

From: Justin Brackett <justinbrackettlaw@gmail.com>
Sent: Thursday, February 22, 2024 9:00 AM
To: DLNR.BLNR.Testimony
Subject: [EXTERNAL] Support Granting the Petitions for a Contested Case Hearing prior to renewal of revocable permits or direct issuance contracts with Secure Parking LLC: Agenda Items J-1, through J-6

Greetings Board of Land and Natural Resources Chair Dawn Chang and Board Members,

We, the Public, are calling upon the Department of Land and Natural Resources and the Board of Land and Natural Resources to fulfill their duties as public servants of public lands in the proper management of Ala Wai Small Boat Harbor contracts and harbor maintenance. We are requesting a contested case hearing to express our desire for clear structure and rules to be established before renewing a contract with Secure Parking LLC, as Secure Parking LLC is one of the contacts directly related to this radical towing situation at the Ala Wai Small Boat Harbor.

It's not acceptable for towings to occur with no warnings or tickets.

Sincerely,
Justin A. Brackett, Esq.
515 Ward Avenue
Honolulu, HI 96814
(808) 377-6778

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From: Korynn Grenert <korynng@hawaii.edu>
Sent: Wednesday, February 21, 2024 11:21 PM
To: DLNR.BLNR.Testimony
Subject: [EXTERNAL] Support Granting the Petitions for a Contested Case Hearing prior to renewal of revocable permits or direct issuance contracts with Secure Parking LLC: Agenda Items J-1, through J-6

Greetings Board of Land and Natural Resources Chair Dawn Chang and Board Members,

We, the Public, are calling upon the Department of Land and Natural Resources and the Board of Land and Natural Resources to fulfill their duties as public servants of public lands in the proper management of Ala Wai Small Boat Harbor contracts and harbor maintenance. We are requesting a contested case hearing to express our desire for a clear structure and rules to be established before renewing a contract with Secure Parking LLC, as Secure Parking LLC is one of the contacts directly related to the towing situation at the Ala Wai Small Boat Harbor.

I have personally had my car towed from the Ala Wai Boat Harbor due to misleading signage, and when I picked up my car from Mr.Tow, they demanded that I pay with cash only. This was despite my pointing out to Mr.Tow that HRS §290-11 requires tow companies to, "(5) Accommodate payment by the vehicle owner for charges under paragraph (1) by cash, credit card, or debit card."

I have seen many cars be towed from the Ala Wai Boat Harbor for going over their metered time even though there were plenty of open stalls available, towing signs pointing in the wrong direction, faded lines on the ground making it difficult to ascertain which parking spots are open to the public, and signage with conflicting information on towing times.

I am a member of Kama'aina Boaters and Surfparking.org, and I strongly support a Contested Case Hearing before renewal of the revocable permit with Secure Parking LLC, who I believe is not doing this state-owned recreational area justice through their immoral towing practices.

Thank you for your consideration in this very important matter.

Sincerely,

Korynn Grenert

BS in Natural Resources & Environmental Management | BA in Political Science

J.D. Candidate, Class of 2026

William S. Richardson School of Law

Phone: (808) 675-8254

Email: korynng@hawaii.edu

February 23, 2024 BLNR Meeting:

Response to both J-1 and J-4 DOBOR submittal to Deny Contested Case Hearings for Kate Thompson, Co-founder of Kama'aina Boaters: we support a contested case hearing on parking and towing at the Ala Wai Small Boat Harbor.

Dear BLNR Chairperson Dawn Chang and Members of the Board,

Mahalo for your long standing interest, your expertise in land use permits in Hawaii and your volunteer time to balance the public and state interests.

The public needs your help to make public parking more pono in our State Harbors.

I, Kate Thompson attended the August 11, 2023 meeting and December 7, 2023 meetings as the representative of Kama'aina Boaters, a consortium of 140 persons who use the Ala Wai Small Boat Harbor parking lot to park their cars in order to access their boats moored at the harbor and the adjacent beach and ocean. I properly requested a contested case at the end of each submittal decision and I certaining met the rule to request a Contested Case Hearing (CCH) prior to the end of the BLNR meeting day. As co-founder of Kama'aina Boaters, and the Director of Surfparking.org my involvement is community focus, yet the CCH form and the vice at the meeting needs to have a name.

The response from DOBAR to recommend denial of the petition for a contested case is short-sighted and misses the opportunity to go deeper into the issues and revolve them with the power of the Board Member votes. We believe that once the situation is fully presented, the Board Members will come to understand the need for a Kama'aina rate for parking. Also, the necessity of citations to be issued by the parking vendor for minor violations, as done by the City and County at the Zoo Parking lot, plus a requirement for the monthly towing and citation records as part of the monthly statement sheet required of the contracted parking concessionaire.

Towing is a serious penalty. The State is mandated by our constitution to provide due process before depriving persons of their property. The state cannot avoid its constitutional obligation by delegating its acts to a private party. This goes for the offer of the current vendor to provide outreach services to the community, as well. Given the current circumstances; it would be like putting the 'fox in charge of the hen house'.

Lasting solutions will remain with the leaders, such as the DLNR Chair and the BLNR Members, who are appointed by the Governor and approved with confirmation from the Senate. The BLNR Chair and Board Members have the authority to make the type of changes that will begin to protect the public from towing in this recreational area. We do not object to the state's engagement of a private company to perform parking services per se. Petitioners object to the

engagement of a private party without undertaking rule-making procedures, or Board Member oversight and directives such as requiring monthly towing records. This alone would likely prevent much of the personal property ‘seizure’ that the public experiences when their vehicle is towing, and it sets the stage for due process when ‘enforcement’ actions are documented, and available for review by the Board Members and the public.

As a petitioner for my group, I allege that the Ala Wai Small Boat Harbor lacks adequate signage and information to understand what the parking regulations are and that cars are being towed improperly, even where the limited signage may be adequate. Petitioner is prepared to present substantial testimonial evidence of improper towing practices.

A "rule" means a statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. HRS 91-1. That is, rulemaking sets procedures for future procedures, acts and activities.

Before the State can hand off control of the Ala Wai Small Boat Harbor parking lot, rule-making needs to be implemented, not only to establish the appropriate signage for the parking lot regulations but also to establish proper procedure before cars may be towed, including understanding when and how a vehicle may be found to be in violation of the parking regulations and provide an adequate remedy to a car owner that believes that they towing procedures were not properly followed. Petitioner believes that among the remedies that should be established by rule is period public meetings regarding the management and operation of the parking lot attended by a DOBAR representative.

Petitioner believes that Hawaii's law requires rule-making in this instance and that we are, therefore, likely to prevail at some level of judiciary action. We prefer the medication option, if granted a contested case hearing. We are trying to work this out ‘in house’ and not resort to another lawsuit, with similar factors, such as the 2009 Federal case, **Carello et al v. Diamond Parking, Inc. et al-Case Number: 1:2010cv00734** in which the State of Hawaii lost, with many of the same DOBOR administration staff listed in the case. The possibility of ‘losing again’ is not good, and far more expensive than a CCH. As far as the direct cost for a Contested case hearing, the cost will be a small fraction of what members of the public have been paying, in cash, to the State contracted tow companies, over the years, and especially since Secure Parking has held the contract, September 15, 2021.

The Hawaii Supreme Court has held that rulemaking may be inappropriate in certain circumstances - see **Pilaa 400, LLC v. Bd. of Land & Nat. Res.**, 132 Haw. 247, 265 (2014) - but those circumstances are not present here. In **Pilaa 400**, the appellant argued that the DLNR needed to engage in rule-making in order to set a fine regarding damage caused to a coral reef. The Hawaii Supreme Court disagreed that rule-making was required, suggesting that

rule-making was not appropriate for " *[P]roblems [in] which the administrative agency could not reasonably foresee, problems which must be resolved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible to capture within the boundaries of a general rule.*" The opposite is true here: The DLNR can readily foresee that cars will be towed - that is the point of the revocable permit. The DLNR has extensive experience with the Ala Wai Small Boat Harbor and operated it for many years. And the issues of regulating parking are not so specialized as to be improper for rule-making. Accordingly, Petitioner believes the Hawaii Supreme Court would affirmatively determine that rule-making is required here.

Accordingly, as Petitioner, I request, on behalf of Kama'aina Boaters and the public in general, that the contested case be granted on the issue of whether the Board must proceed by rule-making before granting longer term contracts such as a 1-year Revocable Permit contracts, or a 3-year Direct Issuance contracts.

Addendum to address specific DOBOR's Analysis sections of J-1 and J-4

In response to J-1 DOBOR's Step One Analysis: "Petitioner has no Constitutionally Protected Property Interest in the Renewal of a One-Year RP to Secure Parking."

Petitioner has a constitutionally protected property interest for the renewal of a one year RP to Secure Parking LLC. and the 3-year Direct Issuance contract to Secure Parking LLC.

Petitioner is co-founder of Kama'aina Boaters, and a boat owner who has held a mooring permit in Ala Wai Small Boat Harbor for more than 25 years. Petitioner is a AWSBH parking permit holder and utilizes the harbor and its parking area several times a week, throughout the year. Petitioner was a Commodore for Hawaii Womens' Yacht Racing and served for many years as a sailing instructor, sailing race manager, and Sea Scout Leader. Petitioner is Director for Surfparking.org. Petitioner holds a USCG 50 ton Master Captain's License, and this 'ticket' is used once or twice annually for international 'bare-boat' chartering. Petitioner has been a Hawaii resident for 42 years.

Since the State Harbor lands have been declared as Public Lands, and I am a member of the public, I have rights to defend my interest in public land access. Refer to Executive Order 1795 on county tax key maps for the Ala Wai Harbor area, The Hobron Trust, the Admissions Act Section 5, HRS 171-2 Definition of Public Lands, Hawai'i Public Trust Doctrine, and specifically the designation of AWSBH as a public non-commercial harbor in the 1957 MEMORANDUM NO.122 signed by Governor Samuel King.

Kama'aina Boaters, all 140 members, are also harbor stakeholders. As members of the public, we are recreational boat owners and recreational crew and family members, and some are boat mooring permit holders, and some are parking permit holders and as such, we have a vested interest in the proper function of the harbor, including its parking management.

We have a legitimate concern for the Board's support of contracts with Secure Parking LLC, either Revocable Permits or Direct Issuance, when the company is associated with questionable towing practices. It was discovered in the December 7, 2023 BLNR meeting that 1500 vehicles had been towed from the harbor in the first 222 days of 2023. This is an average of 203 tows per month. Only 7 parking citations were issued in the harbor during 2023.

The revocable permit between DLNR and Secure Parking LLC was originally approved by BLNR, beginning September 15, 2021.

Normally in a situation of this kind, there are rules and regulations that provide clear structure. Examples are: regulation of a company in terms of the scope of the contract, adequate supervision of the performance of the contract, proper and legal signage, citation issued, properly maintained pavement and striping, standards of procedure, etc.

The situation as it is currently, lacks rules and regulations, thereby creating a loophole for questionable towing practices.

Therefore, the one year renewal of Revocable Permit with Secure Parking LLC should be postponed, and these contracts should be 6 months long, until an appropriate assessment of the parking lot is done, a financial audit is performed, and a public meeting is held to allow community input.

Addressing: "Additional Considerations"

On the 8-11-2023 after the Board ruled on J-1, I Kate Thompson, did then and there verbally request a Contested Case hearing, and BLNR Chair Dawn Chang verbally acknowledged my request.

In summary, it should also be kept in mind that the entire argument that a contested case hearing is not required, does not prevent the Board of Land and Natural Resources from granting one out of common fairness, even if it were true that an investigation hearing isn't required. Community members to help inform the Board and the Department on specifics that could lead to good decisions on these matters, especially in terms of effective signage. You may find that offering a contested case hearing is the fairest way to resolve substantial issues about the public parking regulation and enforcement in the Ala Wai Small Boat Harbor.

Thank you for reviewing this written testimony and the request for a contested case hearing.

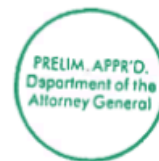
Kate Thompson
info@surfparking.org

Attached is a screenshot of the wording of the minimum duties in the original Revocable Permit issued to Secure Parking LLC on September 15, 2021. The RP has been extended with board approval for the past two and half years and it is still in effect today February 23, 2024. The duties include: Monitor the 6-hour time limit in the recreational area, Monitor the free recreational area at night (10:30 p.m. till - 4:30 a.m.), Ensure proper parking signage throughout the harbor. Many community members think these three duties were not adequately performed, leading to over 2,000 vehicle tows per year in the Ala Wai Small Boat Harbor. Since the revocable permit started on September 15, 2021, that means over 5,000 vehicles have been towed away from this harbor with 90% for minor parking violations. Exhibit B

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: 

Page 13 / 13

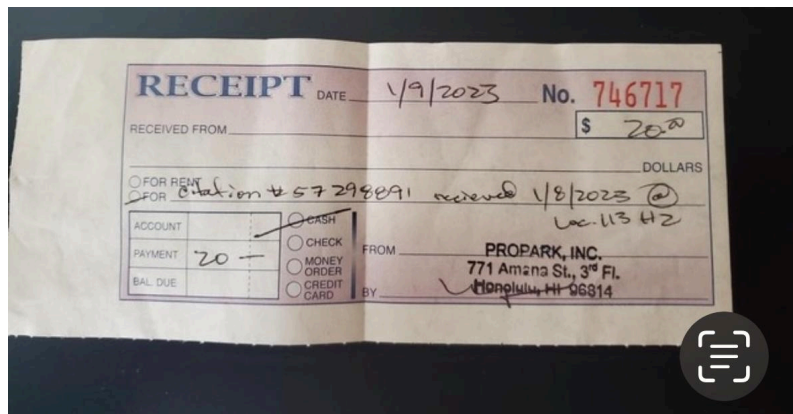


<input type="checkbox"/>	(a) Passenger Curb Loading Zone; Over 3 minutes	\$50
<input type="checkbox"/>	(b) Freight Curb Loading Zone; No Permit.....	\$50
<input type="checkbox"/>	ROH 15-15.4 (Stop / Stand / Park) at Bus Stop.....	\$35
<input type="checkbox"/>	ROH 15-16.3 Parking (on School Grounds / in Public Parks).....	\$50
ROH15-22.11 On-Street Meter & Parking Violations		
<input type="checkbox"/>	(a) Exceeding 4-Hour Limit at (Honolulu Zoo Parking Lot / Mauka Side of Kalākaua Avenue)	\$35
<input type="checkbox"/>	(b) Expired Meter	\$35
<input type="checkbox"/>	(i) Parking in Tow Zone.....	\$50
<input type="checkbox"/>	ROH 15-23.6 Off-Street Meter Violation.....	\$35
HRS 107-11 STATE PARKING RULES		
<input type="checkbox"/>	HAR 3-30-19(a) Expired Meter	\$40
<input type="checkbox"/>	HAR 3-30-19(b) Unauthorized Parking Area.....	\$40
HRS 261-12 AIRPORT PARKING RULES		
<input type="checkbox"/>	HAR 19-15.1-8(a)(1) Prohibited Parking Area.....	\$35
<input type="checkbox"/>	HAR 19-15.1-8(a)(3) Expired Meter	\$35
<input type="checkbox"/>	HAR 19-15.1-8(a)(7) Unattended Vehicle	\$35
<input type="checkbox"/>	HAR 19-15.1-9 Non-payment of Parking Fees.....	\$35
OTHER INFRACTION(S) NOT LISTED ABOVE		
SECTION	DESCRIPTION	
SECTION	DESCRIPTION	\$
SECTION	DESCRIPTION	\$
SECTION	DESCRIPTION	\$

This can be compared to the ticket book used by DOCARE officers, who are the only enforcement entity, currently permitted as law enforcement, to issue citations in State Harbors.

ProPark, under contract with City and County Parks, does issue \$20. citations at the Zoo. Text reminders are sent from ProPark to customers as well.

Secure Parking LLC is already set up to give such citations see their website, as 'Violations' but the company has not yet been allowed to do so, by DLNR and BLNR.



The following photos are at the Ala Wai Small Boat Harbors: Photos explained.

PHOTO 1. Nappy Napoleon says the signs in the Recreational Area need to be better to prevent the late night towing.

PHOTO 2. Confusing signage at an important corner in the harbor.

PHOTO 3. Very faded old signs remain throughout the harbor from the previous vendor Diamond Parking, which vacated in 2020. Secure Parking has not removed these signs which creates sign fatigue'.

PHOTO 4. The photo with two signs on the 'front row' near the Prince hotel were developed by the towing company, not Secure Parking, and they are TOO SIMILAR leading to vehicle tows. The area to the left is paid parking and the area to right is reserved for Boat Owners with permits. Can you easily see the difference?

PHOTO 5. This combination of signs is leading to people who have paid parking in an important parking area reserved for boaters and harbor staff. The sign in front of the sign, the bent smaller sign, and the use of the Secure Parking logo (when not necessary) is leading to customers paying but parking is 'reserved area'. This is the reason for the 2021 community petition for ground stall labels such as the word 'reserved' that existed in the harbor for many years in the boat owner parking areas. Painting the stalls with these words is an inexpensive fix to a major problem.

PHOTO 6. Shows the AWSBH Parking Plan map used in DOBOR submittals, it is inaccurate.



**PAID PUBLIC PARKING
SEE PAY STATION**
UNAUTHORIZED VEHICLES WILL BE TOWED AND
HELD AT THE EXPENSE OF THE VEHICLE OWNER AT:
MR TOW 123 PUUHALE RD 808-486-4665

**PARKING
TIME LIMIT
24 HOURS
NO PARKING
OUT OF STALL**
DEPARTMENT OF LAND & NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
HAWAII ADMINISTRATIVE RULES

PARALLEL STALLS = PUBLIC PARKING
YELLOW STALLS = PERMIT PARKING

**NEIGHBORHOOD
WATCH**

PROGRAM IN FORCE
We report all Suspicious
Persons & Activities to our
Law Enforcement Agency



معلومات عامة
معلومات إضافية
معلومات إضافية

PARKING
TIME LIMIT
24 HOURS
EXCEPT
BY PERMIT
NO PARKING
OUT OF STATE
TOW-AWAY
ZONE

STOP





secure P

THIS LOT IS RESERVED
FOR STATE OF
DOBAR EMPLOYEES
BOATING PERMIT
HOLDERS ONLY. PARKING
PERMIT REQUIRED

UNAUTHORIZED VEHICLES WILL BE TOWED AT VEHICLE OWNERS EXPENSE IN ACCORDANCE WITH
HAWAII ADMINISTRATIVE RULE §13-233-8 REMOVAL OF VEHICLES
Mr. Tow LLC 123 Puuhale Road, Honolulu, HI 96819

NEED HELP?
1-808-517-1311

BEEN TOWED?
1-808-486-4665

**PARKING BY AWSBH
PERMIT ONLY**
UNAUTHORIZED VEHICLES WILL BE TOWED AND
HELD AT THE EXPENSE OF THE VEHICLE OWNER AT:
MR TOW 123 PUUHALE RD 808-486-4665

There is no large general information signage or harbor parking map in the harbor.

There is no ground labeling of boater reserved areas which leads to people paying for parking but not parking in the correct type of stall.

Maps of the map parking submitted in DOBOR's submittals are partly inaccurate, which means the service area is not clear. The parking and towing companies work from this map but the public do not have this map. This map is not posted in the harbor.

Exhibit A-2

Parking Plan

