

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

February 23, 2024

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

SUBJECT: Denial of Petition for Contested Case Hearing filed on August 21, 2023 by Karen Boyer regarding Item J-1 on the August 11, 2023 Board Agenda, titled: *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; and Declare Project Exempt from Environmental Assessment Requirements of Chapter 343, HRS and Title 11, Chapter 200.1, Hawaii Administrative Rules.*

The Board may go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

SUMMARY:

Karen Boyer (hereinafter "Petitioner") filed a contested case hearing ("CCH") petition on August 21, 2023, regarding the continuation of the revocable permit ("RP") issued to Secure Parking Hawaii LLC, *dba Concierge Car Wash and Traffic Monitoring Services* ("Secure"), for management of vehicular parking at Ala Wai Small Boat Harbor, Honolulu, Oahu. The request for continuation of the subject RP was presented to the Board of Land and Natural Resources ("Board") by the Department of Land and Natural Resources' Division of Boating and Ocean Recreation ("DOBOR") as Item J-1 of the August 11, 2023 Board meeting agenda. Because Petitioner did not make any oral or written request for a CCH before the close of the Board's August 11, 2023, meeting, the subject petition is insufficient pursuant to Hawaii Administrative Rule ("HAR") § 13-1-29(a). DOBOR therefore recommends that the Board deny the CCH petition on this basis pursuant to HAR § 13-1-29.1.

BACKGROUND:

At the Board's August 11, 2023 meeting under agenda Item J-1, DOBOR requested approval to continue the RP issued to Secure for an additional one-year period, through September 13, 2024.¹ It is unclear if Petitioner was present at the Board's meeting for Item J-1, via "Zoom" or in-person, and it does not appear that Petitioner testified on Item J-1.

After approximately an hour of consideration, the Board voted to approve DOBOR's recommendation via its Staff Submittal, as amended by DOBOR staff during the meeting, unanimously.² Although there was one person who orally requested a CCH for Item J-1 at the August 11, 2023 Board meeting,³ *Petitioner* did not orally request a CCH for Item J-1 before the close of the August 11, 2023 Board meeting, as required under the rules. Petitioner was one of three parties who filed a written CCH petition regarding Item J-1 after the close of the August 11, 2023 Board meeting.

Petitioner's written CCH petition was filed on August 21, 2023, and is included as **Attachment A**. In it, Petitioner seeks a CCH to challenge the Board's approval of Item J-1 on the Board's August 11, 2023 meeting agenda. Petitioner's desired relief includes a request that the Board require DOBOR to issue a formal request for bids; to make towing records for the last 3 years public; and to require a boot to be placed on a vehicle that has 5 or more unpaid tickets, rather than allowing an immediate tow.

DISCUSSION:

HAR § 13-1-29 sets forth the procedural requirements for anyone seeking to request a contested case hearing relating to any matter before the Board. In relevant part, the rule provides:

On its own motion, the board may hold a contested case hearing. Others must both request a contested case and petition the board to hold a contested case hearing. *An oral or written request for a contested case hearing must be made to the board no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition.* An agency or person so requesting a contested case must also file (or mail a postmarked) written petition with the board for a contested case no later than ten calendar days after the close of the board meeting at which the matter was scheduled for disposition. For good cause, the time

¹ The written submittal provided by DOBOR staff in connection with the August 11, 2023 Board meeting's agenda Item J-1 is publicly available via the Board's website, at <https://dlnr.hawaii.gov/wp-content/uploads/2023/08/J-1.pdf>.

² See Audio, *supra* n.2, at [1:32:38/ 7:01:57](#).

³ See Audio, *supra* n.2, at approximately [1:32:49-to-1:33:22/ 7:01:57](#). The individual who did make the verbal request did not do so until *after* the Board had already voted to approve staff's recommendation and authorize the continuation of the RP to Secure.

for making the oral or written request or submitting a written petition or both may be waived.

Haw. Admin. R. § 13-1-29(a) (emphasis added).

Based on the above, Petitioner is not entitled to a CCH on Agenda Item J-1 of the Board's August 11, 2023 meeting because, although she submitted a written petition for CCH within ten days of the meeting, *Petitioner* did not also make any oral or written request for CCH before the close of the August 11, 2023 Board meeting, as required. Haw. Admin R. § 13-1-29(a). The subject CCH petition was therefore untimely, and it need not be considered further by the Board.

RECOMMENDATIONS:

1. That the Board deny the CCH petition submitted by Petitioner, for failure to comply with the requirements of HAR § 13-1-29(a); and
2. That the Board authorize the Chairperson to take any and all actions necessary to effectuate its decision.

Respectfully Submitted,



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

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson
Board of Land and Natural Resources

Attachment:

- A. August 21, 2023 Contested Case Hearing Petition by Karen Boyer



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

RECEIVED

2023 AUG 21 PM 4:08

PETITION FOR A CONTESTED CASE HEARING

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

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

INSTRUCTIONS:

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

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Kama'aina Boaters (an unincorporated association), and myself	2. Contact Person Karen Boyer	
3. Address [REDACTED]	4. City Honolulu	5. State and ZIP HI 96816
6. Email [REDACTED]	7. Phone [REDACTED]	8. Fax

Attachment A

22. Any Disagreement Petitioner May Have with an Application before the Board

1. Board should not have approved the revocable permit to Secure Parking Hawaii LLC because of legitimate reports that (i) signage regarding parking is inadequate, resulting in improper removal of vehicles; (ii) that State officials are not determining whether parking meters are expired before vehicles are towed/removed. Secure Parking Hawaii LLC has been a poor steward of the Ala Wai Small Boat Harbor Parking Lot because they are not patrolling the area themselves and by releasing electronic information to Mr Tow LLC, who's Tow Truck drivers to perform immediate towing, without a ticketing phase.

2. DOBOR did not adequately describe the service area in the J-1 submittal. The parking map (Exhibit A2) is inaccurate and could lead to additional and wrongful towing. The general parking signage in the harbor is very poor with only an 8 1/2 x 11 printed map on the Harbormaster's Office door, which is faded, not to scale, and a different color key than the map in the J-1 submittal. Also, a new designation of commercial permit offered by Secure Parking LLC has never been proposed to the Board of Land and Natural Resources for approval and yet commercial vehicles in the harbor display the Secure Parking permit on their windshield. Tour company trucks have been parking in the Permit Lot E, the triangle parking lot, which is likely a decision by DOBOR Administrator's without a request to the Board of Land and Natural Resources.

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

1. Revocation of the permit;
2. For the Board to engage in rule-making to establish proper use and operation of a private contractor licensed to perform the acts in connection with the revocable license, including procedures to provide adequate signage; determining when parking regulations have been violated; charging reasonable fines and fees in connection with the removal of vehicles; require licensees to require towing contractor to accept typical forms of legal tender including credit cards; require licensees to make the terms and conditions of all agreements with towing companies public, including terms regarding sharing of electronic information, and protections to ensure errors do not result in improper removal of vehicles; and require licensees of both parking and towing companies to produce monthly towing records; and agree to annual state inspection and approval of signage; and
3. Require an environmental assessment in accordance with Hawaii law, before making any changes to the parking lot unless for normal maintenance such as paving, painting, striping. New design projects and construction should require an Environmental Assessment.

24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

Preserve due process in this state-owned recreational area and preserve the public's right to beach access. In a recent public survey, half of the people who have had their vehicle towed from this harbor area say they did not receive a 'Post-Tow Hearing' form from Tow Company at the time of the vehicle pick up, which is mandatory for the Tow Company to give. Then, Secure Parking LCC staff have a mandatory responsibility to read the completed forms and attend the Post-Tow Hearings, a duty designed to assist the parking contractor to increase their understanding of the tow specifics and evaluate the parking client's complaint and ideally make improvements as needed.

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

My family and I regularly use the harbor for sailing and paddling five to six times weekly. My daughter and her friends have been towed. My vehicle was hooked up to a tow truck at 10:29 pm but he had to release it because I arrived on scene by 10:30. The tow truck company is very aggressive circling during all hours apparently looking for cars that have exceeded paid parking time or are parked in incorrect and poorly marked spaces. I feel really bad for unsuspecting local families and tourists who do not aware of the ambiguous signs and rules in the area.

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.

Karen R. Boyer

08/21/2023

Petitioner or Representative (Print
Name)

Signature

Date

August 21, 2023

Remedy: The ticketing authority needs to be established in writing and the person with the authority to ‘authorize a tow’ from Ala Wai Small Boat Harbor must be clearly established by DLNR and the Attorney General’s Office before parking permits or contracts can be continued.

There can be no question that towing is much more of an onerous punishment than a ticket, in terms of inconvenience, as well as cost. It follows that a tow should be used only in circumstances where the vehicle to be towed presents a danger to public safety (such as parking in front of a fire hydrant), or significantly impairs rush hour traffic, or has been abandoned for more than 24 hours in the paid parking spaces, a guideline used by Honolulu Police Department City and County of Honolulu for similar public parking areas near Kapi’olani Park.

At the Ala Wai Small Boat Harbor, a State of Hawaii property, the current parking signage, pavement striping, and general information such as a harbor map are poor, misleading, or nonexistent. There needs an official third party evaluation of the signage in the harbor.

Currently, about 10 cars a day are being towed from the Ala Wai Small Boat Harbor, which is a small portion of the parking lot capacity, 941 public stalls, and therefore not creating a danger to the public. Wrongly parking in a boat owner-permitted stall, or a meter expiration in the paid public stalls, does not affect public safety and citations should be written for a cost that is ‘appropriate to the crime’ and consistent with other government-owned parking areas, in the State of Hawaii.

Parking area	Property	Manager of the parking	Cost of an Expired Meter Violation
Iolani Palace & State Capitol	State of Hawaii	DAGS (State Agency)	\$40.00
Honolulu Zoo	City & County	ProPark	\$20.00
Frank Fasi Municipal	Honolulu City & County	Parking Div. Expired Meter	\$35.00
Ala Wai Small Boat Harbor	State of Hawaii Department of Land and Natural Resources	Secure Parking LLC with an <u>electronic connection</u> to Mr. Tow LLC.	\$165.00 plus* Vehicle tow charge, * late hours fee, *ride/taxi to Tow yard, *ATM fee due to tow yard demand for ‘cash only’

The table above in words: ProPark Inc. is contracted by the City and County Parks Department to manage the parking lot at the Honolulu Zoo. They give a \$20.00 ticket for an expired meter. The Department of Accounting and General Services manages the parking in downtown Honolulu at the Iolani Palace and the cost of a meter overstay is \$40.00. At the Frank Fasi municipal parking lot the meter overstay is \$35.00. Tow cost from the Ala Wai Small Boat Harbor to the Mr. Tow yard \$165.

Therefore, I submit that the Department of Land and Natural Resources, and the Attorney General, should designate an officer, or the hired parking attendant, to give a more reasonable citation, in the range of \$25.00 to \$35.00 for meter overstays and for those you paid for parking but wrongly parked in the permitted (boat owner) stalls at the Ala Wai Small Boat Harbor.

A ticketing phase in the Ala Wai Small Boat Harbor is a necessary step in the parking enforcement process, to align with similar parking practices in Honolulu, Hawaii. The stark contrast in the cost of a tow, incurred by patrons of the harbor, shows the inequity of the parking system, designed and condoned by the Division of Boating And Ocean Recreation and the Department of Land and Natural Resources, in Revocable Permits and contracts approved by the State Attorney General's Office.

Many people who park at the Ala Wai Small Boat Harbor make parking errors due to the confusing signage. This violates the duty of Secure Parking Hawaii LLC to Revocable Permit of September 15th, 2021, Minimum duties on Pg. 13 Exhibit B; "To ensure proper parking signage is displayed throughout the Premises." I would like the opportunity to present photos of the signage and ground striping issues in a Contested Case Hearing.

Signature *Karen Boyer*

Submitted by Karen Boyer, Community member. Requesting a Contested Case Hearing (attached) regarding the J-1 Submittal for the Continuation of the Revocable Permit for Secure Parking LLC, presented at the Board of Land and Natural Resources meeting on August 11, 2023.