on the Diamond Head end. In the plan, parking Lot E was to go away because the area was to be utilized better. It was unclear.

Member Johns explained that the Board needs to find out whether it's true or not. He inquired if there will be another Ala Wai parking plan brought by the Department to the Board for future approval. He would address this submittal differently if this is the plan.

Mr. Underwood responded the plan, initially started as do nothing and block the harbor. The final plan that staff is proposing for the harbor is to reserve the 130 stalls free and raise fees for the permittees. The fees for the permittees are part of the rule where the plan will come back to the Board.

Chair Thielen clarified the confusion is the administrative rule that is before the Board right now. Under that rule it is to include the plan for the Ala Wai Boat Harbor parking which DOBOR discussed with the public.



Mr. Underwood mentioned that the administrative rule does not include a specific Ala Wai plan. That's exactly what staff didn't want to do. The exhibit A map is the current plan at the Ala Wai which staff is repealing.

Discussion reiterating the change to slipholders' parking permits and changing existing rules.

Member Johns stated there will be a plan and the community is saying staff should have more parity and put more restrictions on what that plan is. Don't do this, do that. At the end of today, the Board is not approving an Ala Wai parking permit. He asked is that right?

Colin Lau, Deputy Attorney General, replied affirmatively.

Member Johns added unless the Board does something else the Board can't approve and will not approve an Ala Wai parking plan today. The Board does not have the authority to do that even if they wanted to.

Mr. Lau responded in the affirmative.

Chair Thielen made it clear that DOBOR is not proposing that the Board adopt an Ala Wai plan today. All staff is recommending is the Board adopt this rule change which empowers staff to come back.

Ms. Mandrell remarked that the reason for the confusion is in the administrative rules and that it would further confuse things. That is why the opposition. The confusion was encouraged, a conflict developed and continued. She congratulated Member Johns for separating these two things and keeping them apart.

Ms. Mandrell testified agreeing with #1 and #5. Plan first, rule making later. There is a problem with how the rule is written because the parking rates are benchmarked in reference to the Honolulu City rates. This allows DOBOR to put in parking at anywhere from 25 cents to a \$1.59 which commits the administrative rules written by the AG and not come back to the Board. This is based on the history of the Land Board. These rules will cause people to be written tickets, go to court and then get thrown out due to poorly written rules. The rule as written empowers DOBOR first to do what it wants throughout the State before moving on, it must come back to the Land Board. The way the rules are written and the fees that are suggested is a way to price people off of their land or a boat slip. Other harbors in the U.S. don't charge for parking. Here boat owners are charged for everything.

At every public hearing there has been overwhelming opposition to these rules as written. People were giving staff suggestions on how to handle it. Ms. Mandrell was one of the folks that got the survey. It's a bait and switch where people want a parking plan, but not at the cost. The public felt they are being deceived. She reiterated the need for a parking plan and she is concerned with how much goes into the boating special fund. After all

the public review a special effort should be put forth to change the law. Ms. Mandrell felt that the State is wasting people's time by going forward without public testimony.

Member Johns inquired where is the language that talks about coming back to the Land Board and the process for future development of the parking plan for the harbor.

Mr. Underwood replied it's in the administrative rule, but the parking plan is not specifically addressed in the administrative rule. To enter into any kind of agreement for a lease for a small boat harbor and to use a parking management company; it would have to come before the Board to ask for that approval.

Member Johns asked where is the overall plan. Is the private concession agreement part of a larger plan that would have open areas, reserve areas, etc. Where is it written that it comes back to the Board and where is the process described as to how that plan would be developed by DOBOR before it came back to the Board?

Mr. Underwood responded staff did not spell it out in the rule amendment now.

Member Pacheco inquired if it is a recommendation.

Member Johns said he is trying to figure out if all the Department is saying is that all this does is empower the Department to develop a parking plan for individual harbors then come back to the Board to address Ala Wai. Where is it? He doesn't see it. Is staff changing the recommendation or changing the language of the public rules themselves to do it? The way it's described makes sense, but he was wondering where it was.

Mr. Underwood replied that is not written specifically in the actual rule amendment package. Staff will bring everything before the Board.

Member Johns asked how does the Board ask the Department direction if the Department decides to go in. How does the Board make sure that happens?

Mr. Underwood responded staff will add it in as a recommendation in the rule.

Member Johns inquired if staff does it in a rule will it have to correct out.

Ms. Ling-Ing noted she is not familiar with that.

Mr. Lau explained it would have to go back to rulemaking if staff wants to change or approve any of the rules for Board policy.

Chair Thielen asked if this policy making was before the Board in the recommendations for rule changes now before us.

Mr. Lau replied it is now just an approval of the rules.

Member Johns asked if the board approves the rules, will the former recommendation be mentioned. Is it clear that the Department is not implementing their own plan if these rules are adopted?

Mr. Lau responded staff could correct or make rules regarding the plan in the future. The Board is only approving these before you.

Member Johns stated that is what he is afraid of. He wants to make sure it gets back to the Department to come up with individualized parking plans for each of the harbors and that staff agrees it's good to bring it back to the Board in a public setting and to agree that can happen. He asked what can the Board say to staff to make sure that happens. If it's through the recommendations then we could say it could be developed with input, before it comes to the Board. One of the things the Board is going to ask for is did you get input from the public. It's hard to take in more public input than what was envisioned because there is a discrepancy of what was written and what has been described to him today by the public. He suggested maybe staff could add recommendations to these rules as part of the rules.

Mr. Lau replied that doing that (amending the rules now) is right on the border because although the public can say these rules aren't the best and wants to require the agency to perform something else, including a specific harbor plan could be consider ad hoc rulemaking.

Member Johns added he is trying to figure out the legal process. If that is what the Deputy AG says, and this is what the Board wants, it can't be done today. After everyone is gone (in the future when a new Board and AG comes in), these rules are in place and then if the Board is not paying attention, maybe those plans could be put in place without coming back to the Board.

Les Parsons an Ala Wai boater reported he attended all the public meetings and thinks DOBOR is grossly disrespectful of constituents' concerns by ignoring input at the hearings. He referred to Bruce Middleton's testimony and recommended the Board consider it. Mr. Parsons suggested that DOBOR add more questions to the survey, but that was not followed. He also suggested reducing paperwork and instead of imposing all fees on boaters, for DLNR to seek to obtain general funds for the operation of harbors especially the Ala Wai which is a de facto public park in addition to its function.

Jimmy Anderson a surfer testified that surfers surf for 4 to 5 hours. The 130 stalls is not enough parking because the boater's guests and hotel patrons will park there. Also divers dive longer than 2 hours.

Lavonne West a resident of the Ilikai supports free parking. She noted locals use the parking and the construction workers use it, but will be gone in a year.

Catherina Pudwill opposed approving this. She reiterated there wasn't a parking problem before the construction workers came. There are 700 stalls, but she thinks the public is



losing 500 stalls and is concerned that it's too expensive if you go there everyday. She noted that the 24 hour rule change has gone through at the helipad area.

Mr. Underwood clarified that the 24 hour rule change is statewide and that some harbors have already adopted it.

Tony Agad cited Kapiolani Park as an example of metered parking by the County. Originally there were 175 spaces reduced to 130. He asked to consider future generations.

Ron Iwami, President of Friends of Kewalo Basin Park Association and spokesperson for Save Our Kakaako Coalition, wants free parking and ocean access to preserve a lifestyle for Hawaii's people. He commended Ms. Ling-Ing and supporters.

George Downing of Save Our Surf is concerned for surfers' accessibility being taken away and the extra expense on young people's pocketbooks. He wondered if money is an issue because if all this income is coming to DOBOR than why isn't all these piers fixed? He referred to DLNR giving Hilton a 50 year lease on the lagoon for no charge. It is funding that could be directed to the harbor. Why? Because the Hilton decided to repair the facility. When Hilton purchased the Kaiser lagoon they're assuming the lease of liability. The potential threat for the Ala Wai is the pressure brought upon the State by the hotel industry because of their usage of the lagoon area and the need for more parking. Right now there are 40-50 stalls being used by Hilton employees and construction workers which reduced the surfers' parking. He disagrees with approval of the amendment, but will come back when the parking plan is brought to the Board.

Liz Enoka testified that her family has been parking at the Ala Wai for years. Any parking fees would create a financial hardship for her family and others. She suggested if signs are put up to provide more enforcement.

Ron Iwami read Val Loh's written testimony as a recreational user because she had to leave. She is concerned with accessibility and economics. Hawaii is expensive to live and most of our incomes aren't keeping up with the constant inflation and cost of living. To limit or reduce free parking near the ocean is to cut into the peoples' access to the beach or the ocean and limits our ability to live in Hawaii. Hawaii is known for their water people. Access is essential. Please keep parking free.

Susan Kim disagreed with keeping the 130 free public spaces because she is unsure of the number of available open spaces. She recommended the Board include it in the amendment and to include and consider all community input. Miss Kim wants to safeguard the parking slip fee. She reiterated more enforcement and suggested issuing a FONSI.

Noa Napoleon represents the 2002 State coop group that the Board asked to make recommendations in regards to privatization. He reiterated the reason for the rules. He reported commercial surf schools are converging on the heliport to conduct professional

surf lessons there and he believes the current rules require permitting, but have not been strictly enforced. These companies have been asked not to leave their vehicles there all day, store surfboards and stage lessons there, but they do. He wanted to know if these rules constrain these surf companies. There should be prohibitions against commercialism not only at the parking lot, but at the beaches. There are 2 or 3 different vendors who use the heliport parking area and if it is not going to be enforced he thinks there will be a double standard where the public will prevent them from double parking. He suggested simultaneously having a hidden provision that governs commercial vehicle parking. If the package is not accepted then is it possible to address surf school companies at the heliport when DOBOR goes to publish the rules. He gave the Chair his written testimony.

Zelei Abordo commended the Board for clearing up the confusion with this amendment. She reiterated the survey percentages. It is saying 50% of the people are in favor of the parking plan which is totally incorrect. She noted that Marion Higa says there are 700 parking stalls in the harbor, 130 stalls reserved for the public, but the public is losing a lot of stalls. Ms. Abordo is not against DOBOR, but they need to respect the people who went out of their way to go to every meeting. She reiterated DOBOR's disrespect and non-accountability. She opposes this plan.

Michael Kraft, Ala Wai boater, read his written testimony. At the hearings, not one person wanted parking fees at the Ala Wai Marina. He referred to Mr. Underwood's letter that for years the Department received complaints, but Mr. Underwood didn't provide any data, how many, when or by who. Mr. Kraft presented photos of parking everywhere (at the Ala Wai) which is not a problem. The consensus by the public was to put up signs and enforce the rules. He described who attended and what happened at the public meetings. He passed out copies of the survey. If the word parking was substituted with parking management there would be totally different results. Mr. Kraft felt the money shouldn't be coming from the people who can least afford it and suggested going after the businesses that have deep pockets at the Ala Wai. The \$25/month fee is a 1500% increase. There is no public marina he is aware of that charges parking fees to boaters. It's always included in the mooring fees which just had a 25% increase and will be having another 10% increase. He begged to dismiss this submittal for the best interest of the public and recommended starting over by rewriting the rules.

Frank Lange, Commodore of Hawaii Yacht Club, apologized for not bringing the complete board amendments with him. About 600 families use the Ala Wai harbor and boat facilities. The boat parking provides access for their members at the club which the club collectively pays. His position and recommendation is please, vote no and start over.

Bruce Middleton, Ala Wai slip holder and Chair of Ala Wai Marina Community Association, gave his written testimony that his organization opposes these rule changes. He suggested starting over by working with the boaters to come up with a plan that will work for the harbor and then rule on the basis of that plan. The association objects to the way the admin rules have been written because they confer upon boating and the

Department a lot of power that doesn't exist now in the admin rule. It's fine for management, but not good for the public. DOBOR has acted in bad faith to the community because DOBOR didn't tell the public that no matter what the public response is it doesn't affect DOBOR's position and nor did DOBOR address any of the problems. Mr. Middleton reiterated the survey percentages and the need for a parking management plan. He asked how did DOBOR come up with \$25/month? City and County employees don't pay parking fees which is covered by a rule. He asked the Board to consider his testimony package and recommended that DOBOR work with the harbor ad hoc group to create a plan and revise the admin rules. He reiterated the public hearings were unanimously in opposition of this and he recommended plan first, rulemaking later.

Mark Cunningham represents all the recreational users who didn't make it here. He reiterated the importance of beach access, the survey and the Ala Wai having one of the last free public parking areas in Waikiki. The next free public parking and access to the beach is at Kaimana Beach by the Natatorium. He asked how many free stalls are there currently.

Mr. Underwood replied none. It's all metered parking once the meters go in.

Mr. Cunningham reiterated the lost of free public parking and access to the beaches. He feels for the boating community and agreed with a parking management plan. The problem of people paddling across the channel from Magic Island. The fact that DOBOR is moving ahead to maintain access to our ocean resources sounds like shibai to him.

Richard Ing opposed the rule change. He suggested analyzing where the money is going and where it went before asking for more money. He recommended that somebody manage the fund instead and direct where the money needs to go.

Reggie White an Ala Wai tenant and resident remarked there is no such thing as free parking if the property is improved and vehicles parking on it. Somebody is paying for the parking. Currently, the Ala Wai boaters are paying for all the parking to cover litter pick-up, landscaping, cleaning and maintenance of the restrooms. The Ala Wai should be the same as other recreational areas that have free recreational parking. It should be paid for out of the general fund or parks monies. Mr. White described the situation at his old pier. In order to fix it, it has to be paid for. But by draining the funds to pay for guest parking will make it harder to maintain these recreational boating facilities. He has sailed all along the North American Continent and there is no marina that charges for parking except at Ft. Lauderdale, Florida. Ft. Lauderdale charges visiting boaters to park a rented car next to the boat, but they don't charge the tenants to park their car. The slip rental pays for the parking lot.

Chris Roridge is a new Hawaii resident and U.S. citizen. He urged the Board to keep free access to the sea in the spirit of aloha to continue the Hawaiian beach culture, to retain and protect the use and enjoyment of the sea as it has always been. He believes this



Department and the State is responsible for governing Hawaiian culture and activities which are unique compared to any other state.

Peter Drews a surfer who considers bowls his home break admitted that he didn't read this document, but observed that no one can agree on what it says and it shouldn't be approved. He used to work on boats in the harbor, but since 1991 has seen the piers deteriorate. He reiterated making money for harbor improvements and the boaters and surfers taking the brunt of it, but felt it improper to make money off of recreation like surfing. Mr. Drews suggested uniting the boaters, surfers and the community to figure out how much money is needed. Approach some of the harbor businesses like the Hawaii Prince, the Chart House, and Hilton to provide money and in turn put up banners saying "parking was beautified by these businesses." Unite organizations like the Surfrider Foundation or Save Our Surf Coalition and have a big fundraiser where half the island comes out and spends money on a plate lunch rather than pay for parking. He hopes the Board is more cognitive and will get this problem solved.

A gentleman wanted to amend testimony with one sentence. He doesn't believe DOBOR has really considered the possibility of some serious confrontations at the heliport and the suggestion of free parking and paid parking.

Member Pacheco inquired if Ala Wai is a non-commercial harbor.

Mr. Underwood clarified that no commercial vessel activity is allowed in the harbor. Tasks on land at harbors can be used for commercial activity.

Member Pacheco said some of the numbers thrown out were 700 stalls. Does that include all the boat slips?

Mr. Underwood responded the total parking in the harbor is 1000.

Member Pacheco queried if the 700 are not associated with boat slips.

Mr. Underwood replied there are certain areas in the harbor that are designated public parking only and the remaining not designated public parking have been left open for this public boater access.

Member Pacheco inquired if he had the number or an estimate.

Mr. Underwood responded he doesn't have that on hand. It would be more open parking than current boater parking.

Member Pacheco assumed the parking put in for the harbor was for harbor users. He asked when the Department was put in charge, was there a mandate to set aside (parking) for beach access.

Mr. Underwood replied there was no mandate to set aside at all. Currently, with the way the administrative rule is written the entire harbor area can be metered. As the public testimony has shown, staff wanted to propose a rule change to allow parts of the Ala Wai for free parking.

Member Pacheco asked if the rule change is approved what is the process for it coming back (to the Board). If the Board approves these rules how would staff go about putting in the meters and to include them in the plan? There is no condition to come back to the board. He wondered what the mechanism would be.

Mr. Underwood's response was staff didn't write anything in particular under the rule amendment. But after he reviewed it he believes it is covered in the existing rule, HAR § 13-233-7 public parking. He read "as may from time to time be prescribed by the department, no person shall use any public parking area without payment of parking fees and charges [in areas where the fees and charges are properly designated and posted by signs] and may only park in areas designated by the department. The department may establish such areas by signage as convenient and efficient public use of a small boat harbor may dictate." Staff made minor changes where they've taken out "parking areas where fees and charges designated by posted signs" to say "can only park in areas designated by the department." The department has the ability to not only say where, but what to charge and where to charge. To what Member Johns instructed earlier it's already covered in the rule. But staff did not write a new amendment. Everyone considered that correct.

Member Johns clarified it allows the Dept. to do it, but it doesn't talk about the process or to amend it. It just says the department wants to amend.

Chair Thielen added it's not the Division, it's the Dept. that sets forth the policies for this Dept. It specifically does not give the authority to the Division.

Member Johns asked how does the Board know whether the Dept.'s parking is proper for the area.

Mr. Lau noted the rule is supposed to address this statewide. Staff is saying this is not specific to the areas of the Ala Wai. It's supposed to apply to all state boat harbors.

Member Johns asked Mr. Lau if he is saying for the individual signage placement, in order for this HAR § 13-233-7 to take effect, does the Board have the opportunity to make the decision on the parking, but not on how to implement it.

Mr. Lau replied that the rules allow the Board discussion on how to do that, but Mr. Underwood is clearly the policy maker, and representative of the Department, who can decide how to go about implementing without the Board. It was his understanding that Mr. Underwood has agreed to bring it to the Board for the specifics for the Board to approve how those requirements will be implemented, after the rules are adopted.

Chair Thielen added the intention with the Department was to require them to implement on the Department level not on the Division level.

Mr. Lau responded but not the Board.

Member Johns reported the rule says the Department can do what it wants. It can change policy rules. He said there is some question if the Division wants to say they need to come back to the Board with a specific parking plan and get input to do that, how do we do that? What does the Dept. want to do. How should the Board move? The Board wants to say come back on a specific parking plan, but how does the Board get input to do that.

Mr. Underwood replied would it be possible because staff is asking for the revision of the fee from the top 25-35 wording of minor revisions instead of saying "Dept.," then say "Board."

Mr. Lau stated that you would go back to a hearing if you do that.

Inaudible reply.

Mr. Underwood said his recommendation would be, if we do that than he would move forward with the existing rules that's in place now and amend it at a later date if the Board chose to do so.

Member Johns asked what does the Dept. want to do.

Chair Thielen reported the intention behind the rule was to permit DOBOR to better manage parking and address a number of problems. It helps when an area is not assigned. People may park at the boat ramps for more than 72 hours and that creates a problem because there may be derelict vehicles left there, not be able to remove them and no one to watch them. There is a statewide problem where signs are vandalized. Sometimes staff can't enforce because there is no signage. The change is for 24 hours, but the Board could still post longer for areas where people are fishing statewide.

The other issue is the parking permits for people who are using slips. Unlike the rest of the nation where there are slip fees, the boaters probably have an ala carte slip fee. Staff has to increase the permit fees to add the parking stalls. The small boat harbors has a backlog of capital improvements, around \$300,000,000. The Legislature appropriated granted by the Governor's request last year for \$10,000,000 lump sum for capital improvements to the following harbors. It came out of a bond that has to be repaid out of the harbor's special fund. Prior to that, the Legislature appropriated funding for the small boat harbors for \$20,000(?) for "G" dock. The Governor has put in a request this year for an additional \$10,000,000 in lump sum improvements, but with general obligation bonds. The "F" dock at the Ala Wai harbor came out of this money from the boating special fund. Staff asked for the release of the monies that were appropriated last year to do



various improvements that is clearly not sufficient to cover all the capital improvements and incurring maintenance costs.

The Board is trying is to address this rule change which is the amendment to the boaters. The purpose of the rule change was to give DOBOR the flexibility to develop and implement this parking plan for Ala Wai and take a look at other harbors where parking plans may be suitable. The current rule structure allows staff to charge Ala Wai for all the public parking that is to be metered. But recreational users want to retain good parking and would like to be able to include that parking when the Board adopts staff's plan. Boating has committed to bringing any plan for the Ala Wai Harbor back to this Board for review and approval, as stated in its recommendation.

Chair Thielen said that staff doesn't want to put our DOCARE officers in the position of having to enforce public parking of the small boat harbors and would rather use them for resource enforcement. The intention was to contract a vendor and that parking vendor would give a percentage of the proceeds to DOBOR for managing and supervising the parking. Unless there is oversight by a vendor the recreational users and boaters will be able to park there and not people who are trying to get free parking on their way to work or a construction site. This is the desire of the Dept. to be able to move forward with this.

There is concern that the admin rules don't specifically require Boating to come back to the Board and they would like to address that. It is the intention of Boating to come back to the Board to find a way to ensure people not feel that it is such a substantial change (?) to the draft rules that staff would have to go back on those rules and that people really can, however it works today. Chair Thielen stated it is not wise to place a plan on one harbor and she recommended the Department direct additional rule making for additional fees to the Board.

Member Johns inquired if the Chair is suggesting that the Board still pass these rules, but allow the Dept. to commence rule making amendments that would be specific to an Ala Wai parking plan?

Chair Thielen replied she doesn't support any rule amendments for any individual harbor because each harbor is different. There should be a focus on the process of the plan developed for each specific harbor. Direct the Department to do additional rule making to make it clear that future increases to parking fees or implementation of additional type of fees is done by the Board as opposed to the Department.

There was a suggestion and discussion for the Department to come up with a parking plan for each harbor, but mainly high use harbors like Honokohau and Ma'alaea.

Member Pacheco asked if this passes there really isn't any substance to get anywhere, but the fee of \$25 and 72 hours. Is there anything else in here?

Mr. Underwood added and we create the free parking at the Ala Wai.

Member Johns mentioned it's not in the rules, anyway.

Mr. Underwood noted it's not specific, but if we implement the rule language that is there now staff would meter the entire area.

Member Pacheco inquired the Board has the rules now for free parking. He doesn't understand what the issue is. Are you saying we're in violation of the rules by having free parking?

Member Johns replied no. The Department has the ability...

Member Pacheco added to put meters in.

Member Johns replied it's not required.

Chair Thielen noted we have the ability to put meters in and what staff is asking for is the ability to enter into a contract with a vendor to manage the parking. In bringing forward that contract for approval in front of this Board staff will maintain 130 stalls at the helipad for free. There would be a cap on any fee that the vendor could charge.

Member Johns that's not planned, that's not right.

Female voice that's not part of the rules.

Member Pacheco remarked he can see that we're making more problems than correcting them. He doesn't understand what is being fixed here unless it's generating money from the parking.

Member Johns stated he doesn't have a problem with coming up with a better parking management plan for the harbors, but is not sure of the process. Something needs to be done because if the Board doesn't, there will be a situation where the Dept. could meter on its own and could go in now. Because that's what's on the law right now, that's on the books now. They could do that. There is nothing the Board could say about it unless the Dept. does this rule change which is what this is. He asked except, where does the process start?

Mr. Underwood asked does the Board want the Department to amend that HAR § section 13-233-7.

Member Edlao recommended the Dept. should go back and revisit this and come up with a plan that will accommodate other parking.

Member Pacheco inquired what drove this submittal?

Mr. Lau replied clearly there were safety concerns, unauthorized use of parking at Ala Wai by non-harbor users, and also equal access to parking.

Mr. Underwood suggested that the amendments changed from saying metered to paid parking zones.

Member Pacheco asked if instead of saying "state parking metered" could we say take out "metered."

Mr. Underwood reported the intent was it isn't necessary to meter. The mauka side is metered, but it isn't practical to meter all of Ala Wai because of the problem of meters being stolen, and explained that people were using pipe cutters. He suggested using parking pay stations in a number of stalls and to have someone continually monitor them. If no payment, staff can take enforcement action. Let's go to a different form and have a company who specializes in parking.

Member Agor I guess I would say come up with a parking plan with input from the public and (inaudible).

Mr. Underwood related he heard some people say that DOBOR didn't develop a plan. The plan was written and handed out at the last meeting explaining the next step which would be coming to the Board and following a rule making process.

Mr. Underwood noted some people said that DOBOR didn't develop a plan. The plan was written and handed out at the last meeting explaining the next step would be coming to the Board and following rule making process. That was written.

Member Agor deferred to the Dept. to develop a parking plan and have DOBOR discuss with the public.

Chair Thielen stated the Board can still come back to the plan or some aspects of the plan. It is required that the Board approves this because staff is going to be required upon administrative rule changes. The Department and Division can take their draft plan that they have on the Ala Wai back out. But again whatever comes back the rule changes here are intended to allow the Division flexibility.

Member Agor replied he has no problem approving the wording and the Department using the wording to develop a plan.

Member Pacheco inquired how long would it take.

Mr. Underwood described we go back out and start the public informational meetings over again. It depends how many people testify and if they don't want any changes. It's very clear. No changes. The only option staff heard was to provide more free parking. It's possible to have more parking at the triangle parking lot. Go down more on the 700 row which is an option to do. Then staff will have to get the boaters involved with this because it's their part of the property and will be the ones paying for it.



Chair Thielen added when staff makes the parking plan, rulemaking is an option by the Division. When staff goes to the parking plan they will ensure the public process.

\*Member Agor made a motion to recommend approval of the rules and add another condition or recommendation for the Dept. to develop a parking plan for all the harbors that are affected by this with public input and come back to the Board for approval of that plan for implementation.

Member Pacheco asked would you consider Honokohau a high use area?

Mr. Underwood replied staff is having issues with the parking area now. It's a huge area and it would take awhile for improvements before the Board votes on that.

Mr. Lau asked if the Board was about to develop a plan in addition to the passage of these rules before public input and Board approval? The only concern that he had is that it may be a Sunshine Law violation.

Chair Thielen replied the Board will have conditions added.

Member Johns stated the added conditions are on not rulemaking. He seconded it.

Member Pacheco remarked the public will lose out and he does not support this. He is really concerned with the public parking. There is a need for public input in regards to the public parking that way when staff goes out there the facility can handle it. He had more issues about those spaces for harbor users to access the ocean and DOBOR needs to do that. He doesn't know how or where to fund for more public access or more public parking at the Ala Wai.

Chair Thielen pointed out for state parks they have their own separate funds and they asked the legislature for specific purposes. It's similar to the fund for parking like City & County. In harbors the special fund is primarily funded by the boaters for these are the harbors primary use. On the Ala Wai situation where enough people need general recreation access and generally need free access for non-boaters to be subsidized by the boaters. The Board is caught between balancing by giving some free parking for recreation access because ocean recreation does fall under this Division. And also to relieve the boaters from having to subsidize parking for other people as well.

Member Pacheco cited the example where a lot of people who access the beach on one side and the national park on the other side. It's very bad. People are using the resources from the state for all the parking for that area.

Member Agor asked if Mr. Underwood would come up with a plan regarding Ala Wai.

Mr. Underwood replied not at all. He said staff have been through this process already. Staff has no problem doing it again, but the testimony is the same which is to do nothing; leave it the way it is.

Chair Thielen suggested regarding the comments on the problems boating has on capital improvements and the level of use, it maybe worthwhile for Boating to go back and come up with a compromise that could graduate into something to help. So we can bring to that situation there. We make a different exception as of today.

Member Johns alluded to the fact that the Board would need to vote on that.

Chair Thielen stated the motion to accept the recommendation of staff to add an additional recommendation that the Division will go out to meet with the public and have public input when developing a plan on the harbors parking beginning. We have a motion and second.

Member Johns asked that motion is on the floor. Is the Chair suggesting that the Division go back out?

Chair Thielen suggested that the Board pass the rule so that the Division is within the authority provided in this rule rather than go back out beginning with the Ala Wai Harbor to lay that management plan on the table for the people who are here today, boaters in the harbor and others, to work on a revised parking management plan for the Ala Wai Harbor for the Dept. Other than these staff rules under consideration right now before the Board would simply give the Division the flexibility to implement that plan again it allows free parking in the Ala Wai Harbor.

Member Johns inquired if the rule would not be sent to the Governor and made into law until we get something else?

Chair Thielen confirmed it would not be the plan until ruled.

Member Pacheco suggested if the increase in public parking were entered than maybe he could draw that up.

Member Agor stated with that admission this rule would come back.

Chair Thielen clarified only the parking plan.

Mr. Lau asked should it be a plan by public hearing or by a rule?

Member Agor replied a plan is being developed by the department using the public.

Member Johns noted again, the rules do not require that.

Chair Thielen clarified that's the existing rules do not require that. Staff is not in the business of managing parking lots. Why not have somebody else manage it instead of wasting DOCARE's time in checking meters and use the boating fund. We want to enter into a contract especially for this Dept.

Member Johns explained need to understand where the Dept. wants to go with that. The problem he has with it is the Dept. has the responsibility, but the public, that the plan of what they want to do will have to move forward in order to come back to the Land Board and then to Boating, but that is not what is in front of us. If that plan was before him today he would vote one way or another or he would revise it, but that's not what we're starting out calling it. It's another process, that's not the submittal. The Dept. or public that this was planned in B&W and was written down in a plan that was signed off on is in the rules, but might say whether or not outside whether it's fair or not fair and kind of missing what the plan is. Then saying the Board can't do it or DOBOR says that is not what the rules say.

Chair Thielen gave one of the reasons staff couldn't bring the plan for the Board approval today is these rules don't allow it and the rules are not going through the final process until after the Board votes. It would've been moot to do that.

Member Johns pointed out in order to do a plan for a modified plan there needs to rule change which he understands. But this rule change is going to allow, in writing, the Board and/or the public additional input to the Department and the plan.

Chair Thielen explained other than the plan, the Division has made the commitment and has submitted a recommendation to this Board which has committed today and the motion that is on the table has a recommendation with a provision to develop this plan. That's the best that the Board could do in absence of putting a parking management plan before this Board because of the rules.

Ms. Ling-Ing asked do those specific revisions to those forms have to come back to the Board? Or would it be a one time thing?

Chair Thielen remarked that's a good question. This Board has the ability to direct the Division to grant subsequent rules that would require coming before the Board for approval.

A gentlemen asked they can stop them from implementing a planned rule.

Member Johns remarked in that case I fully confer if that is the master plan we decide then I probably won't push it. In order to move this forward then staff will need to come up with a master plan to come before the Board. Somehow what the Board needs to decide at this time is additional information that comes in at the meantime. If you want to do something else you could do something else. It needs to be voted on and it probably needs to be passed. If staff doesn't have a plan presented to the Board in 3 months then it'll be the same setting. He thought that was fair. Does Mr. Underwood have a problem with that or think that is fair?

Mr. Underwood agreed.

Member Johns added that's if you have a problem with the whole sunshine issue.



Member Pacheco queried this whole idea of the parking meters is going to take over the harbor. He was wondering how to solve this parking meter to make it a viable business to operate.

Member Johns remarked that's his point. Is it 131? Or maybe 131 is not enough?

Member Pacheco noted but staff will still have to go back out to the public. The public hearings are still planned. That rule hinders our ability to vote, but it's not right. If we have to go back out to the public just do the whole thing over.

Member Johns noted he would normally agree with that, but based on the rules now without doing the interim stuff by giving authority to have people get the Department today to agree to use what is now something else to allow them to vote on that thinking. Even to institutionalize the staff submittal on the ground right now. Even to do that. So they don't have the authority to do that. Somebody said to him, lets try to think anybody will separate 300 A and 700 B. It would still need to make a rule change of some sort. The question is what rule change and how will we process the Board submittal. (parts are inaudible)

Member Edlao inquired if the Board signs it staff has to go back out for public input? Then come back?

Member Johns responded affirmatively. He understands for the Department.

Member Agor added the rule can be adopted. What it is will be seen. He hopes the Department and concerned citizens can get together and look at the whole situation and deliberate. Its not somebody has to win somebody has to lose. He wants everyone to win.

Mr. Underwood mentioned when staff put this plan together, somebody didn't agree with the community or the boaters then staff could present to the Board. But this is what staff feels to let the Board decide on the plan.

Member Agor reported that's not what's going to happen.

Mr. Lau stated he thinks he heard Ed talk about the City & County parking rates in 13-233-26. It's his understanding Ed wanted to go up to city & county rates but no greater.

Mr. Underwood replied rates up to or less than. Staff wanted the ability to set rates below City & County rates if possible.

Mr. Lau added as long as staff stays within the range. It is already authorized at 40 cents per hour up to that amount.

Member Edlao hoped staff can go back to something that the Board can begin working with for the public. There's a lot of access and we should hang on to it because nothing is happening here at DLNR. He approved this, but he didn't accept it.

Member Johns accepted the motion, but the only way for the Board to give this is there be no changes at the harbor until staff makes a parking plan and it comes back to the Land Board to approve it. Despite what the rules might say because if staff doesn't fit in with the rules it won't be much fun. He doesn't want to see any changes at the harbor until that comes back to the Board however long it takes. He insists staff comes back otherwise he'll deny.

Mr. Underwood agreed - before any changes to the harbor in regards to the public parking.

Member Johns insisted only do the 72 hours and the boating slip fee, but don't make any other changes other than that.

Member Pacheco asked how does it work with the 72 hour change and cited Honokohau example. For someone who obviously is not fishing, what is the time frame and there are signs put in the ground allowing for 72 hours in appropriate places. Is there some leeway in that?

Mr. Underwood replied it won't go out until these are signed by the Governor. It'll be several months. There will be public informational meetings.

Bruce Middleton and Janet Mandrell requested contested case hearings.

#### **The Board:**

##### **Amendment to staff's recommendation:**

**Moved by Ron Agor, second by Tim Johns that the board accept staff recommendation for amendment of the Chapter 13-233 HAR, and add new recommendation that the Division of Boating and Ocean Recreation shall go out and meet with the public for input to develop parking management plans for each of the high use small boat harbors, beginning at Ala Wai small boat harbor, and to come back to the Board of Land and Natural Resources for approval of any plan before implementation of public parking fees.**

**Ayes: Laura Thielen, Taryn Schuman, Jerry Edlao, Ron Agor, Tim Johns**

**Nays: Rob Pacheco**

**No change will be made to the public parking areas at Ala Wai small boat harbor until such plan has been developed with community input and brought to the Land Board for its approval.**

**Proposed changes to monthly permits for slip holders and the limits on parking at boat ramps were approved.**

**These rules must be forwarded to the Governor's Office for final approval and filed with the Office of the Lieutenant Governor before they are final.**

**DOBOR will work with the public and make announcements before changing any practice at the boat ramps.**

**Unanimously approved as amended. (Agor, Johns)**

*Item L-1: A contested case hearing was requested by attorney from William McCorrison's office.*

**Item J-1 Request for Approval to Conduct Public Hearings to Amend Hawaii Administrative Rules, Sections 13-251-76 and 13-256-108, Relating to Commercial Activities on Waikiki and Kaanapali Beaches and Ocean Waters and the Lahaina-Kaanapali Offshore Restricted Area; Possible Executive Session Pursuant to HRS Sections 92-4 and 92-5 (a)(4).**

Written testimony was received from Greg VanderLaan of UFO Parasail and James Coon of Ocean Tourism Coalition.

Ed Underwood representing DOBOR explained the background behind this request to amend the number of commercial parasailing operations from five to six in HAR § 13-256-108; and to repeal subsection (g) of HAR § 13-251-76 because it has caused confusion. Staff consulted the Attorney General's Office on this request.

There was discussion regarding commercial activities in the Kaanapali ocean waters.

Pam Matsukawa, Deputy Attorney General, said it would be advisable to use revocable permits pursuant to HRS § 171-155 for the commercial activities occurring on land (Kaanapali beach). The Board could consider issuing for other types of commercial boating activities which may be occurring.

Greg VanderLaan, owner of UFO Parasail and member of the Ka'anapali Beach Association, testified on his written testimony. His company operates on Ka'anapali Beach and described what happened in 2001 and 2003. In 2007, he noticed there was a new company without a permit operating on the beach. A harbor agent not versed in the Boating rules issued 3 commercial permits. He spoke to Mr. Underwood about these rules. He asked the Board to deny this request.



Member Johns inquired as to why the Board should change the rule (§ 13-251-76), and whether this was appropriate or not appropriate.

Ms. Matsukawa agreed that the Board could issue revocable permits under the current rule. But eliminating subsection (g) would allow the Board to review all the commercial activities currently occurring on the beach and decide on the commercial activities that would be appropriate. DOBOR would bring applications to the Board and the Board would decide which permit should be issued. If sub-section (g) were deleted, it would provide some clarity.

Member Johns stated he didn't understand how much clearer it would be.

Ms. Matsukawa recommended going into Executive Session to discuss the Department's legal responsibilities and liabilities.

Mr. VanderLaan mentioned going back to the history of the rule which is to mandate the Board to preserve the resource by limiting commercial access.

There was discussion of issuing the sixth permit.

**4:40 pm        Adjourned for Executive Session pursuant to HRS §92-5(a)(4) to discuss the Board's legal rights, duties, privileges, and obligations relating to this matter, with the deputy attorney general. (Johns, Pacheco)**

**5:07 pm        Reconvened**

**The Board:**

**Approved staff's recommendation with an amendment regarding HAR § 13-251-76. Department should go out, work on, and come back with amendments for the Board's consideration that will put an effective cap on commercial activity on Kaanapali beach.**

**Unanimously approved as amended. (Johns, Edlao)**

**Item D-1        After-the-Fact Issuance of Revocable Permit to Coco Palms Ventures LLC, for Parking and Landscape Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-03:17.**

**Item D-2        Consent to Assign General Lease No. S-5584, Mary K. Thronas Assignor, to Michael J. Fernandes, Assignee, Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-9: 20.**

- Item D-3**      **Consent to Assign General Lease No. S-5264, Emmis Television Broadcasting, LP., Assignor, HITV Operating Co., Inc., Assignee, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-8-01:11.**
- Item D-6**      **Rescind Prior Board Action of December 8, 2006, (Agenda Item D-15), Consent to Assign General Lease No. S-3764, Sugita Enterprises, Ltd. dba Hawaiian Floral Nursery, Assignor, to Coral Shores Enterprises Inc. dba Trade Winds Flower Farm, Assignee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:08.**
- Item D-7**      **Amend Prior Board Action of October 13, 2000 (D-17), Resubmittal: Cancellation of General Lease #S-4329, Waiahole Irrigation Company, Ltd., Set Aside to Department of Agriculture for the Capture, Collection and Transportation of Water and Uses Incidental Thereto, Including Without Limitation, the Use of the Existing Camp Site in Waiahole Valley and the Aqueduct System in Kahana Valley and the Management Right-of-Entry, Waiahole and Kahana, Oahu, Tax Map Key: (1) 4-8-13: portion 1, 19 and 5-2-1: portion of 1.**
- Item D-8**      **Consent to Assign; Amendment of Grant of Non-Exclusive Easement Bearing General Lease No. S-5210, Linda M. Rivera, Trustee, Assignor, to Michael Miki and Mary Lau-Miki, Griffith Yanagi and Olivia Yanagi, Assignees, Kaluanui, Koolauloa, Oahu, Tax Map Key: (1) 5-3-010:17 (seaward).**

**All unanimously approved as submitted. (Johns, Edlao)**

- Item D-5**      **Sale of Lease at Public Auction for Commercial Purposes, Waikiki, Honolulu, Oahu, Hawaii: Tax Map Key: (1) 2-7-36:04 and 16.**

Morris Atta representing Land Division requested deferral by Senator Ihara.

Member Johns recommended staff obtain input from the Neighborhood Board and to bring it back to the Board. He was concerned with the face value of the parking lot.

**The Board:**

**Approved to Defer:**

**The Board agreed to a request by Senator Ihara to defer the matter.**

**Deferred. (Johns, Schuman)**

- Item D-9**      **Grant of Perpetual, Non-Exclusive Easement to Hawaiian Telcom, Inc. and Hawaiian Electric Company, Inc. for Access and Utility Purposes and Issuance of Construction and Management Right-of-**

**Entry, Hauula, Koolauloa, Oahu, Tax Map Key: (1) 5-4-009:004  
(por.).**

Member Johns recused himself.

**Unanimously approved as submitted. (Pacheco, Agor)**

**Item E-1 Approval to Issue a Permit at Ahupua'a 'O Kahana State park,  
Ko'olauloa, O'ahu to Na Kamalei for Educational Purposes**

**Item E-4 Termination of Revocable Permit No. S-7164 to HKK, LLC; Issuance  
of Revocable Permit to IWF KKH, LLC., Lanihau 1st, North Kona,  
Hawaii, Tax Map Key: (3) 7-5-06:22**

Dan Quinn representing State Parks reported on the background and noted no changes.

**Unanimously approved as submitted. (Schuman, Johns)**

*Item E-3: Mr. Quinn informed the Board that staff received a petition for contested case.*

**Item L-2 Certification of Election for Mauna Kea Soil and Water Conservation  
District Director**

**Unanimously approved as submitted. (Johns, Pacheco)**

**Item M-1 Issuance of Master Lease FAA Agreement No. DTFAWP-08-L-00012  
United States of America (USA) Federal Aviation Administration  
(FAA) Molokai Airport**

**Item M-2 Issuance of an On-Demand Airport-Based Shuttle Bus Concession at  
Kahului Airport**

**Unanimously approved as submitted. (Pacheco, Johns)**

**Item F-1 Request for Authorization and Approval to Issue a Papaha-  
naumokua-kea Marine National Monument Conservation and  
Management Permit to Commanding Officer Karl Mangels, National  
Oceanic and Atmospheric Administration (NOAA) Ship OSCAR  
ELTON SETTE, for Access to State Waters to Conduct Conservation  
and Management Activities.**



- Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. David Johnston, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service, for Access to State Waters to Conduct Cetacean Survey Activities.**
- Item F-3 National Monument Conservation and Management Permit to Dr. Charles Littnan, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service, for Access to State Waters to Conduct Hawaiian Monk Seal Monitoring Activities.**
- Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Charles Littnan, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service, for Access to State Waters to Conduct Research on Hawaiian Monk Seal Foraging Activities.**

Dan Polhemus, Administrator for Department of Aquatic Resources, described each submittal background.

Discussion regarding subsistence fishing which is not allowed.

Marti Townsend representing KAHEA distributed their testimony booklet. She stated they have no opposition on the permit, but they had some concerns as noted.

1. Have permitted activities been identified.  
Example: Item F-3 has related discharge checked off to allow activity, but nothing states what is discharged.
2. Require a daily "take log."  
To ensure compliance which prevents and checks for violations. To include activities in the cruise log for better enforcement.
3. Require an incident reporting protocol on accidental kill of monk seal.  
Item F-3 is an attempt to build protection.
4. End commercial fishing.  
Should be protecting not fishing.
5. Clarify what is discharged.  
Don't know if chemical or non-chemical. Best to name what these are.

Ms. Townsend gave her concerns and supporting information.

Mr. Polhemus noted that specimens taken are identified. A daily take log is already being done. The Monument is protected.

Dr. Charles Littnan representing NOAA explained that KAHEA's concerns are imbedded in protocol. His staff always reports activities.

Mr. Polhemus mentioned state rules prohibit discharges in state waters which was once before the Land Board last year. The monument permit allows outside of state waters. The waters close to the islands are under a higher level of federal protection.

Member Johns stated the co-trustees are in the position and could certainly do that, as long as the Board has that position.

Chair Thielen added the Board members have neutral ground in consideration of KAHEA's comments on the process.

Member Johns replied he would rather take the comments from KAHEA on how to handle the situation.

Mr. Polhemus responded he could do that. It could be done within the boundaries of the monument rules.

Ms. Townsend noted she was advocating improvements to the permit.

Mr. Pacheco suggested going back to the co-trustees.

Mr. Polhemus recommended scheduling within the context of time.

Chair Thielen noted there will be a presentation with co-trustees and an opportunity for the Board to discuss the final process.

Member Johns asked about the draft.

Mr. Polhemus stated he hadn't seen the draft, but thanked everyone involved.

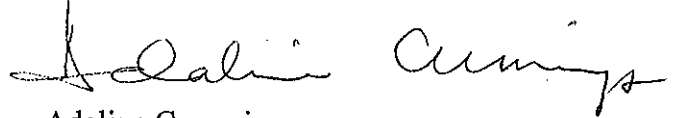
Chair Thielen remarked the Board members approved in a variety of forms including that one. The approval is an opportunity for the Board if we're not there.

**Unanimously approved as submitted. (Pacheco, Johns)**

**Adjourned. (Johns, Pacheco)**

There being no further business, Chairperson Laura Thielen adjourned the meeting at 5:33 pm. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Board of Land & Natural Resources  
Secretary

Approved for submittal:



LAURA H. THIELEN  
Chairperson  
Department of Land and Natural Resources



**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY - MAY 23, 2008  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

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MEMBERS

Laura Thielen  
Ron Agor  
Tim Johns

Rob Pacheco  
Jerry Edlao

STAFF

Sam Lemmo, OCCL  
Morris Atta, LD  
Dan Polhemus, DAR  
Matt Ramsey, DOFAW

Ed Underwood, DOBOR  
Dan Quinn, SP  
Paul Conry, DOFAW

OTHERS

Linda Chow, Deputy AG  
John Mail, K-1  
Kawika Winter, K-3  
Reverend Cloudia Charters, J-1  
Arnold Lum, J-1  
George Downing, J-1  
Noa Napoleon, J-1  
Catherina Pabla, J-1  
Frank Lange, J-1  
Willie Marshall, J-1  
Grant Arnold/OHA, J-1, D-3  
Greg Nasky, D-8  
Eric Knudsen, D-3  
Jerry Ornellas, D-3  
Dean Okimoto, D-3  
Reverend Katir, D-3

Dave Merchant, K-1  
Donald Newton, K-1  
Ken Goldblatt, J-1  
Bruce Middleton, J-1  
Melissa Ling-Ing, J-1  
Mark Meyer, J-1  
Janet Mandrell, J-1  
Liz Enoka, J-1  
Zelei Abordo, J-1  
Kawika Napoleon, J-1  
Joe Farber, K-2  
Bill Maris, D-8  
Alfredo Lee, D-3  
Leslie Milnes, D-3  
Roy Oyama, D-3  
Mark Sletten, E-1

Allan Takase, D-7  
Tim Lui-Kwan, D-11  
Beth Malvestiti, D-6 & D-2  
Robert Taoonen, F-2  
Stephen Karl, F-5

Guy Tagomori, D-5  
Marti Townsend, F-2 to F-8  
Brian Bowen, F-3  
Evelyn Cox, F-8

{Note: language for deletion is [bracketed], new/added is underlined}

**Item A-1      April 11, 2008 Minutes.**

**Approved as submitted (Johns, Edlao)**

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**Item A-2      April 25, 2008 Minutes.**

**Item A-3      May 9, 2008 Minutes.**

**Deferred (Johns, Edlao) Not ready.**

**Item K-1      Enforcement File MA-08-30 Regarding Unauthorized Seawall  
Improvements Located Makai of Shoreline by Hale Kai AOA  
Condominiums, 3695 Lower Honoapiilani Road, Lahaina, Island of  
Maui, in the Vicinity of Parcel (2) 4-4-001:042**

Written testimony was received.

Sam Lemmo, Administrator for Office of Conservation & Coastal Lands (OCCL), corrected the address from 3695 to 3691. This is a follow-up from a complaint. He recommended the county and the Board enforce this. Background and recommendation was given.

David Merchant, Attorney representing Hale Kai Condominiums, reported that this condominium was built too close to the shoreline with a poorly constructed seawall. Hale Kai had consulted with engineers and followed their instructions. He disagreed with staff on the definition of where the boulders were placed in front of a landscaping wall which is behind the seawall. He referenced the Sea Engineering, Inc. document and photos.

There was discussion on whether to allow an after-the fact permit which staff may not have approved had the client come for a permit.

Mr. Merchant has a problem with the removal of the boulders and asked for a reduction in the fine.

There was discussion regarding cementing of the rocks which the client agreed.

Member Johns asked whether Mr. Lemmo wants to do an after-the-fact permit or does he think it will be rejected. The client has 180 days to remove it. 270 days or permitted by the Board.

John Mail, President of Hale Kai, explained what happened with an uncontrolled contractor even when the client didn't want it.

Donald Newton filed the first complaint and was there when all this occurred. No engineers were present and he gave more background. He would like to see the wall at the pool removed.

Mr. Lemmo mentioned staff will refer this back to the county because that particular wall is not under DLNR jurisdiction.

Chair Thielen clarified this Board is discussing the makai portion. The wall issue Mr. Newton raised will be addressed by the county through the SMA permit process. She suggested he meet with staff.

There was discussion of the wall in the pictures.

**Unanimously approved as amended (Edlao, Pacheco)**

**Item K-3 Conservation District Use Application (CDUA) KA-3449 to Use the Dunn Single Family Residence (SFR) for Administrative, Education, and Tool Storage for National Tropical Botanical Garden (NTBG) Limahuli Garden and Preserve, Haena District, Island of Kauai, by Chipper Wichman, Executive Director, National Tropical Botanical Garden, Hawaii, Parcel TMK: (4) 5-9-006:012**

Member Agor recused himself.

Mr. Lemmo reported on background history. Limahuli Gardens started using the Dunn home, but was notified that it can only be used as a single family residence. They stopped and filed a CDUP to seek OCCL's permission to use the house for additional purposes. Staff recommended the Board approve this. There was public support on Kauai.

Kawika Winter, Director of the National Tropical Botanical Garden, explained that the goal is to be in compliance to incorporate this in the special subzone. The master plan was updated last year. About 3-5 staff will utilize this as an office. He has reviewed all the conditions and agrees with them.

**Unanimously approved as submitted (Agor, Johns)**



**Item J-1 Request for Board Approval of the Proposed Parking Plan for the Ala Wai Small Boat Harbor (Exhibit A).**

Numerous testimony was received.

Ed Underwood, Administrator for Division of Boating & Ocean Recreation (DOBOR), distributed packets on the Ala Wai parking plan which were handed out at the third public meeting and notes from the facilitator. Staff requested for approval. He reminded the Board that at the January 25, 2008 Board meeting where the Board approved the request to amend the rules and requested for staff to have subsequent public meetings for more input on a parking plan. April 9, 16 and 30 public meetings were facilitated by Mediation Company to keep the meetings on point and to gather information. The two facilitators, Ken Goldblatt and Evalyn Inn ran those meetings.

Ken Goldblatt, Facilitator from Mediation Company, read his written testimony reporting on each of the public meetings regarding who attended, testimony received, and attendees' thoughts, concerns, and opinions. An organized group supported by 13 other groups submitted an alternative parking plan. The majority of the attendees support the maximum number of free parking spaces to be maintained.

Mr. Underwood referred to exhibit B and C. Because the boaters were under represented at the 3<sup>rd</sup> meeting staff put together a survey with the facilitator's input, mailed out 501 and received 137 responses. This was based on 966 harbor parking stalls resulting in a wide range of responses. He read the recommendation to approve.

The Board questioned the time frame [which]where Mr. Underwood said 10:30pm-4:30am was a compromise. Staff is asking for \$1.00/hour. The fees were adjusted for the permittees who can park either in the permit areas or open stall and could still access the entire harbor. It is an ala carte fee with the slip. Parking runs out during the weekends. Boaters can get parking passes for their crew and guests.

Member Pacheco asked how much revenue would be generated. Mr. Underwood stated staff factored in at \$1/hour/stall to about \$1,000,000 per year gross which might be a little high. Normally the vendor makes 20% and DOBOR 80%. The boating special fund goes to all harbors, but staff would like this money to stay in the Ala Wai but Mr. Underwood couldn't guarantee that. The parking vendor projects \$800,000 per year.

Chair Thielen asked if there was a plan for the Ala Wai Harbor improvements which Mr. Underwood explained staff put out to all the boaters an R&M plan and CIP plan asking for their recommendations. Staff hopes to get permission from the Legislature to make pier repairs as income is generated.

Member Johns noted that the slip holders didn't agree to limit the public parking to only ocean recreational users. Public is public.

Mr. Underwood replied it would be for harbor users. The money will go into the Boating Special Fund or it could go to repairs. Staff has a continuing list of repair and maintenance on the Ala Wai.

Member Johns asked if this was ceded land. Mr. Underwood said any water and submerged lands that was filled. Any monies generated on ceded land would go to OHA.

Member Edlao asked about the approximate number of 300 stalls. Mr. Underwood stated that the vendor will restrip and number the stalls to make the most efficient use of the harbor which may increase the number of stalls. It won't be less than 300.

Member Agor was disturbed that there is no attempt for an enforcement plan. He would like the hotels and construction companies to notify their employees. Maybe start ticketing people the first month to get the message out. Mr. Underwood said staff will work closely with DOCARE to monitor the parking. Member Johns recommended notifying the hotel association. Mr. Underwood answered Mr. Pacheco's question that the vendor will enforce the entire harbor using pay stations.

Member Johns asked it doesn't have to be a \$1/hour in order for it to be worthwhile for the vendor which Mr. Underwood agreed.

Mr. Underwood was not opposed to an oversight committee.

Member Johns thanked Mr. Underwood for going back out to the community.

Reverend Cloudia Charters, Chaplin for Kona Theological Institute, a live aboard and works in Waikiki, read her written testimony. She feels this violates peoples' rights because they can't afford the increase in fees not just in parking.

Chair Thielen said per Sunshine Law the Board can only act on matters noticed on the agenda which is the management of the parking plan. She understands people may want to discuss the slip holders permit fees, but that is not on today's agenda because the Board had passed it and is an Administrative Rule. She asked people to limit their comments to the parking plan.

Bruce Middleton, Chair of the Ala Wai Marina Community Association, echoed Reverend Charter's sentiments and felt that the Board could better handle this by establishing an adhoc committee to work with DOBOR to resolve the plan defects and address this in a public forum. The plan doesn't address the Yacht Club's struggles. He thought the privatization of public administrative functions was handled improperly and wondered whether HGEA or civil service has been contacted. Mr. Middleton described how an adhoc committee would address HGEA comments comparing it to a condominium association.

Member Johns asked who should be the adhoc committee.

Mr. Middleton mentioned 3 voting organizations – his organization, surfers/paddlers/fishermen and boaters. Enforcement by a private contractor is not true. Statutory violation – law enforcement cannot be delegated to a private entity. It has to be rooted in authority granted by the State. That vendor can't enforce the law by writing tickets or towing cars unless the vendor has a property interest. Under the provisions of HRS 290-11 - where property owners, condominiums, hotels, etc can tow with the proper signage up, but that is only to protect their property interest. Could DOBOR conceivably give the vendor property rights throughout the entire harbor? Yes, a revocable permit for so many months, years. The problem with that is tax law says after 12 consecutive months on a one month revocable permit the vendor would have to start paying taxes on that land or if a 12 month RP it would start paying immediately. The public overwhelming stated they want the 549 currently free parking spaces kept free. Even the majority surveyed wants the 549 kept open, but was also ignored by DOBOR.

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Chair Thielen said that the Office of the Attorney General will consider his research.

Arnold Lum, Chairperson of the Marine & Coastal Zone Advocacy (MACZAC) which assists the Office of Planning in coastal matters, about 5 years ago an adhoc citizens committee surveyed critical shoreline parking around Oahu and that information was placed on a GIS data base by the Office of Planning. He commended Mr. Underwood's efforts with the public participation. The 300 space parking is consistent with MACZAC's adhoc committee's prior data. He explained the city's enforcement by having a couple people on motor scooters watch the metered lot and give out \$35 tickets. DOCARE could do this.

Melissa Ling-Ing represents all ocean recreational users and hopes the Board read her written testimony. She reiterated their wish to keep the 549 free parking stalls and everyone is maxed out financially. She recommended the rate kept at 25 cents per hour. The Boaters are paying 3-1/2 cents per hour, but they don't want to pay. All the free stalls were taken and almost all the pemitted stalls were empty and they weren't surfers parking there. She reiterated keeping parking for recreational users and suggested using meter maids for enforcement.

George Downing reported because the surf off of the Ala Wai is well known worldwide it attracts tourism which is a concern. He supports Common Ground's written testimony. He wondered why an EA or EIS was not conducted on this issue?

Linda Chow, Deputy Attorney General, explained that it is an existing use and does not trigger an EA or EIS.

Chair Thielen added this is a change in how that is managed and not a different use.

Mr. Downing noted in the 3 meetings no one answered him what this is for. It is financial.

Mark Meyer reiterated a need for an adhoc committee. He felt item J-1 should be stricken from the record because it is in error. He objects to the increases. Also, [strick]strike exhibit A because it is in error relating to an incomplete inventory. There is insufficient number of disabled parking because they are taken up by hotel users and not reflected in exhibit A. This is misleading the Board. There is a loss of \$2300/month because DLNR hasn't been collecting fees and no one is enforcing.

Noa Napoleon representing the Ala Wai surfer's coalition has distributed his written testimony. He reiterated the need for an adhoc committee and using the general fund. He gave some history and mentioned the signage issue.

Janet Mandrell for the Makai Society distributed a handout. She had circulated a petition where 160 permittees opposed the plan because it unfairly favors other groups over others. DOBOR did not look at the 5 options offered by the public during the public hearings. The plan is still incomplete. They believe the plan[e] and public participation process was flawed and DOBOR did not perform their proper due diligence. She felt the cumulative effect since 2000 would trigger an EA.

Catherina Pabla oppose[s]d the 300 free stalls and prefers the 549. She wants enforcement, signage and a 25 cent/hr. parking rate.

Liz Enoka opposed the parking plan because of the financial hardship. It should be free.

Frank Lange, Commodore for the Hawaii Yacht Club, asked what is the total number of boat slips that will be available for the public and the number of parking stalls.

Mr. Underwood replied about 750 slips and 966 parking stalls currently.

Mr. Lange noted if all the boaters had one space there will be a shortage of parking. None of his members oppose the surfers parking for free. This plan pushes aside the people who use this harbor in favor for a vendor who could increase the prices and in turn may not be able to collect the money from those people.

Zelei Abordo had furnished her written testimony. She is against DOBOR's plan because it is incomplete. The RFP is against an adhoc committee. She felt this will affect harbors statewide.[and] [n]No one was listening to the people. Give the public a true fair process.

Willie Marshall, a nursing instructor at UH Manoa, had submitted written testimony. He is a live aboard, state worker [and]who cares for the health [for the people] of Hawaii's people. It is getting harder to find parking for people to relax at the ocean.

Kawika Napoleon representing his dad from Anuenue Canoe Club is against this plan because he wants to see his grand kids go to the ocean. He asked to keep it free.

There was discussion on the Hawaii Yacht Club parking and whether to continue issuing the 50 stalls which will remain unchanged.



There was discussion on the disabled parking which is in compliance based on Federal law.

The free parking was discussed and a possible contract with the vendor.

The Board talked about an evaluation. Whether there was an adhoc committee which there are none currently. No one wants to pay for parking and the preference for 25 cents per hour.

Chair Thielen concerned that there is a certain breaking point a vendor would accept this. Mr. Underwood spoke to 3 vendors and we[']re willing to do an RP month to month. He felt there should be an adhoc committee for any future changes. He would like to go forward with this plan then implement.

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There was discussion regarding the fee amount and enforcement.

Member Pacheco had a problem with the plan, but he is for it because the money goes back to the resource. Mr. Underwood doesn't know until it is in place.

The next step was discussed which is to ask for an RP. An RFP could take 6 months. The process was mentioned which could affect other issues. There are ways to set-up enforcement with the vendor.

Member Agor reported his observations, the need for more enforcement in the mornings and supports staff recommendation.

The Board discussed the 25 cents/hour which should be supported.

Grant Arnold of OHA can't claim the amount, but OHA would like 20%.

The meters as discussed will not change because they will be taken out later.

Member Johns moved to approve staff's recommendation with the amendment to set aside no less than 300 stalls as shown in the map exhibit A-1, direct the department to create an adhoc committee using the facilitator to provide input on parking and enforcement issues as staff proceeds in this process, and changing the hourly rate to 25 cents as shown on exhibit A.

Member Agor seconded.

Chair Thielen summarized the Board approved the parking plan subject to amendments that it be no less than 300 free stalls as shown on exhibit A-1, an adhoc committee will be created to work with the division[s] on issues of enforcement, the division will come back to the Board with a request for a revocable permit which would have more details including input from the adhoc group and the parking rates would not be more than 25 cents per hour. It is possible during conversations with a vendor that they may not be interested in bidding on the parking at 25 cents per hour and that will be flushed out in

more detail and brought back to the Board. Staff couldn't proceed with a parking plan greater than 25 cents per hour unless this Board was to change that vote.

Member Johns amended his motion to exempt the 40 cent metered area and permit the department to start signage with regards to closure from 10:30pm to 4:30am. Member Agor seconded.

Chair Thielen clarified this changes the area that are currently metered at 40 cents per hour will remain and to move forward with signage to close at night in the public areas.

**Unanimously approved as amended (Johns, Agor)**

**Recess 11:50 am**

**Reconvened 12:10 pm**

**Item K-2 Conservation District Use Application (CDUA) HA-3447 To Restore and Rebuild the 1893 "Kapoho Fishpond," Puna District, Island of Hawaii, by John Barsell, Pahoa, Hawaii, Parcel TMK: (3) 1-4-002:036**

Sam Lemmo of OCCL reminded the Board this was deferred from May 9, 2008 to seek advice from the Attorney General's Office. Staff recommends the same which is to amend condition 15 to say to delete that verbage.

Linda Chow, Deputy Attorney General, cited the Kaiser Hawaii Kai Marina case and the public need for access. These are considered a private fast land to a degree public is allowed access. Public is not required access.

There was discussion regarding condition #10.

Joe Farber on behalf of the applicant appreciates staff. He commended the owner for restoring this fishpond and to allow traditional customary rights.

Member Pacheco moved to approve as amended condition #15 deleting "the general public."

Member Johns seconded.

**Unanimously approved as amended (Pacheco, Johns)**

**Item D-8 Consent to Mortgage of Sublease K-4 with Estoppel Certificate and Subordination Agreement, General lease No.; S-5619, Natural Energy Laboratory of Hawai'i Authority (NELHA), Lessee, Cyanotech Corporation, Sublessee/ Mortgagor, Kalaoa 1st – 4th, North Kona, Hawaii, TMK: (3) 7-3-43, Portion of 42.**

Morris Atta, Administrator for Land Division, gave background and recommended approval of consent as well as execution.

Greg Nasky representing Cyanotech Corporation named other representatives who were present. Thanked Mr. Atta and the Board for their consideration.

**Unanimously approved as submitted (Pacheco, Johns)**

**Item D-3 Resubmittal: Co-existence Plan with State Permittees for the Issuance of a Revocable Permit to Green Energy Team LLC, Wailua, Lihue, Kauai, TMK: (4) 3-9-01: Portion 2 and (4) 3-9-02: Portions 1 & 20 and (4) 4-2-01: Portion 3.**

Morris Atta for Land Division reminded the Board that this came before and gave background. An Environmental Assessment isn't required because the use [is] contemplated is consistent under the statute.

Eric Knudsen of Green Energy Team, LLC is committed to the 10 years of removing the albizia. DOFAW will dictate what will be planted. He explained removal of albizia and will not use chemicals.

Jerry Ornellas of East Kauai Water Users Cooperative stated their position is the same from the last meeting. They object to giving them (Green Energy) irrigated land. He wants more diversified agriculture.

Leslie Milnes representing the Kalepa Koalition distributed 2 maps and pointed out various areas. 250 in albizia and 9 acres in full albizia.

Dean Okumoto of Nalo Farms is not against this, but felt that use of good ag lands for fuel is poor use. Need to put best lands in food production.

There was discussion on diversified agriculture.

Reverend Katir from the Saiva Church and Kalepa Koalition felt Green Energy should pay a fee to the water coop.

Grant Arnold of OHA reported these are ceded lands and asked for 20% for OHA.

There was discussion on the acreage amounts and uses.

Mr. Lee commented that they will try to work with less, but concerned that this is a 30 day revocable permit once the trees are in, it's permanent. It would be better to lessen the 255 acres.

Chair Thielen [stated]said take 68 out of Green Energy would be below the 1000 minimum and to find 31 acres elsewhere. She assumed their business plan starts with harvesting of existing albizia and asked if they would plant elsewhere first.

There was discussion between Mr. Milnes and the Chairperson regarding planting the 137 acres last and to come up with other alternatives in the meantime.

Member Agor moved to approve the recommendation by amending page 3 to add 31 acres to Mr. Milnes then he could work things out with other land owners. Instead of 143 he would divvy out 174 acres. And remove the 68 acres from unit C. Mr. Milnes agreed. Member Johns seconded.

**The Board:**

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**Amended staff's recommendations by amending Recommendation No. 3 by noting that tenant Leslie Milnes will be [C]contributing an additional 31 acres to the lands being transferred to Green Energy Team LLC ("Green Energy"), and by amending Recommendation No. 4 by: (1) changing the total number of acres assigned to Green Energy from 1,037 acres to 1,000 acres; and (2) removing the 68 acres of irrigated Kalepa lands in Parcel Unit C from the lands being assigned to Green Energy and keeping those irrigated lands available [fro]for immediate use by future diversified agriculture tenants. Otherwise, the Land Board approved staff's recommendations as submitted.**

**Unanimously approved as amended (Agor, Johns)**

**1:15 pm Member Johns departed.**

**Item E-1 Request for Approval of a Special Use Permit to Conduct a Remote Sensing Research Experiment at Makapuu Point, Ka Iwi Scenic Shoreline, Oahu**

Dan Quinn, Administrator for State Parks, reminded the Board that this was listed on the last meeting and was deferred due to a problem with the title. He gave some background and presented the location on the map. It would occur at night to minimize any exposure to hikers and will be fenced in. There is no risk to marine life.

Mark Sletten of the Naval Research Laboratory, Washington, DC, described the research and the applications used.

**Unanimously approved as submitted (Agor, Pacheco)**

**Item D-7 Grant of Perpetual, Non-Exclusive Easement to DJAT, LLC for Utility Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-57: Portion 01.**



Morris Atta of Land Division gave background and proposed to amend the submittal to place the burden on the applicant if it was determined an EA/EIS is required which hasn't been determined. He suggested amending recommendation #1 to reflect this.

Allan Takase representing DJAT, LLC will follow what staff says, but he didn't feel it was necessary.

**The Board:**

**Amended the recommendation by replacing the first recommendation with a requirement that the Applicant shall be responsible for obtaining an EA or EIS in compliance with HRS Chap. 343 if staff, after consultation with the AGs, determines such action is necessary. Otherwise, the Land Board approved staff's recommendations as submitted.**

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**Unanimously approved as amended (Pacheco, Edlao)**

**Item F-9 Request for Approval of an Agreement for Grants, Subsidies, and Purchases of Services between the Board of Land and Natural Resources and the Hawaii Nature Center, Inc. for \$500,000 to Create an Environmental Education Center in Wailua, Kauai (Term of Agreement: June 1, 2008 through June 30, 2011)**

Dan Polhemus, Administrator for Division of Aquatic Resources, reported that the 2006 appropriation has been released by the Governor as of [the ]yesterday. He amended the background section, paragraph 2; line 1 should change from SLH 2006 to SLH 2005.

Wade Ishikawa of Hawaii Nature Center spoke for Ramsey Taum who supports the request. DLNR can move forward to create more family recreational activities in this area.

**Unanimously approved as amended (Agor, Pacheco)**

**Item D-11 Re-submittal –Affirm the Encroachment Area; Grant of Term, Non-Exclusive Easement to Garrett Frank Saikley Trust for revetment Purposes, Kuliouou, Honolulu, Oahu, TMK: (1) 3-8-1: 1 portion. *Submittal to be distributed.***

Morris Atta representing Land Division reminded the Board that this is a re-submittal and the recommendation remains the same as last time. Mr. Saikley requested the easement be withdrawn and his deposit refunded. Staff opinioned although they are following the deputy attorney general's request that the easement be withdrawn staff believes that the prior Board action appears to legitimize the structure based on erroneous perceptions that the state may be liable to the property owner which staff don't necessarily agree with.

Tim Lui-Kwan was here to answer questions.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item D-12 Consent to Assign General Lease No. S-5592, Herbert Seichi Omizo and Keith Omizo, Personal Representative of the Estate of Kenneth Shundo Omizo, Assignor, to Nalo Farms, Inc., Assignee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-009: 269.**

Amend agenda item title D-12 with item D-13 title.

Morris Atta of Land Division said staff concurs with this assignment.

Dean Okimoto representing Nalo Farms explained how he needs this to expand capacity. He concerned with competition [with]by landscapers and energy producers.

Chair Thielen suggested that Department of Agriculture needs to determine and work proactively to develop these criteria for the leases.

**Unanimously approved as submitted (Agor, Edlao)**

**Item D-5 Consent to Lease Amendment of Lands under Governor's Executive Order No. 2849 to The Arc of Hilo, Piihonua, Hawaii, TMK: (3) 2-3-32: 6.**

Morris Atta for Land Division described background.

Guy Tagomori representing the Department of Human Services who currently controls the lease for ARC of Hilo related some history. The funding source requires amending the lease.

**Unanimously approved as submitted (Pacheco, Agor)**

**Item D-6 Set Aside to the Hawaii Housing Finance and Development Corporation for Future Housing and Housing Related Development Purposes, Waiakea, Hawaii, TMK: (3) 2-4-20: 2, 3, 5, 6, 54; 2-4-24: 157; 2-4-26: 45.**

**Item D-2 Set Aside to the Hawaii Housing Finance and Development Corporation for Future Housing and Housing Related Development Purposes, Hanapepe, Kauai, TMK: (4) 1-9-9: 6, 7, 8, 9 and 1-9-10: 3.**

Morris Atta representing Land Division grouped these 2 items together because they are the same type. He gave background.

Beth Malvestiti was here to support.

**Unanimously approved as submitted (Agor, Pacheco)**

**Item D-9 Mutual Cancellation of General Lease No. S-5152 and Issuance of Direct Lease to Hawaii Conference Foundation for Youth Athletic, Education, and Religious Purposes, North Kona, Hawaii, TMK: (3) 7-6-16: 33.**

Morris Atta of Land Division the Attorney General's office questioned whether an EA was done and asked to withdraw it.

**Withdrawn (Pacheco, Edlao)**

**Item D-1 Amend Prior board Action of July 11, 1997 (D-1), Cancel Executive Order Nos. 1201 and 1221, Reset Aside to the Department of Education, Hawaii State Public Library System, and Grant of Easement to Citizens Utilities Company for an Underground Electrical line, Hanapepe, Waimea, Kauai, TMK: (4) 1-9-06: 14 & 29.**

**Item D-4 Amend Prior Board Action of March 28, 2008 (Item D-4) Set Aside to County of Hawaii for Park, Recreational, and Ancillary Purposes; and Cancellation of Revocable Permit No. S-7165; Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-5: 28.**

**Item D-10 Cancellation of Governor's Executive Order No. 3403 and Reset Aside to Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Ocean and Ocean-Related Recreational and Commercial Purposes and Issuance of a Management Right-of-Entry, Lahaina, Maui, Government Shores, Shore Waters and Submerged Lands of Tax Map Keys: (2) 4-4-1; 4-4-6; 4-4-8; 4-5-14; 4-5-21.**

**Item D-13 Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-010:46.**

**Item D-14 Amend Prior Board Action of December 14, 2007, Agenda item D-20, Cancellation of Grant of Non-Exclusive Easement Bearing General Lease No. S-5172 to Stanley Chun and Katherine S. Chun and Grant of Term, Non-Exclusive Easement to Gilbert K. Chun and Leialoha K. Chun for Seawall Purposes, Kahaluu, Koolaupoko, Oahu, TMK: (1) 4-7-019: 26 (seaward).**

Amend by renumbering agenda items D-14 as D-13 and item D-15 should be D-14.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item C-7 Request for approval to restrict access to portions of 'Ahihi-Kina'u Natural Area Reserve for a period of up to two years to implement the 'Ahihi-Kina'u Resource Protection Action Plan**

Paul Conry, Administrator for DOFAW, asked the Board to approve and summarized background with reference to the map. There are provisions for a special use permit for access by Native Hawaiian practitioners and researchers.

Matt Ramsey, NARS Manager, concerned with resource degradation because 700 people impact the reserve that is set aside for preservation. Because it is a protected marine area it has been advertised as having the best snorkeling on Maui. People are treating it like a park – stepping on lava and coral impacting the resources. Staff may come back to ask for a partial closure.

There was discussion whether there are unlimited consecutive 2 year closures which there are.

Mr. Ramsey indicated that Maui DOCARE supports the action, but they cannot place full attention to one preserve.

Member Edlao supports this, putting out better information and suggested hiring more rangers which staff is proceeding with.

Mr. Ramsey explained the human use and resource monitoring then at the end of 2 years report back to the Board with staff's recommendation.

**Unanimously approved as submitted (Edlao, Pacheco)**

**1:54 pm      Recess**

**2:07 pm      Reconvened**

**Item E-2      Approval to Enter Grant-In-Aid Agreements with Various Non-Profit Organizations Subject to their Release of Funds**

Dan Quinn of State Parks reported on background.

**Unanimously approved as submitted (Agor, Edlao)**

**Item F-1      Amend Prior Board Action of March 28, 2008 under Agenda Item F-1: Request for Approval to Provide Additional Funds and Extend through FY09 Two (2) DLNR/University of Hawaii Contracts: Contract No. 47471--Hawaii Fish Aggregating Device System (\$330,000) and Contract No. 47261--Improvement of Bottomfish Stocks (\$398,000) by amending the bottomfish contract number to reach Contract No. 55137**

Dan Polhemus of DAR asked to amend the submittal title.



**Unanimously approved as submitted (Pacheco, Edlao)**

**Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Robert Toonen, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Reef Invertebrates Genetic Survey Activities.**

Dan Polhemus representing DAR explained these seven submittals involve on-going research activities by HIMB (Hawaii Institute of Marine Biology) scientists and have been renewed by this Board. He described background. The transport protocol was approved and he related the process. Independent scientific peer reviewers on the mainland accepted these protocols. Monument Management Board, DAR biology staff, Hawaii Dept. of Agriculture staff and IBC staff agree the protocols are suitable. This protocol has not had public review because it was under development. It is available as of today for public comment.

There was discussion regarding sharing of samples. A material transport agreement is needed to leave the state. The joint Monument still needs to develop an agreement and until then nothing leaves the state. It will go through NOAA and our Attorney General's office to imbed then come before the Board.

Chair Thielen suggested going through a public process review and then to the Board.

Mr. Polhemus was asked by the Board regarding Native Hawaiian reviewers. He described a cultural briefing by William Aila on the Hawaiian perspective in regards to the monument where each person participating can make an offering of water.

Marti Townsend representing KAHEA had e-mailed her testimony and commended the Federal and State staff for putting together these disease protocols, but concerned that there isn't someone charged with protecting the State's interests. KAHEA would prefer a state employee who understands the state refuge and knows the history to review these protocols. Any public comment disinfects any harm and prevents oversight on issues not covered. She re-emphasized with concern comment #5 regarding a daily take log. This is important information to the cumulative effects. Ms. Townsend suggested deferring to give the public time to review and to add a previous condition prohibiting transport of any live organism within the monument which was not a problem after she spoke to Federal and State representatives.

Mr. Polhemus said the transport protocol does not include a daily take log and noted that all the researchers keep a log and data data-base as part of the annual assessment of research activities. Usually the researchers log individually depending on the project.

There was discussion on the need to log and whether to access that information.

The Board asked how enforcement is worked into the protocol. Mr. Polhemus stated there are no officers on the vessels. The transport protocol uses freezing or chemical fixation. It would be evident to the trustee representatives on board if someone is freezing things that they shouldn't. He referred to the reported violation by the State's research coordinator on board the vessel. State and Federal co-trustees are on these cruises to oversee these permit conditions. The chief scientist is responsible for everyone's activities on the ship and it is in his best interest to follow these permit conditions.

Ms. Townsend wants to ensure enforcement of state regulations. She suggested a crew member be the compliance officer for the vessel instead of a scientist for objectivity in enforcing regulations. She would like to see amongst the co-trustees who have the best authority to handle a certain issue. The State should be on par with the Federal and if the State raises an issue the Federal should embrace it as if it was their own.

Mr. Polhemus noted that the Monument Management Plan is out for public comment and these issues are not being ignored. There is no legal requirement for the transport protocol. It was brought up by Department of Agriculture and was developed internally for staff's security and assurances on the permit.

There was discussion regarding no transport of live organisms, but staff didn't want a blanket prohibition on transport because of the need to bring in a sick monk seal, bird or transferring of plants. Chair Thielen clarified the concern is the transport of diseased coral or fish. Ms. Townsend added this is for specific transport not general from the State's view.

Dr. Robert Toonen from HIMB clarified there are no live transport as noted in his permit and he concurs with Mr. Polhemus.

Chair Thielen said that this Board hasn't had time to review the transport protocols or heard on it until today. Pending that review would the Board want to impose a condition.

Mr. Polhemus stated the protocol tells the applicant how he is going to make it dead and keep it dead, but does not address how to transport it dead.

Chair Thielen referred to condition 3 where it may need to be reworded. "The transport of live organisms is prohibited in order to prevent the introduction of disease..."

Mr. Polhemus agreed.

**The Board:**

**Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."**

**Unanimously approved as amended (Agor, Edlao)**

**Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Brian Bowen, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Reef Fish Genetic Survey Activities.**

Mr. Polhemus reported background. Scientific and cultural reviews accepts this. Staff approves as long as the transport protocol is attached and followed.

The Board asked why not include parrot fish where Brian Bowen for HIMB replied they are long lived organisms and he didn't want to kill a 15 year old fish for a little piece of tissue. If there is a way to collect them in a non-lethal way.

Ms. Townsend stands on her previous testimony, emphasized the intake log and cumulative effects. Mr. Polhemus noted the Board has been briefed with the cumulative results.

HIMB puts out a 6 month report which is being edited currently.

**The Board:**

**Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."**

**Unanimously approved as amended (Edlao, Agor)**

**Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Joshua Reece, Washington University in Saint Louis, for Access to State Waters to Conduct Moray Eel Research Activities**

Mr. Polhemus described background and it has been accepted.

Mr. Bowen said they will capture a few moray eels for non-lethal sampling. They are finding eels are looking different, but are the same.

Ms. Townsend stands on her testimony.

**The Board:**

**Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."**

**Unanimously approved as amended. (Agor, Pacheco)**

**Item F-5 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Stephen Karl, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Coral Genetics Research Activities.**

Mr. Polhemus spoke on background and it has been accepted.

Stephen Karl explained that because no one knows when the cruise is going it is difficult to organize a crew. The Monument staff suggested they give a number instead of naming all because not everyone is going on the list otherwise it might give the impression that more was going.

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There was discussion regarding the compliance.

Ms. Townsend's testimony stands.

**The Board:**

**Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."**

**Unanimously approved as amended (Pacheco, Agor)**

**Item F-6 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Ruth Gates, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Coral-Endosymbiont Research Activities.**

Mr. Polhemus gave background.

Ms. Townsend's testimony stands.

**The Board:**

**Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."**

**Unanimously approved as amended (Agor, Pacheco)**

**Item F-7 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Michael Rappé, University of Hawaii, Hawaii Institute of**



**Marine Biology, for Access to State Waters to Conduct Coral Microbial Community Characterization Activities.**

Mr. Polhemus informed the Board on the background and has been accepted.

Ms. Townsend's testimony stands.

**The Board:**

**Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."**

**Unanimously approved as amended (Pacheco, Agor)**

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**Item F-8 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Evelyn Cox, University of Hawaii, for Access to State Waters to Conduct Coral and Fish Disease Research Activities.**

Mr. Polhemus asked to defer.

Evelyn Cox, Assistant Professor at U.H. West Oahu, informed she was permitted to attend this cruise. She distributed a photo handout on coral diseases and presented background. This research is to prevent the spread of the disease.

David Lonborg, U.H. Office of General Counsel, noted that 2 or 3 weeks is too late to make the cruise[ and this work is important]. The University wants this work to continue and Ms. Cox can't go by herself. He requested the permit be acted on. Dr. Aeby is not the applicant on this permit. They are willing to meet with staff.

Ms. Townsend stands on her testimony.

The Board felt this looks like a maneuver for Dr. Aeby to get back into the research and that it can't continue without her. Mr. Polhemus stated this is a policy matter determined by the Board and the Division will work with the Board and the AG's office.

Chair Thielen noted that these are discretionary permits and the Board takes stewardship responsibilities seriously.

Mr. Polhemus pointed out at the back end of this submittal [is] under Monument Board opinion is not your standard statement.

**Deferred (Agor, Edlao)**

**Item C-1 Request for authorization for the Chairperson to negotiate and sign a contract to purchase a backhoe/loader for Kauai District, bulldozer for Hawaii district and vehicles for DOFAW**

Paul Conry representing DOFAW amended page 2, item 6 should be DOFAW Hawaii for 6 instead of 7.

**Unanimously approved as amended (Pacheco, Edlao)**

**Item C-4 Request for approval of expenditure of funds and authorization to negotiate and sign a contract to purchase two mobile office trailers, Island of Maui**

Mr. Conry amended the recommendation 1<sup>st</sup> line to read “The Board approve the expenditure of funds up to \$100,000 from the Natural Area Reserves Special Fund and to authorize the Chair to negotiate and sign a contract.” It will go through an RFP process.

**Unanimously approved as amended (Edlao, Pacheco)**

**Item C-5 Request for approval of the design and placement of Warning Signs on improved public lands (Kula and Kahikinui Forest Reserves, Polipoli Springs State Recreation Area TMK (2) 2-2-007:001), pursuant to Act 82, Session Laws of Hawaii, 2003**

Mr. Conry amended the map exhibit 2, page 6 where two of the diamonds were suppose to be circles. To correct the 2 dots on where the hazards are.

**Unanimously approved as amended (Edlao, Pacheco)**

**Item C-2 Request for approval to enter into a contract with Land Prep LLC to cut and chip non-native trees in Kanaha Pond Wildlife Sanctuary, Maui, for the Division of Forestry and Wildlife**

**Item C-3 Request for approval of expenditure of funds and authorization to negotiate and sign a contact with Pacific Consulting Services Inc. (PSCI) to conduct an archaeological inventory survey at Mauna Kea Ice Age Natural Area Reserve, Hawaii**

**Item C-6 Request to conduct a Public Hearing regarding withdrawal of approximately 650 acres from Na Pali-Kona Forest Reserve (TMK (4) 1-4-001: portion 003), Waimea District, Kauai, for set aside to Hono O Na Pali Natural Area Reserve**

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item L-1 Appointment of Soil and Water Conservation District Directors**

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item M-1 Amendment No. 9 to Lease No. DOT-A-92-0018 Restaurant and Lounge Concession Lease Host International Inc. Honolulu International Airport**

Amend agenda title to read as M-1 instead of M-5.

**Unanimously approved as submitted (Edlao, Pacheco)**

**Item K-4 Conservation District Use Application (CDUA) KA-3121 Second Time Extension Request for Greg and Joanne Allen's Single Family Residence (SFR) and Accessory Structures, at Kawaihau District, Wailua, Island of Kauai, Parcel (4) 4-2-003:002**

Sam Lemmo of OCCL asked to withdraw.

**Withdrawn (Edlao, Pacheco)**

**Adjourned. (Pacheco, Agor)**

There being no further business, Chairperson Thielen adjourned the meeting at 3:30 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



Laura Thielen  
Chairperson  
Department of Land and Natural Resources

Secure Parking monthly income forms shows a income of \$283,517.73 to Secure Parking for 2022. The software and the parking meters are owned by the State of Hawaii. Our community has requested DLNR for more detail accouting November 28th, 2023 UIPA. In 9-14-2021 BLNR ordered that vendor could not profit more than 120k a year from the AWSBH Parking. Secure Parking contact says 20 percent of gross not 20 percent of adjusted gross.

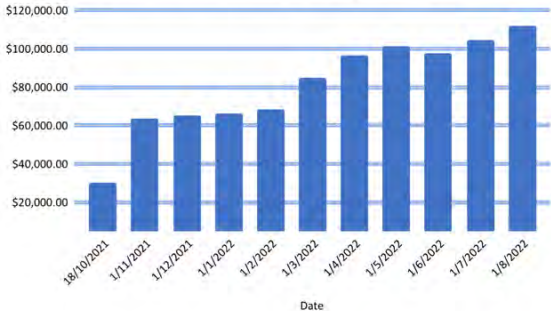
Month	Parking Pay Station	Pay-By-Phone Service	Permit Distribution	Total Gross Receipts	Less Refunds/Char gebacks	Services & Payment Gateway Fees	Adjusted Gross Receipts	Gross Receipts (Secure Parking Portion)	Gross Receipts (DOBOR Portion)
2-2023	65499	60,279.00	19,065.00	144,843.00	1,048.74	5,569.85	138,224.41	27,644.88	110,579.53
1-2023	68,757.00	57,117.00	36,149.25	162,023.25	1,123.00	7,295.19	153,605.06	30,721.01	122,884.05
12-2022	68,130.00	56,753.00	19,765.00	144,648.00	998.00	7,849.01	135,800.99	27,160.20	108,640.79
11-2022	62,929.00	51,431.00	16,164.00	130,524.00	774.00	7,369.82	122,380.18	24,476.04	97,904.14
10-2022	62,573.00	55,407.00	14,689.00	132,669.00	467.00	7,555.01	124,646.99	24,929.40	99,717.59
09-2022	56,153.00	62,096.00	10,195.00	128,444.00	811.00	7,586.75	120,046.25	24,009.25	96,037.00
08-2022	63,913.00	66,522.00	17,074.00	147,509.00	488.00	7,097.24	139,923.76	27,984.75	111,939.01
07-2022	61,675.00	63,069.00	11,661.00	136,405.00	63.00	5,705.16	130,636.84	26,127.37	104,509.47
06-2022	55,627.00	58,949.00	13,100.00	127,676.00	411.00	5,272.91	121,992.09	24,398.42	97,593.67
05-2022	60,944.00	56,797.00	14,824.00	132,565.00	145.00	5,691.27	126,728.73	25,345.75	101,382.98
04-2022	71,705.00	45,824.00	8,713.00	126,242.00	107.00	5,637.33	120,497.67	24,099.53	96,398.14
03-2022	67,051.00	34,853.86	11,810.00	113,714.86	19.00	7,471.75	106,224.11	21,244.82	84,979.29
02-2022	59,326.00	18,464.20	12,149.50	89,939.70	166.00	3,992.25	85,781.45	17,156.29	68,625.16
01-2022	77,348.00	-	9,696.59	87,044.59	88.00	4,027.00	82,929.59	16,585.92	66,343.67
12-2021	73,064.00	12,975.00		86,039.00	212.00	3,940.55	81,886.45	16,377.29	65,509.16
11-2021	66,550.00	17,194.50		83,744.50	674.25	3,600.43	79,469.82	15,893.96	63,575.86
10-2021	25,254.00	14,381.10		39,635.10	696.77	1,391.64	37,546.69	7,509.34	30,037.35
Totals	1,066,498.00	732,112.66	215,055.34	2,013,666.00	8,291.76	97,053.16	1,908,321.08	381,664.22	1,526,656.86

2022 Secure Parking 283,517.73

2022 Merchant Servs includes \$2,802.71 for Sign Posts



## Ala Wai Boat Harbor Paid Parking Revenue



STATE OF HAWAII  
Department of Land & Natural Resources  
Division of Boating & Ocean Recreation

STATEMENT OF GROSS RECEIPTS

07

Reporting Period from 08/01/2022  
to 08/31/2022

Agreement No: 120

Rental Rate \$ - Per -  
or 80% % of Adjusted gross  
receipts, whichever is greatest.

Note:

1. Payment and correctly completed report must be received not later than 30 days following the end of month
2. Late payment fee and interest assessed for incorrect or late report delinquent payment.

\$ 68,918.00  
\$ 66,522.00  
\$ 17,074.00  
\$  
\$

\$ 147,509.00

(? 152,514.00)

\$ 488.00  
\$ 7,097.24  
\$  
\$

GREYMY

\$ 7,580.24

\$ 139,928.76

Item 2e):

\$ 111,943.01

pts

**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

**STATEMENT OF GROSS RECEIPTS**

Account No. \_\_\_\_\_  
Secure Parking Hawaii  
 Name of Operation or Firm  
Ala Wai Small Boat Harbor  
 Location  
Jonathan Mauri  
 Name of Owner  
529 Koula Street, Bay 2 Honolulu, HI 96813  
 Address  
(808) 517-1311  
 Phone No.

Reporting from February 1<sup>st</sup>, 2023  
 Period to February 28<sup>th</sup>, 2023  
 Agreement No: RP120  
 Rental Rate - \_\_\_\_\_ Per - \_\_\_\_\_  
 Or 80% % of adjusted gross receipts,  
 whichever is greatest

**Note:**

1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

**1. Gross Receipts (itemize):**

a.	<u>Parking Pay Station</u>	\$ <u>65,499.00</u>	
b.	<u>Pay-By-Phone Service</u>	\$ <u>60,279.00</u>	
c.	<u>Permit Distribution</u>	\$ <u>19,065.00</u>	
d.	_____	\$ _____	
e.	_____	\$ _____	
f.	<b>Total</b>		<b>\$ <u>144,843.00</u></b>

**2. Allowable Deductions (Specify):**

a.	<u>Refunds/Chargebacks</u>	\$ <u>1,048.74</u>	
b.	<u>Merchant Services &amp; Payment Gateway Fees</u>	\$ <u>5,569.85</u>	
c.	_____	\$ _____	
d.	_____	\$ _____	
e.	<b>Total</b>		<b>\$ <u>6,618.59</u></b>
3.	<b>Adjusted Gross Receipts (Item 1f less item 2e):</b>		<b>\$ <u>138,224.41</u></b>
4.	<b>Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):		<b>\$ <u>110,579.53</u></b>
5.	<b>Less Minimum Fixed Rental Paid in Advance for</b> <b>Period Covered in Statement:</b>		<b>\$ <u>0.00</u></b>
6.	<b>Additional Rental Due (Item 4 less item %):</b>		<b>\$ <u>0.00</u></b>

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:


DLNR – BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

(For DOBOR use only)

Date: \_\_\_\_\_ By: \_\_\_\_\_

Receipt No: \_\_\_\_\_ Amount: \_\_\_\_\_

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.



Jonathan Mauri Authorized Signature

03/08/2023 Title

Date

**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

FEB 9 23PM 3:22BOR ADM

**STATEMENT OF GROSS RECEIPTS**

\_\_\_\_\_  
Account No.  
**Secure Parking Hawaii**  
\_\_\_\_\_  
Name of Operation or Firm  
**Ala Wai Small Boat Harbor**  
\_\_\_\_\_  
Location  
**Jonathan Mauri**  
\_\_\_\_\_  
Name of Owner  
**529 Koula Street, Bay 2 Honolulu, HI 96813**  
\_\_\_\_\_  
Address  
**(808) 517-1311**  
\_\_\_\_\_  
Phone No.

Reporting from January 1<sup>st</sup>, 2023  
Period to January 31<sup>st</sup>, 2023  
Agreement No: RP120  
Rental Rate - \_\_\_\_\_ Per - \_\_\_\_\_  
Or 80% \_\_\_\_\_ % of adjusted gross receipts,  
whichever is greatest

- Note:**
1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
  2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

<b>1. Gross Receipts (itemize):</b>		
a.	<u>Parking Pay Station</u>	<u>\$ 68,757.00</u>
b.	<u>Pay-By-Phone Service</u>	<u>\$ 57,117.00</u>
c.	<u>Permit Distribution</u>	<u>\$ 36,149.25</u>
d.	_____	<u>\$ _____</u>
e.	_____	<u>\$ _____</u>
f.	<b>Total</b>	<u>\$ 162,023.25</u>

<b>2. Allowable Deductions (Specify):</b>		
a.	<u>Refunds/Chargebacks</u>	<u>\$ 1,123.00</u>
b.	<u>Merchant Services &amp; Payment Gateway Fees</u>	<u>\$ 7,295.19</u>
c.	_____	<u>\$ _____</u>
d.	_____	<u>\$ _____</u>
e.	<b>Total</b>	<u>\$ 8,418.19</u>
3.	<b>Adjusted Gross Receipts (Item 1f less item 2e):</b>	<u>\$ 153,605.06</u>
4.	<b>Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):	<u>\$ 122,884.05</u>
5.	<b>Less Minimum Fixed Rental Paid in Advance for Period Covered in Statement:</b>	<u>\$ 0.00</u>
6.	<b>Additional Rental Due (Item 4 less item %):</b>	<u>\$ 0.00</u>

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:


DLNR – BOATING DIVISION  
DEPT. OF LAND & NATURAL RESOURCES  
4 Sand Island Access Road  
HONOLULU HI 96819

**(For DOBOR use only)**

Date: \_\_\_\_\_ By: \_\_\_\_\_

Receipt No: \_\_\_\_\_ Amount: \_\_\_\_\_

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.

  
\_\_\_\_\_  
Manager Authorized Signature

02/07/2023 Title

\_\_\_\_\_  
Date Date





Tuesday, February 7, 2023

Division of Boating and Ocean Recreation (DOBOR)  
4 Sand Island Access Road,  
Honolulu, HI 96819

Secure Parking Hawaii  
529 Koula Street, Bay 2  
Honolulu, HI 96813

Attention: Ed Underwood

**RE: Ala Wai Boat Harbor Certified Statement of Revenue**

Dear Mr. Underwood

This is to certify that adjusted gross receipts collected by Secure Parking Hawaii for the month of January 2023 was equal to \$153,605.06.

As per Revocable Permit No.120, Secure Parking Hawaii will issue DOBOR with 80% of gross receipts equal to \$122,884.05.

Revenue detail and operation reports are available upon request. Should you have any questions or concerns, please do not hesitate to email me at [j.mauri@secureparkinghi.com](mailto:j.mauri@secureparkinghi.com) or call me at (808) 600-7388.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Mauri", with a horizontal line extending to the right from the end of the signature.

---

Jonathan Mauri  
Secure Parking Hawaii LLC

STATE OF HAWAII
Department of Land & Natural Resources
Division of Boating & Ocean Recreation

STATEMENT OF GROSS RECEIPTS

Account No.
Secure Parking Hawaii
Name of Operation or Firm
Ala Wai Small Boat Harbor
Location
Jonathan Mauri
Name of Owner
529 Koula Street, Bay 2 Honolulu, HI 96813
Address
(808) 517-1311
Phone No.

Reporting from December 1st, 2022
Period to December 31st, 2022
Agreement No: RP120
Rental Rate - Per -
Or 80% % of adjusted gross receipts,
whichever is greatest

- Note:
1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

1. Gross Receipts (Itemize):

Table with 2 columns: Item description and Amount. Rows include Parking Pay Station (\$68,130.00), Pay-By-Phone Service (\$56,753.00), Permit Distribution (\$19,765.00), and Total (\$144,648.00).

2. Allowable Deductions (Specify):

Table with 2 columns: Item description and Amount. Rows include Refunds/Chargebacks (\$998.00), Merchant Services & Payment Gateway Fees (\$7,849.01), and Total (\$8,847.01).

3. Adjusted Gross Receipts (Item 1f less item 2e):

Table with 2 columns: Item description and Amount. Rows include Adjusted Gross Receipts (\$135,800.99), Rental as a Percentage of Gross Receipts (\$108,640.79), Less Minimum Fixed Rental Paid in Advance for Period Covered in Statement (\$0.00), and Additional Rental Due (Item 4 less item %) (\$0.00).

NOTICE TO OWNER

Mail original of this statement together with remittance, if any to:

DLNR - BOATING DIVISION
DEPT. OF LAND & NATURAL RESOURCES
4 Sand Island Access Road
HONOLULU HI 96819

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.

Handwritten signature of the manager.

(For DOBOR use only)
Date: By:
Receipt No: Amount:

Authorized Signature
Manager
Title
01/05/2023
Date

**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

**STATEMENT OF GROSS RECEIPTS**

Account No. \_\_\_\_\_  
**Secure Parking Hawaii**  
 Name of Operation or Firm \_\_\_\_\_  
**Ala Wai Small Boat Harbor**  
 Location \_\_\_\_\_  
**Jonathan Mauri**  
 Name of Owner \_\_\_\_\_  
**529 Koula Street, Bay 2 Honolulu, HI 96813**  
 Address \_\_\_\_\_  
**(808) 517-1311**  
 Phone No. \_\_\_\_\_

Reporting from **November 1<sup>st</sup>, 2022**  
 Period to **November 30<sup>th</sup>, 2022**  
 Agreement No: **RP120**  
 Rental Rate - \_\_\_\_\_ Per - \_\_\_\_\_  
 Or **80%** \_\_\_\_\_ % of adjusted gross receipts,  
 whichever is greatest

- Note:
1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
  2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

<b>1. Gross Receipts (itemize):</b>		
a.	<b>Parking Pay Station</b> _____	<b>\$ 62,929.00</b> _____
b.	<b>Pay-By-Phone Service</b> _____	<b>\$ 51,431.00</b> _____
c.	<b>Permit Distribution</b> _____	<b>\$ 16,164.00</b> _____
d.	_____	\$ _____
e.	_____	\$ _____
f.	<b>Total</b>	<b>\$ 130,524.00</b> _____

DEC12'22AM 8:21BOR ADM

<b>2. Allowable Deductions (Specify):</b>		
a.	<b>Refunds/Chargebacks</b> _____	<b>\$ 774.00</b> _____
b.	<b>Merchant Services &amp; Payment Gateway Fees</b> _____	<b>\$ 7,369.82</b> _____
c.	_____	\$ _____
d.	_____	\$ _____
e.	<b>Total</b>	<b>\$ 8,143.82</b> _____
<b>3.</b>	<b>Adjusted Gross Receipts (Item 1f less item 2e):</b>	<b>\$ 122,380.18</b> _____
<b>4.</b>	<b>Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):	<b>\$ 97,904.14</b> _____
<b>5.</b>	<b>Less Minimum Fixed Rental Paid in Advance for</b> <b>Period Covered in Statement:</b>	<b>\$ 0.00</b> _____
<b>6.</b>	<b>Additional Rental Due (Item 4 less item %):</b>	<b>\$ 0.00</b> _____

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:

DLNR – BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

(For DOBOR use only)

Date: \_\_\_\_\_ By: \_\_\_\_\_

Receipt No: \_\_\_\_\_ Amount: \_\_\_\_\_

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.



\_\_\_\_\_  
**Manager** Authorized Signature  
 \_\_\_\_\_ Title  
**12/07/2022** Date  
 \_\_\_\_\_ Date

**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

NOV14'22AM 7:58BOR ADM

**STATEMENT OF GROSS RECEIPTS**

Account No. \_\_\_\_\_  
**Secure Parking Hawaii**  
 Name of Operation or Firm \_\_\_\_\_  
**Ala Wai Small Boat Harbor**  
 Location \_\_\_\_\_  
**Jonathan Mauri**  
 Name of Owner \_\_\_\_\_  
**529 Koula Street, Bay 2 Honolulu, HI 96813**  
 Address \_\_\_\_\_  
**(808) 517-1311**  
 Phone No. \_\_\_\_\_

Reporting from October 1<sup>st</sup>, 2022  
 Period to October 31<sup>st</sup>, 2022  
 Agreement No: RP120  
 Rental Rate - \_\_\_\_\_ Per - \_\_\_\_\_  
 Or 80% % of adjusted gross receipts,  
 whichever is greatest

- Note:
1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
  2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

<b>1. Gross Receipts (itemize):</b>		
a. <u>Parking Pay Station</u>	<u>\$ 62,573.00</u>	
b. <u>Pay-By-Phone Service</u>	<u>\$ 55,407.00</u>	
c. <u>Permit Distribution</u>	<u>\$ 14,689.00</u>	
d. _____	\$ _____	
e. _____	\$ _____	
f. <b>Total</b>		<b><u>\$ 132,669.00</u></b>

<b>2. Allowable Deductions (Specify):</b>		
a. <u>Refunds/Chargebacks</u>	<u>\$ 467.00</u>	
b. <u>Merchant Services &amp; Payment Gateway Fees</u>	<u>\$ 7,555.01</u>	
c. _____	\$ _____	
d. _____	\$ _____	
e. <b>Total</b>		<b><u>\$ 8,022.01</u></b>
<b>3. Adjusted Gross Receipts (Item 1f less item 2e):</b>		<b><u>\$ 124,646.99</u></b>
<b>4. Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):		<b><u>\$ 99,717.59</u></b>
<b>5. Less Minimum Fixed Rental Paid in Advance for</b> <b>Period Covered in Statement:</b>		<b><u>\$ 0.00</u></b>
<b>6. Additional Rental Due (Item 4 less item %):</b>		<b><u>\$ 0.00</u></b>


**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:

DLNR – BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

<b>(For DOBOR use only)</b>	
Date: _____	By: _____
Receipt No: _____	Amount: _____

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.

  
 \_\_\_\_\_  
**Manager** Authorized Signature  
 Title  
11/08/2022  
 \_\_\_\_\_  
 Date



**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

OCT11'22PM12:31BOR ADM

**STATEMENT OF GROSS RECEIPTS**

Account No. \_\_\_\_\_  
Secure Parking Hawaii  
 Name of Operation or Firm \_\_\_\_\_  
Ala Wai Small Boat Harbor  
 Location \_\_\_\_\_  
Jonathan Mauri  
 Name of Owner \_\_\_\_\_  
529 Koula Street, Bay 2 Honolulu, HI 96813  
 Address \_\_\_\_\_  
(808) 517-1311  
 Phone No. \_\_\_\_\_

Reporting from September 1<sup>st</sup>, 2022  
 Period to September 30<sup>th</sup>, 2022  
 Agreement No: RP120  
 Rental Rate - \_\_\_\_\_ Per - \_\_\_\_\_  
 Or 80% % of adjusted gross receipts,  
 whichever is greatest

- Note:**
1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
  2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

<b>1. Gross Receipts (itemize):</b>		
a.	<u>Parking Pay Station</u>	<u>\$ 56,153.00</u>
b.	<u>Pay-By-Phone Service</u>	<u>\$ 62,096.00</u>
c.	<u>Permit Distribution</u>	<u>\$ 10,195.00</u>
d.	_____	\$ _____
e.	_____	\$ _____
f.	<b>Total</b>	<b><u>\$ 128,444.00</u></b>

<b>2. Allowable Deductions (Specify):</b>		
a.	<u>Refunds/Chargebacks</u>	<u>\$ 811.00</u>
b.	<u>Merchant Services &amp; Payment Gateway Fees</u>	<u>\$ 7,586.75</u>
c.	_____	\$ _____
d.	_____	\$ _____
e.	<b>Total</b>	<b><u>\$ 8,397.75</u></b>
3.	<b>Adjusted Gross Receipts (Item 1f less item 2e):</b>	<b><u>\$ 120,046.25</u></b>
4.	<b>Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):	<b><u>\$ 96,037.00</u></b>
5.	<b>Less Minimum Fixed Rental Paid in Advance for Period Covered in Statement:</b>	<b><u>\$ 0.00</u></b>
6.	<b>Additional Rental Due (Item 4 less item %):</b>	<b><u>\$ 0.00</u></b>

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:

DLNR – BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.



Manager Authorized Signature  
 \_\_\_\_\_ Title  
10/07/2022 Date

<b>(For DOBOR use only)</b>	
Date: _____	By: _____
Receipt No: _____	Amount: _____



**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

**STATEMENT OF GROSS RECEIPTS**



Account No: +0001307

Reporting Period from 05/01/22 to 05/31/22

SEWER PARKING HAWAII  
 Name of Operation or Firm

Agreement No: 120

ALU WAI CRAFT HARBOR  
 Location

Rental Rate \$ - Per -  
 or 80% % of Adjusted gross receipts, whichever is greatest.

JONATHAN MAWMA  
 Name of Owner

- Note:**
1. Payment and correctly completed report must be received not later than 30 days following the end of month
  2. Late payment fee and interest assessed for incorrect or late report delinquent payment.

529 KOOLA ST, BAY 2  
 Address  
HONOLULU HI 96813  
 Phone No.  
(809) 600-7328

<b>1. Gross Receipts (Itemize):</b>	
a. <u>PAY STATIONS</u>	<u>\$ 60,944.00</u>
b. <u>PAY BY PHONE</u>	<u>\$ 56,797.00</u>
c. <u>PERMITS</u>	<u>\$ 14,826.00</u>
d. _____	<u>\$</u>
e. _____	<u>\$</u>
<b>1. Total</b>	<b><u>\$ 132,565.00</u></b>

<b>2. Allowable Deductions (Specify)</b>	
a. <u>REFUNDS/CHARGEBACKS</u>	<u>\$ 145.00</u>
b. <u>MERCHANT SERVICES/COMMUNITY FEES</u>	<u>\$ 5691.27</u>
c. _____	<u>\$</u>
d. _____	<u>\$</u>
<b>e. Total</b>	<b><u>\$ 5836.27</u></b>

**3. Adjusted Gross Receipts (Item 1f less item 2e):** \$ 126,728.72

**4. Rental as a Percentage of Gross Receipts**  
 (80 % of Item 3): \$ 101,382.98

**5. Less Minimum Fixed Rental Paid In Advance for Period Covered by this Statement:** \$ 0

**6. Additional Rental Due (Item 4 less item 5):** \$ 0

**NOTICE TO OWNER**

Mall original of this statement together with remittance, if any to:  
 DLNR - BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants and conditions of the permit to which this Statement applies.

[Signature]  
 Authorized signature  
MANAGER  
 Title

Date: 06/06/22

(For DBOR use only)  
 Date: \_\_\_\_\_ By: \_\_\_\_\_  
 Receipt No: \_\_\_\_\_ Amount: \_\_\_\_\_



STATE OF HAWAII  
 Department of Land & Natural Resources  
 Division of Boating & Ocean Recreation

**STATEMENT OF GROSS RECEIPTS**

Account No: \_\_\_\_\_

Secure Parking Hawaii

Name of Operation or Firm

Ala Wai Boat Harbor

Location

Jonathan Mauri

Name of Owner

529 Koula Street, Bay 2

Honolulu HI 96813

Address

(808) 600-7388

Phone No.

Reporting Period from 08/01/2022

to 08/31/2022

Agreement No. 120

Rental Rate \$ - Per -  
 or 80 % of Adjusted gross receipts, whichever is greatest.

**Note:**

1. Payment and correctly completed report must be received not later than 30 days following the end of month
2. Late payment fee and interest assessed for incorrect or late report delinquent payment.

<b>1. Gross Receipts (itemize):</b>	
a. Pay Stations	\$ 63,913.00
b. Pay-By-Phone	\$ 66,522.00
c. Permits	\$ 17,074.00
d. _____	\$ _____
e. _____	\$ _____
<b>f. Total</b>	<b>\$ 147,509.00</b>

<b>2. Allowable Deductions (Specify)</b>	
a. Refunds/Chargebacks	\$ 483.00
b. Merchant Services/Payment Gateway Fees	\$ 7,097.24
c. _____	\$ _____
d. _____	\$ _____
<b>e. Total</b>	<b>\$ 7,580.24</b>

**3. Adjusted Gross Receipts (Item 1f less item 2e):** **\$ 139,928.76**

**4. Rental as a Percentage of Gross Receipts (80 % of Item 3):** **\$ 111,943.01**

**5. Less Minimum Fixed Rental Paid in Advance for Period Covered by this Statement:** **\$ 0.00**


**6. Additional Rental Due (Item 4 less item 5):** **\$ 0.00**

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:

DLNR - BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants and conditions of the permit to which this Statement applies.

  
 \_\_\_\_\_  
 Authorized signature

Manager  
 \_\_\_\_\_  
 Title

Date: 09/09/2022

(For DBOR use only)	
Date: _____	By: _____
Receipt No: _____	Amount: _____

# REQUEST TO ACCESS A GOVERNMENT RECORD

Date of request: November 28, 2023

To: State of Hawaii Department of Land and Natural Resources, Chair Dawn Chang

Agency contact information: [Dawn.Chang@hawaii.gov](mailto:Dawn.Chang@hawaii.gov)

From: Kate Thompson, representing myself and members of Surfparking.org

Requester's Contact Information: [katet@me.com](mailto:katet@me.com)

---

AS THE REQUESTER, I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

**Subject: Government records**

- 1) Statement of Gross Receipts from Secure Parking Hawaii LLC' (RP120) to the DOBOR, for the Ala Wai Small Boat Parking. Statement example included from previous UIPA.**
- 2) Record of Deposit going from Secure Parking to a State of Hawaii Government bank account**
- 3) Hawaii State owns the Parking meters and the parking software. We request the analytic for Ala Wai Small Boat Harbor parking meters and how many times MR. Tow, DOBOR or DOCARE search on software for the time meter expiration.**
- 4) If DOBOR or DLNR requires banking receipts or documents from Secure Parking Hawaii of the actual credit service fee paid we want to see these documents. We are requesting verification of the normal percent amount for merchant fees paid.**

Date range: 11-01-2022 to 10-31-2023

Location: Government Computers, Government owned Pay Station parking software, payment coming from the (Scan code company) Parkwhiz, the monthly deposit coming from Secure Parking to State of Hawaii Government banking records.

Purpose: To review how much Secure Parking is making per month to review if Hawaii is paying too much for their service. We must be informed to give our community testimony at the BLNR meetings.

Names of persons or place record refers: DOBOR/ DLNR and Hawaii Accounting Employees.



I would like: This document or documents digitally and emailed to this address: [katet@me.com](mailto:katet@me.com)

I am requesting the fee waiver in the Public Interest.

UIPA Statute <https://oip.hawaii.gov/laws-rules-opinions/uipa/uniform-information-practices-act-uipa>

**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

**STATEMENT OF GROSS RECEIPTS**

Account No. \_\_\_\_\_  
Secure Parking Hawaii  
 Name of Operation or Firm \_\_\_\_\_  
Ala Wai Small Boat Harbor  
 Location \_\_\_\_\_  
Jonathan Mauri  
 Name of Owner \_\_\_\_\_  
529 Koula Street, Bay 2 Honolulu, HI 96813  
 Address \_\_\_\_\_  
(808) 517-1311  
 Phone No. \_\_\_\_\_

Reporting from February 1<sup>st</sup>, 2023  
 Period to February 28<sup>th</sup>, 2023  
 Agreement No: RP120  
 Rental Rate - Per -  
 Or 80% % of adjusted gross receipts,  
 whichever is greatest

**Note:**

1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

**1. Gross Receipts (itemize):**

a.	<u>Parking Pay Station</u>	\$ <u>65,499.00</u>	
b.	<u>Pay-By-Phone Service</u>	\$ <u>60,279.00</u>	
c.	<u>Permit Distribution</u>	\$ <u>19,065.00</u>	
d.	_____	\$ _____	
e.	_____	\$ _____	
f.	<b>Total</b>		<b>\$ <u>144,843.00</u></b>

**2. Allowable Deductions (Specify):**

a.	<u>Refunds/Chargebacks</u>	\$ <u>1,048.74</u>	
b.	<u>Merchant Services &amp; Payment Gateway Fees</u>	\$ <u>5,569.85</u>	
c.	_____	\$ _____	
d.	_____	\$ _____	
e.	<b>Total</b>		<b>\$ <u>6,618.59</u></b>
3.	<b>Adjusted Gross Receipts (Item 1f less item 2e):</b>		<b>\$ <u>138,224.41</u></b>
4.	<b>Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):		<b>\$ <u>110,579.53</u></b>
5.	<b>Less Minimum Fixed Rental Paid in Advance for</b> <b>Period Covered in Statement:</b>		<b>\$ <u>0.00</u></b>
6.	<b>Additional Rental Due (Item 4 less item %):</b>		<b>\$ <u>0.00</u></b>

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:


DLNR – BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

(For DOBOR use only)

Date: \_\_\_\_\_ By: \_\_\_\_\_

Receipt No: \_\_\_\_\_ Amount: \_\_\_\_\_

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.



\_\_\_\_\_  
 Authorized Signature  
Jonathan Mauri  
 Manager  
 Title  
03/08/2023  
 Date

**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

FEB 9 23PM 3:22BOR ADM

**STATEMENT OF GROSS RECEIPTS**

Account No. \_\_\_\_\_  
**Secure Parking Hawaii**  
 Name of Operation or Firm \_\_\_\_\_  
**Ala Wai Small Boat Harbor**  
 Location \_\_\_\_\_  
**Jonathan Mauri**  
 Name of Owner \_\_\_\_\_  
**529 Koula Street, Bay 2 Honolulu, HI 96813**  
 Address \_\_\_\_\_  
**(808) 517-1311**  
 Phone No. \_\_\_\_\_

Reporting from January 1<sup>st</sup>, 2023  
 Period to January 31<sup>st</sup>, 2023  
 Agreement No: RP120  
 Rental Rate - \_\_\_\_\_ Per - \_\_\_\_\_  
 Or 80% \_\_\_\_\_ % of adjusted gross receipts,  
 whichever is greatest

- Note:**
1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
  2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

<b>1. Gross Receipts (Itemize):</b>		
a. <u>Parking Pay Station</u>	\$ <u>68,757.00</u>	
b. <u>Pay-By-Phone Service</u>	\$ <u>57,117.00</u>	
c. <u>Permit Distribution</u>	\$ <u>36,149.25</u>	
d. _____	\$ _____	
e. _____	\$ _____	
f. <b>Total</b>		\$ <u>162,023.25</u>

<b>2. Allowable Deductions (Specify):</b>		
a. <u>Refunds/Chargebacks</u>	\$ <u>1,123.00</u>	
b. <u>Merchant Services &amp; Payment Gateway Fees</u>	\$ <u>7,295.19</u>	
c. _____	\$ _____	
d. _____	\$ _____	
e. <b>Total</b>		\$ <u>8,418.19</u>
3. <b>Adjusted Gross Receipts (Item 1f less item 2e):</b>		\$ <u>153,605.06</u>
4. <b>Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):		\$ <u>122,884.05</u>
5. <b>Less Minimum Fixed Rental Paid in Advance for</b> <b>Period Covered in Statement:</b>		\$ <u>0.00</u>
6. <b>Additional Rental Due (Item 4 less item %):</b>		\$ <u>0.00</u>

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:


DLNR – BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

(For DOBOR use only)

Date: \_\_\_\_\_ By: \_\_\_\_\_

Receipt No: \_\_\_\_\_ Amount: \_\_\_\_\_

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.



\_\_\_\_\_  
 Manager Authorized Signature

\_\_\_\_\_  
 Title

02/07/2023  
 Date



Tuesday, February 7, 2023

Division of Boating and Ocean Recreation (DOBOR)  
4 Sand Island Access Road,  
Honolulu, HI 96819

Secure Parking Hawaii  
529 Koula Street, Bay 2  
Honolulu, HI 96813

Attention: Ed Underwood

**RE: Ala Wai Boat Harbor Certified Statement of Revenue**

Dear Mr. Underwood

This is to certify that adjusted gross receipts collected by Secure Parking Hawaii for the month of January 2023 was equal to \$153,605.06.

As per Revocable Permit No.120, Secure Parking Hawaii will issue DOBOR with 80% of gross receipts equal to \$122,884.05.

Revenue detail and operation reports are available upon request. Should you have any questions or concerns, please do not hesitate to email me at [j.mauri@secureparkinghi.com](mailto:j.mauri@secureparkinghi.com) or call me at (808) 600-7388.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Mauri", with a horizontal line extending to the right.

---

Jonathan Mauri  
Secure Parking Hawaii LLC



STATE OF HAWAII
Department of Land & Natural Resources
Division of Boating & Ocean Recreation

STATEMENT OF GROSS RECEIPTS

Account No.
Secure Parking Hawaii
Name of Operation or Firm
Ala Wai Small Boat Harbor
Location
Jonathan Mauri
Name of Owner
529 Koula Street, Bay 2 Honolulu, HI 96813
Address
(808) 517-1311
Phone No.

Reporting from December 1st, 2022
Period to December 31st, 2022
Agreement No: RP120
Rental Rate - Per -
Or 80% % of adjusted gross receipts,
whichever is greatest

- Note:
1. Payment and correctly completed report must be received
not later than 30 days following the end of the month.
2. Late payment fee and interest assessed for incorrect or
late report or delinquent payment.

Table with 2 columns: Item description and Amount. Row 1: 1. Gross Receipts (itemize): a. Parking Pay Station \$ 68,130.00; b. Pay-By-Phone Service \$ 56,753.00; c. Permit Distribution \$ 19,765.00; d. \$; e. \$; f. Total \$ 144,648.00

Table with 2 columns: Item description and Amount. Row 1: 2. Allowable Deductions (Specify): a. Refunds/Chargebacks \$ 998.00; b. Merchant Services & Payment Gateway Fees \$ 7,849.01; c. \$; d. \$; e. Total \$ 8,847.01; 3. Adjusted Gross Receipts (Item 1f less item 2e): \$ 135,800.99; 4. Rental as a Percentage of Gross Receipts ( 80 % of item 3): \$ 108,640.79; 5. Less Minimum Fixed Rental Paid in Advance for Period Covered in Statement: \$ 0.00; 6. Additional Rental Due (Item 4 less item %): \$ 0.00

NOTICE TO OWNER

Mail original of this statement together with remittance, if any to:

DLNR - BOATING DIVISION
DEPT. OF LAND & NATURAL RESOURCES
4 Sand Island Access Road
HONOLULU HI 96819

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.

Handwritten signature of the manager.

(For DOBOR use only)
Date: By:
Receipt No: Amount:

Authorized Signature
Title
Date
01/05/2023

**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

**STATEMENT OF GROSS RECEIPTS**

Account No. \_\_\_\_\_  
**Secure Parking Hawaii**  
 Name of Operation or Firm  
**Ala Wai Small Boat Harbor**  
 Location  
**Jonathan Mauri**  
 Name of Owner  
**529 Koula Street, Bay 2 Honolulu, HI 96813**  
 Address  
**(808) 517-1311**  
 Phone No.

Reporting from **November 1<sup>st</sup>, 2022**  
 Period to **November 30<sup>th</sup>, 2022**  
 Agreement No: **RP120**  
 Rental Rate - \_\_\_\_\_ Per - \_\_\_\_\_  
 Or **80%** \_\_\_\_\_ % of adjusted gross receipts,  
 whichever is greatest

- Note:
1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
  2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

<b>1. Gross Receipts (itemize):</b>		
a. <b>Parking Pay Station</b>	<b>\$ 62,929.00</b>	
b. <b>Pay-By-Phone Service</b>	<b>\$ 51,431.00</b>	
c. <b>Permit Distribution</b>	<b>\$ 16,164.00</b>	
d. _____	\$ _____	
e. _____	\$ _____	
f. <b>Total</b>		<b>\$ 130,524.00</b>

DEC12'22AM 8:21BOR ADM

<b>2. Allowable Deductions (Specify):</b>		
a. <b>Refunds/Chargebacks</b>	<b>\$ 774.00</b>	
b. <b>Merchant Services &amp; Payment Gateway Fees</b>	<b>\$ 7,369.82</b>	
c. _____	\$ _____	
d. _____	\$ _____	
e. <b>Total</b>		<b>\$ 8,143.82</b>
<b>3. Adjusted Gross Receipts (Item 1f less item 2e):</b>		<b>\$ 122,380.18</b>
<b>4. Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):		<b>\$ 97,904.14</b>
<b>5. Less Minimum Fixed Rental Paid in Advance for</b> <b>Period Covered in Statement:</b>		<b>\$ 0.00</b>
<b>6. Additional Rental Due (Item 4 less item %):</b>		<b>\$ 0.00</b>

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:

DLNR – BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

<b>(For DOBOR use only)</b>	
Date: _____	By: _____
Receipt No: _____	Amount: _____

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.



**Manager** \_\_\_\_\_ Authorized Signature  
**12/07/2022** \_\_\_\_\_ Title  
 \_\_\_\_\_ Date

**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

NOV14'22AM 7:58BOR ADM

**STATEMENT OF GROSS RECEIPTS**

Account No. \_\_\_\_\_  
**Secure Parking Hawaii**  
 Name of Operation or Firm \_\_\_\_\_  
**Ala Wai Small Boat Harbor**  
 Location \_\_\_\_\_  
**Jonathan Mauri**  
 Name of Owner \_\_\_\_\_  
**529 Koula Street, Bay 2 Honolulu, HI 96813**  
 Address \_\_\_\_\_  
**(808) 517-1311**  
 Phone No. \_\_\_\_\_

Reporting from October 1<sup>st</sup>, 2022  
 Period to October 31<sup>st</sup>, 2022  
 Agreement No: RP120  
 Rental Rate - \_\_\_\_\_ Per - \_\_\_\_\_  
 Or 80% % of adjusted gross receipts,  
 whichever is greatest

- Note:**
1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
  2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

<b>1. Gross Receipts (itemize):</b>		
a.	<u>Parking Pay Station</u>	<u>\$ 62,573.00</u>
b.	<u>Pay-By-Phone Service</u>	<u>\$ 55,407.00</u>
c.	<u>Permit Distribution</u>	<u>\$ 14,689.00</u>
d.	_____	\$ _____
e.	_____	\$ _____
f.	<b>Total</b>	<b>\$ <u>132,669.00</u></b>

<b>2. Allowable Deductions (Specify):</b>		
a.	<u>Refunds/Chargebacks</u>	<u>\$ 467.00</u>
b.	<u>Merchant Services &amp; Payment Gateway Fees</u>	<u>\$ 7,555.01</u>
c.	_____	\$ _____
d.	_____	\$ _____
e.	<b>Total</b>	<b>\$ <u>8,022.01</u></b>
<b>3.</b>	<b>Adjusted Gross Receipts (Item 1f less item 2e):</b>	<b>\$ <u>124,646.99</u></b>
<b>4.</b>	<b>Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):	<b>\$ <u>99,717.59</u></b>
<b>5.</b>	<b>Less Minimum Fixed Rental Paid in Advance for</b> <b>Period Covered in Statement:</b>	<b>\$ <u>0.00</u></b>
<b>6.</b>	<b>Additional Rental Due (Item 4 less item %):</b>	<b>\$ <u>0.00</u></b>

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:


DLNR – BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

(For DOBOR use only)

Date: \_\_\_\_\_ By: \_\_\_\_\_

Receipt No: \_\_\_\_\_ Amount: \_\_\_\_\_

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.

  
 \_\_\_\_\_  
 Authorized Signature  
**Manager** Title  
**11/08/2022** Date

**STATE OF HAWAII**  
**Department of Land & Natural Resources**  
**Division of Boating & Ocean Recreation**

OCT11'22PM12:31BOR ADM

**STATEMENT OF GROSS RECEIPTS**

Account No. \_\_\_\_\_  
Secure Parking Hawaii  
 Name of Operation or Firm \_\_\_\_\_  
Ala Wai Small Boat Harbor  
 Location \_\_\_\_\_  
Jonathan Mauri  
 Name of Owner \_\_\_\_\_  
529 Koula Street, Bay 2 Honolulu, HI 96813  
 Address \_\_\_\_\_  
(808) 517-1311  
 Phone No. \_\_\_\_\_

Reporting from September 1<sup>st</sup>, 2022  
 Period to September 30<sup>th</sup>, 2022  
 Agreement No: RP120  
 Rental Rate - \_\_\_\_\_ Per - \_\_\_\_\_  
 Or 80% % of adjusted gross receipts,  
 whichever is greatest

**Note:**

1. Payment and correctly completed report must be received not later than 30 days following the end of the month.
2. Late payment fee and interest assessed for incorrect or late report or delinquent payment.

<b>1. Gross Receipts (itemize):</b>		
a.	<u>Parking Pay Station</u>	<u>\$ 56,153.00</u>
b.	<u>Pay-By-Phone Service</u>	<u>\$ 62,096.00</u>
c.	<u>Permit Distribution</u>	<u>\$ 10,195.00</u>
d.	_____	\$ _____
e.	_____	\$ _____
f.	<b>Total</b>	<b><u>\$ 128,444.00</u></b>

<b>2. Allowable Deductions (Specify):</b>		
a.	<u>Refunds/Chargebacks</u>	<u>\$ 811.00</u>
b.	<u>Merchant Services &amp; Payment Gateway Fees</u>	<u>\$ 7,586.75</u>
c.	_____	\$ _____
d.	_____	\$ _____
e.	<b>Total</b>	<b><u>\$ 8,397.75</u></b>
3.	<b>Adjusted Gross Receipts (Item 1f less item 2e):</b>	<b><u>\$ 120,046.25</u></b>
4.	<b>Rental as a Percentage of Gross Receipts</b> ( <u>80</u> % of Item 3):	<b><u>\$ 96,037.00</u></b>
5.	<b>Less Minimum Fixed Rental Paid in Advance for Period Covered in Statement:</b>	<b><u>\$ 0.00</u></b>
6.	<b>Additional Rental Due (Item 4 less item %):</b>	<b><u>\$ 0.00</u></b>

**NOTICE TO OWNER**

Mail original of this statement together with remittance, if any to:

DLNR – BOATING DIVISION  
 DEPT. OF LAND & NATURAL RESOURCES  
 4 Sand Island Access Road  
 HONOLULU HI 96819

I certify that this Statement is, to the best of my knowledge and belief, a true and correct declaration of gross receipts for the period stated, pursuant to the terms, covenants, and conditions of the permit to which this Statement applies.



Manager Authorized Signature  
 \_\_\_\_\_ Title  
10/07/2022 Date

<b>(For DOBOR use only)</b>	
Date: _____	By: _____
Receipt No: _____	Amount: _____





**STATE OF HAWAII**  
**CONTRACT FOR GOODS OR SERVICES**  
**BASED UPON**  
**COMPETITIVE SEALED BIDS**

This Contract, executed on the respective dates indicated below, is effective as of  
 July 1, 2020, between Department of Land and Natural Resources  
*(Insert name of state department, agency, board or commission)*  
 State of Hawaii ("STATE"), by its Chairperson  
*(Insert title of person signing for State)*  
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),  
 whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813  
 and MR TOW LLC  
 ("CONTRACTOR"), a Domestic Limited Liability Company  
*(Insert corporation, partnership, joint venture, sole proprietorship or other legal form of the Contractor)*  
 under the laws of the State of Hawaii, whose business address and federal  
 and state taxpayer identification numbers are as follows: 123 Pu'uhale Road, Honolulu, HI 96819  
 Fed ID: 83-4676316, State Tax ID: GE 184035584001

**RECITALS**

- A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.
- B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.
- C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").
- D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.
- E. Pursuant to Hawaii Revised Statute Chapter 103D, HRS 171-6 , the STATE  
*(Legal authority to enter into this Contract)*  
 is authorized to enter into this Contract.
- F. Money is available to fund this Contract pursuant to:  
 (1) Act 5, SLH 2019  
*(Identify state sources)*  
 or (2) \_\_\_\_\_  
*(Identify federal sources)*  
 or both, in the following amounts: State \$ 1.00  
 Federal \$ \_\_\_\_\_

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

- 1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number IFB No. LO-20-006 ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.
- 2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

ONE AND NO/100

DOLLARS

(\$ 1.00), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR  is required to provide or  is not required to provide:  a performance bond,  a payment bond,  a performance and payment bond in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of ZERO DOLLARS (\$ 0.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

**STATE**

*(Signature)*

Suzanne D. Case

*(Print Name)*

Chairperson

*(Print Title)*

*(Date)*

**CONTRACTOR**

MR TOW LLC

*(Name of Contractor)*

*(Signature)*

Mary Jo Rivera

*(Print Name)*

Member

*(Print Title)*

*(Date)*

CORPORATE SEAL  
of the State of Michigan

**APPROVED AS TO FORM:**

  
Deputy Attorney General

\* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.

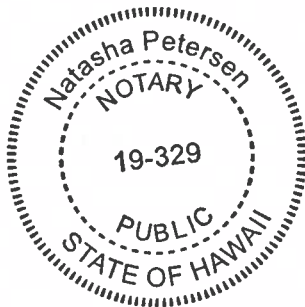


STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF HAWAII )
) SS.
COUNTY OF HONOLULU )

On this 8th day of JULY, 2020 before me appeared MARY JO RIVERA and ... to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are MEMBER and ... of MR TOW LLC the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.



Signature of Natasha Petersen
(Print Name)

Notary Public, State of HAWAII
My commission expires: JUL 28 2023

Doc. Date: 07/01/2020 # Pages: 36
Notary Name: Natasha Petersen First Circuit
Doc. Description: CONTACT FOR TOWING SERVICES
(IFB NO. LO-20-006)

Notary Signature Date JUL 08 2020



NOTARY CERTIFICATION



**STATE OF HAWAII**  
**CONTRACTOR'S**  
**STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of MR TOW LLC, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR  is\*  is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

\*Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302. HRS. or a competitive sealed proposal under section 103D-303. HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

**CONTRACTOR**

By Mary Jo Rivera  
(Signature)  
 Print Name Mary Jo Rivera  
 Print Title Member  
 Name of Contractor MR TOW LLC  
 Date 7/8/20





## STATE OF HAWAII SCOPE OF SERVICES

The purpose of this IFB is to award a services contract to a Contractor who shall provide towing services for vehicles and boat trailers at the Division of Boating and Ocean Recreation (DOBOR) Oahu District Harbors.

The Small Boat Harbors (SBH) and launch ramp facilities included in this contract are as follows:

<b>DOBOR Oahu Facilities:</b>	<b>Exhibit</b>	<b>Facility Address:</b>
Ala Wai Small Boat Harbor	A-1	1651 Ala Wai Blvd. Honolulu, HI 96815
Keehi Small Boat Harbor	A-2	4 Sand Island Road, Honolulu, HI 96819
Haleiwa Small Boat Harbor	A-3	66-105 Haleiwa Road, Haleiwa, HI 96792
Waianae Small Boat Harbor	A-4	85-371 Farrington Highway, Waianae, HI 96792
Heeia Kea Small Boat Harbor	A-5	46-499 Kamehameha Highway, Kaneohe, HI 96744
Kahana Bay Launch Ramp	A-6	54-046 Kamehameha Highway, Hauula, HI 96717
Maunalua Bay Launch Ramp	A-7	6270 Kalaniana'ole Highway, Honolulu, HI 96825
South Keehi Lagoon Launch Ramp	A-8	10 Sand Island Parkway, Honolulu, HI 96819

The State and Contractor agree that Contractor is a “Person in charge of the property” as that term is used in Hawaii Revised Statutes Section 290-11 as to each of the premises listed above.

Contractor shall keep on file a schedule of business hours and days open and a completed towing rate sheet of prices charged. Monthly reports may be asked to be prepared and submitted, in a format approved by DOBOR.

Contractor shall tow vehicles as stated in this scope of services, as generally or specifically directed by DOBOR staff, and as generally or specifically directed by any other person or entity authorized in writing by DOBOR to authorize towing.

Contractors assigned project manager shall have at least five (5) years of experience in providing towing services for their towing operations.

Contractor must have the financial ability to carry out the terms of the contract. Upon execution of contract by Contractor, Contractor must be able to have equipment, and signs prepared which shall be approved by DOBOR and installed within thirty (30) calendar days of award.

Contractor should be fully operational within thirty (30) calendar days from contract execution.

Contractor shall maintain a tow yard located in the Sand Island/Kalihi area; and it shall be a minimum of 0.8 acres in size; and shall hold a minimum of fifty (50) vehicles at any one time for the entire term of the Towing Contract and any extensions. Contractor shall have someone physically available at the tow yard 24 hours a day and 7 days a week.

Contractor shall not charge the State for any tows and the State will not be paid anything from the Contractor, unless the vehicle is considered abandoned. Contractor shall provide cost



## STATE OF HAWAII SCOPE OF SERVICES

estimates for towing and disposal of abandoned vehicles in the Qualifications Questionnaire. This shall be a no funds contract.

Contractor shall have a minimum of eight (8) tow trucks available 24 hours a day 7 days a week. Contractor shall have an employee physically available at the tow yard 24 hours a day 7 days a week to release vehicle(s).

Contractor shall provide a post tow hearing notice to all persons seeking to recover possession of a towed vehicle. Contractor shall document the receipt of the notice to the vehicle's owner.

Contractor shall cooperate with DOBOR with respect to any post towing hearing. Contractor shall attend each post tow hearing. Contractor shall provide documentation (including video and photographs) concerning the tows, providing such documents and testifying at all of the hearings. Photos shall show date and time of each tow.

Site Specific Requirements: Minimum response times are indicated in the table below:

<b>DOBOR Oahu Facilities:</b>	<b>Minimum Response Time</b>
Ala Wai Small Boat Harbor, Honolulu, Oahu	20 minutes
Keehi Small Boat Harbor, Honolulu, Oahu	20 minutes
Haleiwa Small Boat Harbor, Haleiwa, Oahu	40 minutes
Waianac Small Boat Harbor, Waianac, Oahu	60 minutes
Heeia Kea Small Boat Harbor, Kaneohe, Oahu	40 minutes
Kahana Bay Launch Ramp, Hauula, Oahu	40 minutes
Maunalua Bay Launch Ramp, Honolulu, Oahu	30 minutes
South Keehi Lagoon Launch Ramp, Honolulu, Oahu	20 minutes

Contractor shall tow vehicles from Ala Wai Small Boat Harbor after 10:30 PM every night and until 4:30 AM. (Ala Wai Small Boat Harbor only.)

Contractor shall tow vehicles from the public parking stalls after 10:00 PM every night and until 5:00 AM and shall tow any vehicles that are parked within the confines of the Keehi Small Boat Harbor without a valid parking permit. (Keehi Small Boat Harbor only.)

Contractor shall tow vehicles from the public parking stalls in the South Keehi Lagoon Launch Ramp after 8:00 PM until 7:00 AM. (The South Keehi Lagoon Launch ramp parking lot is closed from 8:00 PM to 7:00 AM.)

### Insurance Requirements:

Contractor shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of the contract, comprehensive general liability insurance or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00



**STATE OF HAWAII**  
**SCOPE OF SERVICES**

aggregate. The policy shall name the State of Hawaii and Diamond Parking Services, LLC (Ala Wai Small Boat Harbor only) as additional insureds and a copy shall be filed with DOBOR. The insurance shall cover the OSBH. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance proved by State's policy.

Contractor shall also have Garage Keeper's Insurance with a \$1,000,000.00 minimum. The insurance shall be in effect for the entire contract period.

Contractor shall release, indemnify, defend, save and hold harmless the State of Hawaii and Diamond Parking Services, LLC (Ala Wai Small Boat Harbor only) and all of their officers, agents and employees from and against all liability, lost, damage, cost, and expense, including all attorney's fees, and all claims, suits and demands or proceedings for violation of law, property damage, or personal injury, including death, arising out of, resulting from, or in connection with the Towing Contract.

Contractor's Acknowledgement that "He/She has reviewed the filings in the United States District Court for the District of Hawaii case Carello et al v. Diamond Parking, Inc., et al, Civil No. 10-00734, and is familiar with the issues raised therein relating to managing state owned parking facilities and enforcing applicable restrictions and requirements." prior to the award of the contract.

Contractor understands that the Honolulu Police Department has and retains all enforcement authority proved by law in all areas in the small boat harbor facilities. Nothing in this contract is intended to or shall limit the Honolulu Police Department's authority.

# OAHU SMALL BOAT HARBOR ("OSBH")

Towing Areas

Exhibit A

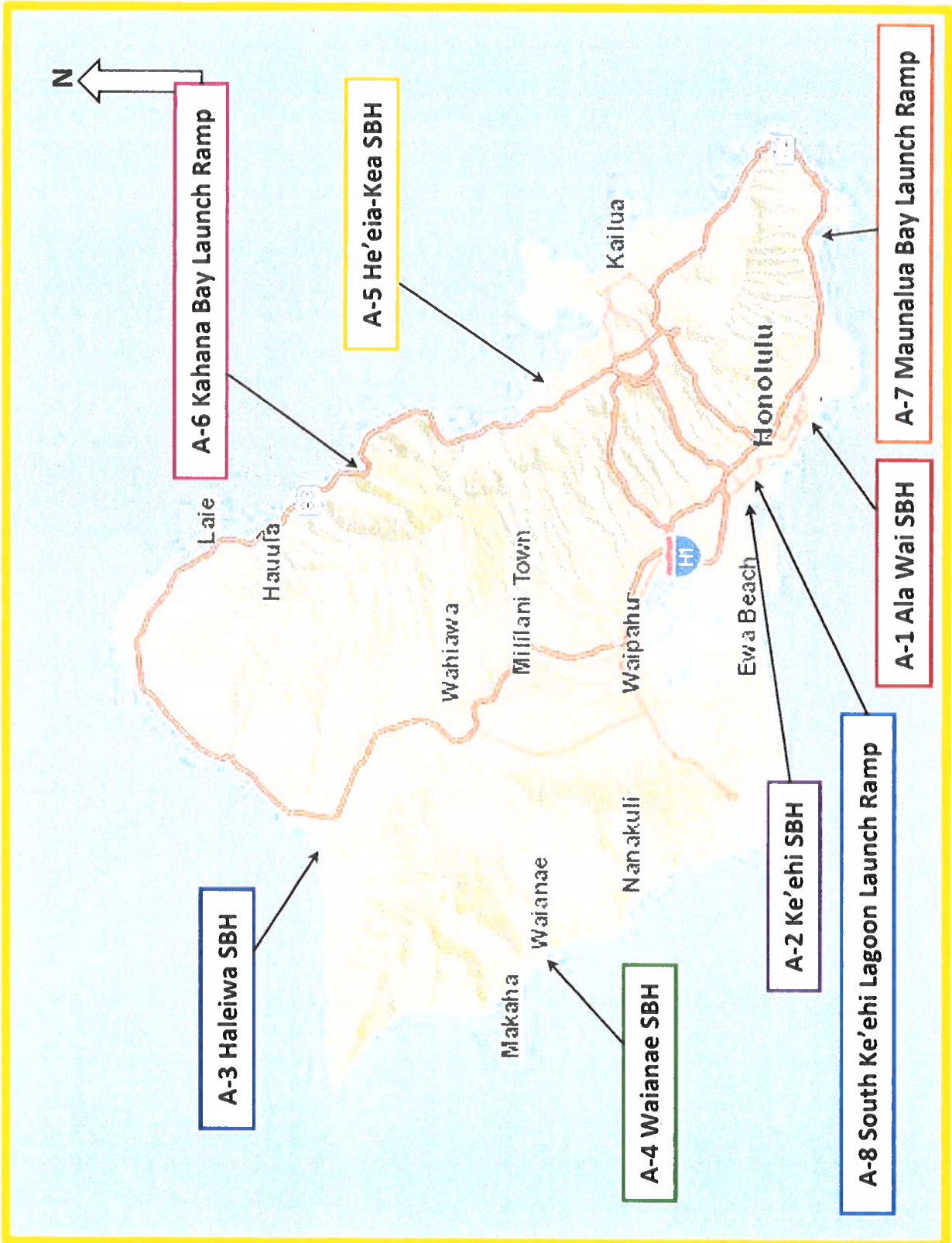


Exhibit A



Exhibit A-1

Ala Wai Small Boat Harbor



Exhibit A-1



Ke'ehi Small Boat Harbor

Exhibit A-2



Exhibit A-2



Exhibit A-3

Haleiwa Small Boat Harbor

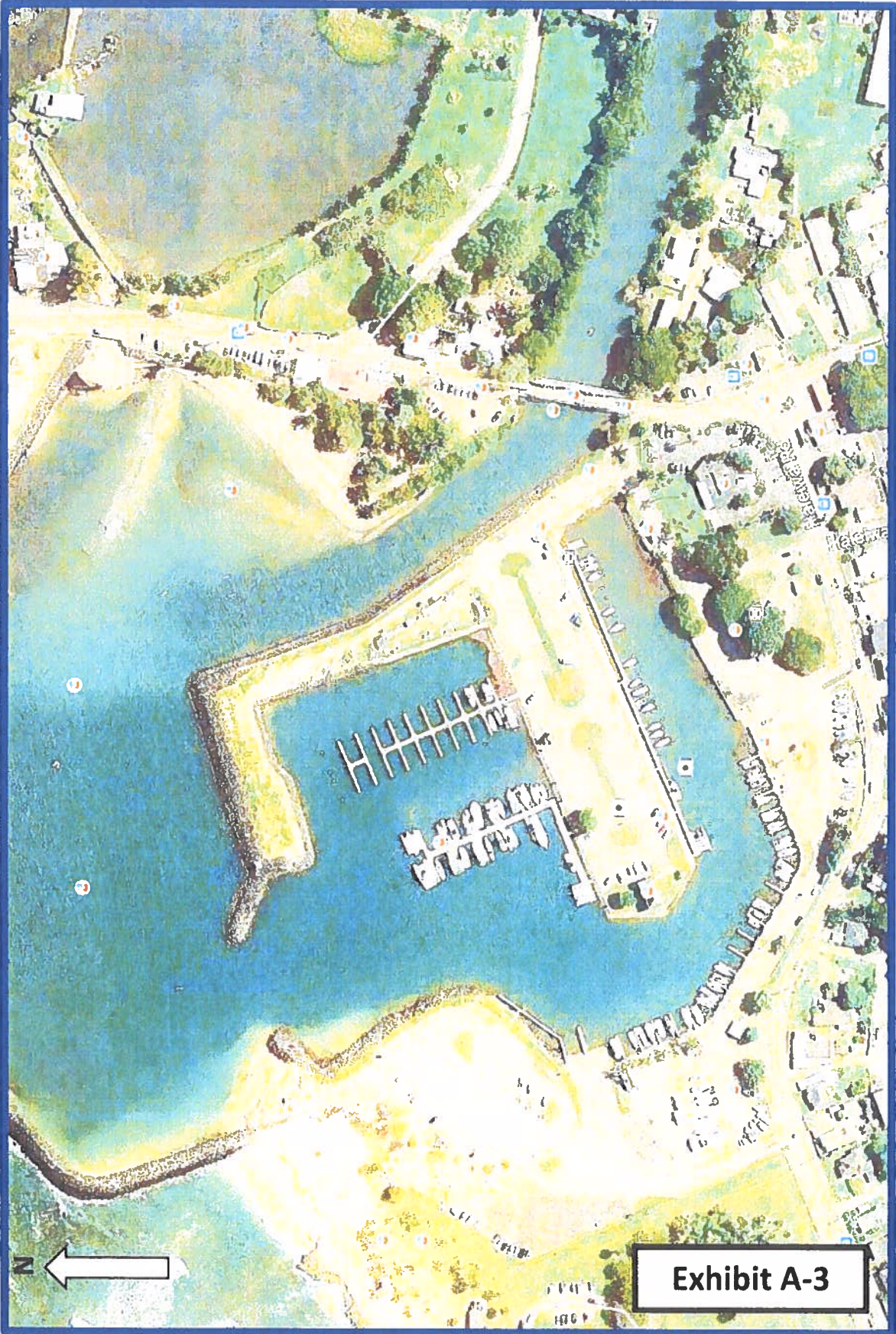


Exhibit A-3



Exhibit A-4

Waianae Small Boat Harbor

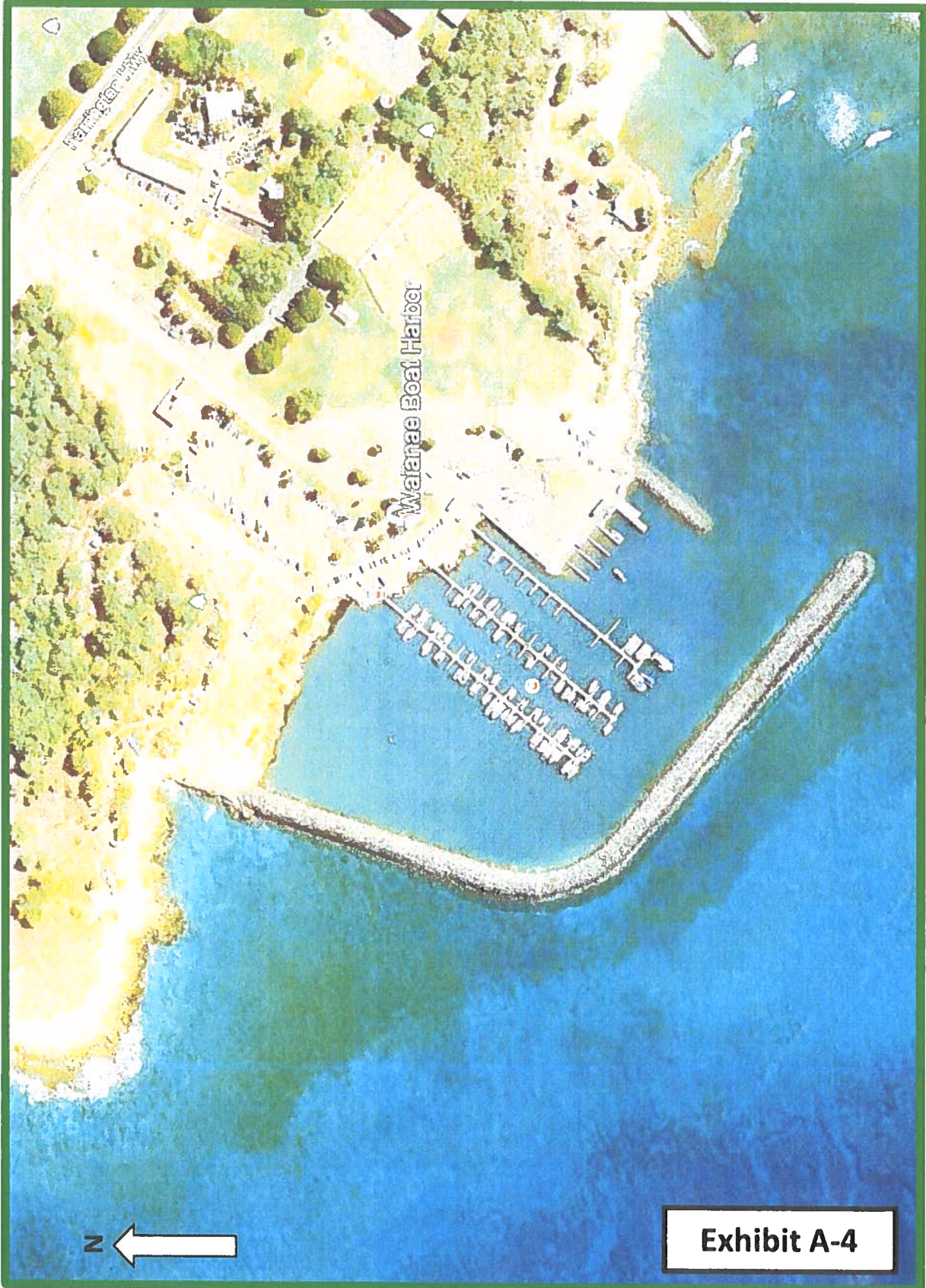


Exhibit A-4



Exhibit A-5

He'eia-Kea Small Boat Harbor

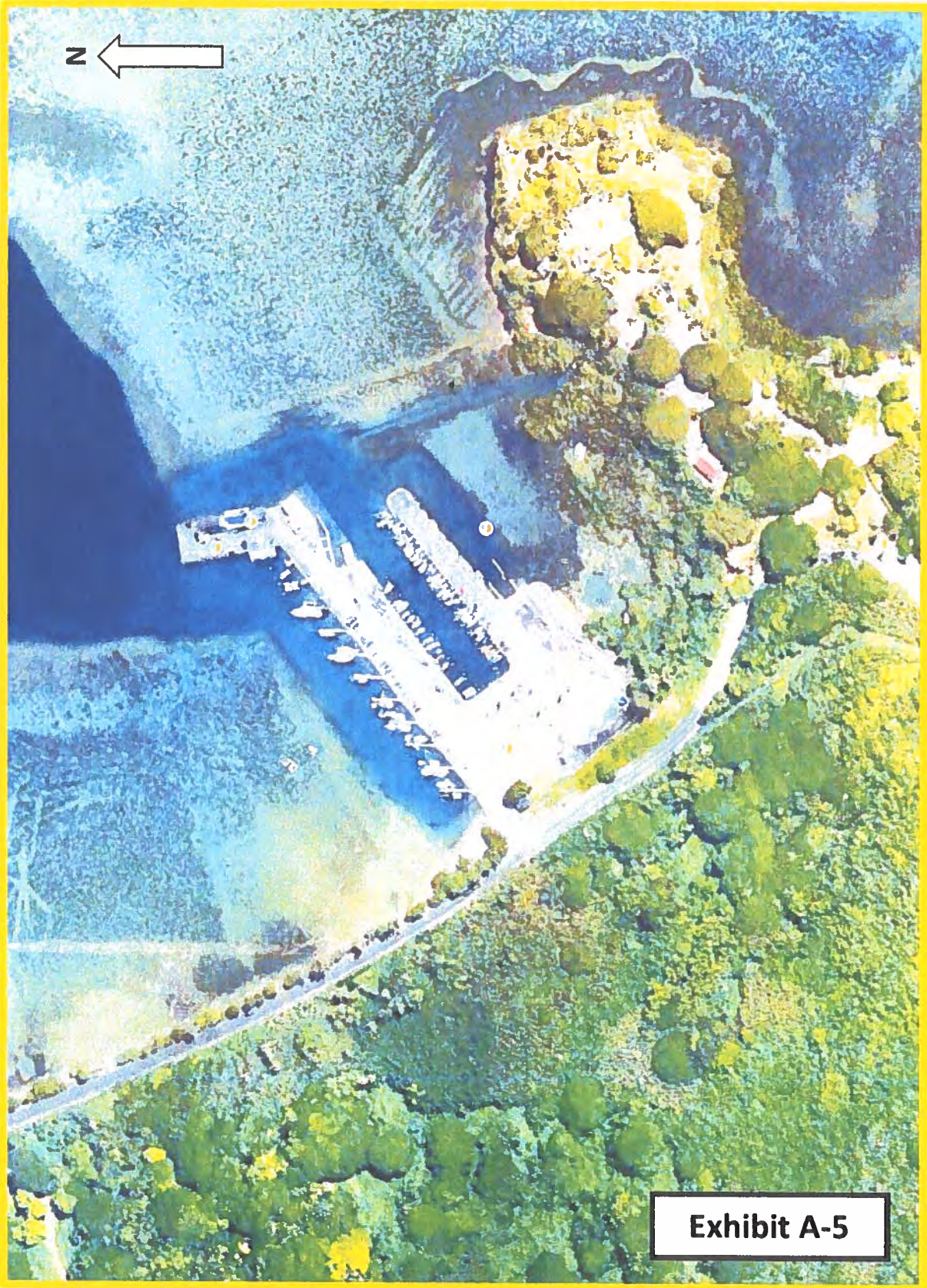


Exhibit A-5



Exhibit A-6

Kahana Bay Launch Ramp

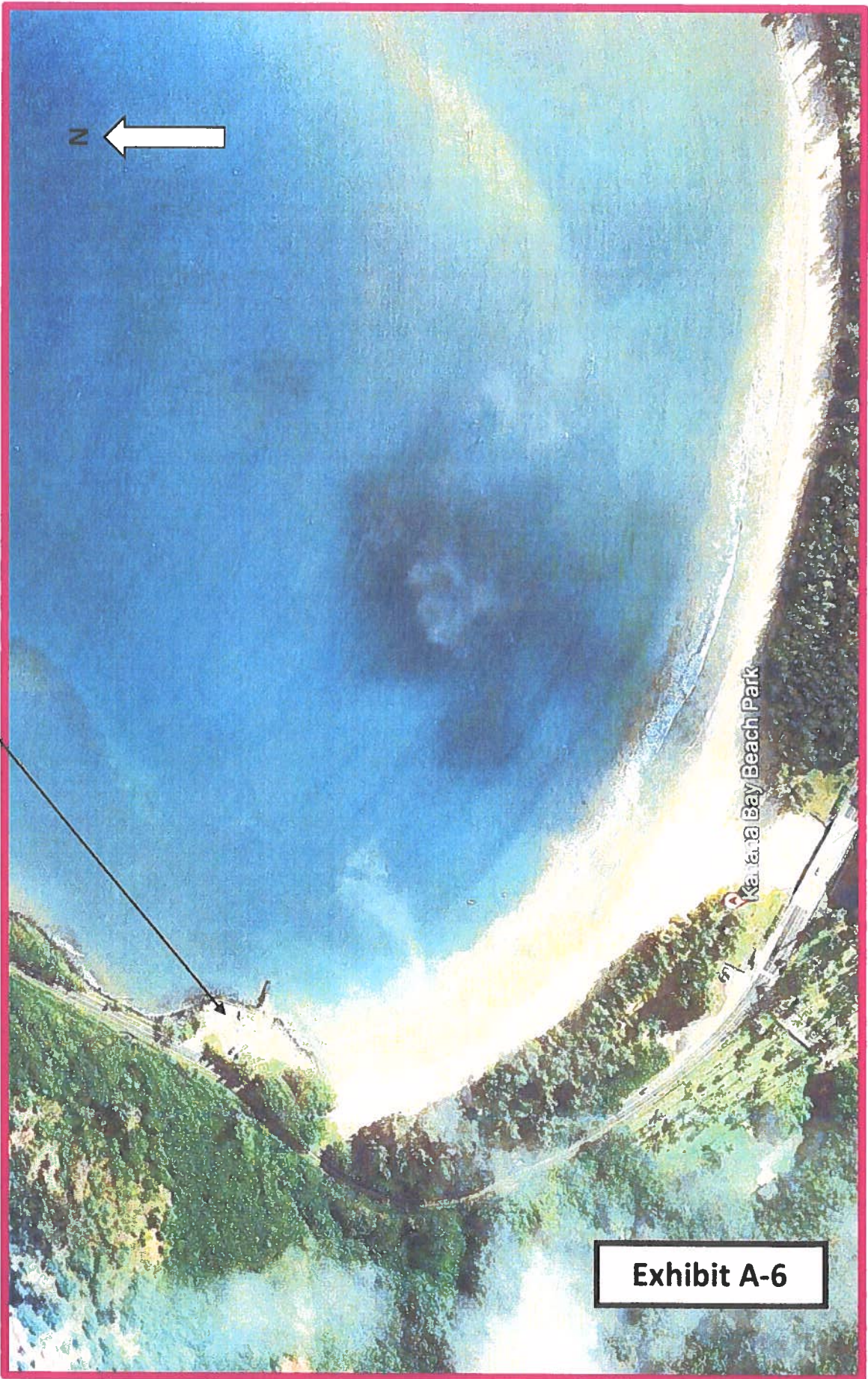


Exhibit A-6



Exhibit A-7

Maunaloa Bay Launch Ramp



Exhibit A-7



Exhibit A-8

South Keehi Lagoon Launch Ramp



Exhibit A-8





**STATE OF HAWAII**  
**COMPENSATION AND PAYMENT SCHEDULE**

The State shall pay the Contractor only one dollar (\$1.00) per year as compensation. Contractor will only charge the owners of the vehicles and trailers that are towed from the Oahu District facilities.



**STATE OF HAWAII**  
**TIME OF PERFORMANCE**

Contractor shall enter into a contract for furnishing towing services for a five (5) year period commencing on July 1, 2020, and ending on June 30, 2025.

Unless terminated, the contract has two (2) options to extend the contract for a one (1) year term upon approval.

In addition to any provisions for early termination, the Department of Land and Natural Resources may terminate the contract without cause by providing sixty (60) days prior written notice to the Contractor with approval of the Chairperson.

FILED 05/01/2019 11:51 AM  
Business Registration Division  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
State of Hawaii

STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
Business Registration Division  
335 Merchant Street  
Mailing Address: P.O. Box 40, Honolulu Hawaii 96810  
Phone No (808) 586-2727



**ARTICLES OF ORGANIZATION FOR LIMITED LIABILITY COMPANY**  
(Sect or 428 203 Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned for the purpose of forming a limited liability company under the laws of the State of Hawaii, do hereby make and execute these Articles of Organization

I

The name of the company shall be  
**MR TOW LLC**

(The name must contain the words *Limited Liability Company* or the abbreviation *L.L.C.* or *LLC*)

II

The mailing address of the initial principal office is:  
**1414 DILLINGHAM BLVD STE 201, HONOLULU, HI 96817 USA**

III

The company shall have and continuously maintain in the State of Hawaii a registered agent who shall have a business address in this State. The agent may be an individual who resides in this State, a domestic entity or a foreign entity authorized to transact business in this State

- a. The name (and state or country of incorporation, formation or organization, if applicable) of the company's registered agent in the State of Hawaii is:

**MARY JO RIVERA**

(Name of Registered Agent)

(State or Country)

- b. The street address of the place of business of the person in State of Hawaii to which service of process and other notice and documents being served on or sent to the entity represented by it may be delivered to is:

**2129 KALIWA ST, HONOLULU, HI 96819 USA**

IV

The name and address of each organizer is:

**MARY JO RIVERA**

**1414 DILLINGHAM BLVD STE 201, HONOLULU, HI 96817  
USA**

05/01/201947094



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

**CERTIFICATE OF VENDOR COMPLIANCE**

This document presents the compliance status of the vendor identified below on the issue date with respect to certificates required from the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer Affairs

**Vendor Name: MR TOW LLC**

**Issue Date: 06/19/2020**

**Status: Compliant**

Hawaii Tax#:

New Hawaii Tax#: GE184035584001

FEIN/SSN#: XX-XXX6316

UI#: XXXXXX3751

DCCA FILE#: 214291

**Status of Compliance for this Vendor on issue date:**

<b>Form</b>	<b>Department(s)</b>	<b>Status</b>
A-6	Hawaii Department of Taxation Internal Revenue Service	Compliant Compliant
COGS	Hawaii Department of Commerce & Consumer Affairs	Compliant
LIR27	Hawaii Department of Labor & Industrial Relations	Compliant

**Status Legend:**

<b>Status</b>	<b>Description</b>
Exempt	The entity is exempt from this requirement
Compliant	The entity is compliant with this requirement or the entity is in agreement with agency and actively working towards compliance
Pending	The entity is compliant with DLIR requirement
Submitted	The entity has applied for the certificate but it is awaiting approval
Not Compliant	The entity is not in compliance with the requirement and should contact the issuing agency for more information



# GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
  
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified



period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d. "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

#### 14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product: and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:



- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.



28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
  - a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

    - (1) Social security number;
    - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96819

January 8, 2021

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

SUBJECT: Amend Prior Board Action of September 11, 2020, Item J-4, Sale of Concession by Sealed Bid for a Five-Year Parking Contract to Operate a Parking Concession Situated at Ala Wai Small Boat Harbor Honolulu, Island of Oahu, Identified by Tax Map Keys: (1) 2-6-010:003 (Portion), (1) 2-3-037:012 (Portion), :024, :027, :033, :035 and :037

The purpose of the amendment is to replace Chapter 102-2 with Chapter 103D-302, Hawaii Revised Statutes to the Legal Reference of the Board Action.

**BACKGROUND:**

At its meeting on September 11, 2020, under agenda Item J-4, the Board approved the sale of a Parking Concession Contract by sealed bid for the purpose of managing a parking concession at the Ala Wai Small Boat Harbor. To ensure the continuity of parking operations at Ala Wai Small Boat Harbor, staff proposed that DOBOR procure and install parking equipment at the harbor, which would be owned by the state. Staff would then select and contract with the bidder who, through an Invitation for Bids, submitted the lowest management fee to manage DOBOR's parking operation at the harbor. The winning bidder would be paid a management fee by the state, as opposed to the winning bidder paying the state rent for operating a concession, which was done under the previous parking concession contract. While working with the Department of the Attorney General to complete the Invitation for Bids, staff was informed that the legal reference contained in the September 11, 2020, Board action (i.e. HRS Section 102-2) was incorrect. The prior board action is attached as Exhibit A. Since staff's intention is to award the contract to the lowest bidder, the Deputy Attorney General instructed staff to amend the Board action to the proper legal reference, which is Section 103D-302 (h) Hawaii Revised Statutes.<sup>1</sup>

<sup>1</sup> "The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event all bids exceed available funds as certified by the appropriate fiscal officer, the head of the purchasing agency responsible for the procurement in question is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsible and responsive bidder,

**Item J-4**

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Amend its prior Board action of September 11, 2020, under agenda item J-4, by replacing Section 102-2, HRS with Section 103D-302 (h), HRS in the legal reference section.
2. All terms and conditions listed in the September 11, 2020, approval to remain the same.

Respectfully Submitted,

EDWARD R. UNDERWOOD, Administrator

Division of Boating and Ocean Recreation



APPROVED FOR SUBMITTAL:



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

Attachments:

A. Board Action of September 11, 2020, Item J-4

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96819

September 11, 2020

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

SUBJECT: Sale of Concession by Sealed Bid for a Five-Year Parking Contract to Operate a Parking Concession Situated at Ala Wai Small Boat Harbor Honolulu, Island of Oahu, Identified by Tax Map Keys: (1) 2-6-010:003 (Portion), (1) 2-3-037:012 (Portion), :024, :027, :033, :035 and :037

And

Declare Project Exempt from Requirements of Chapter 343, HRS and Title 11, Chapter 200.1, Hawaii Administrative Rules

REQUEST:

Sale of Parking Concession Contract by Sealed Bid for the purpose of managing a parking concession at the Ala Wai Small Boat Harbor (“AWSBH”) on the island of Oahu.

LEGAL REFERENCE:

Chapter 102-2, and Chapter 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portions of Government lands situated at AWSBH, Honolulu, Oahu, Hawaii, identified by Tax Map Keys: (1) 2-6-010-:003 (Portion), (1) 2-3-037:012 (Portion), :024, :027, :033, :035 and :037, as shown on the attached map labeled Exhibit A-2.

AREA:

8.5 acres, more or less. The concession area includes 329 paid and 312 monthly permit parking stalls. The concessionaire will also be responsible for managing the three 300 free public parking stalls.

Item J-4

BLNR – Sale of a 5-Year Parking Concession Contract

At Ala Wai Small Boat Harbor

ZONING:

State Land Use District: Urban  
County of Honolulu CZO: Public Precinct (Waikiki Special District)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_ NO

X CURRENT USE STATUS:

The Premises is presently unencumbered.

CHARACTER OF USE:

Vehicle Parking Concession.

CONCESSION CONTRACT TERM:

Five (5) Years.

CONCESSION COMMENCEMENT DATE:

As determined by the Chairperson.

BID FOR CONCESSION FEE & MINIMUM DUTIES OF THE CONCESSIONAIRE  
& DOBOR RESPONSIBILITIES:

Bid for Concession Fees:

DOBOR to pay concessionaire a flat monthly management fee no higher than \$10,000/month to be determined by sealed bid. The winning bidder will be bidder who submits the lowest bid.

Minimum Duties of the Concessionaire:

- Manage the Division's parking program at the harbor.
- Collect the fees and issue monthly parking decals for permit parking and turn the money over to the Division within Thirty (30) days of collection by the permittee.
- Work with equipment supplier to maintain and repair the Division's equipment. Ensure parking enforcement and work directly with the Division's towing concessionaire. Ensure that proper parking signage is displayed throughout the facility.
- Participate in any and all post-tow hearings.



At Ala Wai Small Boat Harbor

**DOBOR Responsibilities:**

Purchase all equipment including but not limited to pay stations, mobile phone payment apps, signage.

Pay stations will be cashless and the equipment have battery, A/C and solar power options, secure housing, be weather resistant, thermal print technology, payment options including credit card and mobile applications, programmable functions, wireless communication for remote meter management, security systems, efficient maintenance, meter management system that includes remote monitoring, meter mapping, administration reports and maintenance reports and financial reporting.

Division will pay concessionaire an incentive fee of five percent (5%) of revenue over Thirty Thousand dollars (\$30,000.00) per month. The incentive fee will be paid to the concessionaire monthly.

Provide concessionaire a monthly accounting of all hourly paid parking collected from the parking equipment.

**PERFORMANCE BOND:**

Equal to four (4) months of monthly fee.

**CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

In accordance with Section 11-200.1-15, Hawaii Administrative Rules (HAR) and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred in by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to Exemption Class No. 1, Item No. 44 states that, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

**BACKGROUND:**

At its meeting on August 7, 2008, under agenda Item J-1, the Board approved the issuance of a revocable permit to Diamond Parking Services LLC ("Diamond") for parking concession purposes, effective November 1, 2008. On December 27, 2009, Diamond was awarded Parking Concession Contract IFB No. AWSBH-200901, which commenced February 1, 2010, and ended on January 31, 2015. Diamond exercised an option to extend for an additional five (5) years and the concession ended on January 31, 2020.

At its meeting on January 10, 2020, under agenda Item J-1, the Board approved the issuance of a revocable permit ("RP") to Diamond from February 1, 2020, to January 31, 2021. The rent was the greater of \$45,869.52 per month or 70.369% of Gross Receipts, whichever is greater. The proposed RP rent was based on the rent charged in the Parking Concession Contract IFB No. AWSBH-200901.

At Ala Wai Small Boat Harbor

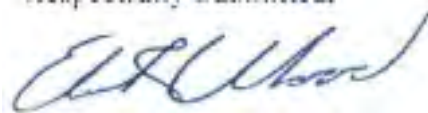
Due to the economic impact that resulted from the Covid-19 pandemic shut down, Diamond requested that the contract be renegotiated. Staff and Diamond were not able to agree to terms acceptable to the state. Therefore, Diamond elected to remove their equipment as of July 31, 2020. The preceding events necessitate a new IFB for a parking concession at AWSBH.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the Sale of a Parking Concession Contract by Sealed Bid for the purpose of managing a parking concession at the Ala Wai Small Boat Harbor under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current concession contract form, as may be amended from time-to-time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



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

At Ala Wai Small Boat Harbor

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to read "Suzanne D. Case". The signature is written in a cursive style with a large, stylized initial "S".

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

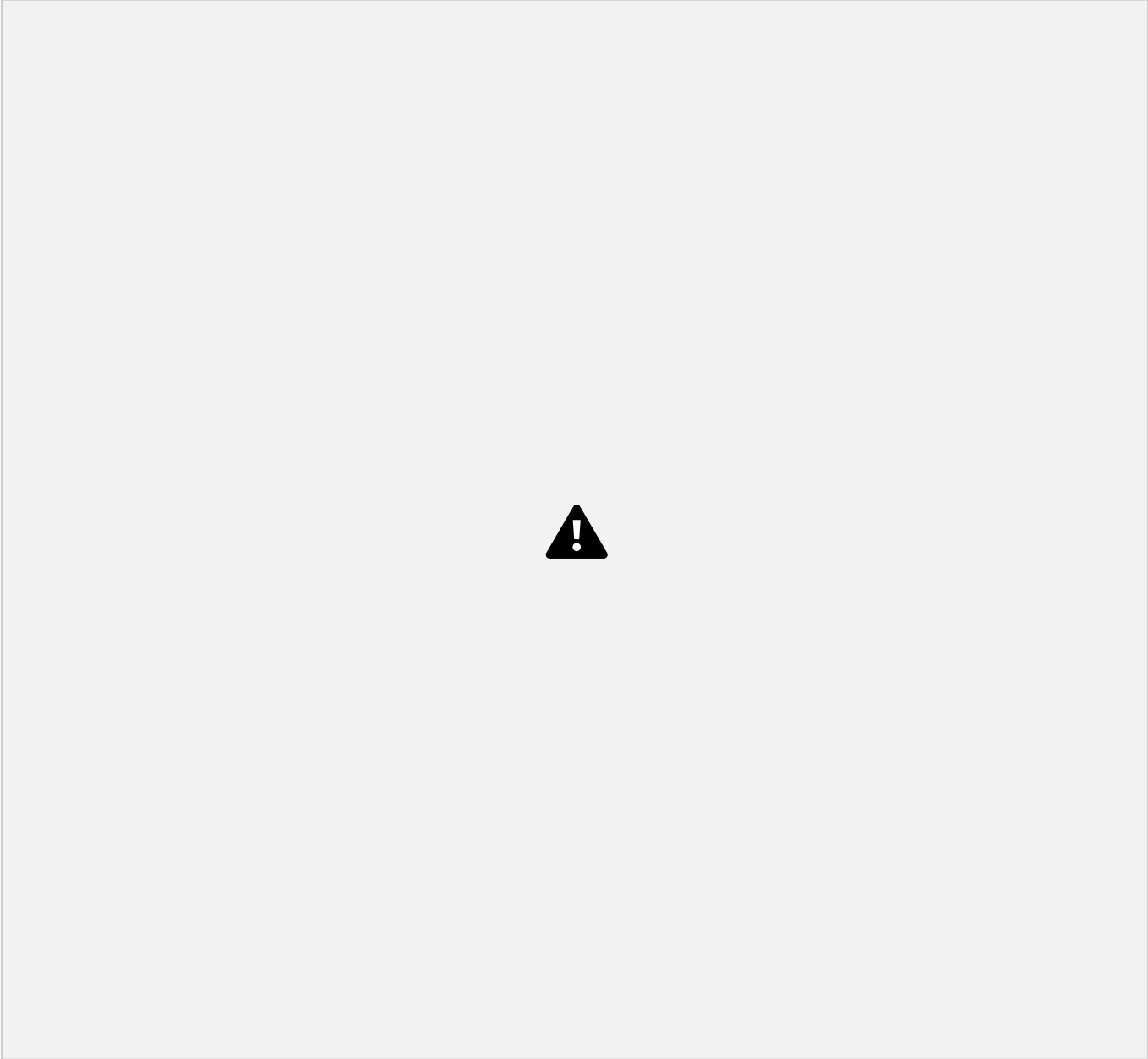
Attachments:

A-1 AWSBH location on Oahu

A-2 AWSBH Parking Plan

Exhibit A-1

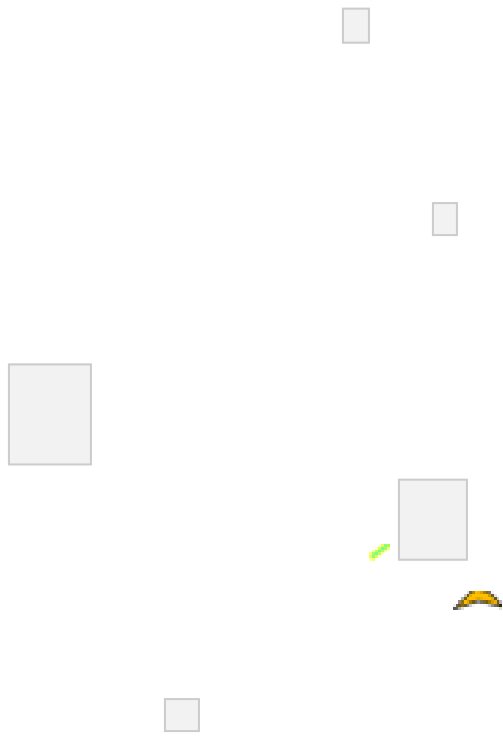
Island of Oahu



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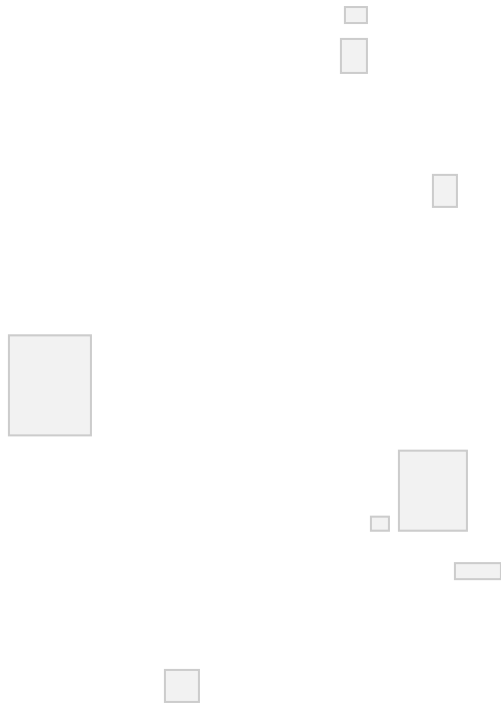
Ala Wai Small Boat Harbor

Exhibit A-1


Exhibit A-2

Parking Plan

N



## LEGEND

Paid Parking  
(329 Stalls) 

Permit Parking  
(312 Stalls)

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

REVOCABLE PERMIT NO. 120

KNOW ALL MEN BY THESE PRESENTS:

This Agreement (hereinafter referred to as the "Permit") is executed this 15<sup>TH</sup> day of SEPTEMBER, 2021, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and SECURE PARKING HAWAII LLC, a Hawaii limited liability company, hereinafter called the "Permittee," whose mailing address is 529 Koula Street, Bay 2, Honolulu, Hawaii 96813. The parties agree that commencing on the 15th day of September, 2021, ("commencement date") and ending September 14, 2022, Permittee is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, that certain parcel of public land (and any improvements located thereupon) situate at Ala Wai Small Boat Harbor, Executive Order No. 4604, tax map key nos. (1) 2-6-010:003 (Portion), (1) 2-3-037:012 (Portion), 024, 027, 033, 035, and 037, as shown on Exhibits A-1 and A-2, as indicated on the maps attached hereto, if any, and made a part hereof, containing an approximate area of 8.5 acres, more or less, which parcels are hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

- A. The Permittee shall:
1. Occupy and use the Premises for the following specified purposes only: vehicle parking management, more particularly described on Exhibit B, attached hereto and made a part hereof. The parking management area includes THREE HUNDRED TWENTY NINE (329) stalls for paid parking and THREE HUNDRED TWELVE (312) stalls for monthly permit parking. The Permittee will also be responsible for managing THREE HUNDRED (300) stalls for free public parking set aside for the public in the designated free parking areas.
  2. Submit to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, 4 Sand Island Access Road, Honolulu, Hawai'i 96819, a statement of monthly gross receipts together with an amount equal to EIGHTY PER CENT (80%) of monthly gross receipts revenue from monthly parking and hourly parking. Said payment and a statement of gross receipts shall be due ten (10) calendar days after the end of the preceding month.



All gross receipts generated by the parking operation shall be collected by the Permittee.

The interest rate on any unpaid or delinquent rentals shall be at one per cent (1%) per month.

If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge.

Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

3. Upon execution of this Permit, deposit with the Board amount of FORTY TWO THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$42,800.00), as security for the faithful performance of all of these terms and conditions.

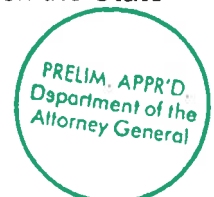
The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.

4. At the Permittee's own cost and expense, keep any government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and loss payee and shall be filed with the DLNR. In the event of loss, damage, or destruction of those improvements, the DLNR shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
6. Pay all real property taxes assessed against the Premises from the commencement date of this Permit.



7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, release and indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.
12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety.
14. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy of the policy or other documentation required by the State shall be filed with the DLNR. The insurance shall cover the entire Premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of the Permittee.

Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State



with a policy(s) or other documentation required by the State showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the State on deposit during the entire Permit term, and furnish a like policy(s) or other documentation required by the State upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the State. The State may at any time require the Permittee to provide the State with copies of the insurance policy(s) that are or were in effect during the permit period.

The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or other documentation required by the State thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's or the Permittee's employees, agents, officers, or invitees' negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

The insurance policy(s) or other documentation required by the State shall be mailed to:

State of Hawaii  
Department of Land and Natural Resources  
Division of Boating and Ocean Recreation  
4 Sand Island Access Road  
Honolulu, Hawaii 96819

15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including



reasonable attorney's fees, and expenses incurred by or imposed on the State.

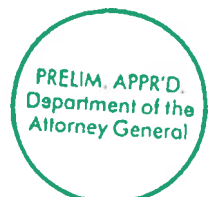
16. The Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

**B. Additional Conditions:**

1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises or continues to occupy or use the Premises.
2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.
3. If the Permittee fails to vacate the Premises upon expiration, revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.
4. If the Permittee fails to vacate the Premises upon expiration, revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.
5. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two

times the new monthly rental as security for the faithful performance of all of these terms and conditions.

6. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the expiration, termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the expiration, termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
7. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has





been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

Permittee agrees to release, indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the Premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the Permit.

For the purpose of this Permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

13. Prior to expiration, termination or revocation of the subject Permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent expiration, termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.
14. Permittee shall release, indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, officers, or invitees under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation,



expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.

15. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.
16. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above.

Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813 and to the Administrator of the Division of Boating and Ocean Recreation at 4 Sand Island Access Road, Honolulu, Hawai'i 96819. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by written notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.

17. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved with Amendments by the Board of Land and Natural Resources at its meeting held on September 10, 2021.

By Suzanne D. Case  
SUZANNE D. CASE  
Chairperson of the Board of Land and Natural Resources

APPROVED AS TO FORM:

STATE

Julie H. China  
JULIE H. CHINA  
Deputy Attorney General

Dated: Sept. 13, 2021

SECURE PARKING HAWAII LLC, a Hawaii limited liability company

By [Signature]  
JONATHAN MAORI  
Its MANAGER

By \_\_\_\_\_  
Its \_\_\_\_\_

PERMITTEE



STATE OF HAWAII )  
 ) SS.  
COUNTY OF )

On this 14th day of September, 2021, before me personally appeared Jonathan Mawri and N/A, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



[Signature]  
Notary Public, State of Hawaii

1st Circuit

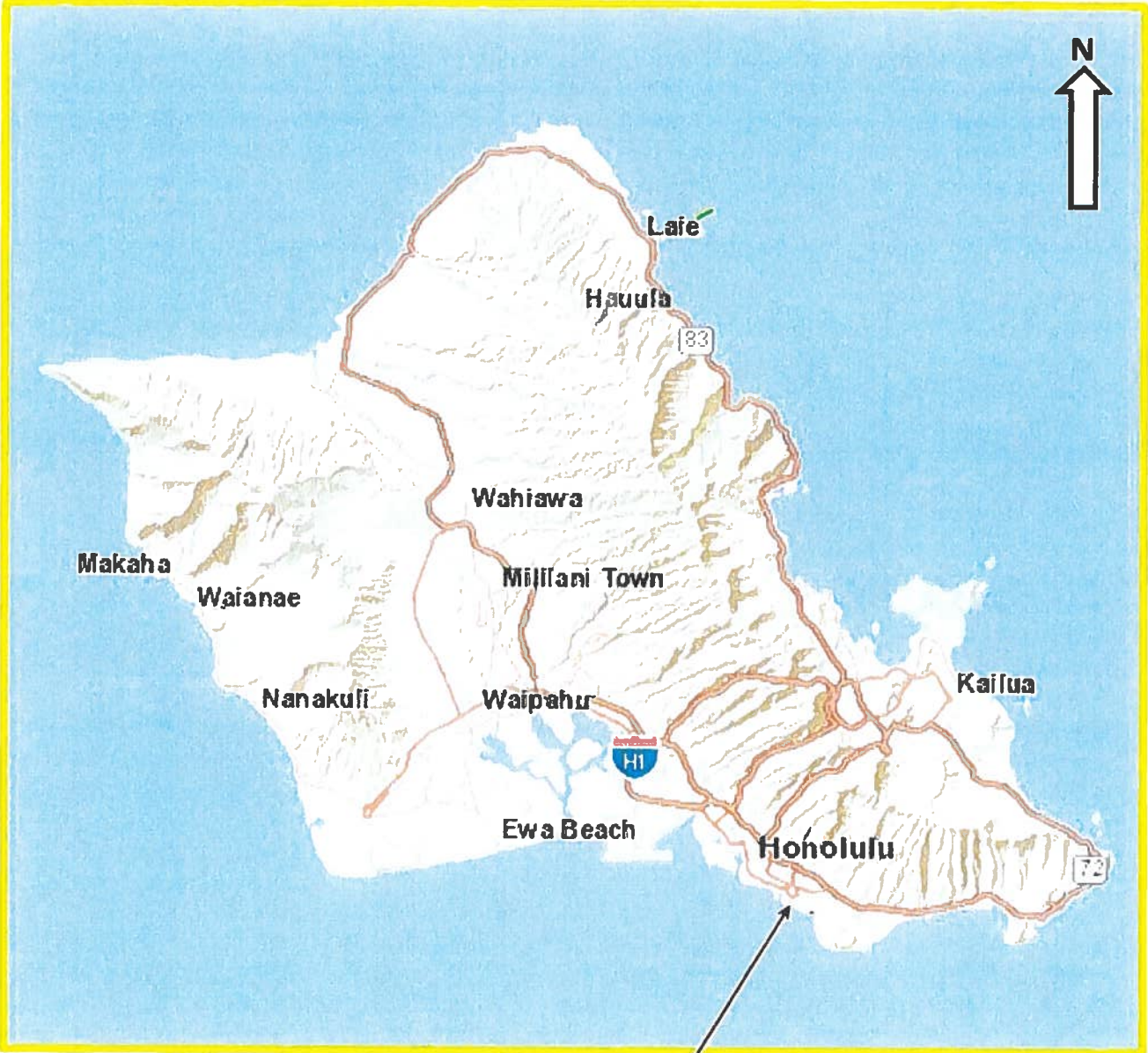
My commission expires: May 23, 2022

Doc. Date: 09/14/2021 Pages: 13  
Notary Name: Cami R. Miyakado First Circuit  
Doc. Description: [Signature]  
[Signature]  
NOTARY CERTIFICATION





**Exhibit A-1**  
**Island of Oahu**



**Ala Wai Small Boat Harbor**

PRELIM. APPR'D.  
Department of the  
Attorney General

**Exhibit A-1**



**Exhibit A-2**

**Parking Plan**



PRELIM. APPR'D  
Department of the  
Attorney General

**Exhibit A-2**

## Exhibit B

### Minimum Duties of the Parking Permittee at AWSBH:

- Manage the Division of Boating and Ocean Recreation's ("DOBOR") parking operations at the harbor.
- Issue monthly parking permits and collect parking fees assessed in accordance with Hawaii Administrative Rules, Chapter 13-233.
- Collect the fees for the hourly parking.
- Submit a monthly gross receipts statement and EIGHTY PER CENT (80%) of gross receipts revenue to DOBOR within Ten (10) calendar days of the end of the preceding month.
- Work with DOBOR's parking equipment supplier to maintain and repair the parking equipment.
- Ensure parking compliance throughout the Premises and work directly with the DOBOR staff, DOCARE and DOBOR's towing contractor.
- Ensure that proper parking signage is displayed throughout the Premises.
- Monitor the 6-hour time limit within the free parking area to ensure compliance.
- Monitor free parking area to ensure no overnight parking. Closure times will be from 10:30 p.m. to 4:30 a.m.
- Participate in any and all post-tow hearings.



Signature:

A handwritten signature in blue ink, appearing to read "Ed R. Underwood".

Email: [ed.r.underwood@hawaii.gov](mailto:ed.r.underwood@hawaii.gov)

JAN 20 2023

# A BILL FOR AN ACT

RELATING TO PUBLIC PARKING AT ALA WAI BOAT HARBOR.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that the Ala Wai boat harbor serves as a melting pot of culture and activity in the community. Its ocean legacy is an asset to cultural and recreational practices and water sport opportunities, such as surfing, paddling, fishing, and Hawaii's voyaging traditions. For many keiki, the Ala Wai boat harbor is their first introduction to canoe paddling, surfing, sailing, boating, and other water activities.

The department of land and natural resources, through its division of boating and ocean recreation, operates and manages the Ala Wai boat harbor, Kahanamoku lagoon, and the adjacent parking areas. In 2008, the board of land and natural resources approved the parking plan for the Ala Wai boat harbor, which includes nine hundred forty-one parking stalls, three hundred twelve of which are permit stalls. The board of land and natural resources reduced the number of free parking stalls from

2023-0826 SB HMSO

1





## A BILL FOR AN ACT

RELATING TO PUBLIC PARKING AT ALA WAI BOAT HARBOR.

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includes nine hundred forty-one parking stalls, three hundred 14

twelve of which are permit stalls. The board of land and 15

natural resources reduced the number of free parking stalls from 16

# S.B. NO. 1034

## SB. No. 1034

by converting free

this reduction in the  
approved plan requires that  
stalls be set aside.

division's current request  
is subject to change  
of the new development

the removal of free  
access to Hawaii's  
island as the cost of living  
Hawaii's residents and  
there are also the  
from the proposed

stalls for surfers. Without  
stalls surfers are likely to park  
at the active boat harbor  
as well as ocean craft.

is to ensure access to  
protect surfers' rights to

five hundred forty-nine to  
three hundred by converting  
free stalls to paid  
metered stalls.

Due to immense public opposition  
to this reduction in the  
number of free parking stalls,  
the approved plan requires that  
no fewer than three hundred free  
parking stalls be set aside.  
The division of boating and ocean  
recreation's current request  
for proposals states that the  
parking plan is subject to  
change depending on the type and  
configuration of the new  
development project for the Ala  
Wai boat harbor.

The legislature further  
finds that the removal of  
free

10

public parking would  
adversely restrict access

to Hawaii's 11

natural resources for use by the community as the cost  
of living 12

already puts a tremendous strain on Hawaii's  
residents and 13

families. Beyond the addition of fees, there  
are also the 14

burdens of transporting beach equipment from  
the proposed 15

parking structure and safety consequences for  
surfers. Without 16

free parking at Ala Wai boat harbor, surfers are  
likely to park 17

at Ala Moana beach park and paddle across the active  
boat harbor 18

entrance, thus endangering themselves as well as  
ocean craft. 19

Therefore, the purpose of this Act is to  
ensure access to 20

the ocean for future generations and protect  
surfers' rights to 21

nter the ocean safely and safeguard access to the lagoon,

each, and harbor waters named after Duke Kahanamoku by

equiring the maintenance of three hundred parking stalls at Ala

ai boat harbor at no cost for recreational ocean access and for

enter the ocean safely and safeguard access to the lagoon, beach, and harbor waters named after Duke Kahanamoku by requiring the maintenance of three hundred parking stalls at Ala Wai boat harbor at no cost for recreational ocean access and for the practice of traditional and customary Native Hawaiian rights.

SECTION 2. Section 200-2.6, Hawaii Revised Statutes, is amended to read as follows:

"[+]§200-2.6[+] Ala Wai boat harbor; leases.

(a) The fast lands and submerged lands of the Ala Wai boat harbor that 10

may be leased include the following:  
11

(1) All fast lands and submerged lands described in the 12 request for qualifications or request for proposals 13 issued by the division of boating and ocean recreation 14 of the department on November 25, 2008;  
15

(2) The fast land described as a portion of tax map key: 16

(1) 2-3-37-12, composed of approximately 112,580 17 square feet, presently used for harbor offices and 18 permitted vehicular parking; and  
19



(3) The fast land described as a portion of tax  
map key: 20

(1) <sup>2-3-37-12</sup>, which is a triangular area located  
21

Page 4

## S.B. NO. 1034

P8964

Diamond Head of Mole B, presently used for permitted  
vehicular parking.

(b) Any lease of fast lands and submerged lands of the Ala  
ai boat harbor shall provide for the maintenance of at least  
three hundred public parking stalls at no cost for recreational  
cean access and for the practice of traditional and customary  
ative Hawaiian rights."

SECTION 3. Statutory material to be repealed is bracketed  
and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:



# SB. NO. I03''

Diamond Head of Mole B, presently used for permitted vehicular parking.

(b) Any lease of fast lands and submerged lands of the Ala wai boat harbor shall provide for the maintenance of at least three hundred public parking stalls at no cost for recreational ocean access and for the practice of traditional and customary Native Hawaiian rights."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

INTRODUCED

BY:

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SECTION 4. This Act shall take effect upon its approval.

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S.B. NO. 1034

SB. NO. (03"!

e Stalls

ee hundred parking  
for recreational ocean  
al and customary Native

Report Title:  
Ala Wai Boat Harbor; Public Parking; Free  
Stalls

*for informational purposes only and is*

Description:  
Requires the maintenance of at  
least three hundred parking  
stalls at Ala Wai boat  
harborlat no cost for  
recreational ocean access and  
for the practice of  
traditional and customary  
Native Hawaiian rights.

The summary description of legislation  
appearing on this page is for/nformationa/  
purposes only and is not legislation or

evidence of legislative intent.

2023-0826 SB HMSO

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## 8-11-2023 BOARD OF LAND AND NATURAL RESOURCES for DOBOR

### J-1

BLNR Video <https://www.youtube.com/watch?v=HQUZpZeZUHg>

00:00:01

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Thank you. Thank you. Thank you for your time. We appreciate it. Thank you so much.

00:00:06

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* The next item is item J-1, Division of Boating and Ocean Recreation J-1.

00:00:12

*Richard Howard - DOBOR:* Good morning. Good morning. Chair and Board members Richard Howard for DOBOR. Item J-1 is the continuation of a revocable permit issued to secure parking Hawaii LLC for the management of vehicular parking at the Ala Wai Small Boat Harbor. Before I go any further, I'd like to amend the submittal of recommendation in the submittal to say, Based on this model and testimony and facts presented. Staff recommends that the Board find that approving the continuation of the month-to-month revocable permit to secure parking Hawaii LLC for management of the vehicular parking and designated areas, including its conditions. And rent will serve the best interests of the state. We need to. To continue this revocable permit because it ends in September of this year and we need somebody in place to manage the parking while we refine and go out with our request for interest get another parking vendor on a permanent basis or a longer-term basis. And so that's why we're here, to renew the permit. And I'll gladly answer any questions you might have.

00:01:44

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* If you have any questions for. I know I've got two people here. I have given them stuff. Oh, I'm sorry, Riley. Go ahead, Riley. Yeah.

00:01:56

*Riley Smith - BLNR:* Thank you, Chair. You know, I just wanted to enter it into the record. I had some offline communications with Richard, and he provided some information that I think it's important for us to consider when we deliberate on this item. You know, first of all, the amount of revenue per year to generated from the parking is in excess of \$1 million a year. So this is significant. Okay. It provides a much-needed, venue for parking for. Recreational uses of the harbor. For folks that are surfing, and families that go to Duke Kahanamoku Lagoon, it serves a multi-use purpose as well as for those in the hotel industry that work nearby and might need a place to park. Um, Richard provided me with the scoresheet that we intend to use to evaluate the different applicants on the RFP. Uh, the, my assessment of the criteria is that they're objective criteria that would enable DOBOR to differentiate between qualified and qualified for better proposals from less suited proposals. So I appreciate Richard sharing that. He also explained that he would be willing to provide that scoresheet with the RFP so that applicants,

when they put in their proposals, would know how their proposals would be evaluated. So I thought that was very transparent. And also DOBOR would be willing to share the results of their evaluation process. So whether you are a successful applicant or an unsuccessful applicant, you would be able to understand how your proposal fare compared to the others. So I appreciate all that that board is doing to make sure that this is an objective and fair process for all applicants.

00:03:55

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Thank you. Thank you very much, Riley. Board members. I wanted to just confirm there are under this you are not proposing to change any of the existing parking allocations.

00:04:10

*Richard Howard - DOBOR:* That's correct.

00:04:10

*Richard Howard - DOBOR:* So there are approximately 300 free parking stalls. There are approximately 312 permitted parking spots, and then there are 329 paid parking spots.

00:04:23

*Richard Howard - DOBOR:* That's correct.

00:04:23

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* And there is nothing to be changed under this Revocable permit?

00:04:26

*Richard Howard - DOBOR:* That is correct.

00:04:27

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* All right.

00:04:29

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Board members, any other questions before I take public comment? Did Kate Thompson, who is here to testify, request an exception to provide a longer testimony,,,,, Oh yes

00:04:43

*Aimee Barnes - BLNR:* Is the bond posted here? Is that essentially insure against what we experienced with the other?

00:04:52

*Richard Howard - DOBOR:* Yeah. Yeah. Of permanent basis. And because they're really they're really acting as a pass-through, right? Because they collect parking revenue and just pass 80% of it to us. We came up with that number of 42,000,

00:05:17

*Aimee Barnes - BLNR:* Right?

00:05:18

*Aimee Barnes - BLNR:* So if there was a Covid 2.0 and they decided two weeks after the you

know, the contract was awarded, that they didn't want to provide those services, we would retain that amount of money.

00:05:34

*Richard Howard - DOBOR*: Well, I think that would be up to the board. I think it comes to the board and ask about, you know, ask for that. We were just going by the letter of the revocable permit that says that we have to have two months of security.

00:05:48

*Aimee Barnes - BLNR*: Okay. Thank you.

00:05:49

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES*: Very good. Thank you, Richard. Thank you.

**Public Testimony does not appear in this Transcript. Please see youtube video for the public testimony**

40:06 Video to Meeting

BLNR Video <https://www.youtube.com/watch?v=HQUZpZeZUHg>

**J-1 Meeting Transcript 8-10-2023 Passed by the BOARD OF LAND AND NATURAL RESOURCES for DOBOR J-1**

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES*: Okay. And we thank you. You did a good job just for your first time providing testimony, coming on, and providing us with written testimony. Always appreciate getting that ahead of time. Thank you very much, Elizabeth. Is there anybody else on Zoom? On item J. One. Thank you very much. Thank you, Kate. Thank you again, Last call. Anybody in the room?

00:00:32

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES*: Another question or two? Sure, sure. Richard, thanks.

00:00:40

*Aimee Barnes - BLNR*: I just wanted to take an opportunity to get your reaction to some of the points that were raised in public testimony. I mean, I know towing, for example, can be predatory and particularly for low moderate-income communities can really contribute to that

burden. So I'm curious if in thinking about the contract for this work you've thought about and I don't know if this is possible, but for example, adding a, you know, addendum or some sort of footnote that says towing may not occur, you know, up to some point, or if we're really just letting the concessionaire determine when and how that happens.

00:01:30

*Ed Underwood - DOBOR:* Sure, I can address all of that. And we'd like to clarify this isn't a retroactive renewal. The current agreement is in place. We'll go back and look at the submittal for that. So if five minutes real fast, **back in 2009**, I think we were the first division to implement a parking plan in the department. So it was new to everybody. Um, so we implemented the plan and at that time, it was 300 free parking stalls because we had such opposition from the surfing community and all the 300 permits and then the 300 paid. So as soon as we went in there and put the plan in, at that time, **Diamond Parking was issuing parking, paid notices.** So if you didn't pay the fee, they put a notice on your car and it would say, Hey, you owe us parking. And then after about 3 or 4 of those notices, then that's when they would tow the car out of the paid area and all the free parking area. We close it at night. It's closed for everybody at night from I think it's 10:30 p.m. on and. **DOCARE does not have the ability to be there every night to issue citations.** That's our law enforcement. Not only that, they've told us that they feel that their mission is natural resource protection, not issuing parking tickets. So we were sued in federal court right about this time

00:03:04

*Ed Underwood - DOBOR:* 2000.

00:03:05

*Ed Underwood - DOBOR:* Just to be clear.

00:03:05

*Ed Underwood - DOBOR:* 2009, **just after two just after the parking plan went into effect and several things came out of it, one of which was, yes, the parking vendor cannot issue parking pay notices or anything like that.** Um, if somebody doesn't pay, you either need to give them a ticket or you got to tell them you have to take enforcement action. Also, what came out of that that was new is whenever a car is towed, you are required to offer a post-tow hearing. So and the citation that's issued along with it does not count. So we notified the counties as well that this is what you need to do and they are being sued now as well because and we've been holding post-tow hearings.

Aimee Barnes: They're being sued by people who have been towed or by the.

00:03:59

*Ed Underwood - DOBOR:* It was an individual that sued as a class action. So we had to go back and refund the money for a certain period of time. And also now we always offer a post tow hearing. And the entire time we've been doing this, I believe we've only lost like two post-tow hearings because it's very well documented. We've asked the towing vendor when we close the area, don't be there right at 1030 and hook up cars, give them a grace period of ten minutes or so or 30 minutes, whatever you can. Um, but that's how the enforcement works. And back then, because this was so new, we put this plan in place. **It's been 14 years and there's been a lot of**



complaints about the free parking area and the fact that hotel employees use it. Hotel guests are told to park there because it's cheap, construction companies do. And do we found with the designated parking area, um, it's often left empty because people just don't use their boats that often, and then nobody can use it. So we've been serious we've done this on Maui already. We're seriously looking at our it will be very we don't feel there should be any free parking in the harbor. The whole harbor should be paid for parking, permits, and parking. Anybody with a permit is allowed to park anywhere they want in the harbor at any time. That's just part of the permit parking for our boaters and we own our operating funds only come from user fees that we generate. That's why H.R. 202.5 is in place. It supports the program, but the free parking doesn't go to help with the maintenance of the harbor at all. We're maintaining the bathrooms, the rubbish, the paving, all of that. So we feel that people coming out, it's only a dollar an hour and that fee has not been raised for years. Currently, our fees are based on county or state rates. City and county are charging \$2 an hour. I believe in this building we're charging \$2 an hour, so it might be time to look at the parking rate fee as well. But we were going to bring some recommendations back to you once we put out the RFI. But for this hour, we're not changing anything. Everything is status quo. We're not changing a thing.

00:06:22

*Public question:* Can I say something? Nope. Nope. Sorry.

00:06:26 *Vernon Char - BLNR:* hen are your plans to put out the. Yeah.

00:06:32

*Richard Howard - DOBOR:* But we have it. We have a draft written already. And in my discussions with board member Smith, you know, he made some suggestions as far as posting, including the criteria of how we're going to make the selection in the RFI, which is a good, transparent thing to do. So we have to just add that, um, you know, the RFI concentrates mostly on experience. Um. What I sent to board member Smith was our ranking sheet for how we rank applicants who want to bid on lease auctions. And so that has, you know, your experience. It has a section for that. We rank for a business plan and also a section for financial capability.

00:07:22

*Vernon Char - BLNR:* Will that RFI come out within six months? Yes. Will brought back to the board as well?

00:07:28

*Richard Howard - DLNR Act 163,* this is the process that I think we're envisioning. We'll publish the RFI, we'll get interest from parking vendors and we'll rank them. We'll choose which ones. I mean, our reading of 163 does not preclude us from negotiating with more than one person at a time. So we can pick several, you know, vendors that we want to negotiate.

00:07:59

*Vernon Char - BLNR:* With to publish.

00:08:01

*Riley Smith - BLNR:* I think we can publish within, I think three months.

00:08:04

*Vernon Char - BLNR:* Three months, Yes. So the action being taken today is just temporary until that RFI can be implemented?

00:08:14

*Dawn Chang - BLNR:* As this one expires in September, right?

00:08:16

*Richard Howard - DOBOR:* Yes. So did I make a mistake on this?

00:08:20

*Vernon Char - BLNR:* So it's just whatever the. Yeah, the time until you can put into effect this new plan. Correct.

00:08:29

*Richard Howard - DOBOR:* So we just need a little we just need more time too.

00:08:31

*Vernon Char - BLNR:* And you're thinking that the part of it is publication will be done within three months?

00:08:37

*Richard Howard - DOBOR:* Yes.

00:08:38

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* And the board is only going to approve the final recommend Recommended vendor. Correct. We don't approve the RFI or we don't review the document. Right. Right. Okay.

00:08:50

*Kaiwi Yoon - BLNR:* Um, you said in 2009 during the lawsuit times the vendor cannot issue notices parking notices. Right. Was that a matter of scope or was that a matter of land ownership?

00:09:08

*Ed Underwood - DOBOR:* I believe what it came down to is they don't have the authority to.

00:09:12

*Kaiwi Yoon - BLNR:* As a matter of scope in their contract. Like, in other words, did we give them that authority in the scope?

00:09:23

*Ed Underwood - DOBOR:* No, I don't believe we the department can give them the authority. It has to come from the legislature. Okay. Okay. Yes.

00:09:32

*Kaiwi Yoon - BLNR:* Okay. Because, you know, my concern then, you know, I think you're right. Um, editor Richard whoever said it like, DOCARE. They're not in the business of giving tickets. Right? So I'm concerned, uh, going forward. I don't know if it's a scope thing or through the ledge, but somehow we need to figure out who has the authority to write tickets.

00:09:55

*Aimee Barnes - BLNR:* Sorry to clarify. So what I heard you say is that they can give tickets and tow. They can't.

00:10:03

*Ed Underwood - DOBOR:* No, The only thing right now that the parking the parking vendor could either call in a law enforcement agency, it could be the sheriff's DOCARE, uh, HPD, to issue a citation. Or if they're parked contrary to signage, then they can be towed. So those are our only two options.

00:10:26

*Kaiwi Yoon - BLNR:* But only if they contact a state. Enforcement agency. That's where the problem is going to be.

00:10:36

*Ed Underwood - DOBOR:* Years ago, the department, um, Miss Thompson was correct. The Harbor agents had the ability to issue, um, ticket citations, but they were challenged because they felt they weren't being they were targeting people. So that authority was taken away. This was when it was with DOT.

00:10:54

*Aimee Barnes - BLNR:* So do you know what She's referring to regarding the parking

00:10:59

*Aimee Barnes - BLNR:* Would you say this?

00:11:00

*Richard Howard - DOBOR:* Maui has a different arrangement where there are five tickets before they're towed.

00:11:06

*Richard Howard - DOBOR:* No, we don't. We don't do the private.

00:11:08

*Richard Howard - DOBOR:* I think that was a private company that she is in touch with who's interested in doing towing, or parking, at the Ala Wai. Yeah.

00:11:17

*Richard Howard - DOBOR:* And what about booting?

00:11:20

*Aimee Barnes - BLNR:* Putting a boot on.

00:11:21

*Ed Underwood - DOBOR:* We could boot. That's the same as towing basically in that federal lawsuit. But we'd have to hire a company that can boot and is there to boot.

00:11:32

*Aimee Barnes - BLNR:* Why can't the concessionaire boot and boot if they can tow and then tow?

00:11:36

*Richard Howard - DOBOR:* Well, the concessionaire doesn't tow. We have a separate contract.

00:11:41

*Aimee Barnes - BLNR:* We have a contract with the towing company or the concession. Have a contract with the towing company.

00:11:46

*Aimee Barnes - BLNR:* Oh, yeah, that's. That's. That's a twist you could open with that man. Yeah.

00:11:54

*Ed Underwood - DOBOR:* It's for no charge. We don't get any money. It's just.

00:11:57

*Aimee Barnes - BLNR:* But they get a lot.

00:11:58

*Aimee Barnes - BLNR:* But they get a lot.

00:12:01

*Ed Underwood - DOBOR:* For the tow. Sure. And. And also the tow company has to follow the law. And I think the law was just amended so that you can now use a credit card to pay. So they can't require people to only pay in cash.

00:12:16

*Aimee Barnes - BLNR:* I mean, In addition to the cash problem, I think there's just also the issue of like if you're somebody who's living paycheck to paycheck and your car is taken away from you even for a day, that could mean that you lose your job, which then sends you into a debt spiral where you're unable to pay to get your car out, to be able to work again. And, you know, I just think it's like pushing people over the edge.

00:12:37

*Ed Underwood - DOBOR:* It's tough. It is in that situation. That's why we keep the signage posted. We follow the signage. And unfortunately, people we've had visitors come and come back out and they didn't know and their car's gone. And so we offer them the post tow hearing and oftentimes they're not on the island anymore. We can do it by Zoom.

00:13:02

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Do we approve that towing contract or is that just done by the department? That's somebody that comes to the board.

00:13:08

*Richard Howard - DOBOR:* No, no, no. That was done through. I think we did it through an IFB process. Invitation for bids.

00:13:16

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* You might want to. I have Miss Thompson's nodding and shaking her head all over the place.

00:13:21

*Public question:* You do sign? No copy of the.



00:13:26

*Richard Howard - DOBOR:* Well signed by the chair, but the selection was made through an RFP process.

00:13:31

*Karen Ono - BLNR:* Okay. Yes. Did you guys get a report? A monthly report or quarterly report of tows?

00:13:43

*Ed Underwood - DOBOR:* No,

*Karen Ono - BLNR:* So. We don't know how many cars are being towed?

*Ed Underwood - DOBOR:* No, We could contact them and ask them. Um, but we don't get a report.

00:13:50

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Because our role at the harbor is when we're managing the harbor, we have a contractor that does the parking, and then we have someone who, if they're in violation of the parking, you have a separate contractor that does the towing. But we're not we're not the tow police people. We're not the parking police people. Right. We manage the harbor. Correct. So but clearly, I mean, maybe DOBOR has to think about another arrangement or but at this time, the only action before us is, is to approve this RFP to continue on the existing contract parking contractor pending. You guys coming out with a more permanent RFP.

00:14:34

*Ed Underwood - DOBOR:* Yes.

00:14:35

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* The more permanent contract. Correct. Contract. Right.

00:14:40

*Ed Underwood - DOBOR:* Now, one thing to consider is if we want to change the current parking plan, I mean, I think it's got to be fair, like for Ms. Thompson to weigh in on everybody at the harbor, because it will be very controversial if we come in, and I know this first hand, if I and I keep saying in my opinion, there should be no free parking, it's impossible to manage. So what happened back then was we said, okay, we're going to have 300 free parking stalls and it can only be for ocean recreation users. We said once you establish free parking, it's extremely difficult to determine who is in ocean recreation. User, What if they say they're going swimming on their lunch break? I mean, or you're going to have to have somebody following 300 people coming out of their cars. And it just it's impossible. And it's been a bone of contention ever since. And not only that, we allow six hours of free parking because we were told at the time that surfers needed six hours to go surfing. And that's a pretty long surf sesh, if you ask me, and it makes it hard to manage. So we've have come back before the board and said, let's lower that time to three hours free parking or let's lower it to three hours, because that way if you're working in the hotel, you got to come out twice to feed, to move your car. You'd have to move it to another stall.

00:16:07

*Kaiwi Yoon - BLNR:* What is it?

00:16:08

*Kaiwi Yoon - BLNR:* For the record, where does the parking money go to?

00:16:10

*Ed Underwood - DOBOR:* It goes into the boating special fund and it's used to cover whatever costs in the boating program, the.

00:16:16

*Kaiwi Yoon - BLNR:* Bathrooms, repaving, striping.

00:16:18

*Ed Underwood - DOBOR:* Paving.

00:16:18

*Kaiwi Yoon - BLNR:* Striping.

00:16:19

*Ed Underwood - DOBOR:* Everything. Yes.

00:16:20

*Kaiwi Yoon - BLNR:* Yeah. You know, maybe part of the issue is, and look at the board level, I don't think we should get into administrative issues. I defer to the chair on that. Um, but, you know, maybe some of the messaging could be better, right? Like if there is no free parking, I think the public needs to know, just know that all of this goes to these services, you know, so that we can have excellent harbors and facilities at the harbors. Right. So maybe that's not. No, I don't know. I don't know. I don't want to get into that.

00:16:50

*Ed Underwood - DOBOR:* But sure.

00:16:52

*Vernon Char - BLNR:* I could have confused this RFP that you're going to be putting out. That would be for the concession. Who's going to operate this? That has nothing to do with the touring that will continue. A separate contract with doing. That's correct.

00:17:07

*Richard Howard - DOBOR:* So it's not really it's in our request for interest that will be publishing and Yeah but they're separate. Yeah. Does it have to be separate?

00:17:17

*Ed Underwood - DOBOR:* No, because Maui, the parking vendor there, manages the towing. They do all the enforcement. So that's another thing we're looking at having just the parking vendor manage. It's a great tool for assisting with managing the facilities. That's what we want to bring back. The one for Honokohau small boat harbor in that area. On the outside, we're having issues with. It's good why don't we.

00:17:39

*Karen Ono - BLNR:* Take on the part on the towing? Why don't we get a percentage of the total so that we can monitor how many cars are being pulled?

00:17:47

*Ed Underwood - DOBOR:* Well, we can ask the tow company any time.

00:17:50

*Karen Ono - BLNR:* For why don't we get a fee fall off of what they're towing?

00:17:53

*Ed Underwood - DOBOR:* Well, they're just going to add it to the tow. So then the people are going to pay even more.

00:17:58

*Karen Ono - BLNR:* Or do you put that out to public auction? Would you just negotiate with the towing company?

00:18:04

*Ed Underwood - DOBOR:* Well, we put it out to the tow companies that this is for \$1 a year. I believe it's in the contract. Yeah. And then for whoever can do, what we try to do is get a tow company that's as close to the facility as possible, because in the past we had Ace Towing Towing out of Holly Harbor all the way back to the airport. And people would get really upset having to try to get back. So we try to keep the but the towers are only they're basically all based out of Sand Island.

00:18:36

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* I guess for purposes of facilitating this agenda because the only thing before us is the parking is the RFP. Obviously, there's a whole bunch of questions about towing. I mean, the kind of a lot of opposition is it may not be so much with the parking, but the parking it's the towing company. I really would ask Bill Barr to go back and look at the towing contract and how you're processing it and addressing some of these concerns that have been raised by members of the public as well as the board members. I mean, think there's a question about how much they charge the method of towing, you know, grace period. So I think rather than maybe that should be brought back to the board as well for review and approval rather than administratively, because right now it's just being approved by the department, right? Sure. Yeah.

00:19:32

*Kaiwi Yoon - BLNR:* And I hope it doesn't. I know you guys work hard and you know the capacity. I hope it doesn't add an inordinate amount of time. You know, I think Richard said three months. You know, let us know if it's six months or eight months, or a year. You know, because the public's kind of waiting for that RFP, RFP process to begin. And I like the idea of booting. So maybe, you know, when you guys put it out there, right, Because booting you just do it right there. Right? You don't have to tow it anywhere, right?

00:19:59

*Ed Underwood - DOBOR:* So we can have them on site maybe.

00:20:02

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Yeah, have them on site. You know.

00:20:04

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* I think.

00:20:04

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* I think the community has raised some legitimate concerns. Right. So I would ask the tow bar really address this right now the parking that RFP and you've got a process for that you're going to do and you're going to do an RFP. But the towing is a separate issue. And I think you've heard some really legitimate kind of concerns here that I think you should come up with a plan of action and come back to the board on that.

00:20:30

*Kaiwi Yoon - BLNR:* You put a timeframe on that. I hate to squeeze you guys, but you know, that's fine.

00:20:35

*Kaiwi Yoon - BLNR:* At the same time, you're okay.

00:20:37

*Ed Underwood - DOBOR:* Sure. When you do.

00:20:38

*Ed Underwood - DOBOR:* Come back with the towing.

00:20:39

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Okay. Okay.

00:20:40

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Does that make sense, board members?

00:20:42

*Riley Smith - BLNR:* With that chair? If there's no other, I'll move to approve the staff recommendations amended. Thank you.

00:20:48

*Aimee Barnes - BLNR:* I will. I will. Second, just, I also and I think what you just said is great. So thank you. And thank you guys for taking that back.

00:20:56

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Oh, Riley has a question. Oh, sorry, Riley.

00:21:00

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Big island was the second thing or the question?

00:21:04

*Riley Smith - BLNR:* No.

00:21:04

*Riley Smith - BLNR:* I wanted to ask or I wanted to make a comment. So added earlier mentioned about charging everybody for parking. You know, I've traveled all over the mainland



and I've surfed in California and they make you pay for parking. I think we should do something different in Hawaii. You know, I pay county real property taxes. I pay state gross excise taxes. I think as a resident, I should be able to go to beaches in Hawaii and not pay for parking. So just giving my money on that. Thank you.

00:21:36

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Thank you, Riley. Always appreciate your mana on that. Any other questions? I got a motion and a second. And a second.

00:21:43

*Aimee Barnes - BLNR:* But just with also, I heard some comments on signage and the map and whether the map is accurate.

00:21:50

*Aimee Barnes - BLNR:* So maybe

00:21:51

*Richard Howard - DOBOR:* the map is the exhibit that is in the permit. Okay. So that is what our agreement is. Okay. Um, again, if somebody feels they are unjustly told they have the right to oppose a hearing, and if you know at the hearing, they say I was parked in a freestyle and I got towed.

00:22:11

*Ed Underwood - DOBOR:* And we have worked with staff on telling and directing them to any time the sign becomes faded or has too many stickers on it, replace the signs.

00:22:22

*Vernon Char - BLNR:* How much time do you think it takes for these post-towl hearings? I mean, collectively.

00:22:27

*Ed Underwood - DOBOR:* Our deputy might.

00:22:28

*Ed Underwood - DOBOR:* Be.

00:22:30

*Kaiwi Yoon - BLNR:* Too long, right?

00:22:30

*Aimee Barnes - BLNR:* It is, yeah.

00:22:31

*Kaiwi Yoon - BLNR:* So, I mean, we got to mock up all of that.

00:22:35

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Okay.

00:22:36

*Vernon Char - BLNR:* What is the status of your overall plan for that you did a presentation to

the board and I think we went out and took a look at the area? Um, any further implementation on the utilization of that?

00:22:53

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* You're going to open Pandora's box.

00:22:55

*Ed Underwood - DOBOR:* We've been asked to hold on to that for right now until we can do it can be further looked at.

00:23:03

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* We have an overall strategic approach for boating, so we wanted to take that in the context, all the context of that overall approach. Okay.

00:23:14

*Karen Ono - BLNR:* So there was a first and a second. There's a motion. Okay. And I just want make this point, on the signage, to make it clear with an image so that people know that it's going to be towed. And I mean, you can restate the but to me, a picture says a lot of words and you can put the HRSright below that for all.

00:23:35

*Richard Howard - DOBOR:* The duration the board is giving us. We're going to extend the permit as long as it takes to do the RFI?

00:23:41

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Yeah, well, I think there are two separate matters. The where I think the action here is whether to approve the, um and you said you're going to be able to come back in three months on the RFI for the parking. Yes. I think the board also asked you I asked you to do a separate on the towing. Yes. And we also said, when do you think you can come back to us with that towing plan? And you said three months. So that's two separate action items. Yeah.

00:24:10

*Richard Howard - DOBOR:* Okay.

00:24:11

*Vernon Char - BLNR:* Okay. Are you good with that?

00:24:13

*Richard Howard - DOBOR:* Okay. Okay.

00:24:16

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* I'm going to call for the motion.

00:24:18

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* On the motion. We got the vote.

00:24:21

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* Obviously, I'm going to call.

00:24:22

*Aimee Barnes - BLNR:* For a recess pretty soon.

00:24:24

*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES:* So a motion has been made and it's been seconded. All in favor Say aye.





STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

# PETITION FOR A CONTESTED CASE HEARING

RECEIVED

2023 AUG 21 PM 4:08

## OFFICIAL USE ONLY

Date Received

Division/Office

Case No.

Board Action Date / Item No.

### 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

Contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the Administrative Proceedings Office or at its website (contested-case-form/). Please review these rules before filing a petition.

The boxes are expandable to fit in your petition. You may attach additional sheets.





STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

**PETITION FOR A CONTESTED CASE HEARING**

OFFICIAL USE ONLY	
Case No.	Date Received
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 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 Captain Margaret Hallahan	2. Contact Person Captain Margaret Hallahan	
3. Address 57-068 Eleku Kuilima Place #136	4. City Kahuku	13. State and ZIP HI 96731

<b>6. Email</b> maggie@mhpv.net	<b>7. Phone</b> 415-305-7553	<b>8. Fax</b>
------------------------------------	---------------------------------	---------------

<b>B. ATTORNEY (if represented)</b>		
<b>9. Attorney Name</b> TBD	<b>10. Firm Name</b>	
<b>11. Address</b>	<b>12. City</b>	
<b>14. Email</b>	<b>15. Phone</b>	<b>16. Fax</b>

<b>C. SUBJECT MATTER</b>	
<b>17. Board Action Being Contested</b> Continuation of Revocable Permit ("Permit") Issued to Secure Parking Hawaii LLC, dba Concierge Car Wash and Traffic Monitoring Services ("Licensee") for Management of Vehicular Parking in the Designated Areas Located Within the Ala Wai Small Boat Harbor	
<b>18. Board Action Date</b> 8/11/2023	<b>19. Item No.</b> J-1 DOBOR  SUBJECT:  Continuation of Revocable Permit Issued to Secure Parking Hawaii LLC, dba Concierge Car Wash and Traffic Monitoring Services for Management of Vehicular Parking in the Designated Areas Located Within the Ala Wai Small Boat Harbor, Honolulu, Oahu, Hawaii, Identified by Tax Map Keys: (1) 2-6-010:003 (Portion), (1) 2- 3-037:012 (Portion), :024, :027, :033, :035 and :037

## 20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case:

### 3 Reasons:

- A. Both 102 and 103 D were areas of concern for the AGs office in 2021. 102 falls under concession law. If J-1 8-11-2023 is the same as J-1 2021 which DOBOR stated verbally to the BLNR meeting held on 8-11-2023 how can the new J-1 ( 2023 ) be approved if it does not specifically address the recommended changes. Either 2023 has been changed or DOBOR verbally misinformed the BLNR on 8-11-23.
- B. RFI was not completed as it agreed to in the J-1 BLNR 9-10-2021 board meeting.
- C. Is DOBOR/Secure Parking currently working with a valid contract approved by the BLNR board? If so, why is it not available? Without seeing the contract we are unable to state our objection.

#### Proof for A:

Both 102, which deals with concessions and 103 D was not included in 2021 from AG concerns, if J-1 8-11-2023 is the same as J-1 2021 which DOBOR stated verbally to the BLNR on 8-11-2023 how can the new J-1 ( 2023 ) have a change it that makes it legal now. Either 2023 is changed and DOBOR verbally misinformed the BLNR on 8-11-2023.

00:00:05

#### *Richard Howard DOBOR Verbal Testimony 9-10-2021*

“This is Richard Howard for DOBOR. I've been seeing one is the issuance of a revocable permit to secure parking Hawaii LLC for management of the vehicular parking at the Ala Wai Small Boat Harbor. Staff requests minor amendments. To the submittal before the board votes on this item. The first of which is. Amending the applicant's name on the submittal from Secure Parking LLC to Secure Parking Hawaii LLC. The correct name, i.e. Secure Parking Hawaii LLC was published by Darlene. So think we're okay with that. The second item. Is the Chapter 343 exemption paragraph on page three. It should read as follows In accordance with Section 11 200.115 Hawaii Administrative rules and the exemption list for the Department of Land and Natural Resources reviewed and concurred in by the Environmental Council on November 10th, 2020. The subject request is exempt. From the preparation of EA pursuant to general exemption type one operations, repairs or maintenance of existing structures, facilities, equipment or topographical features involving negligible or no expansion or change of use beyond that previously existing. Part one item number 44, which states that permits licenses, registrations and rights of entry issued by the department that are in routine, that are routine in nature, involving negligible, negligible impacts beyond that previously existing. On the final amendment we have to make is the commencement date. Uh, and that has to be amended from September 15th, 2021 to the first day of the month, determined by the Chair. DOBAR is requesting the issuance of a revocable permit to secure parking Hawaii LLC due to the AG's concerns with the IFB (Invitation For Bid) that we put out, which contained elements **of both 102, which deals with concessions and 103 D**, which is the procurement code, Uh, the, the issuance of this is will be temporary in nature and it will allow DOBOR to address the AG's concerns while allowing us to collect parking revenue from the Ala Wai Boat Harbor. We are willing to answer any questions.”

-----  
*Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES: Transcript 8-11-2023*

**the only action before us is, is to approve this RFP to continue on the existing contract parking contractor pending. You guys coming out with a more permanent RFP.**

Ed Underwood – DOBOR 8-11-2023: **Yes.**

-----  
B. Late RFI or non-existing continuation to the one year permit agreed to in J-1 BLNR 9-10-202

**Proof for B:**

*Richard Howard DOBOR Verbal Testimony 9-10-2021*

On the final amendment we have to make is the commencement date. Uh, and that has to be amended from September 15th, 2021 to the first day of the month, determined by the Chair. DOBAR is requesting the issuance of a revocable permit to secure parking Hawaii LLC due to the AG's concerns with the **IFB (Invitation For Bid) that we put out, which contained elements of both 102, which deals with concessions and 103 D, which is the procurement code, Uh, the, the issuance of this is will be temporary in nature and it will allow DOBOR to address the AG's concerns while allowing us to collect parking revenue from the Ala Wai Boat Harbor.** We are willing to answer any questions.

-----  
C. Is DOBOR/Secure Parking currently working with a valid contract approved by the BLNR board? If so, why is it not available? Without seeing the contract we are unable to state our objection.

**Proof for C:**

00:01:30

*Ed Underwood - DOBOR: Transcript 8-11-2023*

Sure, I can address all of that. And we'd like to clarify this isn't a retroactive renewal. **The current agreement is in place. We'll go back and look at the submittal for that.**

**21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process**

**Protection:** The Boards decision of Chairperson *Dawn Chang* BOARD OF LAND AND NATURAL RESOURCES: The right for fare process of a RFI and a RFB. The 2 year late DOBOR's process to create a RFI as Stated in J-1 2021 BLNR meeting.

**22. Any Disagreement Petitioner May Have with an Application before the Board.**

**I disagree that J-1 8-11-2023 is a continuation of 9-10-2021. Please see both documents to view the many areas that items are added on the J-1 8-11-2023.**

**23. Any Relief Petitioner Seeks or Deems Itself Entitled to:** I would like to create a J-1 9-10-2021 agreement till 12-31-2024 when a new completed parking agreement should be in place. DOBOR would have to create a RFB in the next 2 months, publish it and then review it with an open public review. Make public Towing records from the last three years. Decide which agency can ticket before towing occurs. To decide after 5 unpaid tickets to put a boot on a car at Ala Wai Small Boat Harbor.



**24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest**

I believe the Ala Wai Small Boat Harbor area can be improved, make more money, not use tow trucks but rather to enforce time limit parking violations with tickets. Tow trucks are too strong of a penalty for a simple crime limit parking violations. Finally to respect the 300 free recreational parking sites that were agreed to by the State of Hawai'i in 1957 and again in 2008.

**25. 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 Please see 4 documents BLNR J-1 9-10-2021, Transcript BLNR J-1 9-10-2021, BLNR J-1 8-11-2023 and Transcript BLNR J-1 8-11-2023.**

**At the BLNR J-1 Meeting 2021**

**Kaiwi Yoon - BLNR**

**Tommy Oi - BLNR**

**Richard Howard - DOBOR**

**Darlene Ferreira - BLNR**

**Doreen Canto - BLNR**

**Ed Underwood - DOBOR Ed Underwood, Administrator, Division of Boating and.**

**Melissa Goldman ATTORNEY GENERAL, HAWAII**

**Suzanne Case Chairperson BOARD OF LAND AND NATURAL RESOURCES**

**Vernon Char - BLNR**

**Jonathon Mauri MAURI, JONATHAN MGR Secure Parking Sep 6, 2019**

**Chris Yuen - BLNR**

**At the BLNR J-1 Meeting 2023**

**Kaiwi Yoon - BLNR**

**Dawn Chang, Chairperson BOARD OF LAND AND NATURAL RESOURCES**

**Karen Ono - BLNR**

**Riley Smith - BLNR**

**Aimee Barnes - BLNR**

**Vernon Char - BLNR**

**Richard Howard - DOBOR**

**Ed Underwood - DOBOR**

**Melissa Goldman ATTORNEY GENERAL, HAWAII**

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.

M. Hallahan

*M Hallahan*

8-21-2023

Petitioner or Representative (Print Name)

Signature

Date



Uberstine, Max E PO1 USCG D14 (USA)

Inbox - m...ie@mhpv.net November 14, 2023 at 4:03 PM

RE: USCG Questions

[Details](#)

To: Captain Maggie Hallahan, Cc: Beausoleil, Roxane M (Roxy) PO1 USCG D14 (USA)

Aloha Ms. Hallahan,

OS1 Beausoleil brought to my attention about your concern on transiting about the Ala Wai Boat Harbor Entrance with surfers/paddleboarders that could be impacting the transiting area. Unfortunately, there is no enforcement brought upon if a vessel is transiting in/out of the harbor and come upon surfers in the middle impeding traffic. If they are just transiting, then the vessel needs to give away and wait until it is safe to pass and transit the channel to avoid being negative op.

As to the flip side, surfers should not be waiting in the channel to catch a wave, as paddleboarders should hug the side of the channel but avoid risks of running into shoals or rocks. The best scenario you can as an operator of a vessel so pass at a safe speed if the surfers or paddleboarders give you a hard time then would be best to notify DLNR Conservation officers. They would more likely be assisted to communicate the public. (DLNR DOCARE (808) 453-6780)

Very Respectfully,

Max E. Uberstine, BM1  
Waterways Management (DPW)  
USCG District Fourteen  
300 Ala Moana Blvd. Suite 9-220  
Honolulu, HI 96850  
(808) 535-3409  
[Max.E.Uberstine@uscg.mil](mailto:Max.E.Uberstine@uscg.mil)

Telephone call 11-20-2023 to Senator Inouye office Question: Is there any law restricting DOBOR from stopping instant towing? Answer: No, they can stop the instant towing procedure at DLNR.

Telephone call 11-21-2023 to Jason Redulla, Enforcement Chief, DOCARE Ph: (808) 587-1496 with Maggie Hallahan. Maggie's notes. Question to Jason Redulla. Would you be interested in giving tickets at AWSBH? Answer: It is state land and DOCARE can give tickets there. We have not been asked to by DOBOR. Question: i did you know that DOBOR does instant towing at AWSBH. Answer: No, I was not aware that DOBOR was towing at AWSBH. I thought since 2009 when the court case made a large public refund of towing fees, they stopped. DOCARE gives two types of citations and the fees can generate money.

M.Hallahan 12-5-2023

*M Hallahan*

**From:** [Katherine Lindell](#)  
**To:** [CAPITOL2023-reptarnas](#); [CAPITOL2023-replowen](#); [CAPITOL2023-reptodd](#); [repyamane@Capitol.hawaii.gov](#); [CAPITOL2023-sendelacruz](#); [CAPITOL2023-senfevella](#); [CAPITOL2023-senkanuha](#); [senkeithagaran@capitol.hawaii.gov](#); [CAPITOL2023-senkidani](#); [CAPITOL2023-senchang](#); [CAPITOL2023-sengabbard](#); [Senator Les Ihara, Jr.](#); [CAPITOL2023-seninouye](#); [Senator Jarrett Keohokalole](#); [CAPITOL2023-senkim](#); [CAPITOL2023-senkouchi](#); [CAPITOL2023-senrhoads](#); [CAPITOL2023-senshimabukuro](#); [CAPITOL2023-senwakai](#); [Rep. Henry J.C. Aquino](#); [CAPITOL2023-repbelatti](#); [repcullen@Capitol.hawaii.gov](#); [repdecoite@Capitol.hawaii.gov](#); [CAPITOL2023-repgates](#); [CAPITOL2023-rephashem](#); [CAPITOL2023-rephashimoto](#); [CAPITOL2023-repholt](#); [CAPITOL2023-repchiyama](#); [CAPITOL2023-repkitagawa](#); [CAPITOL2023-repkobayashi](#); [CAPITOL2023-repkong](#); [replee@Capitol.hawaii.gov](#); [repluke@Capitol.hawaii.gov](#); [CAPITOL2023-repmatayoshi](#); [CAPITOL2023-repmatsumoto](#); [repmckelvey@Capitol.hawaii.gov](#); [CAPITOL2023-repmizuno](#); [CAPITOL2023-repmorikawa](#); [CAPITOL2023-repnakamura](#); [CAPITOL2023-repnakashima](#); [CAPITOL2023-repnishimoto](#); [CAPITOL2023-reponishi](#); [Representative Amy A. Perruso](#); [CAPITOL2023-repquinlan](#); [CAPITOL2023-repsaik](#); [CAPITOL2023-reptakayama](#); [reptokioka@Capitol.hawaii.gov](#); [CAPITOL2023-repward](#); [CAPITOL2023-repwoodson](#); [Representative Kyle Yamashita](#); [CAPITOL2023-senmoriwaki](#); [Senator Sharon Moriwaki](#); [keone@downingsurf.com](#); [Representatives - Hawaii State Legislature](#); [Senators - Hawaii State Legislature](#); [Li, Bin C](#); [Fuerte, Arlene A](#); [Ige, David Y](#); [clare.e.connors@hawaii.gov](#); [DOH webmaster](#); [Senators - Hawaii State Legislature](#); [Arakawa, Daniel L](#); [mayor@honolulu.gov](#); [DLNR.BLNR.Testimony](#); [hawaiiag](#); [DOH webmaster](#); [Lieutenant Governor's Office Contact](#)  
**Cc:** [Aaron Kotarek.Vice President / Circulation](#); [Troy Fujimoto.Director of Digital Media](#); [STARADVERTISER-Citydesk](#); [letters@staradvertiser.com](#); [Ed Lynch](#); [Marsha McFadden](#); [Clarke Reilly,Managing Editor / Special Sections & Newsroom Operations](#); [Chris Sykes,Production Editor](#); [dbutts@staradvertiser.com](#); [Lucy Young-Oda](#); [Dan Nakaso](#); [News - KHON2](#); [KITV-news](#); [KITV-jgin](#); [HAWAIINEWSNOW-News](#); [AFerreira@HawaiiNewsNow.com](#); [dhuff@hawaiinewsnow.com](#); [MVorsino@HawaiiNewsNow.com](#); [JByeon@HawaiiNewsNow.com](#); [MKasper@HawaiiNewsNow.com](#); [AJohnson@HawaiiNewsNow.com](#); [PTang@HawaiiNewsNow.com](#); [MSadural@HawaiiNewsNow.com](#); [CIVILBEAT-News](#); [HAWAIIFREEPRESS-Editor](#); [League of Women Voters](#); [chair@oahu.surfrider.org](#)  
**Subject:** [EXTERNAL] Can we finally admit that Hawaii's DLNR rule making process is so corrupt that we can no longer look away?  
**Date:** Monday, December 4, 2023 9:18:34 AM

---

Aloha,

Can we finally admit that Hawaii's DLNR rule making process is so corrupt that we can no longer look away from the negative impact that it is having on our community? Hawaii's OIP had to shut down a BLNR November 9th meeting because of Sunshine Law violations. But that's just the tiny tip of a huge iceberg.

The DLNR's latest plan will effectively cancel a long-standing community in Waikiki. Please have a look at Sally Ingstrom's latest post here:

<https://hawaiiocannews.com/index.php/2023/12/04/hawaii-dlnr-called-on-sunshine-laws-violatiion-will-try-again-to-cancel-the-bowls-surf-community/>

See the post on Twitter (X) here:

<https://twitter.com/HawaiiOceanNews/status/1731743125335646353/photo/1>

Me ke aloha pumehana,

Katherine Lindell, editor

[Hawaii Ocean News](#)



**From:** [KEILI MCEVILLY](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Item J-7: Strong Opposition to Secure Parking LLC Contract Exceeding 6 Months  
**Date:** Tuesday, December 5, 2023 9:31:43 AM

---

To whom it May Concern,

My name is Keili McEvelly and I am writing in strong opposition to the recommendations to eliminate and or restrict free recreational parking from 300 to 125 stalls at Ala wai state boat harbor. ANY changes to the parking at Ala Wai should be discussed with the community thoroughly before being brought before the board.

I am a Hawaiian, a surfer, a lover of this beach park, and an advocate for it to remain a free and welcome resource for all local residents. This is one of the only remaining "oasis" for the local community that has yet to be ruined or tainted by the capitalist tourism industry. Taking away access would be taking a step in the wrong direction for the future of responsible care-taking of Hawai'i.

Parking should remain free to the recreating public. Any fees imposed or unfair towing is not giving this special place and the community the respect they deserve.

Please do not impose any paid parking at ala wai boat harbor.

Sincerely,  
Keili McEvelly

Douglas Meller  
2615 Aaliamanu Place  
Honolulu, Hawaii 96813  
douglasmeller@gmail.com

**Testimony on 12/7/23 BLNR Agenda Item J-7**

Future Oahu residents should be guaranteed the same recreational ocean access that I had. I am 76. I have parked at Ala Wai Harbor for access to Waikiki Beach and surf spots for 60 years. I strongly support the BLNR's policy to retain the existing 300 free public parking stalls in Ala Wai Harbor. However, please consider transferring responsibility for some of the 300 free parking stalls to either the Division of State Parks or to the City Department of Parks and Recreation. I think both the public and DOBOR would agree that public parking lots which Hawaii residents use to go to the beach, swim, or surf should be maintained with public general funds and managed like a kind of park facility.

DOBOR needs some kind of parking concession to manage and generate revenue from harbor-related parking. But before the BLNR authorizes a long-term DOBOR concession, I request that the BLNR verify that the proposed concession would not charge unreasonable parking fees, issue parking citations, or tow vehicles of Oahu residents who are crewing on someone else's boat. Before we had kids my wife and I owned a 23' trimaran daysailer moored in a slip at Ala Wai Harbor. None of our relatives and friends would have spent the day sailing with us if they had to pay huge parking fees, risked a parking citation, or risked having their car towed.

**From:** [sam\\_monet](#)  
**To:** [DLNR.BLNR.Testimony](#); [Arakawa, Daniel L](#); [Senators - Hawaii State Legislature](#); [Representatives - Hawaii State Legislature](#)  
**Subject:** [EXTERNAL] TESTIMONEY BLNR Ala Wai Harbor paid parking plan meeting December 7, 2023, 9 am  
COLLECTIVE PUNISHMENT  
**Date:** Sunday, December 3, 2023 1:50:48 PM

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Sam Monet  
1741 Ala Moana Blvd. #98  
Honolulu, Hawaii 96815  
[monets001@hawaii.rr.com](mailto:monets001@hawaii.rr.com) December 3, 2023

Board of Land and Natural Resources

Re: 9: 00 a.m J-7 Thursday December 7, 2023  
Public Testimony at Oahu Land Board hearing  
Against DLNR plan to terminate “Free” parking at Ala Wai Small Boat Harbor and public beach

I am a native Hawaiian, surfer and sailor who has been surfing at Ala Moana, in the ahupua’a Waikiki for over 60 years. **I would like to testify at that meeting.** December 7, is a day of infamy in our history, a sneak attack, which now appears to be re-enacted by our public servants at DLNR. We fought against it then and now.

**COLLECTIVE PUNISHMENT:** is a punishment or sanction imposed on a group for acts allegedly perpetrated by someone else, which could be an ethnic or political group, or just the family, friends and neighbors of the perpetrator. Because individuals who are not responsible for the acts are targeted, collective punishment is not compatible with the basic principle of individual responsibility, equitable application of laws or rules.

DLNR argues that because people who are NOT recreational users are parking free at the harbor, Hilton hotel employees who illegally park all day along the lagoon fence beginning at about 6 a.m., **DLNR should impose a penalty on or punish ALL users, local surfers, boaters and other recreational users.**

**This is not an equitable, fair or just way for public employees or officials to manage public trust assets.** Those hotel employees are pocketing their monthly stipend for parking at the hotel. **HOTEL EMPLOYEES SHOULD NOT BE PARKING AT THE HARBOR.**

**The way to address this is to notify the Hotel that DLNR has authorized an employee to mark tires and WILL begin towing any cars that do not comply with the EXISTING parking regulations at the harbor.**

**The problem is not local surfers, beach goers and other recreational users parking at the harbor, it is management at DLNR.**

In March 2023 the Hawaii Legislature tabled a bill to convert the FREE Parking at Ala Wai Harbor to paid parking. **DLNR is again attempting an end run the Legislature at the Land Board.**

AWSBH has served as a hub for tourists, recreational boating and fishing, surfing, sailing and beach goers, a legal home for some to ease Hawaii's homeless problem, and a popular spot for paddling, surfing competitions and Friday night fireworks.

**It is the last place in Waikiki where local people, our children and families can come to a beach in Waikiki where we can park FREE, *Manuahi*.**

In addition, under this plan, local surfers will be forced to park at Ala Moana park where parking is FREE, they would then need to paddle across the Ala Wai canal and boat harbor entrance where a steady stream of commercial boats, canoes, private fishing and sail boats transit; **water pollution and many recent shark sightings make that paddle extremely dangerous for parents and their kids.**

**In meeting at AWSBH in March 2023, State of Hawaii DLNR administrator, sexual predator Ed Underwood declared that "the public will no longer get 300 free parking at Ala Wai Small Boat Harbor (AWSBH); but instead will have to pay for approximately 150 stalls in his new "paid parking" plan, and "overflow must instead park outside the harbor at the city's Ala Moana park"; because as he said "nothing is free".**

**When questioned about the danger to surfers paddling across from the Park, Underwood callously stated "that is not my problem".**

**Native Hawaiian Dawn Chang should be ashamed for allowing her agency to manipulate this Board to do the wrong thing against the people of Hawaii. The Lahaina fire was under her watch, the alleged "restoration" has been a nightmare for locals and now she wants to make a mess of things at Ala Wai.**

**300 plus FREE parking stalls at AWSBH is a matter of law.**

**The State of Hawaii is prohibited from terminating free public parking at the AWSBH under the public trust doctrine and various legal precedents.**

In addition native Hawaiians who before the overthrow of the Hawaiian Monarchy in 1890s, traditionally, historically and currently parked "free" *manuahi* at AWSBH with access through what is now called *Kahanamoku* Lane to the beach and ocean to dive, fish, pick limu and opihi, surf, paddle canoe, sail and otherwise utilize the beach and ocean for customary rights for subsistence, to practice their native Hawaiian religion and culture, secured by federal and state Constitution and law.

Because AWSBH is a navigable waterway, was developed by the Army Corps of Engineers, is maintained in part with millions of dollars of federal funds and the issues are federal questions, Federal court has jurisdiction.

First, the public trust doctrine requires that certain natural resources and assets, including navigable waters, the water and submerged lands, be held in trust by the government for the benefit of the public. As a public trust asset, the AWSBH is subject to this doctrine and must be managed in a manner that preserves and enhances public access and use.



**Termination of free public parking would directly limit native Hawaiian and the public's historic and as stated in its development plans, funding and construction, ability to access and use this asset, and therefore violates the public trust doctrine.**

Second, the Ninth Circuit Court of Appeals has held that the public trust doctrine applies to navigable waters and adjacent lands, including public beaches and parking areas. In *Hawaii's Thousand Friends v. Anderson*, 374 F.3d 668 (9th Cir. 2004), the court affirmed that the public trust doctrine requires the State of Hawaii to manage its public trust resources in a manner that prioritizes public access and use, and prohibits the state from privatizing or otherwise transferring control over these resources to private parties.

Third, the Hawaii Supreme Court has also recognized the importance of public access and use in managing public trust resources. In *Diamond v. Dobbin*, 319 P.3d 1017 (Haw. 2014), the court held that the State of Hawaii had violated the public trust doctrine by granting a private developer exclusive use of a public beach, thereby limiting public access and use. The court reaffirmed the public's right to access and use public trust resources and held that the state has a duty to manage these resources for the benefit of the public.

Fourth, the State of Hawaii has a legal obligation to provide adequate public access and use of public trust assets under state and federal law. For example, under the Americans with Disabilities Act, the state is required to provide accessible parking spaces and other accommodations to ensure that individuals with disabilities have equal access to public facilities.

Finally, Hawaiian rights are broadly defined in Article 12, Section 7 of the Hawaii Constitution, Hawaii Revised Statutes Section 1-1, and Hawaii Revised Statutes Section 7-1. These provisions commonly refer to the right of Hawaiians to exercise their traditional and customary rights for subsistence, cultural, and religious purposes, subject to the right of the State to regulate such rights.

State's rights to regulate have been narrowly defined by federal and state supreme court and lower court decisions. In State Supreme Court's 1995 decision in *PASH v. Hawaii County Planning Commission*, 79 Hawaii 425, 903 P.2d 1246 (1995) cert. denied, 517 U.S. 1163 (1996); the Court stated: "[T]he State is obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible."

Again in *Ka Pa'akai O Ka Aina v. Land Use Commission*, 94 Hawaii 31, 7 P.3d 1068 (2000) set forth a 3 step process by which State agencies must evaluate and reasonably protect the native Hawaiian rights to access, traditional and customary rights for subsistence, cultural, and religious purposes; **violated by DLNR in its decision making process.**

In the *Waiahole Ditch Contested Case*, the Courts confirmed that traditional and cultural native Hawaiian rights shall not be diminished or extinguished by a failure to apply for or to receive a permit.

*PASH*, *Kapa'akai*, and *Waiahole*, require governmental entities to not only define

the traditional and customary rights affected by any proposed action but also to render findings on the impacts and mitigation necessary to lessen the impact on the exercise of these rights by Hawaiians.

**The State of Hawaii cannot terminate ANY free public parking at the Ala Wai Small Boat Harbor without violating the public trust doctrine** and various legal precedents that prioritize public access and use of public trust resources. Any attempt to restrict public access to and enjoyment of AWSBH would be contrary to the state's legal obligations and could end up in a federal court, confirmation and an award for (class action) Plaintiffs.

Sam Monet

**From:** [Suzy Seymour](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Item J-7: Strong Opposition to Secure Parking LLC Contract Exceeding 6 Months  
**Date:** Monday, December 4, 2023 8:33:54 PM

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Aloha,

The community needs 6 months to further research DOBOR and the unfulfilled [2008 negotiated Ala Wai Small Boat Harbor](#) recreational access agreement.

We must END the Instant Towing policies of DOBOR/DLNR/BLNR. Predatory towing practices are illegal, and DLNR allows it to happen on a daily basis at the Ala Wai Small Boat Harbor.

Between 2007 and 2008, during a state funded mediation process, hundreds of citizens gave their testimony. The Board of Land and Natural Resources member fully addressed this matter in 2008 and all parties agreed to the maintenance (saving) of the 300 free parking stalls in this well documented and established agreement. DOBOR immediately took 'possession' of the 249 parking stalls, yet they never delivered on their side of the negotiated agreement! DOBOR in the formal agreement in 2008 (15 years ago) were to:

1. Provide standard parking management. DOBOR agreed to monitor the 6-hour recreational time limit by providing parking attendants who issue citations, parking signage on poles, and ground striping. Provide clear signage and informational actions to prevent workers parking the 300 recreational stalls.
2. Provide an ad hoc committee (Community and DOBOR Staff) to continue to refine parking signage and implement policies to improve and protect this beach access for the public.

Our community has been standing by requesting DOBOR's to fulfill its promises in 2008. It's 2023, how long shall we wait?

Mahalo Board Members for the opportunity to submit testimony on these issues.

Thank you,

--

Suzy Seymour  
Ocean Inspired Creative  
[suzthedesigner.com](http://suzthedesigner.com)  
[suz@suzthedesigner.com](mailto:suz@suzthedesigner.com)  
808.255.8546





**From:** [John Shockley](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] LIVE NOTE: J-7 item on the BLNR agenda:  
**Date:** Saturday, December 2, 2023 5:04:31 PM

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**Aloha!**

**Subject: J-7 Strongly OPPOSE any further contracts with Secure Parking LLC**

**Body: We must END the Instant Towing policies of DOBOR/DLNR that allows the Parking Management vender to inform the Tow Truck driver's of when the parking meter expires, which leads to Tow truck driver immediately towing the vehicle for the motor violation of meter overstay.**

**BLNR members OPPOSE any contract with Secure Parking LLC, especially a longer term DIRECT ISSUANCE contract until the policies are in place to issue citations for minor parking violations, and offer a Hawaii Resident, Kama'aina Discount for the paid parking areas.**

**John & Rita Shockley. Coordinators. Free Access Coalition.**  
[www.freeaccesscoalition.weebly.com](http://www.freeaccesscoalition.weebly.com)  
**808 210-9433 (cell)**

**From:** [Sienna Streamfellow](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Opposition in J-7  
**Date:** Tuesday, December 5, 2023 8:33:23 AM

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Aloha Board of Land and Natural Resources,

I am in opposition to the contract proposed for Secure Parking. It doesn't protect our 6hr parking. As well as the company has not made parking parameters clear or kept up painting the lines for stalls.

We do not want those that may harm our public access to this important place.

Mahalo,  
Sienna Streamfellow  
--  
Sienna Streamfellow

Building Forest Relationships  
UH Mānoa NREM Graduate Student

To: Board of Land and Natural Resources  
1151 Punchbowl St. Room 132  
Honolulu, Hawaii 96809

**Testimony on [Item J-7: Strong Opposition to Secure Parking LLC Contract That Exceeds 6 Months](#)**

Dear Chair Chang and Members of the Board of Land and Natural Resources,

On behalf of the Surfrider Foundation and the Surfrider Foundation O'ahu Chapter, we **strongly oppose** the Division of Boating and Ocean Recreation's (DOBOR) staff recommendations to issue long term contracts to private parking companies. **We are instead requesting that you issue a Revocable Permit to Secure Parking LLC for 6 months and OPPOSE any longer term contract such as the Direct Issuance.**

As an organization dedicated to the protection and enjoyment of our ocean, waves, and beaches, Surfrider Foundation strongly believes in the need to provide public access to coastal areas. It is no secret that just offshore of the Ala Wai Harbor boasts some of O'ahu's premier surf spots. It should also come as no surprise that parking and access to these surf and beach spots is extremely limited given the high resident and visitor population of this area.

Since 2008, Surfrider Foundation has opposed the repeated attempts by DOBOR to privatize the AWSBH. See our attached letter from 2008 highlighting DOBOR's illegal attempt to privatize a government function. In addition, DOBOR has repeatedly attempted to eliminate free, public parking at AWSBH in 2008. Due to significant public opposition and outcry, however, this Board approved DOBOR's parking plan with the compromise that at least 300 stalls remain free of charge (6h time limit and no parking allowed from 10:30pm to 4:30am).

Through state mediation in 2008, DOBOR immediately took 'possession' of the 249 parking stalls, yet they never delivered on their side of the negotiated agreement. In the formal agreement established in 2008, DOBOR was to:

1. Provide standard parking management. DOBOR agreed to monitor the 6-hour recreational time limit by providing parking attendants who issue citations, parking signage on poles, and ground striping. Provide clear signage and informational actions to prevent workers parking the 300 recreational stalls.
2. Provide an ad hoc committee (Community and DOBOR Staff) to continue to refine parking signage and implement policies to improve and protect this beach access for the public.

Fifteen years later and DOBOR has yet to fulfill these promises.

In January of 2020, DOBOR again attempted to reduce the number of free parking stalls and convert 125 free stalls to paid parking in total disregard of the compromise reached with the community in 2008 and without any prior community outreach. This Board had denied the amendment to the parking plan and EXPLICITLY required DOBOR staff to engage with community stakeholders before making any changes to the parking plan.

The beaches of Hawai'i are public, but this is moot if our community cannot access these areas. DOBOR's suggested actions are another attempt at privatizing the AWSBH and ultimately squeeze the public out of some of the last remaining free parking in Waikiki. The fact that DOBOR has also

presented their recommendations *without* significant public consultation and/or input further erodes the public trust in our state agencies.

The community has made it abundantly clear that free parking at AWSBH is critical to the continued use and access of the Ala Wai coastal areas. DOBOR's current actions highlight its focus on monetizing state harbors, but this comes at a significant detriment and cost to local community members who simply seek to access the public beach and ocean. **Please DENY any request to issue any long term contracts such as the recommended Direct Issuance Contract to Secure Parking LLC.**

Sincerely,

A handwritten signature in cursive script that reads "Lauren Blickley".

Lauren Blickley  
Hawai'i Regional Manager, Surfrider Foundation



# Surfrider Foundation

## 2008 Testimony Against AWSBH Privatization



Surfrider  
Foundation.

Surfrider Foundation  
P.O. Box 6010  
San Clemente, CA 92674  
[www.surfrider.org](http://www.surfrider.org)

August 7, 2008

Division of Boating and Ocean Recreation  
Department of Land and Natural Resources, State of Hawaii  
333 Queen Street  
Honolulu, HI 96813  
*Via Facsimile:* 808-587-0390

RE: Opposition to Issuance of Revocable Permit to Diamond Parking, LLC, for Management of a Parking Concession located at Ala Wai Small Boat Harbor, Honolulu, Hawaii TMK:(1)2-2-037

To The Chairperson and Members of the Board of Land and Natural Resources:

On behalf of Surfrider Foundation, a grassroots, non-profit environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches for all people, with over 900 members in Hawaii and 50,000 members worldwide, we are writing to oppose issuance of a revocable permit to a private, for-profit entity, Diamond Parking LLC, for management of the Ala Wai Small Boat Harbor parking area. A central focus of Surfrider's mission is to ensure beach access for all persons. As it stands, this type of regulation of parking would not only discourage and effectively prohibit surfers and beachgoers from utilizing the natural resource they have become accustomed to enjoy, but it would also illegally privatize a government function. This privatization should not occur because the state legislature has failed to endow state agencies with the power to contract with private contractors. We urge you to deny the issuance of this revocable permit so as not to overstep the current regulatory framework and not to contravene legislative intent.

The state does not have the right to contract with private companies in such a way as DOBOR is contemplating by creating a parking management plan that would be run by a private company. The rationale for this rule against privatization is to protect against the potential for abuse of government and taxpayer money. Additionally, the prohibition on contracting with private entities protects against the possibility that the public will be overcharged for services only to benefit of a private company who otherwise would not be making money.

This issue was once regulated by Hawaii's Act 90. Act 90, which was enacted in 2001, explicitly allowed counties and states to "contract with private entities when it is

reasonable to believe that those private entities can provide equivalent or better quality services at lower cost than the government agency”<sup>1</sup>. Act 90 is no longer valid and was NOT used as a justification for this contract proposal. Even if this Act was still valid, in this instance, there is no sufficient evidence citing why it would be reasonable to believe that Diamond Parking Services LLC could provide better quality services at lower cost than a state agency.

Furthermore, an audit done by the State of Hawaii in 2002 found that the state did not have the structural framework or leadership to implement Act 90. Act 90 was repealed (via its own statutory terms) as of 2007 and was not reenacted. Thus, under the state’s own assessment, there is no proper state authority to use private contractors.<sup>2</sup> The only agency that planned on utilizing the act was DOBOR, in this very instance, to privatize the currently free parking in the Ala Wai Small Boat Harbor area. Since Act 90 is no longer in effect, the DOBOR does not even have a tenuous justification for agreeing to this contractual proposal.

In an attempt to explicitly address this issue, a recent bill was proposed that would allow a state the right to contract with private entities, but the bill did NOT pass.<sup>3</sup> Therefore, the question of whether the state has the right to contract with private entities is still circumspect at best. In fact, considering that the state legislature had an opportunity to address this specific problem but chose not to, demonstrates at least the lack of political willpower to allow private contractors to do government work, if not their opposition to the concept. Thus, the privatization that is proposed by DOBOR not only lacks any basis or implementation in existing law, it also lacks the legislative intent to be provided for in any new law.

Surfrider avers that this proposed parking management plan would disturb the beach-going experience as well as overstep the state’s restrictions on contracting with private entities. Because the currently proposed parking management plan would not only restrict beach access, which contravenes a core tenet of Surfrider’s mission, but also would do so illegally without statutory right, Surfrider asks that the request for issuance of revocable permit to Diamond Parking LLC be denied.

Sincerely,

Angela T. Howe, Esq.  
Legal Manager  
Surfrider Foundation

<sup>1</sup> <http://www.hawaiireporter.com/story.aspx?b335c226-99b2-4e9e-8938-07018a25d680> (emphasis added).

<sup>2</sup> <http://www.hawaiireporter.com/story.aspx?b335c226-99b2-4e9e-8938-07018a25d680>

<sup>3</sup> <http://www.capitol.hawaii.gov/session2008/bills/HB3141.pdf>. Note that Konno v. County of Hawaii (85 Haw. 61 (1997)) is a recent lawsuit that addresses the subject but does not definitively resolve the controversy.

**From:** [Sue Tamon](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Item J-7: Strong Opposition to Secure Parking LLC Contract Exceeding 6 Months  
**Date:** Monday, December 4, 2023 4:01:01 PM

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The community needs 6 months to further research DOBOR and the unfulfilled [2008 negotiated Ala Wai Small Boat Harbor](#) recreational access agreement.

We must END the Instant Towing policies of DOBOR/DLNR/BLNR. Predatory towing practices are illegal, and DLNR allows it to happen on a daily basis at the Ala Wai Small Boat Harbor.

Hotel and Construction workers Park Their Cars From Early in The Morning And Park all Day..I Have Not Seen Any Cars Being Towed Away.

Between 2007 and 2008, during a state funded mediation process, hundreds of citizens gave their testimony. The Board of Land and Natural Resources member fully addressed this matter in 2008 and all parties agreed to the maintenance (saving) of the 300 free parking stalls in this well documented and established agreement. DOBOR immediately took 'possession' of the 249 parking stalls, yet they never delivered on their side of the negotiated agreement! DOBOR in the formal agreement in 2008 (15 years ago) were to:

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2. Provide an ad hoc committee (Community and DOBOR Staff) to continue to refine parking signage and implement policies to improve and protect this beach access for the public.

Our community has been standing by requesting DOBOR's to fulfill its promises in 2008. It's 2023, how long shall we wait?

Mahalo Board Members for the opportunity to submit testimony on these issues.

Sincerely,

Greg Tamon



**From:** [Victor Victorino](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Item J-7: Strong Opposition to Secure Parking LLC Contract Exceeding 6 Months  
**Date:** Monday, December 4, 2023 8:34:11 PM

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Aloha,

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Thank you,



**From:** [Adam White](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Item J-7: Strong Opposition to Secure Parking LLC Contract Exceeding 6 Months  
**Date:** Monday, December 4, 2023 4:19:16 PM  
**Attachments:** [Screen Shot 2020-04-29 at 12.29.34 PM.png](#)

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Aloha.

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Mahalo Board Members for the opportunity to submit testimony on these issues.

Pray for surf!

Aloha.  
Adam White  
Surfer