

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 December 18, 2023 by Karen Boyer regarding Item J-7 on the December 7, 2023 Board Agenda, titled: *Direct Issuance of a Parking Concession to Secure Parking Hawaii LLC, 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 Continuation of Revocable Permit Issued to Secure Parking Hawaii LLC, 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 December 18, 2023, regarding direct issuance of a parking concession to Secure Parking Hawaii LLC, *dba Concierge Car Wash and Traffic Monitoring Services* ("Secure"), and the continuation of the revocable permit ("RP") issued to Secure, for management of vehicular parking at Ala Wai Small Boat Harbor, Honolulu, Oahu. The request for direct issuance of a parking concession, as well as a 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-7 of the December 7, 2023 Board meeting agenda. Because Petitioner did not make any oral or written request for a CCH before the close of the Board's December 7, 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 December 7, 2023 meeting under agenda Item J-7, DOBOR requested approval to directly issue a parking concession to Secure and to continue the RP for parking management issued to Secure.¹ It does not appear that Petitioner was present at the Board's meeting on December 7, 2023, whether in-person or by "Zoom."

After approximately two hours of consideration, the Board voted to approve DOBOR's recommendation via its Staff Submittal, amended during the meeting.² Although there were two persons who orally requested a CCH for Item J-7 at the December 7, 2023 Board meeting,³ *Petitioner* did not orally request a CCH for Item J-7 before the close of the December 7, 2023 Board meeting, as required under the rules. Petitioner was one of three parties who filed a written CCH petition regarding Item J-7 after the close of the December 7, 2023 Board meeting.

Petitioner's written CCH petition was filed on December 18, 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 December 7, 2023 meeting agenda. Petitioner's desired relief includes revoking the RP; halting the direct issuance process; for the Board to engage in rulemaking related to parking; and requiring an environmental assessment before issuance of an RP for parking management.

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*

¹ The written submittal provided by DOBOR staff in connection with the December 7, 2023 Board meeting's agenda Item J-7 is publicly available via the Board's website, at <https://dlnr.hawaii.gov/wp-content/uploads/2023/12/J-7.pdf>. The expiration of the RP (fourth recommendation of the submittal) was amended at the December 7, 2023 meeting to no more than six months from the Board meeting date.

² See Audio, *supra* n.2, at [1:54:06/ 6:59:23](#).

³ See Audio, *supra* n.2, at approximately [1:54:10-to-1:54:30/ 6:59:23](#). The individuals who did make the verbal requests for CCH did not do so until *after* the Board had already voted to approve staff's recommendation and authorize the direct issuance of a parking concession and continuation of the RP to Secure.

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

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

Based on the above, Petitioner is not entitled to a CCH on Agenda Item J-7 of the Board's December 7, 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 December 7, 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. December 18, 2023 Contested Case Hearing Petition by Karen Boyer



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

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

INSTRUCTIONS:

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

RECEIVED
 2023 DEC 18 PM 1:24
 DEPT. OF LAND & NATURAL RESOURCES
 STATE OF HAWAII

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

B. ATTORNEY (if represented)		
9. Attorney Name TBD	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER

17. Board Action Being Contested

The ‘Continuation of Revocable Permit ("Permit") Issued to Secure Parking Hawaii LLC, ("Licensee") for Management of Vehicular Parking in the Designated Areas Located Within the Ala Wai Small Boat Harbor.’

Direct Issuance of a Parking Concession, (for 3 years) to Secure Parking Hawaii LLC, 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

Continuation of Revocable Permit Issued (for ‘up to six months long’, per meeting transcripts), to Secure Parking Hawaii LLC, 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. (REVISED FROM 11.09.2023)

18. Board Action Date

12/07/2023

19. Item No.

J-7

HAR 13-1-28; Hawaii constitution Article 1, Section 4 (Due Process), and Article IX, Section 4 (Preservation of a Healthful Environment)

21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection

Due process rights: to adequate signage/notice of parking laws and regulations: signage inconsistent throughout the harbor (a minimum duty, Exhibit B of RP 120), to have a proper determination made by a duly authorized state official when parking rules and regulations have been violated; and the right to have regulations fairly enforced and not subject to excessive and unreasonable fines and/or payment terms.

Right to a clean environment.

Active recreational sailboat crew for 30 years, family beach access on a regular basis, and outrigger canoe paddler for 3 years.

DCCA does not take complaints from the public regarding service providers (permittees/licensees) in contract with the State of Hawaii.

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

1. Petitioner's previous contested case hearing request was submitted on August 21, 2023, objecting to the Board's action taken at the August 11, 2023 BLNR meeting approaching agenda Item J-1 to that meeting (regarding the continuation of Revocable permit issued to Secure Parking LLC in respect of the Ala Wai Small Boat Harbor). Because the objections and issues raised in Petitioner's August 21, 2023 Contested Case Hearing Request and this request, and Agenda Item J7 from the August 11 2023 meeting and Agenda Item J-1 from the December 7 hearing, are substantially the same, BLNR should not have acted on December 7 Agenda Item J-1 without first resolving Petitioner's August 21, 2023 Contested Case Hearing Request.

2. Board should not have approved the revocable permit 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; (iii) Licensee/permittee is not performing its duties as was reported to the Board and that no licensee/permittee representative is patrolling the parking area; and (iv) that fees in connection with towing and enforcement are excessive and unreasonable. Furthermore, the licensee Secure Parking LLC works closely with the state contracted with the towing company, Mr. Tow LLC. Continued violations of law and complaints constitutes a failure of DLNR/DOBOR to administer this contract.

3. DOBOR did not adequately demonstrate that the application was entitled to an exemption from performing an environmental assessment because the Exemption Notice did not comply or did not demonstrate notice compliance with HAR 11.200.1-17 (b) or (c). Re-design projects and new sites should continue to require an EA. It seems DOBOR/DLNR has appropriately revised this since my filing of Request for a Contested Case Hearing, submitted on August 21, 2023.

4. DOBOR failed to supervise, or enforce the contract, with Secure Parking LLC to provide 'Minimum Duties of the Parking Concession' (Exhibit B) in RP #120, from the start date 09-15-2021 until 11-09-2023, which specifically states 'Monitor the 6-hour limit within the free parking area to ensure compliance.' Those services were not provided during the contract period(s).

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

1. Revocation of the permit; halt the RFI Direct Issuance Process until all the issues raised have been discussed and addressed.

2. For the Board to engage in rule-making to establish proper use and operation of a private contractor licensed/permitted to perform the acts in connection with the revocable license/permit, or direct issuance including procedures to provide adequate signage; determining when parking regulations have been violated; charging reasonable fines and fees in connection parking violations and with the removal of vehicles; require the state division to require its towing contractor to accept typical forms of legal tender including credit cards; require licensees/permittees 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/permittees to produce monthly towing records.

3. Require an environmental assessment in accordance with Hawaii law, before issuing the license/ permit. If the only improvement is parking asphalt repayment, then the EA can be waived, but other resign project(s) or ground changes need to be assessed.

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

1. Preserve due process and environmental rights to the public. Also, preserve beach and ocean access plus cultural rights.

2. The current parking management is not being done properly, or fairly, is not pono, and it does not adequately protect the public. As minimum 'notice' before a towing event, a citation must be issued by a State Official such as a DOCARE Officer or an HPD Officer.

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

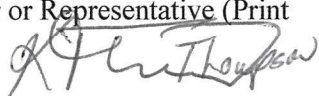
My family regularly uses the Ala Wai Small Boar Harbor area for paddling, swimming, surfing, and sailing and remain thankful for this open (safe and free) space in Waikīkī. It is unfortunate that DLNR and BLNR have not done due diligence in determining the community's opposition to a direct issuance for a parking management concessionaire. I have attached 1) my 2-page document currently titled The need for Parking Citations at the Ala Wai Small Boat Harbor, originally submitted to DLNR in my August 21, 2023 Petition for a Contested Case Hearing filing, 2) my Nov. 7 BLNR cancelled meeting cover letter, 3) my Dec. 7 2023 BLNR testimony opposing any further contracts with Secure Parking LCC until solutions to end the instant towing policies, easier to understand parking signage, and improved ground stripping is in place throughout the harbor. All of these documents point to the need to find solutions that will protect the public from unnecessary vehicle towing.

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

Petitioner or Representative (Print Name)



Signature



12/16/2023 ^{KS}

Date

12/18/2023

Rationale: The need for Parking Citations at the Ala Wai Small Boat Harbor

August 21, 2023

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.

Remedy: Before any Revocable Permits or Contracts can be written between DLNR and a parking vendor for the Ala Wai Small Boat Harbor, the Attorney General's office needs to clarify who has the authority to ticket, especially for an 'Expired Meter' violation, and for those who paid, but failed to park in the correct type of stall. In addition the AG's office needs to clarify who has the authority to 'approve a tow' which might be a DOCARE agent, Parking Vendor or Tow Truck Driver. Plus, the AG's office needs to clarify if the Tow Company can demand Cash Payment, since the 2020 law says the Tow Company must accept the client's choice of Credit Card, Debit Card or Cash.

Signature K. Boyer  _____

Submitted Community members, 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.

November 7, 2023

To: Department of Land and Natural Resources: DOBOR

Karen R.
Boyer

Digitally signed by Karen
R. Boyer
Date: 2023.11.07
14:11:30 -10'00'

From: Karen Boyer, community member

Subject: Item J-7; deny direct issuance of parking contract

Please accept this testimony to request further study of the responsibility of the vendor for parking contracts in the Ala Wai Small Boat Harbor. The public has not had an opportunity to provide input into the plan to shift existing parking or the continued use of Secure Parking Hawai'i as a vendor.

From: Karen R Boyer [REDACTED]

Date: Mon, Dec 4, 2023 at 3:26 PM

Subject: Please accept this testimony and copy of contested case hearing from Karen Boyer, community member

To: <BLNR.testimony@hawaii.gov>

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

[REDACTED]
<J-7 deny direct issuance; Contested Case Hearing submitted to DLNR 8-21-23.pdf>